



HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

31st Report of Session 2021–22

Includes information paragraphs on:

5 instruments relating to COVID-19

Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022

Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2022

Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2022

Statement of changes in Immigration Rules

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Secondary Legislation Scrutiny Committee

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

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

And, to scrutinise –

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

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

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

Members

[Baroness Bakewell of Hardington Mandeville](#)

[Lord De Mauley](#)

[Lord German](#)

[Viscount Hanworth](#)

[Lord Hodgson of Astle Abbotts](#) (Chair)

[Rt Hon. Lord Hutton of Furness](#)

[The Earl of Lindsay](#)

[Lord Lisvane](#)

[Lord Powell of Bayswater](#)

[Lord Rowlands](#)

[Baroness Watkins of Tavistock](#)

Registered interests

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

Publications

The Committee's Reports are published on the internet at <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/>

Committee Staff

The staff of the Committee are Christine Salmon Percival (Clerk), Philipp Mende (Adviser), Jane White (Adviser) and Emily Pughe (Committee Operations Officer).

Further Information

Further information about the Committee is available at <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/>

The progress of statutory instruments can be followed at <https://statutoryinstruments.parliament.uk/>

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/ukxi>

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.

Thirty First Report

INSTRUMENTS RELATING TO COVID-19

Revocations

Health Protection (Coronavirus, Restrictions) (Self-Isolation etc.) (Revocation) (England) Regulations 2022 (SI 2022/161)

1. With effect from 24 February 2022 this instrument revoked:
 - The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 (SI 2020/1045 as amended) which imposed a legal duty on people who tested positive for COVID-19, or were a close contact of a positive case, to self-isolate, to provide NHS Test and Trace with their household contacts and to notify their employer. The Regulations also required employers not to knowingly allow someone who should have been self-isolating to attend work; and
 - The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 (SI 2020/750 as amended) which provided local authorities with powers to impose prohibitions, requirements or restrictions on individual premises, events, or public outdoor places.
2. The Government state that legal restrictions on how the public should act are no longer proportionate due to the success of the COVID-19 vaccination programme. Those who test positive for COVID-19 will receive guidance advising them to stay at home and avoid contact with others for at least five full days. The Explanatory Memorandum also notes that, should local authorities need to impose prohibitions or requirements to deal with a future outbreak, they will be able to rely on existing powers in the Public Health (Control of Disease) Act 1984.

Changes to business practice and regulation

Competition Act 1998 (Health Services for Patients in England) (Coronavirus) (Public Policy Exclusion) Order 2022 (SI 2022/124)

3. This Order lifts temporarily prohibitions of certain types of anti-competitive activity, as set out in Chapter 1 of the Competition Act 1998 (“the 1998 Act”), in relation to independent healthcare providers and the NHS in England. The Department for Business, Energy and Industrial Strategy (BEIS) says that this enables independent healthcare providers to support an expansion of NHS capacity in England in response to the spread of the Omicron variant of coronavirus.
4. This is the second time that such an intervention has been made; an earlier Order was made in March 2020 and expired on 31 March 2021.¹ This Order broadly replicates the earlier instrument and specifies the types of activities and agreements between the different providers that are temporarily excluded from anti-competitive behaviour provisions under the 1998 Act, such as sharing information about capacity; sharing or loan of facilities;

¹ Competition Act 1998 (Health Services for Patients in England) (Coronavirus) (Public Policy Exclusion) Order 2020 ([SI 2020/368](#)).

coordinating staff deployment; or the joint purchasing of goods, facilities or services. The exemptions apply retrospectively from 7 December 2021. According to BEIS, the direct sharing of information relating to costs or prices or future business planning is not exempt, to ensure that competition law is disapplied only where this is necessary to deal with the pandemic. All agreements under the Order must be notified to the Secretary of State who will publish a register of agreements. According to BEIS, there are now agreements with 10 independent healthcare providers which will expire alongside this Order on 31 March 2022.

5. We have received a submission which is critical of the Order. We are publishing on our website² the submission and the Department's response, which highlights the very short-term nature of the Order and its limited scope.

Travel

Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 2) Regulations 2022 (SI 2022/125)

6. Based on a better understanding of the Omicron variant, the Department for Health and Social Care states that this instrument amends the International Travel Regulations³ to facilitate the safe recovery to former levels of travel. The Regulations:

- remove the requirement for “eligible travellers” arriving in England to complete a day 2 test;
- remove the requirement for non-eligible travellers to complete a day 8 test and ten days self-isolation if they arrive from a non-Red-List country;
- expand the “eligible traveller” category to recognise vaccinations certified by 16 additional countries;
- add a new provision, which mirrors the domestic regime, to allow non-eligible travellers, who have not been in a Red List country in the previous 10 days, who have tested positive for COVID-19 to end their self-isolation period after five full days, subject to two negative Lateral Flow Device tests taken at least 24 hours apart; and
- update and streamline the Passenger Locator Form, current exemption regime for certain occupations and the penalties for operators.

Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 3) Regulations 2022 (SI 2022/168)

7. This instrument also amended the International Travel Regulations³ to mirror the changes to self-isolation arrangements made by SI 2022/161 above. The principal change it made, with effect from 24 February, was to remove the obligation for non-eligible (unvaccinated) travellers to self-isolate following a positive post-arrival test or following a void or inconclusive test.

2 See: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/>.

3 Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 ([SI 2021/582](#)).

8. The instrument does not alter the current testing requirements for non-eligible travellers and all travellers are still required to complete a Passenger Locator Form in the 48 hours prior to arrival in England.
9. Although no countries are currently on the Red List, the stricter provisions that would apply to travellers from a designated country remain intact. So if a country or territory is added to the Red List, testing and managed quarantine requirements still apply. However, the Department for Health and Social Care state that the Red List provisions are being reviewed as a whole as part of contingency planning and they may therefore be subject to future change.

Public Services

Draft Human Medicines (Coronavirus and Influenza) (Amendment) Regulations 2022

10. During the early stages of the pandemic the Human Medicines Regulations 2012 were temporarily modified ⁴ to facilitate mass vaccination against both influenza and coronavirus. Those changes are due to expire on 1 April 2022.
11. These amending Regulations will extend for two years the provisions that allow the final preparation of coronavirus vaccine before administration to be done without the need for a manufacturing licence or marketing authorisation, and allow the sharing of coronavirus stocks between vaccination centres without the need for wholesaler dealer licence.
12. They also **make permanent** provisions which allow:
 - all registered healthcare professional groups who can supply or administer medicines to administer a parenteral medicine,⁵ including a vaccine, under a patient group direction commissioned by the NHS or local authority;
 - community pharmacists to deliver influenza and coronavirus vaccination services outside their normal registered premises, for example in school halls and hotels; and
 - registered medical professionals, including paramedics and physiotherapists, to be classed as “occupational health vaccinators” who may administer influenza and coronavirus vaccines under occupational health schemes operated by the NHS or a local authority.

4 The Human Medicines Regulations 2012 ([SI 2012/1916](#)) were modified by the Human Medicines (Coronavirus and Influenza) (Amendment) Regulations 2020 ([2020/1125](#)) and the Human Medicines (Coronavirus) (Further Amendments) Regulations 2020 ([2020/1594](#)).

5 Parenteral refers to the administering of medications through other routes aside from the digestive system, such as through injection.

INSTRUMENTS OF INTEREST

Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022 (SI 2022/94)

13. The Ivory Act 2018 (“the Act”) will prohibit dealing in ivory and items containing ivory in the UK, unless they meet one of the exemptions to the ban.⁶ The instrument prescribes the institutions, such as the Victoria and Albert Museum, which will be able to assess items for which applications for exemption certificates have been made. It also specifies the process for applying for exemption certificates, including the fees (£250), and for dealing in items which have an exemption certificate. The instrument also sets out the process for appeals against a refusal to issue an exemption certificate, as well as the additional information which must accompany an application to register items under the standard exemptions and the fees for that (£20 to register a single item and £50 for a group of at least three and no more than 20 items).
14. We received a submission from the British Antique Dealers’ Association (BADA) which raised a particular concern about regulation 4(5) which requires that an owner of an ivory object who is applying for an exemption certificate must provide the reference number of any unsuccessful previous application or of any previous exemption certificate that was subsequently revoked. BADA suggested that this will be unachievable and unfair as owners may be unaware of any previous applications, for example where the ivory object was inherited or gifted. Asked about this concern, the Department for Environment, Food and Rural Affairs (Defra) explained that the purpose of this requirement is to enable a fresh assessment by an expert who was not involved in a previous assessment of the same item, to reflect that there is an element of subjectivity in any expert’s assessment. Defra added that, as set out in the guidance that has now been published,⁷ if an applicant does not have any information about a previous application or a revoked exemption certificate they can select “no” to the question about this in the digital registration/certification service and then proceed to make an application for an exemption certificate.⁸ We are publishing BADA’s submission and the Department’s response on our website.⁹

Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2022 (SI 2022/194)

15. In response to the Russian invasion of the Ukraine, these made affirmative Regulations imposed sanctions on Russian financial instruments with immediate effect from 1 March 2022. The Regulations:

6 The exemptions are pre-1918 items of outstanding high artistic, cultural or historical value and importance under section 2 of the Act; and pre-1918 portrait miniatures, pre-1947 items with low ivory content, pre-1975 musical instruments containing less than 20% ivory, and acquisitions by qualifying museums under sections 6 to 9 of the Act.

7 Department for Environment, Food and Rural Affairs, ‘Guidance Dealing in items containing ivory or made of ivory’: <https://www.gov.uk/guidance/dealing-in-items-containing-ivory-or-made-of-ivory> [accessed 28 February 2022].

8 Defra, ‘Guidance Ivory: apply for an exemption certificate to deal in pre-1918 outstandingly high artistic, cultural or historical value items’: <https://www.gov.uk/guidance/ivory-apply-for-an-exemption-certificate-to-deal-in-pre-1918-outstandingly-high-artistic-cultural-or-historical-value-items#apply-for-an-exemption-certificate> [accessed 28 February 2022].

9 See: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/>.

- extend existing prohibitions on dealing with transferable securities or money-market instruments particularly those issued by or on behalf of the Government of Russia;
- extend the existing prohibitions on dealing with transferable securities or money-market instruments issued by or on behalf of a person connected with Russia (as defined);
- extend the prohibition on issuing loans or credit to a person connected with Russia; and
- introduce a new measure to prohibit a UK credit or financial institution from establishing or continuing a correspondent banking relationship and from processing sterling payments to, from or via a designated person or a credit or financial institution owned or controlled by them.

16. **Although this is emergency legislation, we are pleased to note that the Foreign, Commonwealth and Development Office (FCDO) has produced an Impact Assessment (IA) to accompany these Regulations.** The IA states that the impact on UK businesses will be small. With no Russian sovereign debt being issued since 2013, and Russian debt making up a very small proportion of trading activity (0.03%), opportunity costs to UK entities will be low.

Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2022 (SI 2022/195)

17. This instrument extends existing prohibitions on the export, supply and delivery of military goods to Russia to include dual-use goods and critical-industry goods and technology (listed in the schedules—for example, lasers and communications equipment). The instrument also makes related prohibitions on the technical assistance, financial services, funds and brokering services that support these goods.
18. The measures will prohibit UK businesses from exporting dual-use items to the Russian Federation. Such items accounted for 11.8% of UK goods exports to Russia in 2021 and the Impact Assessment indicates the net direct cost to UK business of these sanctions will be £278 million per year.

Statement of Changes in Immigration Rules (CP 632)

19. This instrument closed the Tier 1 (Investor) Migrant route to new applications with immediate effect on 17 February 2022. Transitional provisions are provided for those who have already applied or have leave to remain (who may still apply for settlement). A report by the Migration Advisory Committee, found that any economic benefits arising from the route accrued principally to those granted entry rather than to the UK. The Explanatory Memorandum (EM) states that Home Office analysts have reviewed a sample of Tier 1 extension applications granted in 2019 and found that only a very small minority of cases could be classified as contributing to Foreign Direct Investment in the UK. Parliamentary and media scrutiny, including the Intelligence and Security Committee's Russia report,¹⁰ have associated this route with the movement of illicitly obtained wealth.

10 Intelligence and Security Committee of Parliament, *Russia* (Session 2019–2020, HC Paper 632).

20. The EM states that the Government intend to make alternative provision for investment-related migration, in Autumn 2022, for overseas nationals with a track record of investment activity overseas and credible plans to engage in such activity.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft	Commissioner for Patient Safety (Appointment and Operation) (England) Regulations 2022
Draft	Human Medicines (Amendments Relating to the Early Access to Medicines Scheme) Regulations 2022
Draft	Human Medicines (Coronavirus and Influenza) (Amendment) Regulations 2022

Made instruments subject to affirmative approval

SI 2022/161	Health Protection (Coronavirus, Restrictions) (Self-Isolation etc.) (Revocation) (England) Regulations 2022
SI 2022/194	Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2022
SI 2022/195	Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2022

Instruments subject to annulment

SI 2022/94	Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022
SI 2022/96	Merchant Shipping and Fishing Vessels (Entry into Enclosed Spaces) Regulations 2022
SI 2022/122	Safety of Sports Grounds (Designation) (Amendment) (England) Order 2022
SI 2022/124	Competition Act 1998 (Health Services for Patients in England) (Coronavirus) (Public Policy Exclusion) Order 2022
SI 2022/125	Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 2) Regulations 2022
SI 2022/141	Countryside Stewardship (England) (Amendment) Regulations 2022
SI 2022/144	Pesticides (Revocation) (EU Exit) Regulations 2022
SI 2022/168	Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 3) Regulations 2022
CP632	Statement of changes in Immigration Rules

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 1 March 2022, Members declared the following interests:

Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022 (SI 2022/94)

Lord De Mauley

Chairman, LAPADA (The Association of Art & Antiques Dealers)

Attendance:

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