

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

21st Report of Session 2021–22

Drawn to the special attention of the House:

Draft Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2021

Includes information paragraphs on:

Renewable Transport Fuel Obligations
(Amendment) Order 2021

Terrorism Act 2000 (Proscribed
Organisations) (Amendment) (No.3) Order
2021

Universal Credit (Exceptions to the
Requirement not to be receiving Education)
(Amendment) Regulations 2021

Occupational and Personal Pension Schemes
(Conditions for Transfers) Regulations 2021

Football Spectators (Seating) 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.

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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/>

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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.

Twenty First Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE:

Draft Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2021

Date Laid: 10 November 2021

Parliamentary procedure: affirmative

This instrument extends the requirement for mandatory COVID-19 vaccination to anyone working in the NHS on a regulated activity in the health and social care sector who will have direct, face to face contact with a service user. In our 10th Report on the preceding Care Homes Regulations, we said that if the Department of Health and Social Care (DHSC) decided to extend its mandatory vaccination policy, we would expect to see a more effectively argued case for it: unfortunately, the Explanatory Memorandum (EM) accompanying this instrument is just as superficial.

DHSC has published other documents in relation to this instrument but useful information is scattered between them and much of it, particularly the “Impact Statement”, is very broad brush. The Statement is no substitute for the required Impact Assessment (IA), which should have been integral to the policy development process. An IA should include both detailed consideration of the costs and benefits of the policy chosen and allow it to be compared with rejected alternative solutions.

Our many concerns include:

- The legislation lacks practical detail about how key expressions, such as “face to face” or “otherwise engaged”, are to be applied, instead referring to future guidance “to supplement this instrument”;*
- The EM makes no reference to any lessons learned from the roll-out of the Care Homes Regulations and is also silent on what contingency plans DHSC is making to cope with expected staff losses when these Regulations take effect, which are likely to be particularly acute in London.*
- While we appreciate that implementing an exemption on religious grounds might be difficult, DHSC provides no evidence to support its assertions that doing so would “significantly reduce the impact of the policy” or cause tension among co-workers.*
- DHSC’s figures anticipate that, of the 208,000 currently unvaccinated workers in the sector, this legislation will result in 54,000 (26%) additional staff being vaccinated and 126,000 (61%) losing their jobs as a result of not complying with the requirement of being vaccinated: this seems a disproportionately small gain for legislation that is anticipated to cause £270 million in additional costs and major disruption to the health and care provision at the end of the grace period. The House may expect to be provided with some very strong evidence to support this policy choice, and DHSC has signally failed to do so.*

1. **These Regulations are drawn to the special attention of the House on the grounds that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation.**

Background

2. This instrument would make it mandatory for anyone in England working for the NHS in a “regulated activity” to be fully vaccinated against coronavirus unless subject to medical exemption. An equivalent requirement is also applied to anyone “employed or otherwise engaged” for the purposes of a “regulated activity” by a “registered person” within the health and social care sector. This includes care provided in a “service user’s” own home.
3. In relation to care and nursing homes, the same rules apply as set out in the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 (“the Care Homes Regulations”),¹ principally that the registered person must not let a person other than a service user or his or her family enter the premises unless they can provide evidence that they have been vaccinated with the complete course of an authorised vaccine. This is subject to a short list of exceptions, which these Regulations extend to include anyone participating in an authorised clinical trial or who may have received different vaccines (listed in Schedule 4), as long as they have had a top up dose of an authorised type at least 21 days before commencing work.
4. In relation to other regulated activities, which cover a very wide range of medical and social care services,² the same requirements for full vaccination against coronavirus apply (including the new exceptions) unless the person is medically exempt or “will not have direct, face to face contact with a service user”.
5. One innovation is a provision for newly employed workers: they may start work providing they have had one dose of an authorised vaccine at least 21 days previously or have been vaccinated with “other” vaccines. They must, however, have met the legislation’s conditions, generally a requirement for a top up dose of an authorised vaccine, within 10 weeks if they are to continue to be deployed.
6. These provisions are due to come into effect 12 weeks after these draft Regulations are made but the Government have announced that the intended start date is to be 1 April 2022. The Secretary of State will be required to report annually to Parliament on the operation of these Regulations.

Poor quality explanation

7. We are disappointed that the Explanatory Memorandum (EM) lacks all practical detail. Its content is minimal, giving only a high-level overview of the policy without giving an adequate description of how the legislation will apply in the real world or what its consequences may be.

1 [Health and Social Care Act 2008 \(Regulated Activities\) \(Amendment\) \(Coronavirus\) Regulations 2021](#), see SLSC, *8th Report* (Session 2020–21, HL Paper 40) and *10th Report* (Session 2020–21, HL Paper 50).

2 Defined in ss 8 and 9 of the Health and Social Care Act 2008. It includes physical and mental health provision, as well as all forms of personal care and other practical assistance provided for individuals who by reason of age, illness, disability, pregnancy, childbirth, or dependence on alcohol or drugs, may require it.

8. Paragraph 7.2 of the EM gives the current levels of COVID-19 vaccine uptake in NHS England. As with the EM accompanying the Care Homes Regulations, the EM for this instrument fails to address some fundamental points: while high levels of vaccination among NHS staff are desirable to protect vulnerable patients, there is no explanation of why the current level of 92% is insufficient, whether a 100% vaccination rate is feasible, and why local action is not possible to deal with facilities falling below the 80% minimum staff vaccination rate advocated by the Scientific Advisory Group for Emergencies (SAGE). **The EM repeatedly states that there is a strong case for making vaccination mandatory in these settings but fails to provide an evidence-based argument.**

A range of associated documents

9. The press release issued by the Department of Health and Social Care (DHSC)³ includes more figures than the EM. For example, it states that 103,000 NHS trust workers and 105,000 domiciliary care workers are not yet fully vaccinated which tells us the size of the issue being dealt with. DHSC has published several other documents relevant to the instrument but the EM references them only obliquely and provides no links to access the documents. To gain an understanding of the issues involved, we have had to trawl:
- The Impact Statement provided for this instrument.⁴
 - The Impact Assessment for the Care Home Regulations⁵ which was finally published on the day after these new Regulations were laid. This provided several evidence-based arguments for the vaccination policy.
 - The Government’s response to the consultation exercise.⁶
 - The Equality Impact Assessment.⁷
 - The guidance published to interpret the Care Home Regulations.⁸

3 DHSC, ‘Press Release: Government to introduce COVID-19 vaccination as a condition of deployment for all frontline health and social care workers’ (9 November 2021): <https://www.gov.uk/government/news/government-to-introduce-covid-19-vaccination-as-a-condition-of-deployment-for-all-frontline-health-and-social-care-workers> [accessed 24 November 2021].

4 DHSC, *Impact Statement: Making vaccination a condition of deployment in health and wider social care sector* (9 November 2021): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032255/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector-impact_statement.pdf [accessed 24 November 2021].

5 DHSC, *The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021—Vaccination as a Condition of Deployment in Care Homes* (20 July 2021): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032152/making-vaccination-a-condition-of-deployment-in-older-adult-care-homes-impact-assessment.pdf [accessed 24 November 2021].

6 DHSC, *Making vaccination a condition of deployment in health and wider social care sector—Government response to public consultation* (9 November 2021): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032203/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector-government-response.pdf [accessed 24 November 2021].

7 DHSC, *Making vaccination a condition of deployment in health and wider social care settings—Equality Impact Assessment* (9 November 2021): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032170/making-vaccination-a-condition-of-deployment-in-health-and-wider-social-care-settings-equality-impact-assessment.pdf [accessed 24 November 2021].

8 DHSC, ‘Coronavirus (COVID-19) vaccination of people working or deployed in care homes: operational guidance’ (updated 19 October 2021): <https://www.gov.uk/government/publications/vaccination-of-people-working-or-deployed-in-care-homes-operational-guidance/coronavirus-covid-19-vaccination-of-people-working-or-deployed-in-care-homes-operational-guidance> [accessed 19 November 2021].

10. **An EM should set out the case for an instrument’s underlying policy and describe its intended effect. It should be a freestanding, comprehensive explanation, and it should not be necessary to conduct extensive research into other documents in order to achieve an understanding of what an instrument does: we regard this EM as an example of poor practice.**

Interpretation of new terms

11. Searching through these other documents has provided us with some understanding of what is intended, but the instrument contains a number of terms which are not defined or explained.
12. We are told in the EM that the Government intend to publish operational guidance by the end of December 2021. We are also told that “the Code of Practice relating to health care associated infections will be updated to supplement this instrument, providing guidance about compliance with this instrument”, and that the requirement for a top-up dose of an authorised vaccine will be subject to UK Health Security Agency guidance. **We regularly raise the concern that unclear definitions in the law may be “interpreted” in guidance to exceed what the legislation actually requires.**
13. In supplementary material from DHSC we discovered that the proposed operational guidance is published in draft at the end of the Department’s response to the consultation.⁹ The draft guidance answers some of our questions about what evidence of vaccination is acceptable and how the registered person is required to record it. It is disappointing therefore that the EM did not mention the availability of this useful material, and this example provides an illustration of our comments about the EM’s poor quality.
14. Some of the terms used in these Regulations, for example “registered person”, are set out in the Health and Social Care Act 2008 (“the 2008 Act”) and associated regulations, but it would have been helpful if the EM had described who that means in practice—for example, in a hospital, would the checking duties on a registered person be the responsibility of the Board, the head of human resources, or the head of each clinical team?
15. Other terms that are crucial to understanding the scope of this legislation are not in the 2008 Act, and so we asked DHSC for an explanation:
- Vaccination is not required in hospitals etc. where the employee “will not have *direct, face to face contact with a service user*”—DHSC replied:

“The definition of direct face to face is the common word understanding of face to face.

The Green Book¹⁰ recommends COVID-19 vaccination for all staff who have frequent face-to-face clinical contact with patients and who are

9 DHSC, *Making vaccination a condition of deployment in health and wider social care sector—Government response to public consultation* (9 November 2021) p.58–70: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032203/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector-government-response.pdf [accessed 24 November 2021].

10 UK Health Security Agency, *COVID-19: the green book, chapter 14a*, 27 November 2020: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033391/Greenbook_chapter_14a_15Nov21.pdf [accessed 24 November 2021].

directly involved in patient care in either secondary or primary care/ community settings. It also recommends COVID-19 vaccination for non-clinical ancillary staff who may have social contact with patients but are not directly involved in patient care. This group includes receptionists, ward clerks, porters, and cleaners.

DHSC and the NHS will provide further guidance to the sector to help providers identify who is in/out of scope. The intention is to provide sufficient flexibility to local circumstances and we do not believe a prescriptive list of roles would be possible or helpful. If an IT worker employed in the provision of the regulated activity has direct contact with patients—which would be very likely if they are installing equipment on a ward, they would be in scope of the requirements.”

- In non-care home settings, the registered person is only required to confirm the vaccination status of those “employed or otherwise engaged” rather than all those entering the premises - DHSC replied:

“Otherwise engaged’ is not defined in the Regulations, and should be given its plain, ordinary meaning. It captures those workers that are deployed for the provision of the regulated activity but are not contractually obligated to the registered person. As such, volunteers are in scope of the regulations.”

- Some hospitals have shops inside the premises, DHSC confirmed “such staff are not employed or otherwise engaged by the registered person for the provision of the regulated activity and therefore are not in scope of the regulations”.
- Some hospitals have subcontracted staff for example in the canteen. DHSC said: “If the subcontracted canteen staff are providing services as part of the regulated activity (e.g. food provision for patients during their stay in hospital) and have direct face to face contact with services users they would be in scope of the regulations. They would be classified as otherwise engaged.”

16. We understand that there is uncertainty amongst some healthcare providers about the meaning of these terms and also that implementing them may be particularly problematic in the community healthcare sector.

17. In the IA for the Care Homes Regulations,¹¹ DHSC supported the proposal not to permit anyone who is unvaccinated to enter the premises on the grounds that:

“SAGE have advised that while there may be staff on site who never come into contact with service users, co-worker networks have been shown to be an important factor in transmission. This means unvaccinated individuals entering the home remain a potential source of infection and transmission in the home, regardless of whether they provide close care to service users.”

18. **The House may wish to press the Minister for an explanation of the apparent inconsistency in DHSC’s policy, whereby under these**

11 DHSC, *The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 Vaccination as a Condition of Deployment in Care Homes* (20 July 2021): https://www.legislation.gov.uk/ukia/2021/83/pdfs/ukia_20210083_en.pdf [accessed 24 November 2021].

Regulations non-care home staff who are not in face to face contact with patients are exempted despite SAGE’s suggestion that co-workers may be “an important factor in transmission”.

Effect on those with protected characteristics

19. We are also disappointed that the EM is silent on the Government’s decision not to provide an exemption on the ground of religious and other beliefs, which in our 10th Report we described as “an important principle that should have been fully justified in the EM”.
20. The matter is addressed, however, in the Department’s response to the consultation in which it reiterates the view that was given by the Minister in oral evidence to the Committee on the Care Homes Regulations.¹² DHSC says:

“We have considered exemptions for those who refuse the vaccine due to religious beliefs and have decided not to provide this exemption. This type of exemption would be difficult to implement or prove and would likely significantly reduce impact of the policy in achieving its aims of increasing levels of protection for both the workforce and patients. It may also cause tension between those who have been exempted and other workers who have been required to be vaccinated as a condition of deployment.”
21. The Equality Impact Assessment¹³ says that DHSC has “no data on the numbers in the social care workforce who follow these religions or hold beliefs that may make them reluctant to take the COVID-19 vaccination”. We appreciate that such an exemption might be difficult to enforce, but DHSC provides no evidence to support the assertions that it would undermine the policy or cause tension among co-workers.
22. The Equality Impact Assessment, which examines the effect of the policy on people who share a “protected characteristic”, does however include the following estimates:
 - One in five members of the social care workforce from an ethnic minority, in particular, Black/African and Black/Caribbean staff comprise 12% of the adult social care workforce, compared to 3% of the overall population. The evidence suggests that vaccine hesitancy is highest among these groups
 - In 2019–20 the adult social care workforce comprised 82% female and 18% male workers; as a result, more women will be impacted than men by the policy.
 - It is estimated that around 15% of the adult social care workforce is made up of women under 30 who may be vaccine hesitant because of concerns about fertility.
 - Studies show that people living in urban areas have increased odds of testing positive for COVID-19 relative to people living in rural areas.

¹² Q11 (Rt Hon. Nadhim Zahawi MP).

¹³ DHSC, *Making vaccination a condition of deployment in health and wider social care settings— Equality Impact Assessment* (9 November 2021): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032170/making-vaccination-a-condition-of-deployment-in-health-and-wider-social-care-settings-equality-impact-assessment.pdf [accessed 24 November 2021].

23. It concludes that where these various factors combine, for example in London which has the most diverse workforce (66% black, Asian, and minority ethnic (BAME)) and also the most crowded conditions and highest vaccine hesitancy, the numbers likely to refuse the vaccine are greater and they may elect to leave the workforce as an alternative to taking the vaccine.
24. There were nearly 35,000 responses to the consultation¹⁴ with an overall majority of 64% objecting to mandatory vaccination on a range of grounds including religious belief, ethical concerns and civil liberties. Members of the adult social care workforce who responded were almost evenly split. **Given the degree of objection and its potential to reduce the sector's workforce, the House may wish to ask the Minister why these individuals' views could not be accommodated.**

Other vaccinations

25. DHSC also consulted on a proposal to oblige those working in regulated activities to have a flu vaccination: 65% of respondents rejected the proposal. We note however that, for the flu season 2020–21, 76.8% of frontline care workers took the flu vaccination voluntarily.¹⁵ The Department's response to the consultation says:

“The government has considered the concerns raised in relation to introducing flu vaccination requirements. The flu programme runs between October and March with most flu vaccinations happening October and January. Due to the need to balance this with the time necessary for health and social care to implement the regulations, the government has decided not to introduce vaccination requirements for flu at this time. The government will keep this under review following this winter and ahead of winter 2022–23.”

26. **The House may wish to raise any concerns about the principle of mandatory vaccination with the Minister at this point because these Regulations would appear to set a precedent that DHSC may rely on in the future.**

Impact

27. DHSC has published an “Impact Statement.” Although it contains some useful information, the Department neither highlights key figures from it nor responds to them in the EM. Since it is not an Impact Assessment (IA), it does not include third-party validation and is not published on the legislation.gov.uk website alongside the Regulations so that all potential readers can find it easily.
28. The earlier Care Home Regulations also used this device of an “Impact Statement”. The formal IA was not made available until some four and a half

14 DHSC, *Making vaccination a condition of deployment in health and wider social care sector—Government response to public consultation*, (9 November 2021): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032203/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector-government-response.pdf [accessed 24 November 2021]

15 Public Health England, *Seasonal flu vaccine uptake in healthcare workers: winter 2020 to 2021* (24 June 2021): https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fassets.publishing.service.gov.uk%2Fgovernment%2Fuploads%2Fsystem%2Fuploads%2Fattachment_data%2Ffile%2F995890%2FSeasonal_influenza_vaccine_uptake_HCWs_2020_to_2021_supplementary_data.ods&wdOrigin=BROWSELINK [accessed 24 November 2021].

months after that instrument was laid before Parliament and one day before the legislation came into effect. **We regard this as very poor practice.**

29. Speaking about these new Regulations, the Minister, Lord Kamall, announced that DHSC would publish a full IA as soon as possible *and before Members vote on the proposed legislation*.¹⁶ This is not good enough. An IA should be produced alongside the legislation and inform policy development, including explaining other policy options explored and dismissed. It should then be published at the same time as the instrument is laid so that those affected can understand the legislation's practical implications.
30. **We regret that DHSC has not adhered to the well-established government practice of providing detailed impact information in a standardised and validated format at the appropriate time.**
31. We regard the Impact Statement provided as a token effort that largely raises issues as bullet points without serious discussion of their broader effects. For example, according to DHSC's figures, of the 208,000 workers in the sector who are currently unvaccinated, 126,000 workers are expected not to comply, and 46,000 are medically exempt, from this we may deduce that this legislation will result in only 36,000 additional staff being vaccinated. DHSC's own estimate in the Impact Statement puts this at 54,000 (26%) additional staff vaccinated. The figures are confusing. In either case this seems a disproportionately small result for legislation that is anticipated to cause large costs and disruption to the health and social care sector at the end of the grace period. The House may expect to be provided with some very strong evidence to support this policy choice, and DHSC has signally failed to do so.

Effects

32. Vaccination has significant benefits from lives preserved, people ill but not hospitalised with COVID-19, and the NHS workforce losing less staff time through sickness. We are well aware of the societal benefit from extensive vaccination but also note that vaccination reduces but does not eliminate transmission of the disease and other hygiene and testing measures will still need to be relied on.¹⁷
33. The increase in protection from vaccinating the last 8% of health workers may be marginal, and the requirement's benefits need to be quantified, so that they can be weighed up against the policy's negative impacts on the healthcare system. The Impact Statement gives a broad-brush view, and both it and the EM are silent on what contingency plans DHSC is making to cope with expected staff losses when these Regulations take effect.
34. The Impact Statement estimates that 5.4% of the health and social care workforce (126,000 staff) will still be non-compliant by the time these Regulations come into force and £270 million will need to be spent in recruitment and training costs to replace these individuals.
35. More worryingly, it states that the effective capacity of the labour market to respond to this change is unknown, and particularly at the end of the

16 HL Deb, 10 November 2021, [Cols 1766](#) [Lords Chamber].

17 Public Health England, *Press Release: One dose of COVID-19 vaccine can cut household transmission by up to half* (28 April 2021): <https://www.gov.uk/government/news/one-dose-of-covid-19-vaccine-can-cut-household-transmission-by-up-to-half> [accessed 24 November 2021].

grace period there is “significant workforce capacity risk” to an already stretched healthcare system. It also states that DHSC “cannot be confident that the system, even with additional funding will be able to absorb the loss of capacity without further intervention”, but makes no comment on what intervention might be required. **The House may wish to ask the Minister how DHSC plans to provide this capacity and at what cost.**

Care Homes Regulations

36. This instrument, to extend COVID-19 vaccination requirements to the whole of the health and social care sector, was laid two days before the “pilot” instrument requiring vaccination in the care home sector came into effect. There is little reference to any lessons learned from the initial scheme in the assorted documents published, although the Health Secretary’s statement on the day the new Regulations were laid said that “the number of people working in care homes who have not had at least one dose has fallen from 88,000 to just 32,000 at the start of last month”.¹⁸
37. The Impact Statement on the Care Home Regulations, which was provided just before they were debated on 20 July, suggested that around 7% of staff would no longer be able to operate in care homes after the change in the law. The newly published IA uses that same 7% figure which it equates to 38,000 workers. We note a number of articles now appearing in the press about the effects of the cut-off date on care home staffing,¹⁹ and the IA makes clear that effects will vary significantly from local authority to local authority. **We recommend that, before the House debates these Regulations, DHSC should provide a fuller and clearer statement of how the Care Home Regulations have affected the care home workforce.**

Conclusion

38. We said in our 10th Report on the Care Homes Regulations that high levels of voluntary vaccination among front line staff weakens DHSC’s arguments for using legislation as leverage, and we would therefore expect any regulations extending the mandatory vaccination policy to be accompanied by a much more detailed and structured justification. Sadly, this EM is just as superficial as the last one.
39. Advice from SAGE and the Joint Committee on Vaccination and Immunisation is alluded to but never presented for scrutiny. The EM offers no information about what the changes mean in practice - that is deferred to future guidance. There is a broad-brush statement of potential effects but no plans offered to deal with anticipated negative consequences when the Regulations take effect on 1 April 2022. **DHSC has provided no single coherent statement to explain and justify its intended policy, and this undermines the ability of the House to undertake effective scrutiny.**
40. The Secretary of State wrote to the Committee offering, in the absence of an IA, to attend an oral evidence session to answer any questions on this policy or DHSC’s approach.²⁰ While grateful for his offer, we did not it up. **Our**

18 HC Deb, 9 November 2021, [cols 199-200](#).

19 Community Care, ‘Mandatory vaccination enforced in care homes amid mounting staff gaps and job loss warnings’: <https://www.communitycare.co.uk/2021/11/11/mandatory-vaccination-rule-enforced-in-care-homes-amid-mounting-staff-shortages-and-warnings-of-more-job-losses/> [accessed 19 November 2021].

20 The correspondence is published in Appendix 1 of this Report.

decision was based on a point of principle—namely, that clear and comprehensive explanatory material should be laid at the same time as an instrument is laid, so that it is available to all interested parties both inside and outside Parliament.

INSTRUMENTS OF INTEREST

Draft Renewable Transport Fuel Obligations (Amendment) Order 2021

41. Renewable fuels are typically more expensive to supply per litre than fossil fuels, so the Renewable Transport Fuel Obligations Order 2007²¹ (the RTFO Order) began a system of setting annual obligations on fuel suppliers. Those suppliers who meet or exceed the obligations acquire Renewable Transport Fuel Certificates (RTFCs), the trading of which provides a financial incentive. This instrument extends this financial incentive to suppliers of renewable hydrogen used in fuel cell rail and non-road transports²² and to renewable fuels of non-biological origin used in maritime transport. The instrument also increases the RTFO obligation by a total of five percentage points in the period up to 2032, and updates the sustainability and greenhouse gas emissions criteria that renewable fuels must meet to receive RTFCs. It also links with the instrument which introduced E 10 petrol.²³
42. We originally considered this instrument as a published draft under Schedule 8 to the European (Withdrawal) Act 2018. Although we made no specific comments, we note from the Minister's explanatory statement that several comments were received from the industry and that the Order has been amended and improved as a result.²⁴

Draft Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No.3) Order 2021

43. This Order will amend Schedule 2 to the Terrorism Act 2000 to proscribe Harakat al Muqawama al-Islamiyya (Hamas) in its entirety. It is a criminal offence to belong to or invite support for a proscribed organisation. The Home Office states that Hamas is a militant Islamist movement, established in 1987, with the main aims of liberating Palestine from Israeli occupation, establishing an Islamic state under Sharia law and the destruction of Israel (although Hamas no longer demands the destruction of Israel in its Covenant). Its ideology is related to that of the Muslim Brotherhood combined with Palestinian nationalism.
44. Having taken advice from the cross-Government Proscription Review Group, the Explanatory Memorandum states that the Home Secretary now assesses that the distinction previously made between the militant wing, Hamas Izz al-Din al-Qassem Brigades (Hamas IDQ), and the political wing of Hamas is artificial, and cites evidence that Hamas commits and participates in terrorism, including incendiary and rocket attacks on Israel and running terrorist training camps in Gaza.
45. We asked whether UK charities in the area could still continue to operate under these conditions. The Home Office advised that there is recently published guidance to help NGOs operating overseas in high-risk jurisdictions

21 Renewable Transport Fuel Obligations Order 2007 ([SI 2007/3072](#)).

22 Only hydrogen from renewable sources is eligible for this scheme, that is hydrogen produced using wind or solar power, or from biomethane. The calculation takes into account all greenhouse gas emissions associated with the production of the fuel which must also achieve a carbon saving lower than the fossil fuels it replaces.

23 SLSC, [11th Report](#) (Session 2021–2022, HL Paper 52), para 43–59.

24 See Part 2 of the [Explanatory Memorandum](#).

to comply with the counter-terrorism legislative framework and sanctions regime.²⁵

Universal Credit (Exceptions to the Requirement not to be receiving Education) (Amendment) Regulations 2021(SI 2021/1224)

46. The Department for Work and Pensions (DWP) states that only those in receipt of new-style (contributory) employment and support allowance (NS ESA) who have already been determined to have Low Capability for Work before they start an educational course should be considered for continued benefits. This is because the policy intention is to reduce, or end, reliance on Universal Credit by helping claimants to improve their prospects for work.
47. Students cannot normally qualify for Universal Credit, but, until now, a student with a disability could make a new claim to NS ESA and, if assessed to have Low Capability for Work, could be paid Universal Credit. DWP acknowledges that closing this loophole means that similar individuals may be treated differently and certain disabled students may receive more money than their peers as a result. DWP argues that the government provide educational loans and grants for students, which include additional support, such as the Disabled Students Allowance, for extra needs arising from a disability.
48. This is a complex concept and was poorly explained in the Explanatory Memorandum, which DWP has replaced at our request. The change will apply to any new claim for NS ESA made after 15 December when these Regulations come into effect.

Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021 (SI 2021/1237)

49. These Regulations implement section 125 of the Pension Schemes Act 2021, which aims to protect pension scheme members from scams, and attracted interest in both Houses when debated. With effect from 30 November, the Regulations place new duties on pension scheme trustees if the member seeks to transfer their accrued benefits to another pension scheme. The first stage is a simple check of whether the receiving scheme is of an approved type such as a money purchase scheme or Master Trust. Schemes that do not meet those criteria must be considered for red or amber flags: transfers with a red flag may not proceed, those with an amber flag may only proceed if the member takes independent advice from the Money and Pension Service.
50. The conditions are set out in more detail in a very clear and comprehensive Explanatory Memorandum. The Department for Work and Pensions states that there was strong support for these measures from those who responded to the consultation exercise, but the Department has also publicly committed to review the Regulations within 18 months to ensure they remain effective in targeting the evolving methods used by scammers.

Football Spectators (Seating) Order 2021 (SI 2021/1239)

51. This Order allows five specified football clubs to admit spectators to their home grounds to watch designated football matches whilst standing,

²⁵ Home Office, 'For information note: operating within counter-terrorism legislation, counter-terrorism sanctions and export control' (updated 11 October 2021): <https://www.gov.uk/government/publications/operating-within-counter-terrorism-legislation/for-information-note-operating-within-counter-terrorism-legislation> [accessed 24 November 2021].

provided certain conditions are satisfied, in areas where the seating has been adapted through the use of barriers to reduce the safety risk. The five clubs are Cardiff City, Chelsea, Manchester City, Manchester United and Tottenham Hotspur. The Department for Digital, Culture, Media and Sport (DCMS) says that following the 1989 Hillsborough Stadium disaster, an “all-seater policy” has been in place in the top two divisions of English football since August 1994, but that under the supervision of the Sports Grounds Safety Authority (SGSA) major structural improvements have made football grounds much safer for spectators. DCMS adds that despite the all-seater policy, there have been issues with persistent standing, leading to safety risks, such as injury, customer care issues in relation to disabled or young spectators, and crowd management, including the risk of conflict between fans and stewards who attempt to enforce the all-seater policy.

52. A recent review²⁶ by the SGSA concluded that installing barriers has positive effects on spectator behaviour, and that establishing licensed standing areas would help to mitigate the risk of “progressive crowd collapse”²⁷ and associated risks to safety from persistent standing in conventional seating areas. This instrument enables an ‘Early Adopters Programme’ to test how successful licensed standing areas can be as a strategy to manage persistent standing across several different football grounds with varying challenges before any commitment is made to a substantive policy change and wider rollout. DCMS says that to accommodate the needs of disabled and young spectators, the licence condition for standing areas “mandates that the viewing enjoyment of all fans, including those with access needs, be maintained”. The ‘Early Adopters’ programme will be implemented in the second half of the 2021–22 football season, between 1 January and 31 July 2022. An independent evaluation of the programme will be published in summer 2022.

26 Sports Ground Safety Authority, *The Safe Management of Persistent Standing in Seated Areas at Football Stadia* (June 2021): <https://sgsa.org.uk/wp-content/uploads/2021/06/The-management-of-persistent-standing-Final-report.pdf> [accessed 24 November 2021].

27 This occurs where a spectator is pushed forward due to force exerted by a spectator on the row behind, creating a domino effect of spectators in at least three rows falling down on top of each other.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Made instruments subject to affirmative approval

Draft	Consumer Scotland Act 2020 (Consequential Provisions and Modifications) Order 2022
Draft	Renewable Transport Fuel Obligations (Amendment) Order 2021
Draft	Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No. 3) Order 2021

Instruments subject to annulment

SI 2021/1224	Universal Credit (Exceptions to the Requirement not to be receiving Education) (Amendment) Regulations 2021
SI 2021/1237	Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021
SI 2021/1239	Football Spectators (Seating) Order 2021
SI 2021/1252	Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2021
SI 2021/1258	Copyright and Performances (Application to Other Countries) (Amendment) (No. 2) Order 2021

APPENDIX 1: CORRESPONDENCE: HEALTH AND SOCIAL CARE ACT 2008 (REGULATED ACTIVITIES) (AMENDMENT) (CORONAVIRUS) (NO. 2) REGULATIONS 2021

Letter from the Rt Hon Sajid Javid MP, Secretary of State for Health and Social Care, to Lord Hodgson of Astley Abbots, Chair of the Secondary Legislation Scrutiny Committee

I am writing to you regarding the second vaccination as a condition of deployment regulations that have been laid before Parliament earlier today.

Owing to the need to have the regulations come into force as soon as possible, we have not been able to provide Parliament with an Impact Assessment to accompany these regulations. Instead, an Impact Statement has been laid and published on GOV.UK. We will submit the Impact Assessment to the Regulatory Policy Committee and will present this to Parliament as soon as we can.

I fully understand that this is neither normal nor best practice and regret that this is the approach my department has had to take for this SI. However, it is overwhelmingly important that these regulations progress as quickly as possible so that they can maximise protection for our valuable frontline health and wider social care workforce and the most vulnerable in society for which they care. We also want to give certainty as early as possible to workers and health and care providers in these sectors.

I strongly appreciate your committee's efforts to scrutinise legislation and ensure Parliament is as informed as possible when considering legislation of this significance.

Therefore, in the absence of an Impact Assessment and in order to assist your Committee's scrutiny of these regulations, we would be pleased to attend a ministerial evidence session on the regulations to answer any questions on the policy and approach you might have.

9 November 2021

Letter from Lord Hodgson of Astley Abbots to the Rt Hon Sajid Javid MP

Thank you for your letter of 9 November about the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2021 and for your offer, in the absence of an Impact Assessment (IA), to attend an oral evidence session before the Committee to explain the Regulations further.

Whilst we appreciate your considerate offer - not least because we have no doubt that the demands on your time must be extraordinarily high in current circumstances - we have decided not to take it up on this occasion.

Our reasons are twofold. First, an IA, which would contain amongst other things a description of the range of policy options considered, should have been integral to the policy development process. Its absence therefore marks a fundamental flaw in the development of the policy underpinning these Regulations. Second, we hold it as a point of principle that, contrary to what has happened in respect of these Regulations, clear and comprehensive explanatory material should be provided at the same time as an instrument is laid so that it is available to all interested parties, both inside and outside of Parliament. Neither of these deficiencies is remedied simply by further explanation to the Committee at this late stage.

We shall be reporting on these Regulations shortly. We will draw to the attention of the House any concerns we may have so that they can be answered in debate.

22 November 2021

APPENDIX 2: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 23 November 2021, Members declared the following interests:

Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2021

Lord Hutton of Furness

Non-executive Director, Circle Holdings plc

Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021

The Earl of Lindsay

Chairman, Berry UK Pension Trustees Limited (formerly BPI Pension Trustees Limited)

Attendance:

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