

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

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23rd Report of Session 2017–19

# **Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2018**

**Correspondence:  
Licensing of HMO (Prescribed Description)  
(England) Order 2018, and  
“Purdah” and secondary legislation**

Includes 2 Information Paragraphs on 2 Instruments

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### *Secondary Legislation Scrutiny Committee*

The Committee was established on 17 December 2003 as the Merits of Statutory Instruments Committee. It was renamed in 2012 to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee's terms of reference are set out in full on the website but are, broadly, 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 these specified grounds:

(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;

(b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;

(c) that it may inappropriately implement European Union legislation;

(d) that it may imperfectly achieve its policy objectives;

(e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation;

(f) that there appear to be inadequacies in the consultation process which relates to the instrument.

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

### *Members*

Baroness Blackstone

Lord Haskel

Lord Sherbourne of Didsbury

Lord Faulkner of Worcester

Rt Hon. Lord Janvrin

Rt Hon. Lord Trefgarne (Chairman)

Baroness Finn

Lord Kirkwood of Kirkhope

Baroness Watkins of Tavistock

Lord Goddard of Stockport

Baroness O'Loan

### *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 [www.parliament.uk/seclegpublications](http://www.parliament.uk/seclegpublications)

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

### *Information and 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 [hseclegscrutiny@parliament.uk](mailto:hseclegscrutiny@parliament.uk).

# Twenty Third Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2018 (SI 2018/306)

*Date laid: 7 March 2018*

*Parliamentary procedure: negative*

*Summary: These Regulations update the EU Emissions Trading Scheme in relation to aircraft operators regulated by the UK following recent changes to the relevant EU Regulations. The changes make exemptions and introduce simplified procedures under the scheme for certain aircraft operators with small CO<sub>2</sub> emissions. They also extend an exemption from the scheme for flights outside the European Economic Area, to facilitate the implementation of a broader international agreement on reducing aviation emissions and tackling climate change that has been negotiated by the International Civil Aviation Organisation, and will take effect from 2021.*

**These 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. The Department for Business, Energy and Industrial Strategy (BEIS) has laid these Regulations with an Explanatory Memorandum (EM) and Impact Assessment (IA). The instrument amends an earlier instrument, which transposed the provisions of the EU Emissions Trading Scheme (EU ETS) Directive, by requiring aircraft operators, which fall within the geographical scope of the EU ETS and are administered by the UK, to monitor and report their aviation emissions each calendar year and then to surrender sufficient emissions trading allowances to cover those emissions.
2. In December 2017, the Committee reported on a related instrument which amended the compliance deadlines under the EU ETS for stationary installations and aircraft operators regulated by the UK, so that they are obliged to verify and report 2018 emissions and surrender allowances for those emissions in 2019 before the UK leaves the EU in March 2019. The Committee drew these Regulations to the special attention of the House to highlight that the UK's exit from the EU was already affecting policy areas such as the control of greenhouse gas emissions, and leading to the need for secondary legislation under existing Acts.
3. This new instrument implements three provisions within the EU Regulations which came into force on 29 December 2017:
  - (a) It extends a temporary derogation from full scope, whereby only flights between states within the European Economic Area (EEA) are covered by the EU ETS, rather than all flights arriving at or departing from EEA airports, until 31 December 2023. Without the measure, the limited scope would have expired at the end of 2016. BEIS explains that extending the temporary derogation is necessary to facilitate the conditions for the implementation of a broader international

agreement on tackling aviation emissions that has been negotiated by the International Civil Aviation Organisation (ICAO) and will come into effect from 2021, the so-called Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). BEIS says that not extending the limited scope of EU ETS could have revived widespread international opposition to the EU ETS, endangering implementation of CORSIA. When the EU first introduced the EU ETS, all flights, including from the EEA to non-EEA destinations as well as flights from non-EEA destinations to the EEA, were in scope, rather than only intra-EEA flights. A number of international airlines and countries including China and the United States opposed this approach, arguing that the EU did not have jurisdiction to regulate flights outside the EEA in this way. In response to this opposition, the EU exempted non-EEA flights from the EU ETS.

- (b) The measure extends the use of certain simplified procedures to aircraft operators emitting fewer than 3,000 tonnes of CO<sub>2</sub> per year on intra-EEA flights, exempting them from the need to use verification services for their emissions.
  - (c) The measure extends the exemption from obligations under the EU ETS from 2020 until 2030 for non-commercial aircraft operators emitting fewer than 1,000 tonnes of CO<sub>2</sub> per year. This category includes, for example, private jets used in non-commercial settings.
4. BEIS conducted a four-week public consultation between 8 December 2017 and 5 January 2018. Only seven responses were received, four from the industry sector and three from organisations that asked to remain anonymous, all of which were supportive of BEIS's overall approach. BEIS has explained that the timing and short consultation period reflected the lack of discretion over how the EU Regulation could be implemented, the limited timeframe available (the changes to the EU Regulations were agreed in October 2017 and published the following month), and the fact that stakeholders were aware of, and expecting, these changes. BEIS also held a workshop with stakeholders, including industry representatives and NGOs, to explain the changes.
  5. BEIS concludes in the IA that the measure is expected to result in a net cost to the UK of an estimated £405 million between 2017 and 2023. This cost is driven mainly by the estimated impact of increased emissions. BEIS also states, however, that its analysis did not monetise the benefits of creating the conditions to facilitate the implementation of CORSIA from 2021 which is expected to result in significant environmental benefits, namely, in the reduction of emission of greenhouse gases.

## CORRESPONDENCE

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### **Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (SI 2018/221)**

6. In our 22nd Report of this Session,<sup>1</sup> we published information about the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018. We were concerned that the significant extension of licensing of Houses in Multiple Occupation required by the Order might not be readily achieved in the relatively short period until the Order took effect (October 2018).
7. We wrote to the Minister for Housing and Homelessness on 14 March, asking about the steps being taken by the Ministry of Housing, Communities and Local Government to ensure that the extension of licensing would be achieved. We have received a reply of 19 March from the Minister, Mrs Heather Wheeler, MP, and we are publishing this correspondence at Appendix 1.

### **“Purdah” and secondary legislation**

8. In our scrutiny of secondary legislation earlier in the current Session, we noted that several Departments attributed delays in laying statutory instruments in part to the impact of periods of “purdah” before elections. On 21 December 2017, we wrote to the Cabinet Office Minister about such delays, and about the extent to which future work on secondary legislation would be similarly affected.
9. We have received a reply of 12 March from the Minister for Implementation, Mr Oliver Dowden, MP, and we are publishing this correspondence at Appendix 2.

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<sup>1</sup> [22nd Report](#), Session 2017–19 (HL Paper 98).

## **INSTRUMENTS OF INTEREST**

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### **Communications (Television Licensing) (Amendment) (No.2) Regulations 2018 (SI 2018/339)**

10. The Department for Digital, Culture, Media and Sport (DCMS) has laid these Regulations with an Explanatory Memorandum. DCMS says that, in the White Paper “A BBC for the Future: a Broadcaster of Distinction” of May 2016, the Government committed to bringing forward regulations to allow the BBC to trial a more flexible payment plan for those facing difficulty in paying the TV licence fee. In amending an earlier instrument,<sup>2</sup> these Regulations introduce a Simple Payment Plan licence (SPP) on a trial basis. The SPP licence will cost the same as the standard colour TV licence (£150.50 from 1 April 2018) and can be paid in monthly or fortnightly instalments in a pay-as-you-go model. The SPP licence will be available for a limited period only and for specific groups of TV licence customers. DCMS lists three groups of eligible customers: people who have been questioned under caution for TV licence fee evasion and may face prosecution; people who have sought advice from a debt advice charity about their financial obligations; and people who have recently become unlicensed and missed payments on their previous licence. Following the renewal cycle finishing at the end of September 2019, the BBC will assess the impact of this new licence, and the Government will decide whether a SPP-type licence should be available permanently, and other possible steps to help customers who face difficulty in paying the licence fee.

### **Branded Health Service Medicines (Costs) Regulations 2018 (SI 2018/345)**

11. Sections 3 to 6 of the Health Service Medical Supplies (Costs) Act 2017 (“the 2017 Act”) amend the NHS Act 2006 provisions that permit the Secretary of State to control the costs of health service medicines. These Regulations set out the details of the new scheme which is expected to save the NHS £33 million in tax year 2018–19. The main purpose of these Regulations is to provide for a revised statutory scheme which controls the maximum price which may be charged for the supply of branded health service medicines, and requires manufacturers and suppliers of branded health service medicines with annual NHS sales above £5 million to pay to the Secretary of State 7.8% of their net sales income received for the supply of those medicines to the NHS. These Regulations will not apply to those firms who belong to the voluntary 2014 Pharmaceutical Price Regulation Scheme (PPRS). The 2017 Act was introduced, in large part, to enable the statutory scheme to be brought into broad alignment with the 2014 PPRS because the savings produced by the existing statutory scheme were not as high as those generated by the voluntary scheme. As well as benefitting the NHS, the new Regulations aim to ensure a more level playing-field between the companies in the two schemes. The Regulations will also be applied to Northern Ireland, a written statement from the Minister explains the rationale for doing so in the absence of a legislative consent motion.<sup>3</sup>

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<sup>2</sup> The Communications (Television Licensing) Regulations 2004 ([SI 2004/692](#)).

<sup>3</sup> HL Written Statement, 12 March 2018, [HLWS518](#).

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

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### Instruments subject to annulment

- SI 2018/271 Social Security Revaluation of Earnings Factors Order 2018
- SI 2018/278 Wales Act 2017 (Welsh Harbours) (Transitional Provisions and Savings) Regulations 2018
- SI 2018/280 Social Security (Invalid Care Allowance) (Amendment) Regulations 2018
- SI 2018/283 Responsibilities and Standing Rules, and Care and Support (Miscellaneous Amendments) Regulations 2018
- SI 2018/284 Education (Student Loans) (Repayment) (Amendment) Regulations 2018
- SI 2018/286 Plant Health (Export Certification) (England) (Amendment) Order 2018
- SI 2018/287 Marine Works (Environmental Impact Assessment) and Marine Strategy (Amendment) Regulations 2018
- SI 2018/289 Plant Health etc. (Fees) (England) Regulations 2018
- SI 2018/290 Personal Injuries (Civilians) Scheme (Amendment) Order 2018
- SI 2018 293 Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2018
- SI 2018/307 Loans for Mortgage Interest and Social Fund Maternity Grant (Amendment) Regulations 2018
- SI 2018/311 Oil and Gas Authority (Levy) and Pollution Prevention and Control (Fees) (Amendment) Regulations 2018
- SI 2018/313 Government Resources and Accounts Act 2000 (Estimates and Accounts) Order 2018
- SI 2018/320 Plant Health (England) (Amendment) (No. 2) Order 2018
- SI 2018/332 Social Security Benefits Up-rating Regulations 2018
- SI 2018/333 Pensions Increase (Review) Order 2018
- SI 2018/336 National Health Service (Dental Charges) (Amendment) Regulations 2018
- SI 2018/339 Communications (Television Licensing) (Amendment) (No. 2) Regulations 2018
- SI 2018/345 Branded Health Service Medicines (Costs) Regulations 2018
- SR 2018/36 Universal Housing Credit Housing Costs (Executive Determinations) (Amendment) Regulations (Northern Ireland) 2018
- SR 2018/37 Loans for Mortgage Interest and Social Fund Maternity Grant (Amendment) Regulations (Northern Ireland) 2018



## **APPENDIX 1: LICENSING OF HOUSES IN MULTIPLE OCCUPATION (PRESCRIBED DESCRIPTION) (ENGLAND) ORDER 2018 (SI 2018/221)**

### **Letter from Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to Mrs Heather Wheeler, MP, Minister at the Ministry of Housing, Communities and Local Government**

The Committee considered this Order at its meeting yesterday, and is publishing information about it in its report this week.

Your Ministry has confirmed that the effect of the Order will be that an estimated 160,000 properties will require a licence for the first time, by the date of 1 October 2018 when the Order comes into force. It will fall to local housing authorities (LHAs) to process the applications for those licences. We have been told by your Ministry that there have been no problems with LHAs processing applications in the past, but we are not persuaded that this significant extension of licensing can be readily achieved in the relatively short period until October.

We would be grateful, therefore, if you could let us know what steps your Ministry has taken to ensure that the requirement for so many additional properties to be licensed by October will be achieved. We would also be interested to know how your Department will monitor the progress of LHAs in meeting this requirement, and what your intentions are for keeping Parliament informed of progress.

It would be helpful to receive your reply by noon on Monday 19 March, so that we can consider it at our next meeting.

**14 March 2018**

### **Letter from Mrs Heather Wheeler, MP, to Lord Trefgarne**

Thank you for your detailed scrutiny of Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (SI 2018/221). You asked us to clarify the steps my Department has taken to ensure that the extension to mandatory houses in multiple occupation (HMO) licensing can be implemented from October 2018.

This is not an unexpected requirement for Local Housing Authorities (LHAs), we have for some time been alerting them to these changes. We consulted extensively with LHAs in 2015 and 2016 about the technical changes to the policy and how this could work in practice. There was broad support for the changes we proposed, and LHAs were made aware that we intended to introduce them as soon as practicable. Since then, we have also been working with a local authority officers group, updating them with progress on the regulations and what this means in terms of implementation.

The laying of the regulations some six months ahead of implementation was also designed to ensure that LHAs are fully prepared to put processes in place to implement the extended licensing regime, and to deliver their duty to promote awareness amongst landlords. It will also allow LHAs to issue licenses to landlords who apply during this period. In addition, we will continue to communicate across the wider sector with additional focus on those LHAs that may require more support to implement the policy. We are also working with representatives of landlord associations to make sure that their members who might be affected are fully aware of the upcoming changes.



We are developing guidance to be published in April, five months ahead of the regulations becoming enforceable in October. Our guidance will recommend that LHAs encourage early applications, but ultimately it is down to the authorities themselves to determine how best to make arrangements to handle the extension of scope and consider the phasing of applications.

You asked us how we intend to monitor progress of LHAs in meeting this requirement. We already collect data annually on the number of mandatory licensable HMOs and on how many of those have been issued with a licence. This is through the Department's Local Housing Authority Statistical returns process. The next collection that will include information about the licences issued in October 2018 and will be published in January 2020; we are committed to reviewing this data with a view to assessing local authorities' progress.

Once we have concluded this assessment we will consider whether any next steps are required to enable LHAs to meet this requirement. We will write to the House of Lords Scrutiny Committee in the spring of 2020 to update you with the implementation of the policy by LHAs.

**19 March 2018**

## **APPENDIX 2: “PURDAH” AND SECONDARY LEGISLATION: CORRESPONDENCE WITH THE CABINET OFFICE**

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### **Letter from Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to Caroline Noakes, MP, Minister for Government Resilience and Efficiency at the Cabinet Office**

In our recent scrutiny of secondary legislation, we have heard from a number of Departments that there have been delays in progressing policy decisions leading up to the laying of statutory instruments before Parliament, and that a contributory factor in these delays has been the periods of “purdah” before elections.

Examples considered by the Committee at its latest meeting include:

- the Radio Equipment Regulations 2017 (SI 2017/1206), laid by the Department for Business, Energy and Industrial Strategy. BEIS has told us that “the purdah periods in advance of the General Elections in 2015 and 2017 and the referendum on the UK’s membership of the EU in 2016 further impacted on progress in implementing the Directive by the deadline of June 2016”; and
- the Ringing of Certain Captive-bred Birds (England and Wales) Regulations 2017 (SI 2017/1213), laid by the Department for Environment, Food and Rural Affairs. Defra has acknowledged that it took almost three years from launching the consultation to laying the Regulations, and has told us that there had been “three election purdah periods and changes to Ministers where we have had to either put the Regulations on standstill or re-seek Ministerial approval”.

We agreed that we would find it helpful to see the latest guidance to the civil service on “purdah” and its implications for the conduct of Departmental business. I would be grateful if your office could provide this to us.

Looking ahead to the scrutiny of secondary legislation that will be laid before Parliament over the coming months, we also agreed that it would be helpful to know how many periods of “purdah” are expected to constrain the work of Departments during the remainder of the current Session (to 2019). This information will give us a better idea of the likely flow of secondary legislation in the next year or so. We would expect that Departments themselves would factor these constraints into their forward planning of statutory instruments.

Thank you for agreeing to give evidence to the Committee on 27 February, in the context of our concern about Government consultation practice. We look forward to talking to you then, but we would nonetheless welcome it if you could reply to this letter by the middle of January.

**21 December 2017**

### **Letter from Mr Oliver Dowden CBE MP, Minister for Implementation at the Cabinet Office, to Lord Trefgarne**

Thank you for your letter of the 21st December 2017. My officials have been looking into the issues you have raised which has taken longer than I and they would have wished, and for that I apologise.

The conduct guidance issued to civil servants in pre-election periods (“purdah” guidance) places certain restrictions on their activity during election or referendum

campaigns. The principles of the guidance are longstanding and are in effect an extension of the principles that already apply to civil servants as set out in the Civil Service Code. The guidance is clear that the Government still retains its responsibility to govern; its purpose is not to unnecessarily delay essential Government business, but it ensures that civil servants avoid any activity that could call their political impartiality into question or give rise to criticism that public resources are being used for party political purposes. We were not aware of the two cases that you refer to in your letter and we will bear in mind these sorts of issues when preparing pre-election guidance ahead of the next General Election.

Where there is any doubt about what constitutes 'essential' business and whether such activity should proceed during pre-election periods, consideration is given by the relevant Government department on a case by case basis, taking account of public interest considerations and with advice, from the Propriety and Ethics team in the Cabinet Office. These judgements consider a number of factors such as whether postponing policy decisions would be detrimental to the national interest or wasteful of public money.

Ministers are expected to show discretion in initiating any new action that is long term in nature. Policy decisions that a new government might want the opportunity to take a different view from the present Government, including decisions associated with legislation, are generally postponed until after the election.

The most recent pre-election guidance was published at the beginning of the purdah period ahead of the 2017 General Election. A copy of that guidance is enclosed and can be found at the following link: <https://www.gov.uk/government/publications/election-guidance-for-civil-servants/general-election-2017-guidance-for-civil-servants#contents>

There will be a purdah period in place for civil servants ahead of the local government elections scheduled to take place in May 2018. These elections are different from a UK general election and as such the restrictions that apply are not as extensive. The Government will remain in office whatever the outcome of the elections and Ministers and civil servants will continue to carry out their functions in the usual way, including the making of statutory instruments (SIs), unless progressing those SIs would have a particular local impact that could have a bearing in a local election campaign. Again, judgements on where SIs, or the policy issues associated with them may need to be postponed, are taken on a case by case basis. However, I would expect the vast majority of SIs to proceed as normal during the local government election campaign. I have also attached a copy of the guidance that was issued to civil servants ahead of last year's local elections to give you a sense of the principles that apply:

<https://www.gov.uk/government/publications/election-guidance-for-civil-servants/may-2017-guidance-on-elections>

I look forward to discussing these issues with you in due course.

**12 March 2018**

### **APPENDIX 3: INTERESTS AND ATTENDANCE**

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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 20 March 2018, Members declared no interests.

#### **Attendance:**

The meeting was attended by Baroness Blackstone, Lord Faulkner of Worcester, Baroness Finn, Lord Goddard of Stockport, Lord Haskel, Lord Janvrin, Lord Kirwood of Kirkhope, Baroness O'Loan, Lord Sherbourne of Didsbury, Lord Trefgarne and Baroness Watkins of Tavistock.