

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

2nd Report of Session 2019–21

Drawn to the special attention of the House:

**Electricity and Gas (Energy Company
Obligation) (Amendment) Order 2019**

**Public Interest Merger Reference (Gardner
Aerospace Holdings Ltd. and Impcross
Ltd.) (Pre-emptive Action) Order 2019;
Public Interest Merger Reference (Mettis
Aerospace Ltd.) (Pre-emptive Action)
Order 2019**

**Money Laundering and Terrorist
Financing (Amendment) Regulations 2019**

Includes information paragraphs on:

National Health Service (General Dental
Services Contracts and Personal Dental
Services Agreements) (Amendment)
Regulations 2019

Police Appeals Tribunals Rules 2020

Police (Complaints and Misconduct)
Regulations 2020

Police (Performance) Regulations 2020

Police (Conduct) 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

<u>Baroness Bakewell of Hardington Mandeville</u>	<u>Viscount Hanworth</u>	<u>The Earl of Lindsay</u>
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Registered interests

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

Publications

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

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 hseclegscrutiny@parliament.uk.

Second Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Electricity and Gas (Energy Company Obligation) (Amendment) Order 2019 (SI 2019/1441)

Date laid: 31 October 2019

Parliamentary procedure: negative

*This Order adjusts eligibility requirements and incentives for the installation of energy efficiency measures under the Energy Company Obligation scheme, embeds TrustMark as the quality framework for all installations and introduces new delivery standards. The changes are designed to address concerns about poor quality installations and increase consumer protection. The Committee is concerned that as energy suppliers pass on costs to their customers through domestic energy bills, there is a risk that, without direct regulatory oversight of this mechanism, some energy suppliers do not have the incentive to ensure properly rigorous control of costs. **The House may wish to press the Minister for a fuller explanation of this matter.***

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

1. This Order has been laid by the Department for Business, Energy and Industrial Strategy (BEIS) with an Explanatory Memorandum (EM) and Impact Assessment (IA). The instrument makes changes to the Energy Company Obligation (ECO) scheme under which larger energy suppliers in Great Britain are required to reduce domestic energy bills by installing energy efficiency measures. Energy suppliers use delivery partners to procure these measures, who in turn sub-contract with local installers. According to the Regulatory Policy Committee, it is estimated that the ECO scheme involves several hundred delivery partners and around 2,300 installers.
2. The ECO scheme is focused on lower income households and covers measures such as loft, cavity wall or solid wall insulations and boiler replacements or repairs. BEIS says that the scheme aims to tackle fuel poverty, reduce carbon emissions, promote more efficient energy use and encourage innovation in the industry. According to BEIS, between January 2013, when the first ECO scheme was launched, and August 2018, more than 2.5 million energy efficiency measures were installed in over two million homes. The current scheme (ECO 3) seeks to deliver bill savings of £8.253 billion during its lifetime until 31 March 2022.

What is changing

3. BEIS explains that the Order changes the eligibility requirements and incentives for first time heating systems and broken boiler replacements that can be installed under ECO 3. It also makes changes to address concerns about sub-standard and poorly targeted installations, and to increase

consumer protection. The instrument embeds the existing TrustMark¹ framework as a requirement for all ECO 3 installations, so that all work will have to be delivered by TrustMark registered installers. The Order also incorporates new Publicly Available Specifications (PAS) standards² into ECO 3, which cover all stages of the delivery of energy efficiency measures, including post-installation monitoring. BEIS says that once the new PAS standards will apply from 1 July 2021, the requirement to comply with them will not be retained in the legislation underpinning ECO 3. TrustMark will take on responsibility for the technical monitoring of installations and will have oversight of the ECO market. BEIS says that this will improve oversight of the market and increase financial and consumer protection, for example by requiring ECO measures to have at least two years' financial protection in place.

4. We asked the Department whether removing PAS standards and compliance requirements from ECO 3 legislation would make it more difficult to enforce these standards and to seek redress for customers for poor quality work. BEIS told us that:

“The TrustMark Framework sets out the requirements for TrustMark registered businesses to be compliant with, and certified to, the new and updated PAS standards where relevant as well as certain minimum guarantee requirements. This Framework has developed systems for checking that certification is current and in place for the measures being delivered by installers. Therefore, we are satisfied that TrustMark will continue to ensure that installers are certified and compliant through links to UKAS accredited Certification Bodies.”

BEIS added that:

“TrustMark will only take on the full responsibility of technical monitoring for measures delivered within the TrustMark framework from Ofgem after a transition period and a pilot programme is completed successfully. Additionally, TrustMark have a ‘Customer Charter’ which details the rights and responsibilities of any customer receiving advice, installations, products, services or other work carried out by a TrustMark registered business. The ‘Customer Charter’ asks customers to follow the TrustMark process [...] if they have a complaint. Under that process if a consumer raises a dispute that [cannot] be resolved with the registered business, they should contact the business’s Scheme Provider. Under the TrustMark Framework, Scheme Providers are responsible for the conduct of their members and must help resolving disputes. TrustMark should work closely with Scheme Providers to ensure that the correct processes and procedures within the TrustMark scheme have been followed.”

5. We asked the Department how TrustMark would be held to account for its new role in the ECO 3 scheme. BEIS told us that:

“TrustMark operates within a Master Licence Agreement issued by BEIS. This Licence sets out the requirements in accordance with which

1 TrustMark is the government-endorsed quality scheme that covers work carried out in a customer’s home.

2 PAS are developed by the British Standards Institute in collaboration with relevant stakeholders. They define good practice standards for a product, service or process.

TrustMark must operate the Government Endorsed Quality scheme, including reporting requirements. TrustMark also enter into separate sub-licence agreements with their Scheme Providers who in turn enter into sub-sub-licence agreements with TrustMark registered businesses. The TrustMark Framework also sets out details regarding the approach to audit, compliance and enforcement under the TrustMark scheme. TrustMark have confirmed that they work with their Scheme Providers via an escalation methodology to ensure that identified non-compliance is robustly managed at all stages. In addition, they have confirmed that the TrustMark Code of Conduct (which outlines how TrustMark registered businesses should work with the TrustMark scheme to deliver customer service and good trading practices as well as consistent quality and adherence to standards) has also been produced in conjunction with Trading Standards and will be subject to review annually to ensure that any change in legislation or learning from scheme operation is adopted so the Code remains fit for purpose.”

Consultation

6. The EM states at paragraph 10.1 that a four-week consultation period on the changes to the ECO 3 scheme was regarded as sufficient, as the main proposals had already been trailed and widely reported in a previous consultation on ECO 3 in 2018. The Committee notes, however, that the ECO scheme is complex and that some respondents to the consultation were critical of the short consultation period. We asked BEIS whether a longer consultation period would have been appropriate. The Department explained that:

“The ECO3 consultation in 2018 was not the only opportunity stakeholders had to feed into these proposals relating to TrustMark and the new PAS standards. The Each Home Counts (EHC) review, industry-led PAS steering groups and the EHC implementation board, include numerous opportunities for interested parties to be aware of and involved in the process. In view of this, Government considered a shorter consultation period was appropriate given it would allow for improved quality and consumer protection to be incorporated into ECO sooner.”

Impact

7. The IA estimates the direct costs to business arising from the changes in this Order to be £62.129 million during the lifetime of ECO 3. This includes costs of £3.14 million for the new TrustMark framework and £59 million for increased delivery costs arising from the new PAS standards and technical requirements. BEIS says that while energy suppliers are expected to recoup their costs by passing them onto their domestic customers through energy bills, the bills of those households which receive energy efficiency measures will be reduced in the long-term as a result of the measures installed. We asked BEIS about the impact of the changes on the energy bills of domestic customers. The Department told us that:

“At the start of the scheme, the expected overall scheme costs were £2.24bn. Delivery costs at the start of the scheme have been lower than anticipated and therefore, without this SI, would have been expected to be £2.15bn. There are additional costs arising from this SI but, even with the addition of those costs, we estimate the total spending will be lower than the original estimate of £2.24bn. Therefore, consumer bills

may be higher as a result of this SI than they would be without it, but will still be the same or lower than we originally estimated and the policy was designed on the basis of.”

8. We also asked whether Ofgem, as the regulator, would provide oversight to ensure that suppliers only pass on relevant costs to consumers. The Department responded that:

“The ECO scheme is a market led scheme, therefore, how suppliers choose to pass on the cost of the scheme to consumers through energy bills is a commercial decision for each energy supplier. As such, Ofgem does not have any oversight of these decisions since they remain commercially sensitive. Furthermore, the energy price cap is set by Ofgem taking into account the total costs of Government schemes such as ECO as set out in relevant Impact Assessments. Therefore the price cap helps to prevent suppliers passing on costs to consumers in a way which would breach this cap, which in turn helps to prevent suppliers from passing on unrelated costs to consumers. Suppliers are also unlikely to pass on unrelated costs to consumers in order to remain competitive in the energy supply market.”

Conclusion

9. This Order alters the operation of the ECO 3 scheme. It makes changes to address concerns about sub-standard and poorly targeted energy efficiency installations and to increase consumer protection. The changes are expected to result in extra costs for the sector. **The Committee is concerned about the reliance on a market-led approach: energy suppliers pass on their costs to consumers through domestic energy bills but, without direct regulatory oversight of this mechanism, there is a risk that some suppliers do not have the incentive to ensure properly rigorous control of costs. The House may wish to press the Minister for a fuller explanation of this matter. We draw the Order to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.**

Public Interest Merger Reference (Gardner Aerospace Holdings Ltd. and Impcross Ltd.) (Pre-emptive Action) Order 2019 (SI 2019/1490)

Date laid: 17 December 2019

Parliamentary procedure: negative

Public Interest Merger Reference (Mettis Aerospace Ltd.) (Pre-emptive Action) Order 2019 (SI 2019/1515)

Date laid: 20 December 2019

Parliamentary procedure: negative

These Orders intervene in the proposed takeovers of two UK aerospace firms (Impcross Limited and Mettis Aerospace Limited) by Chinese companies on the ground of national security. The Competition and Markets Authority (CMA) will investigate the proposals and report to the Secretary of State by March 2020, who will decide whether to clear the mergers or refer them to the CMA for more in-depth reviews. The Orders are the first time that, with intervention notices in place, the Secretary of State has used powers under the Enterprise Act 2002 to prevent pre-emptive actions by the parties to a merger, such as transfers of information or know-how or actions to take ownership or control of the target companies.

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.

10. The Department for Business, Energy and Industrial Strategy (BEIS) has laid these Orders with Explanatory Memoranda (EMs). The purpose of the instruments is to intervene in the proposed takeovers of two UK aerospace firms, Impcross Limited (“Impcross”) and Mettis Aerospace Limited (“Mettis”), by two Chinese companies on the ground of national security.
11. According to BEIS, Impcross, a small company with around 100 staff and a UK turnover of approximately £9 million, supplies parts into the UK, US and wider NATO defence supply chains. Mettis is a medium-sized company with 560 staff and a UK turnover of £36.6 million that primarily makes precision forged and machined components for commercial airlines, but also produces components for military aircraft, using production processes approved by Boeing, Airbus, Rolls-Royce, Lockheed Martin and Leonardo.
12. The Committee initially considered the Orders at an earlier meeting but noted the very limited contextual information provided in the EMs about the mergers. The Committee wrote to the Secretary of State to seek further background information which is reflected in this report. The full correspondence with the Secretary of State can be found in Appendix 1. The Department has agreed to revise and relay the EMs to incorporate some of the additional background information on the two companies and the process involved.

Powers under the Enterprise Act 2002

13. According to BEIS, the Secretary of State for Business, Energy and Industrial Strategy has the power under section 42 of the Enterprise Act 2002 (“the 2002 Act”) to issue a notice intervening in certain merger transactions where, amongst other things, a specified public interest consideration may be relevant. BEIS explains that national security is a specified public interest

consideration; other specified public interest considerations relate to media plurality and financial stability.

14. Under paragraph 2 of Schedule 7 to the 2002 Act, the Secretary of State also has the power, where an intervention notice is in force, to make an order prohibiting or restricting actions which the Secretary of State considers would constitute “pre-emptive action” and imposing obligations regarding the continuing of activities or the safeguarding of assets. This may, for example, prevent the transfer of information, know-how or documents, or actions being taken to take ownership or control of the target company, pending the outcome of the public interest intervention.

Use of the powers

15. BEIS explains that the decision to intervene in the proposed takeovers of Impcross and Mettis on the ground of national security was informed by advice from the Secretary of State for Defence. While SI 2019/1490 intervenes in the proposed takeover of Impcross by Chinese-owned Gardner Aerospace Holdings Limited, SI 2019/1515 deals with the proposed acquisition of Mettis by Aerostar, a fund established in China, either directly or through Ligeance Aerospace Technology, a company owned or controlled by Aerostar and incorporated in China, or through another company in the same group as Aerostar.
16. Under the 2002 Act, the Competition and Markets Authority (CMA) will have until 2 March 2020 and 17 March 2020 to investigate the proposed takeovers of Impcross and Mettis respectively, and to report to the Secretary of State on their national security implications and any relevant competition and jurisdictional issues. The Secretary of State will then decide whether to clear the proposed mergers, including by accepting any undertakings from the merger parties designed to mitigate public interest concerns, or refer them to more in-depth reviews by the CMA under section 45 of the 2002 Act.
17. In response to questions by the Committee about the national security aspects of the mergers and the role of the CMA, the Secretary of State told the Committee that only limited detail could “be provided publicly on national security issues, particularly during the consideration of a live merger case”. She explained that “Government Departments and agencies will support the CMA by providing them with the national security assessment of the cases”, and that she will also receive separate classified advice directly from Government Departments and agencies to inform her decision. According to the Secretary of State, the national security considerations “might include the protection of the UK’s defence and supply chain, maintaining UK strategic capabilities and/or controlling access to classified information and intellection property”.
18. The Department advises that SI 2019/1490 marks the first time that, with an intervention notice in place, the power of a Secretary of State to make an Order under the 2002 Act to prevent pre-emptive actions by the parties to a merger has been used. The Order prevents any step being taken to integrate Impcross’ business with Gardner’s business, including the transfer of information, know-how and documents, and also prevents Gardner from taking ownership or control of Impcross’ business pending the outcome of the public interest intervention. Similarly, SI 2019/1515 prevents actions being taken by Mettis and its parent companies to integrate its business with

that of Aerostar and also prevents Mettis and its parent companies from transferring ownership or control of the business to any third party pending the outcome of the public interest intervention.

19. The Secretary of State told the Committee that the takeover of UK aerospace and defence company Cobham by a US private equity group which was cleared by the Government at the end of 2019, was considered under the same process, the public interest intervention powers in the 2002 Act, but that in the Cobham case a European Intervention Notice was issued under section 67 due to the European Commission's competence over the competition aspects of the case. It was not considered necessary in that case to make an order preventing the parties taking any pre-emptive action.

Timing of the instruments

20. SI 2019/1490 was made and came into force during Dissolution on 5 December 2019, before being laid before Parliament. SI 2019/1515 was also made and came into force before being laid. The Department explains that this approach was necessary to protect national security by preventing the parties to the mergers from taking actions that might undermine the purpose and effectiveness of the Orders. As required by the relevant guidance,³ BEIS notified the Lord Speaker when the instruments were made of the fact that copies of the Orders had yet to be laid before Parliament and explained the reasons for this approach.

Adequacy of the current process

21. The Committee asked the Secretary of State whether the Government considered the current scope for intervening in takeovers of UK companies by foreign firms sufficient, including in comparison with similar economies, such as those of Germany or France. The Secretary of State highlighted the White Paper on National Security and Investment from July 2018⁴ and the Government's intention to continue to develop the proposals through the draft National Security and Investment Bill which was announced in the Queen's Speech in December 2019 and seeks to strengthen the Government's powers to investigate and intervene in takeovers and mergers to protect national security.

Conclusion

22. There has been considerable interest in past takeovers of UK aerospace and defence businesses by foreign companies, including the takeover of Cobham which the Government cleared at the end of 2019. The House may welcome an opportunity to debate the two Orders, especially in the context of the cited national security concerns and the fact that it is the first time that, with intervention notices in place, the Secretary of State has used powers to make Orders to prevent pre-emptive actions by the parties to a merger. **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.**

3 See: para 4.9.4 of The National Archives *Statutory Instrument Practice, 5th edition* (November 2017): http://www.legislation.gov.uk/pdfs/StatutoryInstrumentPractice_5th_Edition.pdf [accessed 20 January 2020].

4 Department for Business, Energy and Industrial Strategy, *National Security and Investment - A consultation on proposed legislative reforms* (July 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728310/20180723_-_National_security_and_investment_-_final_version_for_printing_1_.pdf [accessed 20 January 2020].

Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (SI 2019/1511)

Date laid: 20 December 2019

Parliamentary procedure: negative

*This instrument makes wide-ranging changes to the UK's anti-money laundering regime to implement changes in the EU's anti-money laundering framework and recommendations by the Financial Action Task Force. According to HM Treasury (HMT), the Regulations aim to combat illicit finance and address emerging risks while minimising the burden on legitimate business. HMT expects total costs of £2,474.1 million over ten years, with average annual costs of £126.9 million. We are disappointed that we had to request copies of the Impact Assessment and HMT's consultation response, which were not publicly available when the Regulations were laid before Parliament. **We urge HMT to ensure that, in future, such documents are published at the time an instrument is laid before Parliament.***

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.

23. These Regulations update the UK's anti-money laundering legislation to implement changes in the EU's anti-money laundering framework by EU Directive 2018/843 ("the Directive"). The Directive must be transposed into UK domestic legislation by 10 January 2020. The Regulations also implement recommendations by the Financial Action Task Force (FATF) in relation to anti-money laundering (AML) and counter-terrorist financing (CTF) standards.⁵

Background

24. HM Treasury (HMT) explains in the Explanatory Memorandum (EM) that AML and CTF standards are generally incorporated into UK law through the transposition of EU directives and that, as a founding member of the FATF, the UK will continue updating its anti-money laundering policies according to international standards to ensure that the UK's anti-money laundering regime is kept up-to-date, effective and proportionate. According to HMT, this instrument aims to combat illicit finance and address emerging risks in these areas while minimising the burden on legitimate business.

Key changes made by the instrument

25. The Regulations introduce wide-ranging changes to the UK's AML/CTF regime. They bring additional businesses into scope of the AML/CTF framework, making them subject to AML/CTF requirements, including in relation to registration and customer due diligence. The Regulations broaden the definition of tax advisers and bring into scope letting agencies if they carry out high-value transactions with a monthly rent of €10,000 or more, and businesses in the art market, such as art galleries, auction houses and freeports⁶ that store high-value art, if they conduct transactions exceeding

⁵ The FATF is an intergovernmental organisation founded in 1989 on the initiative of the G7 to develop policies to combat money laundering and, since 2001, terrorism financing.

⁶ Freeports are special zones for customs purposes, defined as places to carry out business inside a country's land border but with different customs rules.

€10,000. Beneficial owners, officers or managers in these businesses will have to apply to their supervisory authority for approval before 10 January 2021.

26. The instrument also brings cryptoasset exchange providers⁷ and custodian wallet providers⁸ into scope of the AML/CTF regime. HMT says that it has chosen a more specific and precise definition of these providers than that used in the Directive and that the instrument also implements some FATF recommendations which go further than the Directive, by regulating a range of cryptoasset activities and exchange points for AML/CTF purposes that are not covered by the Directive. Additionally, the instrument introduces a “fit and proper” test and a requirement for all new cryptoasset businesses to register with the Financial Conduct Authority (FCA) from 10 January 2020, with a transition period until 10 January 2021 for the registration of existing cryptoasset businesses.
27. Other changes introduced by the Regulations include the establishment of a national automated mechanism which allows the identification of people, businesses or organisations which hold or control bank accounts, payment accounts or safe-deposit boxes held by credit institutions. HMT says that this will not impose any new requirements for businesses to collect data and that the Regulations specify the purposes for which access to the mechanism may be permitted as well as the conditions of access. The Home Office will have to report annually to Parliament on the access given to the mechanism for law enforcement agencies.
28. The instrument introduces a requirement for financial institutions to ensure that they undertake risk assessments prior to the launch or use of new products or business practices, as well as new technologies. Their parent companies will have to ensure that they have group-wide policies on the sharing of information about customers, customer accounts and transactions for AML/CTF purposes. HMT says that these provisions implement FATF recommendations and go beyond the requirements of the Directive.
29. The Regulations also amend the Terrorism Act 2000 and the Proceeds of Crime Act 2002 to align definitions of the regulated sectors in those Acts with the updated EU AML/CTF framework, and amend the Companies Act 2006 and other companies legislation to implement requirements in the Directive relating to companies.

Impact Assessment

30. HMT did not publish an Impact Assessment (IA) when the Regulations were laid before Parliament. Instead, the EM states at paragraph 12.3 that a full IA will be published when a final opinion from the Regulatory Policy Committee (RPC)⁹ has been received. The Committee’s guidance¹⁰ makes clear that failure to provide an IA because the document has not yet been validated by the RPC is an internal planning matter for government but not

7 Cryptoassets are cryptographically secured digital representations of value or contractual rights. This includes cryptocurrencies such as Bitcoin.

8 Custodian wallet providers provides services to safeguard private cryptographic keys on behalf of their customers, to hold, store and transfer virtual currencies.

9 The RPC is an independent body, sponsored by the Department for Business, Energy and Industrial Strategy, that assesses the quality of evidence and analysis used to inform regulatory proposals affecting the economy, businesses, civil society, charities and others.

10 See the Secondary Legislation Scrutiny Committee’s Guidance for Departments: <https://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/SLSC-Guidance-for-Departments-May-2019.pdf>.

an acceptable excuse for failing to present all the necessary documentation at the time an instrument is laid before Parliament.

31. HMT has shared a copy of the IA with the Committee. The IA estimates the total costs arising from the Regulations to be £2,474.1 million over ten years, including total transition costs of £1,382.9 million, with average annual costs amounting to £126.9 million.
32. Sub-Committees A and B of the Secondary Legislation Scrutiny Committee raised the lack of IAs with HMT during the last Parliament. The then Chancellor assured the Committees in February 2019 that HMT would “continue working at pace on Impact Assessments, to enable Parliamentary scrutiny of the relevant SIs in good time”.¹¹ **We are disappointed that the Department has failed to meet its commitment in this case. We urge HMT to ensure that in future, where an Impact Assessments is required, this is published when an instrument is laid before Parliament.**

Consultation

33. HMT carried out an eight-week consultation on the changes between April and June 2019 which received over 200 responses from a cross-section of relevant stakeholders. The EM states at paragraph 10.7 that HMT “will soon publish its formal response to the consultation”. According to the Committee’s guidance, an analysis of consultation responses should be available on a website at the time the instrument is laid before Parliament. We asked HMT why the publication of its consultation response was delayed. HMT told us that:

“It was necessary to delay the consultation response due to uncertainty over what the UK’s relationship would be with the EU on the [Amending Directive] transposition deadline of 10 January 2020 and the restrictions of the pre-election period then necessitated further delay. The response is completing HMG clearance processes and will be published shortly.”

34. HMT has shared a copy of its consultation response with the Committee. It includes helpful material on the reasoning behind the legislative changes and the policy choices made. We note HMT’s explanation but are of the view that better planning would have made it possible to publish the consultation response when the instrument was laid. **We call on HMT to ensure that, in future, consultation responses are made available when an instrument is laid before Parliament.**

Conclusion

35. This instrument makes changes to the UK’s AML/CTF regime. This is an important and complex policy area. It is therefore disappointing that we had to ask HMT for copies of its consultation response and the IA. These documents include material that helps to understand the Regulations, their considerable financial impact and the reasons behind HMT’s policy choices. **We urge HMT to ensure that, in future, consultation responses and IAs are made available when an instrument is laid before Parliament, to enable effective and timely Parliamentary scrutiny. We draw the Regulations to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.**

INSTRUMENTS OF INTEREST

National Health Service (General Dental Services Contracts and Personal Dental Services Agreements) (Amendment) Regulations 2019 (SI 2019/1445)

36. This instrument extends the pilot of a new method for remunerating NHS dentists from its existing end date of 31 March 2020 for another two years. We commented on the initial pilot scheme (composed of three variants) in 2011,¹² which first tested a new approach to the provision of dental care based more on prevention than on the treatment of dental problems. We have seen a number of related instruments in the interim.¹³ A refined prototype agreement, based on the outcome of the 2011 exercise, has been under test since April 2016. We were surprised that after eight years the Department for Health and Social Care (DHSC) still feels it has insufficient information to make a decision. DHSC told us:

“The testing of the prototype agreement scheme has so far suggested many practices are able to deliver their expected number of patients seen and treatments delivered or even exceed the required contract delivery but others have underdelivered. This was referenced in the evaluation of the first year of prototyping¹⁴ and the 2nd year evaluation of the scheme (2017-18) found a broadly similar pattern (which will be ready for publication at the end of the pre-election period).

As recommended in the first evaluation report, further practices have been taken into the scheme (27 practices joined between Oct 18 and April 19) and work undertaken to explore the issues. The further period of testing, alongside further probing of the detail of why some practices have achieved and others not, is needed to ensure a robust decision.”

37. **While we strongly advocate evidence-based policy making, this pilot seems to be an extraordinarily protracted process and we would be unhappy to see any further proposals to extend the testing period beyond March 2022.**

Police Appeals Tribunals Rules 2020 (SI 2020/I)

Police (Complaints and Misconduct) Regulations 2020 (SI 2020/2)

Police (Performance) Regulations 2020 (SI 2020/3)

Police (Conduct) Regulations 2020 (SI 2020/4)

38. The Chapman Review¹⁵ made a number of proposals for the structural reform of the police discipline and complaints system to streamline procedures and to introduce greater accountability, transparency and independence to the

12 The National Health Service (Primary Dental Services) (Miscellaneous Amendments) Regulations 2011 (SI 2011/1182) in the Committee’s [31st Report](#) of Session 2010-12 (HL Paper 147).

13 See, for example, the Committee’s [33rd Report](#), Session 2012-13 (HL Paper 153).

14 Department of Health and Social Care, Dental Contract Reform Evaluation of the first year of prototyping 2016-2017 (May 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/709555/evaluation-report-2016-2017.pdf [accessed 16 January 2020].

15 Home Office, Improving police integrity: reforming the police complaints and disciplinary systems (March 2015): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/411970/improving_police_integrity_reforming_the_police_complaints_and_disciplinary_systems.pdf [accessed 16 January 2020].

system. The Government legislated for these changes in the Policing and Crime Act 2017, which these four instruments now follow up, replacing and revoking previous regulations to improve the procedures for dealing with allegations of police misconduct and underperformance. These regulations establish a reformed system for handling complaints about the police in England and Wales. They deal with police disciplinary matters and promote greater consistency between the processes followed by the Independent Office for Police Conduct (IOPC)¹⁶ and other investigations under Schedule 3 to the Police Reform Act 2002. For example, changes have been made to the investigation processes to make them simpler and therefore quicker, including a requirement to provide an explanation where investigations take longer than 12 months. The sanctions following a misconduct hearing have also been amended to reintroduce the sanction of reduction in rank, to allow for a more proportionate response to serious misconduct which does not justify dismissal, but which requires a harsher penalty than a final written warning.

16 The IOPC replaced the Independent Police Complaints Commission in January 2018.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Instruments subject to annulment

- SI 2019/1445 National Health Service (General Dental Services Contracts and Personal Dental Services Agreements) (Amendment) Regulations 2019
- SI 2020/1 Police Appeals Tribunal Rules 2020
- SI 2020/2 Police (Complaints and Misconduct) Regulations 2020
- SI 2020/3 Police (Performance) Regulations 2020
- SI 2020/4 Police (Conduct) Regulations 2020
- SI 2020/6 State Pension Revaluation for Transitional Pensions Order 2020
- SI 2020/7 State Pension Debits and Credits (Revaluation) Order 2020
- SI 2020/8 Criminal Legal Aid (General) (Amendment) Regulations 2020
- SI 2020/9 Plant Health etc. (Fees) (England) (Amendment) Regulations 2020
- SI 2020/11 Football Spectators (2020 UEFA European Championship Control Period) Order 2020
- SI 2020/14 Civil Enforcement of Parking Contraventions Designation Order 2020
- SI 2020/15 Serious Organised Crime and Police Act 2005 (Designated Sites) (Amendment) Order 2020
- SI 2020/17 Government Resources and Accounts Act 2000 (Estimates and Accounts) (Amendment) Order 2020
- SI 2020/18 Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2020
- SI 2020/20 Whole of Government Accounts (Designation of Bodies) Order 2020
- SI 2020/21 Council Tax (Demand Notices) (England) (Amendment) Regulations 2020

**APPENDIX 1: PUBLIC INTEREST MERGER REFERENCE
(GARDNER AEROSPACE HOLDINGS LTD. AND IMPCROSS LTD.)
(PRE-EMPTIVE ACTION) ORDER 2019 (SI 2019/1490); PUBLIC
INTEREST MERGER REFERENCE (METTIS AEROSPACE LTD.)
(PRE-EMPTIVE ACTION) ORDER 2019 (SI 2019/1515)**

**Correspondence between Lord Hodgson of Astley Abbotts, Chair of the
Secondary Legislation Scrutiny Committee, and the Rt Hon. Andrea
Leadsom MP, Secretary of State for Business, Energy and Industrial
Strategy**

I am writing as Chair of the Secondary Legislation Scrutiny Committee (SLSC). The Committee considered these Orders at its first meeting in the new Parliament and was disappointed that the Explanatory Memoranda (EMs) contain very limited contextual information about the mergers. The Committee felt that further background information was needed to allow Members to better understand the potential impact of the mergers. The Committee has therefore decided to defer consideration of the Orders to its next meeting on 21 January while such information is obtained.

The Committee is fully aware that some information with regard to these instruments involves national security considerations which will not be suitable for publication. Nevertheless it is of the view that it would have been helpful to provide Parliament with more detail about the companies and the intervention process and, in general terms, about the type of national security concerns that are relevant here. In order to assist the House, the Committee would strongly urge you to re-lay a revised EM to include this information.

As you will be aware, the decision to clear the takeover of Cobham, the UK aerospace and defence company, by a US private equity group was the subject of significant media interest towards the end of last year. Our understanding is that the initial intervention into the Cobham takeover followed a different process that did not involve an Order being laid before Parliament.

Against this background, the Committee would welcome further information on the following:

- Why was a different process used to intervene in the Cobham takeover?
- What is the commercial significance of Impcross Ltd and Mettis Aerospace Ltd in terms of size (number of employees and annual turnover), their sites in the UK, their role in commercial aviation as well as defence and who they supply?
- What type of national security considerations are being looked at in the potential takeover of Impcross Ltd and Mettis Aerospace Ltd?
- What is the nature of the investigation by the Competition and Markets Authority (CMA), including the areas it will cover and the type of recommendations that the CMA will be able to make? Will the risk of technology transfers be assessed?
- The EM states that national security was a key consideration in these two cases. Could you explain how the CMA is equipped to carry out the investigations in this area?

- Does the Government consider the current scope for intervening in takeovers of UK companies by foreign firms under the Enterprise Act 2002 sufficient to protect the public interest? How do these powers compare with equivalent regimes in similar economies, such as Germany or France?

I would be grateful for your response by 10:30am on Monday, 20 January, so that it may be made available to the Committee in advance of its meeting the following day.

15 January 2020

Response from the Rt Hon. Andrea Leadsom MP to Lord Hodgson

Thank you for your letter of 15 January 2020 on the orders which prevent the taking of pre-emptive action by the parties involved in the takeovers of Impcross Ltd. and Mettis Aerospace Ltd.

I understand the Committee's concern that the Explanatory Memoranda contained limited information about the proposed transactions and the national security issues. I hope the Committee will understand that there is limited detail that can be provided publicly on national security issues, particularly during the consideration of a live merger case.

I have sought to answer the Committee's wider questions below and will relay the Explanatory Memoranda with additional information on the companies and the process but do not believe that there is anything more I could add to the Explanatory Memoranda on the national security issues.

Why was a different process used to intervene in the Cobham takeover?

The three cases mentioned in your letter (Cobham, Impcross and Mettis) have all been considered under the same process - the public interest intervention powers in the Enterprise Act 2002 (the Enterprise Act). Decisions on such cases are taken on a case by case basis.

In the Cobham case I issued a European Intervention Notice under section 67 of the Enterprise Act to launch the public interest intervention, because the European Commission had competence over the competition aspects of the case under the EU Merger Regulation (Regulation (EC) 139/2004 on the control of concentrations between undertakings). The national security aspects were considered by the UK's Competition and Markets Authority (CMA) with the support of Government Departments and agencies.

In the cases of Mettis and Impcross, I issued notices under section 42 of the Enterprise Act to launch the public interest intervention, as the competition aspects are under the jurisdiction of the CMA. The national security aspects will be considered by the UK's Competition and Markets Authority (CMA) with the support of Government Departments and agencies.

In public interest intervention cases I can also decide to issue an order to prevent pre-emptive action. In making that decision, I take into account the facts of the case, including what is known about the parties and the transaction and the likelihood of a risk to national security arising during the Enterprise Act process which could prejudice my ability to put in place suitable remedies at the end of the process. In the Cobham case it was not necessary for me to make an order preventing the parties taking any pre-emptive action. In the cases of Mettis and

Impcross, I considered that national security interests warranted an order to prevent pre-emptive action.

What is the commercial significance of Impcross Ltd and Mettis Aerospace in terms of size (number of employees and annual turnover), their sites in the UK, their role in commercial aviation as well as defence and who they supply?

Impcross is a small aerospace company based in Stroud. It employs approximately 100 people, has a UK turnover of approximately £9 million and supplies parts into the UK, US and wider NATO defence supply chains.

Mettis Aerospace is a medium-sized (560 staff) aerospace company based near Birmingham with a UK turnover of £36.6million. It primarily makes precision forged and machined components for commercial airlines. It also makes components for military aircraft and has production processes that have been approved by Boeing, Airbus, Rolls-Royce, Lockheed Martin and Leonardo.

What type of national security considerations are being looked at in the potential takeover of Impcross Ltd and Mettis Aerospace Ltd?

The Government considers all potential national security considerations when investigating a merger. This might include the protection of the UK's defence supply chain, maintaining UK strategic capabilities and/or controlling access to classified information and intellectual property. I cannot provide further public detail on the national security considerations in the interventions into Impcross and Mettis.

What is the nature of the investigation by the Competition and Markets Authority (CMA), including the areas it will cover and the type of recommendations that the CMA will be able to make? Will the risk of technology transfers be assessed?

At the end of its investigation, the CMA will provide me with a report with its advice on the considerations relevant to my decision on whether to refer the transactions for further investigation under section 45 of the Enterprise Act.

The report will include the CMA's assessment of whether a "relevant merger situation" has been created, or would be created by the proposed transactions, its assessment of the competition issues relevant to the decisions and a summary of the representations it has received on the national security considerations arising. Government Departments and agencies will support the CMA by providing them with the national security assessment of the cases. Taken together this information will enable me to make a decision on whether, if the grounds are made out, to refer the case for a more detailed investigation by the CMA, or in lieu of such a reference, to accept any undertakings the parties may decide to offer to mitigate national security risks.

The EM states that national security was a key consideration in these two cases. Could you explain how the CMA is equipped to carry out the investigations in this area?

The CMA is supported by Government Departments and agencies throughout the process. I will receive separate classified advice directly from Government Departments and agencies on the case to support me in making my decision on how to proceed.

Does the Government consider the current scope for intervening in takeovers of UK companies by foreign firms under the Enterprise Act 2002 sufficient to protect the public interest? How do these powers compare with equivalent regimes in similar economics, such as Germany or France?

In July 2018, the Government published a White Paper setting out proposals to strengthen the Government's existing powers to scrutinise and intervene in business transactions to protect national security and to provide businesses and investors with the certainty and transparency they need to do business in the UK. Updating our powers is consistent with many of our major partners and allies around the world, including countries such as Australia, Japan, Germany, and the United States of America. The Government's intention to continue to develop these proposals was announced in the Queen's Speech in December 2019.

20 January 2020

APPENDIX 2: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 21 January 2020, Members declared the following interests:

Electricity and Gas (Energy Company Obligation) (Amendment) Order 2019 (SI 2019/1441)

The Earl of Lindsay

Chairman, United Kingdom Accreditation Service (UKAS)

Attendance:

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

