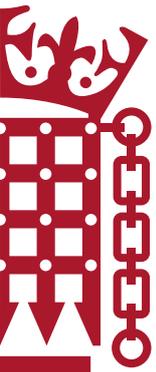


HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

19th Report of Session 2022–23



Includes information paragraphs on:

Draft Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) Regulations 2022

Subsidy Control (Information-Gathering Powers) (Modification) Regulations 2022

Draft Social Security (Class 2 National Insurance Contributions Increase of Threshold) Regulations 2022

Ordered to be printed 22 November 2022 and published 24 November 2022

Published by the Authority of the House of Lords

HL Paper 101

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.

Members

[Baroness Bakewell of Hardington Mandeville](#)

[Lord De Mauley](#)

[Lord German](#)

[Viscount Hanworth](#)

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

[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), 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.

Nineteenth Report

INSTRUMENTS OF INTEREST

Draft Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) Regulations 2022

1. This instrument would remove from the Security Service, the Secret Intelligence Service and Government Communications Headquarters (GCHQ), other than in urgent circumstances, the power contained in the Investigatory Powers Act 2016 (“the Act”), to authorise themselves to acquire communications data. Instead, those agencies would be required to seek authorisation from the Investigatory Powers Commissioner. The change responds to a High Court ruling that the security agencies’ ability to self-authorise solely for serious crime purposes was incompatible with retained EU law. The Regulations would also make other minor changes.
2. “Communications data” is described as “information about communications: the ‘who’, ‘where’, ‘when’, ‘how’ and ‘with whom’ of a communication but not what was written or said. It includes information such as the subscriber to a telephone service. Law enforcement, the security and intelligence agencies and other public authorities may obtain this data from telecommunications operators if the stringent safeguards in [the Act] are met.”¹ Guidance on the use of the power to self-authorise to acquire data in urgent cases is contained in the Communications Data Code of Practice.²
3. We note that, through the original Act, Parliament provided the intelligence services with the power to self-authorise the collection of communications data in non-urgent, as well as urgent, situations. We are concerned that the Explanatory Memorandum did not set out the Home Office’s view on whether that power is still needed.
4. These Regulations are laid under an enhanced affirmative procedure, as set out in section 268 of the Act.³ This requires the instrument to lay before Parliament for 40 days before it may be debated. The procedure provides an opportunity for a committee of either House charged with reporting on the draft Regulations to make recommendations on them, or for either House to pass a resolution about the instrument, within 30 days. If a committee makes a recommendation, or either House passes a resolution, further procedural steps apply.
5. **We make no recommendations on these Regulations.**

1 Explanatory Memorandum, Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) (No. 2) Regulations 2020 ([SI 2020/661](#)).

2 Home Office, *Communications Data: Code of Practice* (November 2018), paras 5.28–40: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/757850/Communications_Data_Code_of_Practice.pdf [accessed 23 November 2022].

3 The procedure is described in more detail in our report on the previous instrument laid under it: SLSC, *13th Report* (Session 2019–21, HL Paper 57).

Draft Social Security (Class 2 National Insurance Contributions Increase of Threshold) Regulations 2022

6. These Regulations would complete the implementation of a commitment in the 2022 spring statement⁴ to increase the national insurance (NI) thresholds for self-employed people, aligning them with the income tax personal allowance and the NI threshold for employees.
7. Self-employed people may pay both Class 2 and Class 4 NI contributions. Class 2 is a flat rate (£3.15 per week in 2022–23) and provides entitlement to contributory benefits, such as the state pension. Class 4 is a percentage of profits (in 2022–23, 9.73% between £11,908 and £50,270 and 2.73% above £50,270) and does not impact benefit entitlement.
8. Class 4 NI is payable over a ‘Lower Profits Limit’ (LPL). The National Insurance Contributions (Increase of Thresholds) Act 2022 (“the Act”) increased the LPL from £9,880 in 2021–22 to £11,908 in 2022–23 and £12,570 in 2023–24.
9. Class 2 NI is currently payable over a ‘Small Profits Threshold’ (SPT) of £6,725. These Regulations would mean that Class 2 NI will only be payable over a new ‘Lower Profits Threshold’ (LPT), which will be £11,908 in 2022–23. As legislated for in the Act, the Regulations would have retrospective effect to apply from 6 April 2022. The Government have committed to increase the LPT in line with the LPL in 2023–24,⁵ although this is not contained in the Regulations or the Act.
10. The Regulations would also provide that self-employed people earning between the SPT and the LPT accrue entitlements to contributory benefits without paying any NI. HM Treasury estimates this will cost £65 million in 2022–23 and approximately £100 million per annum thereafter.⁶

Subsidy Control (Information-Gathering Powers) (Modification) Regulations 2022 (SI 2022/1152)

11. This instrument removes an obligation for the Competition and Markets Authority (CMA) to consult the Devolved Administrations (DAs) when preparing or revising the policy statement in relation to the information-gathering powers which are used by the CMA’s Subsidy Advice Unit (SAU) under the Subsidy Control Act 2022 (“the Act”), or for the Secretary of State to consult the DAs when making regulations about penalties in relation to these information-gathering powers. According to the Department for Business, Energy and Industrial Strategy (BEIS), the Act established a new subsidy control regime to replace the EU’s State aid regime, with the aim of enabling UK public authorities, including DAs and local authorities, to deliver subsidies that are tailored for local needs. The SAU has a monitoring

4 HM Treasury, *Spring Statement 2022* (March 2022), paras 3.6–3.7: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1062486/Spring_Statement_2022_Web_Accessible.pdf [accessed 22 November 2022].

5 HM Revenue and Customs, ‘National Insurance: Increase to Primary Threshold and the Lower Profits Limit and reduction in Class 2 liability of those earning between the Small Profits Threshold and Lower Profits Limit’ (23 March 2022): <https://www.gov.uk/government/publications/national-insurance-primary-threshold-and-the-lower-profits-limit-increase-and-associated-class-2-changes-in-2022-to-2023-tax-year/national-insurance-increase-to-primary-threshold-and-the-lower-profits-limit-and-reduction-in-class-2-liability-of-those-earning-between-the-small-pr> [accessed 22 November 2022].

6 HM Treasury, *Spring Statement*, pp 27–29.

role, using the CMA's information-gathering powers. There are penalties for organisations that do not comply with the requirement to provide information as requested. The new regime will launch in January 2023.

12. BEIS says that following the changes made by this instrument, the CMA and the Secretary of State will still be required to consult anyone they consider appropriate on any changes in relation to the policy statement or penalties, including the DAs if their interests are considered to be "sufficiently affected". **In the absence of any definition of this term, we are concerned how this may be interpreted.**
13. **We also note that the Explanatory Memorandum (EM) appears to state incorrectly that the DAs "did not raise any significant concerns"**. The Department told us that both Scottish Government and Welsh Government ministers wrote to the BEIS minister and "expressed their concerns with the regulations and requested that it be a requirement for the CMA to consult the DAs when preparing or making changes to the Statement of Policy regarding the powers, and for the Secretary of State to do so when making changes to the maximum level of penalty that may be imposed under the powers".
14. BEIS takes the view that the current consultation requirement was introduced by the United Kingdom Internal Market Act 2020 to reflect the "unique position of importance" in the CMA's role between the four governments of the UK under that legislation. The Department says that the new subsidy control regime, however, will apply uniformly across the UK, and that subsidy control is a reserved power. **We have asked BEIS to revise the EM to reflect the position of Scottish and Welsh Government ministers on this instrument more accurately.**

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft	Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) (Amendment) (EU Exit) Regulations 2022
Draft	Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) Regulations 2022
Draft	Public Contracts (Amendment) Regulations 2022
Draft	Social Security (Class 2 National Insurance Contributions Increase of Threshold) Regulations 2022
Draft	South Yorkshire Passenger Transport Executive (Transfer of Functions) Order 2023

Draft instruments subject to annulment

Draft	Brighton & Hove (Electoral Changes) Order 2023
Draft	Malvern Hills (Electoral Changes) Order 2023
Draft	Wychavon (Electoral Changes) Order 2023

Instruments subject to annulment

SI 2022/1133	Early Years Foundation Stage (Welfare Requirements) (England) (Amendment) Regulations 2022
SI 2022/1134	Childcare (Free of Charge for Working Parents) (England) Regulations 2022
SI 2022/1142	Control of Mercury (Amendment) (EU Exit) Regulations 2022
SI 2022/1148	Childcare Payments (Miscellaneous Amendments) Regulations 2022
SI 2022/1149	Local Land Charges (Amendment) Rules 2022
SI 2022/1150	Common Organisation of the Markets in Agricultural Products (Amendment) Regulations 2022
SI 2022/1151	Education (Student Loans) (Repayment) (Amendment) (No.3) Regulations 2022
SI 2022/1152	Subsidy Control (Information-Gathering Powers) (Modification) Regulations 2022
SI 2022/1153	Subsidy Control (Subsidy Database Information Requirements) Regulations 2022
SI 2022/1157	Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2022
SI 2022/1162	Warm Home Discount (Reconciliation) Regulations 2022
SI 2022/1181	Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 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 22 November 2022 and included in this report, Members declared no interests.

Attendance:

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