

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

18th Report of Session 2022–23

Drawn to the special attention of the House:

**Draft Restriction of Hazardous Substances
in Electrical and Electronic Equipment
(Exemptions) (Fees) Regulations 2022**

Draft Voter Identification Regulations 2022

**Energy Bills Support Scheme and
Energy Price Guarantee Pass-through
Requirement (England and Wales and
Scotland) Regulations 2022 and two related
instruments**

Includes information paragraphs on:

Russia (Sanctions) (EU Exit) (Amendment)
(No. 16) Regulations 2022

National Health Service (Primary Dental
Services) (Amendment) Regulations 2022

Energy Bill Relief Scheme Pass-through
Requirement (Heat Suppliers) (England
and Wales and Scotland) Regulations 2022
and Energy Bill Relief Scheme Pass-through
Requirement (Heat Suppliers) (Northern
Ireland) Regulations 2022

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Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as agreed on 12 May 2022, are set out on the website but are, in summary:

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), Chris Smith (Adviser), Jane White (Adviser) and Emily Pugh (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 hlseclegscrutiny@parliament.uk.

Eighteenth Report

DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Date laid: 18 October 2022

Parliamentary procedure: Affirmative

Draft Restriction of Hazardous Substances in Electrical and Electronic Equipment (Exemptions) (Fees) Regulations 2022

*These draft Regulations propose a new fee for applications from businesses for exemptions for the use of restricted hazardous substances in electrical and electronic equipment in Great Britain (GB). The new application fee is to be set at £39,721 and apply from April 2023. **This is the first time that businesses will have to pay such an application fee.** Before Brexit, the system was managed by the EU and applications were free. **The EU system will continue to apply in Northern Ireland (NI)**, so that businesses will have to deal with two separate systems in the UK. **We note that during consultation there was almost unanimous opposition to the introduction of the application fee, and that the Department has suggested that it may re-consider the recognition of exemptions from other jurisdictions. This appears to be inconsistent with the Department's declared intention of having a GB-specific, cost-recovery based system.** There also appears to be a potential loophole, whereby businesses may be able to avoid paying the application fee for a GB exemption, by selling a product into GB that has been put on the market in NI using a free EU exemption. The House may wish to press the Minister further on these issues.*

The draft 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. These draft Regulations have been laid by the Department for Environment, Food and Rural Affairs (Defra) with an Explanatory Memorandum (EM). They propose arrangements for the payment of a new fee for applications from businesses for exemptions for the use of restricted hazardous substances in electrical and electronic equipment in Great Britain (GB).

What this instrument proposes to do

2. Defra explains that the use of certain substances is restricted where these substances can cause harm to the environment and human health, but industry can apply for exemptions. Examples of exemptions that have been granted include the use of lead in portable emergency defibrillators, the use of mercury in intravascular ultrasound imaging systems or the use of phthalates in magnetic resonance imaging (MRI).
3. Before Brexit, the system of granting exemptions for the use of restricted hazardous substances was managed by the EU and applications for exemptions were free. This instrument proposes that, from April 2023, businesses wishing to apply for an exemption in GB will have to pay a fee of £39,721. **The free EU system will continue to apply in relation to Northern Ireland (NI).** Defra expects that most applications in GB will

be made by international trade associations and industry organisations on behalf of a specific industry, rather than by individual businesses.

4. The Department says that the new fee of £39,721 reflects full cost recovery, with a detailed breakdown of the expected costs provided in the consultation document.¹ According to Defra, the bulk of the fee is the consultant's charge for assessing an application (£36,625). The remainder of the fee is made up of an estimate of Defra's administrative costs: that is, hours spent, multiplied by the employment cost per grade on each task, such as publishing the consultation. We note the surprisingly precise figures produced by the Department.
5. The same fee is to apply for applications for both a new exemption and the renewal of an exemption. The Department told us that this is because both applications generally take the same amount of time: exemptions can last for seven years and in that time less hazardous alternatives may have been developed, so a renewal application will require an in-depth assessment of suitability. The instrument proposes a system for partial refunds if applications are processed more cheaply and quickly than anticipated.
6. In terms of the number of applications expected, the Department explains that since Brexit, the Government have received only one application for a new exemption, suggesting that the number of new exemptions is likely to be low. There are also 23 existing exemptions for which the application fee would be payable next time an exemption is renewed.
7. The Department says that the EU is currently considering several exemption applications which were submitted when the UK was still subject to EU rules during the Implementation Period following Brexit. According to Defra, these applications will not be subject to an application fee because under the transitional arrangements there is no requirement for a separate application to be made to Defra. Instead, the Secretary of State will decide whether to grant the exemption for GB, having considered the EU decision within a British context.

Consultation and policy rationale

8. The Department consulted on the policy between 15 July and 26 August 2022. **We note that 53 out of 54 responses opposed the introduction of an application fee and that consultees raised substantial concerns about the policy.** Consultees suggested that the UK should follow EU exemptions to avoid duplication, unnecessary costs and divergence, and raised concerns that the new fee would result in businesses withdrawing products from GB.² Four respondents noted a particular concern in relation to specialised items that are produced in low volumes, including critical types of equipment such as medical devices, and that the proposed application fee may result in certain medical technologies no longer being supplied in GB.

1 Department for Environment, Food and Rural Affairs (Defra), *Consultation on charging fees for applications for exemptions to restrictions in the Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment Regime* (June 2022) p 12: https://consult.defra.gov.uk/waste-and-recycling/consultation-on-charging-fees-for-applications-for/supporting_documents/Consultation_RoHS_charging%2015%20July.pdf [accessed 16 November 2022].

2 Defra, *Charging fees for applications for exemptions to the Restriction of Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regime* (October 2022): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1110932/RoHS_charging_consultation_summary.pdf [accessed 16 November 2022].

9. Consultees also suggested that the new fee would potentially put GB manufacturers, especially small and mid-size enterprises (SMEs) at a competitive disadvantage: while manufacturers with an EU exemption have access to the European Economic Area market and Northern Ireland, producers with a GB exemption will only have access to the markets in England, Scotland and Wales. Consultees noted that the higher costs for businesses applying for GB exemptions may be passed onto consumers.
10. Defra's response to the consultation highlighted that "it is important that the government considers application for exemptions from a British context, noting in particular the availability of alternative technologies and environmental and socio-economic impacts". We asked for further information on how the British context would be different from, for example, the EU context, and why this justified the additional costs to GB businesses. The Department explained that:

"The alternative technologies and environmental impacts wouldn't necessarily be similar in other territories. Although we are broadly aligned with the EU so far on exemptions, the UK's departure from the EU means that we can chart our own course when it comes to environmental protection and have higher standards. One of the objectives of the [system] is the phase out of the hazardous substances listed in the Regs and the fee may motivate industry to develop less hazardous substitutes. Full cost recovery is also in line with managing public money."
11. Defra also explained that because most applications are made by international trade associations and industry organisations acting on behalf of a specific industry, rather than individual companies, there is not a competitive disadvantage for GB businesses who may seek an exemption for certain products.
12. The Department also stated in the consultation response that it had noted the points raised around the duplication of effort and associated costs for businesses that are seeking to apply for identical exemptions in both GB and other jurisdictions that have similar systems. Defra concluded that:

"[The] government will therefore consider whether it would be appropriate to recognise exemption decisions taken in other territories. The government will consult with industry again before making any such decision."
13. The Department added that:

"We are undertaking to consider if a recognition of exemptions in other jurisdictions could work. There is no guarantee that we will proceed even after that assessment. It is therefore sensible to proceed on the basis that no alternative to the current arrangements will be put in place."
14. While the Government are entitled to proceed with their policy despite almost unanimous opposition from businesses, we note that the Department has acknowledged the concerns raised and has said that it may reconsider the case for recognising exemptions granted in other jurisdictions, such as the EU. **We take the view that this creates uncertainty and may be inconsistent with the Department's declared intention to have a**

GB-specific, cost-recovery based system for exemptions. The House may wish to press the Minister further on this.

Separate arrangements in Northern Ireland

15. The new application fee is to apply only in GB, while the free EU exemptions regime will continue to apply in NI. This means that a business will have to deal with two separate systems in the UK, requiring two separate exemptions to place a relevant product on the market in GB and NI respectively. Defra told us, however, that it was “difficult to envisage” a scenario in which a UK manufacturer would only seek to supply the UK market, rather than the EU market, and that, according to the ‘unfettered access’ principle, a NI business would be able to supply GB with a product using an EU exemption without having to apply for a separate GB exemption.
16. We asked whether it would be possible for UK businesses to apply for a free exemption under the EU regime and then export a product benefitting from the EU exemption from NI to GB, thereby bypassing the GB exemption requirement. Defra confirmed that products placed legally on the NI market could be sold into GB. **We note that there is a potential loophole which allows businesses to avoid paying the application fee for a GB exemption, by selling a product into GB that has been put on the market in NI using an EU exemption. This, again, appears to be inconsistent with the intention of having a GB-specific exemptions regime.**

Draft Voter Identification Regulations 2022

Date laid: 3 November 2022

Parliamentary procedure: Affirmative

*These draft Regulations propose to implement the voter identification measures set out in the Elections Act 2022, including the new requirement to show photographic identification (photo ID) at polling stations in Great Britain. Concerns were raised during the passage of the Elections Bill about the potential impact of this new requirement on voters who may not have appropriate forms of ID. This report considers some of the issues which arise from the new photo ID requirement. **While we regret that guidance on how the new rules will be applied in practice has not yet been published, we welcome that a national communications campaign will raise awareness of the new requirement. This should be particularly targeted at and involve more disadvantaged groups to ensure that all voters are made aware of the new requirement and of the availability of a new electoral identity document for those who do not have a recognised photo ID. We note that there is considerable time pressure for this, as the new rules are to apply to the local elections in May 2023, and that the new Voter Authority Certificate has not yet been designed, making it difficult to raise awareness of the new document. The House may wish to explore these issues further with the Minister.***

The draft 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.

17. These draft Regulations have been laid before Parliament by the Department for Levelling Up, Housing and Communities (DLUHC). The instrument aims to implement the voter identification measures introduced by the Elections Act 2022 (“the Act”), including the new requirement for voters to show photographic identification (photo ID) at polling stations in Great Britain. The instrument does not propose new requirements for elections in Northern Ireland where voters already have to show a photo ID in polling stations. The aims of the new photo ID requirement are to prevent people from impersonating someone else to cast their vote illegally, and to improve public confidence in the democratic system.
18. DLUHC has produced an Explanatory Memorandum (EM) and an Impact Assessment (IA). The IA sets out the evidence base for the changes, describes in more detail how the new processes will operate in practice and assesses the potential impact of the changes.

Rationale

19. According to DLUHC, the draft Regulations implement one of the recommendations made in Lord Pickles’ 2016 report on “Securing the Ballot” for the introduction of a requirement for voters to show identification before voting.³ The Department also says that the policy fulfils a commitment from the 2019 Manifesto to “protect the integrity of our democracy, by introducing identification to vote at polling stations”.⁴
20. While the Electoral Commission (EC) supports the introduction of voter identification, data produced by the EC suggests that the UK has low levels of proven electoral fraud. For example, in 2019, 595 cases of alleged electoral fraud were investigated by the police, leading to four convictions and two cautions.⁵ The EC’s Public Opinion Tracker indicates, however, that two-thirds of the public say that voter identification in polling stations would make them more confident in the security of the system.⁶
21. While perceptions of voter fraud in the UK fluctuate, DLUHC says that evidence from the EC’s Public Opinion Tracker and the Cabinet Office pilot studies⁷ “supports the requirement of voter identification as a means to strengthen the perception of security and integrity at polling stations”. DLUHC adds that it is “essential that not only is our electoral system robust, but that the electorate have confidence that this is the case”.
22. According to DLUHC, the new requirement will replace the current “outdated” system of verifying voters’ identities in which voters give their name and address before being issued a ballot. DLUHC says that an existing requirement, whereby polling station staff call out the name of the voter to allow for bystanders to object if they are not who they say they are, is no longer applied consistently.

3 Cabinet Office, *Securing the ballot* (August 2016): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/545416/eric_pickles_report_electoral_fraud.pdf [accessed 16 November 2022].

4 Conservatives, ‘Conservative Party Manifesto 2019’: <https://www.conservatives.com/our-plan/conservative-party-manifesto-2019> [accessed 16 November 2022].

5 Electoral Commission, ‘2019 electoral fraud data’: <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/electoral-fraud-data/2019-electoral-fraud-data> [accessed 16 November 2022].

6 See para 9 of the Impact Assessment.

7 Cabinet Office, ‘Evaluation of voter ID pilots 2019’: <https://www.gov.uk/government/publications/evaluation-of-voter-id-pilots-2019> [accessed 16 November 2022].

Key changes made by the instrument

23. The new photo ID requirement at polling stations is to apply to the following elections:
- England: All elections, local referenda and MP recall petitions
 - Wales: Parliamentary Elections, Police and Crime Commissioner (PCC) elections and MP recall petitions
 - Scotland: Parliamentary Elections and MP recall petitions
24. The first elections to require the new photo ID will be the local elections in England in 2023.
25. The instrument prescribes the specific types of photo ID that will be recognised. These include passports, driving licences, biometric immigration documents, older people's bus passes and disabled passes, such as the Blue Badge. It also includes cards using the Proof of Age Standards Scheme (PASS), such as the Citizens Card, a form of photo ID that is used by many young people. Student union cards will not be recognised as a form of photo ID, as they are not sufficiently secure, but the student discount TOTUM card issued by the National Union of Students will be accepted as it is PASS-accredited.
26. Voters will be able to present their identification in polling stations in private if they wish. DLUHC says that polling stations will be provided with extra support to implement the policy, including training for staff, an extra poll clerk and suitable equipment to check identity sensitively, such as a privacy screen.
27. The instrument sets out the application processes, including the identity verification processes and exceptions, for obtaining a new electoral identity document. This new document, called the Voter Authority Certificate, is intended for voters who do not have one of the valid forms of photo ID specified in the legislation. There will also be an Anonymous Elector's Document for voters whose safety would be at risk if their name or address were listed on the electoral register. The EC will design these new identity documents according to requirements set out in the draft Regulations. Voters will be able to apply online for these new documents either online, by paper or in person via their local authority. **The EC has circulated a briefing to Members of both Houses about the Regulations in which the EC has raised concerns about the proposed deadline for applications for a Voter Authority Certificate. Applications will have to be made by 5pm six working days before polling day for any election. We share these concerns, as this early deadline will mean that access to this important certificate will be reduced.**
28. The instrument also prescribes the form that should be used by polling station staff to record voters who have been refused a ballot paper. The form states that voters can be refused a ballot paper if: (i) staff are not satisfied that the ID is of the person who they claim to be; (ii) the ID document is believed to be forged; or (iii) the voter or their proxy did not answer the statutory voter identification questions as required. According to the IA, identification documents will still be accepted even where they have expired, provided that the photo retains a good likeness of the voter.

29. The Department says that the EC will produce guidance on voter identification for electoral administrators and polling station staff that will provide further information on when it would be suitable to refuse a ballot paper. The EC is still in the process of drafting this guidance and will publish it in due course. **While we note that guidance on the conduct of elections is a responsibility of the EC, we regret that this guidance has not yet been published. The criteria on the ballot paper refusal form can be used to prevent someone from exercising their democratic right to vote, and it would have assisted our scrutiny to see when the guidance considers the refusal of a ballot paper to be suitable.**
30. We asked the Department whether voters who are refused a ballot paper will be able to appeal this decision and/or raise concerns about the way the decision was taken. DLUHC explained that:

“In circumstances where a voter is refused a ballot paper, they will be able to apply again for a further ballot paper. For example, if one form of identification was not accepted (say, a type of travel pass not included in Schedule 1 to the Elections Act), they could return with another.

A refusal to deliver a ballot paper to a voter is subject to review on an election petition [...]. An election petition is a long-standing process by which electors may challenge the results of an election. They may bring a petition forward to the courts, on the basis that the election had been improperly conducted and that this has had an impact on the result. If the courts agree, they may overturn the result and order the poll to be re-run. In this context, if an elector believed that ballot papers had been refused improperly, the elector might choose to bring an election petition.

An elector could also, as ever, raise concerns to their local Returning Officer or to the Electoral Commission.”

Public awareness

31. According to data from EC’s 2021 Public Opinion Tracker, 4% of people who were eligible to vote said that they did not have any photo ID.⁸ The Department also says that the proportion of people without photo ID is higher among certain, more disadvantaged groups, such as the unemployed (11%), those who rent from a local authority (13%) or housing association (12%) and disabled people (8%). **We welcome that there will be a national communications campaign to raise awareness of the new voter ID requirements. This should be particularly targeted at and involve more disadvantaged groups to ensure that all voters are made aware of the new ID requirement and of the availability of the new Voter Authority Certificate where they do not have a recognised photo ID. We note that there is considerable time pressure for this, as the new rules are to apply to the local elections in May 2023, and that the EC has criticised the lack of time to prepare for the new rules. We are also concerned that the new Voter Authority Certificate has not yet been designed. Without a template of this new document, it will be difficult to run an effective communications campaign.**

⁸ Electoral Commission, ‘Public Opinion Tracker 2022’: <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/public-attitudes> [accessed 16 November 2022].

32. The Department says that the EC is responsible for the national campaign, in line with its wider responsibility for communicating with voters about electoral matters. The IA estimates the cost of the campaign to be around £5.1 million in the first two financial years combined (2022–23 and 2023–24).

Monitoring & Review

33. The instrument requires the Secretary of State to publish a report on the effect of the voter identification requirements on the first two general elections held after the new requirements come into force, as well as on the first local elections in England where these are not combined with a general election. In addition, the Secretary of State is required to lay before Parliament a report on the operation of the Act at the latest five years after Royal Assent.

Consultation

34. The EM states that there was “significant consultation” with a range of stakeholders in the electoral sector, including civil society organisations and the devolved administrations, and that the consultation “extensively shaped” the drafting of the instrument. As no consultation analysis has been published, we asked DLUHC about the feedback from civil society organisations and the devolved administrations, and how this had been taken into account in the development of the policy.
35. The Department told us that:

“The consultations were not public or published. The Department has, as required by law, formally consulted the Electoral Commission on the draft SI but, in line with usual practice, this is not a public process. We have also held regular discussions with partners such as the Association of Electoral Administrators and the Society of Local Authority Chief Executives, as well as our networks of local authority electoral teams.

Consultation with civil society organisations and charities (e.g., the [Royal National Institute of Blind People]) focussed on ensuring the policy was accessible to all electors. As a result, the Regulations were updated to allow for an elector to request an explainer document to be posted to them with their Voter Authority Certificate or Anonymous Elector’s Document in a range of formats (e.g., large print). These organisations have also fed in significantly to the design of the Certificate.

Consultation with the devolved administrations focussed on ensuring that polls would run smoothly where a combined reserved/devolved poll occurred (e.g., a Welsh local election and a PCC election being combined). The language of a number of forms was modified for clarity (e.g., in guidance to electors to make it clear that voter identification requirements were not in place for devolved polls). The Welsh Government also provided feedback on the Welsh translation of one form.”

Conclusion

36. The House took a strong interest in the Elections Bill, in particular the new requirement for a photo ID at polling stations. We regret that guidance on how the new rules will be applied in practice has not yet been published. This guidance is particularly important as polling station staff will be able to

prevent someone from exercising their democratic right to vote on the ground of an unsatisfactory ID. We welcome the plans for a national communications campaign. This will need to ensure that more disadvantaged groups in particular will be made aware of the new requirement and the availability of a new electoral identity document for those who do not have a recognised photo ID. We note that there is considerable time pressure for this, as the new rules are to apply to the local elections in May 2023, and that the new Voter Authority Certificate has not yet been designed, making it difficult to raise awareness of this new document. The House may wish to raise these issues with the Minister. **The draft 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.**

Energy Bills Support Scheme and Energy Price Guarantee Pass-through Requirement (England and Wales and Scotland) Regulations 2022 (SI 2022/1102)

Energy Bill Relief Scheme Pass-through Requirement (England and Wales and Scotland) Regulations 2022 (SI 2022/1103)

Energy Bill Relief Scheme and Energy Price Guarantee Pass-through Requirement and Miscellaneous Amendments Regulations 2022 (SI 2022/1125)

Dates laid: 31 October and 4 November 2022

Parliamentary procedure: Made affirmative

*These three made affirmative instruments are part of the package of secondary legislation that has been laid under the Energy Prices Act 2022 to deliver the Government's support for both households and businesses with their energy costs during the current energy crisis. The SIs require intermediaries, such as landlords, to pass on the benefits received from the Energy Price Guarantee, Energy Bills Support Scheme and/or Energy Bill Relief Scheme to tenants and other end users. The instruments make provision for Great Britain and Northern Ireland respectively. The report considers some of the practical issues that arise from seeking to ensure that the support is passed on to end users, especially where these are vulnerable customers. To inform potential future support after March 2023, the planned reviews of the support schemes will need to examine carefully whether they were effective in reaching the most vulnerable customers, and whether these customers received the full support they were due. **We are deeply concerned about the complexity of the system that has been devised, in particular the concept of passing on a "just and reasonable" amount to customers, whatever that may mean, linked to the expectation that even the most vulnerable customers could have to be prepared to take legal action against their own landlords to recover any outstanding support that has not been passed on, and to do so via a County Court procedure. In addition, there could be a particular "inequality of arms" between a landlord who manages multiple premises and individual customers. The House may wish to press the Minister on these issues.***

The instruments 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.

37. These three made affirmative instruments have been laid by the Department for Business, Energy and Industrial Strategy (BEIS) under the Energy Prices Act 2022 (“the Act”), as part of the package of secondary legislation aimed at delivering the Government’s support for both households and businesses with their energy costs during the current energy crisis.
38. **SI 2022/1102** and **SI 2022/1103** are linked and share an Explanatory Memorandum (EM). They require intermediaries, such as landlords, to pass on benefits received from the Energy Price Guarantee (EPG), Energy Bills Support Scheme (EBSS) and/or Energy Bill Relief Scheme (EBRS) to tenants and other end users in Great Britain. **SI 2022/1125** makes equivalent provision to require intermediaries to pass on benefits received from the EBRS and/or the EPG to end users in Northern Ireland (NI). This report considers some of the practical issues that arise from seeking to ensure that the support is passed on to end users, especially where these are vulnerable customers. Separate instruments have been laid to ensure that heat networks pass on the benefits of the EBRS to their customers in GB and NI and that customers of heat networks have access to alternative dispute resolution if they wish to complain (see paras 53–55 of this report).
39. BEIS says that the EPG will reduce the unit cost of electricity and gas so that a typical household in Great Britain will save around £700 this winter. The EBSS provides an additional £400 of assistance with energy costs to all domestic electricity customers via their supplier in monthly instalments from October 2022 to March 2023. The EBRS will provide a price reduction to ensure that all businesses and other non-domestic customers, such as charities and the public sector (including hospitals and schools), are protected from excessively high energy costs this winter.

What the instruments do

40. The purpose of these instruments is to ensure that intermediaries who have received support under the different schemes pass through the benefits to end users, including customers on pre-paid meters, who are the intended beneficiaries of the relevant schemes. Intermediaries include landlords, sublets, managers of student accommodation, local authorities (in relation to council housing), site owners of park homes, marinas which use shore power for boat homes, electric vehicle charging operators or other residential building managers.
41. Intermediaries must provide information to the end user in writing, including on the amount of scheme benefit received, the amount that the intermediary intends to pass through to the end user, and when and how they will pass through the benefit. The intermediary must also ensure that the end user receives the benefit as soon as reasonably practicable.
42. The instruments require intermediaries to pass on the benefit to end users in a “just and reasonable” way, having calculated the amount in line with the requirements set out in the legislation. The instruments prescribe what must be taken into account in determining a just and reasonable amount. Various circumstances are covered, including, for example, where the intermediary itself has energy costs for providing shared services in a building.
43. If an intermediary does not pass through the whole of the scheme benefit, they must demonstrate to the end user that the amount they are passing on is still just and reasonable. As we are not clear what the vague concept of

“just and reasonable” may mean, we asked BEIS how end users, especially those who are elderly, disabled or otherwise vulnerable, will be able to assess whether they have received the appropriate amount from their intermediary. The Department explained that:

“We have sought to ensure that end users are able to assess whether they have received the appropriate amount from pass-through regulations. Intermediaries must pass on the discount irrespective of how the end user pays for their energy use. They can adjust the amount they pass on based on their charges to end users and, crucially, they must demonstrate to end users that this amount is just and reasonable.

Intermediaries can take into account the extent to which they have increased their charges to end users as a result of the energy crisis. For example, if the intermediary has shielded its end users from the impact of increased energy prices it may be just and reasonable for it to retain some or all of the scheme benefit.

If the intermediary charges an ‘all inclusive’ rent incorporating a fixed charge for energy use, the intermediary should pass the discount in a just and reasonable way. The following must be considered when calculating how much benefit would be just and reasonable to pass through:

- If there is equipment (such as electric vehicle charge points) which automatically charges a tariff for usage, then the tariff must be amended to reflect the full scheme benefit.
- If at the time the scheme benefit was provided to the intermediary, they were charging their end users based on usage or on the basis of some other division of the energy costs between its end users, then the intermediary must pass on the scheme benefit in the same proportions.
- In all other cases where the above considerations do not apply, the intermediary must use the best available information to calculate the amount to pass through.
- Guidance⁹ has been produced at gov.uk which sets out a series of illustrative examples of how the pass-through requirements can be calculated in hypothetical scenarios. Each individual case should be considered in line with the Pass-through Regulations [...].”

44. BEIS added that:

“Intermediaries must also ensure that the end user is equipped with the information to understand what benefit they are entitled to and to be able to dispute this, and/or how this has been applied. [...]

Intermediaries are required to notify end users using existing methods of communication and in so far as possible, via the method of communication used customarily with end users. If, for example, for accessibility reasons, the intermediary communicates with the end user

⁹ BEIS, ‘Guidance on the pass-through requirements for energy price support provided to intermediaries’: <https://www.gov.uk/government/publications/pass-through-requirements-for-energy-price-support-provided-to-intermediaries/guidance-on-the-pass-through-requirements-for-energy-price-support-in-great-britain-provided-to-intermediaries> [accessed 16 November 2022].

using a particular communication method, then this communication method should be used to set out the benefits the end user is entitled to.”

45. **We are not convinced by the Department’s explanation and remain concerned that the concept of “just and reasonable” is vague and open to interpretation. Whatever it may mean, it adds further to the complexity of the system. In addition, there could be a particular problem of “inequality of arms” between a landlord who manages multiple premises and individual customers. We are especially concerned that this may leave the most vulnerable customers at risk of losing out from the full support they are due.**
46. Where end users have not received the appropriate amount from their intermediary, the legislation allows them to pursue recovery of benefits as a debt through civil proceedings. We asked the Department for further information about this process, and how realistic it was that a vulnerable end user would be able to pursue such a claim. The Department explained that:

“There will be advice and support available for vulnerable end users to help them navigate the system and this is consistent across the schemes. If an end user believes that they should have been provided with a benefit, did not receive enough benefit, or reasonable steps were not taken to provide information of their eligibility, they should raise this with the intermediary in the first instance. A template letter and guidance has been provided to assist end users in their communications with intermediaries and is available on gov.uk. If there is still disagreement, the end user may pursue recovery of benefits as a debt through civil proceedings.

End users can recover claims to pass-through amounts as civil debts in the County Courts in the same way that other outstanding amounts owed to an individual can be claimed. The Government has issued guidance on the pass-through requirements for energy price support including a link on how to ‘make a court claim for money’.¹⁰ [...]

By replicating existing civil enforcement mechanisms, we hope to avoid any complications for end users, including vulnerable end users, to understanding how they can raise disputes.

We are working to ensure that vulnerable users are able to make a claim. We have been delivering and building a communications campaign to do this. This has so far involved engagement with public media, ongoing discussions with landlord and housing associations and charities that protect those that are most vulnerable.

The Regulations require that intermediaries provide information to end users about the pass-through requirement including that if the amount to which an end user is entitled is not provided to them that they are entitled to seek recovery of it as a civil debt. This information must be provided in writing within either 30 days of the date on which the benefit is provided to the intermediary, or the date the Regulations came into force (where the benefit was provided prior to the Regulations coming

¹⁰ HM Government, ‘Make a court claim for money’: <https://www.gov.uk/make-court-claim-for-money> [accessed 16 November 2022].

into force). The Pass-through requirements for energy price support provided to intermediaries guidance page on gov.uk¹¹ includes template letters for intermediaries to use to communicate this information. This page also includes letters for end users to raise a dispute.”

47. We asked the Department for further information on the advice and/or support that will be available for vulnerable end users. The Department explained that:

“We are keen to ensure that all end users, including those who are vulnerable, receive the benefits of the schemes where they are entitled to it. As such, we have been delivering and building a communications campaign to do this. This has so far involved engagement with public media, ongoing discussions with landlord and housing associations and charities that protect those that are most vulnerable.

To give an example, we regularly engaged with consumer groups and charities in developing the Energy Bills Support Scheme (EBSS) to ensure that the Scheme reached the groups most in need and we reach vulnerable consumers across the UK via a broad suite of communications channels. As well as working with charity and consumer groups, we work with stakeholders including local authorities, faith groups, the rural network and food banks to disseminate information about the Scheme and how it works. We recognise that many vulnerable consumers are on traditional prepayment meters and have a communications campaign (including social media posts, radio broadcasts and posters translated into several languages) outlining the actions these people need to take to receive the discount.”

48. **We are deeply concerned about the complexity of the system that has been devised through these Regulations and the Government’s expectation that customers, including the most vulnerable, could have to be prepared to seek recovery through the courts if a landlord fails to pass on the support to which they are entitled. Due to its complexity and potential cost, court action is not easily accessible to the most vulnerable customers who are also unlikely to want to take legal action against their own landlord. In addition, there could be a particular “inequality of arms” between a landlord who manages multiple premises and individual customers. We note the contrast with the more accessible arrangements for redress that have been put in place for customers of heat networks who can complain to the Energy Ombudsman in GB and the General Consumer Council for Northern Ireland (see paras 53–55 of this report). The House may wish to press the Minister further on this.**

Review

49. The Government will review the operation of the EBRs and publish the findings by the end of the year to inform decisions on how best to offer future support to non-domestic customers who are the most vulnerable to energy price increases after the EBRs ends on 31 March 2023. A further review led by HM Treasury will consider how, following the expiry of the EPG at the end of March 2023, support can be more focused on the most

11 BEIS, *Guidance on the pass-through requirements for energy price support provided to intermediaries*.

vulnerable households and those least able to pay, with greater incentives to improve energy efficiency.

Conclusion

50. These instruments seek to ensure that landlords and other intermediaries who have received energy price support under the different schemes pass on these benefits to end users, including vulnerable customers. To inform potential future support after March 2023, the planned reviews will need to examine carefully whether the support schemes were effective in reaching the most vulnerable customers, and whether these customers received the full support they were due. **We are deeply concerned about the complexity of the system that has been devised, the concept of passing on a “just and reasonable” amount to customers, whatever that may mean, and the expectation that even the most vulnerable customers could have to be prepared to take legal action against their own landlords to recover an outstanding support that has not been passed on. In addition, there could be a particular “inequality of arms” between a landlord who manages multiple premises and individual customers. The House may wish to press the Minister on these issues. The instruments 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.**

INSTRUMENTS OF INTEREST

Russia (Sanctions) (EU Exit) (Amendment) (No. 16) Regulations 2022 (SI 2022/1122)

51. This measure seeks to constrain Russian revenue further by prohibiting the supply or delivery of product codes 2709 (for example, crude oil)¹² and 2710 (oil products—such as kerosene or diesel)¹³ from Russia or between third countries. The ban includes the use of UK transport vessels and the provision of services, including brokering and financial assistance. The prohibition will also cover non-UK vessels in the UK territorial sea. The Regulations come into force on 5 December 2022 to give the industries affected time to adjust (for example, in respect of cargoes currently in transit) but this instrument also advances the date of the ban on the import of all Russian oil and oil products into the UK (including Natural Gas condensates) from 31 December to 5 December 2022.
52. A general licence will be introduced to allow exceptions where the supply or delivery by ship of 2709 and 2710 oil and oil products and related ancillary services may be provided to third country importers, as long as they purchase oil below an agreed price. This is in line with previous commitments made by the UK and its G7 partners to introduce a price cap on Russian oil.

Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (England and Wales and Scotland) Regulations 2022 (SI 2022/1101)

Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (Northern Ireland) Regulations 2022 (SI 2022/1124)

53. These two made affirmative instruments are part of the package of secondary legislation that has been laid under the Energy Prices Act 2022 (“the Act”) to deliver the Government’s support with energy costs during the current energy crisis. The instruments require that heat networks pass on the benefits of the Energy Bill Relief Scheme (EBRS) to their customers in Great Britain (GB) and Northern Ireland (NI) respectively.
54. The Department for Business, Energy and Industrial Strategy (BEIS) explains that heat networks purchase energy from energy suppliers through commercial contracts and then supply heating and hot water to domestic and non-domestic customers. Heat networks are therefore intermediaries which will benefit from the Energy Bill Relief Scheme (EBRS) for non-domestic customers. BEIS points out that domestic heat network customers will not benefit from the support made available to domestic customers through the Energy Price Guarantee (EPG). To ensure that domestic heat network customers receive EPG-equivalent support, these two instruments ensure heat network customers benefit from the EBRS, by requiring heat networks to pass on the benefits of the EBRS to their customers in GB and NI in the form of lower prices.

12 Product code 2709 refers to petroleum oils and oils obtained from bituminous minerals, crude.

13 Product code 2710 refers to petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils.

55. In addition, **SI 2022/1101** provides for the Energy Ombudsman to deal with complaints from customers in GB whose heat network has not complied with the pass-through requirements, while **SI 2022/1124** gives the General Consumer Council for Northern Ireland the equivalent responsibility for complaints from customers in NI. We note that these provisions for redress are significantly more accessible than the arrangements that have been put in place for customers under the Energy Bills Support Scheme, EBRs and EPG who will have to take legal action in the County Courts if their landlord does not pass on the benefits from the schemes to which they are entitled (see paras 37–50 of this report).

National Health Service (Primary Dental Services) (Amendment) Regulations 2022 (SI 2022/1132)

56. These Regulations seek to address the shortage of NHS dentists in England particularly for patients with higher or more complex oral health needs. Currently NHS dental treatments are arranged into four bands (1,2,3 and Urgent) and the charges made to the patient and the allocation of “Units of Dental Activity” (UDAs) are based on this structure. UDAs are used to measure dentists’ performance in relation to their contractual commitment to the NHS and in assessing their remuneration. Band 2 covers a wide range of treatments of varying delivery cost and complexity for which dentists currently receive three UDAs. To incentivise dentists to take on more NHS work, these Regulations subdivide Band 2, putting more complex treatments into categories 2b and 2c which will attract five and seven UDAs respectively, so that NHS dentists’ time and input is more accurately rewarded. The additional cost of these changes is estimated to be £76 million over ten years. These Regulations do not alter patient charges which remain the same for any Band 2 treatment.
57. The Regulations also require practices to update their information on the NHS England website, at least every 90 days, so that patients will find it easier to locate and contact dental practices providing NHS care.
58. **We note that these changes to dental contracts are distinct from the protracted piloting of dental contract prototypes that has been in process for more than a decade.¹⁴ The Department of Health and Social Care has informed us that the results of that piloting should be published before the end of the year and further changes to dental contracting may follow.**

14 See our comment on previous SIs on this issue: SLSC, *2nd Report* (Session 2019–21, HL Paper 7).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Instruments subject to affirmative approval

Draft	Combined Authorities (Mayoral Elections) (Amendment) Order 2022
Draft	Immigration (Persons Designated under Sanctions Regulations) (EU Exit) (Amendment) Regulations 2022
Draft	Local Authorities (Mayoral Elections) (England and Wales) (Amendment) Regulations 2022
Draft	Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2022
Draft	Police and Crime Commissioner Elections and Welsh Forms (Amendment) Order 2022

Made instruments subject to affirmative approval

SI 2022/1101	Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (England and Wales and Scotland) Regulations 2022
SI 2022/1104	Energy Prices (Designated Domestic Energy Price Reduction Schemes for Great Britain and Designated Bodies) Regulations 2022
SI 2022/1122	Russia (Sanctions) (EU Exit) (Amendment) (No. 16) Regulations 2022
SI 2022/1123	Energy Prices (Designated Domestic Price Reduction Schemes) (Northern Ireland) Regulations 2022
SI 2022/1124	Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (Northern Ireland) Regulations 2022

Draft instruments subject to annulment

Draft	Blaby (Electoral Changes) Order 2022
Draft	Blackpool (Electoral Changes) Order 2022
Draft	Chesterfield (Electoral Changes) Order 2022
Draft	Telford & Wrekin (Electoral Changes) Order 2022
Draft	Trafford (Electoral Changes) Order 2022

Instruments subject to annulment

SI 2022/1111	Greater London Authority Elections (Amendment) Rules 2022
SI 2022/1112	Road Traffic Act 1988 (Police Driving: Prescribed Training) Regulations 2022
SI 2022/1120	Phytosanitary Conditions (Amendment) (No. 3) Regulations 2022
SI 2022/1129	Feed Additives (Authorisations) (England) Regulations 2022

SI 2022/1131 National Health Service (Performers Lists) (England)
(Amendment) Regulations 2022

SI 2022/1132 National Health Service (Primary Dental Services)
(Amendment) 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 15 November 2022 and included in this report, Members declared the following interests:

Energy Bills Support Scheme and Energy Price Guarantee Pass-through Requirement (England and Wales and Scotland) Regulations 2022 (SI 2022/1102)

Energy Bill Relief Scheme Pass-through Requirement (England and Wales and Scotland) Regulations 2022 (SI 2022/1103)

Energy Bill Relief Scheme and Energy Price Guarantee Pass-through Requirement and Miscellaneous Amendments Regulations 2022 (SI 2022/1125)

Lord Hutton of Furness
Chair, Energy UK

Baroness Watkins of Tavistock
Chair, Look Ahead Care and Support Limited

Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (England and Wales and Scotland) Regulations 2022 (SI 2022/1101)

Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (Northern Ireland) Regulations 2022 (SI 2022/1124)

Energy Prices (Designated Domestic Energy Price Reduction Schemes for Great Britain and Designated Bodies) Regulations 2022 (SI 2022/1104)

Energy Prices (Designated Domestic Price Reduction Schemes) (Northern Ireland) Regulations 2022 (SI 2022/1123)

Lord Hutton of Furness
Chair, Energy UK

Attendance:

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