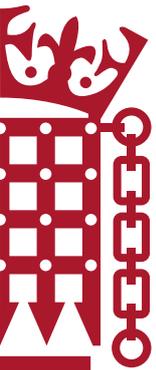


HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

34th Report of Session 2021–22



Includes information paragraphs on:

2 instruments relating to COVID-19

Draft Civil Enforcement of Road Traffic

Contraventions (Representations and Appeals)
(England) Regulations 2022

Polygraph (Amendment) Rules 2022

Non-Domestic Rating (Definition of
Domestic Property) (England) Order 2022

Occupational Pension Schemes (Fraud
Compensation Levy) (Amendment)
Regulations 2022

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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/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.

Thirty Fourth Report

CORRESPONDENCE

Correspondence: Sunset provisions in statutory instruments dealing with COVID-19

1. We have noted in previous reports that many statutory instruments that relate to the coronavirus pandemic included sunset provisions. To assist the House in scrutinising the legislation, we asked the Lord President of the Council and Leader of the House of Commons to send us monthly updates so that they could be properly monitored. As most temporary measures that were introduced during the pandemic have now been lifted or have expired, the Government will no longer provide such updates. Our correspondence with the Lord President on this issue is at Appendix 1.

INSTRUMENTS RELATING TO COVID-19

Changes to benefits and contributions

Draft Social Security (Contributions) (Amendment No. 2) Regulations 2022

2. This instrument proposes to increase the Married Women's Reduced Rate (MWRR) of primary Class 1 National Insurance Contributions (NICs) by 1.25 percentage points for the 2022–23 tax year. HM Revenue and Customs says that this is in line with pre-announced policy and ensures that the MWRR is consistent with the temporary 1.25 percentage points increase to NICs rates for the 2022–23 tax year made by the Health and Social Care Levy Act 2021, prior to the introduction of the Health and Social Care Levy as a separate tax from April 2023. The increases are to provide an additional £12 billion per year in funding to help the NHS and social care deal with a number of challenges, including the pressures arising from the coronavirus pandemic.

Public services

Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) (Amendment) Regulations 2022 (SI 2022/196)

3. This instrument resets Ofsted's inspection cycle for residential family centres, voluntary adoption agencies, adoption support agencies and fostering agencies in England from 1 April 2022. The Department for Education (DfE) says that these providers are usually inspected at least once every three years, but that routine inspections were paused in 2020–21 due to the pandemic, creating a backlog of providers which are overdue an inspection. While Ofsted restarted inspections in April 2021, DfE says that resetting the three-year inspection cycle will avoid Ofsted having to complete an unattainable number of inspections within a shortened time period and give Ofsted greater flexibility to focus resources on those providers that require more support.
4. The instrument also increases by up to 10% the Ofsted fees for providers in England which do not currently pay the full cost of inspection and regulation, and introduces registration, variation and annual fees for multi-building children's homes. These are homes where care and accommodation are provided in more than one building. DfE says that registration, variation and annual fees have usually increased by up to 10% annually since 2010 in order to move the sector closer to full cost recovery, but that in 2020–21 and 2021–22 fees were frozen at 2019–20 levels due to the pandemic. According to DfE, this instrument reinstates the annual fee increase to move towards full cost recovery, while maintaining stability in the market and avoiding unsustainable pressure on individual providers. Fees for providers which are already at full cost recovery level will be capped at the full cost rate.

INSTRUMENTS OF INTEREST

Draft Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022

5. This draft affirmative instrument was originally laid on 27 January 2022 alongside the Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022¹ which extend the range of motoring offences that can be enforced by civil enforcement officers acting on behalf of local authorities. This instrument supports that change by establishing a consistent appeal system against those penalties, which gives motorists stronger rights of representation. However, it had to be withdrawn and re-laid on 7 March due to a drafting error in the instrument.
6. This is the second recent occasion where there has been a significant flaw in Department for Transport (DfT) legislation that has required urgent remedial action² and Baroness Vere of Norbiton, Minister for Roads, Buses and Places at DfT, has written to apologise. Her letter, published in Appendix 2, explains the background to this error and promises improvements in the way prospective legislation is handled within DfT.

Polygraph (Amendment) Rules 2022 (SI 2022/191)

7. The Probation Service has been using polygraph (colloquially known as “lie-detector”) tests since 2014 as an adjunct to monitoring whether certain people convicted of sexual offences are complying with their licence conditions.³ Qualified Probation Officers carry out the tests in line with a policy framework.⁴ These Rules update and modify their training.
8. A polygraph examination takes, on average, two to three hours to complete and works by measuring physiological changes in the body when the individual is asked certain questions. The polygraph examination is made up of three parts: the pre-test interview, the test, and the post-test interview. The Ministry of Justice states that, on average, disclosures are made in two-thirds of polygraph tests, providing information to their Probation Officer about risk-related behaviours. Paragraph 4.8 of the polygraph policy framework lists the categories of convicted criminals on whom it may be used, and individual suitability is also taken into account. Following its initial use with sex offenders, recent legislative changes have widened its use to convicted terrorists and, in July 2021, a three-year pilot was commenced to use polygraph testing with domestic abuse offenders, the outcome of which will determine whether the tests are used more widely with this cohort in the future. We note that the current use of polygraphs is authorised by statute, and that any extension of that use would need to be similarly authorised.

1 Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022 (SI 2022/71).

2 Secondary Legislation Scrutiny Committee, *32nd Report* (Session 2021–22, HL Paper 171).

3 Information obtained during any part of the polygraph examination, including the physiological responses from the tested individual, may not be used in criminal proceedings against the examined person. This is prohibited by section 30 of the Offender Management Act 2007.

4 Ministry of Justice, *Polygraph examination licence condition policy framework* (25 June 2021): <https://www.gov.uk/government/publications/polygraph-examination-licence-condition-policy-framework> [accessed 22 March 2022].

Non-Domestic Rating (Definition of Domestic Property) (England) Order 2022 (SI 2022/217)

9. This instrument ensures that a property will only be assessed by the Valuation Office Agency (VOA) as commercial short-stay self-catering accommodation (“holiday let”) for business rates purposes where it has a history of marketing and letting activity. This is done by introducing two additional conditions a property must meet to be treated as a holiday let: (i) it must have been advertised commercially as a holiday let for short periods totalling at least 140 days in the previous year; and, (ii) it must actually have been let for at least 70 days during that year. The new conditions will come into force on 1 April 2023 and will take into account marketing and letting activity from 1 April 2022.
10. The Department for Levelling Up, Housing and Communities (DLUHC) says that small business rate relief (SBRR) means that no tax is due on properties with a rateable value of up to £12,000, and that 97% of the 65,000 holiday lets on the rating list in September 2021 had a rateable value below that threshold. Under current legislation, a property is treated as a holiday let if the owner intends to make it available to be let commercially for short periods totalling at least 140 days in the coming year. According to DLUHC, there are concerns that owners of second homes may be reducing their tax liability by claiming that they intend to let their second home out commercially but making little or no realistic effort to do so. The two new conditions introduced by this instrument seek to ensure that a property will only be assessed for business rates as a holiday let, and able to access SBRR, where the VOA is satisfied that it has a history of marketing and letting activity.

Occupational Pensions Schemes (Fraud Compensation Levy) (Amendment) Regulations 2022 (SI 2022/259)

11. The Pension Protection Fund (PPF) was established in 2005 to protect people with a defined benefit pension if their employer becomes insolvent. The PPF also operates the Fraud Compensation Fund (FCF), which provides compensation when a scheme has lost money due to dishonesty or fraud.
12. In November 2020, the High Court, in the case of *The Board of the PPF v Dalriada Trustees Ltd.*⁵ clarified that losses as a result of pension liberation schemes,⁶ which satisfied specified criteria, could also make a claim to the FCF. Claims are expected to exceed £350 million.
13. The FCF does not hold sufficient assets to meet claims arising from the judgment and the Compensation (London Capital & Finance plc and Fraud Compensation Fund) Act 2021 was passed to give the Secretary of State the power to make loans to the PPF to provide for that shortfall. This instrument raises the cap on the PPF annual levy on eligible occupational pension schemes from £0.75 to £1.80 per member and from £0.30 to £0.65 per member for authorised Master Trusts, to enable the PPF to repay the loan provided by the Government by 2031.

5 England and Wales High Court Chancery Division, *Board of the Pension Protection Fund vs. Dalriada Trustees Limited*, [EWHC 2960 \(Ch\)](#) (6 November 2020).

6 Pension liberation scheme fraud involves members being persuaded to transfer their pensions from legitimate schemes to fraudulent schemes with promises of high investment returns or access to a loan from their pension scheme before age 55 without incurring a tax charge.

14. The Department for Work and Pensions states that the majority of the current claims are from liberation schemes that occurred between 2010 and 2014 and opportunities for liberation fraud are now considered to be severely restricted. We were, however, surprised that the fraud went on for so long before being identified; as a result, very large sums are now required for compensation that will affect the benefits of blameless pension scheme members.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft	Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022
Draft	Social Security (Contributions) (Amendment No. 2) Regulations 2022

Instruments subject to annulment

SI 2022/191	Polygraph (Amendment) Rules 2022
SI 2022/196	Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) (Amendment) Regulations 2022
SI 2022/214	Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 2022
SI 2022/216	Social Security Revaluation of Earnings Factors Order 2022
SI 2022/217	Non-Domestic Rating (Definition of Domestic Property) (England) Order 2022
SI 2022/228	Saint Mawes Pier and Harbour Revision Order 2022
SI 2022/229	Social Security (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 2022
SI 2022/235	Immigration and Asylum Act 1999 (Part 5 Exemption: Licensed Sponsors) Order 2022
SI 2022/236	Guardian's Allowance Up-rating Regulations 2022
SI 2022/238	Hydrocarbon Oil Duties (Miscellaneous Amendments) Regulations 2022
SI 2022/240	Merchant Shipping (Light Dues) (Amendment)
SI 2022/242	Immigration (Restrictions on Employment and Residential Accommodation) (Prescribed Requirements and Codes of Practice) and Licensing Act 2003 (Personal and Premises Licences) (Forms), etc., Regulations 2022
SI 2022/243	Care and Support (Charging and Assessment of Resources) (Amendment) Regulations 2022
SI 2022/246	Certification Officer (Amendment of Fees) Regulations 2022
SI 2022/247	Government Resources and Accounts Act 2000 (Estimates and Accounts) Order 2022
SI 2022/257	Universal Credit (Energy Rebate Scheme Disregard) Regulations 2022
SI 2022/259	Occupational Pension Schemes (Fraud Compensation Levy) (Amendment) Regulations 2022
SI 2022/260	Universal Credit and Employment and Support Allowance (Terminal Illness) (Amendment) Regulations 2022

SI 2022/261 Forensic Medical Services (Victims of Sexual Offences)
(Scotland) Act 2021 (Consequential Modifications) Order
2022

APPENDIX 1: CORRESPONDENCE: SUNSET PROVISIONS IN STATUTORY INSTRUMENTS DEALING WITH COVID-19

Letter from the Rt Hon. Mark Spencer MP, Lord President of the Council and Leader of the House of Commons, to Lord Hodgson of Astley Abbotts, Chair of the Secondary Legislation Scrutiny Committee

In my predecessor's letter of 12 July 2021 he committed to providing the SLSC with an update on the sunset provisions in SIs made in response to the Coronavirus pandemic. Since then the Government has provided a monthly update to the committee.

The committee has performed an important and valuable role in scrutinising secondary legislation throughout the pandemic. The Government wanted to be as helpful as possible in supporting this work and so provided information in the monthly updates which went beyond that which has been previously provided to scrutiny committees.

It is understandable that the committee would wish to closely scrutinise legislation imposing restrictions on civil liberties at a time of national crisis. However, all such restrictions are now being lifted. As part of the Government's strategy for living with Coronavirus, the last domestic legal restrictions will be lifted. I am therefore of the view that it is no longer necessary for the Government to provide monthly updates.

23 February 2022

Letter from Lord Hodgson of Astley Abbotts to the Rt Hon. Mark Spencer MP

Thank you for your letter of 23 February in which you explained that there will be no further monthly updates on the sunset provisions in SIs made in response to the coronavirus pandemic, as all domestic legal restrictions are now being lifted. We discussed your letter at our most recent meeting.

Our understanding is that some temporary measures, for example in relation to international travel remain in place, and that as recently as 14 February, an Order was made (SI 2022/124) to suspend until the end of March the prohibition of certain types of anti-competitive activity in relation to independent healthcare providers and the NHS in England. While we would not want to add unnecessarily to the workload of officials, we believe that further monthly updates would be helpful to the House and wider public while temporary measures remain in place that seek to address the impact of the pandemic. This will also provide a helpful overview of which measures have expired or have been revoked.

I would be grateful if we could receive the next update by 12 noon on Monday, 14 March to enable us to share it with the Committee at the meeting on 15 March, and further updates at the beginning of each month thereafter.

4 March 2022

**Letter from the Rt Hon. Mark Spencer MP to Lord Hodgson of Astley
Abbotts**

Thank you for your reply to my letter setting out that the Government would not be providing any further monthly updates on the sunset provisions in statutory instruments made in response to the pandemic.

I have noted your request for the updates to continue but remain of the view that it is no longer necessary for the Government to provide them. As set out in my previous letter, these updates were provided to support the Committee in its valuable scrutiny work of legislation which imposed restrictions on civil liberties at a time of national crisis, and as such went far beyond what the Government normally provides to scrutiny committees. All such restrictions are now being lifted.

Furthermore, the Government has set out its planned legislative changes in the COVID-19 Response: Living with COVID-19 document. This is publicly available on GOV.UK for those who wish to understand the temporary measures which remain in place.

14 March 2022

APPENDIX 2: CORRESPONDENCE: CIVIL ENFORCEMENT OF ROAD TRAFFIC CONTRAVENTIONS (REPRESENTATIONS AND APPEALS) (ENGLAND) REGULATIONS 2022

Letter from Baroness Vere of Norbiton, Minister for Roads, Buses and Places, Department for Transport, to Lord Hodgson of Astley Abbotts, Chair of the Secondary Legislation Scrutiny Committee.

I am writing in response to the Joint Committee on Statutory Instruments' 23 February request for a memorandum concerning the draft Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022 (the draft Regulations), which were laid in draft on 27 January. The JCSI's request specially related to the powers which enable the offence created by regulation 18 to apply to representations made under Part 4 of the draft Regulations.

Regulation 18 of the draft Regulations seeks to create a criminal offence relating to the making of false representations in certain circumstances. As currently drafted, the offence applies to any representations made under Parts 2, 3 and 4 of the draft Regulations and to any representation made under any provision of Schedule 1 insofar as it relates to an appeal.

Whilst there is a power in primary legislation to enable the offence created by regulation 18 to apply to representations made under Parts 2 and 3 of the Regulations (and to representations made under Schedule 1 insofar as they relate to appeals under Parts 2 and 3), the Committee has correctly highlighted that an appropriate power has not been identified to enable the offence created by regulation 18 to apply to representations made under Part 4 of the Regulations or to representations made under Schedule 1 insofar as they relate to appeals under Part 4.

I would like to thank the Secondary Legislation Scrutiny Committee for its consideration of this regulatory package to date. While it is still expected that the regulations will come into force on 31 May as currently planned, I apologise to the Committee that this error will necessitate the withdrawal and re-laying of the above statutory instrument.

I can confirm that since drafting of the statutory instrument, the DfT has commenced work to reform and improve our approach to the SI programme. This work is focused on tangible steps to improve resilience in our approach through prioritisation of resource and by implementing a more joined up approach with increased Ministerial oversight. We are also rolling out new processes to address common errors, improve the quality of supporting products and increasing the training offer for staff. Through this process we are also seeking to address specific risks associated with the complexity and volumes of the SI programme in 2022. I can assure you we are taking this matter extremely seriously.

7 March 2022

APPENDIX 3: 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 22 March 2022, Members declared the following interests:

Non-Domestic Rating (Definition of Domestic Property) (England) Order 2022 (SI 2022/217)

Lord Lisvane

House from which rental income is received as a holiday let

Saint Mawes Pier and Harbour Revision Order 2022 (SI 2022/228)

Lord Hutton of Furness

Moors boat in this harbour

Occupational Pension Schemes (Fraud Compensation Levy) (Amendment) Regulations 2022 (SI 2022/259)

Lord German

Member of a defined benefit pension scheme

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 of Furness, the Earl of Lindsay, Lord Lisvane, Lord Powell of Bayswater, Lord Rowlands and Baroness Watkins of Tavistock.

The Earl of Lindsay left the meeting prior to consideration of the Occupational Pension Schemes (Fraud Compensation Levy) (Amendment) Regulations 2022 (SI 2022/259). If he had been present, he would have declared his interest as Chairman of Berry UK Pension Trustees Limited (formerly BPI Pension Trustees Limited).