

# HOUSE OF LORDS

## Secondary Legislation Scrutiny Committee

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### 25th Report of Session 2022–23

**Drawn to the special attention of the House:**

**Draft Environmental Targets (Biodiversity) (England) Regulations 2022 and five related instruments**

**Draft Health and Social Care Information Centre (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023**

**Education (Student Loans) (Repayment) (Amendment) (No.4) Regulations 2022**

**Short-term Holding Facility (Amendment) Rules 2022**

**Includes information paragraphs on:**

Draft Trade (Mobile Roaming) Regulations 2023

Russia (Sanctions) (EU Exit) (Amendment) (No. 17) Regulations 2022

Markets in Financial Instruments (Investor Reporting) (Amendment) Regulations 2022

Aviation Security (Amendment) (No. 2) Regulations 2022

Official Controls (Extension of Transitional Periods) (Amendment) (England) Regulations 2022

Civil Legal Aid (Immigration Interviews (Exceptions) and Remuneration) (Amendment) Regulations 2022

Voter Identification (Principal Area, Parish and Greater London Authority Elections) (Amendment) Rules 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](#)

[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 Christine Salmon Percival (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/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](mailto:hlseclegscrutiny@parliament.uk).

# Twenty Fifth Report

## DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Environmental Targets (Biodiversity) (England) Regulations 2022

Draft Environmental Targets (Fine Particulate Matter) (England) Regulations 2022

Draft Environmental Targets (Marine Protected Areas) Regulations 2022

Draft Environmental Targets (Residual Waste) (England) Regulations 2022

Draft Environmental Targets (Water) (England) Regulations 2022

Draft Environmental Targets (Woodland and Trees Outside Woodland) (England) Regulations 2022

*Dates laid: 19 and 20 December 2022*

*Parliamentary procedure: Affirmative*

*These draft Regulations propose, for England, legally binding long-term targets for six environmental priority areas: biodiversity, air quality, marine protected areas, waste reduction, water quality and tree and woodland cover. The instruments were laid before Parliament more than a month after the deadline required under the Environment Act 2021, putting the Department for Environment, Food and Rural Affairs (Defra) in breach of its statutory obligation. We are not convinced by the Department's explanation of the delay and, given that Defra itself has highlighted the importance of setting the targets "without delay", we regret that the original Explanatory Memoranda (EMs) did not mention or explain Defra's failure to meet the deadline. The Department has agreed to revise and relay the EMs. **The House may wish to note that Defra is required to publish the Environmental Improvement Plan by the end of January which will set out in more detail how the targets are to be achieved and include interim targets.***

*Public consultation generated significant interest, with a clear majority of respondents (in most cases over 90%) calling for more ambitious targets. We note, however, that despite this feedback, the Department has decided against greater ambition and, with regard to the target for trees and woodland cover, has opted for a target that is less ambitious than that originally proposed during consultation, on the ground that the more ambitious target would be unrealistic.*

*We have received two submissions from Greener UK and Wildlife and Countryside Link and from the Healthy Air Coalition which provide a detailed assessment of Defra's approach, raise some concerns about the proposed targets and question some of the Department's underlying policy decisions. This report reflects and draws on some of the issues raised in the submissions which we have published in full, alongside Defra's response, on our website.*

**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), as required under sections 1 to 3 of the Environment Act 2021 (“the Act”). Each instrument is accompanied by an Explanatory Memorandum (EM) and Impact Assessment (IA). The draft Regulations propose legally binding long-term targets for six environmental priority areas: biodiversity, air quality, marine protected areas, waste reduction, water quality and tree and woodland cover. The targets apply to England only, as these environmental policy areas are a devolved responsibility.
2. The Department states that the targets are “laying the foundations” that will help deliver the Government’s commitment to “leaving our natural world in a better state for future generations”, adding that they will “ensure that we are on track to turn around England’s loss of nature and deliver the ambitions set out in the 25 Year Environment Plan<sup>1</sup>”.
3. The instruments establish the level of improvement to be attained and the date when this improvement is to be achieved. They also make provision for monitoring, measuring and assessing whether the targets have been met. We note that the instruments provide a long-term legal framework and that, according to Defra, they do not in themselves propose any policies or new legal requirements that specific sectors must follow; neither do they impose or require immediate changes of behaviour by anyone. The targets mark a first step; the policies needed to attain the targets will be taken forward separately. More detail about how the targets are to be achieved will be published in the Government’s Environmental Improvement Plan which will also include interim targets. The Act requires Defra to publish the Environmental Improvement Plan by 31 January 2023.
4. Asked about any consequences, apart from political consequences, if the Government were to miss the targets, Defra explained that:
 

“Government will be held accountable for delivery of the targets through the need, should they not be met, to report on why they have not been met and to set out the steps that have been taken, or will be taken, to ensure they are achieved as soon as is reasonably practicable (as set out under section 6 of the Environment Act 2021). Additionally, the Office for Environmental Protection has powers to take formal action and there could be third-party legal challenge. The Target Impact Assessments, which are part of the laying pack, include the consequences to the environment of not setting legally binding environmental targets.”
5. We have received two submissions from Greener UK and Wildlife and Countryside Link and from the Healthy Air Coalition which provide a detailed assessment of the six instruments, raise some concerns about the proposed targets and question some of Defra’s underlying policy decisions. This report reflects and draws on some of the issues raised with us directly in

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1 Department for Environment, Food and Rural Affairs (Defra), ‘25 Year Environment Plan’: <https://www.gov.uk/government/publications/25-year-environment-plan> [accessed 17 January 2023].

these submissions. We have published the submissions and the Department's response in full on our website.<sup>2</sup>

### *Consultation*

6. The Department publicly consulted on the proposed targets from 16 March to 27 June 2022. The consultation received a total of 181,003 responses, including 76,604 responses through six campaigns, 103,275 petition signatures, 660 individual responses and 464 responses from organisations.<sup>3</sup> We note that, according to Defra, the majority of comments (in most cases with over 90% of responses) on the targets for biodiversity, marine protected areas, water quality, air quality, waste reduction and trees and woodland cover were in support of higher levels of ambition or achieving the targets more quickly.
7. The following provides a summary of the targets proposed by the six instruments.

### *Biodiversity*

8. The target is to halt the decline in species abundance by 2030, reverse the decline in species abundance by 2042, reduce the risk of species extinction by 2042, and to restore or create more than 500,000 hectares of wildlife-rich habitat outside of current protected sites by 2042.
9. We note that during consultation, most responses (between 92% and 99%) disagreed that the proposed targets would be a good measure of biodiversity changes and also disagreed with the proposed level of ambition. With regard to the extinction risk target, which will be measured by comparing the 2042 Red List Indicator value to the baseline 2022 value, the submission from Greener UK and Wildlife and Countryside Link questioned whether this target could theoretically be met by improving the status of a single species by one category, for example from 'critically endangered' to 'endangered', or whether it would apply a more credible test, requiring a statistically significant increase in the indicator value. Defra clarified that:

“Improving the status of a single species by one category would not be sufficient to change the overall value of the Red List Index for England, and therefore the target would not be considered met. As even small changes to the target indicator could reflect significant changes in extinction threat, we will consider the target met based on changes in the Index value.”

### *Air quality*

10. The target is to reduce the levels of fine particulate matter (PM) in ambient air, specifically to reduce concentrations of PM<sub>2.5</sub>, the air pollutant which causes the most harm to human health:

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2 Secondary Legislation Scrutiny Committee (SLSC), 'Scrutiny Evidence': <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/> [accessed 17 January 2023].

3 Defra, *Environmental targets consultation summary of responses and government response* (16 December 2022): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1125278/Environmental\\_targets\\_consultation\\_summary\\_of\\_responses\\_and\\_government\\_response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1125278/Environmental_targets_consultation_summary_of_responses_and_government_response.pdf) [accessed 17 January 2023].

- For locations where concentrations are highest: the annual mean concentration target (AMCT) sets a maximum concentration of 10 µg/m<sup>3</sup> to be met across England by 31 December 2040; and
  - in relation to average exposure across the country: the population exposure reduction target (PERT) sets a 35% reduction in average population exposure to be obtained by 31 December 2040, compared to the average level in a baseline period of 2016/18.
11. During consultation, between 90% and 91% of responses disagreed with the proposed level of ambition, suggesting that the ambition was too low to improve health outcomes, lagging behind internationally and calling for the targets to be achieved earlier. According to the Healthy Air Coalition, for example, the EU Commission has proposed to reduce PM<sub>2.5</sub> levels to 10 µg/m<sup>3</sup> by 2030.
  12. We note that the Healthy Air Coalition also questioned in its submission why a new requirement for a minimum number of monitoring stations will only come into effect from 1 January 2028, making it more challenging for the Government to accurately assess its compliance with interim targets which will be set in the Environmental Improvement Plan. The Department responded that:

“[W]e have already made progress with 21 new PM<sub>2.5</sub> monitoring sites installed since March 2022 and the new minimum sampling within the SI requiring up to 100 new monitors in total. This is a large-scale expansion of the network that needs to be carried out with due consideration. We expect that the expansion of the monitoring network will be mostly completed within the next three years, but in order to accommodate any unavoidable slippage in building, networking and testing new infrastructure at a national scale, the legal requirement is set for 2028.”

### *Water quality*

13. The target is to reduce by 31 December 2038:
  - the levels of total nitrogen, phosphorus and sediment entering freshwaters in, and coastal waters around, England from agricultural land by at least 40%, compared with the 2018 baseline;
  - the levels of total phosphorus discharged into freshwaters from relevant discharges from sewerage systems of sewerage undertakers by at least 80%, compared with the 2020 baseline;
  - the length of waters polluted by arsenic, cadmium, copper, lead, nickel and zinc from abandoned metal mines by at least 50%, compared with the 2022 baseline; and
  - the amount of potable water supplied by water undertakers per person by at least 20%, compared with the 2019–20 baseline.
14. **We note that the original EM did not explain these four targets, how they will be assessed and when this will be reported.** We have therefore asked Defra to revise and relay the EM so that it includes this essential information.

15. The submission from Greener UK and Wildlife and Countryside Link highlighted that the water demand target is a relative target, based on water abstracted divided by population, and that this could result in overall water taken from the environment increasing, so that there is no environmental improvement in this respect. The submission raised concerns that over abstraction of water remained a significant cause of poor habitat quality and exacerbated the effects of pollution. Asked for reassurance that the water demand target would lead to environmental improvement, Defra explained that:

“The water demand target is intended to help build a secure and more drought resilient water supply. It will also deliver an estimated 12,556 million litres per day reduction in water taken from the environment for public water supply by 2037/38. We are retaining the metric for distribution input over population because it indicates level of water used per person in England per day, making it relatable to water users. It will help to measure and improve water efficiency trends over time. The target accounts for population growth as it is based on population forecasts to 2050. The 2050 supply demand gap in regional water resources planning, which the target will deliver against, is also driven by leaving more water in the environment and the impacts of climate change, addressing the risk outlined by external partners.

Meeting the statutory water demand target will support sustainable levels of abstraction for public water supply. Distribution Input (DI) is the total amount of treated water supplied to customers through water companies’ distribution network. This includes public water supply to households and non-households, as well as water lost through leakage. Public water supply represents the majority of consumptive water use across England and therefore we have retained the scope of the target rather than using total abstraction.

The target draws together existing commitments, creating a statutory driver for delivering the level of ambition needed to meet the required reduction in water use by 2050. It will place an additional driver on the water industry which will need to be factored into their planning, targets and delivery. It will be monitored using annually reported data from water companies.

It is based on a trajectory to address the 2050 supply demand deficit identified in regional water resources plans, which is being driven by climate change, population growth, increasing resilience to drought and protecting the environment. The statutory target will help to ensure that we leave more water in the environment to support biodiversity and for ecosystem recovery, alongside meeting public supply needs.”

*Marine protected areas (MPAs)*

16. The target is to ensure that not less than 70% of protected features in marine protected areas are in favourable condition before the end of 31 December 2042, with the remaining protected features to be in a recovering condition. At present, 44% of protected features in MPAs are assessed as being in a ‘favourable condition’. According to Defra, ‘favourable condition’ means that protected features are in a good and healthy state and the condition also aligns with the conservation objectives of the relevant MPAs. 91% of

responses to the consultation disagreed with the proposed level of ambition, preferring an increased ambition level or achieving the target sooner.

*Waste reduction*

17. The target is to ensure that by the end of 31 December 2042 the total mass of all residual waste, including plastics but excluding major mineral waste, for the calendar year 2042 does not exceed 287 kilograms per head of population in England. According to Defra, this equates to a 50% reduction from 2019 levels, which is estimated to be approximately 574 kilograms per capita.
18. The Department says that the target can be achieved both by recycling more and preventing waste from occurring in the first place, and that it builds on the Government's Resources and Waste Strategy<sup>4</sup> commitments to achieve a 65% municipal recycling rate and send less than 10% of municipal waste to landfill by 2035. It also supports the Government's commitment to eliminate avoidable plastic waste by 2042 and contributes to Net Zero through reduced emissions from landfill and incineration, and could save 32 Mt of CO<sub>2</sub> by 2042, beyond the savings seen from separate reforms of collection and packaging.
19. Defra says that the target excludes major mineral wastes (that is waste from construction, demolition, excavation and mining activities) in order to focus attention where the environmental impact per tonne of waste treatment is greatest. The submission by Greener UK and Wildlife and Countryside Link questioned the rationale for excluding major mineral wastes. The Department responded:
 

“We excluded major mineral wastes to focus on reducing more environmentally harmful waste at point of treatment. Despite high tonnages, major mineral waste's environmental impact per tonne is low when treated as waste. We acknowledge the wider environmental impact of major mineral wastes may be high, but data is less robust for these wastes, which prevents us from being able to set a target that we could be sure was ambitious yet achievable without further evidence. Moreover, due to the high tonnages involved, including major mineral wastes in the target would have likely masked the importance of reducing the residual treatment of other materials, which are lighter in weight, but nonetheless have significant environmental impacts, for example landfilling of biodegradable wastes or incineration of plastic wastes. The target would have essentially become a major mineral waste target. It is therefore more appropriate to consider this waste type as a possible separate target. We are continuing to look at what is needed to be able to meet Environment Act requirements for the Secretary of State to be satisfied that a major mineral waste target can be achieved and to assess whether such a target should be set. We are collaborating with University College London (UCL) on advancing the evidence around major mineral wastes and how to reduce these.”
20. The submission by Greener UK and Wildlife and Countryside Link also questioned why the Department had not put in place a target for reducing the environmental impacts of resource extraction and consumption, as

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<sup>4</sup> Defra, 'Resources and waste strategy for England': <https://www.gov.uk/government/publications/resources-and-waste-strategy-for-england> [accessed 17 January 2023].



recommended by the Office for Environmental Protection. Defra responded that:

“Our research to date has not identified a clear policy pathway for significantly reducing the effects of resource extraction and use on the natural environment, which we assessed through the lens of resource productivity. The research indicates, along with advice from our group of independent experts, that setting a legally binding target at this stage is premature. The consultation helped to explore the most appropriate approach to measure resource productivity and what policies might be most effective in the future. We will consider consultation recommendations and continue to investigate this. We are taking forward further research on policies to improve resource efficiency in collaboration with BEIS. We are also collaborating with University College London (UCL) to improve our evidence around major mineral wastes (typically originating from the highly resource intensive construction sector) and approaches to reduce this. At this stage, it is undetermined what an appropriate resource use target may look like in terms of scope, metric, and ambition level. We acknowledge the importance of quantifying the absolute environmental impacts of resource use, and nothing is off the table.”

#### *Tree and woodland cover*

21. The target is to increase woodland and tree canopy cover to 16.5% of land area by 2050, up from an assumed level of 14.5% in 2022. Purpose-grown energy forestry plantations<sup>5</sup> are excluded from contributing to the target. Defra says that the trees planted to meet this target will contribute to the objectives and desired outcomes of the Environment Act by providing thousands of hectares of priority habitat to support species recovery and improving the quality of our air and water courses, and that the removal of atmospheric carbon by trees planted to meet the target will also contribute to meeting the Government’s statutory commitment of achieving net zero emissions by 2050.
22. We note that Defra decided to reduce the target for tree and woodland from 17.5%, as proposed during consultation, to 16.5%. Asked about the reason for this reduction, the Department said that:

“Defra reviewed our evidence and the current progress of tree planting programmes alongside the Targets consultation process. Whilst planting rates have been rising steadily under the Nature for Climate Fund Tree Programme, the increase is not happening as quickly as originally projected. We concluded that a canopy cover target of 16.5% is the most ambitious that can currently be set whilst still being realistically achievable, as required by the Environment Act 2021. The first review of environmental targets will be an opportunity to consider whether the level can be realistically increased, taking into account maturing tree planting programmes and impacts of policies implemented in the intervening years including for the expansion of agroforestry in England.”

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<sup>5</sup> This means plantations of trees, generally single species, that do not meet the requirements of the UK Forestry Standard, do not provide the wider social and environmental benefits that multi-purpose woodlands provide and are grown solely as a feedstock for bioenergy production.

23. The submission by Greener UK and Wildlife and Countryside Link also questioned the decision to reduce the woodland target and raised concerns about the consequences of that decision for the reduction in CO<sub>2</sub> emissions. In its response, the Department provided further technical information about the data on which this decision is based.<sup>6</sup>

### *Devolution*

24. Effective environmental protection requires a holistic approach across borders and jurisdictions, but the instruments and targets will apply to England only. We asked the Department whether, when developing the targets, there was consultation or coordination with the Devolved Administrations in Scotland, Wales and Northern Ireland, and whether the Devolved Administrations had similar plans. Defra told us that:

“Devolved Administration colleagues have shown an interest in our approach through our engagement with them over the last three years of development. We are committed to working closely with Devolved Administrations regarding any transboundary considerations in relation to implementation of our targets.

For example, an area where we considered transboundary impacts is included in our Environmental targets consultation summary of responses and government response,<sup>7</sup> we amended how we will apply the waste and resources target to include waste sent out of England to Scotland, Wales or Northern Ireland for treatment to ensure that the target cannot be met by sending waste outside, and excluded wastes sent into England from these nations to avoid missing the target due to waste out of England’s control.”

25. Given the cross-border impact of environmental policies, we note the importance of working closely with the Devolved Administrations.

### *Delay*

26. Section 4 of the Environment Act 2021 required the Secretary of State to lay the statutory instruments before Parliament by 31 October 2022. The instruments were only laid on 19 and 20 December, however, more than a month after the statutory deadline. While the original EMs highlight the importance of setting the targets “without delay” and state that the instrument will come into force at the earliest date after parliamentary approval, no reference is made to the delay in laying the instruments and no explanation is provided why the Department failed to meet its statutory deadline.

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6 See Q21–24 of the submission from Greener UK and Wildlife and Countryside Link. SLSC, ‘Scrutiny Evidence’: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/> [accessed 17 January 2023].

7 Defra, *Environmental targets consultation summary of responses and government response* (16 December 2022): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1125278/Environmental\\_targets\\_consultation\\_summary\\_of\\_responses\\_and\\_government\\_response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1125278/Environmental_targets_consultation_summary_of_responses_and_government_response.pdf) [accessed 17 January 2023].

27. Asked for an explanation, the Department referred to the Secretary of State's Written Ministerial Statement of 28 October 2022<sup>8</sup> which explained that:
- “We received over 180,000 responses [to the environmental targets consultation], which all needed to be analysed and carefully considered. In light of the volume of material and the significant public response we will not be able to publish targets by 31st October, as required by the Act.”
28. **We welcome that Defra has agreed to revise and relay the EMs to link to the Secretary of State's statement, but we do not find the explanation that the Department has given of the delay in bringing forward the instruments convincing.** According to Defra, the 180,000 consultation responses included more than 76,600 responses that were submitted through six campaigns and more than 103,000 petition signatures. Campaigns and petitions typically involve large numbers of signatories supporting a set of headline policy concerns and arguments. Campaigns and petitions are usually more straightforward and easier to analyse than one-off consultation responses from individuals or organisations which tend to raise wider and more complex arguments and concerns. We note that there were 660 individual responses and 464 responses from organisations. While this is still a large number and analysis of these responses would have been time consuming, **the Department should have anticipated the extent of public interest in the targets, given the significance that Defra itself attributes to them, and allocated appropriate resources to ensure that it meets its own statutory deadline.**
29. **The delay is particularly concerning because this is not the first delay. We note that the Environmental Principles Policy Statement, which was laid before Parliament for scrutiny in draft form in May 2021,<sup>9</sup> still has not been laid in its final form. The House may wish to note that the Department is also required to publish the Environmental Improvement Plan, which will set out more detail about how the targets are to be achieved and include interim targets, by the end of January.**

### **Draft Health and Social Care Information Centre (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023**

*Date laid: 15 December 2022*

*Parliamentary procedure: Affirmative*

*This instrument seeks to abolish the Health and Social Care Information Centre (also known as NHS Digital) and transfers its statutory responsibilities to NHS England. In its Explanatory Memorandum, the Department of Health and Social Care (DHSC) states that this transfer has two objectives: to bring NHS data and delivery functions together, and to centralise responsibility for digital transformation. The change is made in response to the recommendations of the Laura Wade-Gery review.*

*Although DHSC plans to make this transfer on 1 February 2023, essential statutory guidance is not yet available and two organisations, Medconfidential and the British*

<sup>8</sup> HC Deb, 28 October 2022, [HCWS347](#) (Commons Chamber).

<sup>9</sup> SLSC, [3rd Report](#) (Session 2021–22, HL Paper 11).

*Medical Association, have written to us raising a number of concerns about whether current safeguards on the use of the data will be maintained. DHSC's responses are published with those submissions on our website.*

*Given that members of the House raised a number of concerns about the proposed transfer during the passage of the Health and Social Care Act 2022, **we are disappointed that the consultation on the essential statutory guidance that will direct NHS England's handling of this medical data appears to be being conducted in a rushed and piecemeal manner and is not available alongside the legislation to reassure the House.** We therefore suggest that the outcome of the planned internal review of the new system, after 12 months, is made public.*

**These draft Regulations are drawn to the special attention of the House on the grounds that they are politically or legally important and give rise to issues of public policy likely to be of interest to the House**

### *Background*

30. This instrument seeks to abolish the Health and Social Care Information Centre (also known as NHS Digital) and transfer its statutory responsibilities to NHS England with transitional and savings provisions for certain functions currently in progress. The Department of Health and Social Care (DHSC) states:

“The regulations do not change the rules as to what data the organisation can collect or the circumstances in which it can request or require data. Section 259 [of the Health and Social Care Act 2012] sets out what information NHS England may require to be shared with it. It is this which therefore governs when data must be provided and when it is optional. These functions are transferred to NHS England unchanged.”

31. The Explanatory Memorandum (EM) provided by DHSC explains that this transfer has two objectives: to bring NHS data and delivery functions together, and to centralise responsibility for digital transformation. The change is made in response to the recommendations of the Laura Wade-Gery review<sup>10</sup> which concluded:

“the separation of responsibilities for digital strategy and infrastructure results in a lack of clarity on target state data and technology architecture. This separation also creates friction for the sharing of data for administrative and planning purposes.”

32. DHSC states that as a result of the transfer, a single body will be responsible for the data collated from the NHS and for the delivery of NHS services.
33. The protections which currently apply to the use of patient data are summarised on an NHS webpage which also refers to the current statutory guidance.<sup>11</sup> DHSC states that these protections will be carried forward and that replacement guidance “is being developed currently for publication as

10 Department of Health and Social Care, ‘Putting data, digital and tech at the heart of transforming the NHS’: <https://www.gov.uk/government/publications/putting-data-digital-and-tech-at-the-heart-of-transforming-the-nhs/putting-data-digital-and-tech-at-the-heart-of-transforming-the-nhs> [accessed 17 January 2023].

11 National Health Service, ‘Protecting patient data’: <https://digital.nhs.uk/services/national-data-opt-out/understanding-the-national-data-opt-out/protecting-patient-data> [accessed 17 January 2023].

soon after the transition of NHS Digital’s statutory functions as possible... Parliamentary process permitting, the intention is to transfer the functions on 1st February 2023.”

### *Concerns expressed*

34. A submission from Medconfidential, however, raises questions on how some types of data will be handled under the new regime and whether, in pursuit of efficiencies, NHS England’s handling of the data will be less transparent and subject to fewer checks and balances. Another submission, from the British Medical Association (BMA), expresses concern that the monitoring role of the Independent Group Advising on the release of Data (IGARD) should be maintained. We put these questions to DHSC and the responses are available in full on our website alongside the submissions.<sup>12</sup>

### *Concerns in the House of Lords*

35. In particular, we asked DHSC how undertakings made by the Government during the passage of the Health and Social Care Bill were being addressed. DHSC replied:

“Each is given below as a heading, with how we have addressed these, either in the regulations, or in the statutory guidance.

- *Ensuring continuity in arrangements, particularly relating to transparency*

The regulations transfer the statutory functions of NHS Digital to NHS England, including all the provisions which apply to how the organisation handles people’s data. The same rules will apply as to how data is collected, and how it can be disseminated. The same provisions will apply requiring transparency as to how data is collected, e.g., NHS England will:

- publish its procedures for receiving and considering requests to establish information systems, and for requests to access data;
- report to Parliament annually on its exercise of the data functions;
- publish all directions.
- *Ensuring there is governance to prevent NHS England from marking its own homework, and have oversight of its exercise of its statutory powers internally*

Within the merged organisation, responsibility for ensuring data is protected and managed appropriately will lie with the Chief Delivery Officer. It is intended that this will be separate from accountability for handling the data and undertaking analysis, which will sit in the Transformation Directorate. An important element of the arrangements will be that any internal requests for new data flows or to use data for new purposes will be subject to a rigorous process of scrutiny, comparable to that for external requests (for example for research or public planning purposes). It is also likely that a Secretary of State Direction will place particular requirements on the organisation in relation to internal uses of data.

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<sup>12</sup> SLSC, ‘Scrutiny Evidence’: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/> [accessed 17 January 2023].

- *Ensuring that NHS England would not be able to initiate data collections without the correct legal permission*

NHS Digital is not allowed to initiate the collection of people's information without formal direction from the Secretary of State. This protocol will continue after the transfer of its functions into NHS England. NHS England will need a Direction from the Secretary of State before it can establish an information collection. Directions will be published (as they are now) and subject to the same rules as apply to NHS Digital currently. All the existing directions which NHS Digital is implementing will be transferred to NHS England to ensure continuity in data collections (again, they can be revoked by direction of the Secretary of State).

- *Ensuring the National Data Guardian and Information Commissioner's Office would be consulted*

The National Data Guardian and the Information Commissioner's Office have been consulted on the proposals to transfer NHS Digital's functions, the draft regulations, and the draft statutory guidance.

- *Ensuring that a data usage register would be published, covering all projects accessing patient-level data and showing which data was accessed*

It is intended that this will build on the current Data Uses Register, and mesh with current transparency requirements, requiring publication of what data is shared, and why. There will also be quality assurance of arrangements through audits of how data is used."

### *Independent oversight*

36. Another key concern expressed in both submissions is whether there will be independent oversight of certain governance decisions under the new arrangements. DHSC responded:

"The statutory guidance recommends NHS England to ensure it has processes and procedures in place for obtaining independent advice when exercising the transferred data functions. This is compared to the current situation in which there are no requirements of any sort for NHS Digital to have such oversight.

The arrangements for obtaining independent advice should support oversight and scrutiny of the relevant functions of NHS England's Board. The arrangements may include, but are not limited to:

- appointing members to relevant committees and sub-committees who have specialist data protection and data security expertise
- obtaining independent advice from specialists and experts

NHS England should also have procedures in place for how it will obtain advice from the Confidentiality Advisory Group (CAG) - NHS England will be under a statutory obligation, again, transferred from NHS Digital, to have regard to any advice given to it by the CAG."

37. We also asked how good governance and transparency will be enforced on occasions when NHS England has conflicts between its own interests. DHSC replied:

“The new operating model has been designed to minimise conflicts of interests by separating the functions that use data and design and build systems and data platforms from those who provide advice and assurance on information governance and compliance with the legal framework. The Transformation Directorate, where the Product, Platform, IT Operations and Data and Analytic Services sit are in a different Directorate to the Information Governance and Legal functions which sit in the Delivery Directorate and the Caldicott Guardian function which sits in the Medical Directorate.”

*Consultation on the guidance*

38. Much of the future operation of the system will be set out in guidance to which NHS England will “have to have regard”: the BMA questions whether this is sufficient.
39. Paragraph 7.13 of the EM says the guidance is to be prepared by the Secretary of State after consulting NHS England and other persons that the Secretary of State considers appropriate in connection with matters such as:
- (a) independent expert advice on, and scrutiny of, the exercise of NHS England data functions, in relation to:
    - (i) codes of practice prepared under section 263(1) of the 2012 Act;
    - (ii) requests for the dissemination of confidential information;
    - (iii) other processes, policies and procedures in respect of the collection and dissemination of such information;
    - (iv) contractual terms and other safeguards concerning the protection of confidential information in agreements with third parties;
  - (b) the manner in which, and the time within which, such advice or scrutiny may be sought;
  - (c) from whom such advice or scrutiny may be sought;
  - (d) the purposes for which independent scrutiny is to be established.
40. **While we understand that consultation on the required guidance is currently being undertaken, it is regrettable that the EM does not mention any website where the draft(s) of the guidance may be seen.** We are informed that the National Data Guardian, the Information Commissioner’s Office, NHS Digital, NHS England and the NHS Digital Independent Group Advising on and Release of Data (IGARD) have been involved but are surprised that a matter of significant public interest is not being made available for public comment. The BMA is concerned that the medical professional organisations have not been involved.

41. Medconfidential has been included in the consultation but commented that there is a lack of clarity about which draft version is current and who is being consulted: its submission includes a number of detailed concerns about the governance arrangements currently proposed in the version that it has seen.
42. We note that it is DHSC's intention to only publish the guidance "as soon after the transition of NHS Digital's statutory functions as possible." **It is disappointing that such important guidance is apparently being drafted in a rushed and piecemeal way and is not available alongside the legislation to reassure the House.**

### *Conclusion*

43. It appears that these changes are being made with the worthy intention of improving efficiency and transparency and to provide for more evidence-based delivery of NHS Services. **The simple actions that are set out in the Regulations under consideration, however, may trigger much wider changes in the governance of medical data and the House may wish to be reassured that there will be no negative consequences however unintended.**
44. Medconfidential, which has expertise in this area, has seen a version of the Department's planned guidance and has raised extensive concerns about the proposed arrangements in its submission. We find this worrying. The BMA appears not to have been consulted at all which is also of concern.
45. It is less than two weeks before the intended transition date and yet statutory guidance on the governance of the nation's medical records is not complete and not public. **DHSC may wish to reconsider its current plans for the transition, so that when the legislation is debated, the Minister is in a position to reassure the House that this change will not diminish existing safeguards or standards of governance of patient data.**
46. **We welcome DHSC's intention to conduct an internal review into the outcome of the transfer after 12 months but suggest that, given the degree of public concern expressed, the findings of that review should be made public.**

### **Education (Student Loans) (Repayment) (Amendment) (No.4) Regulations 2022 (SI 2022/1335)**

*Date laid: 15 December 2022*

*Parliamentary procedure: Negative*

*These Regulations amend the student loans system in England and Wales to implement a set of reforms announced in February 2022. The Government state that the reforms will help to ensure the long-term sustainability of the student finance system, making it fairer for taxpayers and students. In practice, the changes will reduce the cost of student loans to the public purse by requiring students to pay back more in aggregate (although not in every individual case). We are concerned that the design of the policy, which leads to students from disadvantaged backgrounds being among the 'losers', is inconsistent with the Levelling Up agenda. The Government have also chosen to implement the changes in a way that significantly increases complexity in the system without explaining why that is necessary, and the policymaking process has also not conformed to best practice in the lack of a*



*consultation and the use of the Retail Prices Index. The House may wish to raise these concerns with the Minister.*

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

### *Background*

47. In February 2022, the Government announced a set of reforms to the student loans system in England and Wales.<sup>13</sup> The measures form part of the Government’s response to the report of the Independent Review of Post-18 Education and Funding (the ‘Augar Review’), published in May 2019.<sup>14</sup>
48. These Regulations implement the reforms. The Government state that the changes will help to ensure the long-term sustainability of the student finance system, making it fairer for taxpayers and students. Some consolidating amendments came into force on 16 January 2023 but the substantive changes to loan repayment terms come into force on 6 April 2023. The Committee was, however, surprised to see that the Regulations contain a “technical error” in their commencement date, requiring them to be corrected, via a further amending instrument, before they had even come into force.<sup>15</sup>
49. We asked the Department for Education (DfE) for further information on aspects of the reforms. DfE’s response can be found in Appendix 1.

### *The current system*

50. Currently, student loans are organised into four types of ‘Plan’ depending on the date of the loan and the type of borrower.<sup>16</sup> In summary:
  - **Plan 1** applies to those who started studying in 2011–12 or before.
  - **Plan 2** applies to undergraduates who started studying from 2012–13 and remains the main current system for undergraduates. It also applies to Advanced Learner Loans, which are loans for certain Further Education qualifications.
  - **Plan 3** applies to loans for postgraduate study.
  - **Plan 4** loans are issued by the Student Award Agency Scotland to borrowers who are ordinarily resident in Scotland. Plan 4 loans are not considered further in this report.<sup>17</sup>
51. The Regulations make two main changes: they introduce a new set of terms and conditions for those applying for a student loan from 1 August 2023

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13 Department for Education (DfE), ‘Higher education policy statement and reform’: <https://www.gov.uk/government/consultations/higher-education-policy-statement-and-reform> [accessed 17 January 2023].

14 DfE, ‘Post-18 review of education and funding: Independent panel report’: <https://www.gov.uk/government/publications/post-18-review-of-education-and-funding-independent-panel-report> [accessed 17 January 2023].

15 The correcting instrument is the Education (Student Loans) (Repayment) (Amendment) (No. 5) Regulations 2022 (SI 2022/1392), also referred to in this report.

16 DfE, ‘Repaying your student loan: Which repayment you’re on’: <https://www.gov.uk/repaying-your-student-loan/which-repayment-plan-you-are-on> [accessed 4 January 2023].

17 Although the Regulations do make drafting amendments to ensure that the loan system continues to function correctly when the Plan 4 repayment threshold exceeds the Plan 2 threshold for the first time in April 2023.

onwards, known as **Plan 5**; and they make certain alterations to the terms of other Plans. We asked DfE to provide a comparison of the main terms of Plans 1–3, both before and after the changes made by the Regulations, and of Plan 5. This helpful comparison is contained in Appendix 2. Key points include:

- The **repayment threshold** for Plan 5 loans will be £25,000 for 2026–27, the first year from which Plan 5 loans will be paid back. This threshold is lower than that currently applied to Plan 2 loans (£27,295). The Regulations also freeze the Plan 2 threshold at this level for 2023–24 and 2024–25, overriding the automatic increases that would otherwise take effect.
- **Changes in the repayment threshold** for Plan 5 will follow the Retail Prices Index (RPI) from their first uprating, in April 2027. Historically, the threshold for Plan 2 has been uprating by average earnings, but the Regulations change this to RPI from 2025–26 (after the freeze described above).
- The **interest rate** applicable to outstanding Plan 5 loans will be the RPI only, both during and after study. This is lower than the interest rate on some Plan 2 loans, which is RPI+3% during study and ranges from RPI to RPI+3% after study, depending on the borrower’s income.
- For Plan 5 loans, **any outstanding balances will be written off** after 40 years. This is longer than the 30 years applicable to Plan 2 loans.
- The **overseas fixed instalment rate**, which is the amount borrowers living overseas repay if they do not submit details of their income, will be £352 per month for Plan 5. This is higher than the equivalent rate for Plan 2 loans because of the higher average repayments under the terms of Plan 5 loans. The overseas fixed instalment rate for Plan 2 and Plan 3 loans will also increase sharply from their level of £201 per month; to £335 for Plan 2 and £255 for Plan 3. According to DfE, this reflects the fact that these have not changed since their introduction in 2012 and 2016 respectively. The Regulations also provide for an annual calculation of the overseas fixed instalment rate for Plan 2, 3 and 5 loans.

52. We asked DfE why the system was not harmonised across different Plans. The Department did not offer any explanation beyond saying that the terms of Plan 2 and Plan 5 loans should be compared “in the round”. The student loan system is already difficult to understand and adding an additional Plan type, with different terms, only adds further complexity. **The Government have offered no clear rationale for not introducing greater harmonisation into the system. We encourage the Department to consider whether the student loan system would benefit from a comprehensive restructuring to increase clarity.**

*Effect on public spending*

53. The Government state that the reforms will reduce public spending on the student loan system. For example, the Explanatory Memorandum (EM) says that only 56% of the total value of loans issued in 2021–22 will ever be repaid, with the Government footing the bill for the remaining 44%—equivalent to an £8.2 billion “subsidy” over the life of the loans. The new

system is expected to reduce this Exchequer contribution: DfE estimates that, for loans taken out in 2023–24, the taxpayer will ultimately pay for 24% for new Plan 5 loans and 28% for existing Plan 2 loans, amounting to £5.4 billion in total. In the long term (2040–41), DfE expects the reforms to result in savings of £12.25 billion per annum.<sup>18</sup>

### *Effect on student repayments*

54. These savings to the taxpayer arise only because the reforms will increase the amount that most borrowers pay back. In the EM, DfE has provided tables setting out the effect of the reforms on illustrative Plan 2 and Plan 5 borrowers in future years. For example, in 2026–27, a Plan 2 borrower earning £35,000 will pay £19 more per month than they would have done without the changes, while a Plan 5 borrower will pay £45 more per month than a Plan 2 borrower on unchanged terms.
55. DfE also provided estimates of the percentage of students who will fully repay their loans. This is forecast to rise from 20% of borrowers who began their courses in 2021–22 to 55% of those beginning in 2023–24.
56. Although aggregate repayments will increase, DfE’s Equality Impact Assessment (EIA), published alongside the February 2022 policy statement, sets out how some individual borrowers, typically the highest earners, will pay less under Plan 5 than they would have done under the current system.<sup>19</sup> DfE said this was because the lower repayment threshold and lower interest rate would mean that people in this group accumulate less debt than they would have done and pay off their loans more quickly.
57. The EIA also concluded that certain groups are more likely to experience negative impacts as a result of the reforms. These groups included: female borrowers; those with white or black ethnicity; lower to middle earners; those from disadvantaged backgrounds; younger borrowers; those from the North, Midlands, South-West or Yorkshire and the Humber; and possibly the disabled.<sup>20</sup> The Government argued that such effects are not discriminatory as they arise from borrowers’ lifetime earnings, not the characteristics themselves.<sup>21</sup>
58. In more general terms, the Government have responded to questions about fairness by stating that through the reforms they have “tried to balance fairness to students with fairness to the taxpayer”.<sup>22</sup> They continued that “currently, a great proportion of the subsidy that the taxpayer makes towards higher education is funded by those who did not have the benefits of that higher education themselves. Students going to university have the advantages of their degree throughout their working lives.” In its response to us, DfE also noted that the student loan system will remain progressive overall, with the highest earners making the largest contributions.
59. We recognise that there are many dimensions to fairness and acknowledge the Government’s argument that they are seeking to rebalance the contributions made by students and taxpayers. **However, we are concerned that the**

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18 DfE, ‘Higher education reform: equality impact assessment’: <https://www.gov.uk/government/publications/higher-education-reform-equality-impact-assessment> [accessed 3 January 2023], p 31.

19 *ibid*, p 16.

20 *ibid*, p 16 and 49–51.

21 *ibid*, p 12.

22 HL Deb, 28 February 2022, [col 637](#) (Lords Chamber).

**changes make the system less progressive and may not be consistent with Government policy elsewhere, for example in the Levelling Up agenda.**<sup>23</sup>

60. We asked DfE whether it writes to existing borrowers when their loan terms change. The Department said it did not, but set out a number of means by which updates are communicated: these include social and traditional media, updates on Gov.UK and through a borrower’s online account. **The House may wish to take a view on whether this approach is sufficient, particularly given the complexity of the system described in this Report.**

*Use of Retail Prices Index*

61. As described above, in several areas DfE has chosen to use RPI as its measure of inflation; for example, when setting applicable interest rates and adjusting repayment thresholds. The UK Statistics Authority has, however, said that RPI should not be used because the index “is not a good measure, at times significantly overestimating inflation and at other times underestimating it [ ... ] It would be wrong for the Government to continue to use a measure of inflation which it itself accepts is flawed, where it has the opportunity to change”.<sup>24</sup>
62. In its response to us, DfE said that it had chosen RPI “to ensure consistency with other student loan plan types”, but the Department did not explain why it had not changed the measure of inflation throughout the system. DfE’s response also stated that using an alternative inflation measure, the Consumer Prices Index including owner occupiers’ housing costs (CPIH), would tend to lead to a lower interest rate on student loans. DfE said this, in turn, would lead to some borrowers repaying less in total over the lifetime of their loans but some borrowers paying more. The Department did not set out the overall effect of such a change. **The House may wish to enquire further on the rationale for not moving away from a measure that the Government themselves describe as flawed, and what the impact of such a move would be on taxpayers and students.**

*Lack of consultation*

63. The Government have not consulted on the changes put forward in the instrument, stating that there is no statutory requirement to do so. In the EM, the Department said the reforms “build on” the recommendations of the 2019 Augar Review, which included a public call for evidence. DfE has not, however, implemented those recommendations in full or explained why the policy differs from that suggested in the Review.<sup>25</sup>

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23 Department for Levelling Up, Housing and Communities, ‘Levelling Up the United Kingdom: executive summary’: <https://www.gov.uk/government/publications/levelling-up-the-united-kingdom/levelling-up-the-united-kingdom-executive-summary> [accessed 3 January 2023].

24 Office for National Statistics, ‘UK Statistics Authority Statement on the future of the RPI’: <https://www.ons.gov.uk/news/statementsandletters/ukstatisticsauthoritystatementonthefutureoftherpi> [accessed 9 January 2023].

25 For example, the Augar Review recommended: reintroducing maintenance grants for socio-economically disadvantaged students; introducing a cap on lifetime repayments of 1.2 times the initial loan amount in real terms; and retaining the income-dependent post-study interest rate: DfE, ‘Post-18 review of education and funding: Independent panel report’: <https://www.gov.uk/government/publications/post-18-review-of-education-and-funding-independent-panel-report> [accessed 3 January 2023], pp 208–9.

64. The legislative framework for student loans allows the Government to change loan terms during the payback period. However, such changes make it difficult for borrowers to plan their financial affairs and are, therefore, not ideal—especially given the lack of a consultation.
65. **Given the financial impact of the reforms, the number of people affected, the time elapsed since the Augar Review and the divergence between the Review’s conclusions and the Regulations, those affected should have been consulted before finalising the policy.**

### *Conclusion*

66. These Regulations will reform the student loan system in a way that decreases the costs for taxpayers by increasing the amount that students will pay back. The reforms will affect millions of people and will have a significant financial impact for many. **The Government have chosen to implement the changes in a way that significantly increases complexity in the system without explaining why this is necessary. The policymaking process has also not conformed to best practice, for example in the lack of a consultation and the use of the RPI, and the reforms may run counter to Government policy elsewhere. The House may wish to raise these concerns with the Minister.**

### **Short-term Holding Facility (Amendment) Rules 2022 (SI 2022/1345)**

*Date laid: 15 December 2022*

*Parliamentary procedure: Negative*

*A Short-term Holding Facility (STHF) is a type of immigration detention centre. STHFs are governed by legislation that sets out what amenities and services different types of facility must provide. With effect from 5 January 2023, these Rules introduced a new category, Residential Holding Rooms (RHRs), which is intended to apply to parts of the UK’s main reception site for small boat arrivals, Manston in Kent. Migrants may be detained in RHRs for up to four days with a lower standard of amenities than would apply to existing Residential STHFs, even though Residential STHFs only have a slightly longer holding period of five days. We have received a submission raising concerns that these inferior detention facilities will weaken the protections available to migrants and increase the risks to vulnerable people. The Government have not provided clear or acceptable public policy reasons why a new type of STHF is necessary or why the amenities for those detained for four days should be materially less than those detained for five. It appears that the main consideration driving the reforms is facilitating the continued operation of Manston even though its conditions have raised public concern. The House may wish to press the Minister for a better explanation of how the welfare of these migrants is to be safeguarded and why potentially contentious legislation was brought into effect over a recess.*

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

*Background*

67. These Rules create a new category of Short-term Holding Facility (STHF), which is a type of immigration detention centre governed by legislation. The amenities that each type of STHF must have available are set out in the Short-term Holding Facility Rules 2018 (“the ‘2018 Rules’”).<sup>26</sup> Currently, there are two types of STHF:
- **Non-residential STHFs (also known as ‘Holding Rooms’)** in which people can be held for a maximum of 24 hours (subject to extension in exceptional circumstances authorised by the Secretary of State). The Government have described Holding Rooms as “effectively secure waiting rooms without formal sleeping accommodation at reporting centres and air, sea and rail ports in the UK, and at the juxtaposed control zone at Coquelles [Northern France]”.<sup>27</sup>
  - **Residential STHFs** in which people can be held for a maximum of five days (extendable to an absolute maximum of seven days if removal directions for the person are set within the five-day period).
68. The 2018 Rules cover a wide range of services and facilities, including: admission and discharge; accommodation; food; hygiene; recreation; communications, including visits; healthcare; security and safety; and independent monitoring. The 2018 Rules cover both Holding Rooms and Residential STHFs, but many are disapplied or modified for Holding Rooms reflecting their different purpose.

*What do these Rules do?*

69. These amending Rules introduced a new category of STHF, with effect from 5 January 2023. Known as a **Residential Holding Room (RHR)**, it is intended to apply to Manston, Kent, which is the UK’s main reception point for people crossing the English Channel on small boats.
70. Migrants can be held in an RHR for a maximum of 96 hours (four days; again extendable in exceptional circumstances if authorised by the Secretary of State although with no absolute maximum). The Rules set out which of the STHF requirements in the 2018 Rules will apply to RHRs, which will be disapplied and which will be modified. **The overall effect of these is that the facilities and amenities available to people who may be detained for four days are materially lower than those deemed necessary for people who may be detained for five days.** For example:
- RHRs are not required to allow migrants to send and receive correspondence. RHRs are also not required to provide funds to allow the migrant to correspond with authorities such as their legal adviser, the court system, the UN Refugee Agency or an Embassy.
  - RHRs are not required to provide internet access.
  - In an RHR, separate sleeping accommodation for men and women should be provided “where possible”, as opposed to being a requirement in a Residential STHF.

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26 Short-term Holding Facility Rules 2018 ([SI 2018/409](#)).

27 Explanatory Memorandum to the Short-term Holding Facility Rules 2018 ([SI 2018/409](#)).

- There is no requirement for an RHR to provide means for migrants to communicate with officers from a room used for sleeping.
- In an RHR, migrants must be permitted to meet with their legal adviser in confidence only “if it is practicable to do so”. For a residential STHF this is an unconditional requirement.
- In an RHR, medical screening must be carried out within 24 hours of admission, rather than within two hours in a Residential STHF, and the RHR rule includes the caveat that “except where this is not possible due to exceptional circumstances”.

*Why is a new category of STHF needed?*

71. The Explanatory Memorandum (EM) to the Rules states that a new category of STHF is needed because Manston is a “unique” facility that requires a “bespoke” time limit and arrangements.
72. Manston currently operates as a Holding Room<sup>28</sup> and, therefore, has a 24-hour limit on detentions. The EM states, however, that it has proved “very challenging” to process migrants within this limit when there have been large numbers of arrivals. Indeed, in autumn 2022, concerns were expressed that Manston was operating illegally by detaining people for more than 24 hours and the Government admitted discomfort about how the site was functioning.<sup>29</sup> In October 2022, in evidence to the Home Affairs Select Committee, the Home Office confirmed that some people had been detained at Manston for “much longer than 24 hours”, with the longest period of detention being “about a month”.<sup>30</sup> Legal action has reportedly been taken against the Government accusing Manston of operating illegally and of providing unsuitable conditions for migrants.<sup>31</sup>
73. We asked the Home Office for further information on a number of aspects of the Rules. The Home Office’s full responses can be found on our website.<sup>32</sup> On the question of why the new RHR category is needed, the Home Office reiterated Manston’s unique needs and expanded on how, under the Rules, Manston will operate as a hybrid of a Holding Room and an RHR:

“While small boats arrivals remain within manageable levels, and staff are able to process individuals within the 24-hours, the majority of the Manston site will continue to operate as a holding room, to which the existing 24-hour detention time limit will apply. However, a residential holding room will provide the required flexibility at this site and will only be used when required by operational needs. In a situation where further time is required to complete initial processing and security checks for an individual, and they are moved from a holding room to

28 Although the legislation is now in force, the Home Office has stated that, as at 17 January 2023, there are no facilities operating as an RHR.

29 For example, Sky News, ‘Minister admits Manston processing centre is not operating legally’: <https://www.youtube.com/watch?v=RxvX8poXIFE> [accessed 17 January 2023].

30 Oral evidence taken by the Home Affairs Committee, inquiry on Channel Crossings, [26 October 2022](#) (Session 2022–23), Q 57 and 74.

31 Civil Service World, ‘Home Office empties Manston asylum centre after legal challenge’: <https://www.civilserviceworld.com/professions/article/manston-asylum-centre-emptied-home-office-legal-threat-pcs-detention-action> [accessed 10 January 2023].

32 SLSC, ‘Scrutiny Evidence’: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/> [accessed 17 January 2023].

a residential holding room at Manston, the period of time spent in the holding room will be taken into account as part of the 96-hour limit.”

74. In response to our question about why it was appropriate to disapply or modify particular aspects of the Residential STHF rules for an RHR, the Home Office again referred in general terms to the unique requirements of Manston. The response noted that the RHR facilities are better than those previously applicable to Manston as a Holding Room and said that the Government was, therefore “improving on the current standards rather than reducing from the R[esidential] STHF standards”. **That facilities are “improving” from an unsatisfactory level does not necessarily mean they are being brought up to an acceptable standard. Moreover, this statement seems somewhat disingenuous in light of the Home Office’s admission, cited above, that Manston has not, in fact, been processing detainees within 24 hours or even the 96 hours required by these amending Rules.**

*Does the RHR downgrade protections for migrants?*

75. We have received a joint submission on the Rules from the organisations Medical Justice, Freedom from Torture, Bail for Immigration Detainees, Rainbow Migration, JRS UK, the Helen Bamber Foundation and Detention Action. The submission is published in full on the Committee’s website.<sup>33</sup> The submission argues that the Rules “constitute a dangerous withdrawal of the safeguards that apply to detained people, and a deeply concerning downgrading of the conditions in which they are held”.
76. In addition to raising many of the issues summarised in [para 70] above, the submission contends that modifications to the rules on special illnesses and conditions are particularly significant. These rules relate to people for whom detention could pose a medical risk, who may have suicidal intentions or may have been a victim of torture. The submission argues that protections in an RHR are “significantly downgraded” relative to a Residential STHF; for example, because an affected person’s detention in an RHR must only be reviewed “as soon as practicable”, rather than within a mandatory 48-hour timeframe for those in Residential STHFs. The submission also states that there is no reporting mechanism for those with evidence of torture. It concludes that “vulnerable people at risk of harm in detention [ ... ] may not be identified”.
77. We raised these points with the Home Office. Its response did not address the difference between the facilities in an RHR and a Residential STHF, instead arguing, again, that the RHR rules will mean “improving on the current standards” at Manston. The Home Office also stated that, for Manston, “there is a balance to be achieved between ensuring it operates as efficiently as possible whilst addressing immediate healthcare and vulnerability concerns for any individuals”. **We accept the need for such a balance, but the Home Office has not explained why it should be struck in a way that provides fewer protections for migrants detained for four days compared to those detained for five.**

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33 SLSC, ‘Scrutiny Evidence’: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/> [accessed 17 January 2023].



*Lack of consultation and Equalities Statement*

78. When the 2018 Rules were introduced, defining the amenities and services necessary at Holding Rooms and Residential STHFs, they followed a “targeted” consultation<sup>34</sup> and were accompanied by a Policy Equalities Statement.<sup>35</sup> In contrast, the current changes have been introduced without either. This may be because the arrangements fall below acceptable standards. The submission referred to in para75 argued that the lack of an Equalities Statement was particularly concerning; for example, because provisions in the Rules extend the period of time during which people can be held without single sex sleeping accommodation.

*Will the RHR category apply to sites other than Manston?*

79. We asked the Home Office if it intended to apply the RHR category to any other sites. The Home Office said that while it could do so, “there are no plans to apply RHRs to other sites at this current time”.

*Conclusion*

80. The Rules create a new category of short-term immigration detention facility, the RHR. The main characteristic of the RHR is a maximum ordinary stay of four days. Existing legislation, however, already provides for a residential facility with a maximum ordinary stay of five days and sets out the amenities appropriate to such a stay. **The Home Office has not provided an adequate policy justification for creating the new category or consulted on it. Nor has it explained why the amenities available for a four-day stay should be less than for a five-day stay.** Instead, the Home Office has admitted that the changes are needed because Manston cannot operate appropriately within the existing regime and requires its own bespoke arrangements.
81. **We are left with the strong impression that the new category is designed for the operational convenience of the Home Office, rather than for good reasons of public policy.** It appears that the main consideration is facilitating the continued operation of Manston even though its conditions have raised public concern. Given the history of Manston, however, we are concerned that even the new regime will not guarantee that the site is always able to operate within the law. **The House may wish to press the Minister for a better explanation of how the welfare of these migrants is to be safeguarded, how Manston will operate in the future and why potentially contentious legislation was brought into effect over a recess.**

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34 Explanatory Memorandum to the Short-term Holding Facility Rules 2018 (SI 2018/409). The consultation was somewhat limited; for example, it did not include groups representing migrants.

35 UK Visas and Immigration and Immigration Enforcement, ‘Policy Equality Statement (PES): Short-term Holding Facility Rules 2018 (SI 409/2018)’: <https://www.gov.uk/government/publications/policy-equality-statement-pes-short-term-holding-facility-rules-2018-si-4092018> [accessed 6 January 2023].

## **INSTRUMENTS OF INTEREST**

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### **Draft Trade (Mobile Roaming) Regulations 2023**

82. These draft Regulations propose to introduce caps on international mobile roaming wholesale charges between the UK, Norway and Iceland. The Department for Digital, Culture, Media and Sport (DCMS) says that this would implement the UK's obligations under the 2021 Free Trade Agreement with Norway, Iceland and Liechtenstein ("the Agreement").<sup>36</sup> The instrument also proposes to give Ofcom powers to enforce the caps.
83. Wholesale charges are the fees mobile operators charge each other when a customer travels to another country and uses the mobile network of an operator based in that territory, while retail charges are the fees operators charge their customers. DCMS explains that in the EU wholesale and retail roaming charges are capped, but that these caps ceased to apply to the UK after Brexit. Since then, three out of the four UK mobile operators have re-introduced roaming charges for new and upgrading customers travelling to the European Economic Area (EEA). According to DCMS, these draft Regulations can only cap wholesale charges because that is a cross-border international issue, while operators' retail charges are a domestic matter that cannot be regulated by the UK in relation to Norway and Iceland. The expectation is, however, that the cap on wholesale charges will facilitate surcharge-free international mobile roaming for retail consumers.
84. We asked DCMS whether there would be an obligation on operators to pass on the benefits of the caps to their retail customers. The Department told us that: "Although the Regulations introduce a cap on the wholesale element only, mobile operators are expected to react to the wholesale cap by reacting at a retail level - by making it surcharge-free for their customers roaming in Norway and Iceland. This expectation has been clearly communicated. If operators do not react appropriately, the Government will have to consider what further measures may be necessary to ensure the Free Trade Agreement [ ... ] facilitates surcharge-free international mobile roaming."
85. The proposed caps are equivalent to the wholesale caps that currently apply in the EU/EEA. Unlike in the EU/EEA, however, there is no automatic mechanism to reduce these caps over time. DCMS told us that, instead, "the UK-EEA/EFTA [European Free Trade Association] Joint Committee will review the rates every two years, unless it otherwise decides, with a view to determining whether those rates are still appropriate. An option with any review could indeed be the EU/EEA roaming rate glidepath [ ... ], as the Agreement talks about relevant international benchmarks, but it would be for the Joint Committee to decide."

### **Russia (Sanctions) (EU Exit) (Amendment) (No. 17) Regulations 2022 (SI 2022/ 1331)**

86. These made affirmative Regulations came into effect on 16 December 2022 and 1 January 2023 to further refine the sanctions regime against Russia. They extend the financial prohibitions to providing trusts or similar arrangements for designated persons and persons connected to Russia. They also close loopholes identified in existing restrictions on dealing with securities and

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<sup>36</sup> Due to its operators' commercial relationships with Switzerland, Liechtenstein has opted out of this specific aspect of the Free Trade Agreement.

credit arrangements for persons connected with Russia. They seek to disrupt Russia's ability to trade internationally by prohibiting the provision of accountancy and advertising services. Additionally, the Regulations extend the current prohibitions on the export, supply and delivery of a range of goods including five additional chemicals.

### **Markets in Financial Instruments (Investor Reporting) (Amendment) Regulations 2022 (SI 2022/1297)**

87. These Regulations relax two rules, contained in retained EU law and related legislation, dealing with communications between investment firms providing portfolio management services and their retail customers. The changes are part of a wider package of reforms intended to improve the competitiveness of the UK's financial services sector post-Brexit, while maintaining high regulatory standards.
88. First, the instrument removes the need for firms to inform their client when the overall value of the portfolio falls by 10%, and thereafter in multiples of 10%. HM Treasury (HMT) argues that this rule can be “detrimental to investors’ best interests” because it can prompt investors into “panic” selling. Instead, the investor and portfolio manager can decide that the firm will provide a report when the value of the portfolio decreases by a bilaterally agreed amount (although there is no obligation on firms to agree to such a customer request from a customer). In addition, other reporting requirements, such as quarterly reporting on the value of the portfolio, remain in place.
89. Second, the Regulations make electronic communication the default mode of communication between firms and their retail clients. Customers will still have the right to opt in to receive paper communications if they so choose.
90. Both rule changes were implemented for institutional investors in 2021.<sup>37</sup> We believe that relaxing reporting requirements for retail investors requires even greater care than for institutional investors. HMT told us, however, that in consultations with investors and their representatives, and the Financial Conduct Authority under its consumer protection remit, all respondents supported the changes with the safeguards described above. **While these reassurances are welcome, we remain concerned about whether the consultation processes were sufficiently representative of the interests of consumers.**

### **Aviation Security (Amendment) (No. 2) Regulations 2022 (SI 2022/1313)**

91. This instrument will enable the implementation of parallel airport security screening regimes during a transitional phase. The Regulations revoke current arrangements based on retained EU law with effect from 31 January 2023 so that a new dual regime can be implemented under the domestic Aviation Single Consolidated Direction.<sup>38</sup> As well as maintaining equivalent levels of airport security, the revised Direction will also allow the tapered roll out of Next Generation Security Checkpoint (“NGSC”) equipment.

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37 Through the Markets in Financial Instruments (Capital Markets) (Amendment) Regulations 2021 (SI 2021/774), noted as an instrument of interest in SLSC, [9th Report](#) (Session 2021–22, HL Paper 45).

38 These Directions are issued by the Secretary of State under Part 2 of the Aviation Security Act 1982 to those members of the directed party with sufficient security clearance to ensure appropriate handling.

The NGSC equipment provides enhanced security screening capability and should enable faster screening of passengers, who will no longer be required to remove liquids and large electrical items, such as laptops, from their cabin baggage for screening. The Department for Transport states the aim is for all airports to have moved over to the NGSC equipment by June 2024.

**Official Controls (Extension of Transitional Periods) (Amendment) (England) Regulations 2022 (SI 2022/1374)**

92. Building on previous extensions,<sup>39</sup> this instrument extends further, until 31 January 2024, the temporary suspension of sanitary and phytosanitary (SPS) checks on imports from the European Economic Area (EEA) into England which would otherwise have been introduced from 1 January 2023. Specifically, the instrument suspends:
- the requirement for meat preparations, such as raw sausages or hamburgers, imported into England from the EEA and certain other territories<sup>40</sup> to be deep frozen, so that such meat can continue to be imported in a chilled condition;
  - import checks of personal goods in passengers' luggage (excluding plants for planting) and of small consignments of products which will not to be placed on the market; and
  - pre-notification requirements for goods which are produced in Northern Ireland or the Republic of Ireland and imported into Great Britain (GB) from the Republic of Ireland.
93. The Department for Environment, Food and Rural Affairs (Defra) says that the Scottish and Welsh Governments are taking forward equivalent legislation, so that the same rules will apply across GB. According to Defra, the further extension is needed while work is still underway on a Target Operating Model for a new regime of border import controls. Defra says that this new regime will apply equally to products from the EU and the rest of the world, with a "proportionate risk-based and technologically advanced approach to controls". Publication of the Target Operating Model and implementation timetable was originally scheduled for Autumn 2022, but Defra says that these will now be published early in 2023.
94. We note that ports and other businesses have already made significant investments to prepare for the anticipated introduction of import checks. Asked whether any support would be made available to businesses given the further delay in the introduction of these checks, Defra told us that: "We are aware that ports have invested their own money, recruited staff and made other preparations. We are working with them on a port-by-port basis, as well as engaging with representative bodies, to understand the implications of this decision for ports and the sector, and to address any issues or concerns they may have. This includes seeking to identify ways of preventing unnecessary additional capital cost and minimising ongoing costs."

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39 The last extension was implemented through the Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2022 (SI 2022/621), see: SLSC, [5th Report](#) (Session 2022–23, HL Paper 28).

40 The Faroe Islands, Greenland and Switzerland.

### **Civil Legal Aid (Immigration Interviews (Exceptions) and Remuneration) (Amendment) Regulations 2022 (SI 2022/1379)**

95. This instrument contains a number of measures relating to immigration legal aid. These include setting new fixed fees for advice on cases appealing to the asylum tribunal using an online system, and for advice on referrals into the National Referral Mechanism (NRM) for identifying victims of modern slavery. NRM referrals were made eligible for legal aid by the Nationality and Borders Act 2022. In a consultation, a large majority of respondents opposed the fixed fee approach on the bases that it could impact the quality of service offered and because civil legal aid fees have not risen since 2012. The Government are nevertheless proceeding and state that the standard fees offer “a fair remuneration package”, relate only to new services and will improve administration and forecasting.
96. The Regulations also include a new means of defining the immigration removal centres (IRC) at which legal aid can be provided under the Home Office’s Detained Asylum Casework (DAC) scheme, a fast-track process that expedites migrants through the asylum process if asylum is unlikely to be granted. Currently, legal aid is only available at three IRCs specified in legislation. The Regulations change this to any location that meets the statutory definition of an IRC. The Ministry of Justice (MoJ) says this will ensure legal aid provision is available in all IRCs in England and Wales if the DAC is extended to further centres. MoJ told us that a further three IRCs would currently fit the definition in the Regulations and that the Home Office may designate further centres in the future.

### **Voter Identification (Principal Area, Parish and Greater London Authority Elections) (Amendment) Rules 2022 (SI 2022/1397)**

97. These Rules implement the requirement to show photographic identification (photo ID), as set out in the Elections Act 2022, in relation to principal area local elections and parish elections in England as well as Greater London Authority elections (both Mayoral and Assembly).
98. We reported an earlier instrument<sup>41</sup> to the House which implemented the photo ID requirements for UK general elections. Our report criticised that guidance on how the new rules would be applied in practice had not yet been published, and that there was little time for a public awareness campaign and for local authorities to issue the new Voter Authority Certificate (“the Certificate”) for those who do not have an appropriate photo ID before the local elections in May 2023.
99. The Department for Levelling Up, Housing and Communities (DLUHC) told us that the Electoral Commission (EC) has now published guidance for Electoral Registration Officers (EROs),<sup>42</sup> while guidance for Returning Officers is to be completed at the end of January and the Polling Station Handbook is due to be published in March.
100. We note that the EC launched its national awareness campaign on 9 January to support the introduction of the new requirements, and that the new Local Authority Administration Portal (ERO Portal), through which all online

41 [Draft Voter Identification Regulations 2022](#). SLSC, [18th Report](#) (Session 2022–23, HL Paper 96).

42 Electoral Commission, ‘Voter Authority Certificates and Anonymous Elector’s Documents’: <https://www.electoralcommission.org.uk/running-electoral-registration-england/voter-authority-certificates-and-anonymous-electors-documents> [accessed 17 January 2023].

applications for the new Certificate will be made, is to go live on 16 January. While the Department is “confident” that Certificates will be issued to all those who apply successfully for one, we remain concerned, however, that there are only four months until the local elections. This leaves little time to reach those 4% of people who the EC estimates are eligible to vote but who may not have a recognised photo ID and who will therefore need to apply for the new Certificate to be able to vote.

## **INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE**

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### **Draft instruments subject to affirmative approval**

Draft	Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023
Draft	Nuclear Regulated Asset Base Model (Revenue Collection) Regulations 2023
Draft	Trade (Mobile Roaming) Regulations 2023

### **Made instruments subject to affirmative approval**

SI 2022/1331	Russia (Sanctions) (EU Exit) (Amendment) (No. 17) Regulations 2022
SI 2022/1367	Plant Health and Trade in Animals and Related Products (Amendment) Regulations 2022

### **Draft instruments subject to annulment**

Draft	Derby (Electoral Changes) Order 2023
Draft	Havant (Electoral Changes) Order 2023
Draft	Slough (Electoral Changes) Order 2023
Draft	Southampton (Electoral Changes) Order 2023

### **Instruments subject to annulment**

SI 2022/1297	Markets in Financial Instruments (Investor Reporting) (Amendment) Regulations 2022
SI 2022/1313	Aviation Security (Amendment) (No. 2) Regulations 2022
SI 2022/1326	Eligibility and Registration of General Practitioners and Specialist Medical Practitioners (Amendment) Order of Council 2022
SI 2022/1328	Local Authorities (Capital Finance and Accounting) (England) (Amendment) (No. 2) Regulations 2022
SI 2022/1341	Apprenticeships (Miscellaneous Provisions) (England) (Amendment) (No. 3) Regulations 2022
SI 2022/1370	Criminal Legal Aid (General) (Amendment) Regulations 2022
SI 2022/1371	Allocation of Housing and Homelessness (Eligibility) (England) and Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) (No. 4) Regulations 2022
SI 2022/1374	Official Controls (Extension of Transitional Periods) (Amendment) (England) Regulations 2022
SI 2022/1376	Legal Aid (Financial Resources and Contribution Orders) (Amendment) Regulations 2022
SI 2022/1378	Health and Safety and Nuclear (Fees) Regulations 2022

- SI 2022/1379 Civil Legal Aid (Immigration Interviews (Exceptions) and Remuneration) (Amendment) Regulations 2022
- SI 2022/1388 Architects (Fees, Electronic Communications and Miscellaneous Amendments) Regulations 2022
- SI 2022/1389 Register of Overseas Entities (Verification and Provision of Information) (Amendment) Regulations 2022
- SI 2022/1392 Education (Student Loans) (Repayment) (Amendment) (No.5) Regulations 2022
- SI 2022/1397 Voter Identification (Principal Area, Parish and Greater London Authority Elections) (Amendment) Rules 2022



## APPENDIX 1: EDUCATION (STUDENT LOANS) (REPAYMENT) (AMENDMENT) (NO. 4) REGULATIONS 2022 (SI 2022/1335)

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### Further information from the Department for Education

*Q1: Why are there different parameters for the different plan types? To take just one example, if £27,295 is the appropriate repayment threshold for Plan 2 loans, why is it not also appropriate for Plan 5? Is there any intention to harmonise features across the plan types over time?*

A1: The Government keeps the student finance system under continuous review to ensure that it delivers good value for both students and taxpayers. Reforms to student loan terms are periodically needed to ensure the system remains fair and sustainable within the wider economic context at the time of loan issue. Factors such as macroeconomic conditions, demographic trends and the participation rate in higher education must all be taken into account.

The reforms implemented by this instrument seek to ensure that the student finance system can continue to support broad access to higher education during a period when the number of 18-year-olds entering higher education is expected to increase significantly—a factor which will further increase demands on the public purse. The reforms also reflect the need to ensure that the student finance system remains sustainable in the tight fiscal context following the COVID-19 pandemic.

It is important to compare the terms of Plan 2 and Plan 5 loans in the round. While Plan 5 will ask graduates to repay for longer, and from a lower annual income threshold of £25,000, it also increases certainty for borrowers by reducing their interest rate to match inflation only.

There are no plans for further standardisation of loan terms across plan types, but the Government will continue to keep the entire student finance system, including repayment terms, under review to ensure that it remains sustainable.

*Q2: As I understand it, the Plan 2 interest rate is changing from earnings to a variable rate of between RPI and RPI+3%. Why is it appropriate for some people to face higher interest rates than others?*

A2: This instrument does not change interest rates for Plan 2 student loans; they remain at RPI+3% while a borrower is in study and, after leaving study, they vary between RPI+0% and RPI+3% dependent on the income of individual borrowers.

The interest rate for Plan 5 student loans, which will be issued to borrowers starting new courses from 1st August 2023 onwards, will be RPI only, both in and after study.

It is important to consider the interest rate(s) applicable to each loan plan in conjunction with the other repayment terms that also apply to that plan. While borrowers with Plan 5 loans will benefit from a reduction in their interest rate (relative to Plan 2) so that it matches inflation only, the Plan 5 repayment threshold is lower and the repayment term is longer than for Plan 2 loans.

Students who commenced courses on or after 1 September 2012 are subject to a protection whereby the student loan interest rate is capped if it would otherwise exceed the prevailing market rate for comparable commercial loans (that is, unsecured personal loans). As an example, the Government has confirmed that the maximum Plan 2 interest rate, as well as the Plan 3 interest rate, will be 6.5%

between 1 December 2022 and 28 February 2023—RPI applicable for the relevant period is 9%.

In this question you may also be querying the change to the mechanism by which the Plan 2 repayment threshold (that is, the annual income level above which student loan borrowers are required to make repayments) is adjusted annually. In 2018 legislation was passed to adjust the Plan 2 repayment threshold at the start of each financial year using a measure of the change in average earnings over the previous year. This resulted in the Plan 2 threshold increasing from £25,000 in financial year (FY) 2018–19 to £27,295 in FY2021–21. In February 2022, subsequent legislation was passed to keep the Plan 2 threshold at £27,295 for FY2022–23. This instrument maintains the Plan 2 threshold at this level for two further years, up to and including FY2024–25. Thereafter, it provides that annual adjustment of the Plan 2 repayment threshold will be based on RPI rather than average earnings.

The repayment threshold for Plan 1 loans is already adjusted annually by RPI. The repayment threshold for Plan 5 loans will be £25,000 in FY2026–27 (the first year in which borrowers on new Plan 5 terms will enter repayment status) and be adjusted annually by RPI thereafter.

*Q3: The EM says the instrument ensures that, for Plan 5 loans, “borrowers will not repay more over the lifetime of their loans than they originally borrowed when adjusted for inflation”. If this is a desirable policy goal for Plan 5 borrowers, why is it not equally so for all Plan 2 borrowers?*

A3: The aim of the reforms introduced by this instrument is to ensure that the student finance system is fair for taxpayers as well as graduates, and that it remains sustainable for the long term. Government has to balance these considerations. Lowering the interest rates applicable to Plan 2 and/or other existing plan types would be very costly for taxpayers given the size of the existing loan book—at the end of FY2021–22, the English higher education loan book totalled £181.6 billion, 78.6% of which can be ascribed to Plan 2 loans.

As noted in the answer to the previous question, it is also important to consider the repayment terms that apply to each student loan plan—the interest rate, repayment threshold, repayment term and so on - as a complete package. While current (Plan 2) loan borrowers will have higher interest rates than borrowers with new Plan 5 loans, Plan 2 borrowers will continue to benefit from a shorter term before any unpaid loan is written off (30 years compared to 40 years for Plan 5), and a higher annual earnings threshold before repayments are required (£27,295 compared to £25,000).

*Q4: Why was the RPI chosen as the measure of inflation? The UK Statistics Authority has said that “We have been clear that the RPI is not a good measure ... and have consistently urged all—in Government and the private sector—to stop using it”.*

A4: We have used the retail prices all items index (RPI), as published by the Office for National Statistics, as the inflation measure to ensure consistency with other student loan plan types, which are already linked to RPI.

The Office for National Statistics are reforming RPI in 2030, bringing the methods of the consumer prices index with housing costs (CPIH) into RPI. Annual RPI inflation has historically been around 1 percentage point higher than CPIH.

While linking student loan interest rates and the annual adjustment of repayment thresholds to CPIH sooner than 2030 would result in some borrowers repaying less in total over the lifetime of their loans (given, as mentioned above, CPIH tends to be lower than RPI and would therefore result in lower interest rates on student loans), monthly repayments would increase for borrowers, and some would pay more overall. This is because a CPIH annual adjustment to the Plan 2 and/or Plan 5 repayment thresholds would—again, given CPIH tends to be lower than RPI—result in smaller increases to these thresholds than RPI-based adjustments would (and monthly repayments are made at 9% of earnings over the repayment threshold).

*Q5: The Regulations introduce large increases in the overseas fixed instalment rates for various Plans, on the basis that there have been no increases for a number of years. Was any consideration given to smoothing these increases to avoid substantial overnight jumps in payments?*

A5: Overseas borrowers who are repaying or accruing arrears at the overseas fixed instalment rates are doing so only because they have failed to provide the Student Loans Company (SLC) with details of their expected earnings. This is in breach of the terms and conditions that all borrowers agree to when first taking out a student loan. Any overseas borrower can avoid repaying via the fixed instalment rate by supplying details of their expected income to the SLC, as is required in the terms and conditions.

Without details of an overseas borrower's expected earnings, the SLC cannot calculate a repayment plan for them. This is necessary as, unlike UK-based borrowers, they cannot repay via the UK tax system. Normally - i.e. where an overseas borrower provides the required information about their expected income - the SLC calculate a figure that results in the borrower repaying 9% (or 6% for a Plan 3 loan) of their expected earnings over the relevant repayment threshold, as is the case for borrowers living in the UK.

Prior to the changes made by this instrument, the fixed overseas instalment rates had not been increased since their introduction in 2012 (for Plan 2 loans) and 2016 (for Plan 3 loans). Consequently, a perverse incentive had arisen for high-earning overseas borrowers not to submit their earnings information to the SLC, as withholding this information keeps their monthly repayment amounts lower than they should be for their earnings level. It is possible that a proportion of overseas borrowers are currently choosing not to submit details of their expected income to the SLC and are instead opting to repay at the overseas fixed instalment rate for this reason. Such overseas borrowers are repaying less than borrowers in the UK with an equivalent earnings level.

Our aim in updating the overseas fixed instalment rates for Plan 2 and Plan 3 loans is to remove the perverse incentive for borrowers overseas not to submit their earnings information to SLC, to better ensure all borrowers repay at an equivalent rate.

*Q6: Are there any provisions to automate how the overseas fixed instalment rate will change over time, or will it still be subject to ad hoc increases? If the latter, what is the justification for not providing for automatic, predictable increases?*

A6: Provisions are included within this instrument to provide for an annual calculation of the overseas fixed instalment rate for Plan 2, 3 and 5 loans. This calculation will be based on a country-adjusted equivalent of the repayments a

borrower earning twice the median working age graduate salary in England would make under the relevant loan terms.

*Q7: Did the February 2022 consultation (feedback not yet published) cover the changes in the instrument or was it entirely focused on other areas of Higher Education reform? If it does cover the changes in the instrument, could you please provide a summary of responses in this area?*

A7: The changes to student loan repayment terms introduced by this instrument were set out in the Higher education policy statement & reform consultation, published on 24 February 2022. The first part of this document is a policy statement that provides a clear direction for higher education funding and finance. It outlines the significant additional investment the government is making in the system and details the changes to student loan repayment terms—now introduced by this instrument—that will rebalance the system to help ensure sustainability and value for money for taxpayers as well as graduates.

There is no statutory requirement to consult on changes to student loan terms, and the February 2022 consultation did not consult on these policy changes. However, the loan reforms build on recommendations made in the report of the independent panel to Government’s Review of Post-18 Education and Funding, which included a public call for evidence.

*Q8: Members of the Committee are likely to be aware of commentary (for example, by the Institute for Fiscal Studies (IFS)) that the reforms will increase repayments for lower-middle earners and reduce repayments for higher earners. How did you assess the distributional impact and fairness of the changes?*

A8: The impacts of the changes introduced by this instrument on the amount borrowers will repay were explored in detail in the equality impact assessment (EIA) that was published alongside the loan reform announcement on 24 February 2022.

As stated in the EIA, the student loan repayment system under Plan 5 will remain progressive overall, with repayments still generally being positively correlated with lifetime earnings - as is the case under current (Plan 2) loan terms.

Table 22 in the EIA (pages 50-51) shows the impact of introducing Plan 5 on lifetime repayments by borrower lifetime earnings decile, relative to a baseline in which the reforms in this instrument were not implemented. While lifetime repayments will increase for earnings deciles one to eight, and decrease for deciles nine to ten (the highest earners), each decile will still repay more in absolute terms than the one below it (ordered by increasing income). The highest earners will still make the largest individual contributions to the system overall, and the lowest earners will still be required to contribute the least.

*Q9: What modelling have you done to assess how students and potential students will change their behaviour as a result of the reforms?*

A9: The EIA for the student loan reforms considered in detail the evidence on how student finance influences student participation decisions (see pages 42-47 in particular). In brief, we do not consider that the changes to student loan repayment terms introduced by this instrument are sufficient to induce significant behaviour changes or deter participation in either higher education or the labour market.

While there is evidence to indicate that some groups of higher education students are more debt-averse and concerned about costs than others (including students who: are aged 20 or older; are from ethnic minorities; are single parents; have a disability or health condition; and/or are from disadvantaged backgrounds), previous reforms to student finance that increased the cost share of study to students have not stood in the way of increases in participation. This includes the introduction of £9,000 fees and Plan 2 repayment terms in 2012, and the replacement of maintenance grants with increased maintenance loans in 2016.

Indeed, overall participation in higher education by age 19 continues to be at record levels, with increases since 2012 across the protected groups for which reliable data is available. In 2022, 18-year-olds from disadvantaged backgrounds were 86% more likely to go to university than in 2010. This can be interpreted as reflecting that student finance terms generally play a secondary role in individuals' decision to go on to higher education.

*Q10: The Augar Review, to which these reforms form part of the response, recommended combining changes to the loan system with protections for low-income families such as reinstating a maintenance grant. Why was this element of the review not implemented?*

A10: In designing the package of reforms implemented by this instrument, Ministers and officials carefully considered all of the Augar panel's recommendations, including those on maintenance support. The Government remains of the view that income-contingent loans are the fairest and most sensible way of financing higher education, and that those who benefit from the system should make a fair contribution to its costs.

The switch from maintenance grants to loans in 2016 has not stopped people going into higher education. As noted previously, in 2022, 18-year-olds from disadvantaged backgrounds were 86% more likely to go to university than in 2010. The Government has continued to increase maximum loans for living costs on an annual basis, with a further 2.3% increase for the 2022/23 academic year.

The current system of loans for living costs targets the most support at students from the lowest income families who need it most, while ensuring that the student finance system remains financially sustainable.

Additionally, the Government continues to provide means-tested non-repayable grants to low-income full-time students with children and/or adults who are financially dependent on them, plus Disabled Students' Allowance (DSA) to assist disabled students with additional costs they may face due to their disability. DSA is not means tested, does not have to be repaid, and is available to full-time and part-time students at undergraduate and postgraduate level.

Eligible pre-registration nursing, midwifery and many allied health profession students can also benefit from at least £5,000 in non-repayable grant funding each year. This can increase by an additional £3,000 for those with childcare costs or for specialisms struggling to recruit.

*Q11: The Equality Impact Assessment (pp 16 and 48-9) found that the changes are likely to negatively affect groups such as women, lower earners, those from disadvantaged backgrounds, younger borrowers, those from certain geographical areas and possibly the disabled. In formulating the policy, what consideration was given to wider Government goals such as levelling up and the reduction of existing inequalities?*

A11: The Government is committed to levelling up and true social mobility. Our wider proposed reforms to higher education, discussed in the higher education policy statement & reform consultation, aim to ensure students are doing courses that give them the skills and knowledge to move into high-value employment that benefits both them and our dynamic economy.

In conjunction, the student finance system will continue to help remove financial barriers to undertaking higher education, while providing a range of unique protections to borrowers. Students will not be required to make any repayments until at the end of the financial year in which either: the borrower ceases to be eligible for financial support; the borrower leaves their course; or, in the case of loans in relation to part-time and doctoral courses, the fourth anniversary of their course start date occurs. Graduates who earn less than the repayment threshold (£25,000 for Plan 5 loans, £27,295 for Plan 2 loans) will not be required to make any repayments at all. And at the end of the loan term (40 years for Plan 5 or 30 years for Plan 2), any outstanding loan debt, including interest accrued, will be written off at no detriment to the borrower. No commercial loans offer this level of protection.

*Q12: Where a borrower's terms change from what was expected in the course of their loan - for example, because the repayment threshold is frozen or because the threshold is adjusted by a different index - what communications do they receive to inform them about the change? For example, would every borrower receive a letter or email setting out the changes in clear, plain language?*

A 12: Any changes to the legislation governing student loans are first announced by the Government to Parliament. For the changes to repayment terms in February 2022, the announcement was made via an Oral Statement<sup>43</sup> and Written Ministerial Statement<sup>44</sup> (WMS) in the Commons, and a WMS<sup>45</sup> in the Lords. This was accompanied by a stakeholder- and public-facing policy statement.<sup>46</sup>

Following their announcement, changes to student loan terms are generally extensively reported on by the media, and widely communicated via multiple official channels:

- Loan terms that are subject to change, such as repayment thresholds and interest rates, are confirmed in advance of coming into force by the Student Loans Company (SLC) on GOV.UK. For example, this announcement<sup>47</sup> confirmed the interest rates that will apply to different loan plans from September 2022, and the repayment thresholds that will apply from April 2023.
- The SLC further disseminate information on any changes to loan terms via their Student Finance England (@SF\_England) and Student Loans Company Repayment (@SLC\_Repayment) social media accounts on Twitter<sup>48</sup> and Facebook.<sup>49</sup>

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43 HC Deb, [Higher Education Reform](#), 24 February 2022.

44 [Higher Education Update](#), HCWS630, 24 February 2022.

45 [Higher Education Update](#), LWS619, 24 February 2022.

46 DfE, [Higher education policy statement & reform consultation](#), 24 February 2022.

47 Student Loans Company, [Student Loans Interest Rates and Repayment Threshold Announcement](#), 10 August 2022.

48 See: [https://twitter.com/slc\\_repayment?lang=en](https://twitter.com/slc_repayment?lang=en).

49 See: <https://www.facebook.com/SLCRepayment/>.

- The Department for Education Twitter account and blog are similarly used to publicise changes to loan terms, e.g. these blog posts (1<sup>50</sup>, 2<sup>51</sup>) and Tweets (3<sup>52</sup>, 4<sup>53</sup>).
- Information on current student loan terms, including repayment thresholds and interest rates, is also provided on the Student Finance<sup>54</sup> pages of GOV.UK. This content is kept under constant review, and is written in a clear, accessible format aimed at existing borrowers, prospective students and their parents/guardians. It includes information on repayment thresholds and interest rates, and explains various aspects of loan policy, such as: how a borrower can determine what loan plan they are on; and how loan repayment works in practice (including various worked examples).

Student loan borrowers can also log into their SLC online account at any time to view information about their outstanding loan balance and repayments. This includes targeted information on the repayment threshold(s) and rate(s) that are applicable to individual borrowers.

Given the various ways in which information on any changes to student loan terms is publicised, the SLC do not routinely write to borrowers for this purpose. However, there is an exception for overseas borrowers, whose monthly repayment amounts are fixed in advance of a new financial year starting – and for whom information on loans may not be as easily accessible. Such borrowers receive an annual ‘Overseas Repayment Schedule Letter’, typically in February/March, which confirms their repayment schedule for the coming year.

Student loan terms and conditions (T&Cs) make clear that the conditions of the loan may change in line with the regulations that govern the loans. Students must sign these T&Cs before any money is paid to them (or, in the case of tuition fee loans, paid to higher education providers on their behalf). Loan T&Cs also make clear that students must themselves make sure that they have the most up-to-date version of their terms – which are updated and published annually<sup>55</sup> by the SLC – to ensure that they are aware of any changes.

## 6 and 19 January 2023

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50 See: <https://educationhub.blog.gov.uk/2022/01/28/2022-2023-student-loan-repayment-thresholds-confirmed/>.

51 See: <https://educationhub.blog.gov.uk/2022/02/24/get-the-facts-about-student-loan-reform/>.

52 See: <https://twitter.com/michelledonelan/status/1496868078726094857>.

53 See: <https://twitter.com/michelledonelan/status/1496890738004697090>.

54 See: <https://www.gov.uk/education/student-loans-bursaries-and-sponsorship>.

55 See: <https://www.gov.uk/student-finance-register-login>.

**APPENDIX 2: EDUCATION (STUDENT LOANS) (REPAYMENT)  
(AMENDMENT) (NO. 4) REGULATIONS 2022 (SI 2022/1335)**

**Further information from the Department for Education**

*Summary of main terms of Plans 1–3 pre- and post-reform, and of Plan 5*

**Loan terms in shaded cells remain unchanged by the Regulations.**

<b>Plan</b>	<b>Plan 1</b>	<b>Plan 2</b>	<b>Plan 3</b>	<b>Plan 5</b>
<b>Term</b>				
Issued to	English and Welsh students who started an eligible course between 1 September 1998 and 1 September 2012.  Northern Irish students who started an eligible course from 1 September 1998 onwards.	Currently: English and Welsh students who started (or start) an eligible course from 1 September 2012 onwards.  Post-reform: English students who started (or start) an eligible course between 1 September 2012 and 31 July 2023 (Plan 2 loans will continue to be issued to Welsh students after 31 July 2023).	English and Welsh students who started (or start) an eligible postgraduate master's degree course from 1 August 2016 onwards and/or an eligible doctoral degree course from 1 August 2018 onwards.	Currently: N/a  Post-reform: English students who start an eligible course from 1 August 2023 onwards.
Interest rate(s)	RPI or the Bank of England base rate plus 1%, whichever is lower.	During study = RPI+3%  Post-study = RPI+0-3%variable depending on salary.	RPI+3% during and after study.	Currently: N/a  Post-reform: RPI only during and after study.
Date interest is accrued from	Interest is added to a borrower's loan from the day when they receive their first loan payment.			



Plan	Plan 1	Plan 2	Plan 3	Plan 5
Term				
Statutory Repayment Due Date (SRDD)	The SRDD—that is, the date from which a borrower is required to make repayments towards their loan, providing they are earning over the relevant repayment threshold - falls at the end of the financial year in which either: the borrower ceases to be eligible for financial support; the borrower leaves their course; or, in the case of loans in relation to part-time and doctoral courses, the fourth anniversary of their course start date occurs.			Currently: N/a Post-reform: The first SRDD for Plan 5 loans will be in April 2026. From this date onwards, SRDD arrangements will function in the same way as those for other loans.
Repayment threshold (including annual adjustment mechanism)	£20,195, adjusted annually by RPI. Will increase to £22,015 in FY2023–24	Currently: £27,295 for FY2022–23, then adjusted on 6 April 2023 (and annually thereafter) by average earnings. Post-reform: £27,295 up to and including FY2024–25, then adjusted on 6 April 2025 (and annually thereafter) by RPI.	£21,000	Currently: N/a Post-reform: £25,000 in FY2026–27 (the year the first Plan 5 borrowers will be required to make repayments), then adjusted on 6 April 2027 (and annually thereafter) by RPI.

<b>Plan</b>	<b>Plan 1</b>	<b>Plan 2</b>	<b>Plan 3</b>	<b>Plan 5</b>
<b>Term</b>				
Term before any unpaid loan is written off	Any unpaid loan written off at age 65 for borrowers who took out a loan up to and including academic year (AY) 2005/06.  25 years after SRDD if the loan was taken out during or after AY2006/07.	30 years after SRDD	30 years after SRDD	Currently: N/a  Post-reform: 40 years after SRDD
Repayment rate	9% above the repayment threshold	9% above the repayment threshold	6% above the repayment threshold	Currently: N/a  Post-reform: 9% above the repayment threshold
Overseas fixed instalment rate (monthly)	£246 (under review)	Currently: £201  Post-reform: £335	Currently: £201  Post-reform: £255	Currently: N/a  Post-reform: £352

Source: Provided by the Department for Education in correspondence with the Committee, 6 January 2023.

### APPENDIX 3: INTERESTS AND ATTENDANCE

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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 17 January 2023 and included in this report, Members declared the following interests.

#### Markets in Financial Instruments (Investor Reporting) (Amendment) Regulations 2022 (SI 2022/1297)

Lord De Mauley

*Is a retail investor*

Lord Hutton of Furness

*Is a retail investor*

Lord Hodgson of Astley Abbotts

*Chair of a regulated firm and an approved person*

The Earl of Lindsay

*Is a retail investor*

Lord Lisvane

*Chair of the Skinners' Company Charitable Foundation*

#### Draft Environmental Targets (Biodiversity) (England) Regulations 2022 and five related instruments

Lord De Mauley

*Farmland and other property in Oxfordshire and Gloucestershire, including residential properties*

*Controlling interest in a commercially operated lake in West Oxfordshire*

Lord Hodgson of Astley Abbotts

*Chairman of a family investment company with farmland investments*

#### Education (Student Loans) (Repayment) (Amendment) (No.4) Regulations 2022 (SI 2022/1335)

Lord German

*Children with student loans*

Lord Hutton

*Children with student loans*

The Earl of Lindsay

*Children with student loans*

#### Draft Nuclear Regulated Asset Base Model (Revenue Collection) Regulations 2023

Lord Hutton

*Chairman and Non-executive Director, GMET Nuclear Ltd (nuclear services and development company)*

#### Attendance:

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