

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

25th Report of Session 2021–22

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

Drawn to the special attention of the House: Building Regulations etc. (Amendment) (England) (No. 2) Regulations 2021

Includes information paragraphs on:

12 instrument relating to COVID-19	Sea Fisheries (Amendment etc.) (No. 2) Regulations 2021
Draft Data Protection Act 2018 (Amendment of Schedule 2 Exemptions) Regulations 2022	Customs Importation (Miscellaneous Provisions and Amendment) (EU Exit) (Amendment) Regulations 2021
Draft Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022	Human Medicines (Amendment) (Supply to Northern Ireland) Regulations 2021
Draft Trade Union (Levy Payable to the Certification Officer) Regulations 2022 and one related instrument	

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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

<u>Baroness Bakewell of Hardington Mandeville</u>	<u>Viscount Hanworth</u>	<u>The Earl of Lindsay</u>
<u>Rt Hon. Lord Chartres</u>	<u>Lord Hodgson of Astley Abbotts</u>	<u>Lord Lisvane</u>
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<u>Lord German</u>	<u>Rt Hon. Lord Hutton of Furness</u>	<u>Baroness Watkins of Tavistock</u>

Registered interests

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

Publications

The Committee's Reports are published on the internet at <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.

Twenty Fifth Report

INSTRUMENTS UNDER THE EUROPEAN UNION (WITHDRAWAL) ACT 2018

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

Published draft on which the Committee makes no recommendations

- Food and Feed Safety (Miscellaneous Amendments and Transitional Provisions) Regulations 2021

**PROPOSED NEGATIVES UNDER THE EUROPEAN UNION
(WITHDRAWAL) ACT 2018**

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

Proposed negative instrument about which no recommendation to upgrade is made

- Representation of the People (Amendment) (Northern Ireland) (EU Exit) Regulations 2022

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Building Regulations etc. (Amendment) (England) (No. 2) Regulations 2021 (SI 2021/1392)

Date laid: 15 December 2021

Parliamentary procedure: negative

These Regulations will require the installation of electric vehicle charge points and associated cable routes in new homes, new non-residential buildings and buildings undergoing major renovation, where there is associated parking. According to the Department for Levelling Up, Housing and Communities, these measures will support the transition to electric vehicles, drive the decarbonisation of the transport sector and help to meet the UK's target of reaching net zero carbon emissions by 2050.

The instrument is drawn to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.

1. The Department for Levelling Up, Housing and Communities (DLUHC) has laid these Regulations with an Explanatory Memorandum (EM), prepared by DLUHC and the Office for Zero Emission Vehicles. The instrument will require the installation of electric vehicle charge points and associated cable routes in new homes, new non-residential buildings and buildings undergoing major renovation, where there is associated parking. According to DLUHC, these measures will support the transition to electric vehicles, drive the decarbonisation of the transport sector and help to meet the UK's target of reaching net zero carbon emissions by 2050. The Department for Transport has produced two Impact Assessments, one each for the provision of electric vehicle charge points in residential and non-residential buildings respectively.

Background

2. According to DLUHC, transport emissions are the largest contributor to UK domestic greenhouse gas emissions, accounting for 27% of emissions in 2019. The Department says that following the Government's announcement to end the sale of new petrol and diesel cars and vans by 2030 and to require all new cars and vans to be fully zero emission from 2035, the Government will work with the private sector and local government to help ensure there is an extensive and accessible network of charging infrastructure.
3. DLUHC says that regulation is needed to ensure that the transition to electric vehicles continues at pace and that an extensive charging infrastructure is available. While the Department has considered alternatives to regulation, such as continuing existing grants, it takes the view that without regulation, there would be limited incentive for builders to install the required infrastructure during construction, leading to higher retrofit costs later.

New requirements for residential buildings

4. At present, most electric car charging happens at home and DLUHC expects this to remain central to future charging behaviour. This instrument will therefore require:
 - All new homes, including those created from a change of use, with associated parking within the site boundary to have an electric vehicle charge point; and
 - Residential buildings undergoing major renovation, which will have more than 10 parking spaces within the site boundary following the renovation, to have at least one electric vehicle charge point for each dwelling with associated parking within the site boundary and cable routes in all spaces without charge points.
5. There will be an exemption for new residential properties where the installation of a charge point would increase grid connection costs by more than £3,600. According to DLUHC, this is to ensure that developments remain viable where installations would be disproportionately difficult or costly. The installation of cable routes, however, will still be required. There will also be an exemption for residential buildings where the cost of installing the required electric vehicle charge points and cable routes exceeds 7% of the total cost of a major renovation. The installation of cable routes will still be required, however, unless the cost of that installation also exceeds 7% of the total cost of the renovation.

New requirements for non-residential buildings

6. To ensure that those without off-street parking at home have access to charge points, the instrument will also require:
 - All new non-residential buildings and all non-residential buildings undergoing a major renovation, which will have more than 10 parking spaces within the site boundary of the building, to have a minimum of one charge point and, in addition to this, cable routes for one in five of the total number of spaces.
7. There will be an exemption from these requirements where the cost of installing the electric vehicle charge points and cable routes exceeds 7% of the total cost of the major renovation. The installation of cable routes will still be required, however, unless the cost of that installation also exceeds 7% of the total cost of the renovation.
8. The process for assessing whether the exemptions apply is set out in the Approved Document which has been published alongside this instrument.¹ According to DLUHC, the decision on granting an exemption will be made by the Building Control Body, that is the local authority or an Approved Inspector, during the notice or planning stage.
9. DLUHC expects that the new requirements will lead to the installation of up to 145,000 charge points across England per year.

¹ DLUHC, *Statutory guidance: Infrastructure for charging electric vehicles: Approved Document S* (15 December 2021): <https://www.gov.uk/government/publications/infrastructure-for-charging-electric-vehicles-approved-document-s> [accessed 21 January 2022]

Changes made following consultation

10. According to DLUHC, respondents to a consultation held between July and October 2019 were largely supportive of the Government's proposals.² Following this consultation, the Department has decided, however, not to introduce a requirement that had been proposed originally for one charge point in all existing non-residential properties with more than 20 parking spaces. DLUHC says that "a more tailored approach" is needed for existing non-residential properties and that the Department will develop an alternative policy. We note that this leaves a considerable gap in the provision of electric vehicle charge points in relation to existing non-residential buildings. This also means that Parliament will not be covered by the new requirements.
11. Enclosed car parks, such as basement and multistorey car parks, have also been exempted from some requirements while research is conducted into appropriate safety measures in these places, and the Department says that following a further targeted consultation in March 2021,³ it has decided to also exempt from the requirements residential buildings which are undergoing major renovation to improve fire safety due to historical fire safety deficiencies related to cladding. DLUHC says that this is to ensure that homeowners facing challenging circumstances do not face further costs.

2 Department for Transport, *Consultation outcome: Electric vehicle charge points in residential and non-residential buildings* (November 2021): <https://www.gov.uk/government/consultations/electric-vehicle-chargepoints-in-residential-and-non-residential-buildings> [accessed 11 January 2022].

3 Department for Transport, *Consultation outcome: Electric vehicle charge points in residential and non-residential buildings* (November 2021): <https://www.gov.uk/government/consultations/electric-vehicle-chargepoints-in-residential-and-non-residential-buildings> [accessed 11 January 2022].

INSTRUMENTS RELATING TO COVID-19

Restrictions on businesses and public gatherings

Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) (No. 6) Regulations 2021 (SI 2021/1415)

12. These changes revoked the amendments which came into force on 30 November 2021⁴ with the emergence of the Omicron variant. The requirements revert to the previous position, that is that all close contacts of a coronavirus case will be exempt from self-isolation providing they are fully vaccinated, under 18 years of age, are taking part in a clinical trial for a COVID-19 vaccine or are medically unable to receive a vaccination. To manage the risk of transmission, contacts who are exempt from self-isolation will instead be strongly advised to take a daily Lateral Flow Test for seven days. These Regulations were made on 13 December, came into effect on 14 December and were debated in both Houses on 15 December—cutting across the normal scrutiny process.

Health Protection (Coronavirus, Restrictions) (Entry to Venues and Events) (England) Regulations 2021(SI 2021/1416)

Health Protection (Coronavirus, Restrictions) (Entry to Venues and Events) (England) (Amendment) Regulations 2021(SI 2021/1435)

13. Another of the measures to implement “Plan B”, these Regulations create a series of legal obligations that restrict access to settings with large crowds to adults who can demonstrate their COVID Status or an exemption. To be admitted people must demonstrate that they are either fully vaccinated against COVID-19 (not including a ‘booster’), have proof of a negative polymerase chain reaction (PCR) test or lateral flow (LFD) test within 48 hours of entry, or proof of a medical exemption or participation in a clinical trial. These restrictions apply to nightclubs, indoor events with more than 500 participants (such as theatres, concerts or indoor sports arenas), outdoor settings where more than 4,000 people attending who are likely to move around during the event (such as festivals and sports stadia) and any setting where more than 10,000 people attend. With prior approval by the local authority of a risk assessment, these checks can be reduced to spot checks. Weddings, funerals and religious events are excluded. The operators of such venues are also “strongly advised” to check the COVID-19 status of their customer-facing workforce.
14. **SI 2021/1416** was implemented with immediate effect, while the effects of the Omicron variant and its response to current vaccines are being assessed. It is, however, a temporary measure that is due to expire on 26 January 2022.
15. **SI 2021/1435** was made the following day to correct some errors in SI 2021/1416 and was brought into effect before it had been laid—however, it was not debated with SI 2021/1416, so a further debate will be required. **This is not an efficient way of handling legislation.**

⁴ The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) (No.4) Regulations 2021 ([SI 2021/1338](#)), removed all exemptions from the requirement to self-isolate, regardless of vaccination status, for those with or suspected of having been in contact with a case of the Omicron variant.

Changes to business practice and regulation

Common Organisation of the Markets in Agricultural Products (Marketing Standards and Organic Products) (Transitional Provisions) (Amendment) Regulations 2021 (SI 2021/1396)

16. Building on a previous extension,⁵ this instrument extends further grace periods in relation to import requirements that apply to certain marketing standards sectors, such as hops and hop products, poultrymeat and fruit and vegetables, for EU exports to Great Britain (GB), as well as to those that apply to hops and fruit and vegetables exported by approved third countries into GB. In addition, the instrument extends the grace periods that apply to import requirements for organic products exported by the EU, the European Economic Area and Switzerland to GB. All grace periods are extended to 1 July 2022.
17. The Department for Environment, Food and Rural Affairs (Defra) says that the extensions will bring the introduction of marketing standards and organic import requirements in line with the revised timetable for sanitary and phytosanitary (SPS) border controls as announced by the Government in September 2021.⁶ According to Defra, the extension takes into account the ongoing pressures on supply chains due to the pandemic, and ongoing pressures on businesses as a result.

Official Controls (Extension of Transitional Periods) (England and Wales) (Amendment) (No. 2) Regulations 2021 (SI 2021/1443)

18. This instrument replaces the end dates of a transitional staging period with a single date (30 June 2022), so that sanitary and phytosanitary (SPS) checks on imports to England and Wales will apply fully from 1 July 2022. Scotland is taking forward equivalent legislation. According to the Department for Environment, Food and Rural Affairs (Defra), this in line with the Government's statement on border controls from September 2021 which highlighted the challenges faced by businesses, especially in the agri-food sector, during the pandemic and the impact on European supply chains.⁷ The Department says that attempting to comply with SPS requirements originally scheduled for 1 January 2022 would have created a significant risk of sector confusion and disruption to the food supply chain into Great Britain (GB). Defra will bring forward further legislation setting out the specific requirements that will apply from 1 July.
19. As a result of this instrument, prenotification requirements for personal goods which form part of passengers' luggage and are intended for consumption or use, small consignments of products sent to natural persons which are not intended to be placed on the market, and goods produced in the island of Ireland, including qualifying Northern Ireland goods moving to GB via the Republic of Ireland were not introduced on 1 January 2022. Defra told us that while personal imports of products of animal origin from the EU will not become subject to pre-notification or certification requirements on 1 July 2022, new rules for such personal imports will come into force on that date, and that these new rules will be made public soon.

5 Common Organisation of the Markets in Agricultural Products (Transitional Arrangements) (Amendment) Regulations 2021 ([SI 2021/652](#)).

6 Border Controls Statement, [HLWS280](#), 14 September 2021.

7 *Ibid.*

20. Meanwhile, the following requirements will now take effect from 1 July as a result of this instrument:
- A requirement for meat preparations, such as raw sausages and hamburgers, which are imported from the European Economic Area (EEA) and certain other territories to be deep frozen, rather than chilled.
 - A requirement for businesses in GB which import products of animal origin (POAO) and high-priority plants and plant products from the EU and for EU businesses exporting such products to GB to comply with documentary, physical and identity checks at Border Control Posts (BCPs).
 - Checks at BCPs on live animals and non-high priority plants and plant products.
 - The requirement for Phytosanitary certificates for all regulated plants and plant products.
21. In contrast to the above, the instrument requires prenotification from 1 January 2022 of the arrival of all category 3 animal by-products⁸ not already subject to controls since 1 January 2021.

Travel

Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 24) Regulations 2021 (SI 2021/1434)

22. This instrument removes all countries from the Red List and from the ban on direct flights to the UK. This effectively reverses three recent SIs⁹ which put 11 African countries on the list in the hope of preventing the spread of the Omicron variant. **This instrument came into force before being laid.**

Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 25) Regulations 2021 (SI 2021/1449)

23. In consequence of the removal of all countries from the Red List by SI 2021/1434 above, these Regulations allowed individuals who had recently arrived from those countries to leave Managed Quarantine Services before the end of the 10 day quarantine period, if they had not tested positive for COVID-19. These individuals were instead required to follow the requirements for arrivals from a non-Red List country, in accordance with their vaccination status. Individuals who had tested positive for Covid-19 were required to remain in Managed Quarantine Services to complete their quarantine period. **This instrument came into force before being laid.**

8 UK and EU law classifies animal by-products (ABPs) into three categories, according to their risk. Category 3 ABPs are low risk, such as hides and skins from slaughterhouses, and products of animal origin or food originally meant for human consumption but withdrawn for commercial reasons. Categories 1 and 2 cover higher risk ABPs.

9 Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 19) Regulations 2021 ([SI 2021/1323](#)), Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 20) Regulations 2021 ([SI 2021/1331](#)) and Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 22) Regulations 2021 ([SI 2021/1367](#)).

Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 26) Regulations 2021 (SI 2021/1463)

24. This instrument made minor corrections and updated the main regulations—in particular to:
- recognise certificates issued by approved EU third countries that meet EU Digital Covid Certificate minimum standards for pre-departure tests;
 - remove the requirement that children under the age of five and individuals unable to take a day 2 polymerase chain reaction test by reason of a disability have to self-isolate by default for 14 days;
 - add an offence for travellers required to self-isolate who knowingly provide false information about the other people living in their household: and
 - to update the list of sporting events set out in Schedule 5.

Changes to benefits

Rent Officers (Housing Benefit and Universal Credit Functions) (Amendment and Modification) Order 2021 (SI 2021/1380)

25. Each year rent officers determine Local Housing Allowance (LHA) rates for the coming financial year. In March 2020, as part of its response to the impact of COVID-19, the Government amended the Rent Officers Orders to increase LHA rates to cover the lowest 30% of local rents from April 2020. In 2021–22 the rates were maintained at the same cash levels, and this Order maintains the 2020–21 cash levels for the financial year 2022–23. The Order also makes a technical change so that any alternations to the boundaries of the Broad Rental Market Areas used in LHA assessments can take effect the following April. This provides greater flexibility in the system.

Statutory Sick Pay (Medical Evidence) Regulations 2021 (SI 2021/1453)

26. **These Regulations came into immediate effect** to extend temporarily, from seven to 28 days, the period of sickness after which an employee must provide a fit note from their GP. This is intended to increase GP capacity to support the coronavirus vaccine booster programme by reducing the need for employees to visit their GP for medical evidence for the purposes of claiming Statutory Sick Pay. The Regulations expire on 26 January 2022.

Delayed or revoked legislation

Draft Competition Appeal Tribunal (Recording and Broadcasting) Order 2022

27. To ensure the principle of open justice could be maintained during the coronavirus pandemic, the Competition Appeal Tribunal (Coronavirus) (Recording and Broadcasting) Order 2020 (“the 2020 Order”) disapplied the statutory prohibitions on recording and broadcasting court proceedings. **The temporary arrangements for broadcasting have proved a success in practice**, particularly for the management of large hearings and have attracted large numbers of observers for some cases. The 2020 Order was due to expire on 25 March 2022, **so this instrument is being introduced to make the broadcasting provisions permanent.**

Draft Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2022

28. The Health and Social Care Act 2008 (“the 2008 Act”) established the Care Quality Commission (CQC), and gave it the function of maintaining a registration system for providers of health and adult social care who carry out “regulated activities”.¹⁰ Providers of regulated activities are required to meet the standards imposed by the provisions of the 2008 Act and the regulations made under it, key amongst which are the Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2014 (“the 2014 Regulations”). The 2014 Regulations include a requirement for the Health Secretary to review them before 1 April 2020 and a provision that the 2014 Regulations will cease to have effect after 31 March 2022.
29. Although the review is under way, resource has been diverted to deal with the pandemic. This instrument therefore seeks to extend the expiry date for a further three years, so that the 2014 Regulations cease to have effect after 31 March 2025.

¹⁰ Defined in section 8 of the 2008 Act.

INSTRUMENTS OF INTEREST

Draft Data Protection Act 2018 (Amendment of Schedule 2 Exemptions) Regulations 2022

30. The Immigration Exemption contained in paragraph 4 of Part 1 of Schedule 2 to the Data Protection Act 2018 (“the 2018 Act”) allows for certain data rights to be suspended where they would otherwise be prejudicial to ‘effective immigration control’. On 26 May 2021 the Court of Appeal ruled¹¹ that the current wording of the exemption does not comply with the requirements of Article 23(2) of the UK General Data Protection Regulation (UK GDPR) which sets out specific provisions that must be included in the exemption (for example, to prevent abuse or safeguard against risks to data subjects). Following a remedy hearing on 8 October 2021, it was ordered that the Immigration Exemption was incompatible with retained EU law because it does not satisfy all of the requirements of Article 23(2). However, the Court’s order was suspended in order to provide reasonable time for the 2018 Act to be amended to remedy the incompatibility.
31. These Regulations propose amending Schedule 2 to the 2018 Act to include all of the safeguards listed in Article 23(2) where they are relevant. The Explanatory Memorandum accompanying the Regulations states that they also contain “additional safeguards” including “an obligation to have regard to” an immigration exemption policy document setting out the Secretary of State’s policies and processes about how the Immigration Exemption is applied and where. This has been published in draft for consultation alongside the draft instrument.¹² On 31 January, the matter will return to the Court of Appeal.

Draft Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022

32. Until now there was a choice of two types of workplace pensions in the UK, either Defined Benefit (DB) or Defined Contribution (DC) schemes. These two models place the majority of the risks and associated costs—economic, financial, and longevity—with either the sponsoring employer (DB) or the individual member (DC). The Pension Schemes Act 2021 introduced a further option, a Collective Money Purchase scheme (CMP).
33. These draft Regulations, with a second instrument due to be laid in February 2022,¹³ propose the regulatory framework within which single or connected employers can create CMP pension schemes with adequate governance and safeguards in place for members and for employers. This instrument sets out what CMP schemes must do to become authorised, to operate effectively in the market under regulatory oversight, and what happens if changes need

11 The Court of Appeal Civil Division, *The Open Rights Group and the 3million vs The Secretary of State for the Home Department and The Secretary of State for Digital, Culture, Media and Sport*, [EWCA Civ 800](#) (2021).

12 [Data Protection Act 2018 \(Amendment of Schedule 2 Exemptions\) Regulations 2022](#).

13 A draft of the Occupational Pension Schemes (Collective Money Purchase Schemes) (Modifications and Consequential and Miscellaneous Amendments) Regulations 2022, was annexed to; Department for Work and Pensions, ‘Consultation outcome: Government response to the consultation on draft regulations to support Part 1 of the Pension Schemes Act 2021 and associated consequential changes’: <https://www.gov.uk/government/consultations/the-occupational-pension-schemes-collective-money-purchase-schemes-regulations-2021/outcome/government-response-to-the-consultation-on-draft-regulations-to-support-part-1-of-the-pension-schemes-act-2021-and-associated-consequential-changes> [accessed 11 January 2022].

to be made to schemes. The authorisation regime is designed to protect members and to build confidence in this new form of money purchase occupational pension provision by ensuring only well designed and well run schemes are able to operate.

Draft Trade Union (Levy Payable to the Certification Officer) Regulations 2022

Draft Trade Union (Power of the Certification Officer to Impose Financial Penalties) Regulations 2022

34. These two instruments propose changes to the role of the Certification Officer. The Certification Officer is responsible for regulating trade unions and employers' associations and is funded by the Department for Business, Energy and Industrial Strategy (BEIS).
35. Following amendments to the Trade Union and Labour Relations (Consolidation) Act 1992 by the Trade Union Act 2016 ("the 2016 Act"), the draft Trade Union (Levy Payable to the Certification Officer) Regulations 2022 propose changes to allow the Certification Officer to recover its regulatory costs through a new levy on trade unions and employers' associations. This is the first use of this power. The instrument proposes the principles by which the Certification Officer will calculate the levy each year, based on its expenses. The cost of external inspectors and external legal services will be excluded from the levy. BEIS says that a separate instrument will be brought forward once the draft Regulations have been approved to revoke fees which the Certification Officer currently charges for functions whose costs will be subsumed within the new levy. The Impact Assessment estimates that around £1.15 million of the Certification Officer's annual operating costs of £1.18 million will be recovered through the levy.
36. The draft Trade Union (Power of the Certification Officer to Impose Financial Penalties) Regulations 2022 propose changes to allow the Certification Officer to impose financial penalties on trade unions and employers' associations for non-compliance with statutory requirements. BEIS says that unlike many other regulators, the Certification Officer currently has no powers to impose any form of financial sanctions. This instrument proposes maximum penalties of between £5,000 and £20,000, depending on the severity of the obligation that has been breached, and a minimum of £200. The Department explains that relevant statutory obligations relate, for example, to the political funding of trade unions, the proper conduct of union elections and matters of personnel propriety. For trade unions and employers' associations with fewer than 100,000 members, the penalty maximum will be reduced by 50%.
37. We note that during consultation, trade unions expressed general opposition to the principle of a levy and strongly objected to the changes to the role of the Certification Officer as a whole, and to the proposed financial penalties specifically.

Sea Fisheries (Amendment etc.) (No. 2) Regulations 2021(SI 2021/1429)

38. This instrument makes amendments to retained EU law relating to sea fisheries. Amongst other changes, the instrument updates discard exemptions covering the North Sea and North-Western Waters. According to the Department for Environment, Food and Rural Affairs (Defra),

the discard exemptions and technical measures would have expired on 31 December 2021, but, following a scientific review by the Centre for Environment, Fisheries and Aquaculture Science, this instrument extends most exemptions in UK waters for a further three years and makes some changes for sustainability reasons, or to support compliance with the landing obligation. The Explanatory Memorandum (EM) sets out in technical detail the changes that will be made in relation to different types of fish in specific areas. On request, Defra has provided a helpful map which shows these areas as defined by the International Council for the Exploration of the Sea (ICES).¹⁴ The instrument also makes changes to certain minimum mesh size requirements, including an increase in the mesh size for retaining and landing seabass in the English Channel to reduce the catch of smaller seabass.

39. We asked the Department whether the EU had been notified of those changes made in this instrument which will affect EU vessels fishing in UK waters, as paragraph 8.2 of the EM suggests is required under the Trade and Cooperation Agreement 2020. Defra confirmed that: “A notification was sent to the EU detailing the measures within this Instrument which would affect EU vessels in UK waters on 17 November 2021. We received a reply from the EU on 15 December 2021 seeking further information on the scientific justification of changes to the mesh sizes mentioned in the SI and asking for clarification as to how these measures may impact fisheries other than those listed. We are in the process of providing a response to this and will continue to engage with the EU on fisheries management.”

Customs Importation (Miscellaneous Provisions and Amendment) (EU Exit) (Amendment) Regulations 2021 (SI 2021/1442)

40. In our 24th report¹⁵ we reported on SI 2021/1312¹⁶ which was laid on 25 November 2021 and gave effect to a legal requirement for goods imported into Great Britain (GB) to be checked at an Inland Border Facility (IBF) if selected for inspection. At the time, we raised concerns about the risk of fraud and goods being tampered with on the way from the ports to the new IBFs.
41. This instrument, which was laid on 15 December 2021, amends a measure in SI 2021/1312 to make special arrangements for EU goods which enter GB from the island of Ireland. Under these arrangements EU goods which were in the Republic of Ireland immediately before they were imported into the UK or in Northern Ireland (NI) immediately before they were removed to GB, may leave the port after arriving by sea while the goods are still subject to customs controls. These goods will be excluded from restrictions that only allow goods to leave the port in GB if they are released to the free-circulation procedure or are moving under a special customs procedure or are selected for inspection at an IBF. This means that while full import controls apply for EU to GB movements from 1 January 2022, these controls do not apply to movements from the island of Ireland to GB. HM Revenue and Customs (HMRC) says that the special treatment avoids any disruption while

14 International Council for the Exploration of the Sea, ‘ICES Ecoregions including ICES Statistical Areas’: <https://www.ices.dk/data/Documents/Maps/ICES-Ecoregions-hybrid-statistical-areas.png> [accessed 11 January 2022].

15 SLSC, [24th Report](#) (Session 2019–21, HL Paper 130).

16 Customs Importation (Miscellaneous Provisions and Amendment) (EU Exit) Regulations 2021 (SI 2021/1312).

discussions between the UK and EU on the operation of the NI Protocol are continuing. Asked why the special arrangements were not included in SI 2021/1312, HMRC told us that:

“[SI 2021/1312] fulfils the government’s commitment to introduce full import controls for goods moving from the EU to GB from 1 January 2022. At the time SI 2021/1312 was laid in Parliament, it also captured goods arriving in GB from the island of Ireland. However, as soon as it became clear that a UK-EU agreement on the operation of the Northern Ireland Protocol would not be forthcoming this year, the government decided that it would be undesirable to bring in new changes for goods moving from the island of Ireland to GB while Protocol arrangements themselves remained unsettled. The government has, therefore, taken steps to ensure that goods moving from the island of Ireland directly to [GB] continue to do so on the basis of the arrangements that apply currently, until further notice; and will not, for now, be affected by the changes being introduced on 1 January for all other inbound goods.”

Human Medicines (Amendment) (Supply to Northern Ireland) Regulations 2021 (SI 2021/1452)

42. From 1 January 2022, under the terms of the Northern Ireland Protocol, the requirements of the EU Pharmaceutical Acquis will no longer apply in Great Britain but will still have to be met in Northern Ireland. Northern Ireland, however, remains highly dependent on medicines supplied from Great Britain. This instrument amends existing legislation¹⁷ to introduce a new route for the supply of prescription-only medicines approved by the Medicines and Healthcare Products Regulatory Agency (MHRA) to Northern Ireland, where no Northern Ireland licensed alternative medicine is available. This new Northern Ireland MHRA Authorised Route (NIMAR) relies on Article 5(1) of Directive 2001/83/EC which provides an exemption from the authorisation and authenticity requirements of the Directive, where the medicinal product is required to fulfil special needs.
43. The Department of Health and Social Care states that this supports the ongoing objectives of both the EU and the UK whilst negotiations on the Northern Ireland Protocol continue.

¹⁷ Human Medicines Regulations 2012 ([SI 2012/1916](#)).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft	Competition Appeal Tribunal (Recording and Broadcasting) Order 2022
Draft	Data Protection Act 2018 (Amendment of Schedule 2 Exemptions) Regulations 2022
Draft	Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2022
Draft	Misuse of Drugs Act 1971 (Amendment) Order 2022
Draft	Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022
Draft	Trade Union (Levy Payable to the Certification Officer) Regulations 2022
Draft	Trade Union (Power of the Certification Officer to Impose Financial Penalties) Regulations 2022

Made instruments subject to approval

SI 2021/1404	Burundi (Sanctions) Regulations 2021
SI 2021/1415	Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) (No. 6) Regulations 2021
SI 2021/1416	Health Protection (Coronavirus, Restrictions) (Entry to Venues and Events) (England) Regulations 2021
SI 2021/1435	Health Protection (Coronavirus, Restrictions) (Entry to Venues and Events) (England) (Amendment) Regulations 2021
SI 2021/1453	The Statutory Sick Pay (Medical Evidence) Regulations 2021

Instruments subject to annulment

SI 2021/1374	Statistics of Trade (Customs and Excise) (Modification) Regulations 2021
SI 2021/1378	Education (Student Loans) (Repayment) (Amendment) (No.4) Regulations 2021
SI 2021/1380	Rent Officers (Housing Benefit and Universal Credit Functions) (Amendment and Modification) Order 2021
SI 2021/1388	Financial Services and Markets Act 2000 (Consequential Amendments of References to Rules) Regulations 2021
SI 2021/1396	Common Organisation of the Markets in Agricultural Products (Marketing Standards and Organic Products) (Transitional Provisions) (Amendment) Regulations 2021
SI 2021/1401	Merchant Shipping (Polar Code) (Safety) Regulations 2021
SI 2021/1405	Social Security (Income and Capital Disregards) (Amendment) Regulations 2021

- SI 2021/1423 Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2021
- SI 2021/1427 Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2021
- SI 2021/1429 Sea Fisheries (Amendment etc.) (No. 2) Regulations 2021
- SI 2021/1434 Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 24) Regulations 2021
- SI 2021/1440 Agricultural Holdings (Units of Production) (England) (No.2) Order 2021
- SI 2021/1441 Government Resources and Accounts Act 2000 (Estimates and Accounts) (Amendment) Order 2021
- SI 2021/1442 Customs Importation (Miscellaneous Provisions and Amendment) (EU Exit) (Amendment) Regulations 2021
- SI 2021/1443 Official Controls (Extension of Transitional Periods) (England and Wales) (Amendment) (No. 2) Regulations 2021
- SI 2021/1449 Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 25) Regulations 2021
- SI 2021/1451 Non-Contentious Probate Fees (Amendment) Order 2021
- SI 2021/1452 Human Medicines (Amendment) (Supply to Northern Ireland) Regulations 2021
- SI 2021/1454 Approved Country Lists (Animals and Animal Products) (Amendment) (No. 2) Regulations 2021
- SI 2021/1463 Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 26) 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 11 January 2022, Members declared no interests.

Attendance:

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