

# HOUSE OF LORDS

## Secondary Legislation Scrutiny Committee

---

27th Report of Session 2021–22

**Drawn to the special attention of the House  
Protection of Animals at the Time of Killing  
(Amendment) (England) Regulations 2022**

**Oral Evidence with the Department of Transport**

### **Includes information paragraphs on:**

4 instruments relating to COVID-19

Draft Divorce, Dissolution and Separation  
Act 2020 (Consequential Amendments)  
Regulations 2022

Draft Waste and Agriculture (Legislative  
Functions) Regulations 2022

---

Ordered to be printed 25 January 2022 and published 27 January 2022

---

Published by the Authority of the House of Lords

HL Paper 150

## *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*

<a href="#"><u>Baroness Bakewell of Hardington Mandeville</u></a>	<a href="#"><u>Lord Hodgson of Astley Abbotts</u></a>	<a href="#"><u>Lord Lisvane</u></a>
<a href="#"><u>Lord De Mauley</u></a>	(Chair)	<a href="#"><u>Lord Powell of Bayswater</u></a>
<a href="#"><u>Lord German</u></a>	<a href="#"><u>Rt Hon. Lord Hutton of Furness</u></a>	<a href="#"><u>Lord Rowlands</u></a>
<a href="#"><u>Viscount Hanworth</u></a>	<a href="#"><u>The Earl of Lindsay</u></a>	<a href="#"><u>Baroness Watkins of Tavistock</u></a>

## *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](mailto:hlseclegscrutiny@parliament.uk).

# Twenty Seventh Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

---

### Protection of Animals at the Time of Killing (Amendment) (England) Regulations 2022 (SI 202/33)

*Date laid: 13 January 2022*

*Parliamentary procedure: negative*

*This instrument permits the use of a non-penetrative captive bolt device as a killing method for piglets, lambs and kids up to certain weight and subject to specified requirements, drawing on scientific evidence and recommendations. The aim is to allow for an additional, humane killing method for the slaughter and on-farm killing of these animals in response to current supply chain disruptions in the pig sector and shortages of butchering staff leading to a backlog of pigs on farms. As the Explanatory Memorandum points out, there is significant public and parliamentary interest in issues around animal welfare at slaughter, and there have been parliamentary questions on pig culling and the overstocking of pigs on farms in both Houses.*

**The instrument is drawn to the special attention of the House on the ground that it is politically or legally important and gives rise to issues of public policy likely to be of interest to the House.**

1. These Regulations have been laid by the Department for Environment, Food and Rural Affairs (Defra) with an Explanatory Memorandum (EM). The instrument permits the use of a non-penetrative captive bolt device as a killing method for piglets, lambs and kids up to certain weight and subject to specified requirements, drawing on scientific evidence and recommendations. The aim is to allow for an additional, humane killing method for the slaughter and on-farm killing of these animals in response to current supply chain disruptions in the pig sector and shortages of butchering staff.

#### *Context*

2. Defra explains that a non-penetrative captive bolt device is currently permitted for simple stunning of kids and lambs (within certain parameters) for slaughter only, and that it is also an available method for the killing of piglets, kids and lambs in emergency situations, where an animal is injured or has a disease associated with severe pain or suffering and where there is no other practical possibility to alleviate this pain or suffering. The method is not currently permitted, however, for the killing of piglets, lambs or kids in non-emergency situations such as depopulation.<sup>1</sup>
3. The Department says that legislative change is required because of the current supply chain disruptions in the pig sector and shortages of butchering staff, leading to potential welfare issues as a result of overstocking of pigs on farms. While Defra does not collect data on the number of pigs culled on farms and producers are not required to submit such data, the Department told us that

---

<sup>1</sup> This is the supervised killing a population of animals for public health, animal health, animal welfare or environmental reasons.

it estimates from its engagement with the pig sector that around 30,000 pigs may have been culled on farms since 1 September 2021. The Department made a declaration of exceptional market conditions in the pigmeat sector under section 20 of the Agriculture Act 2020 on 11 November 2021, which highlights the impact of the pandemic, an interruption of CO<sub>2</sub> supplies, the shortage of butchers and the loss of the Chinese export market due to the pandemic.<sup>2</sup>

#### *Changes made by this instrument*

4. This instrument amends legislation on the protection of animals at the time of killing (PATOK)<sup>3</sup> which currently requires that animals shall only be killed after stunning in accordance with the methods and specific requirements set out in Annex 1. This instrument amends Annex 1 to permit the use of a non-penetrative captive bolt device as a killing method for piglets of less than 10kg live weight, lambs of less than 6kg live weight and kids of less than 4kg live weight, subject to specified requirements, including the delivery of a minimum kinetic energy as set out in this instrument.
5. Defra says that there have been long-standing calls for this change to be made, and that it is being introduced in response to scientific evidence and recommendations from the Animal Welfare Committee (AWC). The additional, humane killing method will be available at slaughterhouses as well as on-farm. According to the Department, this will benefit animal welfare given the current limited lawful humane options available for killing young animals in non-emergency situations.

#### *Consultation*

6. Defra carried out a one-week consultation through engagement with the pig, sheep and goat industries, veterinary groups, academics, slaughter equipment manufacturers and animal welfare NGOs. Asked why the consultation period was so short for a policy of significant public concern, the Department told us that:

“The timescale for the one-week consultation was driven by an urgent need to respond to current supply chain issues within the pig sector. In recent months, the loss of exports to the Chinese market for certain pig processors, disruption to CO<sub>2</sub> supplies, and a shortage of labour in the processing sector has led to a growing backlog of pigs on farm. Industry has been forced to consider the culling of piglets as part of their response, because of easier handling and carcass disposal compared to grown pigs. Industry have highlighted a range of practical difficulties with the currently available methods for killing piglets. We identified and held meetings with key organisations who have an interest in the change. This included animal welfare groups, representatives from the pig, sheep and goat industries and academics. We are introducing the non-captive bolt as an additional, practical, humane method for killing piglets and other neonates animals to support with the ongoing culling which is taking place.

---

2 Department for Environment Food and Rural Affairs, ‘Declaration under the Agriculture Act 2020: exceptional market conditions in the pigmeat sector’: <https://www.gov.uk/government/publications/pigmeat-declaration-relating-to-exceptional-market-conditions-in-the-pigmeat-sector/declaration-under-the-agriculture-act-2020-exceptional-market-conditions-in-the-pigmeat-sector> [accessed 24 January 2022].

3 Retained Council Regulation (EC) (1099/2009).

The introduction of a new, humane killing method — the non-penetrative captive bolt device - for piglets, kids and lambs of certain weights follows recommendations from the Animal Welfare Committee (AWC) for legislative change. There is a clear body of evidence to support the introduction of the non-penetrative captive bolt device as a killing method for these species, which has been referenced by AWC, the European Food Safety Authority, and the post-implementation review of animal welfare at killing legislation.

This is permissive legislation, and there is no change to the rules for existing methods of killing. The new device is already used by industry in emergency situations (although the culling of pigs on farm due to overstocking will generally not fall within the legislative definition of “emergency killing”). The new device is already a permitted “simple stun” method in the case of kids and lambs.

The introduction of this new, humane killing method will ensure that animal keepers have a range of tools available, so that they can choose the ones most appropriate to the circumstances.”

7. The EM sets out the scope of the consultation and the feedback received from stakeholders, including supportive feedback and any concerns raised. A key issue highlighted in the consultation is the importance of proper handling and maintenance of the non-penetrative captive bolt devices, and therefore of training and guidance. Defra says that provision will be made administratively within Welfare of Animals at the Time of Killing (WATOK) licences for the use of these devices, and that appropriate training, guidance and other operational provisions will be made available. Defra consulted the Devolved Administrations which have said that they will consider this change as part of a wider package of proposed animal welfare reforms.

8. We asked the Department whether animals killed on-farm using the new method would have to be bled, and whether they would have to be separated from other animals to reduce stress. Defra responded that:

“While there will be a need to bleed or pith an animal following a “simple stun,” the legislation permits the use of a non-penetrative captive bolt as a killing method for piglets, kids and lambs (within certain parameters). When the device is used as a killing method, it is not a “simple stun” and there will be no need to bleed the animal.

There is no requirement to separate pigs to kill them individually (whether they are being killed on farm or in a slaughterhouse). The general requirements for the protection of animal welfare at the time of killing will apply when the new killing method is used. Article 3 of retained Council Regulation 1099/2009 requires that “animals shall be spared any avoidable pain, distress or suffering during their killing and related operations” and that animals are “prevented from avoidable interactions with other animals that could harm their welfare.”

9. We also asked the Department about the failure rate of using a non-penetrative bolt as a killing device. Defra explained that:

“We discussed the possible failure rate of the non-penetrative captive bolt during our consultation with industry representatives and academics who led the relevant research.

There is no reliable evidence on the possible failure rate of this device when used in commercial settings. Currently, the device can only be used as a killing method for piglets, kids and lambs in emergency situations, and there is no requirement to record its use.

The research referenced in the advice from the Animal Welfare Committee and our Explanatory Memorandum established that the non-penetrative captive bolt device was an effective killing method for piglets, lambs and kids (within the specified parameters). We discussed the findings further with the academics who led the research and they confirmed that their findings had been robust.”

10. Given the current lack of reliable evidence on the possible failure rate of the non-penetrative bolt device, we note the importance of the proper handling of these devices as a killing method and of appropriate training and guidance to ensure that the devices are used with a minimum of stress to the animals. The Department should also consider whether its use should now be recorded in order to gather evidence on its effectiveness in commercial settings in non-emergency situations. We also note that when animals are killed on-farm, this should be done in a way that minimises the stress to other animals on the farm.

*Other support measures*

11. This instrument forms part of a package of measures that have been introduced to address the current supply chain disruption and capacity issues in slaughterhouses.<sup>4</sup> A separate instrument<sup>5</sup> has been laid to extend the duration of a temporary Private Storage Aid (PSA) scheme for pigmeat in England that enables meat processors to store slaughtered pigs for between two and six months so that they can be preserved safely and processed at a later date (see paragraph 39 below).
12. In addition, a scheme to provide 800 temporary visas for overseas butchers to work in the UK for up to six months<sup>6</sup> opened to applications in November 2021, complementing the Skilled Work Route under which foreign butchers have been eligible to apply to come to the UK since January 2021 as part of the points-based immigration system. Asked about the take-up of these temporary visas, Defra told us that the scheme closed to new applications on 31 December 2021 and that visa statistics will be published in the usual way by the Home Office as part of their quarterly immigration statistics reporting requirements. The Home Office is expected to publish these statistics in March 2022.
13. The support package also includes a Slaughter Incentive Payment Scheme (SIPS) to encourage increased throughput of pigs from farm through to slaughter and processing.<sup>7</sup> Defra says that the Government and the Agriculture and Horticulture Development Board (AHDB) are also working to identify new export markets for pork.

---

4 Department for Transport, ‘Government set to bolster supply chains by extending cabotage rights’ (14 October 2021): <https://www.gov.uk/government/news/government-set-to-bolster-supply-chains-by-extending-cabotage-rights> [accessed 24 January 2022].

5 Private Storage Aid for Pigmeat (England) (Amendment) Regulations 2022 (SI 2022/21).

6 Home Office, ‘Statement of changes to the Immigration Rules: HC 803, 1 November 2021’: <https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-803-1-november-2021> [accessed 24 January 2022].

7 Rural Payments Agency, ‘Slaughter Incentive Payment Scheme 2022’ (14 January 2022): <https://www.gov.uk/guidance/slaughter-incentive-payment-scheme-2022> [accessed 24 January 2022].

## ORAL EVIDENCE WITH THE DEPARTMENT FOR TRANSPORT ON MOTOR VEHICLE LICENSING

---

### *Background*

14. We, along with other members of the House, had raised a number of concerns about the draft Motor Vehicles (Driving Licences) (Amendment) (No. 2) Regulations (“the No. 2 Regulations”).<sup>8</sup> When duplicate Regulations, the Draft Motor Vehicles (Driving Licences) (Amendment) (No. 5) Regulations 2021 (“the No 5 Regulations”), had to be laid following a procedural error in the House of Commons, we were astonished that the Department for Transport (DfT) had failed to revise the Explanatory Memorandum (EM) accompanying the No. 5 Regulations to address these concerns.<sup>9</sup>
15. The policy objective of the Regulations was to increase the number of driving test slots available for Heavy Goods Vehicles (HGVs). The instrument proposed to achieve this by removing a requirement for car and van drivers to take the B+E test before they could tow heavier trailers, such as caravans. Our principal concern related to a lack of evidence to support DfT’s assertion that this change would not compromise road safety. Despite the No. 2 Regulations being laid on 16 September 2021, the risk assessment, which was to be included in an Impact Assessment (IA), was not available to the House when the No. 5 Regulations were debated on 14 December, some three months later (and is still not yet published). Another concern was the length of time before the effect of the Regulations would be reviewed, raising questions about how quickly DfT could identify whether they had caused towing accident rates to increase and take appropriate mitigating action.
16. We therefore asked the responsible Minister, Baroness Vere of Norbiton, to provide further explanation at an oral evidence session on 11 January 2022. The full transcript is published on our website.<sup>10</sup>

### *Safety issues*

17. In the debate on the No. 5 Regulations on 14 December,<sup>11</sup> members expressed concern that the failure rate for the B+E trailer driving test was consistently 30%, yet these Regulations would permit those who had failed it to tow trailers on the road. The Minister confirmed that was true but said that modular training on towing skills being developed by DfT would be a better alternative to a test.<sup>12</sup> The Minister indicated that this was still a work in progress, that the content and providers of such courses had not yet been agreed, but that the courses would include practical manoeuvres.<sup>13</sup> We asked the Minister how much motorists would have to pay for such courses, and whether the insurance industry would encourage participation by offering lower premiums.<sup>14</sup> **We question how many drivers would attend voluntary courses, if they are expensive or if there is no other incentive for them to do so.**

---

8 Secondary Legislation Scrutiny Committee, [15th Report](#), (Session 2021–22, HL Paper 79) and HL Deb, 9 November 2021, [cols 484GC](#).

9 SLSC, [23rd Report](#), (Session 2021–22, HL Paper 123).

10 Oral Evidence taken by the SLSC, [11 January 2022](#) (Session 2021–22).

11 HL Deb, 14 December 2021, [cols 52GC](#).

12 [Q 2](#)

13 [Q 5](#)

14 [QQ 4–7](#)

18. We asked what other solutions had been considered – for example, suspending the B+E test temporarily.<sup>15</sup> The Minister said that a temporary suspension would not have provided the HGV training sector with sufficient certainty to be willing to invest in the expensive vehicles required, and that removing the test would allow the Department “to market the training more effectively”.<sup>16</sup>
19. We also asked whether DfT had considered setting a different requirement, such as only allowing someone to tow a trailer after they had held a full licence for two years. The Minister replied that that option had not been considered as DfT had a general policy of not pursuing “graduated driving licences”.<sup>17</sup>
20. **We remain concerned that none of the reasons given for these policy choices reflect consideration of how they will affect road safety.**

### *Statistics*

21. In correspondence, the Minister had told us that DfT was “unable to discern from available data if there is a causal link between road safety and the B+E test”. As we pointed out in our 23rd Report, that can equally be taken to mean that DfT cannot demonstrate the absence of a link between the test and current low accident rates. In effect DfT has no clear view of whether removing that test will result in more injuries.<sup>18</sup>
22. In oral evidence the Minister explained that the data collected is extensive, but that DfT cannot interrogate the current STATS19 data<sup>19</sup> in every circumstance to come up with evidence-based policy. She said the Department could identify trends from the data but not cause and effect, as accident data can be influenced by the subjective view of the police officer attending the scene as to the cause.
23. We have recently asked for accident data in relation to several DfT instruments on driving matters,<sup>20</sup> but each time the Department has responded that it does not have the relevant statistics. We therefore asked what steps the Department was taking to improve the provision of data. She said: “There is a new road safety framework coming up in due course and we will look at how we improve the data, what are the big gaps”.<sup>21</sup> We were surprised at the length of time required to make changes to STATS19: data from recent changes to the system will not become available until 2024.<sup>22</sup>
24. Although the Minister explained that, for the post-implementation review of these Regulations, DfT would be collecting more specific information using surveys of instructors and people involved in towing accidents, we remain concerned that the Regulations set that review date at three years. Our 23rd

---

15 [Q 10](#)

16 *Ibid.*

17 *Ibid.*

18 SLSC, [23rd Report](#), (Session 2021–22, HL Paper 123).

19 STATS19 is the main system for collecting statistics and data about reported accidents and casualties on public roads in Great Britain. Department for Transport, ‘Road accidents and safety statistics’ (25 November 2021): <https://www.gov.uk/government/collections/road-accidents-and-safety-statistics> [accessed 21 January 2022].

20 See for example Drivers’ Hours and Tachographs (Temporary Exceptions) (No. 3) Regulations 2021 ([SI 2021/1106](#)), SLSC, [15th Report](#) (Session 2021–22, HL Paper 79) and Drivers’ Hours and Tachographs (Temporary Exceptions) (No. 2) Regulations 2021 ([SI 2021/921](#)), SLSC, [12th Report](#) (Session 2021–22, HL Paper 63).

21 [Q 6](#)

22 [Q 7](#)

Report suggested that if the data were uncertain, 12 months would be a more appropriate review period, because each addition to these statistics actually represents a road accident involving an injury or a fatality.

25. The Minister explained that the three-year period was dictated by the STATS19 cycle: accident data for the previous year is collected from police forces around the country each January, the information is then reviewed and finally published in September.<sup>23</sup> Because the towing accident figures are small, two years' data would be needed to be able to detect trends. The earliest point at which reliable STATS19 information could be available, therefore, would be in September 2024.
26. We were surprised, given current technology, that more rapid data collection was not feasible and questioned whether the insurance industry would have better information that could be analysed by type of vehicle etc.<sup>24</sup> We also pointed out that the STATS19 page on the Gov.UK website indicated that accident data involving personal injury was posted within 30 days of the incident and that quarterly reports of the raw data were available.<sup>25</sup>
27. The Minister offered to respond to some of our questions in writing. Her letter is published at Appendix 1. She explains that quarterly reports are no longer provided but provisional STATS19 data at six-monthly intervals is available. We regard this as a retrograde step. It also explains that the new Collision Reporting and Sharing system (CRASH) has been rolled out to half the police forces in Great Britain and should provide reliable data within 90 days. In addition, DfT has recently consulted on the creation of a new Road Collision Investigation Branch to conduct thematic investigations of road collisions to identify trends and emerging issues. **We are encouraged that the statistical deficit about which we have raised concerns is being addressed, but note that no date is offered for when this improved data will start to appear in EMs.**

### *Policy formulation*

28. Our further concern in relation to these Regulations is a perception that DfT may have been so focused on the need to increase the number of HGV drivers that the wider consequences of removing the B+E tests were not fully assessed.
29. The Minister confirmed that her letter of 18 October<sup>26</sup> included information that had been produced *after* the No. 2 Regulations were laid. The Minister agreed with us that policy should be evidence-based but told us that before laying the No 2 Regulations she had seen “limited analysis” and the trailer safety report.<sup>27</sup> She said she had also had the benefit of discussions with the All-Party Parliamentary Group on Trailer and Towing Safety.
30. We asked the Minister what evidence had persuaded her that a question in a theory test could effectively replace a practical test. The Minister replied that questions in the driving theory test were aimed at increasing general

---

23 [Q 6](#)

24 [QQ 6–7](#)

25 Department for Transport, *Statement of Administrative Sources*, (March 2013): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/170572/dft-statement-stats-19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/170572/dft-statement-stats-19.pdf) [accessed 21 January 2022].

26 SLSC, [15th Report](#), (Session 2021–22 HL Paper 79).

27 [Q 8](#)

awareness of the challenges of towing and of manoeuvres such as reversing or uncoupling. She stated that manoeuvres training would be included in the voluntary courses, but we take the view that whether that is an effective replacement for the test depends entirely on the level of take up.<sup>28</sup>

*Quality of information to Parliament and the public*

31. One of our primary concerns was that, whatever information may have been available to the Minister, it was not shared with Parliament or the public. The data included in an IA should not only influence the policy-making process but also inform others about why decisions were taken and what other options were considered. None of that information was available to the House at the time of the debates on the No. 2 and No. 5 Regulations, and questions were raised during the debates which should have been answered by an IA.
32. What was not clear to us was why the improved information set out in the Minister’s letter of 18 October 2021 was not included in the EM accompanying the No 5 Regulations, or why the draft IA submitted to the Regulatory Policy Committee on 25 November, or key data from it, was not made available to the House before the debate on the No. 5 Regulations.<sup>29</sup> **When asked about this during the oral evidence session, the Minister agreed that, on reflection, she should have revised the EM.**<sup>30</sup>
33. We are troubled by this indication that ministers and their officials may not fully understand the importance of providing Parliament with all the information, at the appropriate time, to enable the Houses to scrutinise secondary legislation effectively. This was not only demonstrated in this case but also arose in relation to the draft Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 where the Minister similarly acknowledged that explanatory material should have been laid alongside the instrument.<sup>31</sup> **We would welcome the views of the Cabinet Office about what guidance should be given to ministers at the start of their appointment to ensure that the importance of supporting parliamentary scrutiny by the provision of complete and timely explanatory material is fully understood from the outset.**
34. We drew the Minister’s attention to apparent discrepancies in the limited information that was provided: the EM stated that there were “around 1,000 accidents per year involving B+E vehicles”, whereas during the debate on 14 December she had cited figures more than 50% lower. The Minister told us that both figures were correct – the higher figure was for all vehicles towing a trailer and the lower one was the result of the subsequent “drilling down” into the figures relating to cars and vans only. This explanation was helpful but should have been more widely available.

---

28 [Q 5](#)

29 Regulatory Policy Committee, ‘Motor Vehicles (Amendment) Regulations 2021: RPC Opinion’ (11 January 2022): <https://www.gov.uk/government/publications/motor-vehicles-amendment-regulations-2021-rpc-opinion> [accessed 21 January 2022].

30 [QQ 8–9](#)

31 SLSC, [10th Report](#), (Session 2021–22, HL Paper 50).

35. This is not the first time we have had to question the accuracy of explanatory material provided by DfT.<sup>32</sup> We therefore asked the Minister what steps she would take to improve the explanatory material DfT presents to Parliament in support of its SIs. She said that in future every EM would be sent to a senior official from an unrelated policy area to be checked before being submitted to the Minister.<sup>33</sup> The Minister was aware that we had recently asked a similar question of the Minister responsible for marine legislation, Robert Courts MP,<sup>34</sup> and said that they would be working together to improve the quality of EMs across the Department.
36. Each department has a Minister responsible for secondary legislation generally. We asked Baroness Vere what role that Minister in the DfT had in influencing the quality of secondary legislation in the Department. The Minister could not immediately respond and offered to provide an answer in writing. Her letter, dated 19 January 2022, is published at Appendix 1. **This delayed response appeared to us as an indication that the minister responsible for secondary legislation in DfT has insufficient standing and influence within the Department. We will seek clarification from the Cabinet Office about what functions the appointed ministers are intended to fulfil and how effectively they are operating across Whitehall.**

### *Conclusion*

37. This was unusually protracted scrutiny of an instrument, but at no time did we have access to sufficient information to understand the Minister's decision to legislate in this specific way, and we remain concerned about the road safety implications. Parliament cannot effectively challenge decisions based on private discussions with representative groups or yet-to-be-published risk analysis. **We cannot emphasise sufficiently the importance of good quality information to explain and justify legislation and of its being published at the same time as an instrument is laid before Parliament.** The EM and IA are not mere “paperwork” but an essential tool in holding government to account.

---

32 For example, in relation to the published draft of the [Motor Vehicles \(Driving Licences\) \(Amendment\) Regulations 2022](#). The EM stated that the consultation received no objections when in fact 26% of respondents raised safety issues. SLSC, [17th Report](#), (Session 2021-22, HL Paper 88).

33 [Q 11](#)

34 SLSC, [17th Report](#), (Session 2021-22, HL Paper 88).

## INSTRUMENTS RELATING TO COVID-19

---

### Public services

#### *Draft Representation of the People (Proxy Vote Applications) (Coronavirus) (Amendment) Regulations 2022*

38. These Regulations extend for a further 12 months existing temporary changes to the rules governing various elections in Great Britain. This is to allow for late urgent applications up until 17:00 on polling day to vote by proxy on grounds of a requirement to self-isolate or in response to coronavirus-related medical advice. The Department for Levelling Up, Housing and Communities explains that the current arrangements were introduced in 2021<sup>35</sup> and are due to expire on 28 February 2022. Given the continuation of the pandemic, the extension is intended to ensure that people who are required to isolate at short notice are still able to vote.

#### *Private Storage Aid for Pigmeat (England) (Amendment) Regulations 2022 (SI 2022/21)*

39. These Regulations extend the window for applications under the temporary Private Storage Aid (PSA) scheme for pigmeat in England. The PSA scheme enables meat processors to store slaughtered pigs for between two and six months so that they can be preserved safely and processed later. The PSA scheme was launched in November 2021,<sup>36</sup> as part of a package of measures to address supply chain disruptions in the pig sector and shortages of butchers which are in part a result of the pandemic and have led to a backlog of pigs on farms (see also paragraphs 1 to 13 above). The Department for Environment, Food and Rural Affairs (Defra) told us that of 14 January 2022, three PSA applications had been received, totalling 220 tonnes of deboned cuts for six months storage.
40. This instrument extends the window for applications to the earlier of noon on 31 March 2022 or noon on the last working day on which the declaration of exceptional market conditions in the pigmeat sector from November 2021<sup>37</sup> has effect. According to Defra, the declaration has effect for three months and is due to expire on 10 February 2022. This means that the window for applications will close at noon of that day, or, if the Secretary of State makes a further declaration to extend the effect of the November 2021 declaration, at noon on 31 March 2022.

#### *School and Early Years Finance (England) Regulations 2022 (SI 2022/27)*

41. This instrument provides instructions to local authorities on how to set their education budgets. The instrument establishes the parameters which local authorities must use to determine schools' budgets, and the budgets which are allowed to be retained centrally, and sets out how local authorities are to allocate funding to maintained schools and private, voluntary and independent providers of free early years provision through locally-determined funding formulae. The Department for Education makes these

---

35 [Draft Explanatory Memorandum](#) to the Representation of the People (Proxy Vote Applications) (Coronavirus) Regulations 2021.

36 Private Storage Aid for Pigmeat (England) Regulations 2021 ([SI 2021/1269](#)), SLSC, [22nd Report](#) (Session 2021-22, HL Paper 116).

37 Defra, 'Pigmeat: declaration relating to exceptional market conditions in the pigmeat sector' (11 November 2021): <https://www.gov.uk/government/publications/pigmeat-declaration-relating-to-exceptional-market-conditions-in-the-pigmeat-sector> [accessed 24 January 2022].

Regulations annually; this instrument will therefore apply only to education budgets for the 2022–23 financial year.

42. The instrument includes provision to account for the cancellation of assessments in 2021 due to the pandemic, so that local authorities will use 2019 assessment data as a proxy for both the 2020 and 2021 reception and year 6 cohorts when setting a low prior attainment factor in local funding formulae which allows local authorities to give additional funding to schools in respect of their pupils who had low scores in previous assessments. This is in line with changes made after the cancellation of assessments due to the pandemic in 2020.

### Law and Order

*Wills Act 1837 (Electronic Communications) (Amendment) Order 2022 (SI 2022/18)*

43. The Wills Act 1837 (Electronic Communications) (Amendment) (Coronavirus) Order 2020 allowed<sup>38</sup> the use of video-link technology in the witnessing of wills. The measure is intended to support testators who are making a will when forced to self-isolate as a result of the coronavirus pandemic and where there are practical difficulties in observing normal will-making formalities. **This instrument extends the provision by two years to 31 January 2024.** The Explanatory Memorandum states that this also reflects the Government’s intention to conduct a substantive review of the case for reform of the law in this area.

---

38 Wills Act 1837 (Electronic Communications) (Amendment) (Coronavirus) Order 2020 ([SI 2020/952](#)).

## **INSTRUMENTS OF INTEREST**

---

### **Draft Divorce, Dissolution and Separation Act 2020 (Consequential Amendments) Regulations 2022**

44. This instrument makes the necessary changes to existing primary and secondary legislation in preparation for the commencement of the Divorce, Dissolution and Separation Act 2020 (“the 2020 Act”). The 2020 Act aims to reduce conflict in divorce, dissolution and separation proceedings by simplifying the process.
45. The 2020 Act has introduced a new option of a joint application for cases where the decision to divorce is a mutual one, in addition to retaining the current ability of one party to initiate the legal process of divorce. It has also updated the terminology used, for example replacing terms such as “decree nisi”, “decree absolute” and “petitioner” with “conditional order”, “final order” and “applicant”. This instrument will ensure those language changes are reflected across existing legislation.

### **Draft Waste and Agriculture (Legislative Functions) Regulations 2022**

46. Following Brexit, this instrument, amongst other changes, proposes to transfer several technical powers and functions from the European Commission to the Secretary of State and the Devolved Administrations. These powers and functions relate to waste, including those covering end-of life vehicles, batteries and accumulators, and electrical and electronic equipment, as well as the overarching Waste Framework Directive.<sup>39</sup> The Department for Environment, Food and Rural Affairs (Defra) says that the transfer will enable the UK and the Devolved Administrations to maintain their environmental standards on the safe handling of waste, levels of recovery, recycling and treatment of waste. Defra highlights that the functions are routine, and that in several cases the standards and requirements are already in place and working well, so the aim of transferring the powers is to enable changes in the future should it be necessary, rather than making any updates or changes now. Any regulations made under the new powers will be subject to the negative procedure.
47. The Explanatory Memorandum states that “provision is made for the Secretary of State and, where relevant, the Devolved Administrations, to consult relevant regulatory agencies and anyone else they consider appropriate before the exercise of these powers”. Asked whether these requirements to consult had in any way been weakened compared to the duties on the European Commission, Defra responded that:

“Briefly, we consider that consultation requirements are not being weakened in repatriating these powers. The duty on the Secretary of State to consult widely is at least as stringent as the previous duty on the Commission to do so, and, as it applies across all the powers in the SI rather than only on certain elements, is in fact more stringent than the previous requirements within the EU.”

We are publishing Defra’s full response and explanation at Appendix 2.

---

39 Directive [2008/98/EC](#) of the European Parliament and of the Council.

## INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

---

### Draft instruments subject to affirmative approval

Draft	Divorce, Dissolution and Separation Act 2020 (Consequential Amendments) Regulations 2022
Draft	Immigration and Nationality (Fees) (Amendment) Order 2022
Draft	Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2022
Draft	Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2022
Draft	Representation of the People (Proxy Vote Applications) (Coronavirus) (Amendment) Regulations 2022
Draft	Waste and Agriculture (Legislative Functions) Regulations 2022

### Instruments subject to annulment

SI 2022/8	Personal Protective Equipment at Work (Amendment) Regulations 2022
SI 2022/10	Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2022
SI 2022/14	Public Lending Right Scheme 1982 (Commencement of Variation) Order 2022
SI 2022/18	Wills Act 1837 (Electronic Communications) (Amendment) Order 2022
SI 2022/19	National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2022
SI 2022/21	Private Storage Aid for Pigmeat (England) (Amendment) Regulations 2022
SI 2022/25	Council Tax Reduction Schemes (Prescribed Requirements) (England) (Amendment) Regulations 2022
SI 2022/27	School and Early Years Finance (England) Regulations 2022
SI 2022/32	Whole of Government Accounts (Designation of Bodies) Order 2022

## **APPENDIX 1: WRITTEN EVIDENCE FROM BARONESS VERE OF NORBITON, MINISTER FOR ROADS, BUSES AND PLACES, DEPARTMENT FOR TRANSPORT, FOLLOWING AN EVIDENCE SESSION ON 11 JANUARY 2022**

---

Thank you for inviting me to give evidence to the Secondary Legislation Scrutiny Committee on 11 January 2022. I am grateful to the Committee for its time and its important scrutiny of the Department's legislation.

I am writing to provide you with the further information that I committed to send during the session.

### **Frequency and timeliness of STATS19 data**

STATS19 data is used as the basis for the Department's road safety statistics. Currently, provisional statistics are published in November (covering the first six months of the year) and the following June (annual figures). After further validation, the final annual statistics are released in September. Underlying data is made available in November (provisional data for the first half of the year) and September (final validated dataset).

Therefore, in terms of STATS19 data available for monitoring changes in the B+E regulations in the first year, a provisional dataset to June 2022 will be available by November 2022, with final data for the whole of 2022 in September 2023. The provisional data may be sufficient to flag any clear impacts of the changes though, as I said to the Committee, several years' data is likely to be required to properly analyse and understand the impacts.

The Department continually reviews the timeliness and frequency of the publication of road safety statistics, based on an assessment of user needs set against resource constraints and data quality. Statistics published previously on a quarterly basis were withdrawn as consultation found that they were not well used. However, should there be sufficient need for more frequent statistics then we will seek to address this.

The current timescales for data availability reflect the challenges in compiling a complete, national level dataset. For context, final data for 2020 was not received for all police force areas until July 2021.

The Department shares the Committee's wish for more frequent and timely data and is progressing work towards this, including through the roll out of the Collision Reporting and Sharing (CRASH) system. CRASH is a cloud-based system which allows forces to capture and upload collision data from the roadside in real time, improving the accuracy and reducing the work required to collate and validate data for these forces. The lag in receiving data for CRASH forces is smaller (around 90 days) though some time is still required for data validation.

CRASH is currently only used by around half of police forces in Great Britain. We are promoting the further take-up of CRASH through events and demonstrations; and supporting forces by understanding their business needs and addressing their concerns in making the transition from their legacy systems. However, the decision on whether to use CRASH for collision reporting ultimately remains the responsibility of each individual force.

We are currently exploring whether more frequent, timely statistics could be produced for forces using CRASH, with a view to considering whether this could be applied to data from 2022 onwards.

Finally, it should be noted that even with better systems, real time data for road safety is unlikely to be easy to produce at a national level as; for example, 30 days are allowed for incidents to be reported to the police which means a lag of at least one month is always likely to be required.

### Review of STATS19

The most recent review of STATS19 has recently been completed, and the final recommendations published.<sup>40</sup> The main changes resulting from this review do not cover towing or trailers specifically, but will improve the quality of the data in many areas including:

- ensuring all police forces use injury-based reporting to assess casualty severity; and
- introducing a new set of ‘road safety factors’ aligned to the Safe Systems approach to better focus on identifying areas where actions can be taken to improve road safety.

Work is now in progress to implement these changes, with data collected to the new specification from the start of 2024 onwards.

### Additional road safety data

As I referred in my evidence to a programme of other things that could be used to reviewing the road safety impacts of the changes in regulations, I would like to provide some additional information on work the Department is doing to develop the wider road safety evidence base, aside from the STATS19 data.

We have recently consulted on the creation of a new Road Collision Investigation Branch (RCIB) and we are currently analysing the responses to the consultation. We hope to be able to set out next steps over the coming months.

An RCIB would be an independent, safety-focused investigative body which would conduct primarily thematic investigations to analyse and better understand the causes of road collisions to identify trends and emerging issues. This would go beyond the scope of police investigations, which are primarily focused on liability and any potential criminal activity.

We envisage that the analysis undertaken by an RCIB, should one be established, would increase the data landscape around understanding collision causation and help better inform road safety policy and interventions.

While the subject of a Branch’s investigations would be a matter for the Branch’s Chief Inspector, we would expect it to identify any significant emerging issues in collision cause and investigate those accordingly.

### The function of the Minister of SIs within the Department

Further to Lord Hutton of Furness’ question, I committed to write explaining the role of the Department’s SI Minister, Trudy Harrison MP, and her involvement

---

<sup>40</sup> Department for Transport, *STATS19 review: Final recommendations*, (25 November 2021): <https://www.gov.uk/government/publications/road-accidents-and-safety-statistics-user-engagement> [accessed 24 January 2022].

in the delivery of these regulations. I would also like to reiterate what I said to the Committee when I appeared before you - these regulations are mine in my capacity as Roads Minister, so they are my responsibility.

The SI Minister has a strategic role, overseeing the programme, identifying trends and risks and taking steps to ensure the delivery of the overall programme. In that capacity, Trudy Harrison MP is overseeing the SI Delivery Reform Programme and overhauling the current processes for SIs. She is also working with the Department's senior responsible official, Louise Morgan, to ensure there is appropriate upskilling of staff working on SIs with regular access to training. The SI Minister is also responsible for agreeing the Department's SIs proposed for laying in Parliament. However, I should stress it is the role of the Minister with the policy responsibility to shape and deliver the SI; the SI Minister's role is to provide challenge to the programme as a whole and address common issues.

While the programme is in its infancy, we are making good progress, particularly around capability building, programme management and reporting. Louise Morgan works with a dedicated team in the Department championing the work of SIs. The SRO ensures appropriate governance is in place for the programme, as well as overseeing the management of the programme in terms of delivering improvements to the system, an example of which is the Explanatory Memoranda Peer Review system which I mentioned. The SRO is also the Chair of the Department's Legislation Board, a member of the Department's Executive Committee and the Department's Strategy Director - providing a valuable and vital cross cutting view of issues within the Department. To that end, I can assure the Committee that this is a role that is taken very seriously.

On these particular regulations, Trudy Harrison MP was closely involved in their passage through Parliament: leading the debate for the Government in the Commons, first on 8 November 2021 with the No.2 Regulations, then again on 12 December 2021 for the No.5 Regulations. However, as I said to the Committee, I recognise that there was more I could have done to update and improve the quality of the Explanatory Memorandum as part of this process. It is these lessons that Trudy Harrison MP will take forward as part of her work on the SI Delivery Reform Programme.

I hope this reassures the Committee that we are committed to ensuring that the Department's regulations can be developed and evaluated against sound evidence and are taking steps to improve the timeliness and quality of the road safety data available.

**19 January 2022**

## APPENDIX 2: ADDITIONAL INFORMATION FROM THE DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

---

*Q: Paragraph 7.4 of the EM states that “provision is made for the Secretary of State and, where relevant, the Devolved Administrations, to consult relevant regulatory agencies and anyone else they consider appropriate before the exercise of these powers”. How does that provision compare to the arrangements for the powers held by the Commission – is the Commission under a duty to always consult before using the powers? It would be helpful to understand whether consultation requirements are being weakened as these powers are repatriated to the UK Government and Devolved Administrations.*

A: The Waste and Agriculture (Legislative Functions) Regulations 2022 provide for legislative powers in six European Directives to be transferred to the UK statute book to reflect the UK’s exit from the EU. Reg 21 sets out the proposed consultation requirements which apply to any exercise of the legislative powers in Part 2– reproduced for ease below.

*21. Before making regulations under this Part, the Secretary of State or the appropriate authority (as the case may be) must consult—*

- the appropriate agency, in the case of regulations that apply in relation to England, Wales or Scotland;*
- such other persons as the Secretary of State or the appropriate authority thinks appropriate.*

By comparison, the Commission is not under a duty to always consult before using the powers in the Directives. The consultation requirements across the six underlying Directives are not uniformly consistent – two do not require consultation for the relevant provisions (Landfill and Mining Waste Directives); two require the Commission to consult specific groups of stakeholders for narrow elements (WEEE, and Batteries Directives (in relation to one of the powers only)); and two Directives require the Commission to consult experts designated by each Member State (End-Of-Life Vehicles, and Waste Framework Directives – the latter in relation to one of the powers only)

Briefly, we consider that consultation requirements are not being weakened in repatriating these powers. The duty on the Secretary of State to consult widely is at least as stringent as the previous duty on the Commission to do so, and, as it applies across all the powers in the SI rather than only on certain elements, is in fact more stringent than the previous requirements within the EU.

A more detailed analysis is set out below.

- For those provisions from the Mining Waste and Landfill Directives, we are introducing a requirement to consult that did not previously bind the European Commission, so we are strengthening the consultation requirements compared to the previous status quo, because we consider it would be usual good practice to consult stakeholders affected by potential changes to technical standards.
- For the WEEE and Batteries Directives, the Commission was required to consult various technical stakeholders about specific narrow elements within the provisions only. For the Batteries Directive, if the Commission sought to change the exemptions for labelling requirements, they were required to consult “relevant stakeholders, in particular producers, collectors, recyclers,

treatment operators, environmental and consumer organisations, and employee associations”. Similarly, for the WEEE Directive, if the Commission sought to amend the annexes to the WEEE Directive, they must consult “producers of EEE, recyclers, treatment operators and environmental organisations and employees’ and consumer associations”. We would consider that all of these parties would be covered as ‘such other persons as the Secretary of State or the appropriate authority thinks appropriate’ as set out in Reg 21 (b) of our SI, particularly when read in combination with the Government’s wider consultation guidance, which says consultation should be targeted at those affected by policy changes.

- We consider then that this is not weakening the previous requirement on the Commission to consult, but rather strengthening it, particularly as the requirement to consult covers all the provisions in the SI, not just the narrow specific ones in the Directives on labelling exemptions and annexes.
- For the End of Life Vehicles and Waste Framework Directives, the Commission was required to consult technical experts designated by each Member State. There’s not really a direct equivalent for this situation, so we considered that as these are powers relating to technical powers and functions, the best equivalent was to require the Secretary of State to consult the relevant appropriate agency as the likeliest gathering of technical experts, and that we would expect to engage with industry and appropriate stakeholders in any proposed changes to technical criteria. Between Reg 21a) and 21b), therefore, we think this is at least if not more stringent a duty on the Secretary of State or devolved equivalents to consult.

**20 January 2022**

### APPENDIX 3: INTERESTS AND ATTENDANCE

---

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://members.parliament.uk/members/lords/interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 25 January 2022, Members declared no interests.

#### **Attendance:**

The meeting was attended by Baroness Bakewell of Hardington Mandeville, Lord De Mauley, Lord German, Viscount Hanworth, Lord Hodgson of Astley Abbotts, Lord Hutton, the Earl of Lindsay, Lord Lisvane, Lord Powell of Bayswater and Baroness Watkins of Tavistock.