

# HOUSE OF LORDS

## Secondary Legislation Scrutiny Committee

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### 1st Report of Session 2019–21

**Draft Public Bodies (Abolition of Public Works Loan Commissioners) Order 2019: revised report**

Drawn to the special attention of the House:

**Accreditation of Forensic Service Providers (Amendment) Regulations 2019**

**Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019**

**Includes information paragraphs on:**

Firearms Regulations 2019

M4 Motorway (Junctions 3 to 12) (Variable Speed Limits) Regulations 2019

Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Regulations 2019

Water Abstraction (Transitional Provisions) (Amendment) (England) Regulations 2019

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### *Secondary Legislation Scrutiny Committee*

The Committee's terms of reference, as amended on 11 July 2018, are set out on the website but are, broadly:

To report on draft instruments and memoranda laid before Parliament under sections 8, 9 and 23(1) of the European 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>Viscount Hanworth</u></a>	<a href="#"><u>The Earl of Lindsay</u></a>
<a href="#"><u>Rt Hon. Lord Chartres</u></a>	<a href="#"><u>Lord Hodgson of Astley Abbotts</u></a>	<a href="#"><u>Lord Lisvane</u></a>
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<a href="#"><u>Lord Faulkner of Worcester</u></a>	<a href="#"><u>Lord Kirkwood of Kirkhope</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).

# First Report

## PUBLIC BODIES ORDER

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1. We published a report on the Draft Public Bodies (Abolition of Public Works Loan Commissioners) Order 2019 in our 3rd Report of Session 2019, since when three technical inaccuracies have come to light. To assist the House, we are re-printing our report which has been revised to remove those inaccuracies. The changes do not, in any way, change our original conclusion that the Government have satisfied the tests set out in the Public Bodies Act 2011 and that we are content to clear the draft Order within the 40-day affirmative procedure.

### **Draft Public Bodies (Abolition of Public Works Loan Commissioners) Order 2019: revised report**

*Date laid: 14 October 2019*

#### *Introduction*

2. The draft Public Bodies (Abolition of Public Works Loan Commissioners) Order 2019 (“the draft Order”) was laid before Parliament by HM Treasury (HMT) on 14 October 2019 under section 11(1) of the Public Bodies Act 2011 (“the 2011 Act”). The Order was laid with an Explanatory Document (ED). The 2011 Act gives Ministers powers to abolish or merge public bodies, modify their constitutional or funding arrangements or modify or transfer functions of public bodies through Public Bodies Orders. The draft Order proposes to abolish the Public Works Loan Commissioners (the “Commissioners”).

#### *Context*

3. The Public Works Loan Board (PWLB) is a statutory body that issues loans to local authorities and other specified bodies, operating within a policy framework set by HMT. Formally, the PWLB consists of up to 12 Commissioners who are appointed for four years and, by law, are unpaid. The Commissioners originated in 1793 and were established on a permanent statutory basis in 1817. There are six Commissioners in post at present.
4. HMT explains that the Commissioners were originally responsible for approving loan applications, including assessing the appropriateness of any security, and collecting the repayments. In practice, their functions and day-to-day operations have been delegated to the Commissioners’ Secretary in the UK Debt Management Office (DMO), an executive agency of HMT. The National Loans Fund (NLF), managed by HMT, finances loans from the Commissioners. According to HMT, loans from the Commissioners are the main source of debt financing for local authorities. They are mainly used for capital projects and in 2018–19 net lending by the Commissioners to local authorities was £7.4 billion.
5. HMT says that, since 2004, local authorities have been responsible for making their own borrowing decisions without government consent under

the prudential regime<sup>1</sup> which secures any borrowing automatically against their revenues.

*Overview of the proposal and rationale for reform*

6. The draft Order proposes to abolish the Commissioners and transfer their functions formally to HMT. The PWLB will no longer be a statutory lending body. The function of lending will continue to exist, with HMT taking over from the PWLB as the statutory lending body. The DMO will continue to administer PWLB lending on behalf of HMT. The Commissioners' current interests in land are to be transferred to the Public Works Loan Secretary, a new statutory office to be established by this draft Order, to hold on behalf of HMT. All other rights, liabilities and property are to be transferred to HMT. In effect, the new Public Works Loan Secretary will continue the functions and retain the powers of the previous Commissioner's Secretary.
7. HMT explains that the transfer of the Commissioners' functions to HMT will formalise the arrangements which already exist in practice between HMT and the DMO, without impacting on the financing arrangements for local authorities, or the amounts they may borrow. HMT says that apart from meeting once a year to review an annual report and accounts that are prepared by the DMO, the Commissioners have no role in the operational processes or the day-to-day management of local authority loans, such as collecting due repayments. HMT describes their role as "quasi ceremonial" and says that while the role of the Commissioners is no longer required in practice, their lending functions are still needed and transferring them formally to HMT will "align policy and operational responsibilities with current practice". According to HMT, the draft Order would resolve legal ambiguities in the governance framework.

*Role of the Secondary Legislation Scrutiny Committee*

8. The Committee's role, as set out in its Terms of Reference,<sup>2</sup> is to "report on draft orders and documents laid before Parliament under section 11(1) of the 2011 Act in accordance with the procedures set out in sections 11(5) and (6)". A key aspect of this role is the Committee's power to trigger the enhanced affirmative procedure which would require the Government to have regard to any recommendations made by the Committee during a 60-day period from the date of laying. The Committee may also take oral or written evidence, to aid its consideration of the orders.

*Statutory Consultation*

9. The Government conducted a public consultation on the proposed changes in accordance with section 10 of the 2011 Act. The consultation ran from 12 May 2016 to 3 August 2016 and received 35 responses, including 30 responses from local authorities, parish councils and local authority associations, two responses from private sector bodies, two from members of the public and one from a Commissioner.

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1 According to HMT, local authorities may borrow without government consent under the Local Government Act 2003 and the Capital Finance Regulations 2003. They are required to have regard to the "Prudential Code for Capital Finance in Local Authorities" published by the Chartered Institute of Public Finance and Accountancy.

2 [Terms of Reference of the Secondary Legislation Scrutiny Committee.](#)

10. As set out by HMT in the ED and in its consultation response,<sup>3</sup> most responses to the consultation supported the proposed abolition of the Commissioners and the transfer of their functions to HMT. A number of responses highlighted the need for some form of independent oversight of local authority loans. HMT says that, in practice, the Commissioners have not been carrying out this oversight function since decisions on borrowing have been devolved to local authorities under the prudential regime. One local authority raised the possibility of transferring the Commissioner's functions to the Department for Communities and Local Government (DCLG, now Ministry of Housing, Communities and Local Government - MHCLG) as the lead department for local government finance. HMT says that the purpose of the proposed changes is to "provide a more streamlined, up to date governance arrangement and ensure that Ministers and Accounting Officers are properly accountable to Parliament", and that transferring the functions to DCLG/MHCLG or using other organisations for oversight would "add another layer of bureaucracy" as responsibility for the NLF as the source of local authority loans will need to remain with HMT. Most respondents to the consultation expected the proposed changes to have a negligible impact on borrowers. HMT emphasises that "the proposed governance changes will not affect existing local loans, the Government's policy on lending to local authorities, or the process by which the loan applications or repayments are handled" and that interest rate policy will also remain the responsibility of HMT.
11. Given that the consultation was completed in summer 2016, we asked HMT why the draft Order had not been taken forward earlier. HMT told us that the intention was to lay the Order in 2016 but that due to pressures on Parliamentary time following the EU referendum, it was deprioritised. HMT added that the draft Order is now a priority as the power to use the 2011 Act to abolish the Commissioners will run out on 12 April 2020 and the current terms for most of the Commissioners will end in 2021.

*Other Tests in the Public Bodies Act 2011: assessment of the proposals*

12. This Order is proposed under sections 1(1), and (2), 6(1), (2)(a) and (5), 23(1)(a), (2)(b), and (6) and 35(2) of the 2011 Act which, in effect, give Ministers powers to abolish a public body and transfer its functions and property, rights and liabilities to another public body.
13. Ministers may only make an order under sections 1 to 5 of the 2011 Act if they consider that the order serves the purpose of improving the exercise of public functions, having regard to (a) efficiency, (b) effectiveness, (c) economy, and (d) securing appropriate accountability to Ministers (section 8 of the 2011 Act). HMT addresses these issues in sections 8 and 9 of the ED.

*Efficiency*

14. HMT explains that efficiencies will be realised by formalising the existing arrangements between HMT and the DMO, and ensuring the new governance reflects those arrangements. HMT emphasises that under the new arrangements there will no longer be a requirement to hold an annual meeting with, and appoint, Commissioners.

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<sup>3</sup> HM Treasury, *Transfer of functions from the Public Works Loan Board: response to the consultation*, (November 2016): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/568487/transfer\\_of\\_functions\\_from\\_PWLB\\_government\\_response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/568487/transfer_of_functions_from_PWLB_government_response.pdf) [accessed 25 October 2019].

*Effectiveness*

15. HMT sets out in the ED that effectiveness will be improved following the abolition of the Commissioners and the transfer of their functions to HMT as Ministers will be able to influence delivery and the implementation of policies more directly. The Committee notes that as the Commissioners only have a “quasi ceremonial” role in practice, the impact of their abolition on the effectiveness of the Public Works Loan scheme in practice is likely to be marginal.

*Economy*

16. HMT expects to achieve small economies by removing the requirement to appoint Commissioners, explaining that “vacancies typically attract only a small field of candidates and appointing 12 Commissioners involves a drawn-out process” with approval required from HMT’s Permanent Secretary, the Cabinet Secretary, the Prime Minister and the Chancellor before appointments are made by Royal Warrant. We asked HMT about the cost savings that are expected. HMT told us that:

“[T]he role of Commissioners has become simply a formal requirement. Employing civil service assets in the long recruitment process for Commissioners ... therefore is not a good use of public resources, however we have not carried out a specific costing of this activity.”

17. The Committee notes that while it would have been helpful for HMT to provide Parliament with an estimate of the cost savings, these savings are expected to be small.

*Accountability*

18. HMT emphasises that accountability will improve following the transfer of functions to HMT: Ministers will be accountable directly to Parliament as there will no longer be a separation between Ministers and the operation of the Commissioners in providing loans to local authorities. HMT says that under the new arrangements there will be a statutory requirement to present a report annually (with accounts annexed) to Parliament on local authority loans and to provide a copy to the Comptroller and Auditor General, so that it may present a further audited report to Parliament.

*Safeguards*

19. The ED states that the conditions in section 8(2) of the 2011 Act are satisfied in respect of the abolition of the Commissioners as their functions will be transferred to HMT. According to HMT, this change will not by itself alter the financing arrangements for local authorities, or how much they are able to borrow; it will only formalise the existing arrangements between HMT and the DMO.
20. HMT adds that these changes will not alter or remove any necessary protection or affect the exercise of any legal rights or freedoms. The abolition of the Commissioners will remove the requirement to have Commissioners and place responsibility for local loans with HMT which will continue to provide reports and accounts to Parliament, with Ministers being directly accountable for any local loans made. HMT emphasises that the proposed changes will not impact on current financing arrangements for local authorities, or the amounts they may borrow.

*Conclusion*

21. While the practical effect of the abolition of the Commissioners and the transfer of their functions to HMT is likely to be limited, given the Commissioners' current "quasi ceremonial" role, HMT has demonstrated that the proposals will streamline some aspects of the provision of Public Works Loans to local authorities by clarifying the governance framework and improve accountability by making Ministers directly accountable to Parliament for these loans. The Committee notes that while HMT has not provided any financial data, the economies that are expected to be realised by this draft Order are small. **The Committee concludes that the Government has demonstrated that the draft Order serves the purpose of improving the exercise of public functions and is in compliance with the tests set out in the 2011 Act. We are therefore content to clear the draft Order within the 40-day affirmative procedure.**

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Accreditation of Forensic Service Providers (Amendment) Regulations 2019 (SI 2019/1384)

*Date laid: 29 October 2019*

*Parliamentary procedure: negative*

*These Regulations propose a variation to the requirement for accreditation under ISO 17025 for DNA-profile or fingerprint evidence assessed at the government-owned laboratories at the Atomic Weapons Establishment Aldermaston, and the Defence Science and Technology Laboratories at Porton Down and Fort Halstead. In this report, we raise a number of concerns about how this will operate and, in particular, whether the forensic evidence obtained under the new arrangement will be acceptable to the courts.*

**These Regulations are drawn to the special attention of the House on the ground that they may inappropriately implement European Union legislation.**

#### *Background*

22. These Regulations amend the Accreditation of Forensic Service Providers Regulations 2018 (SI 2018/1276) which transposed EU Council Framework Decision 2009/905/JHA, known as the Forensic Services Framework Decision (“the Framework Decision”). The Framework Decision applies specifically to laboratory activities carried out at the request of law enforcement agencies responsible for the prevention, detection or investigation of crime. The Regulations have been laid by the Home Office and are accompanied by an Explanatory Memorandum (EM). We have received a submission from the United Kingdom Accreditation Service (UKAS), which raises a number of issues. These are described below, and the submission is published on our webpage.<sup>4</sup>

#### *Compliance with the standard?*

23. These Regulations propose a variation to the requirement for accreditation for DNA-profile or fingerprint evidence assessed at the government-owned laboratories at the Atomic Weapons Establishment (AWE) Aldermaston, and the Defence Science and Technology Laboratories (Dstl) at Porton Down and Fort Halstead. These laboratories specialise in the analysis and forensic interrogation of evidence where hazardous chemical, biological, radiological, nuclear and explosive (CBRNE) materials are present. The Government argue that these laboratories face specific challenges in gaining accreditation associated with the relatively low number of samples that they handle, and the necessary additional layers of safeguards required to work with such hazardous materials.
24. This instrument amends SI 2018/1276 so that the requirement for accreditation will be satisfied where laboratory activity is carried out in the specified CBRNE laboratories “by, or under the supervision of, an individual ... who is employed by an accredited forensic service provider for the purpose

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<sup>4</sup> Secondary Legislation Scrutiny Committee publications page: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/publications/>.

of carrying out that laboratory activity”. The Government state that work in such laboratories is already conducted by or under the supervision of forensic experts (in other disciplines) who will be present when the work is undertaken and will be able to judge if the work is carried out to the required standard. The EM, at paragraph 2.7, states that:

“This amendment provides clarity that evidence processed by these laboratories will comply with the accreditation requirement in the Regulations, and therefore assurance that prosecutors can rely on such evidence to inform charging decisions and build cases.”

25. UKAS, however, argues that this new arrangement will not meet the requirements of the Framework Decision because accreditation involves an independent expert evaluation of a laboratory’s competence and an impartial assessment of its compliance with the international standard ISO/IEC 17025 *General requirements for the competence of testing and calibration laboratories*. The ISO standard includes detailed requirements for a laboratory’s management system, validated test methods, the suitability of the facilities and equipment, the competence of the personnel and the quality control and assurance practices.
26. UKAS also questions whether the change may lower current standards, as Fort Halstead currently holds UKAS accreditation for DNA recovery and would no longer need to do so under the Regulations.

*Is this equivalent to the ISO standard?*

27. The Regulations insert a new provision into SI 2018/1276 which says that, in relation to tests carried out on CBRNE materials at the three laboratories to which they apply, “the requirement for accreditation is satisfied if that laboratory activity is carried out by, or under the supervision of, an individual who is a relevant employee in relation to that laboratory activity”.
28. This raises a number of questions—how does accreditation apply, what constitutes supervision, and will the courts accept evidence obtained under the new arrangement?
29. Accreditation is essentially a third-party assessment of whether a process meets the standard set by the ISO; that includes a paper trail to ensure that the sample taken has been kept securely and not compromised in some way, as well as checking that the approved equipment and methods are correctly applied. UKAS, the UK competent authority under the Framework Decision, expresses doubts about the new arrangement.
30. We asked the Home Office whether the accreditation applies to an individual or the laboratory. We were told:
 

“The accreditation in question applies to organisations/laboratories rather than individuals although staff competence in a discipline forms part of the accreditation. Hence the need for the amendment to the SI, which states that the accreditation requirement set out in the original SI is satisfied when work is carried out in our specific laboratories by, or under the supervision of, an individual from an accredited laboratory.”
31. **The House may wish to ask the Minister whether, irrespective of the competence of the “relevant employee”, the process still meets the**

**ISO standard if it is not conducted in an accredited laboratory with its special equipment, conditions etc.** The Home Office explained that *where it is possible* to remove the fingerprint or DNA from the hazardous material, the *recovery* of the evidence will be done in one of the named specialist laboratories, but the *analysis* of the recovered evidence will then take place at an accredited provider engaged by the police force in question.

32. Another issue concerns what constitutes “supervision”. The Regulations require supervision to be undertaken by a “relevant employee in relation to that laboratory activity”. Although the Home Office states in supplementary material to the Committee that these laboratories would only use forensic practitioners from ISO 17025 accredited police or private laboratories, we note that the wording in the legislation is broad and would seem to allow any scientist in that discipline to attend the scene.

33. We also asked how close the DNA or fingerprint specialist’s supervision of the sampling would be. The Home Office replied that the approach would be slightly different in each of the laboratories but all of them would use accredited forensic practitioners:

- Chemical and biological: forensic practitioners would either be hands on whenever possible and deemed safe, supervising in person, or via a video link from a safe space. It depends on the hazard posed by the contaminated item being examined.
- Explosives: items require specialist facilities and training to handle safely. Provided the necessary risk assessments have been carried out, staff from a different laboratory can attend an examination and, in some cases, may be able to physically handle explosives should the competent person in handling explosives deem it appropriate to do so. This will be assessed on an item-by-item basis.
- Radiological and nuclear: forensic practitioners from accredited laboratories conduct the forensic activities under supervision. All decisions relating to the forensic science activities undertaken on an exhibit are made by the ‘visiting’ forensic practitioner from an accredited laboratory. Guidance is provided about the safe handling of exhibits, radiation protection, and health physics monitoring.

34. **The House may wish to press the Minister further on what the Regulations intend by “supervision” and whether the definition of “relevant employee” should require more specific expertise in taking forensic samples of this type.**

*Will the courts accept evidence obtained under the new arrangement?*

35. Our greatest concern is whether the courts will accept evidence obtained under the new arrangement.

36. The Home Office asserts that the new arrangement will meet the necessary standard under the Framework Decision:

“The solution we have developed is sufficient to meet the requirements of the Forensic Services Framework Decision, which imposes the accreditation requirement as a means to ensure the quality of the

output evidence. The Home Office is content that the solution we are implementing will meet this objective.”

The Department also told us that it had taken advice from the Crown Prosecution Service and other operational partners before laying these Regulations and was content that the legislation will allow the relevant evidence to be used in court.

37. UKAS, on the other hand, says that it “considers that the amendment to the 2018 Regulations poses a significant risk to the validity of forensic evidence in the criminal justice system and does not meet the intent of the 2018 Regulations to ensure that the UK can demonstrate requirements with the corresponding European legislation.”
38. **The House may wish to ask the Minister for a full explanation of why the Government disagree with the assessment by UKAS that there is a “significant risk to the validity of forensic evidence”.**

#### *Conclusion*

39. The ISO standard is an internationally agreed process based on third-party accreditation of a comprehensive, end-to-end process. Concerns have been raised about whether selective changes of the type contained in these Regulations risk invalidating that process. We acknowledge that the Home Office is trying to deal with exceptional and difficult circumstances but, **given the doubts raised by UKAS, we draw these Regulations to the special attention of the House on the ground that, for the situations identified in the Regulations, they may inappropriately implement European Union legislation.**

## **Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (SI 2019/1514)**

*Date laid: 23 December 2019*

*Parliamentary procedure: negative*

*These Regulations allow same-sex couples to form a civil marriage and opposite-sex couples to register a civil partnership in Northern Ireland. The instrument also provides such couples with associated rights and entitlements, and sets out how equivalent overseas relationships should be treated in Northern Ireland. The Government say that, following consultation, they will lay further regulations later this year covering, in Northern Ireland, same-sex religious marriages and associated protections, and the rights to convert from civil partnership to marriage and vice versa.*

**The Orders 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.**

40. The Northern Ireland Office (NIO) and Government Equalities Office (GEO) have laid these Regulations with an Explanatory Memorandum (EM) and Impact Assessment (IA). The purpose of the instrument is to allow same-sex couples to form a civil marriage and opposite-sex couples to register a civil partnership under Northern Ireland law. The EM states that the Regulations provide such couples with a range of associated rights and entitlements and ensure that their relationships are recognised in Northern Ireland law, especially in relation to pensions and social security, children and families and gender recognition. The Regulations also set out how equivalent overseas relationships should be treated in Northern Ireland.
41. The EM explains that while the Government remain committed to restoring devolution in Northern Ireland, Parliament determined when passing the Northern Ireland (Executive Formation etc.) Bill that, in the continued absence of a Northern Ireland Executive, the Government should legislate to allow same-sex marriages and opposite-sex civil partnerships. Amendments to the Bill were passed in the House of Commons to require the Government to introduce regulations to extend same-sex marriage to Northern Ireland and in the House of Lords to introduce opposite-sex civil partnerships. The NIO says that previous legislative attempts in the Northern Ireland Assembly and, via Private Members' Bills, in the UK Parliament did not succeed, and that under section 8 of the Northern Ireland (Executive Formation etc.) Act 2019 (NIEFA), the Secretary of State is required to make regulations no later than 13 January 2020 so that couples in Northern Ireland are eligible to form same-sex marriages and opposite-sex civil partnerships.
42. The EM explains that the Regulations only allow for civil same-sex marriages and that the Government intend to lay further regulations under the NIEFA later in 2020 to cover same-sex religious marriage and associated protections and the rights to convert from civil partnership to marriage and vice versa. According to the NIO, a consultation on these issues is to be launched later in January to take into account the "particular legal and religious landscape in Northern Ireland". The NIO adds that, because not everyone supports the introduction of same-sex marriage or opposite-sex civil partnerships, this instrument introduces protections, including new exceptions, to ensure that it is not unlawful discrimination for religious bodies to provide blessings

(that is ceremonies or events to mark a marriage or civil partnership) only to same-sex or opposite-sex couples, and to make clear that it is not a criminal offence simply to criticise same-sex marriage.

43. The NIO told the Committee that the recent decision to restore devolved government in Northern Ireland does not impact on the duty of the Secretary of State under Section 8 of the NIEFA to legislate in the areas of same-sex marriage and opposite-sex civil partnerships.
44. The NIO says that it worked with the Northern Ireland Civil Service in the drafting of the Regulations and that the instrument draws heavily on the equivalent legislative provisions in England, Wales and Scotland.
45. The IA identifies survivors' benefits to a partner's private sector defined benefits occupational pension scheme as the key monetised annual recurring cost that will arise from the changes and puts the total cost at £9.5 million over a ten-year period. The IA also identifies an impact on the public sector from defined benefit public sector pension schemes and from other tax impacts and says that the GEO is working with HM Treasury, the Department for Work and Pensions and others to assess the overall impact of opposite-sex civil partnerships and same sex-marriage on public expenditure.

#### *Conclusion*

46. Given Parliament's previous interest in same-sex marriage and opposite-sex civil partnerships, the House may welcome an opportunity to debate this instrument, especially in the context of the particular legal and religious landscape in Northern Ireland. **The 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.**

## INSTRUMENTS OF INTEREST

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### Firearms Regulations 2019 (SI 2019/1420)

47. This Home Office instrument introduces changes to the controls on firearms to implement the requirements of Directive (EU) 2017/853 (‘the Directive’): the main change for the UK is to require notification to the authorities of deactivated firearms acquired after 14 September 2018.<sup>5</sup> As at present, all newly deactivated firearms must be verified by a competent authority, which in the UK is one of the two Proof Houses, who will issue a certificate of conformity if they are satisfied prescribed specifications have been met. They will also permanently affix a mark showing when and where the firearm was deactivated. Firearms deactivated before 8 April 2016 do not have to be declared unless they are transferred or placed on the market in which case they must be upgraded to meet the current specifications. Deactivated firearms brought into the UK will also have to conform to the Directive’s standards and evidenced by the certificate and the mark which must be clearly visible.

### M4 Motorway (Junctions 3 to 12) (Variable Speed Limits) Regulations 2019 (SI 2019/1430)

48. This instrument has been laid by the Department for Transport (DfT) alongside an Explanatory Memorandum (EM).<sup>6</sup> The Regulations enable the operation of variable mandatory speed limits on the M4 motorway between Junctions 3 and 12 and extend further westwards by 117 metres the start of the maximum 60mph speed limit on the eastbound carriageway of the M4 at Junction 4.
49. Paragraph 7.2 of the EM notes that the M4 Junction 3 to Junction 12 smart motorway scheme (“the Scheme”) is part of Highways England’s programme to add capacity to the existing strategic road network to support economic growth and maintain mobility. The EM notes that:
- “This section of the M4 carries more than 130,000 vehicles per day with a trend of higher than average road traffic incidents and casualties. It is expected that the scheme will: increase motorway capacity and reduce congestion; smooth traffic flows; provide more reliable journey times; increase and improve the quality of information for the driver.”
50. The consultation on the proposal to introduce variable mandatory speed limits on the M4 Junctions 3 to 12 ran from 12 January to 22 February 2015. Clarification was sought on paragraph 10.4 of the EM regarding the number of consultation responses which included concerns about the Scheme; the Committee has been provided with additional information from Highways England which we are publishing at Appendix 1. **The Committee is disappointed that the EM did not note the correct number of consultation responses which included concerns about the Scheme.**

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5 This instrument is linked to [SI 2019/1419 Firearms No 2 Order](#) (not subject to parliamentary procedure) which transposes technical provisions.

6 The EM referred to in this note is the version laid on 31 October 2019.

### **Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Regulations 2019 (SI 2019/1440)**

51. These Regulations amend an earlier instrument<sup>7</sup> which transposed the EU Emissions Trading System Directive into UK law. The EU Emissions Trading System (EU ETS) seeks to reduce CO<sub>2</sub> emissions by putting a cap on overall emissions for specific sectors which is lowered gradually over time, requiring relevant operators to reduce their emissions accordingly. Within this cap, operators receive or buy emission allowances which they may trade with each other. A limit on the total number of allowances available ensures that they have a value. Each year operators must surrender enough allowances to cover their emissions or pay a fine. The Department for Business, Energy and Industrial Strategy (BEIS) explains that as the EU ETS is moving from Phase III (2013 to 2020) to Phase IV (2021 to 2030), the EU has introduced legislative changes which the UK is obliged to transpose while it is a Member State. BEIS says that the UK has missed the transposition deadline of 9 October 2019 because of delays in a consultation on the future of UK carbon pricing and that this delay has been communicated to the Commission. Amongst other changes, the instrument enables the UK to apply opt-out schemes for small and ultra-small emitters as set out in Articles 27 and 27a of the revised EU ETS Directive.<sup>8</sup> BEIS says that the opt-out for small emitters and hospitals which applied during Phase III will continue and that, additionally, there will be new opt-outs for ultra-small emitters. The Department emphasises that the use of the opt-outs will minimise the regulatory costs for relevant operators, while maintaining the obligation on them to reduce their CO<sub>2</sub> emissions at the same annual rate (2.2%) as the main EU ETS scheme. Small and ultra-small emitters represent less than 2% and 0.1% of emissions respectively across the system and the Department expects 160 (or 95%) of all eligible ultra-small emitters and 195 (or 70%) of all eligible small emitters to make use of the opt-outs, producing an estimated net saving of £120.2 million and a Total Net Present (Social) Value benefit of £164.3 million.

### **Water Abstraction (Transitional Provisions) (Amendment) (England) Regulations 2019 (SI 2019/1455)**

52. These Regulations extend the deadline by which businesses or individuals who abstract water and are currently exempt from the requirement for an abstraction licence must apply for a licence from 31 December 2019 to 30 June 2020. The Department for Environment, Food and Rural Affairs (Defra) explains that an earlier instrument<sup>9</sup> introduced a five-year transition period for the removal of exemptions which started on 1 January 2018 and gives abstractors two years to make an application and the Environment Agency (EA) three years to determine licences. Abstractors can continue taking water during this transition period. The Department says that removing the exemptions will improve the EA's ability to manage water resources and prevent damage to the environment. According to Defra, an extension of the deadline is needed as there have been fewer licence applications than expected, due to drought, difficulties in identifying and contacting those

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7 Greenhouse Gas Emissions Trading Scheme Regulations 2012 ([SI 2012/3038](#)).

8 Small emitters are those that produce fewer than 25,000 tonnes of CO<sub>2</sub> per year and have an installed thermal input capacity of less than 35 megawatt. This category also includes hospitals. Ultra-small emitters are those that produce fewer than 2,500 tonnes of CO<sub>2</sub> per year.

9 The Water Abstraction (Transitional Provisions) Regulations 2017 ([SI 2017/1047](#)). See: Secondary Legislation Scrutiny Committee, *10th Report*, Session 2017–19 (HL Paper 37).

affected and other factors. The Department says that, while the extension will allow businesses and individuals more time to apply for a licence, it will not affect the overall timetable for removing the exemptions: the EA will still be required to determine all applications by 31 December 2022, as originally intended. Defra estimates that between 4,000 and 5,000 abstractors that are currently exempt from licensing in England will be affected, compared with some 20,000 abstractors that are already licensed. The Impact Assessment for the earlier instrument estimated net direct cost to business of £3 million per year from the compliance costs of licensing and the impact on the economic output of the abstractors affected. Given the lower than expected number of applications, we asked the Department what it was doing to encourage applications. We are publishing Defra's response at Appendix 2.

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

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### Draft instruments subject to affirmative approval

Scotland Act 1998 (Transfer of Functions to the Scottish  
Ministers etc.) Order 2020

### Instruments subject to annulment

- SI 2019/1420 Firearms Regulations 2019
- SI 2019/1426 Greater London Authority Elections (Amendment) Rules 2019
- SI 2019/1427 Insolvency Practitioners and Insolvency Services Account (Fees) (Amendment) Order 2019
- SI 2019/1428 M11 Motorway (Junctions 8 to 9) (Offside Lane Restriction) Regulations 2019
- SI 2019/1429 Cross-border Parcel Delivery Services (EU Information Requirements) Regulations 2019
- SI 2019/1430 M4 Motorway (Junctions 3 to 12) (Variable Speed Limits) Regulations 2019
- SI 2019/1431 Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2019
- SI 2019/1435 Greater London Authority (Consolidated Council Tax Requirement Procedure) Regulations 2019
- SI 2019/1439 Scotland Act 2016 (Transitional) (Amendment) Regulations 2019
- SI 2019/1440 Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Regulations 2019
- SI 2019/1442 Eggs and Poultrymeat (England) (Amendment) Regulations 2019
- SI 2019/1444 Network and Information Systems (Amendment etc.) (EU Exit) (No. 2) Regulations 2019
- SI 2019/1449 Local Government Pension Scheme (Amendment) Regulations 2019
- SI 2019/1453 Agricultural Holdings (Units of Production) (England) (No. 2) Order 2019
- SI 2019/1455 Water Abstraction (Transitional Provisions) (Amendment) (England) Regulations 2019
- SI 2019/1474 Fishery Products (Official Controls Charges) (England) (Amendment) Regulations 2019
- SI 2019/1475 Meat (Official Controls Charges) (England) (Amendment) Regulations 2019
- SI 2019/1476 Official Feed and Food Controls (England) (Miscellaneous Amendments) Regulations 2019
- SI 2019/1488 Official Controls (Animals, Feed and Food, Plant Health Fees etc.) Regulations 2019

- SI 2019/1510 Excise Goods (Holding, Movement and Duty Point)  
(Amendment) Regulations 2019
- SI 2019/1512 Turkey (Asset-Freezing) Regulations 2019
- SI 2019/1517 Official Controls (Plant Health and Genetically Modified  
Organisms) (England) Regulations 2019

## APPENDIX 1: M4 MOTORWAY (JUNCTIONS 3 TO 12) (VARIABLE SPEED LIMITS) REGULATIONS 2019 (SI 2019/1430)

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### Additional Information from Highways England

*Q1: Paragraph 10.4 of the consultation outcome section of the Explanatory Memorandum states that: “11 responses (33%) included concerns about the Scheme...”. Paragraph 1.3.4 (page 4) of the Highways Agency publication M4 J3 to J12 Smart Motorway Responses to Consultation<sup>10</sup> states that: “94% expressed concerns about the proposals”. Please can you clarify what these two different percentages represent?*

**A1:** [...] 10.4 in the EM is incorrect. The first sentence should read ‘31 responses (94%) included concerns about the Scheme.’

[...] [Highways England will] forward a revised EM to DfT on the assumption that they will want to request withdrawal and replacement of the current one.

**7 January 2020**

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<sup>10</sup> Highways Agency, *M4 J3 to J12 Smart Motorway, Responses to Consultation, The Introduction of Variable Mandatory Speed Limits*, (March 2015): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/424641/M4\\_J3\\_to\\_J12\\_SM\\_Response\\_to\\_VMSL\\_Consultation\\_Document1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/424641/M4_J3_to_J12_SM_Response_to_VMSL_Consultation_Document1.pdf) [accessed 13 January 2020].

## APPENDIX 2: WATER ABSTRACTION (TRANSITIONAL PROVISIONS) (AMENDMENT) (ENGLAND) REGULATIONS 2019 (SI 2019/1455)

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### Additional information from the Department for the Environment, Food and Rural Affairs

*Q1: Para 7.6 of the EM lists reasons for the small number of licence applications. Have there been requests from those affected for an extension of the deadline?*

A1: There have been a number of requests for extensions from both individuals and organisations to the Environment Agency—particularly in relation to the agricultural and wetland sectors. In addition, Defra received a letter from the National Farmers Union (NFU) on this issue, where they urged the Minister to extend the transitional arrangements. The requests received have referred to other pressures on abstractors including managing the consequences of drought, the uncertainties in farming at this time, and in some cases needing time to understand how unfamiliar regulations may or may not be relevant to them. For some this has led to very late realisation that they do need a licence, so they now need the time to make the necessary applications.

*Q2: What is involved in the application process, i.e. is there complexity that might cause difficulties to applicants?*

A2: For most abstractors the application is relatively simple. The main elements required by the application process are: describing the location and means of abstraction, its use, the capacity of the pump system, the evidence of the applicant's abstraction in the 7 years prior to 1 January 2018, the periods of time during which abstraction takes place in any given year and quantities therefore taken and confirmation that the applicant has the necessary of the rights of access to the abstraction point. There are a number of abstractors eligible to apply under the Regulations who have more complex sites and operations than most other applicants and so require a more detailed application. However, these abstractors are often associated with significant businesses who are more familiar with responding to regulatory requirements. There is a small minority who did not understand what an abstraction is and that they are impacted by these Regulations. As such, this has been a challenging adjustment for them. Additional Environment Agency guidance has been issued to meet sector specific queries. The Environment Agency has also established a free and confidential hotline so direct assistance could be given to those less sure on how to apply.

*Q3: What is the Department doing to encourage applications?*

A3: The Environment Agency is responsible for communications and engagement with applicants to encourage applications.

Prior to the Regulations being laid in 2017, the Environment Agency supported detailed consultations on the content of the Regulations and what the removal of various exemptions from the abstracting licensing regime would mean for affected abstractors. Many sector trade bodies, environmental organisations and membership bodies such as the National Farmers Union (NFU), Royal Society for the Protection of Birds (RSPB) and large industries such as the Mineral Products Association and construction industries were engaged with the process achieving widespread awareness of the need to apply. After the Regulations came into force in on 1st January 2018, the extensive liaison continued. This included:

- Over 90 articles were run over a 20-month period across over 30 different publications;
- Over 20,000 letters were sent to a potential 7,000 abstractors that may need to apply;
- An extensive Digital media campaign was launched and included 15 co-ordinated launch Tweets over a 10-month period;
- From April 2019 over 213 customers were supported via free hotline calls;
- Targeted mailing was sent to over 5,000 abstractors in geographical areas which are no longer exempt from abstraction licensing using Local Authority data which identified local drinking source abstractors;
- 4,000 letters sent in partnership with the Rural Payments Agency on behalf of the Environment Agency, to contact customers who have a water related grant through the Countryside Stewardship payments scheme; and
- Further local communications campaigns, press releases and direct contact work have promoted the need to apply before the deadline closes, particularly in the geographically exempt areas.

In the next six months the Environment Agency are planning to:

- Move more resource to research and identifying non applicants and contacting them directly;
- Provide clear messaging on the benefit of applying but also the requirement to stop abstracting when the transitional period ends and the risk of penalties if abstraction continues;
- Further promote the free hotline for affected abstractors to obtain advice to help them complete applications; and
- Targeted messaging to relevant sectors of the short extension and the benefits of remaining lawful by applying in time. This will be done through sector trade and representative bodies.

**19 November 2019**

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

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

For the business taken at the meeting on 14 January 2020, the Earl of Lindsay declared the following interest and did not participate in the discussion on the instrument:

#### **Accreditation of Forensic Service Providers (Amendment) Regulations 2019**

*Chairman, United Kingdom Accreditation Service (UKAS)*

Lord Cunningham of Felling declared the following interest:

#### **Water Abstraction (Transitional Provisions) (Amendment) (England) Regulations 2019**

*Home is supplied by a private water supply*

#### **Attendance:**

The meeting was attended by Baroness Bakewell of Hardington Mandeville, Lord Chartres, Lord Cunningham of Felling, Lord Faulkner of Worcester, Viscount Hanworth, Lord Hodgson of Astley Abbots, the Earl of Lindsay, Lord Lisvane, Lord Sherbourne of Didsbury and Baroness Watkins of Tavistock.