HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

30th Report of Session 2022–23

Drawn to the special attention of the House:

Draft Occupational Pension Schemes (Administration, Investment, Charges and Governance) and Pensions Dashboards (Amendment) Regulations 2023

Education (Student Fees, Awards and Support) (Amendment) Regulations 2023

Correspondence: Inaccurate information from the Department of Health and Social Care

Includes information paragraphs on:

Draft Criminal Justice Act 2003 (Home Detention Curfew) Order 2023

Draft Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2023

Criminal Legal Aid (Remuneration) (Amendment) Regulations 2023

Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) Order 2023

Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) (No. 2) Order 2023

Market Measures Payment Schemes (Amendments, Revocation and Transitional Provision) (England) Regulations 2023

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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

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Baroness Harris of Richmond
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Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Committee's Reports are published on the internet at https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/

Committee Staff

The staff of the Committee are Christine Salmon Percival (Clerk), Philipp Mende (Adviser), Chris Smith (Adviser), Jane White (Adviser) and Glenn Chapman (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.

Thirtieth Report

CURRENT LEVEL OF CORRECTIONS IN STATUTORY INSTRUMENTS

1. Given the House's current consideration of the Retained EU Law (Revocation and Reform) Bill, including the capacity of, and the pressures on, the civil service to deliver so extensive a programme of secondary legislation, we draw the following features of instruments we have considered this week to the attention of the House:

    - SI 2023/117 immediately revokes and replaces SI 2023/116 because figures in that instrument were not specified but referred to as "£X" and "X%";
    - SI 2023/131 comes into immediate effect to correct a recent instrument, SI 2023/28, because its commencement provisions were incorrectly drafted so that all regulations would commence on 10 August 2024, whereas the policy intention was for most provisions to come into effect on 10 February 2023 with only regulation 6(2) commencing on 10 August 2024.
    - The draft Occupational Pension Schemes (Administration, Investment, Charges and Governance) and Pensions Dashboards (Amendment) Regulations 2023 correct another recent instrument, SI 2022/1220, because a threshold was incorrectly stated as "10,999–19,999", whereas it should have been "10,000–19,999".

2. These changes are not amendments to the policy but the correction of simple errors: **of the 23 instruments we have considered this week, eight (35%) bear the heading that the instrument is issued free of charge because it corrects an error in a previous instrument.**

3. These are arguably minor corrections, but they demonstrate officials under pressure and bring into doubt the adequacy of departmental quality control processes.

4. We also draw the House's attention to the correspondence with the Department of Health and Social Care, published in this report, about inaccurate information provided to this Committee.

DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Occupational Pension Schemes (Administration, Investment, Charges and Governance) and Pensions Dashboards (Amendment) Regulations 2023

Date laid: 30 January 2023

Parliamentary procedure: affirmative

The main thrust of the Regulations is to create a more level playing field so that all pension schemes with more than 100 members have to disclose the scheme's investments by class in relevant documents, and, from 6 April 2023, separately identify illiquid assets in that information. These Regulations also seek to remove a barrier to pension schemes investing in illiquid assets by excluding "specified performance-based fees" from the list of charges that fall within the 0.75% regulatory charge cap. "Illiquid assets" covers a wide range of investments (for example art, buildings, intellectual property), some with significant risks. We are concerned that without limits on the proportion of such assets within a pension scheme, the scheme may not be able to deliver the returns members anticipate, many of whom may be auto-enrolled by their employer and therefore have no involvement in the choice of their pension scheme investments. As the fee changes made by these Regulations aim to encourage pension schemes to increase their investment in illiquid assets, ***the House may wish to ask the Minister how schemes' subsequent exposure to an increased risk of lower, as well as higher, returns is to be monitored and how trustees are to be properly guided on assessing the risks to the portfolio.***

These 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.

5. The main thrust of the Regulations is to create a more level playing field so that all pension schemes with more than 100 members have to disclose the scheme's investments by class in relevant documents, and, from 6 April 2023, that information will include illiquid assets separately identified. Illiquid assets are ones which cannot easily be sold or exchanged for cash (for example art, buildings, intellectual property). Illiquid assets encompass a wide range of investments and a varying range of risk and returns.

6. Paragraph 7.2 of the Explanatory Memorandum (EM) states that the Government wishes to encourage pension schemes to invest in illiquid assets like renewable energy projects, other infrastructure and UK start-up businesses as this will help contribute to economic growth, in particular in sectors that can help with the transition to net zero.

(a) Specifically, this instrument:

- amends the *Occupational Pension Schemes (Investment) Regulations 2005*[1] to require schemes to include an explanation of their policy about investing in illiquid assets in their Statement of Investment Principles;
- amends the *Occupational Pension Schemes (Scheme Administration) Regulations 1996*[2] to require trustees or managers of occupational

1 The Occupational Pension Schemes (Investment) Regulations 2005 (SI 2005/3378).
2 The Occupational Pension Schemes (Scheme Administration) Regulations 1996 (SI 1996/1715).

money purchase schemes to report on specified performance-based fees incurred by the scheme and on the different classes of assets in which they invest in their annual chair's statement; and

- provides that from 6 April 2023 "specified performance-based fees" will fall outside of the regulatory charge cap calculation.

Excluding charges from the cap

7. Certain pension schemes used by employers to meet their automatic enrolment duties are subject to a cap on the charges which may be borne by scheme members of 0.75% of the funds under management within the default arrangement. The cap applies to all scheme and investment administration charges, excluding transaction costs and a small number of other specified costs and charges.

8. Paragraph 7.1 of the EM states that it is the Government's priority to explore ways to help facilitate greater investment by UK institutional investors in illiquid assets, because of their potential to deliver higher long-term returns to investors as part of a diversified investment portfolio. The Department for Work and Pensions (DWP) adds that the Pension Charges Survey 2020 showed two-thirds of defined contribution occupational pension schemes had no direct investment in illiquid assets in their default funds and that meeting the cap on charges was a significant barrier to such investment.

9. These Regulations address that barrier by excluding "specified performance-based fees" from the list of charges that fall within the regulatory charge cap. Regulation 2 states:

> ""specified performance-based fees" means fees, profit-sharing arrangements, or any part of fees or profit-sharing arrangements, which are—[…]
>
> (b) calculated only by reference to investment performance, whether in terms of the capital appreciation of the managed investments, the income produced by the managed investments or otherwise;
>
> (c) only payable when—
>
> (i) investment performance exceeds a pre-agreed rate, which may be fixed or variable; or
>
> (ii) the value of the managed investments exceeds a pre-agreed amount;
>
> (d) calculated over a pre-agreed period of time […]."

10. In supplementary information DWP said that the Regulations do not prescribe what that pre-agreed rate or amount has to be. Since producing the EM, DWP has now published the statutory guidance,[3] which states that the rate or amount is for the trustees or managers of the scheme, with support from their advisors, and the fund manager to agree based on the nature of the investment proposed. DWP also stated that:

3 Department for Work and Pensions (DWP), 'Statutory guidance' (January 2023): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1131782/Statutory-guidance-final.pdf [accessed 22 February 2023].

> "when investing without the full security of the charge cap, trustees and managers are also advised to seek professional advice on, for example, what is an appropriate hurdle rate for the investment proposed and should also consider the application of mechanisms such as a high-water mark[4] or a fee cap to ensure fund managers are not taking excessive risk or being paid repeatedly for the same level of performance."

Increased risk?

11. "Illiquid assets" covers a wide range of assets that tend to have a niche market, and some of them may be harder to sell profitably at short notice—this can imply greater risk. So we asked DWP what happens if the illiquid asset makes a significant loss. Although there will be no charges to the fund members, there will also be less return to the fund—so presumably a risk of lower pension payments to the members.

12. DWP responded:

> "Illiquid assets are considered a good fit for pension schemes as generally longer term investments they can offer the potential of positive returns as their value grows in time and reduces the impact of inflation. Ultimately, whether these are suitable investments for pension schemes is a matter for trustees in line with their fiduciary duty to manage "risk and reward" in their members' best interest. This includes whether an investment in their assessment is expected to lead to additional value that outweighs the expected costs to members."

13. Because certain illiquid assets are higher risk, we asked whether there is any mechanism within this instrument to prevent a pension scheme being wholly or totally funded by illiquid assets.

14. DWP responded that:

> "Regulation 4 of the Occupational Pension Schemes (Investment) Regulations 2005 (SI 2005/3378) sets out the rules that pension scheme trustees (in line with their fiduciary duty) must comply with when exercising their powers of investment. While they do not categorically state where proportions of investments should go they do require trustees to invest in the best interests of members, see regulation 4(2), and in a manner calculated to ensure appropriate liquidity (cash or an asset that you can quickly convert into cash at a reasonable price), see regulation 4(3), and adequate diversification of the investment portfolio–see regulation 4(7)."

Conclusion

15. One objective of this instrument is to provide clear information on the proportion of the portfolio dedicated to different classes of assets. Another is to encourage pension schemes to make greater use of illiquid assets; however, that covers a wide range of investments, some with significant risks, some with significant returns. We are concerned that without limits on the proportion of such assets within a scheme, it may not be able to deliver the returns scheme members anticipate, many of whom may be auto-enrolled by their

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4 High water mark—ensures that the fund manager only receives performance-based fees for generating additional levels of performance. This avoids an investor paying performance-based fees repeatedly on the same level of performance during periods of volatility.

employer and therefore have no involvement in the choice of their pension scheme's investments. **As the fee changes made by these Regulations aim to encourage pension schemes to increase their investment in illiquid assets, the House may wish to ask the Minister how pension schemes' subsequent exposure to an increased risk of lower, as well as higher, returns is to be monitored and how trustees are to be properly guided about assessing the risks to the portfolio.**

16. We also draw attention to the current concerns about liability-driven investing, which triggered emergency calls for collateral from pension funds last autumn. The need to raise cash quickly meant funds had to sell other assets like property, often at a significant discount, which is where an over-reliance on illiquid assets can cause problems. The House of Common's Work and Pensions Committee is currently conducting an enquiry into the matter.[5] Lord Hollick, Chair of the House of Lords' Industry and Regulators Committee, also wrote to HM Treasury on 7 February 2023 calling for greater liquidity buffers in pension schemes.[6]

17. We note the statutory requirements for trustees to invest in scheme members' best interests but if that legislation were sufficient there would not be so many insolvent pension schemes now reliant on the Pension Protection Fund. **We have also commented previously on the complexity of the legislation that trustees are now required to deal with and this legislation adds yet another layer.** [7]

5 House of Commons Work and Pensions Committee, 'Call for evidence: Defined benefit pensions with Liability Driven Investments': https://committees.parliament.uk/call-for-evidence/3042/ [accessed 21 February 2023], open until 3 March 2023.

6 Letter from Lord Hollick, Chair of the Industry and Regulators Committee to Andrew Griffith MP, Economic Secretary to the Treasury and Laura Trott MP, Parliamentary Under Secretary of State (Minster for Pensions) on the use of Liability Driven Investment strategies by pension funds, 7 February 2023 https://committees.parliament.uk/publications/33855/documents/185115/default/

7 See for example Draft Occupational Pension Schemes (Governance and Registration) (Amendment) Regulations 2022 in SLSC, 6th Report (Session 2022–23, HL Paper 31), p 5, and Occupational Pension Schemes (Climate Change Governance and Reporting) (Amendment, Modification and Transitional Provision) Regulations 2022 (SI 2022/733) in SLSC, 10th Report (Session 2022–23, HL Paper 56), p 12.

Education (Student Fees, Awards and Support) (Amendment) Regulations 2023 (SI 2023/74)

Date laid: 26 January 2023

Parliamentary procedure: negative

Amongst other measures, these Regulations increase the maximum amount of student loans to cover living costs by 2.8% in 2023–24, following similar increases in the previous two years. Though in line with inflation forecasts at the time, the earlier upratings have proved to be significantly below actual inflation, leading to real-term reductions in income for students. The Department itself has said this will have a "negative impact", although fully mitigating the shortfall would have significant implications for the public purse. The House may wish to enquire further about the extent and implications of this negative impact. We also raise questions about aspects of the uprating methodology and encourage the Department to consider whether any improvements could be made. Finally, we regret that important information to assist with scrutiny of the Regulations was only made available after the instrument had been laid. ***The House may wish to enquire further about the extent and implications of this negative impact.*** *We also raise questions about aspects of the uprating methodology and* ***encourage the Department to consider whether any improvements could be made.*** *Finally, we regret that important information to assist with scrutiny of the Regulations was only made available after the instrument had been laid.*

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

18. These Regulations introduce a range of changes to financing for students in higher and further education. Amongst these changes are the annual increases in the maximum amount of further education maintenance loans, intended to cover living costs. Students can also apply for loans to cover tuition fees, but these are not the subject of this instrument.

19. The Department for Education (DfE) has said that the rationale for the Government providing loans and grants to students is that without Government intervention a lack of access to finance would represent a barrier to participation in higher and further education.[8] DfE concluded that without state assistance, only those students who could fund the costs of their studies through private means would be able to participate in higher education.

Upratings not keeping up with past and current inflation

20. The Regulations provide that maximum maintenance loans will increase by 2.8% in 2023–24 compared with 2022–23. DfE states that this is based on the Office for Budget Responsibility's (OBR) forecast for the rate of inflation for the first quarter (Q1) 2024, being roughly mid-way through the 2023–24 academic year, and that the inflation index used was the Retail Prices Index Excluding Mortgage Interest Costs (RPIX).

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8 Department for Education, 'Higher education student finance for the 2023 to 2024 academic year: Equality Impact Assessment': https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1133802/Equality_Analysis_HE_Student_Finance_Regulations_2023–2024_.pdf [accessed 8 February 2023].

21. The OBR's latest forecast for RPIX in Q1 2024 is indeed 2.8%.[9] We note that this uprating follows increases of 3.1% for 2021–22 and 2.3% for 2022–23[10] based on inflation forecasts at the times the upratings were announced. In fact, however, the annual inflation rate measured by RPIX has been over 5% since October 2021 and well over 10% since May 2022.[11] Inflation on the more usually cited measure, the Consumer Price Index (CPI), has been slightly lower but has still been above 10% in recent months.[12] **We note, therefore, that loans designed to cover living costs have failed to reflect the rapid rises in the cost of living since late 2021.**

22. In its Equality Impact Assessment (EIA), published shortly after the instrument was laid, DfE recognised this issue, stating that "increases in maximum loans and grants for 2021–22 and 2022–23 have not maintained their value in real terms".[13] This is despite the EIA describing the rationale for an annual uprating as being "to ensure that students do not suffer a real reduction in their income". As a result, **DfE concluded that "these proposed changes will overall have a negative impact for students".**

23. The EIA reported several estimates of the extent to which students' purchasing power has reduced since 2020–21:

- The 2021–22 and 2022–23 upratings left maximum loans 18.5% below where they would have been had they risen by the actual RPIX rates in those years.
- Based on the CPI, a 13.7% uplift would be required in 2023–24 to restore the real value of loans to their level in 2020–21.
- The EIA referred to a report by the Institute for Fiscal Studies that found the value of loans has been reduced by more than £1,000 in real terms compared to 2020–21.[14]

24. We asked the Department why the uprating is considered adequate, given the erosion in the real-terms value of loans. DfE replied:

> "The 2.8% increase in loans and grants for living and other costs for 2023–24 was announced alongside other measures to ease cost of living pressures for students. The Government has announced that it will provide an additional £15 million in hardship funding this financial year so that universities can provide extra support to students that need it most. This builds on the £261 million funding that the government has

9 Office for Budget Responsibility (OBR), 'Economic and Fiscal Outlook: November 2022': https://obr.uk/efo/economic-and-fiscal-outlook-november-2022/ [accessed 7 February 2023], Supplementary Economy Tables 1.7.

10 Implemented by the Education (Student Fees, Awards and Support etc.) (Amendment) (No. 3) Regulations 2020 (SI 2020/1203) and the Education (Student Fees, Awards and Support) (Amendment) (No. 3) Regulations 2021 (SI 2021/1348).

11 Office for National Statistics, 'RPI All Items Excl Mortgage Interest (RPIX): Percentage change over 12 months': https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/cdkq/mm23 [accessed 8 February 2023].

12 Office for National Statistics, 'CPI annual rate 00: All items 2015=100': https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7g7/mm23 [accessed 31 January 2023].

13 Department for Education, 'Higher education student finance for the 2023 to 2024 academic year: Equality Impact Assessment': https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1133802/Equality_Analysis_HE_Student_Finance_Regulations_2023-2024_.pdf [accessed 8 February 2023].

14 Institute for Fiscal Studies, 'Cost-of-living crisis to hit students harder than expected': https://ifs.org.uk/news/cost-living-crisis-hit-students-harder-expected [accessed 8 February 2023].

already provided to the Office for Students for the 2022–23 academic year which universities can draw upon to boost their own hardship funds. In addition, students will benefit in 2023–24 from fees being frozen for a sixth consecutive year."

25. The hardship funding for 2022–23 benefits from a "one-off reallocation" of £15 million[15] but is otherwise unchanged in nominal terms from 2021–22.[16] The £276 million of hardship support compares with total student maintenance loans of around £8 billion per year.[17] **We conclude that the mitigating actions outlined by Department will not compensate for the loss in the real value of maintenance loans**.

Implications for the public purse

26. Higher levels of maximum student loans lead to higher costs for taxpayers because not all of the loans are paid back. DfE provided us with estimates of the implications for the public finances of alternative possible approaches to the 2023–24 uprating. The estimates (the so-called Resource Accounting and Budgeting (RAB) charge) are in present value terms (in other words, discounting future streams of income and costs to a single figure):

- The planned 2.8% increase costs £90 million in 2023–24 and £120 million in 2024–25 compared to freezing the level of undergraduate loans in cash terms.
- An 18.5% increase, to counter the real terms losses in 2021–22 and 2022–23 based on RPIX, would cost an additional £560 million in 2023–24, rising to £810 million in 2024–25.
- A 13.7% increase in 2023–24, to restore loans to their 2020–21 level in real terms based on the CPI, would cost an additional £420 million in 2023–24 and £590 million in 2024–25.

27. **By choosing not to mitigate the "negative impact" on students that it has acknowledged, the Department is avoiding large additional costs for the taxpayer**. We note that this instrument follows another, which reformed the system by which student loans are paid back, which we drew to the special attention of the House in January 2023.[18] In that report we noted that the reforms generated savings to the taxpayer by increasing the amount that most borrowers pay back.

Effect of the 2023–24 uprating

28. Returning to the 2023–24 uprating, the EIA stated that the 2.8% increase "will likely lead to a further erosion of students' purchasing power". The Department said this was against a background in which half of all students are already reporting "financial difficulties", with some taking out extra credit because their student loan was not enough to support their living costs. The EIA found that groups including women, mature students, those

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15 HC Deb, 11 January 2023, HCWS491 (Commons Chamber).

16 Office for Students, 'Funding for academic year 2022–23': https://www.officeforstudents.org.uk/media/eea64c40-100d-4249-af07-cb3645f51d9b/funding_for_2022–23-_ofsdecisions.pdf [accessed 21 February 2023], p 8.

17 Student Loans Company, 'Student support for higher education in England 2022': https://www.gov.uk/government/statistics/student-support-for-higher-education-in-england-2022/student-support-for-higher-education-in-england-2022 [accessed 21 February 2023].

18 SLSC, 25th Report (Session 2022–23, HL Paper 131).

on low incomes and ethnic minority students would be particularly adversely affected by the real-terms decrease in the value of loans.

29. Our earlier report on the student loan payback system expressed concern that the changes made the system less progressive and may not be consistent with Government policy elsewhere, for example in the Levelling Up agenda. **The Department's EIA suggests that the fall in the real terms value of maintenance loans may have similar effects**.

Consistency and timing of inflation measure

30. DfE told us that the RPIX index has been used to uprate maintenance loans consistently since 2017–18. We have, however, noticed differences in the timing of upratings relative to updated forecasts. For example, the 2023–24 uprating was first announced in a Ministerial Statement on 11 January 2023.[19] It referred to the OBR's most recent forecast of inflation, from November 2022. This instrument was then laid approximately two weeks later, on 26 January 2023.

31. The 2022–23 uprating of 2.3% was, however, announced by Ministerial Statement on 21 October 2021,[20] despite not being laid until 2 December 2021:[21] a six-week gap. The uprating utilised a forecast from November 2020, which was nearly a year out of date. Just six days after the statement, on 27 October 2021, the OBR published updated forecasts that would have generated a higher increase in the maximum loan, of 3.7%. **We encourage DfE to ensure that future announcements are timed, as far as possible, to ensure that up-to-date inflation forecasts are available**.

Use of RPIX

32. We have previously commented on DfE's use of RPIX in many parts of the student loan system,[22] despite the UK Statistics Authority describing RPI measures as "flawed" and stating that it would be wrong for the Government to continue to use them.[23]

33. DfE told us that legislation[24] requires the Secretary of State to have regard to RPIX when considering annual increases to maximum loans to tuition fees. However, this is of questionable relevance because the Secretary of State is not *obliged* to use RPIX for tuition fee loans and the Department has not referred to any similar legislation in relation to maintenance loans. DfE also argued that RPIX upratings promote consistency as the index is also used in other parts of the student loan system but, as we said in our earlier Report, it would be open to the Department to change the reference index more widely. **Again, the House may wish to enquire further on the rationale for not moving away from a measure that the Government themselves describe as flawed**.

19 HC Deb, 11 January 2023, HCWS491.
20 HC Deb, 21 October 2021, HCWS339.
21 Education (Student Fees, Awards and Support) (Amendment) (No. 3) Regulations 2021 (SI 2021/1348).
22 SLSC, 25th Report (Session 2022–23, HL Paper 131), p 18.
23 Office for National Statistics, 'UK Statistics Authority Statement on the future of the RPI': www.ons.gov.uk/news/statementsandletters/ukstatisticsauthoritystatementonthefutureoftherpi [accessed 9 February 2023].
24 Student Fees (Inflation Index) Regulations 2006 (SI 2006/507).

Other measures in the instrument

34. The Regulations also provide that students undertaking the new Higher Technical Qualifications, introduced as part of recent reforms to higher technical education, will be eligible for student loans for both course fees and the cost of living. Other measures include widening the eligibility for loans to those who arrived in the UK under the Afghan or Ukrainian schemes; for example, so that migrants can access loan support and 'home fee' status even if they arrive part-way through an academic year.

Timeliness of support material

35. Finally, we note that the EIA for the Regulations, which contained important information enabling readers to understand the effect of the changes, was only published some days after the instrument itself. This meant that it would have been easy to overlook the EIA and could have hindered effective scrutiny. **We reiterate that all supporting material should be made available to Parliament and the public at the time the instrument is laid.**

Conclusion

36. These Regulations appear to implement a routine adjustment to maximum maintenance loans for students based on forecast inflation. Discrepancies between past forecasts and actual inflation have, however, been large, leading to a substantial fall in the purchasing power of student loans. Remedying the discrepancy could have a significant impact on the public purse and DfE has chosen not to do so, even though the Department itself has stated that the policy will have a "negative impact" on students. **The House may wish to enquire further on the extent and implications of this negative impact**. We also raise questions about aspects of the uprating methodology and **encourage the Department to consider whether any improvements could be made**.

CORRESPONDENCE: INACCURATE INFORMATION FROM THE DEPARTMENT OF HEALTH AND SOCIAL CARE

37. Following this Committee's meeting on 17 January 2023, our 25th Report drew attention to the *Health and Social Care Information Centre (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023,* in particular to the "rushed and piecemeal manner" in which the consultation on the statutory guidance was being conducted.

38. We included supplementary information from the Department of Health and Social Care (DHSC),[25] received on 13 January 2023, in our Report. DHSC said "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)"* had been consulted about the development of the guidance.

39. Subsequently, our attention has been drawn to the published minutes of IGARD's meeting[26] which expressed concern that this did not accurately reflect IGARD's involvement, since the group had only received a draft of the guidance to review on 18 January 2023 and had been given inadequate time to comment properly on the draft.

40. As IGARD themselves disputed the statement made by DHSC, we wrote to the Minister, Lord Markham, seeking an explanation. The correspondence is published in full in Appendix 1 of this Report.

41. **We take the view that this incident provides further evidence to support our comment about the way in which the consultation on the guidance has been conducted**. We note the Minister's apologies and the DHSC's intention to check any evidence submitted to the Committee more rigorously in future: **the need for accuracy when responding to questions from Parliament cannot be overstated.**

25 Published in full on the Committee's website: https://committees.parliament.uk/publications/33594/documents/182874/default/, p 10.

26 NHS Digital, 'IGARD meetings': https://digital.nhs.uk/about-nhs-digital/corporate-information-and-documents/independent-group-advising-on-the-release-of-data/meetings, [accessed 21 February 2023] Minutes of 26 January 2023, p 19.

INSTRUMENTS OF INTEREST

Draft Criminal Justice Act 2003 (Home Detention Curfew) Order 2023

42. Certain offenders serving determinate sentences of more than 12 weeks but less than four years may be eligible for release 135 days before their automatic release date subject to conditions, including an electronically monitored curfew at a specified, suitable address: known as home detention curfew (HDC). This instrument increases the length of time that offenders may be released under HDC to 180 days (6 months). Alongside the legislation, the Ministry of Justice (MoJ) is also revising the policy framework document to add to the list of offences presumed to make someone unsuitable for HDC, for example a history of domestic abuse. MoJ estimates the net result will free up about 300 additional prison places.

43. We asked whether the probation service has sufficient resources for the influx. MoJ responded that it has injected an extra £155 million a year to deliver more robust supervision and reduce caseloads. It has also recruited 2,500 trainee probation officers over the last two years, and plans to recruit a further 1,500 by March 2023. (See additional information in Appendix 2.)

44. MoJ states that the purpose of HDC is to manage more effectively the transition of offenders from custody back into the community. **Although this scheme has been running for more than 20 years the evidence of its usefulness in preventing reoffending is surprisingly limited.** The main research cited is from 2011[27] and says only that "a like-for-like comparison based on offenders' characteristics and sentence length showed that those released on HDC were no more likely to engage in criminal behaviour during the first two years after release from custody."

45. MoJ added that "all electronic monitoring expansion projects are underpinned by robust evaluations designed to further develop our understanding of the effective use of our devices. We expect the first evaluations to be available internally in late 2024, with others to follow as the projects progress." As we have seen little evidence for the basis on which these decisions are being made **the House may wish to press MoJ to publish those evaluations as soon as possible.**

Draft Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2023

46. Amongst other measures, these Rules would set out the operational framework for the Special Immigration Appeals Commission (SIAC) in cases where the Secretary of State exercises new powers to deprive an individual of their British citizenship without prior notice. The powers, provided for in the Nationality and Borders Act 2022 ("the Act"), are intended to be used against those who obtained citizenship by fraud and against the most dangerous people, such as terrorists, extremists and serious organised criminals.

47. When the Secretary of State makes or seeks to make an order under the Act, they must ask SIAC to consider whether the reasons for acting without notice

27 Ministry of Justice, 'The effect of Home Detention Curfew on recidivism' (6 May 2011): https://www.gov.uk/government/publications/the-effect-of-home-detention-curfew-on-recidivism [accessed 22 February 2023].

are "obviously flawed". The draft Rules contain the process for making and considering such an application; for example, SIAC would be required to provide an opinion within 14 days. This process does not impact the person's statutory right of appeal against the deprivation decision. The Home Office told us that once these Rules complete their parliamentary process, the relevant provisions of the Act will be brought into force.

Criminal Legal Aid (Remuneration) (Amendment) Regulations 2023 (SI 2023/97)

48. These Regulations introduce a new fixed fee of £670 for defence advocates where a Court has issued a direction to allow pre-recorded video cross-examination or re-examination of vulnerable witnesses. The Explanatory Memorandum (EM) states that the aim of the system is to enhance the quality and reliability of evidence by improving witnesses' experiences of cross-examination and by reducing the time between the complaint and the cross-examination. The new fee is part of a wider package of reforms to legal aid in response to the Criminal Legal Aid Independent Review (CLAIR) and to the strike action by criminal barristers last year.

49. **We are disappointed, however, that the instrument was brought into force just one day after being laid,** breaching the convention that a 'made negative' statutory instrument should be laid before Parliament for at least 21 days before it comes into force. The Ministry of Justice told us this was to mitigate the risk of further strike action, but **we remind the Ministry to plan and resource its legislation appropriately so that parliamentary scrutiny is not curtailed.**

Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) Order 2023 (SI 2023/116)

Protection Fund and Occupational Pension Schemes (Levy Ceiling) (No. 2) Order 2023 (SI 2023/117)

50. The Pensions Act 2004 requires the Department for Work and Pensions (DWP) to make an annual Order to increase the Pension Protection Fund (PPF) Levy Ceiling in line with the growth in earnings**: regrettably due to error two Orders were needed this year**. The levy ceiling is intended to provide both sufficient funding for PPF compensation and reassurance to the schemes from which the levy is drawn, that the levy will not be above a certain amount in any one year. Supplementary information published in Appendix 3 indicates that, for the financial year 2023–4, PPF intends to collect an estimated £200 million, which is approximately 16% of the levy ceiling of £1,246,964,705 set by this Order. In response to our questions, DWP disclosed that a recent independent review recommended that DWP and PPF work together to make the PPF levy more flexible.[28] The Department is currently considering this recommendation and exploring ways in which to implement it.

28 Department for Work and Pensions, 'Departmental Review of the Pension Protection Fund (PPF)': https://www.gov.uk/government/publications/departmental-review-of-the-pension-protection-fund-ppf/departmental-review-of-the-pension-protection-fund-ppf#summary-of-findings [accessed 22 February 2023].

Market Measures Payment Schemes (Amendments, Revocation and Transitional Provision) (England) Regulations 2023 (SI 2023/124)

51. This instrument amends retained EU law on public intervention (PI) and private storage aid (PSA) schemes in England. According to the Department for Environment, Food and Rural Affairs (Defra), PI schemes require the Government to buy and store certain products at a published price, while PSA schemes seek to address exceptional market disturbances by subsidising the cost of products when prices have fallen to a point that it is not economically viable to sell. Products are returned from storage to the market at the end of the contracted period when the market has recovered, and prices have improved. Defra says that the changes will make the framework for these schemes more suited to an England-only context.

52. While retaining the legal framework for PSA schemes, the instrument removes the requirement for inspections to be carried out whilst products are in storage and the obligation for businesses to provide a security when submitting a product into PSA. Defra says that inspections at intake and at the end of the storage period are sufficient, and that aid is paid only once the product condition and weight are confirmed at the end of the storage period. The instrument increases the minimum inspection levels at entry and removal of storage from 5% to 10% of stored products.

53. The instrument also removes the retained EU framework for the mandatory opening of PI schemes at certain times of the year. PI schemes will remain an option, however, for the Secretary of State should a sector suffer exceptional market conditions. PI schemes currently exist for a range of products, including common and durum wheat, beef, veal, barley, butter and skimmed milk powder. Defra says that these schemes are not an effective market support method. Asked about the impact on farmers if mandatory PI schemes are abolished and feedback from the sector, Defra told us that these schemes have had limited uptake in England: no cereals, for example, have entered PI schemes for the last ten years, and the mandatory beef PI scheme has not been used since the 1990s. Defra also told us that:

> "[I]n informing industry of our plans, they said that they do not frequently use these schemes and did not indicate that they were concerned about the removal of mandatory PI schemes. They indicated a preference to schemes more suited to the domestic market than mandatory schemes if intervention were required in a situation of market disruption. The changes made to [PSA] make that scheme more suited to industry needs, while Government also retains the option of using PI in exceptional market conditions should it choose. The Agriculture Act 2020 also provides powers for the Secretary of State to give financial assistance to agricultural producers in England if their incomes are being, or are likely to be, affected by exceptional market conditions. […] Stakeholders remarked that the use of [PI] schemes was minimal in recent years, considering them to be rather blunt instruments and inflexible in responding to market disruption. Stakeholders indicated their preference would be for schemes to be more tailored to a domestic market situation should such measures be required in the future."

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

	Criminal Justice Act 2003 (Home Detention Curfew) Order 2023
	Direct Payments to Farmers (Reductions) (England) Regulations 2023
	Electricity Supplier Obligations (Green Excluded Electricity) (Amendment) Regulations 2023
	Medical Devices and Blood Safety and Quality (Fees Amendment) Regulations 2023
	National Minimum Wage (Amendment) Regulations 2023
	Non-Domestic Rating (Rates Retention: Miscellaneous Amendments) Regulations 2023
	Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2023

Instruments subject to annulment

SI 2023/97	The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2023
SI 2023/103	Middlesbrough Development Corporation (Establishment) Order 2023
SI 2023/104	Hartlepool Development Corporation (Establishment) Order 2023
SI 2023/105	Civil Procedure (Amendment) Rules 2023
SI 2023/106	Trade in Endangered Species of Wild Fauna and Flora (Council Regulation (EC) No 338/97) (Amendment) Regulations 2023
SI 2023/116	Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) Order 2023
	Defective and superseded by 2023/117
SI 2023/117	Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) (No. 2) Order 2023
SI 2023/121	Sanctions (Humanitarian Exception) (Amendment) Regulations 2023
SI 2023/124	Market Measures Payment Schemes (Amendments, Revocation and Transitional Provision) (England) Regulations 2023
SI 2023/127	Feed-in Tariffs (Amendment) Order 2023
SI 2023/129	Education (Student Loans) (Repayment) (Amendment) Regulations 2023

SI 2023/131	Food Supplements and Food for Specific Groups (Miscellaneous Amendments) (No. 2) Regulations 2023
SI 2023/142	Town and Country (Development Management Procedure) (England) (Amendment) Order 2023
SI 2023/159	Countryside Stewardship (England) (Amendment) Regulations 2023

APPENDIX 1: HEALTH AND SOCIAL CARE INFORMATION CENTRE (TRANSFER OF FUNCTIONS, ABOLITION AND TRANSITIONAL PROVISIONS) REGULATIONS 2023

Letter from Lord Hunt of Wirral, Chair of the Secondary Legislation Scrutiny Committee, to Lord Markham, Parliamentary Under-Secretary, Department of Health and Social Care

The Secondary Legislation Scrutiny Committee which I chair, has asked me to seek an explanation from you in relation to a potential inaccuracy in the information provided by the Department of Health and Social Care (DHSC) to this Committee.

The Committee's 25th Report[29] drew attention to these Regulations for a number of reasons but in particular in relation to the "rushed and piecemeal manner" in which the consultation on the statutory guidance was being conducted.

We included supplementary information from DHSC[30] in our Report, which said "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)" had been consulted about its development.

Subsequently our attention has been drawn to the published minutes of IGARD's board meeting[31] which say:

> "7.1 House of Lords Secondary Legislation Scrutiny Committee
>
> IGARD noted that a response from the Department of Health and Social Care, published by the House of Lords Secondary Legislation Scrutiny Committee on 19th January 2023, stated that the draft statutory guidance (guidance to NHS England on the measures it should take to protect confidential information when exercising the data functions transferred from NHS Digital) had been shared with IGARD for their views. Members judged that this was not an accurate reflection of IGARD's involvement, since the group had only received a draft of the guidance to review on 18th January 2023 and had been given just two days to respond with comments. IGARD were concerned by the impression that had been given to the House of Lords Committee that IGARD had been adequately involved, as members felt they had been given limited opportunity to comment and could have made a more meaningful contribution had they been involved earlier in the drafting process."

We received the information from DHSC stating that IGARD had been involved on 13 January, and our Report was agreed when the Committee met on 17 January, yet IGARD's minutes state that they nly received a draft of the guidance to review on 18 January 2023.

As IGARD themselves dispute the statement made by DHSC, **we would be grateful for a precise explanation of when and how IGARD were involved**

29 SLSC, 25th Report, (Session 2022–23, HL Paper 131).

30 Published in full on the Committee's website: https://committees.parliament.uk/publications/33594/documents/182874/default/, p 10.

31 NHS Digital, 'IGARD meetings': https://digital.nhs.uk/about-nhs-digital/corporate-information-and-documents/independent-group-advising-on-the-release-of-data/meetings [accessed 22 February 2023], Minutes of 26 January 2023, p 19.

in the consultation and whether the briefing we received from DHSC was in fact correct on the date it was sent.

IGARD also commented that the consultation was rushed and they would have had more to contribute had they been given longer to comment. We would, therefore be grateful for an explanation of DHSC's programme for consultation on this guidance, since Parliament has made clear its concern that there should be clear rules for independent oversight of NHS England's handling of sensitive patient data and that the guidance should address this.

We would be grateful for **a response by Friday 17 February**, so that the Committee may consider the issue at its next meeting.

8 February 2023

Letter from Lord Markham, Parliamentary Under-Secretary Department of Health and Social Care, to Lord Hunt of Wirral, Chair of the Secondary Legislation Scrutiny Committee

Thank you for your letter of 8th February informing me of an inaccuracy in information provided by DHSC officials to the Committee. I am grateful for the continued interest of the Committee in this very important transition and am extremely sorry that this mistake has occurred. I hope that the Committee members will accept my sincere apologies for this. We will ensure such errors are avoided in the future by a more rigorous double-checking of any evidence which is submitted to the Committee.

I am very sorry that the response provided to the Committee by officials in my department on 13th January did contain a mistaken reference to the draft guidance having been shared with IGARD, who were listed amongst a number of stakeholders with whom we had been engaging and discussing the guidance.

Having checked with my officials, whilst there had been engagement with IGARD to seek their views, a full draft had not at that stage been shared with IGARD. I am sorry that the committee received this incorrect information, and I am grateful to them for drawing it to my attention. I would like to reassure you that the draft guidance was shared with them several days later on 18th January.

In preparation for the transition of functions and in preparation of both the regulations and draft statutory guidance, we have been keen to hear the opinions of expert stakeholders and have included IGARD amongst those we have engaged with, alongside others including the National Data Guardian, and the Information Commissioner's Office.

IGARD members, including the Chair, had been involved in discussions about the transition of NHS Digital's functions to NHS England, and having had sight of the draft regulations, had discussed what the statutory guidance might require at a formal IGARD session on 24th November. Following that session, a working group was formed to develop draft terms of reference for the Advisory Group for Data. That included the Chair of IGARD and three other members, NHS Digital and NHS England staff and, latterly, the Head of the National Data Guardian's Office. That group met weekly from 9th December until 25th January. In parallel, NHS Digital's Deputy Senior Information Owner regularly attended IGARD meetings to provide verbal updates on the progress of the merger.

While IGARD has now been disbanded, the previous independent advisor members of IGARD have continued to meet as the Advisory Group for Data (interim) at the request of NHS England. IGARD members received a draft of the statutory guidance on 18th January, with a request to provide initial comments on 20th January to allow those to be considered ahead of debate in the House of Lords. Following publication of the draft guidance, IGARD were asked on 24th January to provide any further comments on the published draft and they did so on 1st February, for which I am grateful.

I would also like to highlight that the guidance is not yet finalised. We are continuing to refine the draft, drawing on the very helpful comments IGARD has provided (as well as comments received from other stakeholders and the useful points made by noble Lords in the course of the debate on the regulations). We are keen to ensure that the guidance is not finalised until we have managed to address any concerns raised, which we hope to do by the end of the month.

Once again, I would like to apologise for the error in the information provided to the Committee and I have reiterated to my officials the importance of ensuring robust checks on the accuracy of information provided in future.

15 February 2023

APPENDIX 2: DRAFT CRIMINAL JUSTICE 2003 (HOME DETENTION CURFEW) ORDER 2023

Additional information from the Ministry of Justice

Numbers released:

Q1: Para 7.2 of the EM says "Together, these changes will reduce the number of prisoners released, while making sure those who are appropriate for release on HDC spend longer being curfewed and monitored." whereas the IA says our best estimate suggests this option will increase the HDC population by up to 450 offenders when it reaches steady state. Which is correct?

A1: Both are correct. The HDC population is determined by a combination of both how many offenders are released onto HDC and the length of time they spend on HDC. This Statutory Instrument extends the length of time people spend on HDC but it does not add to the cohort of offenders released–so would increase the HDC population, by 450 on its own. Alongside the legislation, however, we are also changing the HDC Policy Framework by adding to the list of offences that make someone presumed unsuitable for HDC, which will reduce releases–and on its own, would reduce the HDC population. Whilst fewer offenders will be released on HDC going forwards, the net result is that HDC Population grows because those who are released remain on the HDC caseload for longer–and the increase in HDC population caused by the longer time-period on HDC is greater than the reduction in HDC population caused by the reduced number of individuals released on HDC. The net result of both changes is that the HDC population will grow by 300.

Impact:

Q2: This change appears to represent a displacement of workload from one branch of HMPPS to another - does the Probation Service have sufficient resources to cope with the influx of new cases?

A2: Yes. We estimate that the impact of the HDC measures planned is to add a total of 300 lower risk offenders to the overall caseload of offenders under Probation supervision in England and Wales which, at 30 September 2022, stood at 240,674. While this is a relatively modest addition, each offender will need to be managed and the Probation Service is currently exploring the best way to absorb the additional caseload.

Protecting the public will always be our primary concern, and to that end we have unified the Probation Service and greater focus on quality and outcomes has been placed at the centre of the unified Probation Service National Standards and performance framework. We have injected extra funding of more than £155 million a year to deliver more robust supervision, reduce caseloads and recruit thousands more staff to keep the public safer. We have recruited a record- breaking 2,500 trainee probation officers over the last two years, and we plan to recruit a further 1,500 by March 2023.

Policy:

Q3: The policy objective is to extend the resettlement benefits of HDC to those already eligible for the scheme by increasing the maximum period to 6 months

a) can you please clarify and quantify the benefits of HDC that this extension of Electronic Monitoring (EM)is supposed to provide other than freeing up prison places for more serious offenders.

A3a: Extending the period of HDC means that offenders who are assessed as ready to be released can spend longer in the initial phase after release under closer monitoring as they re-

join families and the wider community. We know that for certain offenders the experience of being monitored via an electronic tag in the community can help deal with the negative behaviours that lead to re-offending, allowing offenders to focus on getting into work and back on the straight and narrow[32].

b) the 2018 study seems equivocal - stating EM has "clear rehabilitative potential, However, it is unlikely that EM on its own is enough to bring about compliance beyond the period of monitoring, or achieve longer-term rehabilitation and desistance goals. Furthermore, not everyone experiences benefits and life on EM can potentially lead to a deterioration of important features of life and diminish a person's chances of success." What other support will be provided for those released to ensure that they maximise their chances of benefitting from the programme?

A3b: Everyone released on HDC is also subject to probation supervision and support. This includes consideration of referrals to commissioned rehabilitative services such as accommodation, education, training and employment, substance misuse and personal well-being (which includes lifestyle/associates, social inclusion, emotional well-being & family/significant others). Additionally for women offenders, the Probation Service can refer to a finance, benefit & debt provider.

Q4: You cite the 2011 study but it says "A like-for-like comparison based on offenders' characteristics and sentence length showed that those released on HDC were no more likely to engage in criminal behaviour during the first two years after release from custody." This also implies that they were no less likely to reoffend - do you have any more modern figures that would demonstrate the positive effects of long-term Electronic Monitoring in preventing reoffending?

A4: The 2011 Analysis found offenders who received HDC were no more (or less) likely to engage in criminal behaviour when released from prison when compared to offenders with similar characteristics who were not eligible for early release on HDC. Importantly, there was no increase in offending for those on HDC even after considering that they were in the community for a longer time period than those who were not released on HDC.

There is limited domestic and international evidence on the impact of electronic monitoring on reoffending. All electronic monitoring expansion projects are underpinned by robust evaluations designed to further develop our understanding of the effective use of our devices. We expect the first evaluations to be available internally in late 2024, with others to follow as the projects progress.

32 Ministry of Justice, 'The experience of electronic monitoring and implications for practice: a qualitative research synthesis': https://www.gov.uk/government/publications/the-experience-of-electronic-monitoring-and-implications-for-practice-a-qualitative-research-synthesis [accessed 21 February 2023].

We have recently enhanced our use of electronic monitoring across the board, supported by ever-improving technology and with broader use of GPS, which allows us to monitor offenders when they are away from the curfew address where necessary. We are also now able to target specific offence types, such as acquisitive offenders, to help reduce their particularly high rates of reoffending and we have rolled out alcohol monitoring tags across England and Wales, including for HDC, to clamp down on alcohol-related re-offending.

The evidence supports HDC as an effective way to manage the offenders who are found suitable for release under the terms of the scheme, keeping the public safe providing a greater level of monitoring for these offenders as they begin their transition back into the community.

15 February 2023

APPENDIX 3: PENSION PROTECTION FUND AND OCCUPATIONAL PENSION SCHEMES (LEVY CEILING) ORDER 2023 (SI 2023/116) AND PENSION PROTECTION FUND AND OCCUPATIONAL PENSION SCHEMES (LEVY CEILING) (NO. 2) ORDER 2023 (SI 2023/117)

Additional information from the Department for Work and Pensions

Q1: The Order increases the levy ceiling by 5.8% from £1,178,605,581 to £1,246,964,705 for the next financial year, which is an increase of £68 million. Even if the fund sets the actual increase to the levy at half of that ceiling - how does that not qualify as an impact on business?

Can you please explain why the DWP believes that this legislation does not require an Impact Assessment.

A1: The DWP has not prepared an impact assessment for this instrument because it is not a regulatory measure. It increases the maximum amount that the Pension Protection Fund can raise via the pension protection levy this year. Changes made to levies fall under a statutory exclusion from the business impact target as laid out in section 22(4)(a) of the Small Business, Enterprise and Employment Act 2015. This approach is consistent with previous years' Levy Ceiling Orders, as well as the approach taken for other DWP levies such as the general levy and the fraud compensation levy. The Better Regulation Framework confirms that statutory provisions for levies fall under a statutory exclusion from the business impact target.[33]

- The decision about how much levy to collect and how to collect it is a decision for the Board of the Pension Protection Fund. Each year, the PPF holds a consultation inviting responses about the basis on which to collect the Pension Protection Levy.

Q2: This is an annual change and yet you give no indication of the outcome of previous Orders. The EM explains that

"The ceiling is set at a level that is sufficient to allow the Board to raise a levy that ensures the safe funding of the compensation it provides while providing reassurance to schemes that the levy estimate will not be above a certain amount in any one year. In practice, the Board calculates how much it needs to raise in levy each year, and to date this amount has always been less than the levy ceiling."

How much less than the levy ceiling was required in the last year for which figures are available?

A2: The Board of the PPF is required to estimate the total amount of the pension protection levy it will collect annually. The PPF has announced that for the financial year 2023/4, it intends to collect an estimated £200 million, c.16% of the levy ceiling of £1,246,964,705 set by this year's Order.[34]

33 Department for Business, Energy and Industrial Strategy, 'Better Regulation Framework: Interim guidance': https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916918/better-regulation-guidance.pdf [accessed 21 February 2023], p 27.

34 Pension Protection Fund, 'PPF confirms significant reduction in levy': https://www.ppf.co.uk/press-releases/ppf-confirms-significant-reduction-levy [accessed 21 February 2023].

- For the financial year 2022/23, the PPF announced that it intended to collect an estimated £390 million, c.33% of the levy ceiling which for that year was set at £1,178,605,581.

- For the financial year 2021/22, which has now concluded, the PPF collected £475 million via the Pension Protection Levy, c.43% of the levy ceiling which for that year was set at £1,099,445,505.[35]

Q3: What was the total sum that the PPF required in funds for both its administration and to pay out to beneficiaries the last year for which figures are available?

A3: For the financial year 2021/22, the PPF paid out a total of £1.1 billion in compensation to members. The operating costs of paying compensation and making investments are borne by the PPF and amounted to £48.7m. Current and future PPF compensation is funded by the PPF levy, investment returns from the remaining assets of schemes that enter the PPF and funds recovered from insolvent employers.[36]

- The costs of administration are borne by the PPF Administration Fund (which also covers the costs of raising and collecting the PPF levy, transferring schemes into the PPF and administering the payment of FCF compensation) and amounted to £13.3m. This is funded by the separate PPF Administration Levy.

Q4: The Committee needs to understand whether the policy of annual increase by the growth in earnings is still producing a sensible outcome, or whether it is far outstripping actual usage.

A4: Making the annual Order which increases the Levy Ceiling in line with the growth in earnings is part of the Secretary of State for Work and Pensions' statutory obligations under sections 178(1) and 178(6) of the Pensions Act 2004.

The policy intent when setting the initial levy ceiling, was to ensure significant 'headroom' between the ceiling and the amount of levy required. The levy ceiling was set at this level in order to ensure the safe funding of the compensation provided by the PPF while providing reassurance to schemes that the levy estimate will not be above a certain amount in any one year. When the levy ceiling was first set for the financial year 2006/7, it was set at £775 million.[37] Approximately £270 million was collected in respect of the 2006/7 pension protection levy, meaning c. 35% of the levy ceiling was collected in the first year it was set.[38]

The intention behind creating the statutory obligation to increase the levy ceiling in line with the growth in average weekly earnings was that this would allow the increases in the ceiling to approximately track the increases in the pension liabilities of DB schemes, which are linked to members' earnings. The levy ceiling, combined with the rule set out in section 177(5) of the Pensions Act 2004 stipulating that the total amount of levy raised must not increase by more than 25% year-on-year, aims to ensure that protection exists against large increases in the total amount of levy raised by the PPF.

35 Figures for the 2021/22 financial year can be found in the financial statements at pages 90-97 of the PPF's annual report: Pension Protection Fund, 'Annual Report 2021/22': https://www.ppf.co.uk/annual-report [accessed 21 February 2023].

36 *Ibid* pages 123–4.

37 Occupational Pension Schemes (Levy Ceiling) Order 2006 (SI 2006/742).

38 Pension Protection Fund, 'Annual Report and Accounts 2006/07': https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/250474/1018.pdf [accessed 21 February 2023], p 18.

Since 2010 the PPF has grown significantly. In 2010, the PPF paid approximately £82 million in compensation a year, had 47,000 members and reserves of £400 million. The PPF now pays £1.1 billion in compensation each year and has 295,000

members. PPF investment performance has consistently performed ahead of target and combined with the PPF's levy collection and risk reduction strategies, has resulted in a reserve of £11.7 billion and assets of £39 billion (as of 31 March 2022).

Due to these improvements to its funding position, the PPF is reducing the levy it raises. This has resulted in a significant difference between the levy ceiling and the amount required.

The PPF's funding strategy acknowledges the importance of being able to increase the levy if the funding position of the PPF weakens following large claims or the risk environment worsening. Despite the intent to build reserves at a lower pace, the PPF will still require the ability to increase the levy at pace if necessary.[39]

The recent independent review of the PPF recommended that the DWP and the PPF work together to ensure that the PPF levy can be used flexibly and be reduced when needed while giving the PPF the freedom to reintroduce or raise it as necessary.8 The department is currently considering this recommendation and exploring ways in which to implement it. This includes considering the role of the administration levy and both statutory constraints on the levy -- the levy ceiling and the rule that the total amount of levy raised must not increase by more than 25% per year.

14 February 2023

39 Department for Work and Pensions, 'Departmental Review of the Pension Protection Fund (PPF)': https://www.gov.uk/government/publications/departmental-review-of-the-pension-protection-fund-ppf/departmental-review-of-the-pension-protection-fund-ppf [accessed 21 February 2023].

APPENDIX 4: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 21 February 2023 and included in this report, Members declared the following interests:

Draft Occupational Pension Schemes (Administration, Investment, Charges and Governance) and Pensions Dashboards (Amendment) Regulations 2023

Lord Powell of Bayswater

Director of a bank involved with pension investments

Attendance:

The meeting was attended by Lord De Mauley, Baroness Harris of Richmond, Lord Hunt of Wirral, Lord Hutton of Furness, Baroness Lea of Lymm, Baroness Randerson, Baroness Ritchie of Downpatrick and Lord Russell of Liverpool.