

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

22nd Report of Session 2022–23

Correspondence: Department for Transport's backlog of maritime legislation

Includes information paragraph on:

Criminal Legal Aid (Remuneration)
(Amendment) (No. 2) 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.

Members

[Baroness Bakewell of Hardington Mandeville](#)

[Lord De Mauley](#)

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

[Lord Hutton of Furness](#)

[The Earl of Lindsay](#)

[Lord Lisvane](#)

[Lord Powell of Bayswater](#)

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[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 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/ukxi>

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.

Twenty Second Report

CORRESPONDENCE

Update from the Department for Transport on its maritime backlog

1. We previously held the Department for Transport (DfT) to account for unacceptably long delays in implementing its maritime legislation. This included taking oral evidence from Robert Courts MP, who was then the responsible Minister. For that evidence session the Minister had conducted an audit of the overdue statutory instruments and subsequently set out in a letter the arrangements to deal with the backlog by the end of 2023.¹ His successor, Baroness Vere of Norbiton, has sent us a progress report which is published in full in Appendix 1. We are pleased to note that DfT is continuing to give this remedial programme priority and is making steady progress towards completing it by the end of 2023, in line with the undertakings given.

1 Secondary Legislation Scrutiny Committee (SLSC), *17th Report* (Session 2021–22, HL Paper 88).

INSTRUMENTS OF INTEREST

Criminal Legal Aid (Remuneration) (Amendment) (No. 2) Regulations 2022 (SI 2022/1267)

2. These Regulations provide a further backdating of increases in remuneration for legal aid barristers. This forms part of the Government's response to the 2021 Criminal Legal Aid Independent Review (CLAIR).² It also follows the recent strike action by legal aid barristers.
3. Prior to the strike, the Government had offered a 15% increase in fees for new cases only (those agreed to be eligible for legal aid on or after 30 September 2022).³ As part of the agreement that settled the strike, the Government extended the uplift to all cases where legal aid had been granted on or after 17 September 2020 (a date when the structure of some legal aid fees changed substantially).⁴ The Ministry of Justice (MoJ) said 97% of Crown Court legal aid cases in the backlog would receive the higher fees.
4. Depending on the form of legal aid, these Regulations extend the uplift to all cases agreed to be eligible from either 1 April 2016 or 31 December 2018 (the dates of previous changes to the structure of fees). In their answers to our questions (see Appendix 2), the MoJ told us that, following this change, only 0.1% of cases in the backlog—54 out of 59,687 at 30 June 2022—will not be covered. MoJ explained that the cost of digital development work to include these cases would be £2 million, which would be disproportionate to their total value (£40,000). **We agree that this does not represent value for money but are surprised that a cheaper work-round cannot be found.**

2 Ministry of Justice, 'Response to Independent Review of Criminal Legal Aid': <https://www.gov.uk/government/consultations/response-to-independent-review-of-criminal-legal-aid/outcome/governments-full-response-to-the-criminal-legal-aid-independent-review-and-consultation-on-policy-proposals> [accessed 13 December 2022].

3 Implemented in Criminal Legal Aid (Remuneration) (Amendment) Regulations 2022 (SI 2022/848), with four mistakenly calculated fee rates corrected in the Criminal Legal Aid (Remuneration) (Amendment) (Amendment) Regulations 2022 (SI 2022/1010).

4 Criminal Legal Aid (Remuneration) (Amendment) (Amendment) (No. 2) Regulations 2022 (SI 2022/1035), see SLSC, *14th Report* (Session 2022–23, HL Paper 75).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft	Civil Legal Aid (Housing and Asylum Accommodation) Order 2023
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Instruments subject to annulment

SI 2022/1230	Police, Fire and Crime Commissioner for Cumbria (Fire and Rescue Authority) Order 2022
SI 2022/1232	Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2022
SI 2022/1235	Aviation Safety and Air Traffic Management (Amendment) Regulations 2022
SI 2022/1236	Democratic Republic of the Congo (Sanctions) (EU Exit) (Amendment) Regulations 2022
SI 2022/1237	Religious Character of 16 to 19 Academies (Designation Procedure) (England) Regulations 2022
SI 2022/1239	Payment and Electronic Money Institution Insolvency (Scotland) Rules 2022
SI 2022/1241	EU Agencies (Revocations) Regulations 2022
SI 2022/1247	Guarantees of Origin of Electricity Produced from Renewable Energy Sources and High-efficiency Cogeneration (Amendment) (EU Exit) Regulations 2022
SI 2022/1249	Public Interest Disclosure (Prescribed Persons) (Amendment) (No. 2) Order 2022
SI 2022/1250	State Pension Debits and Credits (Revaluation) Order 2022
SI 2022/1251	State Pension Revaluation for Transitional Pensions Order 2022
SI 2022/1252	Financial Services and Markets Act 2000 (Qualifying Provisions) (Amendment) Order 2022
SI 2022/1253	National Health Service (Charges to Overseas Visitors) (Amendment) (No. 4) Regulations 2022
SI 2022/1267	Criminal Legal Aid (Remuneration) (Amendment) (No. 2) Regulations 2022

APPENDIX 1: UPDATE FROM THE DEPARTMENT FOR TRANSPORT ON ITS MARITIME BACKLOG

Letter from Baroness Vere of Norbiton, Minister for Aviation, Maritime and Security at the Department for Transport, to Lord Hodgson of Astley Abbotts, Chair of the Secondary Legislation Scrutiny Committee

As the recently appointed Minister for Maritime, I wanted to provide the Committee an updated position on the current maritime work programme, particularly progress made against the ‘maritime backlog’ of legislation, as well as updating you on other international changes in the coming weeks.

My predecessor, Robert Courts MP, wrote to your committee on 22 April this year, outlining my Department’s progress against the backlog of secondary legislation. He confirmed that of the 13 Statutory Instruments identified as ‘international maritime backlog’ in 2021, four had been completed and had entered into force. Annex A sets out the status of the programme and provides a numbered list which I will refer to throughout the letter.

Since then, further good progress has been made and I am pleased to confirm that another three statutory instruments (numbers 6, 7 and 10) have been made and enter into force in December; these will shortly be with your Lordships for scrutiny. A further statutory instrument (number 15) has been debated and approved by both Houses and will also be made this month. The first three instruments form part of the international backlog and the latter instrument is domestic legislation.

Three more statutory instruments are well progressed. One instrument has been laid in draft (number 5) and is due to be debated in both Houses this week. Another (number 8) was published in draft on 22 November in accordance with the enhanced scrutiny procedures for legislation that has been amended by section 2(2) of the European Communities Act under the EU Withdrawal Act, with one more (number 16) published in draft today. Two of these form part of the international backlog (numbers 5 and 8). Instruments 8 and 16 are due to be laid in draft next year once the publication period has ended and subsequently put to both Houses for consideration.

The remaining four of the 13 international backlog instruments are also in train and planned for completion in 2023.

Other outstanding instruments (number 14–20) have also been progressing well. Two instruments on this list are reported on above numbers 15 and 16, and another international instrument on the list implements an international convention which the UK recently acceded to and entered into force in July 2022 (number 14).

Addressing the existing backlog of international maritime legislation has been foremost in my Department’s priorities, but taking steps to ensure we keep pace with international changes coming down the tracks is equally important to ensure such a backlog is not repeated.

One such change, which will shortly be with your Lordships for scrutiny, is to Annex I (prevention of oil pollution), Annex IV (prevention of pollution by sewage) and Annex VI (prevention of air pollution) to the International Convention for the Prevention of Pollution from Ships (MARPOL), which entered into force on 1 November this year. This change allows for an exemption to be granted to unmanned, non-self-propelled (UNSP) barges. These barges do not have engines

or fuel tanks on board, or carry crew or passengers, and agreement was reached at the International Maritime Organization that ships meeting the criteria for UNSP barges may opt to be exempted from the existing survey and certification requirements on the basis that they present no, or a very low, pollution risk.

An instrument to implement the amendments to MARPOL Annexes I and IV was on track to be laid on 10 October 2022, to allow it to come into force on the same day as the amendments came into force internationally (1 November 2022). However, due to the period of national mourning following the death of Her Majesty Queen Elizabeth II, the laying date was rescheduled. The amended laying date has been kept as close to the international coming into force date as possible, meaning that it will be laid just one month after the international coming into force date (5 December 2022).

A further amendment to the MARPOL Convention brings into force internationally a ban on the use of heavy fuel oil in Arctic waters. Although this amendment gives effect to this ban, nominally from 1 November 2022, the actual ban itself does not come into force internationally until 1 July 2024 at the earliest. Work is underway to ensure domestic legislation is completed prior to the July 2024 date.

In June 2021, the IMO adopted two amendments to Annex VI of the MARPOL Convention aimed at improving the operational and technical efficiencies of ships. The Carbon Intensity Indicator (CII) is an operational measure that grades ships on their carbon intensity outcomes while the Energy Efficiency Existing Ship Index (EEXI), a technical measure, tightens energy efficiency improvements on existing ships. These amendments build on existing carbon reduction measures: an energy efficiency design standard for new ships (introduced in 2013) and a reporting requirement related to fuel oil consumption for ships (introduced in 2019).

The amendments must be incorporated into UK domestic law via amendments to the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008. A draft statutory instrument has been prepared and has been subject to a targeted industry consultation. The instrument, which is not part of the backlog, is on track to be laid in early 2023.

Finally, we are preparing regulations to implement amendments to the Control of Harmful Anti-fouling Systems on Ships, 2001 (AFS Convention), which includes controls on the biocide, cybutryne. These regulations are not part of the backlog. The new requirements will come into force on 1 January 2023 (but taking effect in respect of existing ships at the next scheduled renewal of the anti-fouling system). My Department has drafted an Order in Council, recently approved by both Houses, and that is scheduled to be made by the Privy Council at its meeting on 14 December. This Order will provide the powers necessary to make the regulations which implement the new IMO amendments.

I hope this reassures the Committee that the backlog of maritime legislation is well advanced and on track to be completed by the end of 2023 and that future measures can be addressed efficiently.

Maritime SI Programme—Maritime Programme (1 to 20 measures are Maritime backlog, of which 1 to 13 measures are international backlog)

No	Title	Status	Finalisation Status	Update
1	The Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2021	International Backlog	Complete	In force
2	The Merchant Shipping (Radiocommunications) (Amendment) Regulations 2021	International Backlog	Complete	In force
3	The Merchant Shipping (Polar Code) Regulations 2021	International Backlog	Complete	In force
4	The Merchant Shipping (Entry into Enclosed Spaces) Regulations 2022	International Backlog	Complete	In force
5	The Merchant Shipping (Standards of Training, Certification and Watchkeeping) (Amendment) Regulations 2023	International Backlog	Well progressed	Laid in draft on 31 October (EUWA affirmative measure). House of Commons debated on 30 November. House of Lords debate scheduled 6 December.
6	The Merchant Shipping (Nuclear Ships) Regulations 2022	International Backlog	Made, and laid on 16 November Expected to enter into force on 8 December 2022.	Made and laid.

7	The Merchant Shipping (Additional Safety Measures for Bulk Carriers) Regulations 2022	International Backlog	Approved by both Houses and made on 28 November to enter into force 20 December 2022.	Now made.
8	The Merchant Shipping (Fire Protection) Regulations 2023	International Backlog	At 28-day pre-publication stage—SI expected to be completed by 2023.	28-day publication on 22 November (EUWA affirmative measure). Laying in draft expected 3 March 2023.
9	The Merchant Shipping (Cargo and Passenger Ship Construction) Regulations 2022	International Backlog	Expected to be completed in mid-2023.	At post-consultation Stage (negative measure).
10	The Merchant Shipping (High Speed Craft) Regulations 2022	International Backlog	Approved by both Houses and was made 28 November and enters into force 19 December 2022.	Now made.
11	The Merchant Shipping (Special Measures to Enhance Maritime Safety) Regulations 2022	International Backlog	Statutory Instrument is being prepared for consultation—expected to be completed 2023.	At pre-consultation Stage (negative measure).

12	The Merchant Shipping (Carriage of Cargoes) Regulations 2022	International Backlog	Statutory Instrument is being prepared for consultation—expected to be completed 2023.	At pre-consultation Stage.
13	The Merchant Shipping (Carriage of Dangerous Goods) Regulations 2022	International Backlog	Statutory Instrument is being prepared for consultation—expected to be completed 2023.	At pre-consultation Stage (EUWA affirmative measure).
14	The Merchant Shipping (Control and Management of Ships' Ballast Water and Sediments) Regulations 2022	Outstanding Delayed Domestic (UK commitment to accede to a convention)	Complete	In force (29 July 2022).
15	The Merchant Shipping (Standards for Passenger Ships on Domestic Voyages) (Miscellaneous Amendments) Regulations 2022	Outstanding Delayed Domestic (Thames Inquiry)	Approved by both Houses and will be made shortly.	Completed Parliamentary stages and expected to enter into force December 2022.
16	Merchant Shipping (Inspections of Ro-Ro Passenger Ships and High-Speed Passenger Craft) Regulations 2022	Outstanding	Expected to be completed 2023.	Published in draft 5 December 2022, 28-day publication period. Laying in draft expected early 2023.

17	The Merchant Shipping (Cargo Ship) (Bilge Alarm) (Amendment) Regulations 2022	Delayed Domestic	Amendment identified by the JCSI following the laying of the Merchant Shipping (Cargo Ship) (Bilge Alarm) Regulations 2021.	Requirements has been included in Construction Regulations (no 9).
18	Merchant Shipping (Standards of Training, Certification and Watchkeeping) (Fishing vessels) Regulations 2023		Underway and expected to be completed 2023.	At pre-consultation Stage.
19	Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 2023	Delayed Domestic (MAIB recommendation)	Underway and expected to be completed 2023.	At pre-consultation Stage.
20	Merchant Shipping (Workboats) Regulations 2023 MAIB	Outstanding Delayed Domestic (MAIB recommendation)	Statutory Instrument is at consultation and expected to be completed 2023.	At consultation Stage.

5 December 2022

APPENDIX 2: CRIMINAL LEGAL AID (REMUNERATION) (AMENDMENT) (NO. 2) REGULATIONS 2022 (SI 2022/1267)

Further information from the Ministry of Justice

Q1: When the initial backdating was implemented (SI 2022/1035), you informed us that it would capture 97% of cases in the then-backlog (the remainder being 1,791 out of 59,687 as at 30 June 2022). Could you please provide updated figures for: (i) the backlog; (ii) cases with higher fees as a result of SI 2022/1035; (iii) cases added by these Regs; and therefore (iv) cases still not covered?

A1: The outstanding caseload was 59,687 at end of June 2022. Over 99% of outstanding cases will now be uplifted. The estimated value of the less than 1% of outstanding cases (54 cases) not being uplifted is around £40k.

Q2: Apart from longevity, do the remaining cases not covered have any particular common features—e.g., are they especially contentious/expensive?

A2: The older outstanding cases tend to be more complex, e.g., serious fraud, and more expensive.

Q3: Why has the cut-off date changed and why have the new dates been chosen? The EM for SI 2022/1035 said that at that time 17 September 2020 had been chosen because it was “when the structure of the AGFS changed substantially”. Why is that no longer the appropriate criteria and what are the reasons for now choosing 31 December 2018 and 1 April 2016?

A3: The SI applies the 15% increases to cases where a main hearing occurs after 23 December 2022 and, in relation to AGFS, where a relevant determination is made on or after 31 December 2018 but before 17 September 2020, and in relation to LGFS, where a relevant determination is made on or after 1 April 2016 but before 17 September 2020. The relevant dates are the last occasion the AGFS and LGFS were revised prior to 17 September 2020. The SI disapplies the changes introduced in September 2020 to those older cases. The relevant dates were introduced to ensure that almost all outstanding cases which have not had a main hearing will be paid uplifted fees.

Q4: If the number of uncovered cases is now very small, why not simply cover them all with uplifted fees?

A4: We estimate that the digital development work required to apply 15% uplifts to earlier historic schemes would cost around £2 million. These development costs would outweigh the value of the uplift itself and would not represent value for money.

7 December 2022

APPENDIX 3: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 13 December 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 Rowlands and Baroness Watkins of Tavistock.