

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

35th Report of Session 2019–21

**Drawn to the special attention of the House:
Town and Country Planning (General Permitted
Development) (England) (Amendment)
Order 2022**

**Correspondence: Impact Assessment for the Motor
Vehicles (Driving Licences) (Amendment) (No. 5)
Regulations 2021**

Includes information paragraphs on:

5 instrument relating to COVID-19
Judicial Pensions Regulations 2022 and six
related instruments

National Health Service (Clinical
Commissioning Groups) (Amendment)
Regulations 2022

National Health Service (Charges to Overseas
Visitors) (Amendment) (No. 2) Regulations
2022

International data transfer agreement

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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

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/>

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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 Fifth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2022 (SI 2022/278)

Date laid: 14 March 2022

Parliamentary procedure: negative

This Order amends the restrictions and conditions which apply to the installation, upgrade or replacement of electronic communications infrastructure, such as masts, through permitted development rights in England. According to the Department for Levelling Up, Housing and Communities, the changes will make it easier to install new masts or upgrade other electronic communications infrastructure, supporting the delivery of mobile infrastructure and 5G technology and helping to address the current discrepancy between mobile network cover in urban and rural areas. However, the changes will also reduce the ability of local planning authorities to scrutinise certain developments which will no longer require prior approval. Such developments frequently give rise to local concerns and there has been considerable public interest, as shown by a large number of responses to two public consultations during which 40% of individual responses objected in principle to the deployment of 5G technology.

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

1. This Order has been laid by the Department for Levelling Up, Housing and Communities (DLUHC) with an Explanatory Memorandum (EM). The Order makes changes to the restrictions and conditions which apply when electronic communications infrastructure is installed, replaced or altered through permitted development rights. According to DLUHC, this is to support the delivery of mobile infrastructure to address the current discrepancies between mobile network cover in urban and rural areas, and as part of the Government's ambition that by 2030, the UK will have nationwide gigabit-capable broadband and 4G mobile technology coverage, with 5G coverage for most of the population.

Background

2. Under the current arrangements, most electronic communications infrastructure can be installed and maintained under the permitted development rights process, with statutory limits on the scale of the development that can be deployed in this way. According to DLUHC, permitted development rights provide a planning process which is more streamlined and affords greater planning certainty than the full planning application process, while at the same time allowing the local consideration of key planning matters through a light-touch prior approval process. This Order makes changes to the permitted development rights in relation to electronic communications infrastructure which, according to DLUHC,

“strike the right balance between the benefits of improved connectivity and appropriate local control and environmental protections”.

3. DLUHC says that to ensure that the delivery of communications infrastructure is balanced with local and environmental considerations, the Department for Digital, Culture, Media and Sport has developed new guidance to support the deployment of electronic communications infrastructure. The Code of Practice for Wireless Network Development in England¹ (“the Code of Practice”) outlines the process that operators should undertake when engaging with local planning authorities, communities and other interested parties.
4. The following sets out the key changes made by this instrument and provides additional information provided by DLUHC about how some of the changes will operate in practice.

Housing of radio equipment

5. This Order makes it easier to deploy the radio equipment housing needed to install additional antenna on existing masts, as well as the radio equipment housing required alongside new masts by permitting single developments of equipment housing up to 2.5 cubic metres on protected land (so-called Article 2(3) land)² without prior approval. Where the single development is greater than 2.5 cubic metres, prior approval from the local planning authority will still be needed. The Order also permits the deployment of equipment housing of any size to be deployed within a permitted compound without prior approval on all land, except for sites of special scientific interest.

Strengthening existing ground-based masts

6. The Order allows for the strengthening of existing ground-based masts by changing their width up to certain limits without prior approval of the local planning authority. In addition, operators will be allowed to extend or replace masts on protected land or land on a highway up to a new height of up to 25 metres, subject to prior approval of the local planning authority. Increases of up to 20 metres will remain possible without prior approval. On unprotected land, alteration or replacement up to a new height of 25 metres will be permitted without prior approval. Any increases beyond this, up to a new height of 30 metres, will require prior approval of the local planning authority. DLUHC says that these changes will make it easier to accommodate new or additional antennae on existing masts, thereby reducing the need for new masts and sites.

Building-based masts

7. The Order permits the deployment of building-based masts on unprotected land without the need for prior approval from the local planning authority, provided that the tallest part of the mast does not exceed the tallest part of the building by more than six metres. DLUHC says that this will encourage

1 Department for Digital, Culture, Media and Sport, ‘Code of Practice for wireless network development in England’: <https://www.gov.uk/government/publications/code-of-practice-for-wireless-network-development-in-england> [accessed 29 March 2022].

2 Protected land includes Conservation Areas, Areas of Outstanding Natural Beauty, the Broads, National Parks, areas specified by the Secretary of State for the purposes of section 41 (3) of the Wildlife and Countryside Act 1981, and World Heritage Sites. These areas are collectively defined as Article 2(3) land, as set out in Part 1 of Schedule 1 of the [General Permitted Development \(England\) Order 2015](#).

the use of existing buildings to deploy masts, rather than deploying new ground-based masts.

8. We asked DLUHC whether such developments will need to be advertised before they go ahead, even if they do not require prior approval. The Department explained that:

“Where the development does not require prior approval from the local authority, the developer must notify the local planning authority of its intention and can exercise the permitted development right after 28 days’ notice. [...] The local planning authority may within this period give written notice of conditions with which they wish the Code Operator to comply in respect of the installation of the apparatus.

The [Code of Practice] sets out guidance for Mobile Network Operators and infrastructure providers, their agents and contractors, local planning authorities, and all other relevant stakeholders in England. This provides a stronger focus on the siting and design of wireless infrastructure and the process for engaging with local authorities and communities. Government guidance sets out that early engagement with local communities is good practice. The Code of Practice sets out guidance for the deployment of building-based masts, as well as encouraging Code Operators to engage with local communities, prior to deployment including at pre-application stage. This extends to all development, regardless of whether prior approval is required from the local authority.

The measures set out in the Order, and the guidance set out in the Code of Practice, strike a balance to ensuring the timely delivery of electronic infrastructure while ensuring that local considerations are accounted for and ensuring best practice when consulting with interested parties including local authorities and the local community.

Concerns had been raised regarding the impacts to private property rights, as a result of the amendments made to these permitted development rights. The framework regulating the installation and maintenance of digital communications infrastructure by Code Operators on private land is contained in the Electronic Communications Code (‘the Code’), as set out in Schedule 3A of the Communications Act 2003. The Code does not provide operators with powers to unilaterally impose terms on site providers. The terms according to which Code rights can be exercised are a matter for individual negotiation between individual operators and site providers. If mutually acceptable terms cannot be agreed, the operator may ask the courts to impose the rights requested, but the imposition of those rights is not automatic.”

New ground-based masts

9. The Order permits the installation of new ground-based masts of up to 30 metres in height on unprotected land, and up to 25 metres on protected land, subject to prior approval from the local planning authority. According to DLUHC, allowing higher masts will reduce the need for new ground-

based masts and will support deployment of the Shared Rural Network,³ a programme which aims to increase mobile network coverage across the UK.

10. We asked DLUHC whether members of the public could raise objections about the installation of new masts under the prior approval process, and whether the local planning authority had to take such objections into account before making a decision. The Department responded that:

“The prior approval process allows local authorities to consider the siting and appearance of mobile infrastructure, before the development is carried out. This involves a requirement for engagement through site and/or written notices to allow representations, for example from local residents, and the views of certain named consultees, such as the Highways Agency. This gives the local planning authority the opportunity to refuse the development on certain grounds. If the local planning authority has not made a decision within 56 days of receipt of the application, then the developer may exercise the permitted development right without awaiting such approval. In addition to the requirements for consultation for planning applications, the Code of Practice provides further detailed guidance on how Code Operators should engage with local authorities and communities, and actively encourages engagement prior to any application being made.

The measures set out in the Order, and the guidance set out in the Code of Practice, strike a balance to ensuring the timely delivery of electronic infrastructure while ensuring that local considerations are accounted for and ensuring best practice when consulting with interested parties including local authorities and the local community.”

Changes to mitigate any visual and accessibility impacts

11. According to DLUHC, the Order strengthens the conditions on the placing and visual impacts that must be considered when masts and radio equipment housing are installed, changed or replaced, especially where the development is located on or next to protected land and other designated heritage assets. In addition, the Order introduces a condition that requires operators to minimise the impact that electronic communications infrastructure has on the accessibility of any footway or premises, including for disabled people.
12. We asked the Department for further information on the strengthened conditions. DLUHC provided the following additional explanation:

“Mitigating visual impacts from development

Permitted development rights on Article 2(3) land are generally more limited in scale and subject to greater controls through Prior Approval. For example, the prior approval of the local planning authority will continue to be required for all new ground-based masts on all land, including Article 2(3) land. These measures will limit the overall impact on more sensitive locations. However, in order to provide further protection, especially for development where prior approval may not be required (including where development may be located adjacent to Article 2(3) land, but not subject to the same controls as it would be if located on Article 2(3) land), we have expanded conditions to require

³ Shared Rural Network, ‘The Shared Rural Network is bringing mobile broadband to rural communities across the UK’: <https://srn.org.uk/> [accessed 29 March 2022].

Code Operators to consider and minimise the potential impacts on Article 2(3) land or designated heritage assets of any nearby proposed deployment (taking account of the reason for the Article 2(3) designation). Article 4(2)(b) of the Order has been included to address this, so that any development type listed which does not require prior approval is required to minimise the impact of development as far as practicable. In addition, this Article ensures that the siting and appearance of any development that is visible from more sensitive locations minimises the visual impact as far as practicable taking account of the nature and purpose of the site. For example, where the development is visible from a National Park which are designated for reasons set out in legislation, Code Operators would have to ensure that the sensitivities associated with that particular landscape are addressed.

The [Code of Practice] sets out guidance on how Code Operators should look to mitigate visual impacts of development through sympathetic design, materials and colours. The Code of Practice also places a strong emphasis on Code Operators to consider national design principles, as set out in the National Planning Policy Framework (NPPF), as well as any relevant national and local design codes.

Mitigating impacts as a result of development being sited on a highway/footway

While measures, including Manual for Streets 2 guidance,⁴ exist to limit the impact of equipment which is sited on highways, we have added a condition to mitigate impacts from development sited on footways [...].

Article 4(2)(b) of the Order has been included to address this, so that any development type listed which does not require prior approval is required to minimise the impact of development as far as practicable. This extends to the siting of development on footways and ensuring that equipment deployed does not impede access to properties – for example, where a single deployment of radio equipment housing is installed adjacent to an access to premises and unduly preventing access to it. Likewise, the condition looks to ensure that footway users are not impeded by the siting of the equipment – for example to prevent people stepping onto the highway, to get past the development. This is to ensure that any potential impacts on the accessibility of footways are reduced, including any impact affecting disabled people.”

13. We are concerned that the statutory requirement “to minimise the impact of development as far as practicable” may be insufficiently precise, making it difficult to assess whether developments meet this requirement, and that this could impact on the accessibility of premises, including for people with disabilities. This has added relevance, given that these are permitted developments with a consequential limit on the ability of the public to appeal against decision to install or replace relevant infrastructure.

Other changes

14. The Order ensures that the Civil Aviation Authority or the Secretary of State for Defence are notified in advance of any installations near aerodromes,

⁴ Department for Transport, ‘Designing and modifying non-trunk roads and busy streets’ (29 September 2010): <https://www.gov.uk/government/publications/manual-for-streets-2> [accessed 29 March 2022].

technical sites and defence assets to ensure any potential impacts on such assets can be considered. The Order also amends the definition of “small cell systems” (which provide better mobile broadband at highly populated areas to avoid data traffic congestions and provide better user experience), to ensure that it includes new and emerging types of small cell technology.

Consolidation

15. The EM states that this Order is the twenty-sixth amending instrument to the Town and Country Planning (General Permitted Development (England) Order 2015, but that there are no current plans for a consolidation. We are concerned that having so many amending instruments may lead to the undermining of the clarity and accessibility of an important part of the law that is of significant concern to local communities.

Consultation

16. The Department says that a 10-week public consultation⁵ on the principle of the changes between August 2019 and November 2019 received almost 1,900 responses. A second, technical eight-week consultation⁶ between April and June 2021 received more than 3,200 responses, suggesting a high level of public interest in the changes. The Department says that the responses showed most support for changes which encourage site sharing and use of existing structures, and that the responses recognised that the changes would support the deployment of 5G technology and extended coverage.
17. According to DLUHC, the key concerns raised during consultation were about the visual impacts on protected landscapes, lack of local consideration and scrutiny, and the impacts of 5G technology on wildlife and public health. With regard to the impact on public health, DLUHC says that the UK Health Security Agency advises that so long as exposures are within the International Commission on Non-Ionizing Radiation Protection (ICNIRP) guidelines,⁷ they do not pose a threat to human health. We note that 40% of individual responses to the second consultation were opposed in principle to the deployment of 5G technology.

Conclusion

18. This Order amends the restrictions and conditions which apply to the installation or replacement of electronic communications infrastructure, such as masts, through permitted development rights in England. The changes will make it easier to install new masts or upgrade other electronic communications infrastructure, but the changes will also reduce the ability of local planning authorities to scrutinise certain developments. Such developments frequently give rise to local concerns and there has been considerable public interest, as shown by a large number of responses to two public consultations during which 40% of individual responses objected in

5 DLUHC, ‘Proposed reforms to permitted development rights to support the deployment of 5G and extend mobile coverage’ <https://www.gov.uk/government/consultations/proposed-reforms-to-permitted-development-rights-to-support-the-deployment-of-5g-and-extend-mobile-coverage> [accessed 19 March 2022].

6 DLUHC, ‘Changes to permitted development rights for electronic communications infrastructure: technical consultation’: <https://www.gov.uk/government/consultations/changes-to-permitted-development-rights-for-electronic-communications-infrastructure-technical-consultation> [accessed 29 March 2022].

7 ICNIRP, ‘RF EMFS’: <https://www.icnirp.org/en/frequencies/radiofrequency/index.html> [accessed 29 March 2022].

principle to the deployment of 5G technology. **The Order is drawn to the special attention of the House, on the ground that it is politically or legally important and gives rise to issues of public policy likely to be of interest to the House.**

CORRESPONDENCE

Correspondence: Impact Assessment for the Motor Vehicles (Driving Licences) (Amendment) (No. 5) Regulations 2021

19. On 11 January we took oral evidence from Baroness Vere of Norbiton, Minister for Roads, Busses and Places, concerning a deficiency in the material that the Department for Transport (DfT) had provided in support of the Motor Vehicles (Driving Licences) (Amendment) (No 5) Regulations 2021.⁸ We were told that information answering several of our questions about safety would be published shortly in an Impact Assessment (IA). Ten weeks after that session and six months after the original legislation was laid, we noted that the IA had not been published and wrote to Baroness Vere. In her response, the Minister indicated that the IA was still not ready for publication. **This further strengthens our view that DfT are giving insufficient priority to the provision of good quality information to explain and justify legislation and to publishing it at the same time as the instrument is laid before Parliament. This practice severely restricts Parliament's ability to undertake the proper degree of scrutiny of secondary legislation.**

8 SLSC, [23rd Report](#) (Session 2021-22, HL Paper 123) on the instrument and the transcript of the oral evidence session in our [27th Report](#) (Session 2021-22, HL Paper 150).

INSTRUMENTS RELATING TO COVID-19

Travel

Mandatory Travel Concession (England) (Amendment) Regulations 2022 (SI 2022/284)

20. During the pandemic, because numbers of bus passengers were much lower than usual, emergency funding packages were provided to support the bus industry. Initially this was through the COVID-19 Bus Services Support Grant, which provided £1.5 billion, but was superseded on 1 September 2021 by the Bus Recovery Grant, which is providing £226.5 million of recovery funding to help to maintain bus networks.
21. As part of the package, the requirement for Travel Concession Authorities (TCAs)⁹ to ensure that operators are not better off as a result of reimbursement arrangements was suspended until 5 April 2022. This instrument extends the suspension until the end of 5 April 2023 to support both the bus sector and the objectives of the National Bus Strategy, *Bus Back Better*.¹⁰ The recovery strategy recommends TCAs take an incremental approach to reducing current payments by 5% every other month, until they are back in line with actual patronage levels, to avoid a sudden reduction in these payments.

Health Protection (Coronavirus, International Travel and Operator Liability) (Revocation) (England) Regulations 2022 (SI 2022/ 317)

22. This instrument revoked the International Travel Regulations¹¹ from 4am on 18 March 2022 and made consequential amendments to the Health Protection (Notification) Regulations 2010 to implement the decision to revoke all border health measures.
23. This revocation means that there will no longer be any coronavirus-related requirements or restrictions for any traveller entering England. This includes removing the current requirement for all passengers to complete a Passenger Locator Form no more than three days prior to arrival in England. The requirement for “non-eligible” travellers to book and take a pre-departure test and day 2 test is also removed, as is the requirement to self-isolate in managed accommodation if arriving from a “Red List” country. The Department of Health and Social Care states that following the recent removal of all remaining domestic self-isolation and testing requirements in England, there is a limited public health rationale for treating domestic and international arrival cases differently.

Public services

National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 (SI 2022/273)

24. Part 3 of this instrument extends the provisions made under the Coronavirus Act 2020 which temporarily enable retired or partially retired NHS staff to return to work, or increase their work hours, without having their pension

9 TCAs are legally required to reimburse bus operators for carrying concessionary passengers, so that those who have reached State Pension Age or have eligible disabilities may travel for free.

10 Department for Transport, ‘Bus Back Better’: <https://www.gov.uk/government/publications/bus-back-better> [accessed 29 March 2022].

11 Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (SI 2021/582) as amended.

benefits abated or suspended. The temporary provision, designed to attract back trained staff to deal with the pandemic, is extended to 31 September 2022.

25. Part 2 of the instrument sets out the revisions to the NHS pension scheme that will apply to all staff from that date.¹² That is to reflect the move from 1 April 2022 to a Career Average Revalued Earnings Scheme which will be based on members' actual pensionable pay rather than their notional whole-time equivalent pay. This instrument implements the first phase of the changes to the member contribution structure, with further changes planned to follow in 2023.

Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2022 (SI 2022/295)

26. In July 2021 the Government laid temporary regulations to facilitate civil wedding and civil partnership ceremonies during the pandemic restrictions by allowing them to take place outdoors.¹³ These provisions were due to lapse on 5 April 2022, but **these Regulations make the arrangement permanent**. The provision has proved very popular and 96% of those who responded to the consultation exercise supported its continuation. The requirements remain the same: outdoor locations for the ceremony will need to meet certain conditions, including that they are seemly and dignified and are identifiable by directions so that they can be easily located by the public.

Changes to benefits and contributions

Social Security Contributions (Disregarded Payments) (Coronavirus) Regulations 2022 (SI 2022/276)

27. This instrument extends the current National Insurance contributions (NICs) disregard to ensure that where an employer pays or reimburses an employee for the cost of a relevant coronavirus diagnostic test,¹⁴ there is no Class 1 NICs liability for either the employer or the employee. HM Revenue and Customs explains that the disregard for employer-reimbursed coronavirus diagnostic tests was first introduced for the 2020-21 tax year¹⁵ and subsequently extended for the 2021-22 tax year.¹⁶ This instrument provides for the NICs disregard to be extended again to also apply in the 2022-23 tax year. The extension is temporary and will only have effect for payments made between 6 April 2022 and 5 April 2023.

12 See also National Health Service Pensions Schemes (Amendment) Regulations 2022 ([SI 2022/327](#)) mentioned on page 11 of this report.

13 Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2021 ([SI 2021/775](#)). SLSC [9th Report](#) (Session 2021-22, HL Paper 45) and [11th Report](#) (Session 2021-22, HL Paper 52).

14 This includes Lateral Flow Tests and Polymerase Chain Reaction Tests but not antibody tests.

15 Social Security Contributions (Disregarded Payments) (Coronavirus) (No. 2) Regulations 2020 ([SI 2020/1523](#)).

16 Social Security Contributions (Disregarded Payments) (Coronavirus) Regulations 2021 ([SI 2021/242](#)).

INSTRUMENTS OF INTEREST

Judicial Pensions Regulations 2022 (SI 2022/319)

Teachers' Pension Scheme (Amendment) Regulations 2022 (SI 2022/320)

Armed Forces Pensions (Amendment) Regulations 2022 (SI 2022/323)

National Health Service Pension Schemes (Amendment) Regulations 2022 (SI 2022/327)

Public Service (Civil Servants and Others) Pensions (Amendment) Regulations 2022 (SI 2022/330)

Civil Service (Other Crown Servants) Pension Scheme (Amendment) Regulations 2022 (SI 2022/334)

Police and Firefighters' Pension Schemes (Amendment) Regulations 2022 (SI 2022/336)

28. These seven instruments provide for the full closure of the final salary (legacy) sections of the pension schemes for members of the judiciary, teachers, NHS staff, civil servants, the police and firefighters on 31 March 2022, with all remaining active members transitioning to career average pension schemes on 1 April 2022. This implements the scheme closures provided for by the Public Service Pensions and Judicial Offices Act 2022 (“the PSPJO Act”) which received Royal Assent on 10 March 2022. The changes address a judgement by the Court of Appeal (McCloud)¹⁷ from 2018 which found that transitional protection arrangements under the Public Service Pensions Act 2013 unlawfully discriminated on the grounds of age against young pension scheme members. These transitional protection rules allowed older members (those within 10 years of their normal pension age) to remain in the final salary legacy sections of their schemes, whilst younger members were moved into new career average arrangements. The seven instruments ensure that following the closure of the legacy schemes through the PSPJO Act, all members of the different public service career average schemes will be treated equally from 1 April 2022.
29. Specifically for members of the judiciary, SI 2022/319 establishes the new Judicial Pension Scheme 2022 (JPS 2022) as the only judicial pension scheme in which eligible salaried and fee-paid judicial office holders can accrue benefits for future service from 1 April 2022. The Ministry of Justice explains that due to recruitment and retention challenges in the judicial profession, the JPS 2022 includes arrangements which differ from those in the other public service pension schemes. In particular, the JPS 2022 is tax unregistered, so that benefits accrued in the scheme do not count towards members’ annual allowance and lifetime allowance limits.
30. A further set of regulations will be made and will come into force by 1 October 2023 at the latest to deliver a retrospective remedy under the PSPJO Act. This will address the difference in treatment experienced by some members between 1 April 2015 and 31 March 2022 by rolling their service back into the legacy schemes and offering all members with remediable service a choice of benefits (legacy or reformed scheme) for that period. We

¹⁷ Court of Appeal (Civil Division), *The Lord Chancellor and Secretary of State for Justice and the Ministry of Justice V McCloud and Others and N Mostyn and others*, [2018] EWCA Civ 2844 (20 December 2018).

note that the Impact Assessment provided by HM Treasury for the PSPJO Act estimates that the changes will cost approximately £17 billion over the remedy period, with an additional cost of £130 million for the JCP 2022.¹⁸

National Health Service (Clinical Commissioning Groups) (Amendment) Regulations 2022 (SI 2022/316)

31. Subject to the enactment of the Health and Care Bill, it is anticipated that Clinical Commissioning Groups (CCGs) will be abolished and replaced with 42 integrated care boards (ICBs) to commission the majority of secondary care services in England. The target date for this change is summer 2022. These Regulations put in place transitional measures, making the current restrictions on core numbers and qualifications more flexible so that, if they depart from CCGs prior to the establishment of their anticipated successor bodies, personnel may not have to be replaced and the CCGs can continue to function.

National Health Service (Charges to Overseas Visitors) (Amendment) (No. 2) Regulations 2022 (SI 2022/318)

32. The principal Regulations require relevant bodies in England to make and recover charges from an overseas visitor for medical treatment and services provided to them. These amending Regulations provide an exemption for those displaced from their homes by the conflict in Ukraine. With effect from 24 February 2022, no charge may be made or recovered for treatment delivered to residents of Ukraine who are lawfully in the UK. The exemption is due to be reviewed in six months' time.

International data transfer agreement

33. We have recently become aware that the Department for Digital, Culture, Media and Sport (DCMS) failed to send us for scrutiny two documents which were laid before Parliament on behalf of the Information Commissioner's Office. Both were subject to parliamentary procedure: the International data transfer agreement, which was laid on 2 February 2022, and the Code of Practice on Data Sharing, which was laid on 18 May 2021. While both documents are not statutory instruments, they were subject to a form of negative procedure, and therefore fell within our remit.
34. **We consider all secondary legislation that is subject to parliamentary procedure, including statutory Codes of Practice, and departments should send us copies of all relevant legislation for scrutiny. In both these cases, however, the documents came into force and the 40-day period during which either House could have resolved not to approve the documents expired without us being able to carry out our scrutiny function because the Department failed to send us copies of the documents. This is a significant oversight. We therefore welcome DCMS's assurance that it will ensure that in future all relevant secondary legislation is sent to us for scrutiny, and that a reminder message has gone out to all departments about the extent of our role.**

¹⁸ HM Treasury, *Public Service Pensions and Judicial Offices Bill, Assessment of Impacts* (December 2021): <https://publications.parliament.uk/pa/bills/cbill/58-02/0211/AssessmentofImpactsPublicServicePensionsJudicialOfficeBill.pdf> [accessed 30 March 2022].

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft Industrial Training Levy (Construction Industry Training Board) Order 2022

Made instruments subject to affirmative approval

SI 2022/319 Judicial Pensions Regulations 2022

Draft instruments subject to annulment

Draft Statement of Changes in Immigration Rules

Instruments subject to annulment

SI 2022/267 Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2022

SI 2022/272 Coroners and Justice Act 2009 (Alteration of Coroner Areas) Order 2022

SI 2022/273 National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022

SI 2022/274 Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment) Regulations 2022

SI 2022/276 Social Security Contributions (Disregarded Payments) (Coronavirus) Regulations 2022

SI 2022/277 Occupational Pension Schemes (Master Trusts) (Amendment) Regulations 2022

SI 2022/284 Mandatory Travel Concession (England) (Amendment) Regulations 2022

SI 2022/294 Personal Injuries (Civilians) Scheme (Amendment) Order 2022

SI 2022/295 Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2022

SI 2022/296 Immigration and Nationality and Immigration Services Commissioner (Fees) (Amendment) Regulations 2022

SI 2022/298 Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2022

SI 2022/300 Social Security (Contributions) (Amendment) Regulations 2022

SI 2022/303 Police Act 1997 (Criminal Records) (Amendment) Regulations 2022

SI 2022/306 Social Security (Contributions) (Re-rating) Consequential Amendment Regulations 2022

- SI 2022/307 National Insurance Contributions Act 2022 (Application of Part 1) Regulations 2022
- SI 2022/311 Ivory Prohibition (Civil Sanctions) Regulations 2022
- SI 2022/312 Tribunal Procedure (Amendment) Rules 2022
- SI 2022/313 Social Security Contributions (Freeports) Regulations 2022
- SI 2022/316 National Health Service (Clinical Commissioning Groups) (Amendment) Regulations 2022
- SI 2022/317 Health Protection (Coronavirus, International Travel and Operator Liability) (Revocation) (England) Regulations 2022
- SI 2022/318 National Health Service (Charges to Overseas Visitors) (Amendment) (No. 2) Regulations 2022
- SI 2022/320 Teachers' Pension Scheme (Amendment) Regulations 2022
- SI 2022/323 Armed Forces Pensions (Amendment) Regulations 2022
- SI 2022/327 National Health Service Pension Schemes (Amendment) Regulations 2022
- SI 2022/330 Public Service (Civil Servants and Others) Pensions (Amendment) Regulations 2022
- SI 2022/334 Civil Service (Other Crown Servants) Pension Scheme (Amendment) Regulations 2022
- SI 2022/336 Police and Firefighters' Pension Schemes (Amendment) Regulations 2022

**APPENDIX 1: CORRESPONDENCE: IMPACT ASSESSMENT FOR
THE MOTOR VEHICLES (DRIVING LICENCES) (AMENDMENT)
(NO. 5) REGULATIONS 2021**

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

When you gave oral evidence to us on 11 January 2022 in relation to the Motor Vehicles (Driving Licences) (Amendment) (No. 5) Regulations 2021, we discussed at length our concerns about the absence of an Impact Assessment (IA) for the Regulations. Despite the Regulations having been in force since 16 December 2021, it appears that there is still no IA published on the Legislation.gov.uk website.

We would be grateful if you could explain why, three months after this legislation came into force and six months since the original “No 2” Regulations were laid, the IA and, in particular, the risk assessment data which your Department said would be in the IA continues to be unavailable.

22 March 2022

Letter from Baroness Vere of Norbiton to Lord Hodgson of Astley Abbotts

Thank you for your letter of 22 March. May I first apologise for the delay in publishing the Impact Assessment (IA) in relation to the Motor Vehicles (Driving Licences) (Amendment) (No. 5) Regulations 2021. I very much regret that this has not proceeded to publication as swiftly as I expected. My officials have been working at pace to ensure that the analysis fully reflects all viewpoints.

However, I am pleased to inform you that I have now received the finalised IA. Subject to final Ministerial clearance, I expect this to be laid before Parliament before Easter recess. I will write to you again once it is available. The de minimus assessments that support the measures introduced in the Motor Vehicles (Driving Licences) (Amendment) (No. 3) and (No. 4) Regulations 2021 will also be shared with you in the spirit of openness.

I thank you for your continued interest in this matter and once again, please accept my apologies for the delay.

28 March 2022

APPENDIX 2: 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 29 March 2022, Members declared the following interests:

Ivory Prohibition (Civil Sanctions) Regulations 2022 (SI 2022/311)

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, 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.