

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

33rd Report of Session 2021–22

Instrument under the European Union (Withdrawal) Act 2018: Published Draft Instrument

Drawn to the special attention of the House:

Universal Credit and Jobseeker’s Allowance (Work Search and Work Availability Requirements - limitations) (Amendment) Regulations 2022: Oral Evidence

Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 3) Regulations 2022

Includes information paragraphs on:

2 instruments relating to COVID-19
Russia (Sanctions) (EU Exit) (Amendment)
(No. 6) Regulations 2022

Housing (Approval of Code of Management
Practice) (Student Accommodation)
(England) Order 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.

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Registered interests

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

Publications

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

Committee Staff

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Further Information

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

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Contacts

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Thirty Third 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

- Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Universal Credit and Jobseeker's Allowance (Work Search and Work Availability Requirements - limitations) (Amendment) Regulations 2022 (SI 2022/108)

Date laid: 7 February 2022

Parliamentary procedure: negative

This instrument reduces from three months to four weeks the period during which claimants are permitted to limit their job search to the same occupation and level of remuneration as their previous work (“the permitted period”). All other conditions for the receipt of benefits and imposition of sanctions remain as now, they simply apply at an earlier stage. Although the policy objective of matching jobseekers to job vacancies as quickly as possible is clear and important, we were not satisfied that these Regulations met the normal criteria for emergency legislation or that the Department for Work and Pensions had a feasible plan for achieving its stated target of getting 500,000 people into work by the end of June.

DWP claimed these Regulations were urgent because they were vital to achieving that target. It became apparent, however, that they were just one element of a larger campaign. The Explanatory Memorandum provided with the Regulations made no mention of the larger campaign and the reader was left with the impression that this statutory instrument alone would be expected to achieve the target, raising concerns about how frequently sanctions would be applied.

Extensive additional evidence still left us with the view that the target is aspirational, its delivery not yet fully thought through, and the Department's ability to say whether it has been achieved somewhat uncertain.

We therefore draw these Regulations to the special attention of the House on the grounds (1) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation and (2) that the Regulations may imperfectly achieve their policy objective.

Background

1. This instrument amends the Universal Credit Regulations 2013 and Jobseeker's Allowance Regulations 2013 to reduce from three months to four weeks the period during which claimants are permitted to limit their job search to the same occupation and level of remuneration as their previous work (“the permitted period”). All other conditions for the receipt of benefits and imposition of sanctions remain as now but simply apply at an earlier stage.
2. In supplementary material, the Department for Work and Pensions (DWP) explained that, after the end of the permitted period, claimants are expected to widen their job search into other suitable sectors where they may find employment at or above the National Minimum Wage that can support them while they consider their longer-term career options. Those who refuse to do so may be sanctioned.

3. Our preliminary consideration of the Regulations left us with numerous questions about how their policy intention would be delivered: whether Jobcentres were adequately resourced to deliver this initiative, how it could be delivered equitably in places with fewer job vacancies and whether retrospectively applying the requirement to broaden their job search after four weeks to existing claimants¹ would result in them being sanctioned.
4. We were also concerned about DWP's claim that the Regulations, which came into force the day after they were laid, were urgent enough to warrant (1) a breach of the 21-day rule (the rule that negative instruments should generally be laid at least 21 days before they are due to come into force) and (2) the application of an urgency procedure which enabled them to be laid without first being considered by the Social Security Advisory Committee (SSAC).
5. Replies to our written questions to the Department did not satisfy us (see Appendix 1). We therefore invited Baroness Stedman-Scott, Parliamentary Under Secretary of State at DWP, Jonathan Mills, Director-General of Labour Market Policy and Implementation, DWP, and Hilton Leslie, Deputy Director, DWP Legal Advisers, Government Legal Department, to attend an oral evidence session to provide fuller explanations. This took place on 8 March.²

Urgency?

Breach of the 21-day rule

6. The Regulations were laid on 7 February and came into force on 8 February. The Explanatory Memorandum (EM) stated (paragraph 3.2) that immediate action was necessary to achieve a target of getting 500,000 people into work by the end of June: "Any delay to the legislation in order to meet the 21-day rule could impact the Department's ability to achieve that target."
7. The purpose of the 21-day rule is not only to allow time for parliamentary scrutiny before an instrument comes into effect but also to enable operational staff and the public to prepare. The Joint Committee on Statutory Instruments has stressed the importance of compliance with the 21 day rule, "which is designed to protect those affected by changes in the law made by subordinate legislation from being subject to the effect of the changes before they have had a reasonable opportunity to understand the effects and what they must do to satisfy any requirements."³ The convention should be set aside only for compelling reasons.⁴
8. In the course of oral evidence, we discovered that these Regulations were part of a multifaceted package of initiatives, the *Way to Work* campaign, and that **the Minister was unable to point to any specific disadvantage that would have occurred from these Regulations conforming to the 21-day rule.**

1 The Regulations include a transitional provision which states that any existing permitted periods will end either four weeks from the Regulations coming into force date or at the end of the previously agreed permitted period, whichever is the earlier.

2 Oral Evidence taken by the SLSC, [8 March 2022](#) (Session 2021–22).

3 Joint Committee on Statutory Instruments, [Transparency and Accountability in Subordinate Legislation](#) (First Report, Session 2017–19, HC 1158, HL 151).

4 *Ibid.*, para 2.20, where the JCSI sets out a non-exhaustive list of examples which would not generally be regarded as justification for breach of the 21-day rule.

9. We also observed that the Regulations were laid 12 days after the Secretary of State had announced the *Way to Work* campaign. During the evidence session, it became clear that, although the broad policy objectives had been agreed before the announcement, the Regulations were drafted afterwards.⁵ Mr Mills said that the Department had not been sure when the Plan B health restrictions would be lifted and so the process was “concertinaed”.⁶ **That is an internal planning matter within government. It is not, in our view, a valid reason for curtailing parliamentary scrutiny.**

SSAC and the urgency procedure

10. DWP has a statutory obligation to consult the SSAC before laying regulations about benefits. On this occasion the Secretary of State invoked the urgency procedure which enables regulations to be laid with the SSAC examining them afterwards. The SSAC has questioned both the reasons for urgency and the need for these Regulations:⁷

“Although we have not had sight of draft regulations, based solely on the Government’s announcement on 26 January and the legislation currently in place, it is not currently clear to us why it is necessary to amend existing legislation to deliver the *Way to Work* campaign.

Our understanding is that existing regulations already provide adequate space for the implementation of the campaign through the provision of Secretary of State discretion on limitations on work-related requirements, without needing a general rule. ...

As the *Way to Work* campaign has been presented as a change of government policy unconnected to either external factors or a fiscal event, the compelling need for urgency in this specific case is not apparent, beyond the ordinary desires to effect policy without delay. We would welcome a greater appreciation about the necessity for urgency in this case”.

An aspirational target?

11. The *Way to Work* campaign was first mentioned at Prime Minister’s questions on 26 January and formally announced by the Secretary of State for Work and Pensions, the Rt Hon. Thérèse Coffey MP, on 27 January⁸—both mentioned getting 500,000 claimants into work, neither referred to the end of June deadline. When we asked Baroness Stedman-Scott how this target date had been decided and what its significance was, the Minister said it had been agreed by the Chancellor, the Prime Minister and the Secretary of State for Work and Pensions: it was acknowledged that it was “stretching”.⁹
12. We asked why, if these Regulations were intended to meet a deadline, they did not include a sunset clause to revert to a three month permitted period from 1 July. The Minister said the Secretary of State was committed to

5 QQ 3–4.

6 Q3.

7 Social Security Advisory Committee, *Way to Work: Regulations* (7 February 2022) p 1: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1053839/way-to-work-ssac-letter-to-dwp.pdf [accessed 15 March 2022].

8 DWP, Press Release: *New jobs mission to get 500,000 into work* on (27 January 2022): <https://www.gov.uk/government/news/new-jobs-mission-to-get-500-000-into-work>.

9 Q3.

keeping the Regulations under review and did not want a sunset clause.¹⁰ This appears to us to indicate that the legislation may be intended to be a longer-term measure than the purported deadline of 30 June and suggests that the target date was adopted simply to gain publicity.

13. Getting jobseekers into work as soon as possible is, of course, an important objective. **It appears, however, that the end of June deadline has no specific significance, and the claimed “urgency” is self-imposed.** Mr Mills said that part of the reason for setting a target was that: “giving our work coaches and jobcentres a really clear thing to aim at has particular value”. We do not dispute that, but it is an operational matter and not a reason to claim an urgency which impacts parliamentary and SSAC scrutiny.

Measuring success

14. The EM also failed to provide any information on how progress towards this target would be measured, and we followed this up in oral evidence:
- First, no baseline was provided from which the deduction of 500,000 is to be calculated. The evidence session did not resolve this since the Minister quoted 1.4 million unemployed and Mr Mills 1.7 million, using slightly different definitions.¹¹
 - Second, it appears that DWP has not yet decided whether an individual taking a part-time job would be counted as one unit or a fraction of a full-time equivalent.¹²
 - Third, Mr Mills said that DWP would not be able to measure what they had done until afterwards. Because of the degree of economic uncertainty in the post-pandemic period, the Department was unable to predict the “counterfactual” and could not therefore estimate the normal ebbs and flows on and off the register to anticipate how much “value added” this activity would have.¹³
 - Fourth, the effect of these Regulations could not be separated out from the other elements of the *Way to Work* package which included employer job fairs, better account management and better use of outcome data to monitor performance.¹⁴
15. We understand that the post-pandemic period might make predictions trickier than usual, so we asked about DWP’s implementation plan. Given that there are well-established regional variations in job availability, we would have expected the 500,000 figure to have been based on some sort of analysis of the location of the jobseekers and the location of the job vacancies to see how they might coincide. This Minister was unable to assist and undertook to find out what information about regional variation was available and write to the Committee afterwards.¹⁵ (The letter is published in Appendix 2)
16. The evidence we received strengthens the impression of a target and deadline chosen arbitrarily. **We have addressed this issue before, and we are disappointed that our comments on the Homes and Communities**

10 Q4.

11 Q5.

12 Q8.

13 Q5.

14 Q5.

15 QQ 6 and 9.

Agency (Transfer of Property etc.) Regulations 2020 (SI 2020/31) about “aspirational” targets were not taken on board. We said:¹⁶

“It seems reasonable to us to suggest that when the Government refer to a “target” figure, to be achieved within a stated timescale, there is an intention, based on a realistic assessment of the evidence, that that figure should be achieved within the deadline set We find it deeply troubling that the Government have, in this context, used the word “target” when there was an insufficient evidence base to support it and when it is acknowledged as being nothing more than “aspirational”. Given the absence of information on the face of the EM ..., we find this misuse of the word “target” to be particularly egregious.”

17. **The House may wish to seek a commitment from the Minister to present a statement after 30 June setting out the results of this campaign, including a regional breakdown, and whether the target has been met.**

Carrot and stick

18. The EM provided with the Regulations does not mention the other parts of the “jigsaw” of interventions described by Mr Mills,¹⁷ and gave the impression that the Regulations alone would achieve the target.
19. At the oral evidence session, we were told that the *Way to Work* campaign also included a national team and local employer teams that were focused on producing more vacancies. We also discovered that during the pandemic period DWP had doubled its number of work coaches and opened 200 new jobcentres around the country, and, in consequence, is now in a position to devote 50 minutes a week to each claimant’s needs so as to encourage them back into work. Given the current high number of vacancies, DWP takes the view that claimants should broaden their job search at a much earlier stage than previously: the change made by these Regulations provides the ability to enforce that where necessary.
20. In response to concerns that claimants living in areas with few vacancies might be penalised unfairly, Mr Mills clarified that “the sanction would apply at the end of a long process of consideration, if somebody was not actively looking for work. If somebody is looking for work and the work is not available or they are unsuccessful despite their best efforts, our sanctions regime would not penalise them for that.”¹⁸ The Minister added: “somebody would be sanctioned only if there was a job that they could do but which, for no good reason, they would not do.”¹⁹ We pointed out that the law applies nationally irrespective of the local situation and the Minister undertook to write further on the extent of the work coaches’ discretion to apply it.

Financial impact

21. According to the EM, the Regulations will have no significant impact on the private, public or voluntary sectors. This seems surprising since it might be expected that the movement of 500,000 jobseekers into employment would result in financial savings to the Treasury. The Minister’s reply did not

16 SLSC, [6th Report](#) (Session 2019–21, HL Paper 25).

17 Q2.

18 Q6.

19 Q6.

provide a satisfactory explanation and the follow-up letter simply rehearses the same arguments.²⁰ **The House may wish to press the Minister further about potential savings from this campaign.**

Conclusion

22. These Regulations exemplify some of the long-standing concerns raised most recently in our report *Government by Diktat*²¹ about the quality of legislation and supporting materials.²² We found the EM accompanying this instrument disappointing. It did not adequately justify its assertion of urgency and failed to include any practical explanation of the policy context or how achievement of the target would be assessed.
23. Although we asked DWP a number of supplementary questions, the responses focused more on the campaign's ethos than its operation. In oral evidence, while the Minister conveyed her enthusiasm for the campaign effectively, we were less convinced by the information provided about how the campaign would deliver its "stretching" target and how DWP would know whether the target had been met. The follow-up letter from DWP represented a third stage of explanation, supplementary to the EM, and yet we remain unclear about the costs, benefits and the extent to which these Regulations will be effective in delivering the stated target. **We therefore draw these Regulations to the special attention of the House for failing to provide sufficient information to gain a clear understanding about their policy objective and intended implementation.**
24. DWP claimed these Regulations were urgent because they were vital to getting 500,000 people into work by June. It became apparent, however, that they were just one element of a larger campaign. Extensive additional evidence still left us with the impression that the target is aspirational, its delivery not yet fully thought through, and the Department's ability to say whether it has been achieved somewhat uncertain. **We therefore also draw these Regulations to the attention of the House on the ground that they may imperfectly achieve their stated policy objective.**

Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 3) Regulations 2022 (SI 2022/ 206)

Date laid: 1 March 2022

Parliamentary procedure: negative

*These Regulations revoked with effect from 15 March the two sets of regulations that made full vaccination against COVID-19 a condition of employment in a care home or NHS setting. The Department of Health and Social Care (DHSC) states that, as the risk of Omicron is now known and not as serious as anticipated, the vaccination requirement is no longer proportionate. This Report summarises DHSC's supporting evidence but regrets that the Explanatory Memorandum (EM) makes no mention of how those already dismissed are to be treated. **The House may also wish to enquire further into DHSC's future intentions about mandatory flu vaccination and the statement in the EM that DHSC***

20 Q7.

21 SLSC, *Government by Diktat: A call to return power to Parliament* (20th Report, Session 2021–22 HL Paper 105).

22 Ibid, paras 60 to 64.

is engaging with the NHS to review its policies to take account of vaccination status when hiring new staff.

These Regulations are drawn to the special attention of the House on the grounds that they are politically or legally important and give rise to issues of public policy likely to be of interest to the House.

25. These Regulations revoke the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021²³—which required anyone working in a care home after 11 November 2021 to be fully vaccinated against COVID-19—and the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2022²⁴—which required all NHS staff in contact with patients to be fully vaccinated against COVID-19 by 1 April 2022.
26. The revoking Regulations were laid on 1 March and came into effect on 15 March to provide time for employers in the health and care sector to react before the 1 April deadline.

Rationale for revocation

27. The Explanatory Memorandum (EM) states that by 20 February over 1.45 million (95%) NHS trust staff had received at least one dose of an authorised coronavirus vaccine, and 1.4 million (92%) staff had received two doses. These high levels are sustained across all regions, with London being the lowest at 92% for the first dose, 88% for both doses. Over 1.24 million staff (78%) have also received a booster.
28. There is a similar picture for social care staff with 1.3 million (96%) having received a first dose by 20 February and 95% a second dose.; 96% of care home residents have also been fully vaccinated; and 92% of all adults over 80 in the general population have received two doses of the vaccine.
29. The Department of Health and Social Care (DHSC) cite Public Health England analysis which indicates that the COVID-19 vaccination programme has directly prevented between 23.8 and 24.4 million infections, over 82,100 hospitalisations, and between 102,500 and 109,500 deaths.
30. DHSC adds that both sets of regulations were formulated when Delta was the dominant variant and Omicron was an unknown quantity. It is now known that, while Omicron still presents a threat to public health, it is intrinsically less severe and the risk of requiring emergency care or hospital admission with Omicron is approximately half of that for Delta. DHSC states that when coupled with the high vaccination rate in the population, this has meant the impact of the Omicron variant has been less than initially feared.
31. There is also evidence, however, that the protection offered by coronavirus vaccine wanes over time, with protection against Omicron dropping to about 50% by 14 weeks after the booster dose.
32. Having reviewed these factors DHSC announced on 31 January 2022 that the Government now take the view that it is no longer proportionate for

23 SLSC, [8th Report](#) (Session 2019–21, HL Paper 40) and SLSC, [10th Report](#) (Session 2021–22, HL Paper 50). Both of these reports include oral evidence.

24 SLSC, [21st Report](#) (Session 2021–22, HL Paper 109) and SLSC, [24th Report](#) (Session 2019–21, HL Paper 130). Both of these reports include material from an Impact Assessment.

vaccination to be a legal condition of employment in the health and social care sectors. Guidance will make it clear that it is a professional responsibility for staff to be vaccinated and the EM states that the Government are engaging with the NHS to review its policies to take into account vaccination status when hiring new staff (paragraph 7.29).

33. We note that DHSC were constrained by the knowledge available at the time the original regulations were laid, and that the situation has changed rapidly. **The EM accompanying these Regulations provides substantial factual information and scientific evidence to support the decision, which we commend.**

The factors not addressed

34. We are, however, disappointed to see no information in the EM about the other consequences of this policy. In particular there is no estimate of how many care home staff were dismissed in November when the first regulations took effect or how many NHS staff were dismissed or left in anticipation of the second set. We asked supplementary questions on these points but DHSC's responses, included at Appendix 3, fail to provide satisfactory answers. **As a large part of the debates on the original instruments focused on the potential reduction to the workforce, it is surprising that the Department has not collected any data on the reasons for staff leaving during this period.** We also note that the Department has received Employment Tribunal claims related to individuals who were dismissed.
35. We are further disappointed that, having caused difficulties to many care homes and staff, DHSC's response to our question about whether staff dismissed under the mandatory vaccination regulations could now be reinstated was simply that "the matter of rehiring staff who have been dismissed or resigned as a result of VCOD regulations²⁵ is an issue for each individual employer and they may want to seek independent legal advice." **The House may wish to press the Minister for further information on this point.**
36. We also note the suggestion in the EM that NHS recruitment policy should be changed to consider vaccination status. **The House may wish to press the Minister on this point as well.**
37. Finally, we recall that DHSC's consultation exercise conducted in September 2021 was also keen to promote mandatory vaccination against influenza. In the Government response document²⁶ DHSC cited practical reasons for not including flu in the legislation (primarily vaccine supply problems, as most flu doses are administered by January each year, and a lack of resources to run a second major vaccination programme last year). However, DHSC's response also said that it would review that decision following this winter and ahead of winter 2022–23. **The House may therefore wish to ask the Minister about DHSC's future plans on mandatory flu and any other vaccinations as a condition of NHS employment.**

25 The Department of Health and Social Care use the term Vaccination as a Condition of Deployment to describe the original regulations.

26 DHSC, *Making vaccination a condition for deployment in health and wider social care sector* (9 November 2021): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032203/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector-government-response.pdf [accessed 15 March 2022]. A majority of respondents (61% for healthcare settings and 62% for social care settings) did not support flu vaccination requirements.

INSTRUMENTS RELATING TO COVID-19

See also the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 3) Regulations 2022 which have been drawn to the special attention of the House.

Delayed or revoked legislation

Air Traffic Management (Regulation (EU) No 716/2014) (Amendment) Regulations 2022 (SI 2022/211)

38. This instrument amends retained EU Regulations 716/2014, known as the Pilot Common Project (PCP), which mandates the rollout and standardisation of various Air Traffic Management technologies at the UK's larger airports and at NATS (the UK's main provider of air traffic services). The Regulations delay the implementation dates for certain air navigation and routeing programmes to take into account the effects of COVID-19 on the industry. The Department for Transport (DfT) added that the delays also take into account that some airports have implemented their own, more advanced and safer systems in line with the UK's overall airspace modernisation strategy, which superseded the PCP. DfT's intention is to conduct a wider review of the PCP to eliminate those elements no longer relevant, but these Regulations provide an interim solution so that airports will not be in breach of UK law through no fault of their own. DfT states that, in all cases, the UK is operating to the same or higher standards than stipulated in the PCP Regulation.

Cremation (England and Wales) (Amendment) Regulations 2022 (SI 2022/218)

39. Section 19 of the Coronavirus Act 2020 temporarily suspended the requirement for a confirmatory medical certificate by a different doctor from the one who certified the cause of death, before cremation could take place. The 2020 Act is due to expire on 24 March 2022, but these Regulations make **permanent** the need for only one certificate. The Department of Health and Social Care states that provisions in the current Health and Care Bill, which introduce the statutory medical examiner role, will make the confirmatory medical certificate obsolete and the Department wishes to avoid causing confusion by reintroducing the form temporarily.

INSTRUMENTS OF INTEREST

Russia (Sanctions) (EU Exit) (Amendment) (No. 6) Regulations 2022 (SI 2022/241)

40. These Regulations were brought into immediate effect on 8 March to prohibit Russian aircraft, including those chartered by a designated person, from flying over or landing in the UK. Registrations of Russian aircraft by the Civil Aviation Authority (CAA) are terminated, and existing permissions revoked. The Secretary of State may also direct that a Russian aircraft is to be detained. An exception from the prohibitions is provided for where failing to land would endanger the lives of persons on board or the safety of the aircraft.
41. The Regulations also extend the trade restrictions on the supply of certain goods to anyone connected to Russia in the principal Regulations²⁷ to add aviation and space goods and technology, including a new prohibition on insurance and reinsurance services for those goods.
42. Parts 4, 7 and 9 also amend the principal Regulations and the Merchant Shipping (Registration of Ships) Regulations 1993 to correct certain omissions and errors in the Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations 2022.²⁸

Houses in Multiple Occupation (Specified Educational Establishments) (England) (Amendment) Regulations 2022 (SI 2022/197)

Housing (Approval of Code of Management Practice) (Student Accommodation) (England) Order 2022 (SI 2022/198)

43. These two instruments deal with the management of houses in multiple occupation (HMOs) that are occupied by students. **SI 2022/198** approves a new code of practice²⁹ (“the new code) on the management of HMOs that are occupied by full-time further or higher education students and that are managed privately. The Order also withdraws approval for an earlier code from 2006. The new code was developed by the Accreditation Network UK (ANUK) and Unipol, the student housing charity, with the involvement of the sector, including the National Union of Students, and subject to public consultation.
44. According to the Department for Levelling Up, Housing and Communities (DLUHC), the changes introduced by the new code include new sections covering Wi-Fi provision, buildings which are completed late, the provision of gender-neutral toilets and improvements to the section on equality and diversity as well as to the provision of modified accommodation for disabled students to ensure that it is always let at the lowest rate for that development and that students with disabilities are not charged extra.
45. Membership of the new code is voluntary. According to DLUHC, there are currently 110 non-educational and 49 educational establishment members.

27 Russia (Sanctions) (EU Exit) Regulations 2019 ([SI 2019/855](#)) as amended.

28 Merchant Shipping (Registration of Ships) Regulations 1993 ([1993/3138](#)) and Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations 2022 ([2022/203](#)).

29 DLUHC, *The National Code of Standards for Larger Developments*, (March 2022): <https://protect-eu.mimecast.com/s/qrl0CyoLEurzpnR3FZrzNJ?domain=gbr01.safelinks.protection.outlook.com> [accessed 15 March 2022].

Educational establishments which are not members are subject to mandatory licensing of HMOs by local authorities. **SI 2022/197** makes clear that educational establishments which are members of the new code are exempt from HMO licensing. It also specifies two new additional educational establishments as exempt from HMO licensing.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Made instruments subject to affirmative approval

SI 2022/241 Russia (Sanctions) (EU Exit) (Amendment) (No. 6) Regulations 2022

Instruments subject to annulment

SI 2022/197 Houses in Multiple Occupation (Specified Educational Establishments) (England) (Amendment) Regulations 2022

SI 2022/198 Housing (Approval of Code of Management Practice) (Student Accommodation) (England) Order 2022

SI 2022/200 Direct Payments to Farmers (Allocation of Payment Entitlements from the National Reserve) (England) Regulations 2022

SI 2022/202 M271 Motorway (Junction 1 to Redbridge Roundabout) (Fixed Speed Limits) (Amendment) Regulations 2022

SI 2022/204 Oil and Gas Authority (Levy and Fees) Regulations 2022

SI 2022/211 Air Traffic Management (Regulation (EU) No 716/2014) (Amendment) Regulations 2022

SI 2022/218 Cremation (England and Wales) (Amendment) Regulations 2022

SI 2022/221 National Health Service (Optical Charges and Payments) (Amendment) Regulations 2022

APPENDIX 1: FURTHER INFORMATION FROM THE DEPARTMENT FOR WORK AND PENSIONS ON THE UNIVERSAL CREDIT AND JOBSEEKER'S ALLOWANCE (WORK SEARCH AND WORK AVAILABILITY REQUIREMENTS - LIMITATIONS) (AMENDMENT) REGULATIONS 2022

Q1: Can you please provide a link to the Way to Work campaign launch statement, so the Committee can understand exactly what has been announced?

<https://www.gov.uk/government/news/new-jobs-mission-to-get-500-000-into-work>

Q2: What information can you provide on the feasibility of achieving your target of 500,000 off the register by 30 June? Do you have any projected figures (by month? by region?) that the Committee can see about where and when these jobs are to be taken up?

There are currently 1.2 million vacancies across the economy, many in key sectors which the country depends on. This change will support employers who need to fill their vacancies, whilst also our claimants by improving their financial situation and wellbeing.

Q3: What level of compulsion will be applied to claimants to take up 1) a different role or 2) a less well-paid role after the four week permitted period has expired?

Claimants in the Intensive Work Search regime and those claiming New Style JSA who are able to work are required to look for and be immediately available for any work. Limitations can be placed on the type of work and salary searched for in circumstances where a claimant has a strong work history in a specific occupation.

Previous regulations gave discretion to allow jobseekers with a strong work history to limit their job search to a particular type or salary. This is known as the 'permitted period'. Regulations that came into force 8 February 2022 will reduce the maximum permitted period from 13 to 4 weeks. After this period, they will be expected to widen their job search into other suitable sectors where they may find employment at or above the National Minimum Wage that can support them whilst they consider their longer-term career options.

The requirements a claimant is asked to meet will be clearly set out in their Claimant Commitment. This includes both mandatory and voluntary actions the claimant has agreed to undertake. Any work-related requirements are set in discussion with the claimant and will always be tailored to an individual claimant's capability and circumstances, making them realistic and achievable. Work coaches already impose mandatory work-search requirements to apply for a particular vacancy for paid work. These powers will continue to be used, albeit from an earlier date.

If, after 4 weeks, claimants with an agreed permitted period refuse to widen their job search and apply for specific roles identified by their Work Coach, attend interviews or take up paid work outside of their preferred sector without good reason, then they may be referred for a sanction.

We are not changing the reasons we may apply a sanction, nor the rates applied. If claimants refuse to apply for roles, attend interviews or take up paid work without good reason, they can be referred for a sanction—this has always been the case.

Q4: Are any additional staff resources within Jobcentres being deployed to deal with the bulge of recent claimants who will all reach the four week deadline in March?

The permitted period is an existing policy and therefore we do not expect additional numbers of claimants as a direct result of this change. The regulation change means that permitted periods will be reviewed at an earlier point in the claim.

Q5: Can you please send a copy of the guidance issued on 8 February?

The regulation changes have resulted in amendments to existing guidance where there is reference to the permitted period, rather than a standalone product. In each case the reference to 13 weeks or 3 months has been amended to 4 weeks but no additional changes have been made. All guidance is available in the House.

Q6: Although there is no Impact Assessment do you have any estimates of the costs and benefits anticipated from this change in policy?

There are not likely to be significant financial implications for this change and as such are unable to provide any estimates of the costs of this regulation change.

In terms of benefits, Way to Work and the amended regulations could support claimants into work more quickly, connecting them with local employers with immediate vacancies and preventing them from moving further away from the labour market—a factor that makes it increasingly difficult to get a job.

People are better off financially in work than on benefits, with work likely to improve their wellbeing. It will also ensure businesses get the people they and the economy need.

The national economic and recruitment situation requires significant movement of claimants into work to support the Government's economic recovery strategy. This change allows us to promote opportunities in any sector immediately.

Q7: Do you have anything to add to the justification for breaching the 21-day rule set out in the Explanatory Memorandum?

Following the Prime Minister's announcement of the Way to Work campaign on 27th January we have had to make the changes quickly to deliver on his commitment. As Plan B restrictions have lifted, we recognised the opportunity to respond quickly to maximise the current labour market and levels of vacancies. The urgency is necessary to allow the Department to promote opportunities in any sector for claimants more quickly. Any delay—even of the usual 21 days—would have had a negative impact on the Department's ability to achieve the target of getting half a million people into jobs by June, which is designed to help the prosperity and wellbeing of unemployed people.

This is particularly pressing given the cost-of-living rise, of which our claimants will be among those feeling the sharpest impact. By encouraging claimants to widen their employment opportunities, we can best support them during the crisis. The national economic and recruitment situation requires significant movement of claimants into work to support our Government's economic recovery strategy.

We need to use every measure possible to enhance our ability to support claimants into work. Given the need to start supporting people as quickly as possible it was important that the regulations were brought into force immediately to ensure our work coaches could get to work.

15 February 2022

APPENDIX 2: CORRESPONDENCE IN RELATION TO THE UNIVERSAL CREDIT AND JOBSEEKER'S ALLOWANCE (WORK SEARCH AND WORK AVAILABILITY REQUIREMENTS - LIMITATIONS) (AMENDMENT) REGULATIONS 2022

Letter from Baroness Stedman-Scott, Minister for Work and Pensions (Lords), to Lord Hodgson of Astley Abbotts, Chair of the Secondary Legislation Scrutiny Committee

Thank you for your, and your committee's, time on Tuesday to discuss the above regulations. As you know, these are a critical part of the Way to Work campaign and seek to provide work coaches and claimants with clear expectations for work search activity: what we are expecting claimants to do and when; and to make sure regulations are consistent with guidance, adding clarity for work coaches and legal protection.

At the end of the session you requested information on.

- the financial impact of the regulations
- availability of work in different parts of the country
- the extent of discretion on applying sanctions
- timing of the policy formulation

This letter responds to those requests.

Financial impact of the regulations

The potential financial impacts fall into two categories: direct operational costs such as work coach activity and consequent impacts on expenditure on Universal Credit or other benefits.

The scale of operational processes required to agree and review a permitted period are not changed by these regulations. The only change is that, when it is appropriate to use a Permitted Period, the maximum period is shorter than it was previously. This means the amount of work coach activity is unchanged. In general, a work coach will agree a Claimant Commitment including a Permitted Period where it is appropriate to do so. Usually claimants and work coaches meet weekly for the first 13 weeks of their claim. The Claimant Commitment can be reviewed at any of these Work Search Review meetings. The direct operational costs of delivery therefore remain unchanged.

We have not sought to quantify the impact of these regulations on welfare expenditure at this stage. This is for two reasons. First, the regulations are part of the overall Way to Work campaign which also includes, for example, significantly increased employer engagement as well as more intensive engagement from work coaches. While this package as a whole is intended to secure delivery of at least 500,000 people into work it is not possible to apportion that outcome to different elements of the campaign.

Second, to identify the additional impact on welfare expenditure of the overall target to move 500,000 people into work it would be necessary to identify a reliable counterfactual. This would not be realistic given the combination of uncertainties we face from end of COVID-19 measures and the wider global economic outlook. Any number provided at this stage would be arbitrary. Many of those moving into

work will continue to receive financial support under Universal Credit, lessening any financial impact.

Availability of work in different parts of the country

According to data published by the ONS³⁰, online job adverts are higher in all countries and regions of the UK than in February 2020.

Data from the Adzuna website on 14th March shows many job opportunities spread across different parts of the UK.

Wales	32,300
Scotland	60,800
Northern Ireland	8,500
North East	30,700
North West	118,000
Yorkshire and the Humber	74,200
East Midlands	77,700
West Midlands	107,100
East of England	120,000
London	285,200
South East	208,700
South West	120,000

Note: Figures rounded to the nearest hundred. Taken from www.adzuna.co.uk.

The Government has not set regional or local targets for Way to Work. Instead we are seeking to ensure all Jobcentres maximise their impact.

We do publish information on Universal Credit caseloads at a local level and will consider what can be said about the local impacts of the Way to Work campaign.

The extent of discretion on applying sanctions

As you are aware, these Regulations apply to New Style JSA claimants and those in the UC Intensive Work Search regime, reducing the maximum period for which limitations on work-related requirements for our claimants are allowed (known as the permitted period) from three months to four weeks.

This will mean claimants with a permitted period will be expected to broaden their job search activity more quickly into suitable jobs in any sector they are capable of doing through discussions with their work coach.

The Regulations do not make any changes to the reasons we may apply a sanction, including refusing to take a job which has been offered, nor the sanction rates applied.

Sanctions are only ever used where someone fails to comply with reasonable and appropriate commitments they have made without good reason. If, after 4 weeks,

30 Office for National Statistics, *Online job advert estimates* (3 March 2022): <https://www.ons.gov.uk/economy/economicoutputandproductivity/output/datasets/onlinejobadvertestimates> [accessed 16 March 2022].

claimants refuse to widen their job search and apply for roles mandated by their work coach, attend interviews or take up paid work outside of their preferred sector without good reason, then they may be referred for a sanction. But if a claimant has done all they can reasonably do to look for work, even if that has not resulted in a job offer, there is no failure and so no referral for a sanction. Where there is a doubt as to whether a claimant has failed to comply with a work-related requirement, a work coach would refer the case to a decision-maker. Work coaches only refer for a sanction, they do not decide themselves.

Decisions on applying a sanction is undertaken by DWP civil servants working separately in a more centralised hub so there can be objective and consistent evaluation of cases.

Timing of the policy formulation

You asked a number of questions about the decision-making process behind these regulations. As we set out, the department has closely monitored the labour market throughout the pandemic and put in place a comprehensive package of interventions through the Plan for Jobs, to protect jobs and employment. This has helped to return unemployment to levels near those seen before the pandemic.

The end of the plan B measures, allied with the record levels of vacancies and the scope for Jobcentres to return to full face-to-face activity, presented a unique opportunity to accelerate the transition out of the pandemic and both to help claimants find work and address critical vacancies and shortages faster.

The department developed the Way to Work campaign, including the policy objective secured by these regulations, working with the Treasury, No.10 and others ahead of the Prime Minister's announcement on 26 January. Following that announcement work continued in order to ensure the policy intent was translated into the detail of legislative drafting and accompanying materials.

Once again, I want to thank the Committee for the opportunity to provide additional information.

I hope this letter has reassured the Committee these Regulations were necessary to support the Governments wider campaign on Way to Work and help our claimants back into work more quickly.

14 March 2022

APPENDIX 3: FURTHER INFORMATION FROM THE DEPARTMENT OF HEALTH AND SOCIAL CARE ON THE HEALTH AND SOCIAL CARE ACT 2008 (REGULATED ACTIVITIES) (AMENDMENT) (CORONAVIRUS) (NO. 3) REGULATIONS 2022

Q1: How many care home staff were dismissed in November 2021 (or left their jobs) as a result of the Regulated Activities Regulations?

VCOD was the right decision at the time. It was supported by the best available clinical evidence when introduced for care homes and subsequently when legislation was passed to extend it to health and wider social care settings. The policy was proportionate at the time, based on the severity of the dominant variant of COVID-19, Delta. The weight of clinical evidence in favour of VCOD outweighed the risks. Employers who took steps to ensure they only deployed vaccinated staff in care homes, unless exempt, were complying with the law at the time when they did so. NHS England and NHS Improvement publish weekly statistics on the workforce size in care homes as part of their vaccination series. This information can be found here: <https://protect-eu.mimecast.com/s/YjEGCRO3xsvkAnKluNINVr?domain=eur03.safelinks.protection.outlook.com>. Data on the reasons for staff exit are not collected.

Q2: How many NHS staff have already been dismissed (or left their jobs) as a result of the Regulated Activities No 2 Regulations?

With regard to dismissals, no NHS trust would have been unable to deploy a worker based on the No 2. regulations until the enforcement date of the 1 April 2022. As such dismissal dates for staff leaving would not have been until the 1 April 2022. [A letter was sent to NHS trusts](#) on 31 January 2022, which set out clearly that letters informing staff of dismissal should not be sent. We therefore would not expect any NHS dismissals to have been as a result of VCOD and are not aware of any.

The department and NHS do not collect data on leavers by vaccination status. However, the [ERS data](#) shows more staff who meet the vaccination requirements than there were total staff (including unvaccinated) when the policy was consulted on in September 2021—i.e. even if you only were to count double vaccinated staff this is an increase in workforce not a reduction since September. As such, by the government following the best available clinical advice at the time, service users are now better protected from COVID-19.

Q3: Will they now be eligible for reinstatement?

[Guidance was issued to NHS trusts](#) on 8 February 2022 advising them on the appropriate steps to take while the parliamentary process to revoke the regulations was completed.

Adult social care is provided by autonomous providers. As such, adult social care providers have the freedom, subject to relevant employment law, to determine the steps they take as employers. The matter of rehiring staff who have been dismissed or resigned as a result of VCOD regulations is an issue for each individual employer and they may want to seek independent legal advice.

Vaccination remains our best line of defence against COVID-19. The Secretary of State for Health and Social Care, along with the Chief Medical Officer, have said that all people working in health and social care settings have a professional

responsibility to be vaccinated. This expectation has now been reflected in statements made professional regulators and will also be underlined in government guidance.

Q4: Will there be any compensation for those dismissed?

Making vaccination a condition of deployment was the right decision at the time, supported by the best available clinical evidence. Employers who took steps to ensure they only deployed vaccinated staff in care homes, unless exempt, were complying with the law at the time when they did so. The government will therefore not be offering compensation to unvaccinated staff who were dismissed or chose to leave the care home workforce.

Q5: Are there any legal actions/tribunal cases currently or do you anticipate any relating to those individuals who were dismissed?

The Department has received Employment Tribunal claims related to individuals who were dismissed. As this is ongoing litigation we cannot comment any further. It is also not possible to comment on the likelihood of any future legal action.

9 March 2022

APPENDIX 4: 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 15 March 2022, Members declared the following interests.

Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022

Lord Powell of Bayswater
Director of a bank

Russia (Sanctions) (EU Exit) (Amendment) (No. 6) Regulations 2022

Lord Powell of Bayswater
Member, International Advisory Board, Chubb Insurance (formerly ACE Insurance)

Attendance:

The meeting was attended by Baroness Bakewell of Hardington Mandeville, Lord German, Viscount Hanworth, Lord Hutton of Furness, the Earl of Lindsay, Lord Lisvane, Lord Powell of Bayswater and Lord Rowlands.