HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

20th Report of Session 2017–19

Merchant Shipping (Prevention of Pollution from Noxious Liquid Substances in Bulk) Regulations 2018

Merchant Shipping (International Load Line Convention) (Amendment) Regulations 2018

Free School Lunches and Milk, and School and Early Years Finance (Amendments Relating to Universal Credit) (England) Regulations 2018

Includes 7 Information Paragraphs on 8 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.

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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.
Twentieth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Merchant Shipping (Prevention of Pollution from Noxious Liquid Substances in Bulk) Regulations 2018 (SI 2018/68)

Date laid: 15 February 2018

Parliamentary procedure: negative

Merchant Shipping (International Load Line Convention) (Amendment) Regulations 2018 (SI 2018/155)

Date laid: 15 February 2018

Parliamentary procedure: negative

Summary: These two instruments implement part of a backlog of 40 items of international maritime legislation and enable the use of an ambulatory reference mechanism to implement future legislation in their reflective subject areas. While accepting that commercial incentive is a strong motivation for ship operators to comply with the law, the House may wish to ask the Minister about the Department for Transport’s (DfT) failure, for more than ten years, to ensure that the UK authorities have up-to-date powers to prosecute when a breach of safety law is identified.

Material from the DfT, set out in this Report, indicates that the gaps in relation to those instruments are comparatively minor. However, the DfT’s own Impact Assessment points out that, as a signatory to international maritime conventions, if the UK is found to have failed to comply with its obligations it might lose its “low risk status”, which would increase the frequency of inspections for UK flagged vessels in foreign ports and hence increase costs to UK industry. While these Regulations are the start of the DfT’s attempt to prevent that outcome by reducing the backlog, we are concerned that deficiencies recognised in time to insert provision for an ambulatory referencing mechanism in the Deregulation Act 2015 are only now starting to be addressed, almost three years after that Act was passed. We intend to write to the Minister to enquire how significant the overall backlog of maritime legislation is, and how long DfT expects to take to put its legislation in order.

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. These Regulations have been laid by the Department for Transport (DfT) under the Merchant Shipping Act 1995, and each is accompanied by an Explanatory Memorandum (EM) and an Impact Assessment (IA). In each case, the legislation seeks to implement a backlog of international maritime law and to ensure that future legislative amendments made by the International Maritime Organisation (IMO) will operate directly in UK law by use of an “ambulatory reference” (see paragraphs 14 and 15 below).
2. A submission has been received from a member of the public, Mr Richard Greenhill, expressing concerns about the long delays in implementing this legislation. It is published in full on our website alongside DfT’s responses to various questions posed (“the supplementary material”).

Policy content

3. **SI 2018/68** (“the NLS Regulations”) update Annex II of “MARPOL”, the main international convention for the prevention of pollution of the marine environment by ships from operational or accidental causes. Annex II of MARPOL entered into force on 6 April 1987 and lays down specific requirements for the construction and operation of ships carrying Noxious Liquid Substances (“NLS”) in bulk. These Regulations consolidate previous amendments and, among other things, introduce a new pollution categorisation system with criteria for assigning products to it. They also revise rules around the cleaning of tanks and discharge of NLS into the sea. DfT state that UK shipping already operates to these standards and the change will have little or no commercial impact on them.

4. **SI 2018/155** (“the Load Line Regulations”) implement the International Convention on Load Lines (“ICLL”) 1966, as modified by the Protocol of 1988 relating to the Convention (“IPLL”) and all subsequent amendments, into domestic law. Load lines are based on the historic “Plimsoll Line”, and indicate the maximum safe loading of a ship in specific conditions. The Regulations aim to reduce the risk of sinking due to overloading, instability and breach of watertight integrity, and include provision for the survey, certification and inspection of ships for the purpose of ascertaining compliance with the Regulations. With certain limited exceptions, for example warships, the Regulations apply to all UK ships of 24 metres or more and to all foreign ships of 24 metres or more while in UK waters.

A major backlog

5. These instruments implement elements of a large backlog of international maritime legislation. The NLS Regulations implement changes that came into effect on 1 January 2007. The Load Line Regulations make all necessary changes since 1998. In the supplementary material DfT acknowledges the backlog but states that:

“[DfT] can give assurance that it does not allow this to make a material difference to UK ship standards, which are among the highest in the world. ...The maritime sector is highly regulated and over the last 20 years the Secretary of State for Transport has made 250 pieces of UK maritime secondary legislation. This number comprises the implementation of international obligations and EU legislation as well as the development of domestic legislation. The legislative programme has been prioritised according to safety, commercial and legislative need.”

Deficiencies in the NLS regime

6. Gaps have been left by this selective approach, although, according to DfT’s supplementary material, they have not made a difference in the number of prosecutions. However, shipowners’ compliance appears to have been based

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on commercial interest so that their ships can sail freely between ports, rather than free enforcement.

7. DfT states that:

“when comparing MARPOL Annex II, pre-2007 with the amendments post 2007, the key change has been to the re-categorisation and classification of chemicals carried by chemical ships internationally. The only other change has been to the tightening of the quantity of noxious liquid substances remaining in the tank after discharge, from 100 litres to 75 litres. All other requirements from the previous MARPOL Annex II remain in place, with some updating...the Department has not identified any cases where there was no prosecution because the 1996 Regulations were not up to date. ... The Department has identified that out of date references in the [current] 1996 Regulations could pose a risk to a successful prosecution in a narrow range of cases where the terminology for product categorisation or classification has changed internationally. In practice this issue has not arisen and the matter has not therefore been tested in law. The 2018 Regulations will close this potential gap.”

Deficiencies in the Load Line regime

8. The position in relation to the Load Line Regulations is more concerning. Paragraph 2.5 of the IA to the Load Line Regulations states: “While the ILLC/ILLP is not transposed into UK law the UK does not have the legal authority to certify its own ships to the relevant standards. Failure to do so makes it much more likely that a UK ship will be detained in a non-UK port for non-compliance, leading to expensive delays and inconvenience for UK flagged ships trading internationally.”

9. Paragraph 2.6 of that IA says: “While the ILLC/ILLP is not transposed into UK law the UK is unable to take enforcement action against non-compliant ships because it does not have legal authority to require compliance. As most UK owners and operators comply as a matter of course with ILLC/ILLP requirement in order to continue their global operations, the UK must be able to enforce the same standards against non-UK ships in UK ports, to ensure that compliant UK ships are not disadvantaged.”

10. DfT’s initial response to a question about this was:

“The UK’s power to certificate its ships to international convention standards is based on UK domestic law (ie which reflects the conventions as last transposed). For load lines, the Secretary of State has approved Assigning Authorities to assign the load lines and issue certification. The Assigning Authorities are commercial Classification Societies, and in practice they apply the latest international standards. Shipowners are keen to comply with the latest standards, as failure to do so will result in non-compliance in port State Control inspections when they visit foreign ports.”

11. When pressed on whether the UK authorities could or could not certify and enforce the load line for ships, DfT responded:

“The legal basis for the certification of UK ships is contained in the Merchant Shipping (Load Line) Regulations 1998 which implement the
comprehensive survey and certification regime provided for by the Load Line Convention... Certification can currently only be carried out under the 1998 Regulations to the standards implemented by those Regulations. The same certification regime is contained in the 2018 Regulations and will be used to certify ships to the amended international standards when the Regulations come into force but until the Regulations come into force the UK does not have legal authority to certify ships to the amended international standards.” [emphasis added]

12. This statement is not as bad as it looks because, as the supplementary material made clear, this inability to enforce is limited to certain higher standard elements on newer ships:

“The UK currently has powers under the Merchant Shipping (Load Line) Regulations 1998 to prosecute UK ships wherever they are and non-UK ships in UK territorial waters for breaches of the standards ... as last transposed into UK law. Therefore, if the load line is submerged, demonstrating a ship is overloaded, UK authorities can bring a prosecution. The 2018 Regulations contain the same powers to bring prosecutions for breaches of the Regulations. The reference in the Load Line Impact Assessment to enforcement action should be understood in the context of bringing prosecutions under a new set of Regulations which contain marginally higher standards for newer ships.

These incremental improvements to safety are made on a continuous basis, and generally apply to ships built after a certain date. This does not mean the older ships are unsafe - it just means that improvements are reflected in new vessels. For instance, the most significant amendments to the Load Line Convention require that newer ships are built with additional strengthening to hatch covers and portable beams compared with older ships.”

13. The House may wish to consider whether the DfT’s selective approach to implementing international legislation “prioritised according to safety, commercial and legislative need” is acceptable, if the implication is that certain international obligations are not transposed within a reasonable time.

Ambulatory References

14. We acknowledge that DfT have been aware of their own deficiencies for some time and have sought a mechanism to prevent future difficulties by using an “ambulatory reference”. This mechanism enables any amendment to the specified law or convention to come automatically into force in UK law at the same time as it takes effect internationally. Once agreed no further regulations on these matters will be laid before the UK Parliament for discussion and approval. In the EM however the DfT undertakes to publicise any such changes in advance of their coming into force date by means of a Parliamentary Statement to both Houses of Parliament and a Merchant Shipping Notice.

15. This mechanism was enabled specifically for international instruments in the maritime sector by section 106 of the Deregulation Act 2015 and came into effect on 26 May 2015. These two sets of Regulations are the first to use the capability, but have not been made until almost three years after it was acquired. We note that paragraph 2.7 of the IA to the Load Line Regulations
mentions a backlog of over 40 items of international maritime legislation that have not been transposed. **The House may wish to press the Minister on why addressing the backlog has taken so long.**

**Who makes the decisions?**

16. Mr Greenhill suggests that the use of this ambulatory reference mechanism will in effect delegate the UK’s law-making powers to a supranational body (namely a two-thirds majority of the Maritime Safety Committee of the IMO which is empowered to amend maritime conventions).

17. In its supplementary material DfT responded:

“UK law-making powers on maritime safety have not been delegated to the IMO or any other international body, but are fully retained in Westminster, where they reside as a reserved matter. Any convention amendment proposed in the IMO is the subject of considerable debate and close scrutiny. The UK also has strong influence in the IMO. The UK position is always determined in consultation with industry and union representatives.

Further, for amendments which have been adopted by the IMO, the amendment procedure in a convention will allow for objections and that is the case even with the tacit acceptance procedure (which generally requires two-thirds of members not to object in order for an amendment to come into force).

The UK may also make a declaration that it does not accept a proposed amendment or lodge a reservation at the IMO in respect of the amendment to ensure that the amendment does not come into force in relation to the UK (pre-EU exit, this continues to be subject to EU-alignment in matters of EU competence). This also means that an amendment cannot come into force in the UK by way of an ambulatory reference provision. However, in practice, this is expected to happen rarely, if ever, because the UK is generally supportive of safety enhancements.”

18. Although DfT states that the UK position is always determined in consultation with industry and union representatives, we note this does not necessarily mean with their agreement. The consultation process described in paragraph 8.3 of EM on the Load Line Regulations says:

“two of the three responses, including the UK Chamber of Shipping, the main representative body for shipowners in the United Kingdom, were supportive of the use of ambulatory referencing and welcomed the reduction in bureaucracy and increased speed of implementation. The National Union of Rail, Maritime and Transport Workers (RMT) was not supportive due to concerns about the uncertainty about what future amendments would be agreed.”

**Conclusion**

19. Although DfT states that UK-flagged ships are operating to the enhanced standards, their compliance appears to be because those ships would not otherwise be accepted at foreign ports which do fully enforce IMO legislation. The reciprocal position for enforcement for foreign ships in UK waters appears to be adequate but not complete.
20. While accepting that commercial incentive is a strong motivation for ship operators to comply with the law, the House may wish to ask the Minister about DfT’s failure, for more than ten years, to ensure that the UK authorities have up-to-date powers to prosecute when a breach of safety law is identified.

21. The DfT’s Impact Assessment on the Load Line Regulations (paragraph 2.7) points out the potential wider consequences of this failure:

“The UK, as a signatory to the IILC/IILP, has an obligation to implement any changes. Given the backlog of over 40 items of international maritime legislation that have not yet been transposed there is a danger that the UK’s failure to comply with its obligations will be identified through the mandatory IMO Member Statue Audit Scheme which entered into force at the start of 2016. A poor audit performance increases the possibility of the UK losing its “low risk status”, this would increase the frequency of inspections for UK flagged vessels in foreign ports and hence increase the cost to UK industry.”

22. Paragraph 2.8 of that IA goes on to state “overall there is a pressing need for Government intervention to provide for an alternative, simplified approach to help speed up implementation and/or reduce the resources required”. That mechanism was given to the DfT under the Deregulation Act 2015 and yet these Regulations, the first proposing to use an ambulatory reference, come almost three years after that Act was passed. We intend to write to the Minister to enquire how significant the overall backlog of maritime legislation is, and how long DfT expect to take to put their legislation in order.


Date laid: 7 February 2018

Parliamentary procedure: negative

Summary: These Regulations amend the eligibility criteria for free school lunches and milk and the early years pupil premium (“FSM” and “EYPP”). Hitherto, during the rollout of Universal Credit, the list of entitling benefits for FSM and EYPP included Universal Credit, in order to ensure that children of families moving on to Universal Credit in the early pilot areas would continue to be entitled to FSM and EYPP. The Department for Education is now introducing a net earned income threshold of £7,400 per annum under Universal Credit: to be eligible for FSM and EYPP, a household must have an annual net earned income equivalent to £7,400 at the point of claim.

The Department has said that the new criteria are intended to ensure that free school lunches and milk and the early years pupil premium continue to be targeted at the families that need them most. It has confirmed that it intends to continue publication of its annual analysis of “Schools, pupils and their characteristics”. We look to the Department to make best use of this analysis, in order to monitor the impact of the changes and to demonstrate that its targeting does not miss children who would otherwise face avoidable disadvantage.
We draw these 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.

23. The Department for Education (DfE) has laid these Regulations with an Explanatory Memorandum (EM). In the EM, DfE says that the Regulations amend the eligibility criteria for free school lunches and milk (FSM) and the early years pupil premium (EYPP).² ³

24. During the early stages of the rollout of Universal Credit (UC), UC was added to the list of entitling benefits for FSM and the EYPP, in order to ensure that children of families moving on to UC in the early pilot areas would continue to be entitled to FSM and the EYPP. DfE is now introducing a net earned income threshold of £7,400 per annum under UC: to be eligible for FSM and EYPP, a household must have an annual net earned income equivalent to £7,400 at the point of claim. The Department says that a typical family earning around this threshold, depending on their exact circumstances, would have a total annual household income of between £18,000 and £24,000 once benefits were taken into account.

25. DfE states that the new eligibility criteria are intended to ensure that FSM and the EYPP continue to be targeted at the families that need them most, and that they are consistent with the way in which the Department for Work and Pensions (DWP) and other Government Departments have established new criteria for other “passported” benefits.

Consultation

26. DfE consulted on changing the entitling criteria for FSM and the EYPP over eight weeks to 11 January 2018. In the EM, the Department says that 576 responses were received “alongside 8,421 emails in response to a campaign run by the Children’s Society primarily asking the Government to extend eligibility for FSM to all children in families on UC”. DfE comments that this was “a different proposition to that which was consulted on”. 56% of the 560 respondents to the specific question agreed with the proposed net earnings threshold of £7,400 per annum. DfE adds that “of those who disagreed, a significant proportion cited the Children’s Society’s ambition to extend entitlement to FSM to all children in households on UC”. DfE has published a summary of consultation responses.⁴

Impact of changes

27. We put a number of questions to DfE about the Regulations. We asked how many children benefited from FSM under the previous benefits system; whether DfE still estimated that by 2022 around 50,000 more children would benefit from FSM; and, in each year to 2022, whether more children would benefit from FSM than under the previous benefits system.

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² EYPP funding is allocated to local authorities which are required to distribute the funding to early years providers (such as school or day nurseries or childminders) in respect of eligible children.  
³ A Written Statement announcing these changes was made on 7 February 2018 (HCWS459).  
28. DfE has told us that, last year, around 1.1 million of the most disadvantaged children were eligible for and claimed a free meal. The Department still estimates that by 2022 around 50,000 more children will benefit from a free school meal compared to the previous benefits system, and has provided a note to explain the methodology used in its analysis (which we are publishing as Appendix 1). That note refers to DfE’s annual publication “Schools, pupils and their characteristics”, which includes statistics on free school meals. DfE estimates that, in each year to 2022, more children will benefit from free school meals compared to the previous benefits system. As the explanation of DfE’s methodology shows, the Department does not predict actual pupil population numbers, but estimates the change in the eligible cohort numbers between the previous benefits system and the proposed system.

29. We noted that the February 2018 summary of consultation responses contained a section on the impact of the new income threshold on work incentives, which acknowledged that “some respondents believed that our threshold might discourage some households from increasing their income through work”. The Department’s response stated that “in the longer term, introducing a threshold remains the most practical approach. We must have a clear system that is realistic for school and local authorities to deliver.” We asked DfE whether it accepted that there was a risk that the threshold would be a disincentive to increasing income from work, but considered that this risk was outweighed by practical considerations.

30. DfE has told us that it would not accept this, and that the Social Security Advisory Committee (SSAC) has found that there is no rigorous research evidence to show that the provision of passported benefits acts as a work disincentive. The SSAC also found that a substantial proportion of people do not make decisions about whether to take work or remain on benefits on purely economic grounds; other social and attitudinal factors are important. DfE told us that these factors, combined with the well-established links between employment and improved health and wellbeing, meant that there would still be considerable incentives for households to increase their working hours.

31. DfE has also said that its new criteria are consistent with the approach that other Government Departments have applied to determining eligibility for other passported benefits that flow from Universal Credit eligibility. DfE’s net earnings threshold is comparable to the approach taken for free school meals in Scotland, where a net earnings threshold of £610 per month (equating to £7,320 per annum) was introduced in August 2017.

Conclusion

32. In introducing these Regulations to amend the eligibility criteria for free school lunches and milk and the early years pupil premium, the Department for Education has said that the changes are consistent with new criteria for other “passported” benefits that have been set by other Government Departments as Universal Credit has been rolled out. DfE’s consultation on changing the eligibility criteria showed that 56% of the 560 respondents

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6 Welfare Reform (Consequential Amendments) (Scotland) Regulations 2017 (SI 2017/182)
to the specific question agreed with the proposed net earnings threshold of £7,400 per annum, although the Department acknowledges that it also received 8,421 emails, which it ascribes to a campaign run by the Children’s Society, calling for the extension of eligibility for free school lunches and milk to all children in families on Universal Credit. The support given to the Children’s Society campaign shows the strength of feeling on this issue.

33. The Department has said that the new criteria are intended to ensure that free school lunches and milk and the early years pupil premium continue to be targeted at the families that need them most. It has confirmed that it intends to continue publication of its annual analysis of “Schools, pupils and their characteristics”. We look to the Department to make best use of this analysis, in order to monitor the impact of the changes and to demonstrate that its targeting does not miss children who would otherwise face avoidable disadvantage.
Draft Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018

34. The Department for Environment, Food and Rural Affairs (Defra) has laid these draft Regulations with an Explanatory Memorandum (EM) and Impact Assessment. Defra explains that the Animal Welfare Act 2006 (“the 2006 Act”) brought together and updated existing legislation to promote the welfare of vertebrate animals, other than those in the wild; and that the 2006 Act conferred powers on the Secretary of State to introduce secondary legislation to promote the welfare of vertebrate animals in England. The draft Regulations propose an updated licensing system in England for five activities involving animals: selling animals as pets; providing for or arranging for the provision of boarding for cats or dogs; hiring out horses; dog breeding; and keeping or training animals for exhibition. In the EM, Defra states that the Regulations fulfil an undertaking given by the Government to Parliament in 20067 to introduce secondary legislation under the 2006 Act to update the registration and licensing systems for these activities, in line with modern animal welfare standards; this is the first time since 2012 that the Secretary of State has used these powers.8 A consultation on the review of animal establishments licensing in England ran for 12 weeks between December 2015 and March 2016: leaving aside some 323 standard campaigning responses, 1,386 responses were received, and a large majority supported updating the licensing system.9 We commend Defra on a well-judged and informative EM.

Draft Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018


35. The Department for Business, Energy and Industrial Strategy (BEIS) has laid these two instruments, each with an Explanatory Memorandum and Impact Assessment. BEIS says that the draft Order proposes to extend the right to receive an itemised pay statement (or “payslip”) to all workers, not just “employees”, in order to assist such workers in determining whether they have been paid correctly. The Department adds that this corrects the current situation whereby those at work classified as “employees” have a statutory entitlement to receive a payslip, while those classified as “workers” who are not employees do not.

36. BEIS explains that SI 2018/147 increases transparency over whether employees are paid correctly and seeks to address underpayment, including underpayment of the National Minimum Wage and contractual underpayment, where the amount paid is less than that agreed in an employee’s contract. SI 2018/147 requires employers to provide additional information about the number of hours that are being paid for within the itemised pay statement of “time paid” employees (that is, those employees

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7 HC Deb, 10 January 2006, cols 168-169.
8 The powers were previously used to introduce the Welfare of Racing Greyhounds Regulations 2010 (SI 2010/543) and the Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012 (SI 2012/2932).
for whom pay varies by reference to hours worked). The aim is to help employees identify, when reading a payslip, whether the number of hours for which their employer has paid them matches their own understanding of the number of hours they have worked in the same period.

37. BEIS says that both instruments support the recommendations made by the report “Good work: the Taylor review of modern working practices”, which was submitted to the Government in July 2017 and contained a series of recommendations for improving employee and worker rights in UK labour law. The instruments support recommendations made about increasing transparency over employment rights, in order to help ensure their enforcement.

Draft Police Powers of Designated Civilian Staff and Volunteers (Excluded Powers and Duties of Constables) Regulations 2018

38. Part 1 of Schedule 3B of the Police Reform Act 2002 lists powers that are reserved solely for use by constables, and cannot be used by civilians employed by police forces, or police volunteers, and designated with police powers under section 38 of that Act. These Regulations add to that list the power to conduct an intimate search under section 55(6) of the Police and Criminal Evidence Act 1984, where an officer of at least the rank of Inspector considers it not practicable for a suitably qualified person to conduct such a search. The Home Office states that there have only been three searches by staff rather than constables nationally over the last 15 years, this is, however, a very intrusive power and these Regulations fulfil a commitment by Ministers to restrict its use.

Convention on Road Traffic (Cm 9750)

39. The 1968 United Nations Convention on Road Traffic contains provisions on the rules which apply to motor vehicles, trailers, mopeds and cycles in international traffic. The UK signed the Convention on 8 November 1968, and already largely conforms to its provisions through the Road Traffic Act 1988 and the Highway Code. The Government have, however, now decided to ratify it fully for reasons of uniformity and to facilitate international traffic after the UK leaves the European Union. To implement it some changes will be required, in particular the provision of a new system for issuing 1968 Convention compliant International Driving Permits and a registration system for trailers travelling overseas, both of which are being introduced by the Haulage Permits and Trailers Bill currently before the House.


40. Under Regulations dating from 1992, local planning authorities (LPAs) are able to determine their own development proposals on land in which they have an interest. However, the 1992 Regulations provide that, where an LPA grants permission for its own development, the resulting permission is “personal” to the LPA and cannot be implemented by a future owner.

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to whom the LPA may dispose of the land.\textsuperscript{12} This means that a developer purchasing land from a county or district council, and wishing to undertake the same development, would need to re-apply for planning permission.

41. In the Explanatory Memorandum to SI 2018/99, the Ministry of Housing, Communities and Local Government (MHCLG) says that a proposal was included in the Housing White Paper “Fixing our broken housing market” for all local authorities to have the power to dispose of land they have an interest in with any planning permission they have granted themselves. In February 2018, the Government published a summary of responses to this proposal:\textsuperscript{13} 529 respondents supported it, while 162 were opposed (21 were neutral). MHCLG has told us that support came from a cross-section of respondents. The vast majority of local authority and developer respondents expressed support: 185 of 201 local authority respondents, and 56 of 64 developer respondents.

42. We obtained additional information about the Regulations from the MHCLG, in particular about the risk that local authorities could “game the system”, and we are publishing that information at Appendix 2.

\textbf{Elections (Policy Development Grants Scheme) (Amendment) Order 2018 (SI 2018/127)}

43. Policy development grants are awarded to help parties develop policies to include in their manifestos for elections. Parties are eligible for a grant if they have two Members of the House of Commons who have taken the oath of allegiance. The administration of the scheme is set out in the Elections (Policy Development Grants Scheme) Order 2006. In line with a recommendation from the Electoral Commission, this instrument removes references to the Social Democratic and Labour Party (SDLP) and Ulster Unionist Party (UUP) from the Scheme, as, after the last election, they no longer meet the eligibility criteria.

\textbf{Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018 (SI 2018/151)}

44. The Department for Environment, Food and Rural Affairs (Defra) has laid these Regulations with an Explanatory Memorandum (EM) and Impact Assessment. The Regulations set out provisions to reduce and prevent pollution of inland freshwaters and coastal waters and springs, wells and boreholes from farming activities on agricultural land in England. In the EM, Defra says that agriculture and rural land management are the greatest source of water pollution in England; the pollutants of most concern include nitrogen and phosphorus (nutrients), sediment, pesticides and faecal organisms (from animal excreta); farming accounts for 25% phosphate, 50% nitrate and 75% sediment loadings in the water environment. The estimated damage from this pollution ranges from £750 million to £1.3 billion each year, affecting many sectors in society including water users, water companies, tourism and shellfisheries. Defra says that the Regulations complement regimes established by statutory instruments from 2015 and 2010, and also

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\textsuperscript{12} This restriction does not apply to unitary authorities (including London Boroughs) and Urban Development Corporations, which can dispose of land to developers with the benefit of planning permission.

form part of the implementation of the EU Water Framework Directive. We obtained additional information from Defra about the timescales involved, published as Appendix 3. We note that, while consultation began in 2014, it has taken four years to finalise the measures now contained in these Regulations, a gestation period which, in our view, is unexpectedly protracted.
INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018
Draft Electricity Supplier Payments (Amendment) Regulations 2018
Draft Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018
Draft Greater Manchester Combined Authority (Amendment) Order 2018
Draft Insolvency of Registered Providers of Social Housing Regulations 2018
Draft National Minimum Wage (Amendment) Regulations 2018
Draft Non-Domestic Rating (Rates Retention and Levy and Safety Net) (Amendment) Regulations 2018
Draft Police Powers of Designated Civilian Staff and Volunteers (Excluded Powers and Duties of Constables) Regulations 2018

Instruments subject to annulment

Cm 9750 Convention on Road Traffic
Cm 9571 Environment - Amendments to the 1998 Protocols on Persistent Organic Pollutants and Heavy Metals
SI 2018/58 Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018
SI 2018/117 Late Payment of Commercial Debts (Amendment) Regulations 2018
SI 2018/127 Elections (Policy Development Grants Scheme) (Amendment) Order 2018
SI 2018/134 Alternative Investment Fund Managers (Amendment) Regulations 2018
SI 2018/135 Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018
SI 2018/137 Education (Student Fees, Awards and Support) (Amendment) Regulations 2018
SI 2018/139 Gas Safety (Installation and Use) (Amendment) Regulations 2018
SI 2018/141 Personal Injuries (NHS Charges) (Amounts) Amendment Regulations 2018
| SI 2018/146 | Local Authority (Duty to Secure Early Years Provision Free of Charge) (Amendment) Regulations 2018 |
| SI 2018/147 | Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018 |
| SI 2018/151 | Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018 |
| SI 2018/152 | Adoption and Care Planning (Miscellaneous Amendments) Regulations 2018 |
| SI 2018/154 | Novel Foods (England) Regulations 2018 |
| SI 2018/165 | Export Control (Amendment) Order 2018 |
| SI 2018/166 | School Teachers (Recognition of Professional Qualifications) (Amendment) Regulations 2018 |
| SI 2018/178 | Commonwealth Heads of Government Meeting (Immunities and Privileges) Order 2018 |
| SI 2018/182 | Further Education Loans (Amendment) Regulations 2018 |
| SI 2018/186 | Public Service Pensions Act 2013 (Judicial Offices) (Amendment) Order 2018 |
APPENDIX 1: FREE SCHOOL LUNCHES AND MILK, AND SCHOOL AND EARLY YEARS FINANCE (AMENDMENTS RELATING TO UNIVERSAL CREDIT) (ENGLAND) REGULATIONS 2018 (SI 2018/148)

Additional Information from the Department for Education

**Glossary**

- FSM: Free school meal(s).
- Legacy benefits: the benefits replaced by Universal Credit. These include Job Seeker’s Allowance (JSA), Housing Benefit (HB), Working Tax Credit (WTC), Child Tax Credit (CTC), Income Support (IS) and income based Employment and Support Allowance (ESA).
- Passported benefits: the receipt of some benefits, or entitlement to certain schemes, are determined by whether or not you receive certain welfare benefits.
- Legacy benefit system/previous benefit system: this refers to how the benefits system would have been, in the absence of Universal Credit.
- UC: Universal Credit. UC is a social security benefit introduced in 2013 to replace income based Jobseeker’s Allowance, Housing Benefit, Working Tax Credit, Child Tax Credit, income based Employment and Support Allowance and Income Support.
- UC rollout: when local authorities and Jobcentre areas will transition to the Universal Credit full service and existing benefit and tax credit claimants are migrated across to Universal Credit.
- PSM: Policy Simulation Model—a static micro-simulation model that calculates the effects of tax and benefit policy on a random sample of households from the 15-16 Family Resources Survey
- INFORM: INtegrated FoRecasting Model—a dynamic micro-simulation model that generates estimates of monthly flows across and between the legacy benefits and UC
- FRS: Family Resources Survey—a continuous household survey which collects information on a representative sample of private households in the United Kingdom.

**Purpose of this document**

Before the introduction of Universal Credit (UC), the receipt of certain passported benefits determined a child’s entitlement to free school meals (FSM). UC replaces six existing benefits with a monthly payment that gradually reduces as earnings increase, to ensure people are better off in work. It is targeted at people who are looking for work or who are on a low income and it aims to create a greater fairness in the welfare system.

When UC was introduced in 2013, a temporary measure was put in place that gave FSM entitlement to all children in households in receipt of UC. This was because

14 Details of the rollout schedule can be found here: https://www.gov.uk/government/publications/universal-credit-transition-to-full-service
15 https://www.gov.uk/apply-free-school-meals
the UC pathfinders were receiving out of work benefits, and so their children would have been eligible for FSM under the legacy system\textsuperscript{16}.

Last year, around 1.1 million of the most disadvantaged children were eligible for and claimed a free school meal\textsuperscript{17}, which corresponds to approximately 14\% of children in state-funded schools. If this temporary measure were to continue for the full rollout of Universal Credit, around half of all children would become eligible for FSM\textsuperscript{18} so that meals would no longer be targeted at those who need them the most. For this reason, the government explored replacing this temporary measure with a net earned income threshold to determine eligibility. This approach is consistent with how other government departments and devolved administrations have approached amending criteria for passported benefits under Universal Credit, for example the Help with Healthcare costs scheme (covering prescription charges) administered by the Department of Health and Social Care; and free school meals in Scotland\textsuperscript{19}.

In collaboration with the Department for Work and Pensions (DWP), the Department for Education (DfE) undertook analysis to determine the impact of different income thresholds on the number of children in receipt of FSM. Additionally, we considered operational feasibility, legal frameworks and technological capabilities. We decided to consult on implementing a net earned income threshold of £7,400.

\textit{Methodology}

The analysis undertaken by DfE uses outputs from two DWP models\textsuperscript{20}:

- Integrated forecasting model (INFORM)—a dynamic micro-simulation model that generates estimates of monthly flows across and between the legacy benefits and UC. The specific outputs used by DfE gave estimates for the number of children in households moving between the main legacy benefits and UC. The outputs are split by the legacy benefit received and broken down on a monthly basis.

- Policy simulation model (PSM)—a static micro-simulation model that calculates the effects of tax and benefit policy on a random sample of households from the 15-16 Family Resources Survey (FRS). Future years are modelled by simulating announced policies consistent with growth in relevant variables from economic forecasts.

Whilst these modelling outputs have their limitations, they are considered the best available sources for modelling benefit entitlement and the flows between different benefits.

The outputs of these models are used by DfE in the following ways:

- INFORM allows us to estimate the volumes of children in households moving onto UC split by the corresponding legacy benefit type on the legacy system.

\textsuperscript{16} https://publications.parliament.uk/pa/cm201213/cmhansrd/cm130417/text/130417w0004.htm#130417w0004.htm_spnew23
\textsuperscript{17} https://www.gov.uk/government/statistics/schools-pupils-and-their-characteristics-january-2017
\textsuperscript{18} https://www.gov.uk/government/consultations/eligibility-for-free-school-meals-and-the-early-years-pupil-premium-under-universal-credit
\textsuperscript{19} http://www.legislation.gov.uk/ssi/2017/182/contents/made
PSM allows us to estimate the earnings and age of the children in those households moving onto UC, and calculate whether or not they will be eligible for FSM after the transition. It tells us whether they would have been eligible for FSM if they had never moved across to UC.

By combining this information, we are able to estimate:

• how many people will move onto UC by January 2022;
• whether or not they will have household earnings below or above the threshold of £7,400; and
• whether or not they would have FSM eligibility if they were still on legacy benefits.

Using this, we can estimate the difference in size between two groups of children who are in UC households in January 2022:

• children who *would not* have been eligible for FSM under the legacy system, but *will be* under the proposed eligibility system; and
• children who *would* have been eligible for FSM under the legacy system, but *will not* be under the proposed eligibility system. It is important to realise that no child will lose their free school meals during the rollout of UC due to the protections outlined in the consultation response.

The government is introducing transitional protections to ensure that existing recipients of free school meals will not lose their entitlement following the introduction of new eligibility criteria. When calculating the effect of the threshold, we decided it was important not to account for protections in order to better understand how the number of children who meet the eligibility criteria change. These protected children are therefore not included in this analysis of the additional pupils eligible for FSM.

We take into account the fact that not every entitled household will claim for FSM. We do this by applying a “claiming rate” to the numbers described above. Our basis for this assumption comes from a DfE report into the proportion of pupils not claiming FSM\(^2\). This report found that there is an under registration rate of around 11%, suggesting a claiming rate in the region of 89%.

Our modelling does not attempt to anticipate behavioural responses that may result due to policy changes.

**Results**

We estimate that by 2022 around 50,000 more children will benefit from a free school meal compared to the previous benefits system.

This figure represents the difference between those that *gain* eligibility under UC to those that would have been eligible under the old system but will not now be eligible under UC. It also takes account of the fact that not everybody claims their meal.

This figure does not include children that retain free school meals as a result of the transitional protections we are introducing during the rollout of Universal Credit. Under our proposals, no child in England should lose their free school meal during the transition to Universal Credit. In addition, any protected pupils

who still receive free school meals once the transition is complete should continue to receive protection until the end of their current phase of education (e.g. primary, secondary school).

It is important to note that this number looks only at the net change in cohort size due to the eligibility criteria. The transitional protections (as outlined in the consultation response) mean that no child will actually lose their free school meals during the rollout of UC.

As new economic forecasts are released and underlying data (such as the FRS) are refreshed, the outputs from both the PSM and the INFORM will change. In turn, the output of the analysis outlined in this document will change.

DfE will continue to publish statistics on free school meals as part of its annual publication ‘Schools, pupils and their characteristics’.

**February 2018**
APPENDIX 2: TOWN AND COUNTRY PLANNING GENERAL
(AMENDMENT) (ENGLAND) REGULATIONS 2018 (SI 2018/99)

Additional Information from the Ministry of Housing, Communities and Local Government

Q1: The Committee was concerned at the risk that local authorities could “game the system”, that is, use their powers to grant planning permission for land under their ownership with the intention of selling it on very quickly, in ways that might limit or circumvent the possibility of challenge by other interested parties (notably, local residents). Does MHCLG see any such risk and, if so, what safeguards / oversight arrangements exist to guard against it?

A1: Unitary authorities have had the power to dispose of land with the benefit of planning permission they’ve granted themselves for a long time (since 1998). The effect of the Town and Country Planning General (Amendment) (England) Regulations 2018 is simply to extend that ability to other local authorities (i.e. those in two tier areas). We are not aware of any particular propriety concerns in relation to unitary authorities using this power, and so we have no reason to think that such concerns will arise as a result of extending it to other local authorities.

On the issue of ensuring fairness and transparency, there are existing safeguards built into the planning system to ensure that local authorities act properly when determining applications for their own development. These are set out in the Town and Country Planning General Regulations 1992, and include the requirement to advertise and consult on any such applications as they would any other planning application, so local residents will be aware of, and have the opportunity to put forward their views on, proposals. Where they raise relevant planning objections the authority must take those into account. A further safeguard is that the planning application cannot be determined by a committee which manages the land in question nor by an officer with such responsibilities.

Also, in two-tier areas if the authority in question does not intend to develop the land itself (or jointly with a developer) then, if it is not a matter for which that authority would normally have responsibility, they must apply to the other authority in the area for permission. For example, if a county council intended to undertake housing development itself it would apply to itself for permission. However, if the county council did not intend to undertake the housing development itself, the district authority would determine the application (because housing is not a county matter). This provision is unchanged by the 2018 amending regulations.

We do not consider that additional safeguards are required in respect of two tier authorities.

Q2: In the EM, you state that “the change will not apply to any planning permission granted before 23 February 2018”. The Committee asked why: if the intention is to facilitate development by allowing existing permissions to be transferred with the land, excluding permissions already granted seems to go against that aim.

A2: The rationale for not applying the new rules to planning permissions which have already been granted is to ensure that anyone with an interest in a proposed development is fully aware of the effect of the grant of planning permission (i.e., that it will run with the land) in case that might influence if/how they wish to comment on the application. To apply the rules to cases where permission has already been granted would deprive interested parties of that opportunity.

22 February 2018
APPENDIX 3: REDUCTION AND PREVENTION OF AGRICULTURAL DIFFUSE POLLUTION (ENGLAND) REGULATIONS 2018 (SI 2018/151)

Additional Information from the Department for Environment, Food and Rural Affairs

Q1: In the Explanatory Memorandum you say that the Regulations complement existing regulatory regimes such as the Nitrates Pollution Prevention Regulations 2015 (SI 2015/668) and the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 (SI 2010/639), and also form part of the implementation of Article 11(3)(h) of the Water Framework Directive, which requires member States to implement basic measures to prevent or control pollution from diffuse sources. What deadline was set by the Water Framework Directive for implementation of Article 11(3)(h)? Is the UK late in doing so and, if so, is it subject to proceedings by the European Commission?

A1: The European Commission has raised concerns about existing measures to implement Article 11(3)(h) of the Water Framework Directive (WFD) in England to tackle agricultural diffuse pollution, in correspondence and in wider infraction proceedings on the WFD (see this Press Release)\(^2\). The government recognises more could and should be done to address the problems posed by agricultural diffuse pollution and this is reflected in the goals set out in the 25 Year Environment Plan.\(^3\) These Regulations are therefore designed to help achieve these goals and supplement our current implementation of Article 11(3)(h) WFD.

Q2: If the Regulations complement the regimes established by SIs from 2015 and 2010, why are the latest Regulations being laid only in 2018?

A2: The government consulted informally with stakeholders on design principles and proposals to tackle agricultural diffuse pollution in 2014. Following that, in 2015, the government consulted formally on a set of proposals to establish a new regulatory baseline for all farmers to reduce diffuse water pollution from agriculture. The responses to that consultation formed the basis of the regulations contained in the SI.\(^4\) Since 2015, progress was slower than anticipated, in part due to the Referendum in 2016 on leaving the European Union and the General Election in 2017. We have taken time to ensure that the regulations respond to the evidence raised during the consultation and the opportunities and challenges for agriculture on leaving the European Union.

19 February 2018


APPENDIX 4: 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 27 February 2018, Members declared the following interests:

Alternative Investment Fund Managers (Amendment) Regulations 2018 (SI 2018/134)

Financial Services and Markets Act 2000 ( Benchmarks) Regulations 2018 (SI 2018/135)

Lord Janvrin
Senior Adviser, HSBC Private Bank (UK) Ltd

Attendance:

The meeting was attended by Baroness Blackstone, Lord Faulkner of Worcester, Lord Goddard of Stockport, Lord Haskel, Lord Janvrin, Baroness O’Loan, Lord Sherbourne of Didsbury and Lord Trefgarne.