

# HOUSE OF LORDS

## Secondary Legislation Scrutiny Committee

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### 6th Report of Session 2019–21

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

Drawn to the special attention of the House:

#### **Homes and Communities Agency (Transfer of Property etc.) Regulations 2020**

#### **Includes information paragraphs on:**

Draft Civil Liability (Information  
Requirements) and Risk Transformation  
(Amendment) Regulations 2020

Draft Client Money Protection Schemes for  
Property Agents (Approval and Designation of  
Schemes) (Amendment) Regulations 2020

M62 and M606 Motorways (Chain Bar  
Roundabout) (Car Share Lane) (Revocation)  
Regulations 2020

Communications (Television Licensing)  
(Amendment) Regulations 2020

School and Early Years Finance (England)  
Regulations 2020

Street and Road Works (Amendments  
Relating to Electronic Communications)  
(England) Regulations 2020

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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 Union (Withdrawal) Act 2018.

And, to scrutinise –

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

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

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

### *Members*

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

### *Registered interests*

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

### *Publications*

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

### *Committee Staff*

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

### *Further Information*

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

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

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

### *Contacts*

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

# Sixth Report

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

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

- International Accounting Standards, Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2020

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Homes and Communities Agency (Transfer of Property etc.) Regulations 2020 (SI 2020/31)

*Date laid: 16 January 2020*

*Parliamentary procedure: negative*

*The Ministry of Housing, Communities and Local Government (MHCLG) has laid this instrument which specifies two public bodies, Manchester University NHS Foundation Trust and Staffordshire County Council, whose designated property, rights or liabilities can be transferred to the Homes and Communities Agency (HCA). The Regulations relate to the disposal of surplus public sector land for housing. We were disappointed that the Explanatory Memorandum (EM) accompanying the instrument contained on its face scant information on the policy context, aims and current performance data on the Public Land for Housing Programme 2015–2020 generally, and that additional information requested from the Ministry also failed to bridge the gap. As a result, we invited the responsible Minister to come before the Committee to give evidence.*

*We welcome the further information and explanation provided during this evidence session. It is, however, a matter of regret that it was necessary to hold it, particularly since the Government have laid five previous instruments associated with transfers of surplus land to the HCA and, in each case, the Committee has commented on the instrument and, in more than one case, been critical of the content of the accompanying EM. **The House may wish to seek assurances from the Minister that, in future, any similar transfer of property regulations will be accompanied by a sufficiently thorough EM to enable the Committee and the House to exercise their scrutiny function fully and effectively.***

*We also take this opportunity to question the use – or misuse – of the word “target” in describing the intention of the Public Land for Housing Programme 2015–2020 to release land with capacity for 160,000 homes when the Minister acknowledged that there had been a significant shortfall and the “target” had been “aspirational”.*

**The instrument is drawn to the special attention of the House on the ground that that the explanatory material laid in support provides insufficient information to gain a clear understanding about the intended implementation of the underlying policy.**

#### *Background*

1. These Regulations, which are subject to the negative resolution procedure, have been laid by the Ministry of Housing, Communities and Local Government (MHCLG) with an Explanatory Memorandum (EM). They relate to the disposal of surplus public sector land for housing, creating the legal framework to enable the property, rights or liabilities of two public bodies specified in the Regulations—Manchester University NHS Foundation Trust and Staffordshire County Council—to be transferred to the Homes and Communities Agency (HCA) (now known as Homes England). The HCA, appointed in 2015, is the Government’s land disposal agency in England, outside London, and is involved in preparing land transferred to it for release to market.

2. According to MHCLG: “The sale of public land for housing forms an important part of the government’s ambition to deliver 300,000 homes a year by the mid-2020s”.<sup>1</sup> These Regulations involve two separate programmes, both of which are due to end in March 2020, for the disposal of public sector land for housing:
- The Public Land for Housing Programme 2015–2020, which was preceded by the Public Land for Housing Programme 2011–2015 and covers all land-owning government departments and their arm’s length bodies.
  - The Local Authority Land Ambition 2015–2020. Under this programme, MHCLG and the Cabinet Office, with the support of the Local Government Association, support local authorities in disposing of land.<sup>2</sup>
3. Paragraph 7.4 of the EM notes that the Public Land for Housing Programme has been subject to several hearings by the Public Accounts Committee (PAC) of the House of Commons. Their most recent report was published in July 2019<sup>3</sup> (“the July 2019 report”), following a National Audit Office (NAO) investigation in May 2019.<sup>4</sup> The July 2019 report was the third time that the PAC had reported on the programme. In 2015, they concluded that MHCLG could not demonstrate the success of the 2011–2015 programme in addressing the housing shortage or achieving value for money. In 2016, the PAC recognised that improvements had been implemented in the 2015–2020 programme but warned that the Government would fail to deliver land for 160,000 homes by 2020 unless they significantly accelerated the rate at which land for new homes is made available.<sup>5</sup>

*The Committee’s principal concern*

4. Our principal concern in this case is the quality of the accompanying explanatory material. While we acknowledge that links to various documents are included in the EM, there is scant information on its face on the policy context, aims and current performance data on the Public Land for Housing Programme 2015–2020. The additional information requested from the Ministry failed to bridge the gap, in particular further information about the separate Local Authority Land Ambition of which MHCLG has oversight and specific information about the two bodies to which the Regulations relate. For this reason, we invited the responsible Minister, the Rt Hon. Esther McVey MP, (then) Minister of State for Housing, to come before the Committee to give evidence. (Additional information provided by the department and further additional information provided in an annex to a letter from the department after the evidence session are set out in an

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1 Appendix 1, answer to Q5.

2 [Q 10](#).

3 Public Accounts Committee (PAC), *Sale of public land* (One hundred and tenth Report, Session 2017–19, HC 2040) (“the July 2019 Report”).

4 National Audit Office, Report of the Comptroller and Auditor General, *Investigation into the government’s land disposal strategy and programmes* (HC 2138, Session 2017–19): <https://www.nao.org.uk/wp-content/uploads/2019/05/Investigation-into-the-governments-land-disposal-strategy-and-programmes.pdf> [accessed 21 February 2020].

5 The July 2019 report, p 4.

appendix to this report. The transcript of the oral evidence session is available on the Committee’s webpage.)<sup>6</sup>

5. There is, in particular, an absence of clear information on the face of the EM about the extent to which the two programmes have met their targets. Our further inquiry into this matter has raised a more general concern about the Government’s use—or misuse—of the word “target” in describing their ambition in this policy area. We explain this point more fully in paragraphs 16 to 18 below.

#### *Public Land for Housing Programme 2015-2020*

6. According to the EM at paragraph 7.1: “The aim of the Public Land for Housing Programme 2015-20 is for government departments to sell surplus land with capacity for at least 160,000 homes”. That target, it is clear, will not be met by the time the programme ends next month.
7. In evidence to the PAC on 12 June 2019, Melanie Dawes, [then] Permanent Secretary at MHCLG, said that, although there had not been “a lack of strategy, a lack of effort or a lack of work ... what is certainly true is that the original target of land for 160,000 homes will not be realised by March 2020; it will be realised to a longer timescale.” As to the extent of the shortfall, Ms Dawes said: “we think we have a high probability of 69,000 homes’ worth of land by March next year”.<sup>7</sup> Additional information sent to this Committee, however, indicates that even that figure was over-optimistic—69,000 has been revised down to 65,000 because, we were told, “there are still significant risks on certain sites”.<sup>8</sup>
8. We asked the Minister the reasons for the shortfall. Ms McVey referred to the Government’s “new direction and vision” for an extra 40 hospitals which meant that “some land that might have come forward will not”.<sup>9</sup> While we acknowledge that this may provide part of the explanation, we note that, of the overall target of capacity for 160,000 homes, the Department for Health and Social Care had agreed at the beginning of the programme in 2015 to contribute no more than 16.5% (26,000) of that total,<sup>10</sup> suggesting that other factors also account for the target being missed so significantly.
9. As for when the target of 160,000 will be achieved, the additional information sent to the Committee provides no deadline but states simply: “beyond 2025”.<sup>11</sup>

#### *Local Authority Land Ambition 2015-2020*

10. The EM at paragraph 7.6 says that an announcement was made in Budget 2016 that councils would collaborate with central government on a Local Government Land Ambition, working with their partners to release surplus land with the capacity—as with the Public Land for Housing Programme

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6 Oral Evidence taken before the Secondary Legislation Scrutiny Committee, [11 February 2020](#) (Session 2019-21).

7 Oral Evidence taken before the Public Accounts Committee, 12 June 2019 (Session 2017-19), [QQ 69-71](#).

8 Appendix 1.

9 [Q 5](#) (The Rt Hon. Esther McVey MP).

10 Ministry of Housing, Communities and Local Government, *Public Land for Housing Programme 2015-20 Data Release* (6 February 2020): <https://www.gov.uk/government/publications/public-land-for-housing-programme-2015-to-2020-data-release-february-2020> [accessed 21 February 2020], p 2.

11 Appendix 1.

2015-2020—for at least 160,000 homes; and “to support the ambition, HCA provides support to those local authorities that seek its assistance to realise their land disposal plans through a number of land funds that support the release of surplus land for housing”.

11. In answer to additional questions, MHCLG explained:

“The local authority land ambition is separate from the target to release land with capacity for 160,000 homes on former central government land. Any land transferred by Staffordshire County Council for housing would count towards the local authority land ambition. MHCLG has oversight of the local authority land ambition while engagement with local authorities is undertaken by the Local Government Association.”<sup>12</sup>

12. At the evidence session, we were told that the local authority programme had performed better than the central government programme, with a forecast that by March 2020 land for 128,000 homes would be released by local authorities.<sup>13</sup> That said, we note that the additional information provided after the evidence session caveats that figure with a statement that “there is a large degree of uncertainty in these numbers, as they are based on returns from only two-thirds of local authorities”.<sup>14</sup>
13. We asked MHCLG for information specifically about the potential contribution of any land transfer from Manchester University NHS Foundation Trust and Staffordshire County Council towards releasing land for housing. We were told: “This data is not available, as the Regulations create the legal framework for the transfer of land from the specified bodies to Homes England. The capacity for new homes on surplus land is assessed at the point that specific sites transfer to the ownership of Homes England”.<sup>15</sup> During the evidence session, however, information was more forthcoming. We were told that the Manchester University NHS Foundation Trust land involved capacity for about 30 homes;<sup>16</sup> the Staffordshire County Council land would have capacity for 500 homes.<sup>17</sup>

### *Previous Regulations*

14. Paragraph 7.10 of the EM notes that this instrument follows five earlier sets of Regulations which specify public bodies which are able to transfer land to the HCA. This Committee commented on each of them:
- *Homes and Communities Agency (Transfer of Property etc.) Regulations 2015 (SI 2015/1471)*. This instrument involved transfer of land from eight public bodies. The Committee drew these Regulations to the special attention of the House on the ground that the explanatory material laid in support provided insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation. The Committee was particularly concerned that recommendations in an NAO report of June 2015 had not been mentioned in the EM.<sup>18</sup>

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12 Appendix 1, answer to Q7.

13 [Q 10](#).

14 Appendix 1.

15 Appendix 1, answer to Q2.

16 [Q 4](#).

17 [Q 8](#).

18 [7th Report](#), Session 2015-16 (HL Paper 28).

- *Homes and Communities Agency (Transfer of Property etc.) (No. 2) Regulations 2016 (SI 2016/515)*. This instrument involved transfer of land from three public bodies, including HS2 Limited. The Committee drew this instrument to the special attention of the House on the ground that it gave rise to issues of public policy likely to be of interest to the House, noting in particular that, unlike the previous instrument, the EM on this occasion made reference to an NAO report of June 2015.<sup>19</sup>
- *Homes and Communities Agency (Transfer of Property etc) Regulations 2017 (SI 2017/199)*. This instrument involved transfer of land from Network Rail Infrastructure Limited and 26 NHS Trusts. The Committee published an information paragraph about it, stating that further information had been obtained about the background to the specification of the listed bodies.<sup>20</sup>
- *Homes and Communities Agency (Transfer of Property etc.) Regulations 2018 (SI 2018/8)*. This instrument involved transfer of land from 16 NHS Trusts. The Committee drew these Regulations to the special attention of the House on the ground that they may imperfectly achieve their policy objectives, in particular in relation to the “Homes for Nurses” scheme. The Committee concluded that: “The information which the Government have provided is replete with good intentions, but short on hard evidence that nurses are benefiting from the creation of affordable housing on surplus NHS land”.<sup>21</sup>
- *Homes and Communities Agency (Transfer of Property etc.) Regulations 2019 (SI 2019/36)*. This instrument involved transfer of land from six NHS Trusts. Sub-Committee A of this Committee published an information paragraph about it, noting in particular that it had written to the Minister asking why the Government had failed to produce a report on the Public Land for Housing Programme 2015–2020 promised for July 2017 and why this omission had not been referenced in the EM.<sup>22</sup>

15. We welcome the further information and explanation provided during the evidence session with the Minister. It is, however, a matter of regret that it was necessary to hold it. The Government have laid five earlier instruments associated with transfers of surplus land to the HCA and, in each case, the Committee has commented on the instrument and, in more than one case, been critical of the content of the accompanying EM.
16. **The House may wish to seek assurances from the Minister that, in future, any similar transfer of property regulations will be supported by an EM which is sufficiently thorough on its face to enable the Committee and the House to exercise their scrutiny function fully and effectively.**

*Use—or misuse—of the word “target”*

17. The EM at paragraph 7.1 describes the “aim” of the Public Land for Housing Programme 2015–2020 as selling surplus land with a capacity for “at least” 160,000 homes. Other documents, such as the Programme handbook,

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19 [35th Report](#), Session 2015-16 (HL Paper 147).

20 [28th Report](#), Session 2016-17 (HL Paper 131).

21 [17th Report](#), Session 2017-19 (HL Paper 71).

22 [16th Report](#), Session 2017-19 (HL Paper 285).



refer to this figure as a “target”.<sup>23</sup> Ms Francis, when giving evidence to this Committee, also referred to the 160,000 “target”.<sup>24</sup>

18. It seems reasonable to us to suggest that when the Government refer to a “target” figure, to be achieved within a stated timescale, there is an intention, based on a realistic assessment of the evidence, that that figure should be achieved within the deadline set. But, when we challenged the Minister about the 160,000 target of land for housing, she told us that it had been “very ambitious when it was set” and that it had been “aspirational”;<sup>25</sup> and later the Minister described the number as having been set “incredibly high”.<sup>26</sup> Before the PAC, Ms Dawes had said that the target “was always going to be challenging” and, with some candour, admitted that “the target was set without a sufficient evidence base”.<sup>27</sup>
19. We find it deeply troubling that the Government have, in this context, used the word “target” when there was an insufficient evidence base to support it and when it is acknowledged as being nothing more than “aspirational”. Given the absence of information on the face of the EM about the shortfall from 160,000, we find this misuse of the word “target” to be particularly egregious.

### *Conclusion*

20. **This instrument is drawn to the special attention of the House on the ground that that the explanatory material laid in support provides insufficient information to gain a clear understanding about the broader context of the instrument’s policy objective and intended implementation of the policy of sale of public land for housing.**
21. **We also take this opportunity to question the use—or misuse—of the word “target” in describing the intention of the Public Land for Housing Programme 2015-2020 to release land with capacity for 160,000 homes when the Minister acknowledged that there had been a significant shortfall and the “target” had been “aspirational”.**

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23 See, for example, MHCLG, Public Land for Housing Programme 2015-2020, *Programme Handbook for Departments and Arm’s Length Bodies* (February 2020: Update): <https://www.gov.uk/government/publications/public-land-for-housing-programme-2015-to-2020-handbook> [accessed 21 February 2020], p 6.

24 [Q 9](#).

25 [Q 6](#).

26 [Q 12](#).

27 Oral Evidence taken before the Public Accounts Committee, 12 June 2019 (Session 2017–19), [Q 69](#).

## **INSTRUMENTS OF INTEREST**

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### **Draft Civil Liability (Information Requirements) and Risk Transformation (Amendment) Regulations 2020**

22. The key change made by this instrument is the introduction of a new reporting requirement for the motor insurance industry in relation to whiplash injuries. HM Treasury (HMT) explains that the Civil Liability Act 2018 (“the Act”) reformed the compensation system for whiplash injuries and changed the way the Personal Injury Discount Rate is calculated. While the reforms are expected to generate savings for insurers, HMT says that Parliament expressed concerns during the passage of the Act that these savings would not be passed onto consumers. Parliament therefore requested amendments to require the Government to report to Parliament about whether any cost benefits have been realised; and whether and to what extent insurers have passed on savings from the reforms in the Act to consumers. This instrument requires private motor insurance providers to submit a one-off data return to the Financial Conduct Authority by 1 October 2023, showing how their costs and premiums have changed as a result of the reforms over a three-year reporting period (financial years 2020–21 to 2022–23). Insurers will also have to produce counterfactual figures showing costs and premiums for the same period if the Act had not been passed. HMT will evaluate the data and report to Parliament before 31 March 2025. HMT expects that between 70 and 80 insurers which have sold 100,000 or more motor insurance policies will be subject to the new reporting requirement, with total one-off costs of £4.7 million (best estimate) for the sector. Small or specialised insurers and insurers which only offer policies for commercial vehicles will be exempt. The Committee notes that by the time HMT will report to Parliament, seven years will have passed since the Act received Royal Assent. A tighter reporting timeframe would have been preferable as the issues may no longer be as pertinent then.

### **Draft Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) (Amendment) Regulations 2020**

23. The purpose of this instrument is to extend until 1 April 2021 the grace period for letting agents before they have to hold client money in a client money account. The Ministry of Housing, Communities and Local Government (MHCLG) explains that since 1 April 2019 lettings agents in the private rented sector holding client money have been required to be members of a Client Money Protection scheme, with the aim of giving landlords and tenants confidence that their money is safe. One of the scheme membership requirements for agents is to have an appropriate client account in place. According to MHCLG, an initial grace period of one year until 1 April 2020 was introduced for this requirement to address concerns that some agents may face difficulties in securing pooled client accounts where the money they hold for a number of clients is placed in a single account. The Department says that such accounts potentially present a money laundering risk because it can be difficult to identify the true owners of the funds in the account, and that some banks have been reluctant to offer such accounts to lettings agents because of concerns about compliance with Money Laundering Regulations as well as commercial factors. MHCLG explains

that the Joint Money Laundering Steering Group (JMLSG)<sup>28</sup> is currently updating its guidance to help banks understand better the low risk letting agents present. The Department says that it expected the final guidance to be published before 1 April 2020, but that due to unforeseen complexity, the JMLSG is now expected to consult on the draft guidance in the Spring, with the final guidance to be published within the one-year extension period proposed by this instrument. The Department told the Committee that, as of 31 December 2019, 9,978 letting agents, holding just under £3.4 billion in funds, had obtained membership of an approved client money protection scheme, of which all had an appropriate client account or were making “every reasonable attempt to obtain one”. At the same time, 251 letting agents had reported difficulties in obtaining an account during the period of October to December 2019. MHCLG said that this amounted to 2.5% of protected agents, suggesting that the current scale of the problem was limited. We are publishing the additional information provided by the Department at Appendix 3.

### **M62 And M606 Motorways (Chain Bar Roundabout) (Car Share Lane) (Revocation) Regulations 2020 (SI 2020/68)**

24. This instrument removes the requirement for a car share lane from a West Yorkshire roundabout. The Committee was concerned that, although this revocation will speed up traffic it may do so at the expense of increased pollution. Further information from the Department for Transport is provided in Appendix 4.

### **Communications (Television Licensing) (Amendment) Regulations 2020 (SI 2020/80)**

25. This instrument, part of an agreed five-year settlement which runs to 2022, provides for the annual increase of the TV licence fee, from £154.50 in 2019–20 to £157.50 in 2020–21 for a colour licence, and from £52.00 to £53.00 for a black and white licence. The increases are in line with inflation (Consumer Price Index). The instrument also increases the amounts payable if the licence fee is paid in instalments. From 1 June 2020 onwards, only those aged 75 and over and in receipt of Pension Credit will be eligible for a free TV Licence. The Department for Digital, Culture, Media and Sport told the Committee that this change is not part of this instrument and will not require further legislation, but that it was made in June 2019 through a Determination<sup>29</sup> by the BBC under the Communications Act 2003, as amended by the Digital Economy Act 2017.

### **School and Early Years Finance (England) Regulations 2020 (SI 2020/83)**

26. This instrument provides for the way in which local authorities are to set their education budgets in the 2020–21 financial year. The Department for Education (DfE) explains that regulations to this effect are made annually and that, to a large degree, this instrument makes the same provisions as the previous instrument<sup>30</sup> did for the 2019–20 financial year. However, the Regulations introduce some changes, including in relation to the way

28 The JMLSG is a private sector body made up of the leading UK Trade Associations in the financial services industry.

29 See: BBC, *Age-Related TV Licence Fee Concession Determination* (28 June 2019): <http://downloads.bbc.co.uk/aboutthebbc/reports/consultation/age/determination.pdf> [accessed 25 February 2020].

30 School and Early Years Finance (England) Regulations (No. 2) 2018 (SI 2018/1185).

in which local authorities distribute the school funding element of their Dedicated Schools Grant (DSG). DSG consists of four funding elements: mainstream schools; central school services; high needs (that is services for children and young people (aged 0-25) with complex needs); and early years. DfE explains that the National Funding Formulae (NFF) determine local authority DSG allocations, and that in 2020-21, local authorities will continue to determine schools' budget allocations at a local level, through a local funding formula, known as a 'soft' schools NFF. The Department plans to implement a 'hard' schools NFF in future, whereby schools receive what they attract through the national formula, rather than through different local authority funding formulae. DfE says that the changes made by this instrument mainly relate to making the distribution of school funding by local authorities mirror more closely the distribution of the NFF at school-level, including by making the minimum per pupil levels within the NFF mandatory for local authorities to use, as a step towards the 'hard' schools NFF. According to DfE, minimum per pupil funding levels ensure that the funding formula provides every school with a minimum level of funding, benefitting the lowest funded schools, in addition to funding distributed based on the particular characteristics of individual schools and their cohorts. As the Explanatory Memorandum does not put the changes into a financial context, we sought additional information from the Department about the schools budget for 2020-21 and high needs funding which we are publishing at Appendix 5. We have asked the Department to revise the EM to reflect the additional financial information.

### **Street and Road Works (Amendments Relating to Electronic Communications) (England) Regulations 2020 (SI 2020/122)**

27. These Regulations mandate the use of *Street Manager*, a new digital service developed by the Department of Transport (DfT) which aims to transform the planning, management and communication of street and road works. On the local road network in England, there are around 2.5 million road works each year, leading to traffic congestion that, as well as causing significant disruption to people's journeys, is estimated to cost the economy around £4 billion per year. The previous planning system, Electronic Transfer of Notifications (EToN), was developed in the 1990s and is no longer fit for purpose, in particular, because each user must purchase its own EToN software licence product from a small and declining market of private sector providers. Responses to consultation preferred Government provision of a single software solution operated on a cost-recovery model, which led DfT to invest £10 million in developing *Street Manager*. As well as providing better coordination through a centralised system, the new approach is expected to reduce costs to utility companies and local highways authorities. An additional benefit is that the data on live and planned works will be made available so that technology companies can use it in journey planning apps and satnavs.

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

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### Draft instruments subject to affirmative approval

Armed Force Acts (Continuation) Order 2020

Civil Liability (Information Requirements) and Risk Transformation (Amendment) Regulations 2020

Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) (Amendment) Regulations 2020

Justices of the Peace and Authorised Court and Tribunal Staff (Costs) Regulations 2020

Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2020

### Instruments subject to annulment

SI 2020/47	M6 Motorway (Junctions 2 to 4) (Variable Speed Limits) Regulations 2020
SI 2020/68	M62 and M606 Motorways (Chain Bar Roundabout) (Car Share Lane) (Revocation) Regulations 2020
SI 2020/79	M23 Motorway (Junctions 8 to 10) (Variable Speed Limits) Regulations 2020
SI 2020/80	Communications (Television Licensing) (Amendment) Regulations 2020
SI 2020/82	Civil Procedure (Amendment) Rules 2020
SI 2020/83	School and Early Years Finance (England) Regulations 2020
SI 2020/85	M62 Motorway (Junctions 10 to 12) and M602 Motorway (Junction 1) (Variable Speed Limits) Regulations 2020
SI 2020/96	Electricity and Gas (Internal Markets) Regulations 2020
SI 2020/98	Authorised Court Staff (Legal Advice Functions) Qualifications Regulations 2020
SI 2020/100	Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (Consequential, Transitional and Saving Provision) Regulations 2020
SI 2020/101	Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling and Compensation Cap) Order 2020
SI 2020/102	Employment and Support Allowance (Transitional Provisions) (Amendment) Regulations 2020
SI 2020/106	Utilities Act 2000 (Amendment of Section 105) Order 2020
SI 2020/108	Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2020
SI 2020/109	Trade in Animals and Related Products (Amendment) Regulations 2020

- SI 2020/112 Care and Support (Charging and Assessment of Resources) (Amendment) Regulations 2020
- SI 2020/115 Carbon Accounting (Provision for 2018) Regulations 2020
- SI 2020/117 Financial Services and Markets Act 2000 (Central Counterparties, Investment Exchanges, Prospectus and Benchmarks) (Amendment) Regulations 2020
- SI 2020/122 Street and Road Works (Amendments Relating to Electronic Communications) (England) Regulations 2020
- SI 2020/169 Proscribed Organisations (Name Change) Order 2020

## APPENDIX 1: HOMES AND COMMUNITIES AGENCY (TRANSFER OF PROPERTY ETC.) REGULATIONS 2020 (SI 2020/31)

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

*Q1: Will the surplus land from both bodies under these Regulations form part of the Public Land for Housing Programme 2015–2020?*

A1: Any land that is suitable for housing transferred by the Manchester University NHS Foundation Trust by the end of March 2020 would form part of the Public Land for Housing Programme 2015–2020. The Public Land for Housing Programme relates only to land owned by central government or arms' length bodies, so any land transferred by Staffordshire County Council would not form part of the programme.

*Q2: What is the assessed capacity for new homes on the surplus land of each public body under these Regulations?*

A2: This data is not available, as the Regulations create the legal framework for the transfer of land from the specified bodies to Homes England. The capacity for new homes on surplus land is assessed at the point that specific sites transfer to the ownership of Homes England. This can occur only with the consent of the landowner.

*Q3: Has there been any assessment of the types of homes that will be built on the land associated with these Regulations? (E.g. will they include key worker housing?)*

A3: As above, these regulations are not associated with specific land. Any homes brought forward by Homes England will be in consultation with the local authority and pursuant to the normal planning process.

*Q4: Paragraph 7.1 of the EM notes that the aim of the Public Land for Housing Programme 2015–2020 is for government departments to sell surplus land with capacity for at least 160,000 homes.<sup>31</sup>*

*Q4(i): What is the current level of progress against the 160,000 target?*

A4(i): As set out in the Progress Report, at the end of December 2018 land with capacity for over 38,000 homes had been sold by all departments.

*Q4(ii): When does the Public Land for Housing Programme 2015–2020 end?*

A4(ii): The end of March 2020.

*Q4(iii): What is the anticipated level of progress against the 160,000 target at the end of the Public Land for Housing Programme 2015–2020?*

A4(iii): As set out in the Progress Report, there is a high probability of releasing land with capacity for up to 69,000 homes during the current programme. The House of Commons Committee on Public Accounts noted that this was an 'upper estimate'. Disposals are complex and affected by a range of factors.

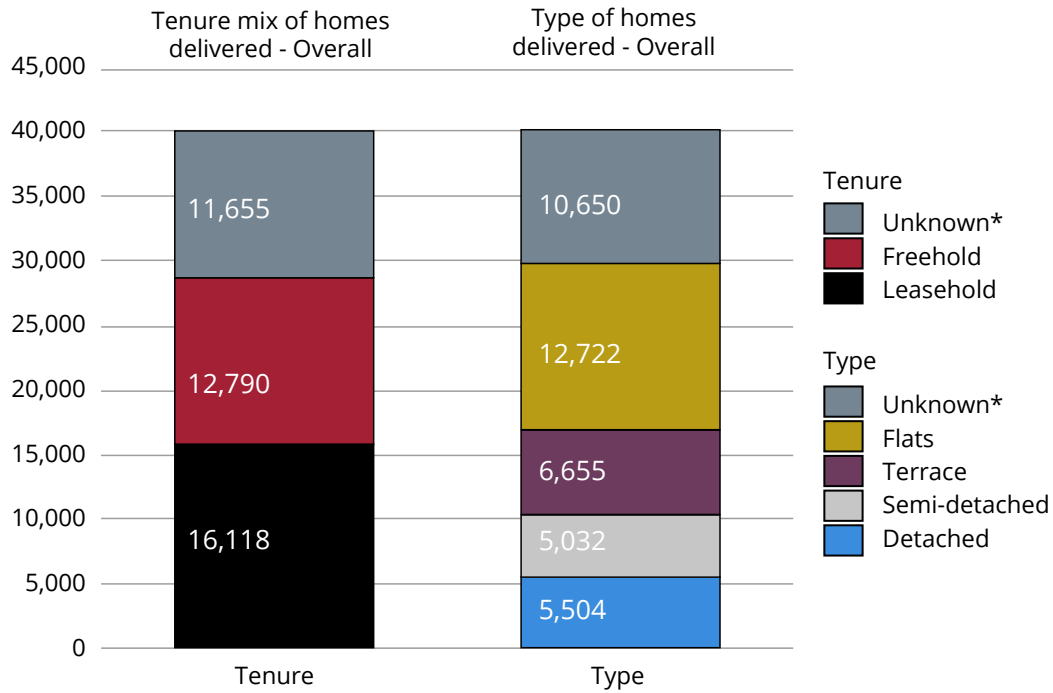
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<sup>31</sup> In answering the sub-questions under Q4, MHCLG noted: "Further detail on the below is available in the May 2019 Progress Report". MHCLG, *Public Land for Housing programme 2015 to 2020: progress report* (2 May 2019): <https://www.gov.uk/government/publications/public-land-for-housing-programme-2015-to-2020-progress-report> [accessed 22 January 2020].

*Q4(iv): How many homes have currently been built and sold on land released through the Public Land for Housing Programme 2015–2020? What types of homes are they?*

A4(iv): As set out in the Progress Report, by the end of March 2018 over 40,000 homes had been built on to market on land from the Public Land for Housing Programme 2011–2015 and 2015–2020. The below chart contains detailed information on type and tenure.

**Figure 1: Information on type and tenure of homes delivered**



*Q5: Please can you provide some background text about the aims of this policy and how the land from the two public bodies specified in these Regulations fits in with the policy?*

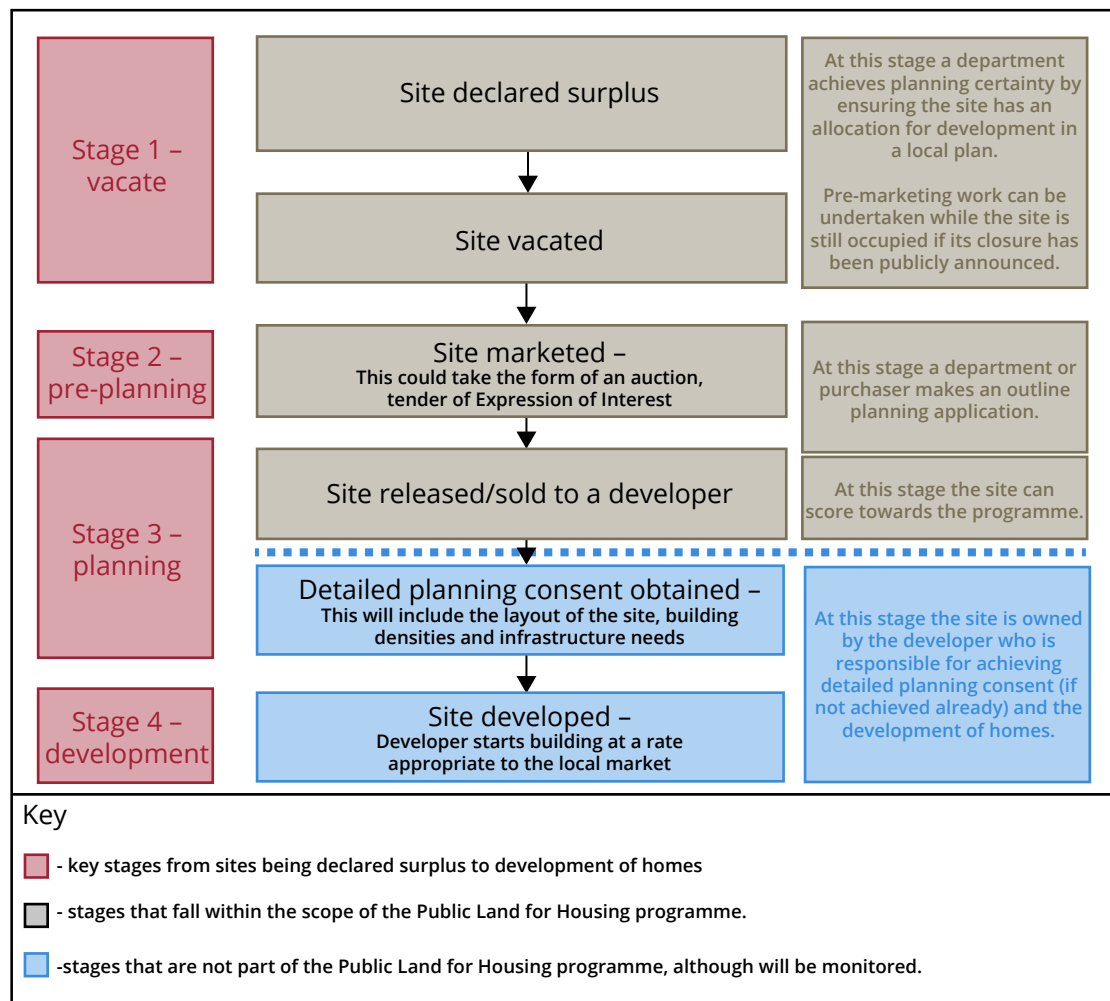
A5: The sale of public land for housing forms an important part of the government’s ambition to deliver 300,000 homes a year by the mid-2020s.

*Q6: Please could you explain for the Committee the process/steps, starting from this instrument and leading to the sale of homes on any land transferred by the two public bodies specified in these Regulations?*

A6: See chart reproduced [below].



**Figure 2: Key stages from sites being declared surplus to development of homes**



*Q7. In your answer to Q1, it notes that any land transferred by Staffordshire County Council would not form part of the Public Land for Housing Programme 2015–2020. Paragraph 7.6 of the EM notes that: “On local government owned land, an announcement was made in Budget 2016 that councils would collaborate with central government on a local government land ambition, working with their partners to release surplus land with the capacity for at least 160,000 homes”; please can you confirm whether this is a separate Programme and which Department/ organisation has the monitoring oversight of this Programme? Would any land transferred by Staffordshire County Council form part of this Programme?*

**A7:** The local authority land ambition is separate from the target to release land with capacity for 160,000 homes on former central government land. Any land transferred by Staffordshire County Council for housing would count towards the local authority land ambition. MHCLG has oversight of the local authority land ambition while engagement with local authorities is undertaken by the Local Government Association.

*Q8: In your answer to Q1, it notes that: “Any land that is suitable for housing transferred by the Manchester University NHS Foundation Trust by the end of March 2020 would form part of the Public Land for Housing Programme 2015–2020.” Please can you*

*confirm what would happen to any land that is suitable for housing and transferred by the Manchester University NHS Foundation Trust after March 2020? Which Programme would this fall under?*

A8: MHCLG will continue to work with other government departments following the end of the current programme in March 2020. It has confirmed that the 160,000 ambition will be met, but to a longer timeframe than originally envisaged.

*Q9: In view of the answer provided to Q3, does this mean that MHCLG are not able to confirm at this time whether the “Homes for Nurses” policy would be applicable in relation to the specification of Manchester University NHS Foundation Trust in these Regulations?*

A9: Homes England is aware of the Homes for NHS Staff policy, and it is drawn to the attention of developers. Further detail on the policy is available here.<sup>32</sup> The allocation of affordable housing is a matter for local decision by the planning authority.

*Q10: Paragraph 2.1 of the EM states that: “The purpose of this instrument is to specify the public bodies whose designated property, rights or liabilities can be transferred to the Homes and Communities Agency (“HCA”) by a scheme made by the Secretary of State under section 53A(1) of the Housing and Regeneration Act 2008 (“the HRA 2008”).” Please can you confirm what the scheme under section 53A(1) of the HRA 2008 is for these Regulations?*

A10: No scheme has been drawn up, as the Regulations have not been made. This is standard terminology for bringing the regulation into effect.

*Q11: In your answer to the third sub-question under Q4, you state that: “As set out in the Progress Report, there is a high probability of releasing land with capacity for up to 69,000 homes during the current programme...”. Please can you confirm whether the target for the Public Land for Housing Programme 2015–2020 relates to selling surplus land with the capacity for at least 160,000 homes? If so, how does selling surplus land differ from releasing land?*

A11: These terms are used interchangeably.

**Answers to Q1-4 provided on 22 January 2020**

**Answers to Q5-11 provided on 23 January 2020.**

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<sup>32</sup> Please note that MHCLG had provided an embedded hyperlink in their response to Q9, as follows: [https://improvement.nhs.uk/documents/5429/Homes\\_for\\_NHS\\_staff.pdf](https://improvement.nhs.uk/documents/5429/Homes_for_NHS_staff.pdf) [accessed 23 January 2020]

## APPENDIX 2: HOMES AND COMMUNITIES AGENCY (TRANSFER OF PROPERTY ETC.) REGULATIONS 2020 (SI 2020/31)

### Letter from Cathy Francis, Housing Delivery Director at the Ministry for Housing, Communities and Local Government, to Lord Hodgson of Astley Abbots, Chair of the Secondary Legislation Scrutiny Committee

I was pleased to have the opportunity to accompany the Minister to the Secondary Legislation Scrutiny Committee to discuss the Statutory Instrument recently laid before the House. We hope that you and your fellow Committee members found the answers helpful.

The Minister promised that we would write to the Committee to provide the figures that we discussed on the performance of the Public Land for Housing Programme and the Local Authority Land Ambition. In light of today's announcement, I wanted to write myself to make sure there is no delay, and have included that data as an annex to this letter.

I also include copies of the May 2019 Public Land for Housing Progress Report, which describes progress towards the programme's targets and sets out lessons learned, and actions taken to drive delivery. I am also including the recent Data Release that provides an update to those figures, and the latest Cabinet Office Transparency Report, which reports on the sale of Government land and property.

The Government remains committed to the release of land from across the public sector, and to ensuring that the public estate plays its part in providing the homes our country needs.

#### Annex to letter

**Table 1: Public Land for Housing Programme**

<b>2011–15 programme target</b>	To release land for 100,000 homes
<b>2015–20 programme target</b>	To release land for 160,000 homes
<b>2011–15 programme delivery</b>	Land released for 109,446 homes
<b>2015–20 programme delivery as of June 2019</b>	Land for c. 48,000 homes
<b>2015–20 programme delivery total forecast</b>	Land for up to 65,000 homes <sup>33</sup>
<b>Expected delivery date for 160,000 target</b>	Beyond 2025

Source: Ministry for Housing, Communities and Local Government (MHCLG)

<sup>33</sup> This is lower than the 69,000 upper estimates discussed at PAC in June 2019. There are still significant risks on certain sites and up to 65,000 is now a more realistic outcome.

**Table 2: Homes built**

<b>Homes delivered on sites disposed since 2011</b>	c51,000 homes (as of March 2019)
<b>Homes delivered on land disposed since 2015</b>	c5,500 homes (as of March 2019)
<b>Contribution to 300,000 homes a year commitment</b>	Homes are being built on former public sector land at a rate of 7,000-9,000 homes per year

Source: MHCLG

**Table 3: Planned affordable homes on public sector land<sup>34</sup>**

<b>Planned affordable</b> homes on land disposed through <b>both</b> programmes (2011–15 and 2015–20) as of March 2019	c20,000 homes, including:
<b>Planned affordable</b> homes for <b>sites released in the current programme</b> 2015–20 only (as of March 2019)	c5,500 homes, including:

Source: MHCLG

**Table 4: Capital receipts 2015–2019**

Sites and properties sold for housing <b>and other purposes from 2015–2019</b>	1,852
Target receipts by 2020	£5 billion
Receipts by March 2019	£4.62 billion

Source: MHCLG

**Table 5: Local authority land ambition 2015–2020<sup>35</sup>**

<b>Ambition</b>	Release surplus local authority land with capacity for 160,000 homes by March 2020
<b>Land released to Aug 2019</b>	c.68,000 homes
<b>Total forecast for release by March 2020</b>	c.128,000 homes

Source: MHCLG

<sup>34</sup> This reflects the number of affordable homes in approved planning applications for land sold as part of the Public Land for Housing Programme.

<sup>35</sup> There is a large degree of uncertainty in these numbers, as they are based on returns from only two-thirds of local authorities.

### APPENDIX 3: DRAFT CLIENT MONEY PROTECTION SCHEMES FOR PROPERTY AGENTS (APPROVAL AND DESIGNATION OF SCHEMES) (AMENDMENT) REGULATIONS 2020

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

*Q1: Para 7.3 of the EM refers to the guidance on compliance with the Money Laundering Regulations that has turned out to be more complex than expected. When will the draft guidance be published for consultation? When does the Department expect the final guidance to be published?*

A1: The draft of the Joint-Money Laundering Steering Group's (JMLSG) Pooled Client Account guidance is being developed and JMLSG is likely to consult on this guidance in Spring 2020.

We expect the guidance to be published within the one year extension period defined in this Statutory Instrument. However, it is important to note that the JMLSG is a private body and the Government cannot require them to publish the guidance on a specific date.

*Q2: Para 7.5 refers to assessing the impact of the guidance. Who will assess the impact and what will this entail?*

A2: The Government will be responsible for assessing the impact of this guidance on the extent to which banks are more willing to offer pooled client accounts to letting agents.

The Government requires the approved client money protection (CMP) schemes to submit quarterly data to MHCLG which, includes reporting on the number of letting agents who have reported difficulties in obtaining a client account. Using this data point the Department will assess the impact of the guidance which, will be supported through our governance framework that we have with the approved CMP schemes

*Q3: Are there any figures on how many agents currently have appropriate client accounts and are members of a Client Money Protection scheme (in total and in % of all agents)?*

A3: As of 31 December 2019, 9978 letting agents have obtained membership of an approved client money protection scheme all of which have an appropriate client account or are making every reasonable attempt to obtain one.

However, the Department is aware from quarterly data that we collect that 251 letting agents have reported difficulties in obtaining a client account (during the period of October—December 2019) which amounts to only 2.5% of protected agents. Therefore, we know the current scale of this problem is limited.

*Background information to mandatory client money protection, from quarterly submissions to MHCLG*

**Table 6: Total number of members across the six client money protection schemes from 1 January 2019 to 31 December 2019**

Total number of members as of (01/01/2019)	6120
Total number of members as of (31/03/2019)	7492
Total number of members as of (30/06/2019)	8756
Total number of members as of (30/09/2019)	9604
Total number of members as of (31/12/2019)	9978

Source: Ministry of Housing, Communities and Local Government (MHCLG)

**Table 7: Total amount of client money protected across the six approved schemes**

Total amount of client money protected (as of 30 June 2019)	£2,969,249,989
Total amount of client money protected (as of 30 September 2019)	£3,271,787,116
Total amount of client money protected (as of 31 December 2019)	£3,377,587,361

Source: MHCLG

**Table 8: Number of agents holding client money in each size bracket**

	30 June 2019	30 September 2019	31 December 2019
£1 - £500,000	7967	8683	9042
£500,001 - £1,000,000	452	455	475
£1,000,001 - £5,000,000	316	326	333
5,000,001 - £10,000,000	26	28	31
Over £10,000,000	28	32	34

Source: MHCLG

**Table 9: Number of agents who have reported difficulties in obtaining a client account across the six approved schemes**

Number of agents who have reported difficulties in obtaining a client account (as of 30 June 2019)	488
Number of agents who have reported difficulties in obtaining a client account (as of 30 September 2019)	118
Number of agents who have reported difficulties in obtaining a client account (as of 31 December 2019)	251

Source: MHCLG

## APPENDIX 4: M62 AND M606 MOTORWAYS (CHAIN BAR ROUNDABOUT) (CAR SHARE LANE) (REVOCATION) REGULATIONS 2020 (SI 2020/68)

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### Further information from the Department for Transport

*Q1: It appears that initially the car share lane worked sufficiently well for the experiment to be made permanent but following alterations to the junction in 2015–17 it no longer functioned as intended. Was this a failure in the design of the revised junction?*

A1: Due to the length of time the car share lane was suspended it was very apparent when it was reinstated, the operational issues it was creating. However prior to the suspension in 2015 it had already been observed that the car share lane was adding to congestion problems at this location. Its capacity was significantly underutilised with only c.300–400 vehicles per hour using the lane in peak hours compared to c.1500–1700 vehicles per hour having to stop at the traffic signals at Chain Bar roundabout, leading to significant queuing on the M606 approach to Chain Bar. Traffic growth over the last decade has also added to the congestion issues at this sensitive location, increasing the demand for the M606 to M62 eastbound movement.

The improvement scheme that was implemented between 2015–2017 widened the southern and western parts of the circulatory carriageway to four lanes. The purpose of the scheme was to improve flow from the M62 westbound to the M606 northbound by increasing capacity on the circulatory carriageway. The scheme implemented between 2015–2017 is not creating the congestion issue relating to the car share lane and it's likely that without this, the operation of the junction would in fact be worse than it is.

*Q2: Although this revocation will speed up traffic it risks doing so at the expense of increased pollution—what assessments were made about the air quality at the site?*

A2: Following the Design Manual for Roads and Bridges (DMRB), the scope of the proposed intervention did not require an air quality or greenhouse gas assessment. We have however carried out an operational assessment and modelled the impacts of the proposal using a VISSIM microscopic simulation model, covering a region from the west of the M62 junction 26 to the east of the M62 junction 27, and northward to the M606 junction 3, incorporating the surrounding roads. The assessment shows a reduction in delay and queueing, reducing congestion and queue lengths away from sensitive receptors. As the main benefit of the scheme is reduced congestion it is not anticipated to have any negative impact on air quality. The car share lane has effectively been suspended since 2015, however on average, traffic growth at this location appears to be consistent with the Yorkshire & Humber region suggesting that the temporary revocation of the car share lane has not attracted significantly more traffic to the area.

*Q3: We note that the West Yorkshire Combined Authority questioned Highways England's commitment to supporting sustainable transport in their area—what other initiatives are being implemented in that area to improve environmental damage from traffic?*

A3: The WYCA [West Yorkshire Combined Authority] consultation did set out some suggestions as to how Highways England could work with them on alternative means of promoting car sharing and an initial meeting to discuss this has already taken place with a view to supporting WYCA with the suggested activity. WYCA do also recognise the work that Highways England has already delivered in the area

to mitigate the impact of the SRN [Strategic Road Network] on the environment, though the use of our Environment Designated Funds. During the first Road Investment Strategy we have invested around £10m of environment designated funds on measures in the WYCA region to reduce the environmental impact of the SRN. These have included measures to reduce carbon, address flooding and noise and improve the roadside habitat. We have also used our Cycling, Safety and Integration fund to work with WYCA to promote sustainable travel options including cycling.”

**19 February 2020**



## APPENDIX 5: SCHOOL AND EARLY YEARS FINANCE (ENGLAND) REGULATIONS 2020 (SI 2020/83)

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### Additional information from the Department for Education

*Q1: According to the EM, the SI provides instruction on how local authorities are to set their education budgets in the 2020–21 financial year. But the EM does not provide any information about the overall financial context, i.e. the schools budget that has been set for 2020–21. Could you provide information about the 2020–21 schools budget please and how this compares to the last budget for 2019–20?*

A1: For context, last year’s Spending Round saw the government announce that, compared to 2019–20, the core schools budget will increase by £2.6bn in 2020–21, followed by £4.8bn and £7.1bn in 2021–22 and 2022–23 respectively.

In 2020–21, the schools block is increasing by 5% overall, with every local authority receiving a per-pupil increase at least in line with inflation; and higher than inflation for most—the average increase is 4.2% per pupil.

*Q2: Para 7.13 of the EM states that the NFF funding floor provides a minimum increase in per-pupil funding for all schools. Other provisions in the SI apply only to local authority maintained schools. Does that mean that the NFF funding floor minimum increase also applies to other schools, such as academies and free schools?*

A2: The NFF, including the funding floor, relates to both maintained schools and academies. While the SI applies to maintained schools only, it dictates how a local authority sets its local funding formula, which is also the basis by which the Education and Skills Funding Agency funds academies.

The funding floor factor in the 2019–20 regulations allowed local authorities to mirror the NFF factor in their local formulae if they wished to, as a supplement to using the minimum funding guarantee (which pre-dates the funding floor)—both are ways of protecting changes in per-pupil funding.

For 2020–21, we have changed the calculation of the NFF funding floor so that it is effectively the same as the minimum funding guarantee. Therefore, local authorities no longer need the funding floor option in the SI to mirror in their local formulae the protection that the NFF gives to all schools.

*Q3: The government consultation response to the stage 2 consultation on the NFF in relation to high needs states that there “was concern that insufficient funding to meet growing cost pressures on local authorities’ high needs budgets would create instability in the system and that this could result in risks to ensuring appropriate provision for children and young people”, and that “respondents also raised concerns about fairness, arguing that the historic spend factor should be removed or reduced as it had the effect of locking in levels of expenditure that could not be considered fair in comparison to the levels of spending in other areas”. To what extent have these concerns be addressed, including by this SI?*

A3: The SI does not address the historic spend factor, or any other factors in the high needs national funding formula.

Funding allocated through the historic spend factor of the formula will comprise 38% of the 2020–21 allocations, and recognises that there are local circumstances and patterns of demand and provision that are not adequately reflected in the

other formula factors. We are planning to start of review of the high needs national funding formula, including the historic spend factor, later in 2020.

This SI relates to the cost pressure point only through the new provisions described at 6.20 to 6.22 on handling DSG deficits.

*Q4: What will be the high needs budget for 2020-21 and how does this compare to 2019-20?*

A4: The high needs block is increasing by 12% overall in 2020-21, with every local authority receiving at least 8% per head of population aged 2 to 18, and up to 17% per head.

**11 February 2020**

## APPENDIX 6: INTERESTS AND ATTENDANCE

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 25 February 2020, Members declared no interests.

### **Attendance:**

The meeting was attended by Baroness Bakewell of Hardington Mandeville, Lord Chartres, Lord Cunningham of Felling, Viscount Hanworth, Lord Hodgson of Astley Abbotts, Lord Liddle and Lord Sherbourne of Didsbury.