

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

53rd Report of Session 2017–19

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

Drawn to the special attention of the House:

**Draft Climate Change Act 2008 (2050
Target Amendment) Order 2019**

**Draft Electricity Capacity (No. 2)
Regulations 2019**

**Draft Safeguarding Vulnerable Groups
Act 2006 (Specified Scottish and Barred
Lists) Order 2019**

Includes information paragraphs on:

Draft Misuse of Drugs Act 1971
(Amendment) Order 2019

Merchant Shipping (Prevention of Air
Pollution from Ships) (Miscellaneous
Amendments) Regulations 2019

Occupational Pension Schemes (Investment
and Disclosure) (Amendment) Regulations
2019

Further Education Loans and the Education
(Student Support) (Amendment) Regulations
2019

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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 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

[Rt Hon. Lord Chartres](#)

[Rt Hon. Lord Cunningham of Felling](#)

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Registered interests

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

Publications

The Committee's Reports are published on the internet at <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>

Committee Staff

The staff of the Committee are Christine Salmon Percival (Clerk), Helen Gahir (Adviser), Nadine McNally (Adviser), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant), Ben Dunleavy (Committee Assistant) and Paul Bristow (Specialist Adviser).

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 hlseclegscrutiny@parliament.uk.

Fifty Third Report

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

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

- Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
- Preparatory Action on Defence Research and European Defence Industrial Development Programme (EU Exit) Regulations 2019

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Climate Change Act 2008 (2050 Target Amendment) Order 2019

Date laid: 12 June 2019

Parliamentary procedure: affirmative

This draft Order, laid by the Department for Business, Energy and Industrial Strategy, proposes placing a duty on the Government to ensure greenhouse gas emissions reach net zero by 2050, a 100% reduction relative to 1990 levels, replacing the current target of reducing emissions by at least 80%. This follows a recommendation by the independent Committee on Climate Change. The proposal would strengthen the UK's commitment to contributing to international efforts to address global warming and climate change.

Given the significant economic and wider societal changes that will be required to meet the zero emissions target, the Committee believes that the Department should have acknowledged in the Explanatory Memorandum this far-reaching impact and summarised the work that is underway to assess the significant costs and wider implications of the transition.

This draft Order is drawn to the special attention of the House on the ground that it gives 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 this draft Order before Parliament alongside an Explanatory Memorandum (EM). The instrument proposes to amend the Climate Change Act 2008 (“the Act”) to introduce a legally binding target of net zero greenhouse gas emissions by 2050.
2. BEIS says that section 1 of the Act currently commits the UK to reducing greenhouse gas emissions by at least 80% by 2050, relative to 1990 levels. This is a key element of the UK's contribution to limiting the rise in global temperature to 2°C. The Department says that according to the latest annual statistics available, the UK's greenhouse gas emissions reduced by 42% between 1990 and 2017. This instrument proposes to amend section 1 so that the 80% target is replaced with a reduction of at least 100%, after adjustment for trading in carbon units and after any reductions through activities such as forestry.¹ BEIS says that under section 2 of the Act, the Secretary of State may amend the 2050 target if there have been significant developments in European or international law or policy, or in scientific understanding of climate change. The Government has committed to review the zero emissions target within five years “to confirm that other countries are taking similarly ambitious action”.²
3. The Department explains that the new target takes up a recommendation of the independent Committee on Climate Change (CCC) to the Government from May 2019 that the “UK should legislate as soon as possible to reach net-zero greenhouse gas emissions by 2050” and that the target could be

¹ The term “at least” reflects the fact that it is possible to overperform against the 100% target, by achieving net negative emissions.

² HL Deb, 12 June 2019, [Col 424](#).

“legislated as a 100% reduction in greenhouse gases (GHGs) from 1990 and should cover all sectors of the economy”.³

4. The EM sets out that the recommendation of the CCC responds to a request by the Government for the CCC to assess the implications of the Paris Agreement,⁴ the special report by the Intergovernmental Panel on Climate Change (IPCC)⁵ for the UK’s long-term emissions reduction targets, and whether the UK would need to take further action to meet the goals of the Paris Agreement.

Consultation

5. BEIS says that while the Act does not require public consultation, the Secretary of State must obtain and take into account the advice of the CCC and any views expressed by the Devolved Administrations. The Department says that the Devolved Administrations have welcomed the CCC’s recommendation and have not raised any concerns about this instrument.

Impact

6. The CCC’s report states that “a net-zero [greenhouse gas emissions] target can be met at an annual resource cost of up to 1–2% of GDP to 2050, the same cost as the previous expectation for an 80% reduction from 1990”. It also explains that:

“policy development has begun for many of the components needed to reach net-zero emissions: low-carbon electricity (which must quadruple its supply by 2050), efficient buildings and low-carbon heating (needed throughout the building stock), electric vehicles, carbon capture and storage (CCS), diversion of biodegradable waste from landfill, phase-out of fluorinated gases, increased afforestation and measures to reduce emissions on farms”, adding that “these policies must be urgently strengthened and must deliver tangible emissions reductions – current policy is not enough even for existing targets”.

7. In light of the CCC’s report, it is clear that extensive economic and wider societal changes will be needed to meet the net zero emissions target. However, the EM, at paragraph 12.1, states that the instrument has “no, or no significant, impact on business, charities or voluntary bodies”.
8. We asked the Department why the EM does not acknowledge the far-reaching implications of the zero emissions target. The Minister for Energy and Clean Growth, Chris Skidmore MP, told the Committee (see Appendix 1) that the instrument “does not place a direct burden, in itself, on any other body and any policies brought forward to support delivery of the target will be subject to the development of an impact assessment in the usual way”.

3 Committee on Climate Change, *Net Zero - the UK’s contribution to stopping global warming*, Committee on Climate Change (May 2019): <https://www.theccc.org.uk/wp-content/uploads/2019/05/Net-Zero-The-UKs-contribution-to-stopping-global-warming.pdf> [accessed 17 June 2019].

4 Signatories to the Paris Agreement agreed in December 2015 to keep the global temperature rise below 2°C and pursue efforts to limit the warming to 1.5°C. The UK ratified the Paris Agreement in November 2016.

5 The report from October 2018 sets out an up-to-date assessment of the science of the impacts and associated greenhouse gas emissions pathways for a global temperature rise of 1.5°C, compared to 2°C.

9. The Minister added that:

“the Government carries out full impact assessments when we set carbon budgets, which place legally binding caps on UK emissions over successive five yearly periods on a path to reaching our 2050 emissions reductions target. Carbon budgets 1 through to 5 (covering the period of 2008 to 2032) have already been set through secondary legislation with accompanying impact assessments. The sixth carbon budget (which will cover the period 2033–37) must be set by June 2021 and we will produce a full impact assessment ahead of introducing any legislation to set it.”

10. The Minister also explained that:

“A crucial issue, as the Committee on Climate Change (CCC) identify in their advice to the Government, is how we meet the costs of the transition in a fair and balanced way. That is why HM Treasury will be taking forward a review on how to achieve this transition in a way that works for households, businesses and public finances. This review will also consider the implications for UK competitiveness.”

11. The Department told us that “the Government is considering the timing and scope of the HMT review, and will provide an update in due course”.

*Conclusion*12. The Committee notes that the proposed zero emissions target would strengthen the Government’s commitment to tackling global warming and climate change and would put the UK into a leading position internationally in this policy area. Given the significance of what is proposed, we believe, however, that the Department should have acknowledged the wider-ranging economic and wider societal changes that will be needed to meet the new target in the EM. It would have been helpful for the Department to provide a summary of the work that is underway to assess the significant costs and wider impacts of the transition, to inform Parliament’s scrutiny of the instrument. **We are drawing the draft Order to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.****Draft Electricity Capacity (No. 2) Regulations 2019***Date laid: 5 June 2019**Parliamentary procedure: affirmative*

These draft Regulations propose changes to the Capacity Market, a key mechanism used to ensure security of electricity supply at times of peak demand in Great Britain. The proposed changes include a one-off Capacity Market auction to be conducted in early 2020 and allowing certain unsubsidised renewable technologies to participate in future capacity auctions. The instrument also proposes changes to the current credit cover requirements to avoid unnecessary duplication of credit cover. Given the complexity of the issues, we asked the Department for Business, Energy and Industrial Strategy for further information on the proposed changes and for the Explanatory Memorandum to be revised to reflect this additional material.

The House may wish to see a summary of what the Department is proposing, given the importance of the Capacity Market for security of electricity supply and continuing uncertainty as a result of judicial review proceedings of the Department’s actions and

an ongoing investigation by the European Commission into the State aid aspects of the Capacity Market.

The draft 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.

13. The Department for Business, Energy and Industrial Strategy (BEIS) has laid these draft Regulations before Parliament alongside an Explanatory Memorandum (EM). The instrument proposes changes to the way the Capacity Market operates, including during a ‘standstill period’ following the annulment of the scheme’s State aid approval by the General Court of the Court of Justice of the European Union (CJEU).

Background

14. The Capacity Market is a key part of the Government’s 2013 Electricity Market Reform, which was designed to decarbonise UK electricity supplies while maintaining security of supply and minimising costs to consumers. BEIS explains in the EM that the Capacity Market is one of the main mechanisms to ensure that there is enough capacity to meet peak demand for electricity at minimum cost to consumers in Great Britain.⁶
15. A key feature of the Capacity Market are competitive auctions which are usually held four years (T-4) and one year (T-1) before the capacity needs to be delivered. While the main T-4 auctions are used to secure the majority of the predicted capacity requirements, supplementary T-1 auctions secure further capacity in line with more accurate demand forecasts which are available closer to the delivery year. During these auctions, electricity generators, interconnectors and so-called Demand Side Response (DSR) providers⁷ make bids; if they are successful, they secure a capacity agreement which obliges them to generate electricity, or to reduce demand in the case of DSR providers, at times of system stress. Capacity providers, that is successful bidders that hold a capacity agreement, are then paid monthly for the capacity they have committed to make available during the delivery year if there is system stress. They face financial penalties if they fail to deliver this capacity when required to do so.
16. Capacity providers wishing to enter certain types of Capacity Market Unit (CMU) into a capacity auction are required to provide and maintain credit cover.⁸ According to BEIS, this obligation helps to ensure that applicants who bid for a capacity agreement based on a CMU that is not yet proven or constructed will deliver the capacity they have committed to deliver. If a capacity provider fails to discharge their obligations, they will be penalised by having their credit cover drawn down.
17. The EM explains that following a judgment of the General Court of the CJEU on 15 November 2018, which annulled the European Commission’s State

6 Separate arrangements exist in Northern Ireland which is part of the Single Electricity Market (SEM) for Ireland.

7 DSR providers enable consumers to shift their electricity usage to off-peak times when there is less demand on the electricity network.

8 A CMU is the unit of electricity generation or of DSR for which a Capacity Market agreement is awarded. The type of a CMU can vary widely, from a large nuclear, coal, or gas plant to a small-scale DSR business.

aid approval for the scheme on procedural grounds,⁹ the Capacity Market is currently in a ‘standstill period’, and that the European Commission (“the Commission”) is carrying out an investigation into the original State aid notification for the Capacity Market (as required by the Court) and is also appealing the judgment.

18. Sub-Committee A of the Secondary Legislation Scrutiny Committee drew an earlier statutory instrument, the Electricity Capacity (No. 1) Regulations 2019 (“the Standstill Period Regulations”), to the special attention of the House in March 2019. The Standstill Period Regulations introduced changes to the Capacity Market to keep aspects of it operational following the Court’s judgment.¹⁰ These arrangements are currently the subject of judicial review proceedings.¹¹
19. The key changes proposed in the draft Electricity Capacity (No. 2) Regulations 2019 are set out below.

Replacement T-3 auction

20. The instrument proposes to replace the T-4 auction for the 2022–23 delivery year, which was originally scheduled for February 2019 with a one-off three-year ahead (“T-3”) auction, with the aim of providing greater certainty to investors. BEIS expects this auction to be held in early 2020 to ensure security of electricity supply in winter 2022–23, and that a T-1 auction for the 2020–21 delivery year and a regular T-4 auction for the subsequent 2023–24 delivery year will also be held at that time.
21. BEIS explains that the Standstill Period Regulations suspended credit cover requirements for capacity agreements which existed on the date the CJEU’s judgment annulled the State aid approval (15 November 2018). This instrument proposes to extend this suspension of credit cover requirements to the three upcoming capacity auctions in early 2020 (see paragraph 20) until after State aid approval is obtained. In addition, the instrument proposes to adjust the credit cover requirements for a CMU that is entered into both the upcoming T-3 and T-4 auctions to allow applicants to meet their credit cover obligations collectively, rather than providing the full amount of credit cover which would otherwise be required for each auction. According to BEIS, this seeks to reduce the burden that parallel credit-cover requirements for two auctions might otherwise create.
22. The Department explains that under the current rules, companies which use certain types of renewable technologies, such as biomass, may participate in the Capacity Market if they do not receive subsidies for low carbon electricity generation through schemes such as the Renewables Obligation (RO), Contracts for Difference (CfD) or Feed-in-Tariffs (FIT). Companies which do benefit from such subsidies are not allowed to take part in the

9 [Case T-793/14](#): Tempus Energy Ltd, a DSR company, considered certain aspects of the Capacity Market scheme to disadvantage DSR providers in comparison to conventional electricity generators, arguing that the Commission should have investigated these concerns more thoroughly before reaching its State aid decision.

10 SLSC (Sub-Committee A), [20th Report](#), (Session 2017–19, HL Paper 313).

11 On 5 March 2019, Tempus Energy Ltd issued an application for Judicial Review of the actions the Government have taken to keep the Capacity Market operational during the standstill period, alleging, amongst other things, that running a capacity auction and continuing to operate aspects of the scheme during the standstill period breaches the UK’s obligations under State aid law.

Capacity Market “to prevent over-compensation through cumulation of multiple forms of state support”.

23. According to BEIS, there is evidence that certain renewable technologies which do not have access to the Capacity Market at present can operate now on a subsidy-free basis. This instrument proposes to enable these technologies to take part in the Capacity Market, while maintaining the exclusion of technologies which benefit from RO or CfD payments. The instrument proposes new requirements for capacity providers to declare any state subsidies they may receive, to avoid the risk of over-compensation and so that their Capacity Market payments can be adjusted where they do receive support. BEIS says that it will monitor whether this mechanism needs to be extended to additional subsidy schemes or types of CMU. The Committee notes the importance of the renewables sector in the context of the Government’s intention to achieve a target of net zero greenhouse gas emissions by 2050, relative to 1990 levels.

Consultation

24. The Department carried out a public consultation from 7 March to 4 April 2019 that received 42 responses from a range of stakeholders, including capacity providers, generators, interconnectors, suppliers, local authorities, NGOs and trade associations.¹² According to BEIS, the majority of respondents broadly supported the key proposals to replace the delayed T-4 auction with a T-3 auction in early 2020 and to allow certain renewable technologies to participate in the Capacity Market. The Department says that the instrument addresses concerns from prospective applicants about unduly burdensome credit cover for the simultaneous T-3 and T-4 auctions.

Monitoring and review

25. The Department explains that as required by the Energy Act 2013, a statutory review of the performance of the Capacity Market is currently underway. Following a call for evidence which was open from 8 August to 1 October 2018, a report of the review is due to be submitted to Parliament and to be published in summer 2019.

Timing

26. BEIS says that the proposed changes and the operational processes required for the forthcoming auctions in early 2020 will need to be in place in late July 2019.

Judicial Review and the Commission’s investigation

27. We asked the Department when it expects the Commission to complete its investigation of State aid approval and for an update on the judicial review proceedings. BEIS told us that:

“Re the Commission investigation, while timing is of course in their hands, ... we continue to expect a decision before next winter and think it very improbable that it will be delayed into 2020.

12 Department for Business, Energy and Industrial Strategy, *Proposals for further amendments to the Capacity Market. Response to consultation* (May 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/805554/capacity-market-further-amends-consultation-response-2019.pdf [accessed 17 June 2019].

On the Judicial Review, we are awaiting a decision from the UK Court as to when the hearing will take place, most probably in October (although possibly in July) 2019. Over 40 individual capacity providers have chosen to formally participate in the JR as Interested Parties. In the meantime, we and Tempus (who brought the JR) have filed our detailed grounds and evidence, and we are now waiting for Interested Parties to do so.”

Conclusion

28. Building on the Standstill Period Regulations that were laid before Parliament in March, these draft Regulations propose further changes to the Capacity Market. Given the complexity of the issues, we asked the Department for further information and for the EM to be revised to reflect this additional material.
29. The Committee notes that there continues to be some uncertainty regarding the operation of the Capacity Market in the context of the Commission’s investigation of its State aid aspects and the judicial review proceedings currently underway in relation to the Government’s actions during the standstill period. **We draw the draft Regulations 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.**

Draft Safeguarding Vulnerable Groups Act 2006 (Specified Scottish and Barred Lists) Order 2019

Date laid: 20 May 2019

Parliamentary procedure: affirmative

*This draft Order implements a statutory restriction that the barring lists of England and Wales and of Scotland should not duplicate each other. Currently the Disclosure and Barring Service does not have the technical capability for the automatic exchange of information with Scotland. Whilst the Committee has no information about the efficiency or effectiveness of the current cross-checking system, we have some concerns that it appears to depend on the vigilance of officials who operate the lists. A new IT system is planned to make such cross-checks automatically. The Home Office told us that, although the current IT contract has been terminated it has provision in place until January 2020 to allow for procurement and transition to new suppliers. However, it could not offer a clearer indication of when the capability to undertake automatic checking of Scotland’s barred list will be in place. **The House may wish to seek assurance about what mitigation is in place to offset any risk that information about individuals on a barred list in one jurisdiction may inadvertently fail to be shared with another jurisdiction. The House may also wish to seek further information about when and how the new IT system will achieve compliance with the requirements of section 74 of the Protection of Freedoms Act 2012.***

This draft Order is drawn to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.

Background

30. The Safeguarding Vulnerable Groups Act 2006 (“the 2006 Act” or SVGA) sets out the arrangements under which the Disclosure and Barring Service (DBS) may bar individuals from certain roles which involve working with children or vulnerable people in England and Wales. It includes provisions

setting out the relationship between the barred lists maintained under devolved legislation in Scotland and Northern Ireland. Section 74 of the Protection of Freedoms Act 2012 (“the 2012 Act”) amended the 2006 Act to place restrictions on duplication with Scottish and Northern Ireland barred lists. The purpose of this Order is to implement that restriction with regard to Scotland.

What counts as duplication?

31. In material supplementary to the Explanatory Memorandum (EM) laid with the Order, the Home Office clarified that this instrument would only prevent an entry on the England and Wales list for the same specific offence:

“Paragraphs 6 and 12 of Schedule 3 to the SVGA will restrict the DBS from listing an individual who has already been considered for barring in Scotland on a particular ground and where there is no new evidence. These paragraphs would not restrict the DBS from listing the individual in relation to new matters or evidence, for example if a subsequent similar offence was committed or any additional information came to light which had not been considered by Disclosure Scotland.”

32. The Home Office explained that the restriction on duplication under the 2012 Act arose from concern that “double barring” might create a further burden on individuals who wished to challenge their inclusion on the barred list, as they would need to pursue separate appeal and review processes in each jurisdiction. Duplication also gives rise to the potential that, if an individual’s challenge was successful in one jurisdiction but not another, he or she would remain barred across the whole UK.

Delay

33. The Committee asked why, given that the restriction on duplication was introduced in 2012, it was only now being implemented. The Home Office said that responsibility for the DBS was changed to the Home Office following enactment of the 2012 Act and the delay in bringing this measure forward was an oversight.

Technical capacity

34. Paragraph 6.4 of the EM says: “Section 74 [of the 2012 Act] is not yet commenced as the technical capacity is not yet in place to enable the DBS to implement the provisions”. The Committee raised concerns about this. The Home Office responded:

“The DBS has access to the barred lists of all three jurisdictions when issuing an Enhanced Criminal Record Certificate with barred list check. The DBS maintains the children’s and adults’ barred lists in respect of England and Wales and Northern Ireland. The DBS operates a reciprocal agreement with Disclosure Scotland to share barred list information for the purpose of producing a certificate.

The DBS do not currently have the technical capability in their barring systems to implement the automatic exchange of information necessary to implement fully the new paragraphs 5A and 11A. However, the DBS can request information from Disclosure Scotland when they believe an individual under consideration has a Scottish connection. ... This

matter will be considered once the DBS have finalised arrangements for their new IT supplier and the programme of change.

DBS have recently terminated their contract with TCS but issued an extension notice until January 2020, to ensure continuity of services whilst the procurement process transitions to new suppliers. Further changes to the programme cannot be planned until the new supplier is in place. This matter will be considered as part of that change programme. Therefore, we cannot give a clearer indication of when the capability to undertake automatic checking of Scotland's barred list will be in place."

35. The Committee was further concerned by the statement that "the DBS can request information from Disclosure Scotland when they believe an individual under consideration has a Scottish connection." This opens up the possibility that an individual might be missed if he or she had offended in Scotland but had no obvious or recent connection with that country. Although the system is manual, the Home Office offered some assurance:

"The DBS has a robust process for identifying that an individual has a Scottish connection. The DBS takes into account both the individual's address history and information relating to a Police National Computer (PNC) record as well as any other information available. Previous offending in Scotland will be recorded with a Police Scotland identifier on the PNC and will clearly identify a Scottish connection for these purposes."

Conclusion

36. The Committee has no information about the efficiency or effectiveness of the current system is, but is concerned that, without the technical capacity for an automatic exchange of information and the consequent reliance on the vigilance of those who operate the lists, there may be a risk that information about individuals on a barred list in one jurisdiction may inadvertently fail to be shared with the other jurisdiction. **The House may wish to seek assurance about what mitigation is in place to offset any risk that information may be overlooked.**
37. The arrangements for the comparison of the various barring lists are redolent of the concerns we raised in relation the Adoption Register¹³ and the Managed Migration of Universal Credit claimants.¹⁴ In each case, delivering the policy depended significantly on the commissioning of a new IT system. The Home Office told us that, although the current contract has been terminated, it has provision in place until January 2020 to allow for procurement and transition to new suppliers, but could not offer "a clearer indication of when the capability to undertake automatic checking of Scotland's barred list will be in place" (see para 34 above). **The House may wish to seek further information about when and how the new IT system will be able to achieve compliance with the requirements of section 74 of the Protection of Freedoms Act 2012.**

13 Children's Homes etc. Inspection Fees, Childcare Fees, Adoption and Children Act Register (Amendment) Regulations 2019 ([SI 2019/835](#)), *49th Report*, Session 2017–19 (HL Paper 366).

14 [Draft Universal Credit \(Managed Migration\) Regulations 2018](#), see para 34 of SLSC (Sub-Committee B) *8th Report* (Session 2017–19 HL Paper 244).

INSTRUMENTS OF INTEREST

Draft Misuse of Drugs Act 1971 (Amendment) Order 2019

38. This draft Order narrows the previous definition of synthetic cannabinoids because it has had the effect of requiring compounds to be licenced as Class B drugs that are not of concern. The Advisory Council on the Misuse of Drugs (ACMD) has recognised that their 2016 advice has had unintended consequences and this Order amends the generic definition of “third generation” synthetic cannabinoids by replacing the term “univalent” with a defined number of substituents (alkyl, alkenyl, alkoxy, halide, haloalkyl, cyano, phenyl, benzyl and substituted phenyl and benzyl groups).¹⁵ This will reduce the number of compounds unintentionally captured by the generic definition, estimated by industry at more than 40,000 substances, while retaining those that have been found to cause harms. The Home Office states that the impact of the change is limited to the pharmaceutical and healthcare research sector. The revised definition does not alter the position for Class A drugs or the licensed medicines previously excluded.

Merchant Shipping (Prevention of Air Pollution from Ships) (Miscellaneous Amendments) Regulations 2019 (SI 2019/940)

39. These Regulations implement changes that have been made to the International Convention for the Prevention of Pollution from Ships which are intended to improve the energy efficiency of ships. The Committee has previously expressed concern about the backlog in maritime legislation¹⁶ and has had correspondence with the Minister about the extent of the current backlog.¹⁷ The Department for Transport said that “The Department and the Maritime and Coastguard Agency are aware of the problem and have a programme in place to implement all outstanding IMO measures by mid-2020, at the latest.” However, the Committee remains disappointed that there is a delay in addressing the backlog and has written to the Minister again to express its concerns.

Occupational Pension Schemes (Investment and Disclosure) (Amendment) Regulations 2019 (SI 2019/982)

40. A revised European Union Directive, the Shareholders’ Rights Directive, commonly known as ‘SRD II’, encourages investors to adopt a more long-term focus in their investment strategies, not only considering social and environmental issues, but also being transparent about how they invest and approach their engagement as shareholders. The Directive has a transposition deadline of 10 June 2019. These Regulations, however, laid by the Department for Work and Pensions (DWP) do not come into force until later in the year. There is therefore a risk of infraction for not implementing the provisions in accordance with the deadline. DWP explained to us that:

“DWP had to balance the risk of infraction against the operational burden on industry and also align them with changes brought in by the

15 Advisory Council on the Misuse of Drugs, *Letter to Victoria Atkins MP, Parliamentary Under Secretary of State for Crime, Safeguarding and Vulnerability. Re. Legitimate use of controlled drugs: research and healthcare* (22 December 2017): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/670663/ACMD_Letter_-_Legitimate_use_of_controlled_drugs_research_and_healthcare_22_Dec_17.pdf [accessed 19 June 2019].

16 *20th Report* (Session 2017–19 HL Paper 82).

17 *34th Report* (Session 2017–19 HL Paper 157).

2018 Regulations that are already in train and meet some of the SRD II requirements. This could amount to a technical breach of the EU Directive and places the UK at some risk of the EU Commission bringing infraction proceedings for a failure to implement by the deadline.

Consequently, the phased implementation approach does carry a slight infraction risk but DWP judges that to be low given that the UK's commitment to, and timetable for, making the necessary changes, will already have been legislated for before the transposition deadline. We had similar issues with the implementation of a previous EU Directive (IORP II), in January this year, which was more controversial than SRD II and infraction action has not been launched against the UK despite some Articles still to be transposed."

Further Education Loans and the Education (Student Support) (Amendment) Regulations 2019 (SI 2019/ 983)

41. In the Explanatory Memorandum (EM) to this instrument, the Department for Education (DfE) notes that the Further Education Loans Regulations 2012 (SI 2012/1818) ("the 2012 Regulations") provide for tuition fee support for students undertaking designated further education courses on or after 1 August 2013. These tuition fee loans (known as "Advanced Learner Loans") are available for students who are aged 19 and over and studying designated qualifications at Level 3 (equivalent to two A-Levels) to Level 6.¹⁸ This instrument amends the 2012 Regulations by inserting a new power to cancel a student's Advanced Learner Loans liability: a new Regulation 25 provides the Secretary of State with a power to cancel a student's liability to repay some or all of a loan when certain circumstances apply. The EM states:

"... Those circumstances are that an eligible student has taken out a fee loan in relation to a designated further education course at an institution, but the course to which the fee loan relates is no longer available at the institution and the student has applied in writing to the Secretary of State for cancellation. The Secretary of State must have due regard to the student's circumstances when considering a cancellation ...".¹⁹

42. DfE notes that Regulation 25(3) sets out factors that the Secretary of State may take into account when deciding whether it is appropriate to cancel all or part of a loan; and that an example of the potential application of the power would be when a provider has gone into liquidation and the student is not able to continue a course with a different provider.²⁰ Additional information provided by DfE notes:

"The Student Loans Company processed over 337,000 Advanced Learner Loans applications up to the end of the 2017/18 academic year. The Education and Skills Funding Agency, together with the Student Loans Company, has identified around 800 students with Advanced Learner Loans to date that may have had their study disrupted due to the actions of their provider. These students have been provided with details of providers where they may be able to continue their studies

18 [Explanatory Memorandum to the Further Education Loans and the Education \(Student Support\) \(Amendment\) Regulations 2019](#), para 6.1.

19 EM, para 6.2.

20 *Ibid.*

with minimal disruption. Some have continued study elsewhere as a result and others may be making plans to do so”.²¹

43. The instrument also corrects some technical aspects of the means tests applicable to dependants’ grants available to higher education students.²² DfE states “This will ensure that higher education students receive the correct entitlement to dependants’ grants for the 2019/20 academic year”.²³

21 Further additional information is set out at Appendix 2.

22 EM, para 3.1. Para 2.2 of the EM notes that the Regulations amend the Education (Student Support) Regulations 2011 ([SI 2011/1986](#)) by making certain technical corrections to the formulae for the new dependants’ grants means tests inserted by the Education (Student Fees, Awards and Support etc.) (Amendment) Regulations 2019 ([SI 2019/142](#)).

23 EM, para 2.2.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019

Misuse of Drugs Act 1971 (Amendment) Order 2019

Draft instruments subject to annulment

Salford (Electoral Changes) Order 2019

Instruments subject to annulment

- | | |
|-------------|--|
| SI 2019/940 | Merchant Shipping (Prevention of Air Pollution from Ships) (Miscellaneous Amendments) Regulations 2019 |
| SI 2019/967 | Armed Forces (Miscellaneous Amendments) Regulations 2019 |
| SI 2019/969 | EU Export Credits Legislation (Revocation) (EU Exit) (No. 2) Regulations 2019 |
| SI 2019/974 | Tollesbury and Mersea (Blackwater) Fishery Order 2019 |
| SI 2019/980 | Intra-EU Communications (EU Regulation) Regulations 2019 |
| SI 2019/982 | Occupational Pension Schemes (Investment and Disclosure) (Amendment) Regulations 2019 |
| SI 2019/983 | Further Education Loans and the Education (Student Support) (Amendment) Regulations 2019 |
| SI 2019/985 | Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2019 |
| SI 2019/989 | Export Control (Amendment) Order 2019 |
| SI 2019/995 | Independent Educational Provision in England (Inspection Fees and Savings Provisions) Regulations 2019 |

APPENDIX 1: DRAFT CLIMATE CHANGE ACT 2008 (2050 TARGET AMENDMENT) ORDER 2019

Letter from Chris Skidmore MP, Minister of State for Energy and Clean Growth, to the Rt Hon. Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee

Thank you for our conversation yesterday, and for your prompt consideration of our request to expedite the Secondary Legislation Scrutiny Committee's review of the draft Climate Change Act 2008 (2050 Target Amendment) Order 2019.

As agreed, I have set out below the rationale for why we have not provided an impact assessment with this draft order.

The draft order laid on Wednesday places a duty on the Government to ensure emissions reach net zero by 2050, a 100% reduction relative to 1990 levels, rather than the current target of reducing emissions by at least 80%.

It does not place a direct burden, in itself, on any other body and any policies brought forward to support delivery of the target will be subject to the development of an impact assessment in the usual way.

In addition, the Government carries out full impact assessments when we set carbon budgets, which place legally binding caps on UK emissions over successive five yearly periods on a path to reaching our 2050 emissions reductions target. Carbon budgets 1 through to 5 (covering the period of 2008 to 2032) have already been set through secondary legislation with accompanying impact assessments. The sixth carbon budget (which will cover the period 2033-37) must be set by June 2021 and we will produce a full impact assessment ahead of introducing any legislation to set it.

A crucial issue, as the Committee on Climate Change (CCC) identify in their advice to the Government, is how we meet the costs of the transition in a fair and balanced way. That is why HM Treasury will be taking forward a review on how to achieve this transition in a way that works for households, businesses and public finances. This review will also consider the implications for UK competitiveness.

The CCC's detailed and analytically rigorous report has shown that this target is now feasible, deliverable, and can be met within the same cost envelope (a resource cost of 1-2% of GDP in 2050) as the 80% target when it was set in 2008. As the CCC point out, there are many benefits to a net zero target – such as the potential for economic growth through leadership in low carbon sectors, reduced air pollution, wider environmental benefits, and reducing the risks of catastrophic climate change – which could partially or fully offset these costs.

14 June 2019

**APPENDIX 2: FURTHER EDUCATION LOANS AND THE
EDUCATION (STUDENT SUPPORT) (AMENDMENT) REGULATIONS
2019 (SI 2019/983)**

Additional Information from the Department for Education

Q: Is there any data about how many students might be affected in the future?

A: The Education and Skills Funding Agency introduced enhanced provider management arrangements as a response to issues with a small number of providers. Those included but are not limited to: improved data management with the Student Loans Company to help identify issues early, better processes to manage growth of loans-funded provision, and the prohibiting of ‘sub-contracting’ meaning a better line of sight of delivery and student experiences. We consider these will have reduced the risk that students will be in this position in future, but it is not possible to provide a forecast of the use of the power in future as it will depend on the circumstances.

11 June 2019

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 18 June 2019, Members declared the following interests:

Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019

Lord Chartres

Associated with Green Alliance

Attendance:

The meeting was attended by Lord Chartres, Lord Cunningham of Felling, Lord Faulkner of Worcester, Baroness Finn, Lord Haskel, Lord Janvrin, Lord Kirkwood of Kirkhope, Baroness O'Loan, Lord Sherbourne of Didsbury and Lord Trefgarne.