



House of Lords
House of Commons

Joint Committee on Statutory
Instruments

Seventeenth Report of Session 2021–22

Drawing special attention to:

Tuberculosis in Animals (England) Order 2021
(S.I. 2021/1001)

*Immigration and Nationality (Replacement of T2
Sportsperson Route and Fees) (Amendment) Regulations
2021 (S.I. 2021/1035)*

*Co-operative and Community Benefit Societies
(Administration) (Amendment) Order 2021 (S.I. 2021/1048)*

*Education (School Teachers' Qualifications) (England)
(Amendment) Regulations 2021 (S.I. 2021/1093)*

*Health Protection (Coronavirus, International Travel
and Operator Liability) (England) (Amendment) (No. 13)
Regulations 2021 (S.I. 2021/1107)*

*Ordered by the House of Lords
to be printed 1 December 2021*

*Ordered by the House of Commons to be printed 1
December 2021*

HL 118
HC 56-xvii

Published on 3 December 2021
by authority of the House of Lords
and the House of Commons

Joint Committee on Statutory Instruments

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Powers

The full constitution and powers of the Committee are set out in [House of Commons Standing Order No. 151](#) and [House of Lords Standing Order No. 74](#), relating to Public Business.

Remit

The Joint Committee on Statutory Instruments (JCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are not considered by JCSI unless they are required to be laid before Parliament.

The role of the JCSI, whose membership is drawn from both Houses of Parliament, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of each House to any instrument on one or more of the following grounds:

- i that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;
- ii that its parent legislation says that it cannot be challenged in the courts;
- iii that it appears to have retrospective effect without the express authority of the parent legislation;
- iv that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;

- v that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;
- vi that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;
- vii that its form or meaning needs to be explained;
- viii that its drafting appears to be defective;
- ix any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

Publications

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The reports of the Committee are published by Order of both Houses. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

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Contents

Instruments reported	3
1 S.I. 2021/1001: Reported for requiring elucidation	3
Tuberculosis in Animals (England) Order 2021	3
2 S.I. 2021/1035: Reported for failure to comply with proper legislative practice	3
Immigration and Nationality (Replacement of T2 Sportsperson Route and Fees) (Amendment) Regulations 2021	3
3 S.I. 2021/1048: Reported for failure to comply with proper legislative practice	4
Co-operative and Community Benefit Societies (Administration) (Amendment) Order 2021	4
4 S.I. 2021/1093: Reported for requiring elucidation	5
Education (School Teachers' Qualifications) (England) (Amendment) Regulations 2021	5
5 S.I. 2021/1107: Reported for defective drafting and for requiring elucidation	5
Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 13) Regulations 2021	5
Instruments not reported	8
Annex	8
Appendix 1	10
S.I. 2021/1001	10
Tuberculosis in Animals (England) Order 2021	10
Appendix 2	11
S.I. 2021/1035	11
Immigration and Nationality (Replacement of T2 Sportsperson Route and Fees) (Amendment) Regulations 2021	11
Appendix 3	13
S.I. 2021/1048	13
Co-operative and Community Benefit Societies (Administration) (Amendment) Order 2021	13
Appendix 4	14
S.I. 2021/1093	14
Education (School Teachers' Qualifications) (England) (Amendment) Regulations 2021	14
Appendix 5	15
S.I. 2021/1107	15

Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 13) Regulations 2021	15
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Formal minutes	18
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Instruments reported

At its meeting on 1 December 2021 the Committee scrutinised a number of instruments in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to five of those considered. The instruments and the grounds for reporting them are given below. The relevant departmental memoranda are published as appendices to this report.

1 S.I. 2021/1001: Reported for requiring elucidation

Tuberculosis in Animals (England) Order 2021

1.1 The Committee draws the special attention of both Houses to this Order on the ground that it requires elucidation in one respect.

1.2 This Order, which is not subject to any express parliamentary procedure, consolidates tuberculosis control legislation that applies to various animals. Article 5(1) creates a duty to notify the Secretary of State of a suspicion that an animal has or may have tuberculosis. The duty is imposed on three classes of person: the keeper of an animal; a veterinary surgeon who examines or inspects an animal; and a person who inspects an animal in the course of their duty. Paragraph (2) requires “a keeper who has made a notification under paragraph (1)” to take steps in relation to the animal in question to prevent the potential spread of tuberculosis. There is no equivalent requirement where a notification has been made by a person other than the keeper. The Committee asked the Department for Environment, Food and Rural Affairs to explain the discrepancy. (The Committee had noted that similar provisions in S.I. 2014/2383 and S.I. 2014/2337, which this instrument replaces, were not entirely clear on the point.) In a memorandum printed at Appendix 1, the Department explains that the provision as drafted does reflect the policy intent. It acknowledges, however, that it might have been preferable for the provision to have dealt expressly with a situation where notification was made by a person other than the keeper and undertakes to consider making an appropriate amendment at the next opportunity. **The Committee accordingly reports article 5 for requiring elucidation, acknowledged by the Department and provided in the Department’s memorandum.**

2 S.I. 2021/1035: Reported for failure to comply with proper legislative practice

Immigration and Nationality (Replacement of T2 Sportsperson Route and Fees) (Amendment) Regulations 2021

2.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they fail to comply with proper legislative practice in one respect.

2.2 These Regulations, which are subject to the negative resolution procedure, amend two statutory instruments by inserting “, or the dependent partner or dependent child” after “the dependant partner or dependant child” and by adding a deeming provision that where an Appendix to the immigration rules uses “dependent” as an adjective and the amended instrument uses “dependant”, there is no difference in meaning. The Committee asked the Home Office why any of this was thought necessary. In a memorandum printed

at Appendix 2, the Department asserts that doing nothing “appeared to risk uncertainty” where interpretation provisions in legislation use one spelling but the immigration rules use another and changing “dependant” to “dependent” across the relevant legislation to match the predominant (though admittedly not exclusive) spelling of the adjective in the immigration rules “appeared to attach greater significance to the issue than was merited”. The Committee disagrees. If the Department really thought that people might be misled as to the meaning of the law by discrepancies in the spelling of the word “dependant”, then it should have made a textual amendment in each place to ensure consistent spelling. If the issue did not merit thorough textual amendment (and the Committee thinks it does not) then it would have been better to do nothing at all. Apart from being unnecessary, as dispelling a doubt that in the Committee’s opinion could never arise, a provision of this kind could actually create legal doubt in relation to other instances of inconsistent variant language usage and, like all unnecessary legislative provisions, should be avoided. **The Committee accordingly reports paragraph 2(b) and (c) of Schedule 1 and paragraphs 4(2) and 5(2) of Schedule 2 for failure to comply with proper legislative practice.**

3 S.I. 2021/1048: Reported for failure to comply with proper legislative practice

Co-operative and Community Benefit Societies (Administration) (Amendment) Order 2021

3.1 The Committee draws the special attention of both Houses to this Order on the ground that it fails to comply with proper legislative practice in one respect.

3.2 This Order, which is subject to the negative resolution procedure, amends S.I. 2014/229 so that temporary measures enacted by the Corporate Insolvency and Governance Act 2020 remain in place after 30 September 2021, the date on which they had been set to expire. The Order was made and laid before Parliament on 15 September and came into force 15 days later, in breach of the convention that a negative instrument should be laid at least 21 days before it is due to come into force. The breach is justified, at paragraph 3 of the Explanatory Memorandum, on the basis that there should be no gap between the commencement of the Order and the expiry of the provisions it re-enacts. Given that the expiry date had been known since 22 March 2021, when it was set by S.I. 2021/375, the Committee asked Her Majesty’s Treasury why the Order could not have been made earlier to comply with the 21-day rule. In a memorandum printed at Appendix 3, the Department sets out the sequence of events that led to the breach of the 21-day rule: a last-minute technical complication requiring a cross-departmental reassessment and a redrafting of the instrument. It acknowledges that the resultant delay “is not ideal”, identifies steps it has taken to learn from the experience, and undertakes to apply these lessons to avoid similar outcomes in future. The Committee welcomes the Department’s reflective approach and its undertaking. It emphasises again that delays within Government and time required for cross-departmental collaboration do not justify a failure to give adequate notice of changes to the law. The Committee also reiterates that where an instrument cannot comply with the 21-day rule, the Explanatory Memorandum should explain not just why the instrument must come into effect on a specified day, but also why it could not have been made and laid sooner to avoid the breach, as well as any consequences of the delay (see paragraph 2.21 of the Committee’s First Special Report of Session 2017–19: *Transparency*

and Accountability in Subordinate Legislation). **The Committee accordingly reports this instrument for failure to comply with proper legislative practice, acknowledged by the Department.**

4 S.I. 2021/1093: Reported for requiring elucidation

Education (School Teachers' Qualifications) (England) (Amendment) Regulations 2021

4.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they require elucidation in two respects.

4.2 These Regulations, which are subject to the negative resolution procedure, correct an error recently identified in provisions governing the accreditation of institutions that deliver initial teacher training (“ITT”) leading to qualified teacher status. The error meant that only a further education institution or an institution within the higher education sector could be accredited under the Education (School Teachers' Qualifications) (England) Regulations 2003 (S.I. 2003/1662). This restriction was not observed in practice: School-Centred ITT (“SCITT”) providers were accredited that did not fall into either category. The Explanatory Memorandum to this instrument asserts, at paragraph 11.1, that the Department for Education intends to “write to all existing SCITT providers where appropriate to confirm their accreditation status”. The Committee asked the Department to explain the legal basis for “confirming” an accreditation status that could not lawfully have been granted. In a memorandum printed at Appendix 4, the Department explains that its intention is to accredit the relevant providers under the 2003 Regulations as amended, but in reliance on evidence obtained in its original assessment. The Committee finds this explanation helpful, and **accordingly reports the Explanatory Memorandum to these Regulations as requiring elucidation, provided in the Department’s memorandum.**

4.3 It also appeared to the Committee that problems might arise where people had obtained qualified teacher status as a result of training or an assessment that was, at the time, not lawfully accredited. It asked the Department to explain what it intends to do in relation to these individuals. In its memorandum, the Department notes that it has considered the matter and is satisfied that the existing qualification can be relied on without further action because it was “obtained at a time when both provider and recipient were acting in good faith in the belief that the institution was accredited and when the institution had been subject to both the accreditation process and subsequent inspection”. **The Committee accordingly reports the Explanatory Memorandum to these Regulations as requiring elucidation, provided in the Department’s memorandum.**

5 S.I. 2021/1107: Reported for defective drafting and for requiring elucidation

Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 13) Regulations 2021

5.1 The Committee draws the special attention of both Houses to these Regulations on the grounds that they are defectively drafted in three respects and require elucidation in one respect.

5.2 These Regulations, which are subject to the negative resolution procedure, amend the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (S.I. 2021/582).

5.3 Regulation 6 inserts a new Part into the amended regulations. New regulation 3A(2) contains the definition “Crown servant”. As this term is used in connection with the United Kingdom vaccine roll-out overseas, the Committee asked the Department for Health and Social Care to explain why Crown servant was defined by reference to all the categories in section 12(1)(a) to (e) of the Official Secrets Act 1989, which include amongst others, a member of the Scottish Government, the First Minister for Wales and a person appointed under section 8 of the Northern Ireland Constitution Act 1973 (which was repealed in 1998). In a memorandum printed at Appendix 5, the Department asserts that whilst the most likely scenario is for it to be relevant for a member of Her Majesty’s Diplomatic Service (section 12(1)(c) of the 1989 Act), this is not the sole scenario that might arise in practice. The Committee does not believe that the Department actually wanted to provide for application of this provision to Welsh Ministers or Scottish Ministers “posted or based overseas”. As always, the fact that a definition is apt in one place does not make it apt in another, and when copying definitions care should be taken to ensure that each limb is relevant in the new context. **The Committee accordingly reports new regulation 3A(2), as inserted by regulation 6, for defective drafting.**

5.4 The Regulations introduce new categories of “eligible traveller”. New regulation 3I provides that an eligible traveller who is a worker within the descriptions set out in regulation 5(3) of the amended regulations is “to be treated for the purposes of these Regulations as if regulation 5(4) ... applies to them”. As regulation 5(4) states that regulation 7, and the requirement to undertake workforce tests, also applies to a person that would have come within regulation 5(3) had they arrived from a category 2 country rather than a category 1 country, the Committee asked the Department to explain the reference to regulation 5(4). In its memorandum, the Department distinguishes regulation 5(3) from regulation 5(4) by explaining that workers falling within the latter category are not required to self-isolate under regulation 9 and that eligible travellers that are workers will need to undertake more regular testing compared to non-worker eligible travellers. On its face, all regulation 5(4) achieves is to bring a person arriving from a country listed as a category 1 country, of which there are currently no countries listed, into regulation 5(3). However, the Committee notes that regulation 7 stipulates that persons coming within regulation 5(3) will need to undertake more tests than a person coming within regulation 5(4). Thus, whilst the Committee considers the provisions to be rather convoluted and that the assertion that there will be more regular workforce tests for workers will only be accurate where that person enters and leaves England daily or at intervals of no greater than two days, the Committee accepts the Department’s explanation and is content to **report new regulation 3I(a), as inserted by regulation 6, for requiring elucidation.**

5.5 Regulation 13 amends the list of “required evidence” that an operator is required to ensure a passenger is in possession of. This is to reflect the new categories of “eligible traveller”. The Committee asked the Department to explain why proof of meeting the clinical exemption condition was not included in the amended list. In its memorandum, the Department acknowledges that this should have been included and undertakes to correct the error at the earliest opportunity. **The Committee accordingly reports regulation 13(3)(a) for defective drafting, acknowledged by the Department.**

5.6 Additionally, the amended “required evidence” list refers to evidence of the description in regulation 3C(1)(c). The Committee asked the Department to confirm whether the reference should have instead been to new regulation 3C(1)(e). The Department confirmed the error and **the Committee accordingly reports regulation 13(3)(a) for defective drafting in this additional respect, acknowledged by the Department.**

Instruments not reported

At its meeting on 1 December 2021 the Committee considered the instruments set out in the Annex to this Report, none of which was required to be reported to both Houses.

Annex

Instruments requiring affirmative approval

S.I. 2021/1338 Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) (No. 4) Regulations 2021

Draft Instruments requiring affirmative approval

Draft Civil Jurisdiction and Judgments (2005 Hague Convention and 2007 Hague Convention) (Amendment) Regulations 2022

Draft Civil Partnership (Scotland) Act 2020 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Modifications) Order 2022

Draft Motor Vehicles (Driving Licences) (Amendment) (No. 5) Regulations 2021

Instruments subject to annulment

S.I. 2021/1074 Markets in Financial Instruments, Benchmarks and Financial Promotions (Amendment) (EU Exit) Regulations 2021

S.I. 2021/1127 Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2021

S.I. 2021/1148 Competition Act 1998 (Football Broadcasting Rights) (Public Policy Exclusion) Order 2021

S.I. 2021/1149 Packaged Retail and Insurance-based Investment Products (UCITS Exemption) (Amendment) Regulations 2021

S.I. 2021/1150 Occupational and Personal Pension Schemes (Disclosure of Information) (Statements of Benefits: Money Purchase Benefits) (Amendment) Regulations 2021

S.I. 2021/1152 Social Security (Amendment) Regulations 2021

S.I. 2021/1154 Motor Vehicles (Driving Licences) (Amendment) (No. 3) Regulations 2021

S.I. 2021/1210 Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 17) Regulations 2021

S.I. 2021/1213 Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 17) (Amendment) Regulations 2021

Instruments not subject to parliamentary proceedings not laid before Parliament

S.I. 2021/931 Education (National Curriculum) (Key Stage 1 Assessment Arrangements) (England) (Coronavirus) (Amendment) Order 2021

S.I. 2021/1163 Financial Services Act 2021 (Commencement No. 1) (Amendment) (Savings Provision) Regulations 2021

Appendix 1

S.I. 2021/1001

Tuberculosis in Animals (England) Order 20211

1. The Committee has asked the Department for Environment, Food and Rural Affairs in its letter dated 17 November 2021 for a memorandum on the following point:

Explain whether it is intended that where a person other than the keeper of an animal has made a notification under article 5(1), the same restrictions must apply as where the keeper has made that notification.

The Department's response

2. The restrictions set out in article 5(2) are not intended to apply to a person other than a keeper who has made the article 5(1) notification. This was because the keeper might not know that the veterinary surgeon or other person who had made the inspection had notified the Secretary of State of a suspicion, and could not be required to comply with the restrictions in article 5(2) unless and until the keeper was aware that a notification to the Secretary of State under article 5(1) had been made.

3. On reflection, however, the Department acknowledges that it might have been preferable for article 5(2) to have dealt expressly with a situation where a notification was made by someone other than the keeper.

4. The Department considers that this limitation in article 5(2) is likely to have minimal practical consequences as it is in practice very rare for a case of tuberculosis to be suspected from anything other than a positive test for tuberculosis. In such a case, the keeper would be required to apply similar restrictions under article 8(7).

5. The Department undertakes to consider making an appropriate amendment the next time S.I. 2021/1001 is amended.

Department for Environment, Food and Rural Affairs

23 November 2021

Appendix 2

S.I. 2021/1035

Immigration and Nationality (Replacement of T2 Sportsperson Route and Fees) (Amendment) Regulations 2021

1. In its letter of 17 November 2021 to the Department, the Joint Committee on Statutory Instruments has asked for a memorandum on the following point on S.I. 2021/1035:

Explain why it was thought that making express provision to distinguish between variant spellings of “dependant” and “dependent” would be preferable to silence, given the doubt this must create or exacerbate in relation to similar inconsistencies on the statute book (and given the fact that the spelling is inconsistent even within the relevant appendices to the Immigration Rules—see, for example, Appendix Skilled Worker SW 26.1; Appendix Religious Worker RW 9.1; Appendix Intra-Company routes IC 14.1; Appendix T2 Minister of Religion MOR 19.1).

2. In making amendments to the Immigration and Asylum Act 1999 (Part V Exemption: Licensed Sponsors Tiers 2 and 4) Order 2009 (S.I. 2009/506) and the Immigration and Nationality (Fees) Regulations 2018 (S.I. 2018/330) in this instrument, the Department was faced with existing interpretation provisions which it appeared might potentially become unclear in their effect. The provisions in question are those in article 2(2) of S.I. 2009/506 and paragraphs 1(2) of Schedule 1 and 1(2A) of Schedule 2 to S.I. 2018/330.

3. The amendments made to S.I. 2009/506 and S.I. 2018/330 included the addition of provisions referring expressly to applications by a “dependent child” or “dependent partner” under specified Appendices to the United Kingdom immigration rules, reflecting the predominant terminology in the relevant Appendices. It therefore appeared necessary to make consequential amendments to the existing interpretation provisions (which referred only to “dependant” children and partners) so that they also explicitly covered these new references to applications by a “dependent child” or “dependent partner”. Leaving the interpretation provisions alone appeared to risk uncertainty about their application in relation to these new references.

4. The Department was also faced with the fact that recent amendments to the United Kingdom immigration rules have moved away from referring to “dependant” children and partners in favour of referring to “dependent” children and partners. It was noted that there was a mismatch between the terminology in some existing references in S.I. 2009/506 and S.I. 2018/330, in relation to specific Appendices to the rules, and the predominant terminology in the Appendices in question. Since the interpretation provisions in S.I. 2009/506 and S.I. 2018/330 explicitly provide for references in those instruments to an application by a “dependant” child or partner of a particular person or on a particular immigration route under a particular Appendix to be construed in accordance with that Appendix, it seemed at least helpful to add provisions to the effect that any difference between the instrument in question and the rules in their use of the words “dependant” and “dependent” is simply to be disregarded for the purposes of these interpretation provisions. It is therefore clear, for example, that any reference in either of the two instruments to an

application by a “dependant child” of a particular person or on a particular route under a specific Appendix to the rules is to be construed in accordance with that Appendix even so far as that Appendix in fact refers to applications by a “dependent child”. The Department also believes that the amended interpretation provisions take account of the fact that (as the Committee has noted, and as the Department was aware) there is some internal inconsistency in the relevant Appendices to the rules in this respect.

5. The Department considered, as an alternative solution to the issue explained in paragraph 4 above, making specific amendments to all references to “dependant” in the two instruments where those references are inconsistent with the rules. But that appeared to attach greater significance to the issue than was merited.

6. These amendments are confined to specific interpretation provisions in two instruments which exist for specific purposes in those instruments only, and were made for the particular reasons outlined above. In the Department’s view, it is therefore highly unlikely that they might affect the construction of any other legislation where there might be similar inconsistencies. In particular, the Department considers that the amendments have no impact on the construction of the United Kingdom immigration rules.

Home Office

23 November 2021

Appendix 3

S.I. 2021/1048

Co-operative and Community Benefit Societies (Administration) (Amendment) Order 2021

1. In a letter dated 17 November 2021, the Joint Committee on Statutory Instruments (the “Committee”) requested a memorandum on the following point:

Given that it has been known since 22 March 2021 (when S.I. 2021/375 was made to set a new expiry date) that the temporary provisions in Parts 3 and 4 of Schedule 4 to the Corporate Insolvency and Governance Act 2020 would cease to apply on 30 September 2021, explain why this Order could not have been made in time to comply with the 21-day rule.

2. The Committee are correct that the department has been aware of the expiration date of Parts 3 and 4 of Schedule 4 to the Corporate Insolvency and Governance Act 2020 in advance of 30 September 2021. We worked to bring this instrument forward in line with the 21-day rule and were on track to avoid a 21-day rule breach. However, an unforeseen technical complication arose at the last minute, which meant we had to rapidly assess alternative options. In doing so we needed to discuss and agree a new approach with Government lawyers and BEIS policy colleagues. Following this, it was then necessary to redraft the substance of the SI. Therefore, it was not possible to lay the SI in time to avoid a legislative gap without breaching the 21-day rule.

3. We understand that this is not ideal, and we have assessed what we could have done better to avoid the gap, including earlier engagement with other departments when needed to avoid any last minute difficulties. We will use our reflections to be better prepared for future projects.

HM Treasury

23 November 2021

Appendix 4

S.I. 2021/1093

Education (School Teachers' Qualifications) (England) (Amendment) Regulations 2021

1. In its letter to the Department for Education of 17 November 2021, the Joint Committee requested a memorandum on the following point:

Where an institution that was neither a further education institution nor an institution within the higher education sector was unlawfully accredited before these Regulations came into force (as recognised by paragraph 7.3 of the Explanatory Memorandum), explain:

(1) the legal basis on which the Department will “confirm” that institution’s accreditation status (as indicated by paragraph 11.1 of the Explanatory Memorandum); and

(2) what the Department intends to do in relation to individuals who obtained qualified teacher status as a result of training or assessment by an institution that was not, at the time, lawfully accredited.

2. The Department intends to exercise the power now available in relation to these institutions under regulation 11 of the Education (School Teachers' Qualifications) (England) Regulations 2003, as amended by the instrument under consideration. The use of the term “confirm” refers to the Department having already assessed this group of providers as meeting the current standards for accreditation and its intention to rely on the evidence previously provided by them to now grant them accreditation thus “confirming” the earlier assessment.

3. The Department did consider carefully, before and during drafting, the issue of individuals who obtained qualified teacher status as a result of training or assessment by an institution that was not, at the time, lawfully accredited. It is satisfied that there are grounds for continued reliance, without further legislative provision, on these individuals' existing qualification, obtained at a time when both provider and recipient were acting in good faith in the belief that the institution was accredited and when the institution had been subject to both the accreditation process and subsequent inspection. The Department does not therefore propose to take further action in respect of this issue.

Department for Education

23 November 2021

Appendix 5

S.I. 2021/1107

Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 13) Regulations 2021

1. The Committee has asked the Department for Health and Social Care for a memorandum on the following point(s):

1. In relation to the definition of “Crown servant”, explain the application in this context of each of the categories in section 12(1)(a) to (e) of the Official Secrets Act 1989.

2. Explain the reference to regulation 5(4) in new regulation 3I(a).

3. In relation to regulation 13(3)(a):

i. justify the reference to 3C(1)(c), in particular having regard to the other references in regulation 13(3)(a); and

ii. explain why 3F(b) is not referred to.

Question 1

2. To aid clarity and consistency, the Department has sought to use consistent terminology throughout the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 and subsequent amendments.

3. The terms “Crown servant” and “government contractor” are used in Schedule 4 (Exemptions) by reference to their definitions in the Official Secrets Act 1989. Therefore, the Department decided to use the same terminology and definitions in relation to the implementation of the Government’s double vaccination policy. These terms were first used in the context of the double vaccination policy in the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 6) Regulations 2021 which were considered by the Committee at its meeting on 15 September 2021.

4. The Department recalls that regulation 3H(2)(b) provides that “*where P has received a dose of an authorised vaccine and a dose of a vaccine under the United Kingdom vaccine roll-out overseas, P is deemed to have completed a course of doses of a vaccine under the United Kingdom vaccine roll-out overseas*”. This ensures that a Crown servant, or other relevant person, who has received one dose of an authorised vaccine in the UK or another country or territory and one dose under the United Kingdom vaccine roll-out overseas is still an “eligible traveller” subject to the additional requirements in Part 1B, rather than those in Part 2.

5. In practice, this is most likely to be relevant to a member of Her Majesty’s Diplomatic Service who is required to leave England to take up a posting at an Embassy or High Commission abroad, or to return to England at the end of such a posting, in the period between the administration of a first and second dose of a vaccine against coronavirus. However, this is not the sole scenario that might arise in practice and the Department

does not consider that the legislation should exclude the possibility that other categories of Crown servant may receive at least one dose of a vaccine under the United Kingdom vaccine roll-out overseas. Otherwise, that might render such an individual unable to benefit from status as an “eligible traveller” despite being fully vaccinated under the UK Government’s vaccination programme.

6. Furthermore, the Department notes that, where a Crown servant has not received a dose of a vaccine under the United Kingdom vaccine roll-out overseas, they cannot meet the conditions of regulation 3H, regardless of the category of Crown servant into which they fall as specified in sub-paragraphs (a) to (e) of the definition at section 12(1) of the Official Secrets Act.

Question 2

7. There will be people who meet the definition of “eligible traveller” who should nonetheless continue to be required to undertake “workforce” testing under regulation 7. A person who is required to comply with regulation 7 must undertake more regular testing than a person who is required to comply with regulations 3J (testing requirements on eligible travellers (non-workers)) or 6 (requirement to book and undertake tests). This is because of their occupation and the resultant need for regular international travel. People who must comply with regulation 7 are listed in regulation 5(3). Regulation 5(3) is drafted with reference to people who are required to isolate under regulation 9. Therefore, regulation 5(4) was drafted to apply regulation 7 to people who do not have to isolate under regulation 9.

8. The drafting in regulation 3I(a) therefore achieves the policy intention of requiring this cohort to continue to be obliged to comply with regulation 7.

Question 3 (i)

9. Between 4 October and 22 November 2021, a person vaccinated in the United States of America was required to be ordinarily resident in the United States of America (“US”) in order to benefit from “eligible traveller” status. This residency requirement applied in order to mitigate against fraud concerns particular to the US. In order to be considered an “eligible traveller”, the person needed to be resident (regulation 3C(1)(c)) and be able to provide proof of such (regulation 3C(1)(e)). The reference, in regulation 17A(2)(a) of the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (“ITOLRs”), to regulation 3C(1)(c) ought to have been a reference to 3C(1)(e). This drafting error has been superseded by the changes made to the ITOLRs by the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 18) Regulations 2021 which came into force at 4am on 22 November 2021 and removed both the US residency requirement and the reference to regulation 3C(1)(c) from regulation 17A(2)(2)(a).

Question 3 (ii)

10. The policy intention is that people wishing to rely on the vaccination condition in regulation 3F (UK clinical exemptions) must provide proof that they have been advised by a registered medical practitioner that, for clinical reasons, they should not be vaccinated with an authorised vaccine. As set out in regulation 3F(1)(b), that proof must be provided to either an immigration officer or the operator of the relevant service on which the person

is travelling to England. It is therefore an error that the “required evidence” set out in regulation 17(2)(a) does not include evidence described in regulation 3F(1)(b). This error will be corrected at the earliest opportunity.

Department of Health and Social Care

23 November 2021

Formal minutes

Wednesday 1 December 2021

Virtual meeting

Members present:

Jessica Morden (in the Chair)

Dr James Davies

Baroness D’Souza

Baroness Gale

Lord Haskel

Paul Holmes

John Lamont

Baroness Newlove

Lord Rowe-Beddoe

Baroness Scott of Needham Market

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 5.6 read and agreed to.

Annex agreed to.

Papers were appended to the Report as Appendices 1 to 5.

Resolved, That the Report be the Seventeenth Report of the Committee to both Houses.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Adjournment

[Adjourned till Wednesday 8 December at 3.40 p.m.]