

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

3rd Report of Session 2022–23

Drawn to the special attention of the House:

Abortion (Northern Ireland) Regulations 2022

Draft Environmental Principles Policy Statement

Includes information paragraphs on:

1 instrument relating to COVID-19

Fire Safety (England) Regulations 2022

Draft Local Government (Exclusion of
Non-commercial Considerations) (England)
Order 2022

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Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as amended on 13 May 2021, are set out on the website but are, broadly:

To report on draft instruments published under paragraph 14 of Schedule 8 to the European Union (Withdrawal) Act 2018; to report on draft instruments and memoranda laid before Parliament under sections 8 and 23(1) of the European Union (Withdrawal) Act 2018 and section 31 of the European Union (Future Relationship) Act 2020.

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.

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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 <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/>

Committee Staff

The staff of the Committee are Sarah Jones (Clerk), Philipp Mende (Adviser), Jane White (Adviser) and Emily Pughe (Committee Operations Officer).

Further Information

Further information about the Committee is available at <https://committees.parliament.uk/committee/255/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 h1seclegscrutiny@parliament.uk.

Third Report

DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Abortion (Northern Ireland) Regulations 2022 (SI 2022/554)

Date Laid: 18 May

Parliamentary procedure: Made affirmative

This is the latest stage in the legislation to provide abortion in Northern Ireland on approximately the same terms as in the rest of the UK. These Regulations do not alter the policy set out in the Abortion (Northern Ireland) (No 2) Regulations 2020 but seek to remedy delays in its implementation. The 2022 Regulations remove the need for agreement to commission services in the Executive Committee of the Northern Ireland Assembly and provide the Secretary of State with the powers to do anything that a Northern Ireland Minister or Department could do, but this is strictly limited to the purposes of paragraphs 85 and 86 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The powers taken under these Regulations raise significant issues around devolution and the interplay of laws that we are not qualified to comment on. However, the House's understanding of the situation is unlikely to be helped by the Explanatory Memorandum to this instrument, which does not adequately explain the scale and nature of the problems, the way that the powers provided for in these Regulations may be used, or how the Government anticipate this intervention being effective when a previous Direction has been ignored.

This Report provides additional factual information which may assist the House in the forthcoming debate.

These Regulations are drawn to the special attention of the House on the ground that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation.

1. This is the latest stage in the legislation to provide abortion in Northern Ireland on approximately the same terms as in the rest of the UK. These Regulations do not alter the principles of the policy, which were discussed in some depth in our previous reports,¹ but seek to remedy delays in its implementation. The instrument was laid by the Northern Ireland Office (NIO) with an Explanatory Memorandum (EM) and brought into effect the following day using the made affirmative procedure.

Background

2. The *Abortion (Northern Ireland) Regulations 2020* (“the lapsed Regulations”) decriminalised abortion in Northern Ireland when carried out by a “registered medical professional” (as defined) and set requirements for the provision of abortion services in Northern Ireland.

¹ Secondary Legislation Scrutiny Committee, [11th Report](#) (Session 2019–21, HL Paper 49), [16th Report](#) (Session 2019–21, HL Paper 69) and [51st Report](#) (Session 2019–21, HL Paper 264).

3. The lapsed Regulations were laid at the start of the pandemic but, because the House was at that stage unable to vote on them, they were replaced in May 2020 with the materially identical *Abortion (Northern Ireland) (No. 2) Regulations 2020* (“the No 2 Regulations”). These established the core requirements for abortion services, which now apply:
- Regulation 3 allowed for a termination of a pregnancy without conditions if one medical professional confirms that the pregnancy has not exceeded 11 weeks and six days gestation.
 - Regulation 8 provided that up to the end of the tenth week, following a medical consultation and the first stage of treatment (usually involving the drug Mifepristone), the second part of that treatment (usually involving the drug Misoprostol) may be carried out in the woman’s home. (“Early Medical Abortion”)
 - Abortions beyond 12 weeks gestation were made lawful, subject to conditions including consideration of the pregnant woman’s mental and physical health or wellbeing or where there is severe foetal impairment.
 - Regulation 12 provides protection for conscientious objection in Northern Ireland, but the Supreme Court has ruled that this applies only to those conducting the treatment rather than those who might be involved administratively.
4. The Regulations were made to fulfil section 9 of the Northern Ireland (Executive Formation etc.) Act 2019 which imposed a statutory duty on the Secretary of State to implement, by 31 March 2020, the recommendations contained in paragraphs 85 and 86 of a UN Report made under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):²
- Paragraph 85 recommended that all women should have access to sexual and reproductive health services including access to safe abortions.
 - Paragraph 86 recommended that all women should have access to “scientifically sound and rights-based counselling and information on sexual and reproductive health services, including on all methods of contraception and access to abortion”, and that age-appropriate information should be provided to adolescents in the school curriculum.
5. However, by the deadline of 31 March 2021 only some services had been provided and they were not formally commissioned or supported by the Northern Ireland Department of Health (DoH). The *Abortion (Northern Ireland) Regulations 2021* (“the 2021 Regulations”) were therefore laid to confer power on the Secretary of State to issue a “Direction”³ to require the relevant authorities in Northern Ireland to take action to implement the CEDAW recommendations. These 2021 Regulations contained a new deadline of 31 March 2022.

2 Committee on the Elimination of Discrimination against Women, *Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (23 February 2018): https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT_CEDAW_ITB_GBR_8637_E.pdf [accessed 8 June 2022].

3 The [Abortion Services Directions 2021](#) came into effect on 23 July 2021.

6. The most recent set of Regulations, the Abortion (Northern Ireland) Regulations 2022 (“the 2022 Regulations”), do not alter the policy or content of the No 2 Regulations in any way. Full details of the CEDAW recommendations and the legislation’s requirements are set out in our previous reports on the Regulations mentioned above. On each occasion we received a number of submissions from Parliamentarians and organisations who objected to the proposals; their comments are published online and the Government’s responses to the points made were included in each of our Reports. The links are set out below.

Table 1: Submissions Received

Lapsed Regulations	11th Report Session 2019–21	Submissions received
No 2 Regulations	16th Report Session 2019–21	Submissions received
2021 Regulations	51st Report Session 2019–21	Submissions received

The 2022 Regulations

7. Full provision of the services outlined in the No 2 Regulations was not in place by the extended deadline of 31 March 2022 and is still not yet available in Northern Ireland, and so the latest step has been taken to allow the Secretary of State to intervene. Some urgency is implied because the 2022 Regulations follow the made affirmative procedure and were brought into immediate effect, but the reason for the accelerated process is not made clear.
8. The 2022 Regulations have two main effects:
- they remove barriers to implementation by stating that any direction made under the 2021 Regulations must be complied with irrespective of whether the Executive Committee of the Northern Ireland Assembly has or has not discussed or come to an agreement on the matter, and that the DoH must fund any health and social care that has been commissioned;⁴ and
 - they give the Secretary of State the power to intervene directly by providing him with the powers to do anything that a Northern Ireland Minister or Department could do, although this is strictly limited to the purposes of implementing the recommendations in paragraphs 85 and 86 of CEDAW.
9. Although not mentioned in the EM, we note that an amended Direction⁵ was also issued which came into effect on 21 May 2022. It includes the same requirements for the DoH to commission abortion and contraception services, and to provide scientifically sound information about them, as contained in the 2021 Direction, but it removes certain sections made redundant by the 2022 Regulations.
10. We note that on the day the 2022 Regulations were made, there was a Written Statement, from Brandon Lewis, Secretary of State for Northern Ireland,⁶ stating his intention to use these powers:

4 An explanation of the role of the Executive Committee of the Assembly is given at para 19. A description of the structure of health services in Northern Ireland is provided in Appendix 1.

5 The [Abortion Services Directions 2022](#) came into effect on 21 May 2022.

6 HC Deb, 19 May 2022. [HCWS39](#) (Commons written ministerial statement).

“If the Department of Health does not commission and fund abortion services as directed, I will intervene further. To ensure I have all the information required in those circumstances, a small team that I am establishing in the Northern Ireland Office will work alongside the Department of Health and take this forward.”

The current position

11. Given the sensitivity of the subject matter and the extensive powers being taken, we were surprised at the paucity of information provided in the EM. It tells us that the DoH has not acted on the Direction to commission and fund “relevant health care” given to it on 22 July 2021, but it does not give any details about what that Direction required other than general references to “abortion healthcare services”.
12. The EM then goes on to say that services are available in only four of five Regional Health and Social Care Trusts and are limited to only providing Early Medical Abortions up to a ten-week gestational limit. It adds that these services were set up as a temporary measure while the DoH progressed commissioning but are liable to collapse if not further funded.
13. We therefore asked a number of questions to try and obtain a better understanding of what is and what is not happening, where the problems lie and how the Secretary of State anticipates using the powers taken.

What provision for abortion is available?

14. In supplementary information the NIO stated that:

“a limited and fragile early medical abortion service has been provided since April 2020. In the absence of a decision by the DoH to commission and fund abortion services, no funding has been provided for the service. It has been maintained due to the dedicated work of committed members of staff. However, workforce planning, including the provision of training, is an essential element of a fully commissioned service. Commissioning and funding is necessary before comprehensive services can be provided and the CEDAW recommendation implemented fully. The Secretary of State is steadfast in his belief that the Department of Health should drive forward the commissioning of abortion services without further delay in Northern Ireland.”
15. The EM says that “services are available in only four of five Regional Health and Social Care Trusts”, so we asked for further information about what services are currently available. The NIO replied:

“The services that are available are largely limited to early medical abortions. Early medical abortions means the use of abortion pills at up to 10-weeks gestation. In the absence of commissioning, there has been no progress on provision of surgical abortion. The vast majority of those who require access to a surgical abortion are required to travel to England to receive care.

Health care in Northern Ireland is provided by 5 regional Health and Social Care Trusts (“HSC Trusts”). The current situation is that 4 trusts (the Belfast Trust, the Northern Trust, the Southern Trust and the South Eastern Trust) are able to provide early medical abortions.

The Western Trust does not have the resources to offer even an early medical abortion service. It stopped being able to offer such services in April 2021. The Northern Ireland Office was made aware on the 17 May 2022 that neighbouring HSC Trusts would provide services to women living within the Western Trust catchment area. The fact remains that between April 2021 and May 2022, women living in the Western Trust catchment area had no access to abortion services, meaning their only options were to travel to England for care, seeking unregulated pills online, or continuing with the pregnancy.

Due to the ongoing lack of commissioning or funding, early medical abortion services offered by the HSC Trusts are extremely fragile. Three of the five HSC Trusts have temporarily suspended services to date.

Beyond abortions being unavailable beyond 10 weeks gestation, our stakeholders have also flagged some significant barriers to accessing services, particularly around women not knowing what services are available in Northern Ireland, or how to access them.”

16. To seek to understand the scale of the problem, we also asked how current service provision compares with standard services available in the rest of the UK. The NIO replied:

“Recent numbers for abortion provision have been affected by Covid travel restrictions and full statistics are not yet available for 2021. DHSC annually releases statistics on the number of women accessing services in England and Wales.⁷ 18.2 per 1,000 women in England and Wales had an abortion in 2020.

The Northern Ireland Department of Health answered an Assembly Question on 11 March 2022,⁸ and stated that between 31 March 2020—31 January 2022, a total of 2,794 notifications of termination were submitted to the Chief Medical Officer for abortions in Northern Ireland. 371 women from Northern Ireland accessed abortion services in England in 2020, according to figures released by DHSC (DHSC noted that this was reduced because of travel restrictions).⁹

In 2020, the Northern Ireland Office estimates that around 5.3 women per 1,000 accessed early medical abortion services in Northern Ireland. It should be stressed that the department believes the number of women travelling to England from Northern Ireland in 2020 was reduced by travel restrictions, and an unquantified number of women are being driven to access unregulated services.”

What about the information and education requirements of CEDAW?

17. The NIO states that direction 8 of the Abortion Services Direction 2021, which requires the DoH to secure the provision of an interim service information and referral service, is currently being fulfilled by the British

7 Department of Health and Social Care, ‘Abortion statistics, England and Wales: 2020’: <https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-2020/abortion-statistics-england-and-wales-2020> [accessed 8 June 2022].

8 Northern Ireland Assembly, ‘Questions Search Results’: <http://aims.niassembly.gov.uk/questions/searchresults.aspx> [accessed 8 June 2022].

9 *Ibid.*

Pregnancy Advisory Service (BPAS) on a temporary basis. But the NIO adds that there has been no progress made towards putting this service on a permanent footing:

“The Department’s understanding is that there is a lack of investment in sexual and reproductive health professionals in Northern Ireland and this has resulted in a regional variation of service provision for contraception amongst HSC Trusts in Northern Ireland.”

18. In relation to education the position may be a little better, as the NIO states:

“The recommendation in paragraph 86(d) of the CEDAW report is that age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights is made a compulsory curriculum component for adolescents.

Relationships and Sexual Education (“RSE”) is an element of the curriculum in Northern Ireland and there are opportunities for pupils to learn about and explore issues such as abortion. However, progress is required to fully implement the recommendation. The Northern Ireland Office is engaging closely with the Department of Education in Northern Ireland on whether they will take the necessary steps to make RSE as described in the CEDAW recommendation a compulsory part of the curriculum.”

The role of the Executive Committee

19. The 2022 Regulations allow the Northern Ireland Assembly Executive Committee to be bypassed, so we asked why it is a barrier to progress. The NIO replied that directions 3-6 of the Abortion Services Directions 2021 imposed obligations on the DoH, but it had not complied by the 31 March 2022 deadline, nor had DoH put proposals for commissioning services to the Executive Committee. The NIO explained the situation as follows:

“The Executive Committee of the Northern Ireland Assembly is provided for in section 20 of the Northern Ireland Act 1998. It is chaired by the First Minister and deputy First Minister and consists of them and the Northern Ireland Ministers. Section 20(3) and (4) of the 1998 Act provides that the Executive Committee has the functions of discussing and agreeing upon significant and controversial matters, and matters which cut across the responsibility of more than one Northern Ireland Minister.

Section 28A(5) of the 1998 Act requires the Northern Ireland Ministerial Code to include provision requiring Ministers to bring to the attention of the Executive Committee any matter which ought to be considered by the Executive Committee by virtue of section 20(3) or (4). The Ministerial Code accordingly requires Northern Ireland Ministers to bring such matters to the attention of the Executive Committee.

Section 28A(10) of the 1998 Act provides that a Minister has no Ministerial authority to take any decision in contravention of that requirement.

The position taken by the Minister of Health has been that the action necessary to comply with the Abortion Services Directions 2021

(including the commissioning and funding of relevant health and social care) requires the agreement of the Executive Committee.”

Intervention by the Northern Ireland Secretary

20. The Regulations allow the Northern Ireland Secretary to “intervene directly”, so we asked what the options available to him are. The NIO replied:

“The 2022 Regulations do this by conferring on the Secretary of State the power to do anything a Northern Ireland Minister or department may do for the purpose of ensuring the recommendations of the CEDAW Report are implemented. This means that for that purpose the Secretary of State may exercise the DoH’s statutory functions. Accordingly, the Secretary of State has the power to step in and assume the DoH’s role in the commissioning of the relevant health care.”

21. We therefore asked who or what is to be compelled to comply in the DoH and what recourse there is if it does not comply. The NIO explained:

“Northern Ireland departments (in contrast to departments of the government of the UK) are bodies corporate. They have legal personality. Accordingly, the obligations in both the Abortion Services Directions 2022 and regulation 3 of the 2022 Regulations are imposed on the DoH, rather than the Minister of Health or some other office holder. The function of allocating financial resources, for example, is a statutory function of the DoH (see section 2(3)(c) of the Health and Social Care (Reform) Act (Northern Ireland) 2009).

It is therefore appropriate that a further duty in relation to the allocation of financial resources is imposed on the DoH.

If the DoH does not comply with the duties imposed by the 2022 Regulations or the Directions that failure could be challenged by way of an application for Judicial Review.”

22. We also clarified that this intervention does not cut across the freedom of conscience provisions in regulation 12 of the No 2 Regulations, with the NIO explaining:

“This protection applies to medical professionals and others participating in treatment. It does not relate to the role of the DoH and other health care bodies in commissioning and funding relevant health care.

[The] Explanatory Memorandum to the 2020 Regulations explained the scope of the conscientious objection provision as follows.

“The Supreme Court has held that the extent of conscientious objection is restricted to performing the tasks involved in the whole course of treatment bringing about the termination of the pregnancy, beginning with the administration of the drugs designed to induce labour and normally ending with the ending of the pregnancy by delivery of the fetus, placenta and membrane. People carrying out the host of ancillary, administrative and managerial tasks that might be associated with those acts do not have the same right to conscientious objection.”

Any services that are commissioned as a result of an intervention by the Secretary of State will be in accordance with the existing statutory scheme established by the 2020 Regulations, including regulation 12.

The DoH has been directed to produce guidance for medical professionals to replace the guidance it issued in March 2016 entitled “Guidance for Health and Social Care Professionals on termination of pregnancy in Northern Ireland”. If the DoH fails produce such guidance and it is issued instead by the Secretary of State, care will be taken to ensure that the guidance properly reflects the right to conscientious objection.”

Constitutional position

23. The Constitution Committee’s report on the 2021 Regulations¹⁰ highlighted the issues that both the Secretary of State’s Direction, and now his potential intervention, raise in regard to devolution and the interaction of different types of legislation, and of two potentially conflicting Acts:

“The 2021 Regulations raise an important issue concerning devolved competence. On the one hand the Secretary of State cites a statutory duty, arising from section 9 of the 2019 Act, to make the 2020 and 2021 Regulations, alongside a duty to ensure compliance with the UK’s obligations under international law. On the other hand, one of the governing parties in the Northern Ireland Executive opposes the Regulations as an unwarranted interference with the devolution arrangements.”

24. We have received a submission from CARE NI which raises some of these issues, in particular about the devolution position. It is published on our website.¹¹
25. We are also aware that parties both for and against the legislation are seeking Judicial Review of both the No 2 Regulations and the 2022 Regulations, and that those court cases have not yet reached a conclusion. This is not mentioned in the EM but may have a material effect on how the legislation is interpreted and how it may be implemented. A summary of the current position in each case is included at Appendix 2.

Conclusion

26. Our remit is to consider the policy of statutory instruments. The Government’s policy to allow women in Northern Ireland better access to information about their sexual health and, where necessary, abortion, was established by the No 2 Regulations, and the 2022 Regulations do not alter that policy.
27. The powers taken under these Regulations raise significant issues around devolution and the interplay of laws that we are not qualified to comment on. **However, the House’s understanding of the situation may not be helped by the EM to this instrument which does not adequately explain the scale and nature of the problems, the way that the powers provided for in these Regulations may be used, or how the Government**

¹⁰ Constitution Committee, *23rd Report* (Session 2019–21, HL Paper 269).

¹¹ SLSC, ‘Scrutiny Evidence’: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/>.

anticipate this intervention being effective when a previous Direction has been ignored.

28. This report therefore provides additional factual information which may assist the House in the forthcoming debate.

Draft Environmental Principles Policy Statement

Date Laid: 11 May

Parliamentary Procedure: Negative

*This draft policy statement on environmental principles is the first such policy statement to have been laid before Parliament under the Environment Act 2021 (“the Act”). It sets out how ministers should apply five environmental principles, which are established under the Act, to support environmental protection and enhancement. Government departments have a statutory duty to have “due regard” to the policy statement when designing policy, and to embed the environmental principles into policymaking. **As no explanation of the five principles is offered in the Explanatory Memorandum (EM) that has been laid before Parliament, we have asked the Department for Environment, Food and Rural Affairs to revise the EM.***

This is the first draft policy statement to have been laid before Parliament under the Act, setting a precedent for how the House will handle future policy statements. The House may therefore wish to consider the potential scope for a more exacting scrutiny procedure for future policy statements.

We also take the view that it is essential that the practical implementation and effectiveness of the policy statement and the environmental principles will be properly monitored and evaluated by all government departments in scope of the statutory duty. Without such oversight and evaluation across Whitehall, neither the Government nor Parliament will be able to assess whether the policy statement and environmental principles have had any impact, and to what extent they have achieved their purpose.

The draft policy statement is drawn to the special attention of the House on the ground that it is politically or legally important and gives rise to issues of public policy likely to be of interest to the House.

29. This draft policy statement on environmental principles (“policy statement”) has been laid by the Department for Environment, Food and Rural Affairs (Defra), as required under section 18(3) of the Environment Act 2021 (“the Act”), alongside an Explanatory Memorandum (EM). This is the first draft policy statement to have been laid before Parliament under the Act.

Parliamentary procedure and scrutiny

30. Under section 18(4) of the Act, the draft policy statement is subject to parliamentary scrutiny for a period of 21 sitting days.¹² During this period, either House may pass a resolution and a committee or committees of either House may make recommendations in respect of the draft policy statement.

¹² See: [section 18](#), Environment Act 2021.

The Secretary of State is required to lay before Parliament a response to any resolution passed or any recommendation made, as well as a final version of the policy statement.

31. Our remit is to scrutinise all instruments subject to parliamentary scrutiny. We have therefore agreed to consider this draft policy statement on the basis of our terms of reference.¹³ We understand that the House of Lords Environment and Climate Change Committee is also scrutinising the draft policy statement.
32. **As this is the first draft policy statement to have been laid before Parliament under the Act and a precedent is therefore set for how the House will handle future policy statements, the House may wish to consider the potential scope for a more exacting scrutiny procedure for future policy statements.**

The five principles

33. The draft policy statement sets out how ministers should apply five environmental principles, which are established under section 17 of the Act, to support environmental protection and enhancement. Government departments have a statutory duty to have “due regard” to the policy statement when designing policy, and to embed the environmental principles into policymaking. Exemptions apply to the armed forces, defence or national security, taxation, spending or the allocation of resources within government (section 19 of the Act).
34. The draft policy statement explains the five environmental principles as follows:
 - (1) The **integration principle** proposes that policymakers should look for opportunities to embed environmental protection into the making of policies in all policy areas across government in scope of the statutory duty, where the policy has a potential environmental effect.
 - (2) The **prevention principle** means that government policy should aim to prevent environmental harm. This principle should generally be used in preference over the rectification at source principle or polluter pays principle (see below), as these principles are used in instances when prevention cannot be achieved.
 - (3) The **rectification at source principle** states that environmental damage should, as a priority, be addressed at its origin to avoid the need to remedy its effects later. This principle should be used to guide the design of policy that addresses or manages environmental damage, or potential environmental damage. Where it is not possible to identify or address all environmental damage at its origin, there should be consideration of trying to contain or limit the environmental harm as much as possible.
 - (4) The **polluter pays principle** means that, where possible, the costs of pollution should be borne by those causing it, rather than the person who suffers the effects of the resulting environmental damage, or the wider community. This principle should apply where there is evidence

¹³ Secondary Legislation Scrutiny Committee, ‘Terms of Reference’: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/content/120278/terms-of-reference/>.

of, or potential for, environmental harm or a negative environmental effect, and prevention of that harm is not possible or proportionate.

- (5) The **precautionary principle** is applicable where there is plausible evidence of a risk that a particular policy could cause serious or irreversible damage to the environment, alongside a lack of scientific certainty about the likelihood and severity of this damage. In applying this principle, policymakers need to make a reasonable assessment, using the best available scientific evidence, of the risk. Risk in this case should be understood as a combination of the likelihood of the environmental damage occurring and its severity.
35. We note that the EM as laid before Parliament does not include any explanation of the principles. The purpose of an EM is to provide Parliament, those affected by changes in the law and the wider public with an accessible, stand-alone, comprehensive explanation; it should not be necessary for the reader to consult other documents in order to achieve an understanding of what the legislation does. **We have therefore asked the Department to revise the EM to include a short explanation of each of the five environmental principles.**
36. Defra says that the purpose of the principles is to guide ministers and policymakers towards opportunities to prevent environmental damage and enhance the environment, where relevant and appropriate, and that they should be considered and used iteratively from the outset and during subsequent stages in the development of a policy. The Department emphasises that the principles are not rules and cannot dictate policy decisions by ministers, instead they should be used to inform and influence policy design. When considering the potential environmental effects of a policy option, and the possible changes to a policy, policymakers should take a proportionate approach.
37. According to Defra, the Government have already committed to these principles through international processes, such as the Rio Declaration on Environment and Development 1992 which includes commitments on the principles, or the Montreal Protocol on Substances that Deplete the Ozone Layer which refers to the precautionary principle.

Devolution

38. With environmental protection a devolved matter, the policy statement does not apply to policy relating to Wales or Northern Ireland, or to Scotland, except to a small number of policy areas which are reserved in relation to Scotland. According to Defra, a matter of energy policy which is related to Scotland but is reserved according to Schedule 5 to the Scotland Act, for example, would be covered by the policy statement. In such a scenario, UK ministers would have due regard to the policy statement when making the policy and would consult with the Scottish Government in the process, respecting the devolution settlement.

Consultation, monitoring and review

39. The draft policy statement was subject to a 12-week public consultation which closed in June 2021.¹⁴ The Secretary of State may revise the policy statement at any time, subject to the same requirements for consultation and parliamentary scrutiny that applied to this first policy statement. We asked Defra whether it would monitor and evaluate how effective the policy statement and environmental principles will be across government in improving environmental protection and sustainable development, and whether there were plans for a future review of the policy statement. The Department told us that:

“It is primarily for Government Departments to ensure the duty is implemented effectively in their policy making. The Office for Environmental Protection will monitor the implementation of environmental law, which will include the requirement to have due regard to the policy statement. Because the Environmental Principles are not intended to dictate policy outcomes, it will not be appropriate to monitor direct impacts on policy outcomes. But we envisage the overall benefits would be picked up indirectly in monitoring as part of the 25 Year Environmental plan.

We do not have any immediate plans to review the principles themselves. The five environmental principles are well established and internationally recognised. These principles have significant case law and history, so their meaning and application is clearly understood and defined. However, this does not preclude another review of the principles in the future.”

40. **We take the view that, given that this is the first policy statement under the Act, it is essential that the practical implementation and effectiveness of the policy statement and the environmental principles will be properly monitored and evaluated by all government departments in scope of the statutory duty. Without such oversight and evaluation across Whitehall, neither the Government nor Parliament will be able to assess whether the policy statement and environmental principles have had any impact and to what extent they have achieved their purpose.**

¹⁴ Department for Environment, Food and Rural Affairs, ‘Summary of responses and government response’: <https://www.gov.uk/government/consultations/environmental-principles-draft-policy-statement/outcome/summary-of-responses-and-government-response> [accessed 8 June 2022].

INSTRUMENT RELATING TO COVID-19

Changes to business practice and regulation

Electricity (Individual Exemption from the Requirement for a Transmission Licence) (East Anglia One) (England) Order 2022 (SI 2022/558)

41. This Order grants a further time-limited exemption from the requirement to hold an electricity transmission licence to East Anglia One Limited (EAOL) in relation to the East Anglia One offshore wind farm. The Department for Business, Energy and Industrial Strategy (BEIS) explains that under the current regulatory regime, so-called unbundling rules prevent offshore transmission and generation infrastructure being owned and operated by the same party. Transmission assets are transferred to an independent offshore transmission owner through a competitive tender in the course of an 18-month commissioning period, during which offshore generators are allowed to transmit electricity without a licence. After the end of the commissioning period, unlicensed transmission is no longer allowed.
42. During the pandemic, several time-limited exemptions from the requirement to hold a transmission licence were granted to generators, including EAOL, to account for delays in the transfer of assets caused by pandemic-related restrictions. EAOL subsequently requested a further time-limited exemption due to the ongoing disruption, and this Order grants this further exemption. It will end on the day after the transmission system for East Anglia One offshore wind farm is transferred to a successful bidder, or on 13 April 2023, whichever is earlier.

INSTRUMENTS OF INTEREST

Draft Local Government (Exclusion of Non-commercial Considerations) (England) Order 2022

43. The purpose of this draft Order is to allow best value authorities¹⁵ and parish councils in England to terminate proposed or existing public supply or works contracts, where the country of origin of supplies to the contractor or the location of the business activities or interests of a contractor is the Russian Federation or Republic of Belarus. The draft Order does not place any obligation on authorities to terminate commercial relationships but allows them to cancel existing contracts or decline bids from prospective suppliers. The Department for Levelling Up, Housing and Communities says that this will align arrangements for local authorities with those for central government departments, executive agencies and non-departmental public bodies which were set out in a procurement notice in March 2022.¹⁶

Fire Safety (England) Regulations 2022 (SI 2022/547)

44. The Fire Safety Act 2021 clarified that the scope of the Responsible Person's (RP)¹⁷ duties includes the structure, external walls, and individual flat entrance doors of multi-occupied residential buildings. These Regulations implement recommendations made by Phase 1 of the Grenfell Tower Inquiry by imposing new duties on the RPs of high-rise and other multi-occupied residential buildings in England to improve the safety of residents. The Government are still consulting on the arrangements for Personal Emergency Evacuation Plans.¹⁸
45. These Regulations align with the Building Safety Act 2022 to define a “high-rise residential building” as one that is at least 18 metres in height or has seven or more storeys. The RP will be required to install and maintain a secure information box in such buildings to provide useful information to the Fire and Rescue Service in an emergency which will include hard copies of the building's floor plans and electronic information about its construction and the materials used in the building. The RP will also be required to conduct regular checks on fire doors, conduct monthly checks on evacuation lifts and provide residents with fire safety instructions.
46. We note that this legislation does not come into effect until 23 January 2023 and asked the Home Office for an explanation (which is published in full in Appendix 3). The Home Office responded that the changes require guidance to be published and preparations to be made not only by the RPs but also by the authorities, in particular the London Fire Brigade, as 61% of high-rise residential buildings are in London. **We regard it as important that the**

15 Best value authorities are authorities designated under the Local Government Act 1999 to secure continuous improvement in the way in which they exercise their functions, having regard to a combination of factors, including economy, efficiency and effectiveness. They include county councils, district councils and London borough councils.

16 Cabinet Office, ‘Procurement Policy Note 01/22: contracts with suppliers from Russia and Belarus’: <https://www.gov.uk/government/publications/procurement-policy-note-0122-contracts-with-suppliers-from-russia-and-belarus> [accessed 8 June 2022].

17 A “Responsible Person” is defined in Article 3(b)(i) of the [Regulatory Reform \(Fire Safety\) Order 2005](#). In a workplace it is the employer, in other circumstances it may be the owner or occupier of the building.

18 Home Office, ‘Personal Emergency Evacuation Plans’: <https://www.gov.uk/government/consultations/personal-emergency-evacuation-plans> [accessed 8 June 2022].

RPs should have clear guidance about these duties and how to carry them out to meet the Regulations' requirements.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft	Animal Welfare (Miscellaneous Amendments) Regulations 2022
Draft	Local Government (Exclusion of Non-commercial Considerations) (England) Order 2022

Draft instruments subject to annulment

Draft	Derbyshire Dales (Electoral Changes) Order 2022
Draft	Mansfield (Electoral Changes) Order 2022
Draft	Oldham (Electoral Changes) Order 2022

Instruments subject to annulment

SI 2022/540	Civil and Family Proceedings Fees (Amendment) Order 2022
SI 2022/543	Food and Feed (Fukushima Restrictions) (Revocation) (England) Regulations 2022
SI 2022/547	Fire Safety (England) Regulations 2022
SI 2022/555	Tax Credits and Child Benefit (Miscellaneous Amendments) Regulations 2022
SI 2022/558	Electricity (Individual Exemption from the Requirement for a Transmission Licence) (East Anglia One) (England) Order 2022
SI 2022/560	Novel Foods (Authorisations) and Smoke Flavourings (Modification of Authorisations) (England) Regulations 2022
SI 2022/578	Leasehold Reform (Ground Rent) (Business Lease Notices) Regulations 2022
SI 2022/592	Green Gas Support Scheme (Amendment) Regulations 2022

APPENDIX 1: ABORTION (NORTHERN IRELAND) REGULATIONS 2022

Additional information provided by the Northern Ireland Office

Q1: Please describe the structure of the Health Service in Northern Ireland and the chain- of command

A1: The health service in Northern Ireland is known as Health and Social Care (“HSC”). The Department of Health (DoH) has overall responsibility for Health and Social Care. The general duties of DoH are provided for in the Health and Social Care (Reform) Act 2009. Those duties include providing, or securing the provision of health and social care, allocating financial resources available for health and social care, setting the standards for the provision of health and social care and monitoring and holding to account other health and social care bodies.

Services are provided by Health and Social Care Trusts (“HSC Trusts”). There are 6 HSC Trusts: 5 regional HSC Trusts and the Ambulance Service HSC Trust. The HSC Trusts manage their own staff and services and control their own budgets.

The structure of Health and Social Care has been recently reformed by the Health and Social Care Act (Northern Ireland) 2022. Until that Act, the Regional Health and Social Care Board (“the HSCB”) sat between the DoH and the HSC Trusts. The HSCB was responsible for commissioning services, performance management, and managing resources.

Within the HSCB were five Local Commissioning Groups, each covering the same geographical area as an HSC Trust. The HSCB was dissolved on 1 April 2022. Responsibility for commissioning now sits with the DoH. As an interim measure, the Local Commissioning Groups continue to exist until the DoH establishes new local bodies.

Q2: Please confirm that sufficient funding is there to provide these services.

A2: As a devolved matter it remains the responsibility of the Northern Ireland Executive to fund abortion services in Northern Ireland.

The 2021 Spending Review will provide, on average, £15 billion per year to the Northern Ireland Executive, every year until the end of the Financial Year 24/25. The Block Grant settlement enables the NI Executive to manage its own Budgets and allocate these resources according to its priorities. In its assessment of the NI Executive draft Budget 2022–25 in January this year, the NI Fiscal Council highlighted the higher Block Grant settlement for Northern Ireland and that the Executive was proposing a 10% increase in health funding. In addition, the Executive is proposing to use £147m of Transformation funding provided by the UK Government under New Decade, New Approach (NDNA), to be allocated in full to health over the budget period.

27 May 2022

APPENDIX 2: ABORTION (NORTHERN IRELAND) REGULATIONS 2022

Additional information provided by the Northern Ireland Office about the current status of the various Judicial Reviews being taken in relation to the Regulations

1. Court of Appeal NI—Hearing listed 27 October 2022

Appeal on behalf of the Society for the Protection of Unborn Children (SPUC) Pro Life Limited against the judgement of Mr Justice Colton, NI High Court, dated 8 February 2022 in the judicial review against Secretary of State for Northern Ireland [SOSNI] and Department of Health. Section 9 of the Northern Ireland (Executive Formation etc.) Act 2019 imposed specific duties on the Secretary of State for Northern Ireland in relation to the provision of abortion and post abortion services in Northern Ireland. The appeal challenges the legality of Abortion (Northern Ireland) Regulations 2021 and a second challenge to the 2021 Directions made under those Regulations.

The challenge includes the following grounds:

- The Secretary of State has no power to bypass the Northern Ireland Act 1998 section 26
- The powers granted to the SOSNI under the 2019 Act are not exercisable when a functioning Assembly is in operation
- The 2021 Regulations are unlawful as section 9 of the 2019 Act only permits provisions that the Assembly could itself enact and this is an excepted matter
- The 2021 are unlawful as they do not make any changes to the law of Northern Ireland
- The 2021 Regulations are unlawful in contravention of
 - Article 2(1) of the Protocol (abortion prohibited on grounds of disability)
 - EU Law (abortion prohibited on grounds of disability)
 - UN convention of Rights of Persons with Disability
- Failed to consult prior to the 2021 Regulations or Directions
- The 2021 Directions cannot override the judgment of FM and DFM [*First Minister and Deputy First Minister*] relating to agenda items for Executive Committee meetings.

2. Pre-proceedings Letters (formal pre-action letters that require a formal response in advance of judicial review applications proceeding)

Northern Ireland Human Rights Commission (NIHRC)

- Issued a pre-proceedings letter to SOSNI and the Department of Health NI on 14 April 2022 challenging the SOSNI's continued failure to ensure comprehensive access to termination services in Northern Ireland and the Department's failure to commission and fund these services.
- A formal response on behalf of SOSNI was issued on 23 May 2022. We wait to see if NIHRC will commence proceedings.

SPUC Pro Life—further pre-action letter

- Issued on 26 May 2022 challenging the validity of the Abortion (Northern Ireland) Regulations 2022.
- SPUC seek SOSNI to either let the new 2022 Regulations lapse and undertake separately that no directions will be given under the 2022 Regulations until after the Court of Appeal issues judgment in the case at 1 above, the challenge to the 2021 Regulations.

30 May 2022

APPENDIX 3: FIRE SAFETY (ENGLAND) REGULATIONS 2022 (SI 2022/547)

Additional information from the Home Office

Background

The Fire Safety (England) Regulations 2022 (the Regulations) have been made in exercise of the powers conferred by article 24 of the Regulatory Reform (Fire Safety) Order 2005 SI 2005/1541 (the Fire Safety Order).

They impose new duties on the Responsible Persons (RPs) of multi-occupied residential buildings although these duties do not come into force until 23 January 2023. There are several reasons for this decision.

Interaction with other legislative changes

The Regulations have been laid shortly after commencement of section 1 of the Fire Safety Act 2021. Section 1 of the Fire Safety Act has clarified that the external walls and flat entrance doors of multi-occupied residential buildings which contain two or more sets of domestic premises are within the scope of the Fire Safety Order and any update to a relevant building's fire risk assessment should include these in that assessment. Had the Regulations come into force alongside commencement of the Fire Safety Act or shortly after there was the risk that these two pieces of legislation could have had a negative cumulative impact on RPs, and those in the wider fire sector who RPs engage to assist them in complying with their duties under the Fire Safety Order.

It is right to mitigate against this potential impact by providing time for RPs to update their fire risk assessments to ensure compliance with the Fire Safety Order (as amended by the Fire Safety Act) to start to take effect before the regulations come into force. The Home Office has provided an online tool to prioritise assessments for those buildings deemed the highest priority and to manage the demand for competent professionals to undertake updates to fire risk assessments.

The January commencement date for the Regulations should allow the RPs of high-rise residential buildings reasonable time to update, where necessary, their fire risk assessment. This update, which will require consideration of the building's external wall system, will mean that RPs will also be able to meet paragraph 5 of the Regulations (design and materials of external walls).

Guidance

Article 50 of the Fire Safety Order places an obligation on the Secretary of State to produce guidance to support RPs in the discharge of their duties imposed by articles 8 to 22 of the Fire Safety Order and any regulations made under article 24, and for this guidance to be available before the Regulations come into force.

The Home Office is currently undertaking a guidance refresh programme which will see a comprehensive revision and update of all fire safety guidance. The aim of the consultation programme is to ensure that the guidance which is produced has been considered by a range of relevant stakeholders with technical expertise in and practical experience of fire safety, and those with an interest (such as resident's group).

Guidance has been drafted and will shortly undergo its comprehensive stakeholder review before being finalised and cleared for publication. This period of review

will conclude later in 2022. Commencement of the Regulations, therefore, should take place only once guidance is available.

Representatives of those who affected by the new duties, including local authorities and the fire and rescue service have expressly asked that guidance be available ahead of commencement and that as much time as possible is made available for them to be able to comply.

In the meantime, to assist RPs to take reasonable steps towards compliance, the Home Office has produced a series of fact sheets to support understanding of the requirements under the Regulations. RPs will be able—for example—to work towards compliance by installing secure information boxes (regulation 4) and wayfinding signage (regulation 8) ahead of Article 50 guidance being made available.¹⁹

Impact and Costs

The Regulations impose duties mainly on high-rise residential buildings. There are around 12,000 such buildings in England.²⁰ 50 per cent of these are social sector residential, and the other 50 per cent are private sector residential. The Regulations will also have an impact on fire and rescue services, especially the London Fire Brigade, as 61 per cent of high-rise residential buildings are in London. These services will need to prepare for the information that they will receive from RPs, as well preparing their approach to enforcement.

The Regulations also impose new duties to undertake a specific frequency regarding checks on fire doors in an additional 75,000 multi-occupied residential buildings between 11 and 18 metres.²¹ Finally, the Regulations will also require fire safety instructions and information on fire doors to be provided to the residents of an estimated further 1.6 million multi-occupied residential buildings below 11 metres.²²

It is reasonable, considering the number of buildings in scope of these Regulations, to allow RPs time to work towards compliance and time to plan around accounting for the costs that are associated with their duties, particularly in year one where nearly 40 per cent of the total expected costs (in present value terms over 10 years) are expected to fall and better mitigate the impact on leaseholders and others.

Existing duties under the Fire Safety Order, to ensure that there are general fire precautions in place, and that facilities and equipment provided to fire-fighters are maintained and in working order, will help to ensure that fire safety levels are sufficiently maintained ahead of the Regulations coming into force.

24 May 2022

19 These fact sheets can be found at: Home Office, ‘Fire Safety (England) Regulations 2022’, <https://www.gov.uk/government/publications/fire-safety-england-regulations-2022> [accessed 8 June 2022.]

20 Department for Levelling Up, Housing and Communities, ‘Building Safety Programme: Monthly data release’, 30 April 2022, p 10: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1076525/Building_Safety_Data_Release_April_2022.pdf

21 *Ibid.*, p 11.

22 Fire Safety (England) Regulations 2022 (SI 2022/547), [Impact Assessment](#).

APPENDIX 4: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 7 June 2022 and included in this report, Members declared no interests.

Attendance:

The meeting was attended by Baroness Bakewell of Hardington Mandeville, Lord De Mauley, Lord German, Viscount Hanworth, Lord Hodgson of Astley Abbotts, Lord Hutton of Furness, the Earl of Lindsay, Lord Lisvane, Lord Powell of Bayswater, Lord Rowlands and Baroness Watkins of Tavistock.