

# HOUSE OF LORDS

## Secondary Legislation Scrutiny Committee

---

### 13th Report of Session 2019–21

#### **Proposed Negative Statutory Instruments laid under the European Union (Withdrawal) Act 2018**

Drawn to the special attention of the House:

**Draft Investigatory Powers (Communications  
Data) (Relevant Public Authorities and  
Designated Senior Officers) Regulations 2020**

**Adoption and Children (Coronavirus)  
(Amendment) Regulations 2020**

**Correspondence: Enforcement of the “lockdown”  
Regulations; Sunset provisions in statutory  
instruments dealing with Covid 19**

**Includes information paragraph on:**

9 instruments relating to Covid 19  
Draft Financial Services (Miscellaneous  
Amendments) (EU Exit) Regulations 2020

Civil Legal Aid (Procedure) (Amendment)  
Regulations 2020

---

Ordered to be printed 5 May 2020 and published 7 May 2020

---

Published by the Authority of the House of Lords

HL Paper 57

### *Secondary Legislation Scrutiny Committee*

The Committee's terms of reference, as amended on 11 July 2018, are set out on the website but are, broadly:

To report on draft instruments and memoranda laid before Parliament under sections 8, 9 and 23(1) of the European Union (Withdrawal) Act 2018.

And, to scrutinise –

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

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

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

### *Members*

<a href="#"><u>Baroness Bakewell of Hardington Mandeville</u></a>	<a href="#"><u>Lord Hodgson of Astley Abbotts</u></a>	<a href="#"><u>The Earl of Lindsay</u></a>
<a href="#"><u>Rt Hon. Lord Chartres</u></a>	(Chair)	<a href="#"><u>Lord Lisvane</u></a>
<a href="#"><u>Rt Hon. Lord Cunningham of Felling</u></a>	<a href="#"><u>Lord Kirkwood of Kirkhope</u></a>	<a href="#"><u>Lord Sherbourne of Didsbury</u></a>
<a href="#"><u>Viscount Hanworth</u></a>	<a href="#"><u>Lord Liddle</u></a>	<a href="#"><u>Baroness Watkins of Tavistock</u></a>

### *Registered interests*

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

### *Publications*

The Committee's Reports are published on the internet at <http://www.parliament.uk/seclegpublications>

### *Committee Staff*

The staff of the Committee are Christine Salmon Percival (Clerk), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant) and Ben Dunleavy (Committee Assistant).

### *Further Information*

Further information about the Committee is available at <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/>

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

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

### *Contacts*

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is [hlseclegscrutiny@parliament.uk](mailto:hlseclegscrutiny@parliament.uk).

# Thirteenth Report

## PROPOSED NEGATIVE STATUTORY INSTRUMENTS UNDER THE EUROPEAN UNION (WITHDRAWAL) ACT 2018

---

### Proposed Negative Statutory Instruments about which no recommendation to upgrade is made

- Alternative Dispute Resolution for Consumer Disputes (Extension of Time Limits for Legal Proceedings) (Amendment etc.) (EU Exit) Regulations 2020

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

---

### Draft Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) Regulations 2020

*Date laid: 21 April 2020*

*Parliamentary procedure: affirmative*

*This instrument adds five public authorities to Schedule 4 to the Investigatory Powers Act 2016 (“the 2016 Act”), which lists those public authorities permitted to obtain communications data, and makes minor amendments in relation to the public authorities already on the list. This instrument follows an enhanced affirmative procedure set out in section 268 of the 2016 Act: it requires the instrument to be laid before the House in draft for 40 days before it can be approved by a resolution of each House. Within 30 days of laying, either House may pass a resolution in respect of the instrument or a committee charged with reporting on the Regulations may make a recommendation about the instrument, in which case an enhanced procedure under section 268(6) to (9) of the 2016 Act applies. Whilst we have some comments to make about the way the explanatory material is presented, we make no recommendations in respect of this instrument.*

**The Regulations are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.**

1. This enhanced affirmative instrument has been laid by the Home Office under section 268 of the Investigatory Powers Act 2016 (“the 2016 Act”) and is accompanied by an Explanatory Memorandum (EM) and, in accordance with the requirement in section 268(3) of the 2016 Act, “a document which explains the regulations” setting out the Secretary of State’s reasons for proposing each of these bodies for inclusion.<sup>1</sup>

#### *Procedure*

2. Section 268 of the 2016 Act provides for an “enhanced affirmative procedure” whereby an instrument laid under the Act must be laid before Parliament in draft, along with an explanatory document, for 40 days<sup>2</sup> before it can be approved by resolution of each House. Within 30 days of laying, either House may pass a resolution in respect of the instrument or a committee charged with reporting on the regulations may make a recommendation about the instrument, in which case an enhanced procedure under section 268(6) to (9) of the 2016 Act applies. The enhanced procedure requires the Secretary of State to have regard to any representations, any resolution of either House and any recommendations of a relevant committee made within a 60-day period after laying. If, at the end of that period, the regulations are approved by each House, the Secretary of State may make them. If he or she wishes to proceed with the regulations but with “material changes”, then revised draft regulations, along with a statement summarising the changes proposed, have to be laid. If this revised version of the regulations is approved by each House, the Secretary of State may then make them.

---

<sup>1</sup> See [Memorandum explaining purpose and effect of the Investigatory Powers \(Communications Data\) \(Relevant Public Authorities and Designated Senior Officers\) Regulations 2020](#).

<sup>2</sup> No account is taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.

*Content*

3. This instrument adds five public authorities to Schedule 4 to the 2016 Act. Schedule 4 lists those public authorities permitted to obtain communications data. “Communications data” is described in the EM (paragraph 7.1) as:

“information about communications: the ‘who’, ‘where’, ‘when’, ‘how’ and ‘with whom’ of a communication but not what was written or said. It includes information such as the subscriber to a telephone service. Law enforcement, the security and intelligence agencies and other public authorities may obtain this data from Telecommunications Operators if the stringent safeguards in the [2016 Act] are met.”

4. The five additional public authorities are:

- *the Civil Nuclear Constabulary*, which investigates threats to the most sensitive nuclear sites in the UK;
- *the Environment Agency*, which tackles serious and organised waste crime;
- *the Pensions Regulator*, which has been responsible for enforcement of employer automatic enrolment duties in over one million businesses since 2012;
- *the Insolvency Service*, which investigates fraudulent trading committed by company directors, some of whom are previously disqualified from holding that position; and
- *the UK National Authority for Counter Eavesdropping*, which detects hostile technical espionage activities and eavesdropping activity in UK government buildings.

5. We noted that the first three of these organisations had been removed from those permitted to use investigatory powers in 2015 by the Regulation of Investigatory Powers (Communications Data) (Amendment) Order 2015 (SI 2015/228).<sup>3</sup> In response to our request for an explanation for the change in policy, the Home Office said:

“the public authorities had their powers removed at the time as they were not able to demonstrate that their continued access to communications data was strictly necessary and proportionate.

When removing powers from these public authorities, the Government considered the statutory responsibilities of the authorities, the seriousness of the offences they investigate and the number of requests that they made per year. Since then, the public authorities have submitted new business cases informed by their experiences of not having powers to obtain communications data, changes in circumstances and experience of working with local police forces.

The Home Office evaluated their new detailed business cases for communications data powers and, as circumstances have changed, is now satisfied that to grant powers would be necessary and proportionate. The complexity of the crimes they investigate has increased and their specific expertise and experience often make them better placed to

---

3 Regulation of Investigatory Powers (Communications Data) (Amendment) Order 2015 ([SI 2015/228](#)).

investigate the crimes in the first instance before handing over to local police forces if relevant.

Each public authority submitted a detailed case study which formed part of a 12-week consultation with the Investigatory Powers Commissioner to ensure their need for powers are necessary and proportionate.” Further detail is provided in the additional schedule.”

6. The instrument also makes minor amendments to the names of public authorities and the minimum office, rank or position that must be held by Senior Designated Officers to obtain communications data within public authorities.

*Explanatory material*

7. Section 268(3) of the 2016 Act requires the Secretary of State to lay “a document which explains the regulations” alongside the draft regulations. Although such a document has been laid in accordance with this provision, the EM does not indicate where to find it and itself only provides information on the application of the Environment Agency. This is unhelpful to the House and, more generally, to the wider public. **We therefore take the view that the EM should be revised so that those reading it are made aware of the information contained in the additional explanatory document.**

*Conclusion*

8. Whilst we have commented on the presentation of the explanatory material accompanying this instrument, we make no substantive recommendations in respect of it.

## Adoption and Children (Coronavirus) (Amendment) Regulations 2020 (SI 2020/445)

*Date laid: 23 April 2020*

*Parliamentary procedure: negative*

*This instrument makes extensive changes to statutory requirements in relation to adoption and fostering services and children’s residential care and the responsibilities of local authorities in these areas. The Department for Education says that the changes are needed to support children’s social care services which are under increased pressure during the pandemic. While the changes are temporary, the Committee notes that serious concerns have been raised about their potential impact on some of the most vulnerable children. The Committee regrets that the Children’s Commissioner, amongst others, was not consulted and that guidance was not published earlier. The Committee understands the need for temporary measures during the pandemic but is fundamentally concerned about the changes potentially being made permanent by the Secretary of State. These are issues that the House may wish to explore.*

**The Regulations are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.**

9. The Department for Education (DfE) has laid these Regulations with an Explanatory Memorandum (EM). The instrument amends temporarily ten sets of Regulations, dealing with adoption and fostering services and children in care. DfE says that the changes are needed to support local authorities to manage the increased pressure on children’s social care as well as staff and carer shortages during the pandemic. According to DfE, the changes “prioritise the needs of children, whilst relaxing some administrative and procedural obligations to support delivery of children’s services but maintaining appropriate safeguards”. The instrument will remain in force until 25 September 2020, mirroring the sunset date for provisions in the Coronavirus Act 2020.

### *Urgency*

10. The instrument does not comply with the convention that statutory instruments should be laid before Parliament for at least 21 days prior to coming into force. DfE explains that it was not possible to meet this convention as children’s social care resources are “stretched as a result of staffing shortages and an increased demand for services”. Waiting 21 days, according to DfE, would have “put extraordinary pressure on local authorities, providers and services to try to meet statutory obligations while continuing to provide care for vulnerable children and young people during the outbreak”. DfE says that following the announcement of the lock-down, it was not able “to assess the extent and impact of the ‘stay at home’ rules on children’s social care immediately and needed to consult with the sector to understand the impact and practical difficulties local authorities would have in administering their duties”.

### *The key changes made by the instrument*

#### *Local Authorities*

11. The instrument amends statutory timeframes for the review of complaints about children’s services where a complainant is dissatisfied with the original

response from the local authority, so that such reviews may be dealt with as soon as is “reasonably practicable”, rather than within 20 days (for the complainant to request a panel review); 30 days (for the panel to meet); five days (for the panel to share its report with the local authority and complainant), and 15 days (for the local authority to respond to the panel’s report). The instrument also allows local authorities to publish the inspection report and their written statement of action following an Ofsted inspection of children’s services or local joint services as soon as is “reasonably practicable”, rather than within the statutory timeframe of 70 working days.

#### *Adoption*

12. The instrument changes the requirements for medical and Disclosure and Barring Service (DBS) criminal record checks, so that rather than being required before applicants can move to stage 2 of the adoption process, the instrument allows those checks to be completed during stage 2. The instrument also relaxes the current deadlines for stage 1 and stage 2 of the process, allowing agencies to meet them where “reasonably practicable” during the pandemic. The six months limit on the period that a prospective adopter may leave between stage 1 and stage 2 is suspended.
13. The instrument removes temporarily the statutory requirement for adoption panels whose role it is to make a recommendation to an adoption agency on the suitability of prospective adopters. DfE says that because of staff absences during the pandemic, it will not always be possible for such panels to be quorate. If an agency does decide to conduct a panel, the minimum number of panel members needed is reduced from five to three.
14. The instrument also suspends temporarily the duty on adoption agencies to review a child’s plan for adoption once the child has been approved for adoption or has been placed with an adopter, where such a review is “not reasonably practical”, unless the agency has concerns about the welfare of the child.

#### *Foster care and care planning*

15. The instrument removes a requirement on local authorities to visit a child where they have been notified that the child is to be fostered privately, so that such visits may take place as soon as is “reasonably practicable”, rather than within the statutory framework of seven days, and every six or 12 weeks in subsequent years. The Committee notes that the EM only refers to the statutory requirements in general terms, without providing details of the actual timescales. The instrument also temporarily removes the obligation to review the approval of foster carers within a year of their approval, and thereafter at yearly intervals, so that they can be completed as soon as “reasonably practicable”.
16. The instrument relaxes a requirement to notify Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (“the Chief Inspector”) of certain events, so that notifications do not have to be made without delay but “as soon as reasonably practicable”. The EM does not explain that such events include the notification of criminal convictions. We asked the Department why this change was considered necessary, given the vulnerability of children in foster care. The Department told us that the changes only related to the “people responsible for the running of a fostering agency rather than those

with direct contact with vulnerable children. No changes have been made in respect of notification as regards foster carers.”

17. The instrument also removes a requirement to notify the Chief Inspector of the “outbreak at the home of a foster parent of any infectious disease” and, again, this change is not explained in the EM. We asked DfE why this specific requirement was lifted during the pandemic. The Department explained that the aim was to “prevent an administrative burden on Ofsted and local fostering providers by requiring a formal report of every case of COVID-19 that is confirmed in fostering placements. The change was made with the approval of Ofsted.”
18. **A fuller explanation of the changes made to the notification requirements should have been included in the EM.**
19. The instrument makes fostering panels optional. The role of such panels is to assess the applications of potential foster carers, the ongoing suitability of existing foster carers and any cases where a foster carer was deemed not suitable by the fostering service. This scrutiny role is advisory. The changes mean that where no fostering panel is set up, decisions will be made by the fostering service providers based on their own assessment. Where a panel is formed, the number of people required is reduced.
20. The instrument temporarily allows foster carers to self-report medical information, as, according to DfE, they may not be able to obtain a medical report from a doctor during the pandemic. Additionally, the instrument enables an assessment of the suitability of foster carers to continue while waiting for medical information and DBS checks, with flexibility added to the timescale for notifying prospective carers if they are found unsuitable.
21. The instrument allows a child to remain in the same short break placement for up to 75 days instead of the statutory requirement that each short break placement may only last for up to 17 days (up to 75 days in total over a 12-month period). Similarly, the timescale for emergency placements is increased. The significant extension from six days to 24 weeks is not set out in the EM. The instrument also relaxes the requirements for a social worker to visit children who are being fostered or are in other forms of care. While the EM does not provide any further detail, the Department told us that such visits currently need to take place within seven working days of the local authority having been notified of a private fostering arrangement, and that, in addition, local authorities are required to visit children who are being fostered privately at intervals of not more than six weeks in the first year of the arrangement and at intervals of not more than 12 weeks thereafter. This instrument allows these visits to take place “as soon as reasonably practicable” and also clarifies that the visits may be conducted remotely by telephone or video link.
22. The instrument relaxes the timescale for formalising a placement plan. The EM does not provide details, but the Department explained that rather than requiring such a plan to be in place within five days of the child commencing a placement, this can now be done “as soon as reasonably practical”. In relation to reviews, the DfE told us that a local authority will still be required to review a child’s case within 20 working days of the child being placed into care, and to carry out a second review not more than three months after the first. For third and subsequent reviews, the instrument allows these to be

carried out where “reasonably practicable”, rather than at intervals of not more than six months.

23. **A fuller explanation of the extent to which certain timescales in relation to fostering services have been changed by this instrument should have been included in the EM.**
24. The instrument allows individuals who are not connected to the child to be approved as temporary foster carers. This is a departure from the current requirements, under which only a relative, friend or other person connected with the child may be approved as a temporary foster carer. The instrument also extends the maximum length of such placements from 16 to 24 weeks. According to DfE, the aim is to help to provide additional flexibility and capacity should there be a temporary increase in the need for foster care placements, as many foster carers are regarded as vulnerable to coronavirus because of their age.
25. The instrument removes temporarily the requirement for a nominated officer from the local authority to approve fostering for adoption placements. The nominated officer is a senior officer within the local authority who has been appointed by the Director of Children Services. DfE told the Committee that this requirement has been removed:

“due to other priorities [nominated officers] may have during the Covid-19 crisis. The responsible authority (which is the local authority looking after the child) still has to satisfy themselves that the placement is in the best interest of the child, that the other relevant regulations have been applied correctly and notify the birth parents of the placement plan (if their location is known), which would have been the role of the nominated officer.”

#### *Residential care*

26. The instrument makes temporary changes to the standards that residential family centres must meet, so that centres may use “reasonable endeavours” during the pandemic when providing care, treatment and education and supervising residents; the timeframes for complaints are relaxed; and registered providers must visit their centres at least once a month “as far as reasonably practicable” during the pandemic and may interview residents and staff by telephone or video-link.
27. The instrument requires children’s homes to meet obligations in relation to the delivery of care regarding health and development “as far as reasonably practicable” during the pandemic. DfE says that in the context of school closures and staffing shortages, children’s homes will need to use “reasonable endeavours” to ensure children make measurable progress towards achieving their educational potential.
28. The instrument enables children’s homes to enforce a temporary deprivation of liberty where a Public Health Officer uses powers under the Coronavirus Act 2020 in relation to a young person who is infectious or suspected of being infectious. DfE emphasises that the amendment cannot be used to enforce general restrictions on movement which amount to a deprivation of liberty which will continue to require an application for a court order. We asked DfE whether there will be any oversight of or reporting on the use of this provision. The Department told us that there is “nothing in the

Coronavirus Act 2020 that requires reporting of this use of power but there are requirements on the Public Health Officer to assess the person within 48 hours and consider which restrictions are necessary [...]. This is also subject to a right of appeal to the [magistrates' court]”.

29. The instrument provides that, where a children's home is unable to provide a suitable place for a child to meet privately with their parents, relatives, or advocates during the pandemic, such meetings may take place remotely over the telephone or by video-link. The instrument also makes amendments to allow “reasonable endeavours” to be made to meet the requirement of an independent person visiting the children's home at least once a month, and allow such visits to take place via video-link or other electronic means.
30. The instrument temporarily revokes the minimum intervals for Ofsted inspections of children's homes, residential family centres and other establishments and agencies, although Ofsted may still carry out such inspections and, according to the Department, will continue a risk-based approach.

#### *Savings provisions*

31. The instrument contains several savings provisions to enable certain processes to continue under the temporary rules once they have started, beyond the expiry date of the instrument. These savings provisions apply, for example, to the processes used in the assessment of the suitability of potential adopters or foster parents. A savings provision is also used to ensure that when a child is being deprived of their liberty through the exercise of powers in the Coronavirus Act 2020, the children's home can continue to enforce this deprivation of liberty after the instrument itself has expired.

#### *Consultation and concerns*

32. The EM states that key stakeholders across the children's social care sector were consulted including Ofsted, the Association of Directors of Children's Services, the Local Government Association, Principal Social Workers and Practice Leaders in local authority children's social care. The Children's Commissioner was informed.
33. The Children's Commissioner has issued a statement expressing serious concerns about the instrument,<sup>4</sup> concluding that it makes “significant temporary changes to the protections given in law to some of the most vulnerable children in the country—those living in care”. She has criticised that there was “minimal consultation” and has challenged the Department's view that the changes are needed to ease pressure on local authorities' social care staff. The Commissioner has asked the Department to revoke the instrument or, “at an absolute minimum”, publish guidance to “make clear that these changes will only ever be used as a last resort and for as short a time as possible”. Other organisations have also criticised the instrument. We are grateful for the submissions we have received from Article 39, the British Association of Social Workers and UNISON which we have published on our website.<sup>5</sup> Concerns about weakening protections and about the Department's

---

4 See Children's Commissioner for England, ‘Statement on changes to regulations affecting children's social care’ (30 April 2020): <https://www.childrenscommissioner.gov.uk/2020/04/30/statement-on-changes-to-regulations-affecting-childrens-social-care/> [accessed 30 April 2020].

5 SLSC Publications page: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/>.

claim that the changes are needed because of the pressures of lockdown were also raised in the House through a Private Notice Question asked by Lord Watson of Invergowrie on 30 April.<sup>6</sup>

34. Asked why the Children’s Commissioner was not consulted, the Department told us that:

“The Department considers that the changes are minor in nature and do not constitute infringements on children’s rights. We have not amended any statutory duties in primary legislation, therefore, the main statutory duties on local authorities and others in regards to overall safeguarding and welfare duties remain in place and unchanged. The vast majority of statutory duties in secondary legislation also remain unchanged. The Regulations do not reduce or remove any responsibility that local authorities have towards children and the duties for local authorities to act in the best interests of children are still paramount.”

35. **The Children’s Commissioner has a statutory duty to promote and protect the rights of the most vulnerable children. Given the concerns raised by the Children’s Commissioner, and others, there must be at the very least some significant doubt as to whether the Department is right to assert that the changes are “minor in nature” and “do not constitute infringements on children’s rights”. The House may wish to press the Minister for further justification of the need for this instrument and of why the Children’s Commissioner was not consulted.**

#### *Guidance*

36. The Department told the Committee that it aims to publish updated guidance for local authorities “as early as possible” in the week commencing 4 May. Given the extend of the amendments, some gaps in the EM in relation to the changes to fostering services and the vulnerability of the children who will be affected, **we regret that the guidance was not published when the instrument was laid before Parliament.** Not only would this have assisted Parliament’s scrutiny of a complex instrument, but publishing the guidance in a more timely manner would have been helpful to those involved in children’s social care: the instrument came into effect the day after being laid in breach of the 21-day convention, thus not allowing those who are delivering children’s care services time to familiarise themselves with the changes.

#### *Review*

37. The instrument puts an obligation on the Secretary of State to keep the regulations under continuous review. According to DfE, this will be done by policy officials who will “keep in touch” with the sector. While the changes are time-limited until 25 September 2020, the EM states that, should the current emergency last longer, a statutory instrument will be made to revoke the expiry provision. **Should these circumstances materialise, it will be essential that any further statutory instrument brought forward to extend the measures also includes an expiry provision.**
38. The EM also states that apart from monitoring the changes, the Department will be considering their longer-term impact and what future action may be required once the changes are no longer in force. We asked DfE whether any

---

6 See HL Deb, 30 April 2020, [col 282](#).

assessment of the impact would be published. The Department explained that it “intends, as required, to monitor the use of provisions within this Statutory Instrument. The form of this monitoring is to be determined. In doing so it will want to take account of any longer-term lessons for the operation of the children’s social care system.”

39. Given the concerns that have been raised about the changes and their potential impact on vulnerable children, **the Committee calls on the Department to be open and transparent in its assessment of any longer-term impact and lessons that may be learned, and to involve the Children’s Commissioner’s and other relevant organisations in this process. The House may wish to press the Minister for an assurance that this will happen.**

*Conclusion*

40. This instrument makes extensive changes to a very sensitive policy area. While the changes are temporary, we note that serious concerns have been raised about their potential impact on some of the most vulnerable children. These are issues that the House may wish to explore. **The Regulations are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.**

## CORRESPONDENCE

---

### Enforcement of the “lockdown” Regulations

41. In our 11th Report of this session we described the main provisions of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020/350),<sup>7</sup> the main “lockdown” Regulations, which, with immediate effect, banned public gatherings of more than two people (regulation 7) and prohibited anyone from leaving the place where they are living without reasonable excuse (regulation 6). The Regulations are enforceable by a police constable and breach is subject to a fixed penalty notice fine of £60, reduced to £30 if paid within 14 days.
42. In considering the Regulations we noticed a discrepancy between the provisions in the legislation and the statements in the Covid 19 guidance published on Gov.uk.<sup>8</sup> For example, the “reasonable excuses” for leaving one’s residence set out in regulation 6 include obtaining basic necessities and taking exercise. The guidance, however, states that shopping for basic necessities “must be as infrequent as possible” and that only “one form of exercise a day” should be taken. We therefore wrote to the Health Secretary, Matt Hancock MP, to ask whether these narrower interpretations would be used in enforcement despite not being on the face of the legislation.
43. Mr Hancock confirmed that it was the wording of the instrument and not the guidance which was legally enforceable. However, he added that “the guidance is an important way for the public to understand how best to limit the spread of coronavirus”.
44. We acknowledge the important role of the guidance. **The House may wish, however, to seek an assurance that all those responsible for enforcing these Regulations are aware of their scope, as distinct from that of the guidance.**<sup>9</sup>
45. **The correspondence is published in full in Appendix 1 of this Report.**

### Sunset provisions in statutory instruments dealing with Covid 19

46. The Committee wrote to the Leader of the House of Commons to ask about the use of sunset provisions in statutory instruments dealing with the coronavirus pandemic, after the Committee had noticed that a wide variety of different sunset dates and provisions were being used. The Committee’s letter and the response by the Leader of the House of Commons are set out in Appendix 2 of this Report.

---

7 See Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020/350) in paragraphs 52-55 of our [11th Report](#), Session 2019-21 (HL Paper 49).

8 HM Government, *Coronavirus outbreak FAQs: what you can and can’t do* (last updated 1 May 2020): <https://www.gov.uk/government/publications/coronavirus-outbreak-faqs-what-you-can-and-cant-do/coronavirus-outbreak-faqs-what-you-can-and-cant-do> [accessed 30 April 2020].

9 See the paragraph on Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020 (SI 2020/447) on page 12 of this report – which adds county councils to that number.

## INSTRUMENTS RELATING TO COVID 19

---

47. One instrument relating to the Covid 19 pandemic, the Adoption and Children (Coronavirus) (Amendment) Regulations (2020 SI/445), is described in more detail on page 5 of this report.

### Restrictions on businesses and public gatherings

#### *Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020 (SI 2020/447)*

48. These Regulations came into force at 11.00 a.m. on 22 April 2020 to amend the original “lockdown” Regulations, SI 2020/350, described in our 11th Report. In particular, regulation 6(1) is amended to clarify that in England a person commits an offence if they remain outside of the place where they are living without reasonable excuse, having left it for a permitted reason. These Regulations also add access to all types of banks and money services and visiting a burial ground to the list in regulation 6(2) of permitted reasons to leave the house.
49. The amending Regulations include clarifications on how these requirements are to be enforced, in particular when a child is found at a gathering or outside in contravention of regulation 6. They also clarify that fixed penalty notices are to be paid to an officer designated by the Secretary of State or by a local authority (including a county council). The EM adds that the Government intend to designate the Chief Executive Officer of ACRO Criminal Records Office to facilitate the effective administration of fixed penalty notices.
50. The Committee has written to the Health Secretary about the way the “lockdown” Regulations are to be enforced—see the item on page 11 of this Report, and Appendix 1.

#### *Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) (Coronavirus) (Amendment) Regulations 2020 (SI 2020/448)*

51. This instrument temporarily exempts offshore oil and gas developers from a requirement to make certain documents available for public inspection at a UK address. The documents include environmental statements and applications for consent which are required as part of the approval process for offshore oil and gas projects. The Department for Business, Energy and Industrial Strategy (BEIS) explains that the exemption is necessary due to social distancing measures and restrictions on movement during the pandemic which mean that public inspection or collection of documents at a UK address is not reasonably practicable. BEIS says that the documents will be available online and may also be obtained by post. The Department told the Committee that while the instrument does not contain a specific sunset date, it “is worded so that the exemptions only apply where it is not reasonably practicable for the public to inspect copies of documents at a specified address within the UK due to the restrictions relating to coronavirus”, and that the “exemptions would cease to apply once it is reasonably practicable for public inspection of documents to take place”. BEIS added that they “intend to notify industry by e-mail and via the gov.uk website when we consider that companies must once again make documents available for public inspection”.

*Taking Control of Goods and Certification of Enforcement Agents (Amendment) (Coronavirus) Regulations 2020 (SI 2020/451)*

52. These Regulations amend the normal processes for the seizure of goods in England and Wales for the duration of the pandemic. They: (i) prevent enforcement agents (“bailiffs”) taking control of goods at residential premises and on highways while a person is prevented from leaving the place without a reasonable excuse; (ii) automatically extend by 12 months orders to seize goods that are about to expire; (iii) increase to 90 days the minimum amount of net unpaid commercial rent that must be outstanding; and (iv) automatically extend by six months enforcement agents’ authorisations which are due for renewal by the courts. Although almost all in-person enforcement visits have already ceased, the Ministry of Justice recognises that creditors, under financial pressures themselves, might put pressure on agents to undertake enforcement visits: these Regulations aim to create clarity and consistency in the sector.

**Public services**

*Safeguarding Vulnerable Groups Act 2006 (Regulated Activities) (Coronavirus) Order 2020 (SI 2020/433)*

53. This instrument removes the requirement for employees of Boots Company plc, Sodexo Holdings Ltd. and military personnel who are to be used to undertake testing for coronavirus to undergo vetting and barring checks. The Order specifies that the collection of saliva or mucus from the mouth and or nose of an individual, by the staff specified, is not to be treated as a regulated activity in England and Wales under the provisions in the Safeguarding Vulnerable Groups Act 2006. The Department for Health and Social Care (DHSC) states that the removal of this administrative burden will facilitate rapid deployment of mass testing. The provision is to remain in force for 18 months.
54. Although the immediate need is clear, the Committee was concerned at the length of this exemption. DHSC states that these tests will involve minimal contact between testers and patient and that several testers will be working together at any location, usually a carpark. In supplementary information DHSC states there are no plans for these exempted staff to conduct tests in residential homes. The Committee notes, however, that, in a fast-moving epidemic plans may change, and we would be concerned if unchecked staff were allowed to become familiar with the premises where vulnerable people live and gain trusted access to the residents. **We therefore expect DHSC to reconsider the vetting position carefully if these staff are to be deployed in other locations in future.**

*School Admissions (England) (Coronavirus) (Appeals Arrangements) (Amendment) Regulations 2020 (SI 2020/446)*

55. This instrument amends certain procedural and constitutional requirements<sup>10</sup> relating to school admissions appeal panels. The Department for Education (DfE) explains that the changes allow appeals to continue during the pandemic, when measures such as social distancing and self-isolation are making it difficult for people to meet in person and to secure enough panel members for appeal hearings. The instrument allows, in some circumstances,

<sup>10</sup> As set out in the School Admissions (Appeals Arrangements) (England) Regulations 2012 ([SI 2012/9](#)) and the [School Admission Appeals Code](#).

appeal panels to consider appeals as a panel of two, rather than three, and hearings to be held remotely on the basis of written submissions, rather than in person. It also introduces flexibility in relation to deadlines for the determination of appeals. DfE says that the measures support the rights of parents, admission authorities and appeal panels while maintaining safeguards for procedural fairness and natural justice, for example by retaining a requirement for panels to be supported by a trained clerk. The instrument also revises the deadlines for the appeal process, so that they refer to calendar days or a fixed date rather than “school days”, as schools may experience different and unpredictable levels of closure, creating potential uncertainty about deadlines. The instrument is time limited and expires on 31 January 2021. It includes a savings provision, so that appeals that have sufficiently well progressed as at 31 January will be able to continue under the temporary arrangements. DfE says that the changes will allow enough time to deal with the main annual peak in appeals in relation to children starting new schools at the beginning of the academic year 2020/2021.

*Early Years Foundation Stage (Learning and Development and Welfare Requirements) (Coronavirus) (Amendment) Regulations 2020 (SI 2020/444)*

56. This instrument temporarily disapplies and modifies certain requirements in the Statutory Framework for the Early Years Foundation Stage (EYFS)<sup>11</sup> for early years providers in England that are open to vulnerable children and the children of key workers during the pandemic. The key changes are:
- allowing childcare providers to use their “reasonable endeavours” in complying with the learning and development requirements under Section 1 of the EYFS, so that they can focus on ensuring children are safe if they struggle with workforce availability or are caring for children in a different setting;
  - cancelling the EYFS Profile assessment, which assesses children’s development against 17 early learning goals, for the academic year 2019/20, to reflect that few children are currently attending reception classes and may not be taught by their usual teachers;
  - disapplying the need to undertake a progress check at age two, in line with Public Health England’s decision to pause the health visitor check at that age; and
  - modifying requirements relating to the qualifications of staff and staff holding a paediatric first aid (PFA) certificate. While the requirement for at least one person who has a PFA certificate to be on the premises when children are present is retained for children below the age of 24 months, for children aged two to five providers should use their “best endeavours” to ensure one person with this qualification is on site. Where this is not possible, providers must undertake a written risk assessment and ensure that at least one person with a current First Aid at Work or emergency PFA certificate is on site.

The Department for Education says that the changes are temporary and will expire on 25 September 2020, unless they are revoked earlier.

---

<sup>11</sup> The [EYFS framework](#) sets the standards for learning, development and care of children from birth to five and is mandatory for all early years’ providers in England.

**We take the view that particular care needs to be taken so that the cancellation of the EYFS Profile assessment and progress check at age two does not lead to any children in that year group being disadvantaged. We urge the Department to ensure that appropriate assessments for these children are carried out as soon as possible.**

### Changes to benefits

*Maternity Allowance, Statutory Maternity Pay, Statutory Adoption Pay, Statutory Paternity Pay, Statutory Shared Parental Pay and Statutory Parental Bereavement Pay (Normal Weekly Earnings Etc.) (Coronavirus) (Amendment) Regulations 2020 (SI 2020/450)*

57. The listed benefits are calculated in relation to the claimant's earnings. These Regulations aim to prevent an employee in Great Britain being disadvantaged because they have been placed on temporary leave under the Coronavirus Job Retention Scheme ("furloughed"). The calculation of Normal Weekly Earnings and average weekly amount for Maternity Allowance should, therefore, take into account what the employee would have earned had they not been on furlough, rather than the 80% figure that they may currently be receiving.

### Delayed or revoked legislation

*Football Spectators (2020 UEFA European Championship Control Period) (Coronavirus) (Revocation) Order 2020 (SI 2020/432)*

58. This instrument revokes the Football Spectators (2020 UEFA European Championship Control Period) Order (SI 2020/11) which came into force on 31 January 2020. That Order set up a control period, from 7 June 2020, during which, as a preventive measure, those subject to banning orders must report to a police station and surrender their passport. UEFA has now postponed the tournament until 2021. This instrument therefore revokes the control period and the Football Banning Orders Authority will notify all individuals who would have been affected.

*Non-Domestic Rating (Transitional Protection Payments and Rates Retention) (Coronavirus) (Amendment) Regulations 2020 (SI 2020/449)*

59. To ease the pressure on local authorities during the pandemic, this instrument defers some payments by billing authorities<sup>12</sup> to central government for the 2020-21 financial year and changes the dates by which they must certify certain end-of-year calculations. The Ministry of Housing, Communities and Local Government (MHCLG) explains that half of a local authority's non-domestic rating income in a financial year is due to central government and is currently paid in 12 instalments, beginning on 30 April. Due to the pandemic, some billing authorities are unable to raise all the income they need to make these payments. MHCLG says that some £10 billion has been made available to compensate local authorities for lost income, and that this instrument defers the first three months of payments, so that instalments start on 19 July 2020, rather than 30 April, and are paid in nine rather than 12 instalments. The instrument also delays deadlines by which certified end of year business rates calculations for the 2019/20 financial year are required, from 31 July for end of year calculations under the Rates Retention

---

<sup>12</sup> The billing authority is the local council that is responsible for billing and collecting payment of the council tax and rates and for setting the amounts of the council tax.

Regulations<sup>13</sup> and 30 September for end of year calculations under the Transitional Protection Payments Regulations<sup>14</sup>, to 30 November 2020. For future years, the deadline under the Rates Retention Regulations will revert to 31 July, while the instrument brings forward the “normal” 30 September deadline for the Transitional Protection Payments Regulations to 31 July, so that from 2021 onwards the two deadlines will be aligned permanently.

---

13 Non-Domestic Rating (Rates Retention) Regulations 2013 ([SI 2013/452](#)).

14 Non-Domestic Rating (Transitional Protection Payments) Regulations ([SI 2013/106](#)).

## INSTRUMENTS OF INTEREST

---

### Draft Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020

60. These draft Regulations propose wide-ranging changes to UK domestic law and retained EU law to ensure a coherent and functioning UK financial services regulatory regime at the end of the Transition Period. Some of the measures were included in an earlier instrument which the Committee reported on in November 2019<sup>15</sup> and which subsequently ceased to have effect as it was not approved by Parliament within the 28-day approval period for ‘made affirmative’ instruments. The draft Regulations set out when proxy advisors<sup>16</sup> are to be subject to UK oversight after the end of the Transition Period and proposes to revoke EU regulations that facilitate cross-border activity of collective investment schemes and allow national regulators to pre-verify promotional marketing material passporting from other Member States. HM Treasury (HMT) says that after the end of the Transition Period, the UK will fall outside of the EU’s single market for financial services, including the passporting regime, so that current provisions will no longer be operable in the UK. Additionally, the instrument proposes to extend by two years an exemption under which certain investment funds do not have to produce a “key information document” which sets out potential investment risks and how a fund works, mirroring a two-year extension introduced by the EU. The draft Regulations also propose to retain an EU exemption which provides that issuers of securities do not always have to produce a prospectus, for example when a company issues additional shares which amount to no more than twenty per cent of shares already issued.<sup>17</sup> The draft Regulations also propose to: remove distinctions between European Economic Area countries and third countries; replace a duty on UK supervisory authorities to co-operate with other supervisory bodies with a power to do; clarify the power of HMT to make equivalence determinations on credit rating agencies and third countries’ regulatory and supervisory regimes; and update the regulatory framework for benchmarks<sup>18</sup>, including by transferring functions from the EU to HMT and the Financial Conduct Authority.

### Civil Legal Aid (Procedure) (Amendment) Regulations 2020 (SI2020/439)

61. As part of the Post Implementation Review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the Review of Legal Aid for Inquests, the Ministry of Justice consulted with over 80 organisations. These Regulations enact commitments made in the Legal Support Action Plan, which followed those reviews in February 2019. They amend the Civil Legal Aid (Procedure) Regulations 2012, to:
- remove the mandatory requirement for those seeking legal aid in discrimination, debt and special educational needs matters to contact

---

15 Cross-Border Distribution of Funds, Proxy Advisors, Prospectus and Gibraltar (Amendment) (EU Exit) Regulations 2019 (SI 2019/1370). See: [4th Report](#), Session 2019 (HL Paper 17).

16 Proxy advisors provide research, advice and recommendations to shareholders and their intermediaries.

17 Companies wishing to raise capital by issuing securities (such as shares and bonds) may be required to provide investors with a prospectus which describes a company’s business, shareholding structure and details of the securities.

18 Benchmarks are used to help set prices, measure performance or work out amounts payable under financial contracts.

the Civil Legal Aid Telephone Gateway, instead reinstating immediate access to face-to-face advice for these cases;

- introduce, in relation to inquests, discretion for the Director of Legal Aid Casework to backdate legal help funding;
- amend certain evidence requirements where the applicant needs to prove that they are a victim of or at risk of being a victim of domestic abuse; and
- remove the requirement that an applicant for Family Mediation must always make their application for legal at the mediator's premises.

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

---

### **Draft instruments subject to affirmative approval**

Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020

Square Kilometre Array Observatory (Immunities and Privileges) Order 2020

### **Made instruments subject to affirmative approval**

SI 2020/447 Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020

### **Instruments subject to annulment**

SI 2020/432 Football Spectators (2020 UEFA European Championship Control Period) (Coronavirus) (Revocation) Order 2020

SI 2020/433 Safeguarding Vulnerable Groups Act 2006 (Regulated Activities) (Coronavirus) Order 2020

SI 2020/434 Safety of Sports Grounds (Designation) (Amendment) (No. 2) Order 2020

SI 2020/439 Civil Legal Aid (Procedure) (Amendment) Regulations 2020

SI 2020/444 Early Years Foundation Stage (Learning and Development and Welfare Requirements) (Coronavirus) (Amendment) Regulations 2020

SI 2020/446 School Admissions (England) (Coronavirus) (Appeals Arrangements) (Amendment) Regulations 2020

SI 2020/448 Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) (Coronavirus) (Amendment) Regulations 2020

SI 2020/449 Non-Domestic Rating (Transitional Protection Payments and Rates Retention) (Coronavirus) (Amendment) Regulations 2020

SI 2020/450 Maternity Allowance, Statutory Maternity Pay, Statutory Adoption Pay, Statutory Paternity Pay, Statutory Shared Parental Pay and Statutory Parental Bereavement Pay (Normal Weekly Earnings Etc.) (Coronavirus) (Amendment) Regulations 2020

SI 2020/451 Taking Control of Goods and Certification of Enforcement Agents (Amendment) (Coronavirus) Regulations 2020

## APPENDIX 1: CORRESPONDENCE: ENFORCEMENT OF THE “LOCKDOWN” REGULATIONS

---

### Letter from Lord Hodgson of Astley Abbots, Chair of the Secondary Legislation Scrutiny Committee, to the Rt Hon. Matt Hancock MP, Secretary of State for Health and Social Care

The Lords’ Secondary Legislation Scrutiny Committee (SLSC) yesterday considered the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020. We are aware that this instrument has given rise to a range of concerns, some legal and others from a policy perspective. The remit of the SLSC extends only to the policy aspects of secondary legislation.

The Committee noted that the guidance published on Gov.uk goes beyond the provisions of these Regulations. For example, regulation 6 sets out what constitutes a “reasonable excuse” for a person leaving the place where he or she lives, including obtaining basic necessities and taking exercise. The guidance states that shopping for basic necessities “must be as infrequent as possible” and that only “one form of exercise a day” should be taken. We do not question that this is good advice but we would be grateful if you could explain whether it is regarded as enforceable by law and if so on what legal basis.

**22 April 2020**

### Response from Matt Hancock MP to Lord Hodgson of Astley Abbots

Thank you for your letter dated 22 April in relation to the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020/350) (the “Regulations”). In your letter you raised a question in respect of the related guidance published on gov.uk and I set out my response to that query below. I hope this letter will assist you as you consider the Regulations.

As you will be aware, the Government has introduced a number of measures including social distancing measures in response to the coronavirus pandemic. The full package of social distancing measures is based on clinical and scientific advice and was introduced to help limit the spread of coronavirus, reduce the impact on the NHS and save lives. Key parts of the social distancing measures are underpinned by law in the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020. The Regulations contain the social distancing measures which are legally enforceable and set out enforcement mechanisms and the associated offences and penalties.

It is crucial that people follow social distancing measures to limit the spread of coronavirus which will help protect both themselves and other people. The Government has provided a considerable amount of advice to the public in how best to protect themselves and avoid the spread of the coronavirus. As part of that the Government has published a number of pieces of guidance on gov.uk concerning the steps people should take to limit the infection risk. This guidance is based on scientific advice and is written in plain English to make it accessible to the general public. The guidance provides practical advice and recommendations to help prevent the spread of coronavirus. As noted in your letter, this includes advice in relation to limiting trips outside the home for shopping and exercise. This is a clear recommendation from the Government and aligns with scientific advice. However, it is the Regulations and not the guidance which are legally enforceable

although the guidance is an important way for the public to understand how best to limit the spread of coronavirus.

Our policies and guidance in this area are under regular review. We have provided further clarity through specific Q&As and FAQs and continue to add to them. We will continue to review the guidance, particularly as we approach the next statutory review point in early May.

**28 April 2020**

## **APPENDIX 2: CORRESPONDENCE: SUNSET PROVISIONS IN STATUTORY INSTRUMENTS DEALING WITH COVID 19**

---

### **Letter from Lord Hodgson of Astley Abbotts, Chair of the Secondary Legislation Scrutiny Committee, to the Rt Hon. Jacob Rees-Mogg MP, Lord President of the Council and Leader of the House of Commons**

I am writing to you as Chairman of the Secondary Legislation Scrutiny Committee. At its meeting on 21 April, the Committee considered a significant number of statutory instruments that make provision, either directly or indirectly, to deal with the Coronavirus pandemic.

Some of these instruments temporarily impose significant and far-reaching restrictions on citizens and businesses, and the Committee noticed the use of a wide variety of different sunset dates and provisions. To assist the House in scrutinising the legislation, we would like to ask for the following information:

- A list of all statutory instruments laid before the House that deal with the Coronavirus pandemic that contain sunset provisions along with the expiry date of those provisions; and
- an explanation of how the application of the sunset provisions in these instruments and in any future instruments will be monitored.

In addition, we would welcome monthly updates, by way of an updated list, from which instruments that have expired have been removed and new instruments subject to a sunset provision are added along with their individual expiration dates. We propose to publish this material in our reports.

**23 April 2020**

### **Letter from Jacob Rees-Mogg MP to Lord Hodgson of Astley Abbotts**

Thank you for your letter of 23 April 2020 regarding sunset provisions in statutory instruments (SIs) made to respond to the coronavirus pandemic. As of 29 April the Government has laid 61 SIs that fall into this category, of which 15 include a specific sunset provision. The SIs that include a specific sunset provision are set out at annex A.

In recent years, Government has moved away from requiring sunset provisions in regulatory secondary legislation as a matter of course, to enable departments the flexibility to deliver Government's priorities proportionately. A sunset provision is not the only method by which departments have sought to ensure SIs are time limited and only in effect for as long as they need to be. Eight SIs are required to be continuously kept under review in line with the Coronavirus Act 2020. The health protection regulations, which enforce the restrictions on social distancing are reviewed every three weeks by the Secretary of State for Health. Others are one off legislative changes and set out the timeframe for which they will apply, for example 5 May 2021, which is when the next local elections are due to take place.

There are also SIs which, for good reason, Government wish to be in force permanently and therefore do not include any kind of sunset provision. For example, the Land Registry Amendment 2020 which amends the definition of "working day" in the Land Registration Rules 2003 so that it does not include a day when an event such as Covid-19 causes a substantial interruption in the normal operation of HM Land Registry. This will apply to a number of emergency situations in future, not just Covid-19 and therefore is required permanently. Each

SI must clearly outline if a sunset provision is included and explain the rationale in the EM to enable your Committee to carry out its duties effectively.

The Government is taking every step to be as transparent as possible when bringing forward the urgent legislation needed to respond to this crisis. Departments must now include the word coronavirus in the title of the SI and The National Archives has set up a page on [legislation.gov.uk](http://legislation.gov.uk) outlining all of the Coronavirus-related legislation.

This will help improve access to the public and ensure Parliament, including the Secondary Legislation Scrutiny Committee, can more easily identify, monitor and scrutinise the relevant SIs.

The decision whether to include a sunset provision lies with the relevant department and is always carefully considered. The length of the sunset period depends on a number of factors, including the policy aims of the legislation and the length of time it is expected to be required. Given the nature of some of the SIs made to deal with the current situation, it is quite right that some do include a sunset provision in order to ensure that they are only in place for the specific duration that the Government feels is necessary and expires thereafter. The length will naturally differ for each individual SI depending on the policy objectives and subject area of the legislation.

It is the department's responsibility to set and monitor the sunset provisions in their legislation and ensure any subsequent SIs are laid before Parliament in a timely way if the provisions are to be extended. As is standard procedure this should be clearly outlined in the Explanatory Memorandum and I will remind SI Ministers of the importance to do this as we continue to bring forward legislation needed to deal with the coronavirus.

I am grateful to the Committee for all its work and the vital role it plays in scrutinising this important legislation.

**30 April 2020**

## **Annex A**

**Table 1: SIs that include a specific sunset provision**

<b>Dept</b>	<b>Title</b>	<b>Sunset Provision</b>
DHSC	Health Protection (Coronavirus) Regulations 2020	10/02/2022
DHSC	The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020	23/09/2020—This SI is revoked though by the below.
DHSC	Health Protection (Coronavirus, Restrictions) (England) Regulations 2020	26/09/2020
DHSC	The Safeguarding Vulnerable Groups Act 2006 (Regulated Activities) (Coronavirus) Order 2020	31/10/2020

<b>Dept</b>	<b>Title</b>	<b>Sunset Provision</b>
Ho	Investigatory Powers (Temporary Judicial Commissioners and Modification of Time Limits) Regulations 2020	27/03/2021
MHCLG	Town and Country Planning (General Permitted Development) (Coronavirus) (England) (Amendment) Order 2020	31/12/2020
DWP	Universal Credit and Employment Support Allowance Amendment Regulations 2020 and their [sic]	12/11/2020
DWP	Northern Ireland equivalent to above	12/11/2020
DWP	Social Security (Coronavirus) (Further Measures) Regulations 2020	12/11/2020
DWP	Social Security (Coronavirus) (Further Measures) Northern Ireland Regulations 2020	12/11/2020
DWP	The Social Security (Coronavirus) (Prisoners) Regulations 2020	12/11/2020
DWP	The Social Security (Coronavirus) (Prisoners) Regulations 2020 Northern Ireland	12/11/2020
DfE	The School Admissions (Appeals Arrangements) (England) (Amendment) (Coronavirus) Regulations 2020	31/01/2021
DfE	The Adoption and children (coronavirus) (amendment) Regulations 2020.	25/09/2020
DfT	The Motor Vehicles (Tests) (Amendment) Regulations 2020	30/09/2021

Source: Leader of the House of Commons

### 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 5 May 2020, Members declared the following interests:

#### **Adoption and Children (Coronavirus) (Amendment) Regulations 2020**

Baroness Watkins of Tavistock

*Member, Quality Committee, Outcomes First Group (formerly National Fostering Agency)*

#### **Attendance:**

The meeting was attended by Baroness Bakewell of Hardington Mandeville, Lord Chartres, Viscount Hanworth, Lord Hodgson of Astley Abbots, Lord Liddle, the Earl of Lindsay, Lord Lisvane, Lord Sherbourne of Didsbury and Baroness Watkins of Tavistock.