

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

4th Report of Session 2022–23

Drawn to the special attention of the House:

Building etc. (Amendment) (England) Regulations 2022

Includes information paragraphs on:

Misuse of Drugs (Amendment) (Revocation)
(England, Wales and Scotland) Regulations
2022

Education (Information About Individual
Pupils) (England) (Amendment) Regulations
2022

Allocation of Housing and Homelessness
(Eligibility) (England) and Persons Subject

to Immigration Control (Housing Authority
Accommodation and Homelessness)
(Amendment) (No. 2) Regulations 2022 and
one related instrument

National Health Service (Charges to Overseas
Visitors) (Amendment) (No. 3) Regulations
2022 and one related instrument

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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.

Members

[Baroness Bakewell of Hardington Mandeville](#)

[Lord De Mauley](#)

[Lord German](#)

[Viscount Hanworth](#)

[Lord Hodgson of Astley Abbotts](#) (Chair)

[Rt Hon. Lord Hutton of Furness](#)

[The Earl of Lindsay](#)

[Lord Lisvane](#)

[Lord Powell of Bayswater](#)

[Lord Rowlands](#)

[Baroness Watkins of Tavistock](#)

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.

Fourth Report

DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Building etc. (Amendment) (England) Regulations 2022 (SI 2022/603)

Date laid: 1 June 2022

Parliamentary procedure: negative

These Regulations amend the Combustible Materials Ban that was introduced in England in 2018 following the Grenfell Tower Fire. We note that the changes draw on a review of the Ban undertaken in 2019, and that it has taken the Department several years to bring forward this instrument. The changes will apply to new buildings, and to existing buildings only where they are undergoing work. This will therefore leave a significant number of existing buildings not covered by the Ban. We are disappointed that neither the EM nor the IA provide any indication of how long it will take under the chosen policy approach to make safe the existing stock of hotels, hostels and boarding homes which are higher than 18 metres. We note that for the changes to improve safety, they will have to be enforced by the building control bodies which are responsible for checking compliance and monitoring the operation of the Ban.

The Regulations are drawn to the special attention of the House on the ground that they are politically or legally important and give rise to issues of public policy likely to be of interest to the House.

1. This instrument has been laid before Parliament by the Department for Levelling Up, Housing and Communities (DLUHC) with an Explanatory Memorandum (EM) and Impact Assessment (IA). The instrument amends the ban on combustible materials (“the Combustible Materials Ban”) that was introduced in England in 2018 following the Grenfell Tower Fire.¹
2. DLUHC explains that the changes made by this instrument have been informed by a review of the Combustible Materials Ban undertaken in the autumn of 2019. This review involved the Building Regulations Advisory Committee and included a survey of stakeholders on the effectiveness and impact of the Ban.² **We note that it has taken the Department several years to bring forward this instrument.**

Key changes made by the instrument

3. The Regulations:
 - ban the use of certain metal composite materials from use in the external walls and specified attachments of all buildings;

1 Building (Amendment) Regulations 2018 ([SI 2018/1230](#)), see: Secondary Legislation Scrutiny Committee (Sub-Committee A), [9th Report](#) (Session 2017–19, HL 251).

2 Ministry of Housing, Communities and Local Government, *Survey of the views of industry stakeholders on the effectiveness, issues and impacts of the initial operation of the ban in England on combustible materials in the external walls of buildings*, (August 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/857493/Adroit_Ban_Survey_Analysis.pdf [accessed 15 June 2022].

- include within the scope of the Combustible Materials Ban elements of solar shading devices whose primary function is to provide shade or deflect sunlight;
 - amend the list of materials exempted from the Combustible Materials Ban to include fibre optic cables and insulation up to 300 millimetres from ground level;
 - update the ‘reaction to fire’ classification that materials must meet to comply with the Combustible Materials Ban, to the current version of the British Standard; and
 - reduce the height at which a building must comply with the relevant standard on external fire spread on walls where there is a material change of use of the building, from 15 to 11 metres.
4. The instrument also brings hotels, hostels and boarding houses which are more than 18 metres in height within the scope of the Combustible Materials Ban. We asked the Department whether this will apply only to new buildings or whether it will also apply to existing buildings, thereby requiring potential remedial work.
5. DLUHC explained that the Combustible Materials Ban only applies when building work is carried out,³ and that this “would include building a new building or where work is being done to an existing building”. The Department added that the changes “will not require remedial work to be carried out on buildings where there is no building work happening”.
6. **We note that the exemption for buildings which are not undergoing work will leave a significant number of existing buildings outside the scope of the Ban. We are disappointed that neither the EM nor the IA provide any indication of how long it will take under the chosen policy approach to make safe the existing stock of hotels, hostels and boarding homes which are higher than 18 metres.**
7. The changes will come into force on 1 December 2022. We note that for the changes to improve safety, they will have to be enforced by the building control bodies which are responsible for checking compliance and monitoring the operation of the Combustible Materials Ban.

3 As defined in regulation 3 of the Building Regulations 2010 ([SI 2010/2214](#)).

INSTRUMENTS OF INTEREST

Misuse of Drugs (Amendment) (Revocation) (England, Wales and Scotland) Regulations 2022 (SI 2022/559)

8. These Regulations revoked a controlled drug licensing requirement made at the end of last year,⁴ the day before they were due to come into effect, because the Home Office had discovered that the substance to be licensed, Gamma-Hydroxybutyric acid (GHB), is used much more widely by industry than at first realised.
9. The original estimate of 65 businesses affected reflected information from trade associations about businesses importing or using the pure substance. Subsequent discussions with the Alliance of Chemical Associations indicated that at least 7,500 companies that use GBH in diluted or blended forms in either products or processing would be affected by the licensing requirement, which meant that the licensing requirement would not be practicable. **We are astonished at the magnitude of this oversight. The House may wish to note the case as an illustration of the need for government departments to consult thoroughly when formulating legislation to ensure that the impacts of proposed changes to the law are properly assessed.** Concerns also remain that, although certain formulations of these chemicals remain controlled drugs which cannot be lawfully sold for human ingestion, they are still finding their way to the street for illicit use. The Home Office is about to re-consult on an alternative way of restricting the illicit uses of the substance, and we urge the Government to act as quickly as possible to resolve the situation.

Education (Information About Individual Pupils) (England) (Amendment) Regulations 2022 (SI 2022/599)

10. This instrument expands the range of data that is collected in schools about particularly vulnerable children as part of the School Census, the Department for Education's (DfE) primary source of pupil level information in England. This includes:
 - Additional information to that currently collected in relation to children in state care, to capture specifically whether a child has been adopted outside of England or Wales. According to DfE, this is to ensure greater visibility of these pupils, so that they are provided with the same level of tailored support as those adopted within England and Wales. It is also intended that this new information will be included in the calculation of the pupil premium, which provides additional funding to improve education outcomes for disadvantaged pupils in schools in England.
 - Additional information about whether a pupil is, to the knowledge of the school, a young carer and who has identified the pupil as such. This is to raise the visibility of young carers in the school system and enable DfE to obtain evidence on the young carer population, including evidence on attendance and absenteeism, educational progress and attainment, in order to improve educational support for these pupils.
 - Mandatory collection of two sets of data which are currently provided voluntarily, and which will enable DfE to understand why and how

⁴ Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2021 (SI 2021/1427).

pupils are being placed solely on the school roll of Pupil Referral Units and Alternative Provision Academies,⁵ and why and how schools are placing pupils in education provision outside of the school.

11. We note that the Explanatory Memorandum (EM) provided with this instrument uses a standard description of the instrument’s territorial extent and application. We take the view that this may not be sufficiently clear for a lay reader who may not be familiar with the terms used or with the devolution of education policy in the UK, and that the EM would therefore have benefited from a clearer explanation of the fact that the additional information will only be collected from schools in England.

Allocation of Housing and Homelessness (Eligibility) (England) and Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) (No. 2) Regulations 2022 (SI 2022/601)

Allocation of Housing and Homelessness (Eligibility) (England) and Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) (No. 3) Regulations 2022 (SI 2022/626)

12. **SI 2022/601** enables local authorities in England to treat as eligible for housing and homelessness assistance persons in the UK who have limited leave to remain granted in accordance with the Appendix Ukraine Scheme of the immigration rules and who applied for that leave from within the UK. This will bring access to benefits and services for this particular group in line with others from Ukraine who applied from outside the UK under the Ukraine Extension Scheme and Ukraine Family Scheme.
13. We note that the Department for Levelling Up, Housing and Communities (DLUHC) has had to lay a correcting instrument, **SI 2022/626**, a week after laying SI 2022/601. The correction means that the changes will come into force on 10 June, as originally intended, rather than on 22 June 2022, as incorrectly provided for in SI 2022/601. DLUHC says that the intention had always been for the changes to come into force at the earliest opportunity because of the need to provide support to those unable to return to Ukraine, and that it is considering introducing further checks to ensure that such errors do not occur again in future.

National Health Service (Charges to Overseas Visitors) (Amendment) (No. 3) Regulations 2022 (SI 2022/614)

Health Protection (Notification) (Amendment) Regulations 2022 (SI 2022/616)

14. **SI 2022/616** makes “monkeypox” a notifiable disease in England with immediate effect. This means doctors are required to notify the relevant local authority when they have reasonable grounds for suspecting a patient has monkeypox and that laboratories are required to notify the United Kingdom Health Security Agency (UKHSA) when monkeypox virus has been identified in a sample. Although the system has already identified over 300 confirmed cases, the increased incidence of this formerly rare virus has

⁵ According to the Department for Education, Pupil referral units (PRUs) teach children who are not able to attend school and may not otherwise receive suitable education, for example because they have an illness, have been excluded or are a new starter waiting for a mainstream school place. PRUs that convert to academy status become Alternative Provision Academies.

prompted the Department of Health and Social Care to increase vigilance on the grounds that swift collection and analysis of data enables the UKHSA to trace contacts, interrupt transmission and contain the disease. The Devolved Administrations are also monitoring the situation.

15. **SI 2022/614** exempts foreign visitors to the UK from having to pay any charges if they seek diagnosis and treatment of monkeypox through the NHS. Until recently, cases were only seen in remote parts of Central and West Africa but have now been identified in a number of European countries, with some cases being transmitted through the community rather than linked to travel to countries where the disease is endemic. This instrument also came into effect the day after it was laid in order to minimise any risk to public health from overseas visitors failing to come forward for treatment due to the prospect of being charged.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to annulment

Draft	Amber Valley (Electoral Changes) Order 2022
Draft	Charnwood (Electoral Changes) Order 2022
Draft	Mid Sussex (Electoral Changes) Order 2022

Instruments subject to annulment

SI 2022/559	Misuse of Drugs (Amendment) (Revocation) (England, Wales and Scotland) Regulations 2022
SI 2022/562	Special Measures in Civil Proceedings (Specified Offences) Regulations 2022
SI 2022/567	Prohibition of Cross-Examination in Person (Fees of Court-Appointed Qualified Legal Representatives) Regulations 2022
SI 2022/568	Prohibition of Cross-Examination in Person (Civil and Family Proceedings) Regulations 2022
SI 2022/571	Nationality and Borders Act 2022 (Consequential Amendments) Regulations 2022
SI 2022/581	Immigration and Nationality (Fees) (Amendment) Regulations 2022
SI 2022/584	Sentencing Act 2020 (Surcharge) (Amendment) Regulations 2022
SI 2022/591	Integrated Care Boards (Nomination of Ordinary Members) Regulations 2022
SI 2022/593	Branded Health Service Medicines (Costs) (Amendment) Regulations 2022
SI 2022/599	Education (Information About Individual Pupils) (England) (Amendment) Regulations 2022
SI 2022/601	Allocation of Housing and Homelessness (Eligibility) (England) and Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) (No. 2) Regulations 2022
SI 2022/614	National Health Service (Charges to Overseas Visitors) (Amendment) (No. 3) Regulations 2022
SI 2022/616	Health Protection (Notification) (Amendment) Regulations 2022
SI 2022/626	Allocation of Housing and Homelessness (Eligibility) (England) and Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) (No. 3) Regulations 2022

APPENDIX 1: 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 14 June 2022 and included in this report, Members declared the following interests:

Building etc. (Amendment) (England) Regulations 2022 (SI 2022/603)

Baroness Watkins of Tavistock

Chair of Look Ahead Care and Support Limited, a housing association specialising in homeless support

Attendance:

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