House of Lords
House of Commons

Joint Committee on Statutory Instruments

Sixty-ninth Report of Session 2017–19

Drawing special attention to:

European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions (United Kingdom and Gibraltar) (EU Exit) (Amendment) Regulations 2019 **(Draft S.I.)**

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2019 **(S.I. 2019/1067)**

Vehicle Excise Duty (Taxi Capable of Zero Emissions) Regulations 2019 **(S.I. 2019/1071)**

Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 **(S.I. 2019/1101)**

Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 **(S.I. 2019/1152)**

Product Safety, Metrology and Mutual Recognition Agreement (Amendment) (EU Exit) Regulations 2019 **(S.I. 2019/1246)**

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Joint Committee on Statutory Instruments

Current membership

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Baroness Bloomfield of Hinton Waldrist (*Conservative*)

Lord Colgrain *(Conservative)*

Lord Haskel *(Labour)*

Lord Morris of Handsworth (*Labour*)

Lord Rowe-Beddoe (*Crossbench*)

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Powers

The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 151 and House of Lords Standing Order No. 73, relating to Public Business.

Remit

The Joint Committee on Statutory Instruments (JCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are not considered by JCSI unless they are required to be laid before Parliament.

The role of the JCSI, whose membership is drawn from both Houses of Parliament, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of each House to any instrument on one or more of the following grounds:

i that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;

ii that its parent legislation says that it cannot be challenged in the courts;

iii that it appears to have retrospective effect without the express authority of the parent legislation;

iv that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;

v that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;

vi that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;

vii that its form or meaning needs to be explained;

viii that its drafting appears to be defective;

ix any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

Publications

The reports of the Committee are published by Order of both Houses. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

Committee staff

The current staff of the Committee are Luanne Middleton (Commons Clerk), Christine Salmon Percival (Lords Clerk) and Liz Booth (Committee Assistant). Advisory Counsel: Daniel Greenberg, Klara Banaszak, and Vanessa MacNair (Commons); James Cooper, Nicholas Beach, John Crane and Ché Diamond (Lords).

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Instruments reported

At its meeting on 2 October 2019 the Committee scrutinised a number of Instruments in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to six of those considered. The Instruments and the grounds for reporting them are given below. The relevant Departmental memoranda, are published as appendices to this report.

1 Draft S.I.: Reported for requiring elucidation

European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions (United Kingdom and Gibraltar) (EU Exit) (Amendment) Regulations 2019

1.1 **The Committee draws the special attention of both Houses to these Regulations on the grounds that they require elucidation.**

1.2 The effect of the draft Regulations is to postpone the coming into force of the European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2019 (SI 2018/1310) ("the Principal Regulations") so that they come into force on 31 December 2020 instead of on exit day. The Cabinet Office sets out in the explanatory memorandum why this is being done. The Principal Regulations were drafted on the basis that the UK would leave the EU on 29th March before the European Parliamentary elections were due to be held in the period between 23 and 26 May. As a result of the UK having taken part in European Parliamentary elections, it is necessary to ensure that certain statutory functions and processes under the legislation which are being repealed, revoked or amended by the Principal Regulations remain in force for a period after exit day. A list of some of the functions concerned is set out in paragraph 7.3 of the explanatory memorandum. They include allowing the relevant electoral officers to store ballot papers and election documents; requiring the filing of spending returns by candidates and parties to the Electoral Commission; the investigation by the Electoral Commission of potential offences; and provisions concerning payments to Returning Officers for the costs of running the poll.

1.3 While it appeared to the Committee that most of the provisions contained in the Principal Regulations concerned the holding of European Parliamentary elections, that was not so in the case of all of them. For example, the Principal Regulations will amend section 54(2) of the Political Parties, Elections and Referendums Act 2000 ("PPERA") so that companies incorporated within an EU member State no longer qualify as permissible donors for the purposes of that Act. This provision is not linked to the holding of European Parliamentary elections and therefore the reasons given by the Department in the explanatory memorandum do not explain why it is appropriate to delay this change so that it comes into force on 31 December 2020 rather than on exit day.

1.4 Other provisions identified by the Committee include:

- the repeal of provisions of PPERA which relate to Gibraltar and the extension of that Act to Gibraltar.

- the repeal of provisions of the Recall of MPs Act 2015 which allow persons included on an electoral register of citizens of the European Union to be an accredited campaigner for a recall petition and also to be a permissible donor for such an accredited campaigner.

- An amendment to the Local Government Officers (Political Restrictions) Regulations 1990 so that the political restrictions imposed by those Regulations no longer apply in relation to involvement with EU political parties.

1.5 The Committee wrote to the Cabinet Office asking it to explain why it was considered appropriate to delay commencement of the provisions of the Principal Regulations which did not appear to be covered by the reasons given in the explanatory memorandum. In a memorandum set out at Appendix 1, the Cabinet Office acknowledge that the approach they have taken will leave on the statute book for a limited period provisions which are not linked solely to the holding of European Parliamentary elections. They state that they carefully considered a number of options and concluded that the approach adopted was the most appropriate because it has the benefit of being clear and simple for electoral administrators to understand and implement, and it also ensures that all necessary legislation stays in force minimising the risk of any adverse unintended consequences.

1.6 The Cabinet Office also makes the following points in relation to the specific provisions identified by the Committee:

- It is stated that the provisions of PPERA relating to Gibraltar only apply to political parties established in Gibraltar and registered in the United Kingdom for the purposes of contesting European Parliamentary elections in the South West combined region.

- With regard to the provisions of the Recall of MPs Act 2015 it is stated that this will not have any adverse consequences because relevant citizens of the European Union will in any event remain on the local government register.

- With regard to the other provisions, the Cabinet Office accept these do not relate solely to the European Parliamentary context but have, and will continue to have, broader effect. They state that, if it emerges that there are provisions left on the statute book which cause practical difficulty they will take steps to commence those repeals as soon as possible.

1.7 The Committee accepts that the reasons given by the Cabinet Office in its memorandum provide a reasonable justification for the approach adopted in the draft Regulations. The Committee also welcomes the commitment by the Cabinet Office to keep under review the provisions which are not connected to the holding of European Parliamentary elections; and to take action to bring forward the repeal of those provisions if on the basis of that review it appears appropriate to do so. **Accordingly, the Committee reports the draft Regulations for requiring the elucidation provided by the Cabinet Office in their memorandum.**

2 S.I. 2019/1067: Reported for requiring elucidation

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2019

2.1 **The Committee draws the special attention of both Houses to this Order on the ground that it requires elucidation in one respect.**

2.2 This Order introduces a new exclusion to the regulated activity of credit broking. The exclusion covers fee-free introductions by registered social landlords of individuals to social and community lenders. Paragraph 7.1 of the Explanatory Memorandum states that these social and community lenders offer alternatives to high-cost credit. The Committee asked HM Treasury to explain whether commercial trading subsidiaries of registered charities (as specified in new article 36FA(2)(d)) and subsidiaries of registered social landlords (as specified in new article 36FA(2)(e)) necessarily offer these alternatives.

2.3 In a memorandum printed at Appendix 2, the Department states that it would be contradictory to their social purpose for such subsidiaries to offer high-cost credit products and that this could attract penalties from the relevant regulator or supervisory authority. The Department explains that it considered the risks and benefits of including these subsidiaries in the scope of this exclusion, including the risk that a high-cost lender may restructure as a subsidiary of a charity or registered social landlord to benefit from the exclusion. The Department deemed such risk to be minimal. **The Committee accordingly reports article 2 (inserted article 36FA(2)) for requiring elucidation, provided by the Department's memorandum.**

3 S.I. 2019/1071: Reported for requiring elucidation

Vehicle Excise Duty (Taxi Capable of Zero Emissions) Regulations 2019

3.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they require elucidation in one respect.**

3.2 This instrument specifies the types of vehicle that fall within the category "taxi capable of zero emissions" for the purposes of Part 1AA of Schedule 1 to the Vehicle Excise and Registration Act 1994. Under paragraph 1GE of that Part, light passenger vehicles which cost more than £40,000 are subject to a higher rate of vehicle excise duty unless, when the vehicle is first registered, it is a taxi capable of zero emissions. Regulation 2 of this instrument defines "taxi capable of zero emissions" by reference to eligibility criteria set by, and a list of vehicle models maintained by, the Secretary of State, both of which the Secretary of State may amend from time to time. The Committee asked the Department for Transport to explain what arrangements will be made for consultation and advance notice of such amendments where they remove a model from the category of "taxi capable of zero emissions", how those arrangements will avoid unfair treatment for a person who has bought (but not yet registered) a vehicle in reliance on its inclusion in that category, and how they will secure compatibility with Article 1 of Protocol 1 of the European Convention on Human Rights.

3.3 In a memorandum printed at Appendix 3, the Department confirm that they will consult on any changes to the eligibility criteria, test proposed changes through engagement with relevant stakeholders, allow appropriate time between the announcement and implementation of any such changes to minimise the impact on consumers, and ensure that any interference with individual property rights is proportionate to achieving the aim of improving air quality and the environment for all. The Committee is grateful for the Department's assurances **and accordingly reports regulation 2 for requiring elucidation, provided by the Department's memorandum.**

4 S.I. 2019/1101: Reported for defective drafting

Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

4.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.**

4.2 This instrument amends the Marketing of Fresh Horticulture Produce Regulations (Northern Ireland) 2010 ("the 2010 Regulations"), which supplement EU law on marketing rules and standards for fruit and vegetables. Regulation 10(13) creates a post-Brexit transition period during which regulation 17 of the 2010 Regulations will not apply in relation to a failure to comply with Article 7 of Commission Implementing Regulation 543/2011. It appeared to the Committee that the subject matter of Article 7 (marketing rules for packages of mixed fruit and vegetables) corresponds better to regulation 15 of the 2010 Regulations (offences relating to Community marketing rules for horticultural produce) than to regulation 17 (offences relating to moving controlled horticultural produce). The Committee therefore asked the Department for Environment, Food and Rural Affairs to confirm whether new regulation 25(1), as inserted by regulation 10(13), ought instead to have referred to regulation 15. In a memorandum printed at Appendix 4, the Department acknowledges the error and undertakes to correct it by correction slip. **The Committee accordingly reports regulation 10(13) for defective drafting, acknowledged by the Department.** In the Committee's view, and having regard to the criteria set out in paragraph 3 of the Committee's *First Special Report of Session 2017–19, Transparency and Accountability in Subordinate Legislation,* this is not an error of a kind that would be suitable for correction by correction slip.

5 S.I. 2019/1152: Reported for unjustifiable delay in laying before Parliament

Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019

5.1 **The Committee draws the special attention of both Houses to these Regulations on the grounds that they breach the 21-day rule and that there was an unjustifiable delay in laying them before Parliament.**

5.2 These Regulations (among other things) make provision to introduce the process to be followed when existing benefit claimants are migrated to universal credit. They allow a transitional element to provide protection for existing benefit claimants who would

have a lower entitlement to universal credit than their total existing benefit awards. They also introduce "transitional payments" for eligible claimants in receipt of the severe disability premium (SDP) as part of their award. These Regulations (made under the negative procedure) replace the draft Universal Credit (Managed Migration Pilot and Miscellaneous) Regulations 2019 laid before Parliament on 14th January 2019 under the affirmative procedure and withdrawn in July 2019. The withdrawn regulations were considered by the Committee (which did not draw special attention to them) but were not debated in Parliament.

5.3 The principal changes made by these Regulations are to add a provision relating to SDP claims and to increase the transitional payment amounts to be paid to claimants previously entitled to SDP. This change resulted from a High Court judgment on 3 May 2019 which found that the differential treatment between SDP claimants who have already moved to universal credit and those who are prevented from doing so was not justified. These Regulations also omit a provision about appeals which attracted the draft affirmative procedure (and therefore required draft affirmative procedure for the entire instrument).

5.4 These Regulations break the 21-day rule, and the Committee asked the Department to explain why (in addition to what is said in the Explanatory Memorandum). In a memorandum printed at Appendix 5, the Department explains that the changes were complex to draft and had far reaching operational and financial implications (some of which required clearance across government), that the Social Security Advisory Committee needed an opportunity to consider the changes and that commencing the new provisions without further delay meant eligible claimants could start receiving the transitional payments. While noting these points, the Committee remains concerned that as a result of the changes regulations that were to be debated in both Houses before being made became regulations which came in to force immediately without the opportunity for Parliamentary scrutiny or debate. **The Committee accordingly reports these Regulations for breach of the 21-day rule, acknowledged by the Department.**

5.5 These Regulations were made on Thursday 18 July 2019, laid before Parliament on Monday 22 July and the majority of the regulations came in to force on Wednesday 24 July. In addition to the issue about the 21-day rule, the Committee asked the Department to explain why arrangements for laying were not expedited to maximise the time available for scrutiny. In its memorandum, the Department apologises for not expediting arrangements for laying. Although, as a general rule, the Committee considers that a delay of 10 calendar days between the making and laying of an instrument before Parliament will amount to an unjustifiable delay, there may be instances where a period of less than 10 calendar days is considered an unjustifiable delay *(See paragraph 2.13 of the Committee's First Special Report of Session 2017–19, Transparency and Accountability in Subordinate Legislation).* The Committee considers that this is one of those instances. The migration of benefit claimants to universal credit is controversial and the effective time for Parliamentary scrutiny should have been maximised. There appears to be no reason why the Department could not have made and laid the instrument on 18 July. **The Committee accordingly reports these Regulations for an unjustifiable delay in laying before Parliament.**

5.6 The Committee also asked the Department to explain the reference made by the Secretary of State in her Statement to the House of Commons on 22 July to advice received from the Committee, given that the Committee did not report on the previous draft affirmative instrument which these Regulations in part replace. In its memorandum, the Department confirms that no advice was received from the Committee on these Regulations; **and the Committee draws that confirmation to the attention of both Houses.**

6 S.I. 2019/1246: Reported for defective drafting

Product Safety, Metrology and Mutual Recognition Agreement (Amendment) (EU Exit) Regulations 2019

6.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.**

6.2 Part 3 of the Regulations has two purposes. Regulations 4 to 17 amend the Product Safety, Metrology and Mutual Recognition Agreement (Amendment) (EU Exit) Regulations 2019 ("the Product Safety Regulations"), to ensure that those Regulations function effectively and as intended following the change in exit day from 29 March to 31 October 2019. Regulation 18 amends the Conformity Assessment (Mutual Recognition Agreements) Regulations in consequence of changes made to those Regulations by Part 2.

6.3 Regulation 1(3) generally provides for the regulations which amend the Product Safety Regulations to come into force immediately before exit day. This is so that the amendments come into force before the Product Safety Regulations themselves, which come into force on exit day. However, regulation 1(4) makes an exception in the case of regulation 15 which comes into force on exit day. There is no obvious reason why a different approach should be adopted in relation to regulation 15.

6.4 The Department has submitted a voluntary memorandum to the Committee (printed at Appendix 6) in which it explains that the reference to regulation 15 in regulation 1(4) is incorrect, and that the reference should have been to regulation 18. Despite this mistake, the Department considers that the commencement provisions will still work and that the impact of the mistake on the timing of the commencement of regulation 18 will not have any practical or legal consequences. The Committee accepts the Department's argument that the commencement provisions should still work and that the mistake is unlikely to have substantive consequences. However, as acknowledged by the Department, the mistake is liable to leave users of the legislation unclear as to why regulation 15 is being treated differently from the other provisions amending the Product Safety Regulations. **The Committee accordingly reports regulation 1(4) for defective drafting acknowledged by the Department.**

Instruments not reported

At its meeting on 2 October 2019 the Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported to both Houses.

Annex

Instruments requiring affirmative approval

	Heavy Commercial Vehicles in Kent (No. 2) Order 2019
S.I. 2019/1212	Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019
S.I. 2019/1219	Customs Safety and Security Procedures (EU Exit) (No. 2) Regulations 2019
S.I. 2019/1224	Air Services (Competition) (Amendment and Revocation) (EU Exit) Regulations 2019
S.I. 2019/1225	Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019
S.I. 2019/1229	Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019
S.I. 2019/1232	Capital Requirements (Amendment) (EU Exit) Regulations 2019
S.I. 2019/1233	Risk Transformation and Solvency 2 (Amendment) (EU Exit) Regulations 2019
S.I. 2019/1234	Prospectus (Amendment etc.) (EU Exit) Regulations 2019
S.I. 2019/1245	Competition (Amendment etc.) (EU Exit) (No. 2) Regulations 2019
S.I. 2019/1247	Specific Food Hygiene (Regulation (EC) No. 853/2004) (Amendment) (EU Exit) Regulations 2019

Draft instruments requiring affirmative approval

Draft S.I.	Heavy Commercial Vehicles in Kent (No. 1) Order 2019
Draft S.I.	Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2019

Instruments subject to annulment

S.I. 2019/1070	Plant Health (England) (Amendment) Order 2019
S.I. 2019/1210	The Heavy Commercial Vehicles in Kent (No. 3) Order 2019

Appendix 1

Draft S.I.

European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions (United Kingdom and Gibraltar) (EU Exit) (Amendment) Regulations 2019

1. The Committee has requested a memorandum on the following point:

> *The effect of the draft Regulations is to postpone the coming into force of the European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2019 (SI 2018/1310) so that they come into force on 31 December 2020 instead of on exit day.*
>
> *Explain why delaying commencement of SI 2018/1310 is appropriate in so far as it relates to the following provisions of that instrument:*
>
> *(a) regulation 4, and Part 1 of Schedule 1, in so far as they repeal:*

- *the provisions of the Political Parties, Elections and Referendums Act 2000 ("the 2000 Act") which provide for that Act to extend to Gibraltar, and which provide for Gibraltar registered parties to be subject to regulation under that Act;*
- *the words in section 24(8)(b) of the 2000 Act which make it an offence for a person to hold office as a registered treasurer of a registered party if they have committed an offence in connection with an election to the Gibraltar Parliament within the period of 5 years before their registration;*
- *the words in section 54(2) of the 2000 Act which allow companies incorporated within "another Member State" to be permissible donors for the purposes of the 2000 Act;*
- *the provisions of Schedules 3 and 4 to the Recall of MPs Act 2015 which allow a person included on an electoral register of citizens of the European Union to be an accredited campaigner for a recall petition or a permissible donor for such an accredited campaigner;*
- *(b) paragraph 5 of Schedule 2, which amends the Local Government Officers (Political Restrictions) Regulations 1990 to limit the political restrictions imposed by those Regulations so that they no longer apply in relation to involvement with political parties whose objects relate to matters arising in or connected with an EU Member State.*

2. The instrument amends the European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions (United Kingdom and Gibraltar) (EU Exit) Regulations 2018 ("the 2018 Regulations") to provide for legislation relating to European Parliamentary elections to remain in place until 31 December 2020. We consider this will provide sufficient time for the necessary post-poll processes to be completed.

3. The Committee have identified certain provisions in the 2018 Regulations and have requested an explanation as to why it is appropriate to delay commencement of the repeal of those provisions until 31 December 2020.

4. We are aware the approach we have taken leaves provision on the statute book for a limited period that it is not solely linked to the holding of European Parliamentary elections. We carefully considered a number of approaches to keeping the legislation in force, and concluded our approach was the most appropriate option in the circumstances. Keeping the whole of the legislation in force, has the benefit of being clear and simple for electoral administrators to understand and implement. It also ensures all the necessary legislation stays in force minimising the risk of any adverse unintended consequences.

5. Most of the provisions in the 2018 Regulations only have practical effect in the context of the holding of a European Parliamentary election: absent such election being held, they are simply redundant. For example, the provisions identified relating to Gibraltar contained in the Political Parties, Elections and Referendums Act 2000, only apply to political parties established in Gibraltar and registered in the United Kingdom with the Electoral Commission for the purposes of contesting European Parliamentary elections in the South West combined region.

6. Those provisions were inserted by the European Parliamentary Elections (Combined Region and Campaign Expenditure) (United Kingdom and Gibraltar) Order 2004, and the European Parliamentary Elections (Loans and Related Transaction and Miscellaneous Provisions) (United Kingdom and Gibraltar) Order 2009, made under powers in the European Parliament (Representation) Act 2003. One of the purposes of that Act was to make provision for, and in connection, with the establishment of an electoral region including Gibraltar for the purposes of European Parliamentary elections.

7. With regard to the references identified in the Recall of MPs Act 2015, we do not consider these will have any adverse consequences while remaining in force, as relevant citizens of the European Union will in any event remain on the local government register.

8. Other provisions, such as those the Committee have identified, appear not to relate solely to the European Parliamentary election context. We can see these may seem to have (and to continue to have) broader effect. If it emerges there are provisions left on the statute book which will cause practical difficulty, we will of course take steps to commence those repeals as soon as possible.

Cabinet Office

11 September 2019

Appendix 2

S.I. 2019/1067

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2019

1. The Committee has asked, in relation to the above instrument, for a memorandum on the following point:

> *Having regard to paragraph 7.1 of the Explanatory Memorandum, explain whether commercial trading subsidiaries of registered charities (as specified in new article 36FA(2)(d)) and subsidiaries of registered social landlords (as specified in new article 36F(2)(2)) necessarily offer non-high-cost credit?*

2. Paragraph 7.1 of the Explanatory Memorandum states: "Social and community lenders, which are specified in paragraph 2, and subsequently defined in paragraph 4, of the new article 36FA, offer alternatives to high-cost credit. Registered Social Landlords (RSLs) are key partners for these lenders, as their tenants are low income consumers who may struggle to access mainstream credit."

3. The Treasury considers that the subsidiaries of charities and RSLs primarily provide non-high-cost credit products and the risk of these companies providing high-cost credit products is very low.

4. A subsidiary must either be wholly or majority owned by the RSL or charity, meaning that there is a layer of reassurance that they are fulfilling a social purpose. If a subsidiary were to offer high-cost credit products then this would be contradictory to their social purpose, and could attract penalties from the relevant regulator or supervisory authority if they deemed it necessary.

5. It should also be noted that the subsidiaries of charities and RSLs offering credit will be authorised by the Financial Conduct Authority (FCA) for credit lending and subject to their enforcement toolkit for a breach of any FCA rules or principles.

6. The Treasury has also considered which social and community lenders would be caught by this definition. At present, there are only two social and community lenders structured as a subsidiary of a charity or RSL; both of which offer alternatives to high-cost credit.

7. HM Treasury has worked with Industry and the FCA to consider the risks and benefits of including these subsidiaries in the scope of this instrument. This included the risk that a high-cost lender may restructure as a subsidiary of a charity or RSL to benefit from the exclusion in this instrument.

8. However, this risk was deemed to be minimal considering the significant impact it would have on the firms operating and governance models.

9. Whilst the market size for social and community lenders registered as subsidiaries of charities or RSLs is quite small, these lenders facilitate access to affordable credit for financially vulnerable consumers. It is important that RSLs have the flexibility to refer individuals to all potential sources of social and community lenders to allow individuals to make informed decisions.

HM Treasury

10 September 2019

Appendix 3

S.I. 2019/1071

Vehicle Excise Duty (Taxi Capable of Zero Emissions) Regulations 2019

1. In its letter to the Department of 4th September 2019, the Committee requested a memorandum on the following.

> *Explain the arrangements which are expected to be operated for consultation and advance notice of amendments to the eligibility criteria referred to in regulation 2(1)(a), or the list referred to in regulations 2(1)(b) and 2(2), where the amendments remove a model of vehicle from the category of "taxi capable of zero emissions", and explain, in particular, how those arrangements will avoid unfair treatment for a person who has bought (but not yet registered) a vehicle in reliance on its inclusion in the category of "taxi capable of zero emissions" and how those arrangements will secure compatibility with Article 1 of Protocol 1 of the ECHR.*

2. The Statutory Instrument specifies which vehicles are defined as a Taxi Capable of Zero Emissions (TCZE) and exempt from the supplementary rate of Vehicle Excise Duty (VED) under paragraph 1GE(5) of Schedule 1 to the Vehicle Excise and Registration Act 1994. The supplementary rate of VED is an additional rate of £320 per annum for 5 years at the start of the second licence registration i.e. payable over years 2–6.

3. A TCZE is defined in the Regulations as either one that satisfies the eligibility criteria of the Plug in Taxi Grant scheme (as set out in the guidance document) or a vehicle which is included in the list of models specified by the Secretary of State. Currently, there is one vehicle which qualifies.

4. We work closely with the ultra-low emission taxi industry, to tackle air and climate emissions through supporting the uptake of ultra-low emission taxis. We have no plans to change the eligibility criteria for a TCZE because the ultra-low emission taxi market is still in its infancy. If we were to change the eligibility criteria then we shall consult and provide appropriate forewarning to ultra-low emission taxi manufacturers and consumers.

5. Before considering any changes to the current criteria we anticipate we would test the changes through engagement with the taxi industry (both manufacturers and dealerships), vehicle stakeholder groups (such as the Energy Savings Trust and the Low Carbon Vehicle Partnership), local taxi licensing authorities (such as TfL). The Government's work administering the Plug in Car and Plug in Van grants means we have strong links across the wider vehicle manufacturing and stakeholder industry. We also have experience of informing and protecting consumers when bringing in tighter eligibility requirements for these grant schemes.

6. We shall ensure that there is an appropriate amount of time from announcing the changes to them taking effect, to minimise impact on consumers including those that may have purchased a vehicle but not registered it. More broadly, the government is committed to a tax system which is predictable, stable and simple to understand.

7. Lastly, we fully appreciate that any interference in an Article 1 of Protocol 1 property right would need to be proportionate, considering the interests of the individual and the general interests of the community. The legislation is primarily intended to help improve the air quality and the environment for all, by providing a further incentive for cleaner vehicles. It is anticipated that if there were any significant changes to the existing eligibility criteria they would be aimed at further improving this primary objective. We trust that the arrangements above provide some assurance to the Committee.

Department for Transport

10 September 2019

Appendix 4

S.I. 2019/1101

Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

1. The Committee has asked the Department for Environment, Food and Rural Affairs ("the Department") for a Memorandum to:

> *Confirm whether new regulation 25(1), as inserted by regulation 10(13), ought to have referred to regulation 15 rather than regulation 17.*

2. This instrument has been made on behalf of the Department of Agriculture, Environment and Rural Affairs (DAERA) in the absence of a Northern Ireland Executive.

3. The Department can confirm that this is a typographical error and the new regulation 25(1) inserted into The Marketing of Fresh Horticulture Produce Regulations (Northern Ireland) 2010, should indeed have referred to regulation 15, rather than regulation 17.

4. The instrument amends The Marketing of Fresh Horticulture Produce Regulations (Northern Ireland) 2010 to provide transitional arrangements for fresh horticultural products placed on the market after exit day. The amendment relates to the labelling of packages of fruit and vegetables, and aims to ensure that labels currently allowed under EU law will continue to be permitted in the UK during a transition period of 21 months after exit day. The labelling requirements are set out in Article 7 of Commission Implementing Regulation 543/2011 and it is regulation 15, and not regulation 17, of The Marketing of Fresh Horticulture Produce Regulations (Northern Ireland) 2010 that enforces these requirements.

5. The Department apologises for this error, and will liaise with the SI Registrar in order to correct it by way of a correction slip.

Department for Environment, Food and Rural Affairs

10 September 2019

Appendix 5

S.I. 2019/1152

Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019

1. In its letter to the Department of 4th September 2019, the Committee requested a memorandum on the following points:

> *(1) Given the Department's stated desire to pay former SDP recipients the transitional payment with such expedition that it is necessary to break the 21-day rule (paragraph 3.6 of the Explanatory Memorandum), provide further information about why it was not possible to make these Regulations earlier and implement the 3 May judgment sooner.*
>
> *(2) Explain why arrangements for laying were not expedited to maximise the time available for effective scrutiny.*
>
> *(3) Explain the reference made by the Secretary of State in her Statement to the House of Commons on 22 July to advice received from the Committee, given that the Committee has not reported on these Regulations and did not report on the previous draft affirmative instrument which these Regulations in part replace.*

2. The Department's responses to the Committee's points are set out below.

3. The main changes to the Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 (S.I. 2019/1152), in comparison with the draft Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 (which have now been withdrawn), concern the transitional payments for former Severe Disability Premium claimants in regulations 3(8) and 7. The changes made to the regulations (increasing rates of the payments, abolishing the "SDP gateway" and extending the payments to those migrating after 16th January 2019) were complex to draft and had far reaching operational and financial implications. The financial implications required clearance across government. The Department also wanted to give the Social Security Advisory Committee an opportunity to consider these changes, as the Committee will be aware. Taken together, the Department does not consider the delay between the judgment and the making of the regulations unreasonable. Commencing the new provisions without further delay meant eligible claimants could start receiving the transitional payments, and Ministers weighed this in the balance when deciding that the 21-day rule should, exceptionally, be breached in this case. The Department has now paid over 9600 claims worth over £25 million. The Department nevertheless regrets the breach of the 21-day rule.

4. The Department's arrangements for laying ensured that the regulations were laid and promulgated without any technical difficulties. The Department nevertheless apologises to the Committee for not expediting arrangements for laying further.

5. The Department confirms that no advice was received from the Committee on the Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019, as the Committee has not yet finally considered or formally reported on the regulations.

6. The Committee had formally decided not to report to both Houses the draft Universal Credit (Managed Migration) Regulations 2018 or the draft Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 (both of which have now been withdrawn). The Department drew an inference that Ministers were following the correct procedure in relation to those draft instruments.

7. However, the provision which attracted the affirmative procedure, and which appeared in both draft instruments, was not included in the Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 (S.I. 2019/1152). On that basis the Department was confident it was correct in following the negative procedure. If there was any misunderstanding the Department regrets this.

Department for Work and Pensions

10 September 2019

Appendix 6

S.I. 2019/1246

Product Safety, Metrology and Mutual Recognition Agreement (Amendment) (EU Exit) Regulations 2019

1. The Department for Business, Energy and Industrial Strategy is submitting this memorandum in order to assist the Joint Committee on Statutory Instruments in its deliberations relating to the Product Safety, Metrology and Mutual Recognition Agreement (Amendment) (EU Exit) Regulations 2019 ("the Regulations").

2. Regulation 1 of the Regulations sets out when various provisions of the Regulations are to come into force.

3. Regulation 1(3) and (4) provide that Part 3 of the Regulations comes into force immediately before exit day, except for regulation 15, which is to come into force on exit day.

4. The Department acknowledges that regulation 15 is treated differently from other regulations amending the same instrument, and that readers may be unclear as to why this is. The reference to regulation 15 is an incorrect cross reference. Regulation 15 amends Schedule 27 to the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), which itself amends the Measuring Instruments Regulations 2016 (S.I. 2016/1153). The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations come into force on exit day. The Department accepts it is good drafting practice that in this situation a provision amending an instrument should come into force immediately before the instrument it is amending comes into force. Nevertheless, the provision still has the legal effect intended, by amending the relevant provision of Schedule 27 at the same time that it comes into force.

5. Regulation 1(4) was intended to refer to regulation 18, which differs from other provisions in Part 3 in that it revokes regulation 6 of the Conformity Assessment (Mutual Recognition Agreements) Regulations 2019 (S.I. 2019/392), itself a provision introduced by regulation 2(3) of the Regulations. The Department accepts that it is better drafting practice that this provision should remain in force until exit day but its slightly earlier revocation has no real practical or legal consequences.

6. The Department apologises that this error was not spotted during the informal pre-scrutiny process.

Department for Business, Energy and Industrial Strategy

27 September 2019