HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

44th Report of Session 2022–23

Drawn to the special attention of the House:

Draft Immigration and Nationality (Fees) (Amendment) Order 2023

Draft Pensions Dashboards (Amendment) Regulations 2023

Relationships and Sexuality Education (Northern Ireland) (Amendment) Regulations 2023

Includes information paragraphs on:

1 instrument related to COVID-19:

Draft Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2023

Central Counterparties (Equivalence) (India) (Reserve Bank of India) Regulations 2023

Republic of Belarus (Sanctions) (EU Exit) (Amendment) 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.

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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 Riona Millar (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.

Forty Fourth Report

DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Immigration and Nationality (Fees) (Amendment) Order 2023

Date laid: 6 June 2023

Parliamentary procedure: affirmative

Among other measures, this Order would set the maximum fee that can be charged for the new Electronic Travel Authorisation and increase the maxima for a wide range of other immigration and nationality fees. The Home Office's Explanatory Memorandum (EM) omitted key information about the wider context of the policy changes, something that has been a theme of our comments on recent EMs from the department. ***We ask the Home Office to reconsider its approach to EMs****. The Order would also increase maximum chargeable fees for a number of visas****. The rationale for increasing the maximum for student visas, in particular, appears weak and the House may wish to enquire further about the Government's intention and rationale for this change.*** *Alongside the Order, the Home Office published its Impact Assessment (IA) for the wider ETA policy****. The IA is limited in some respects, and we encourage the Home Office to undertake and publish comprehensive analysis of the effects of ETA in practice, including specifically in Northern Ireland which may experience larger effects than the rest of the UK.***

This Order is drawn to the special attention of the House on the ground that it is politically or legally important and gives rise to issues of public policy likely to be of interest to the House.

Background

1. This Order contains a number of provisions in relation to the fees that can be charged for immigration and nationality services (for example, visa applications). The most noteworthy changes are:

    - Specifying certain new functions for which fees can be charged; most notably, applications for Electronic Travel Authorisations (ETAs), under which all passengers visiting or transiting through the UK who are not British or Irish and who do not currently need a visa will be required to obtain permission in advance and submit biometric information. ETAs are being phased in between November 2023 and the end of 2024.

    - Increases to the maximum amounts ('maxima') that can be charged for certain applications.

2. In our 35th Report, in March 2023, we drew the instruments that introduced ETAs to the special attention of the House.[1] We raised questions about the practical implementation of the system and criticised the Home Office for not providing any impact information in relation to ETAs. In May 2023, we sought further information at an evidence session with Lord Murray of Blidworth, Parliamentary Under Secretary of State for Migration and Borders

1 *35th Report* (Session 2022–23, HL Paper 177), paras 53–68.

at the Home Office.[2] Following that session, we wrote to Lord Murray with further questions (see Appendix 1). Alongside these Regulations, the Home Office published a full Impact Assessment (IA) for ETAs[3] and Lord Murray responded to our letter (also included in Appendix 1).

3. In relation to increases in fee maxima, the instrument would not itself set or introduce the new fees, only specifying their maximum levels, as well as the purposes for which fees may be charged. Further regulations would be required to set the fees themselves.

ETA fee level

4. The Order would set the maxima for an ETA at £15. Separately, the Home Office stated that the actual fee during the initial implementation period will be £10.[4] In response to our question on why the actual fee level was not included in the Explanatory Memorandum (EM) accompanying the instrument, the Home Office said:

> "As the Order amendment only establishes the chargeable function and maximum chargeable fee, and not the actual intended fee, we have focused the content of the accompanying EM accordingly, with the setting of the ETA fee in Regulations at a later date as referenced at Section 7.2 of the EM."

5. We also asked the Home Office why the fee, and the maxima, had been set at £10 and £15 respectively, as the EM contained no information in this area. The Home Office replied that the initial £10 fee had been "primarily set with regard to the costs of administering applications […] as well as fees charged by other countries for comparable schemes in order to ensure that the ETA fee level is internationally competitive". On the maxima, it said this will "provide the Government with reasonable flexibility to adjust the fee level" in response to "the needs of the department, the revealed costs of running the scheme, customers and taxpayers". The Home Office noted that any change to the fee level would be made through separate legislation which would be subject to further Parliamentary scrutiny.

6. While the actual fee is not the subject of the Order, its level and rationale are relevant to the 'bigger picture' of how the policy will be implemented, and therefore to scrutiny of the instrument. **Readers should not have to refer to multiple sources to understand a policy fully. The intended level of the fee, and the rationale for both the fee and the maxima, should have been included in the EM.**

ETA Impact Assessment

7. Our Report on the original ETA instruments, and our follow-up exchanges with Lord Murray, included questions about the effect on the economy of

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2 *40th Report* (Session 2022–23, HL Paper 197), paras 1–16. A transcript of the session can be found at: Secondary Legislation Scrutiny Committee, 'Oral Evidence: Statement of Changes to the Immigration Rules and Immigration (Electronic Travel Authorisations) (Consequential Amendment) Regulations 2023' (11 May 2023): https://committees.parliament.uk/event/18282/formal-meeting-oral-evidence-session/.

3 Home Office, 'Impact assessment: Introduction of an Electronic Travel Authorisation (ETA) Scheme' (May 2023): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1161771/Electronic_Travel_Authorisation_impact_assessment.pdf [accessed 21 June 2023].

4 HC Deb, 6 June 2023, col WS821.

falls in visitor numbers resulting from the cost, and administrative burdens, of applying for an ETA. A particular concern related to travel and tourism around the Republic of Ireland/Northern Ireland (NI) border, as the Home Office said that an ETA would be required to cross the land border into NI—although also stating that there would be no checks at the border.

8. The IA for ETAs estimated a net present social value (NPSV) gain for the overall policy of £540 million over 12 years, principally as a result of ETA fee income. This included a central estimate for the fall in visitor numbers of approximately 1% as a result of the £10 cost of an ETA. This fall in visitor numbers was estimated to result in an economic cost within the NPSV of £400 million.[5] However, this only incorporates losses to the exchequer; for example, from reduced VAT, duties and other taxes. The IA states that wider costs (for example, to businesses) are "not quantified as it is unclear how much visitor expenditure directly benefits the resident population". In 'sensitivity analysis', the Home Office estimates the present value of these wider costs to businesses at £950 million, although this estimate is described as "very uncertain". Such costs would be sufficient to reduce the overall central NPSV of the policy from a £540 million gain to a £410 million loss.

9. In addition, the main NPSV only includes reductions in visitor numbers as a result of the cost of the ETA, not the administrative and technological burden of applying for one. The Home Office estimates that this administrative effect could lead to a further reduction in visitors of 0.7% (again, described as "very uncertain") and an additional fall in tax revenue, with potentially further costs (not estimated) from the wider impacts on businesses. Again, these effects could convert the overall NPSV from a gain to a loss.

10. The IA indicates that the economic impact of the ETA is highly sensitive to assumptions about falls in visitor numbers and the associated costs, only some of which are included in the assessment. We appreciate that forecasts and estimates in this area are difficult and uncertain. **We encourage the Home Office to monitor the impact when the ETAs are introduced and publish comprehensive information to help in assessing the effects in practice.**

11. The IA does not include any information specific to NI or the Irish land border. In response to our questions, the Home Office said that "the Impact Assessment considers the impact on visitors to the UK as a whole, it does not differentiate between countries". In the May 2023 evidence session, we welcomed Lord Murray's assurance that the Government were working with tourism bodies on both sides of the border in implementing the policy. **We also encourage the Home Office to work with relevant bodies to assess the specific impact of ETAs in NI, where the impact may be greater than in the rest of the UK.**

12. The IA reported that in the US, the majority of the comparable (ESTA) fee is allocated towards the promotion of tourism to the US, "which may have negated some of the potential negative impact" on visitor numbers. In response to our questions, the Home Office said that "there are no current plans for income from ETA to be used for the purposes of tourism

5 Home Office, 'Impact assessment: Introduction of an Electronic Travel Authorisation (ETA) Scheme' (May 2023), tables 3 and 6: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1161771/Electronic_Travel_Authorisation_impact_assessment.pdf [accessed 19 June 2023].

promotion". **The House may wish to enquire further about whether the income from ETA applications could be used to promote tourism to the UK.**

Increases in existing maxima

13. The Order would implement a range of increases to maximum chargeable fees, while also consolidating a number of categories of fee; for example, equalising maxima for 'in-country' and 'out-of-country' applications. The Home Office states that increases in the maxima are required because some actual fees have moved closer to the maxima over time. In addition, the Home Office said some maxima are either below or close to the processing costs for that application type, meaning that fees cannot be increased to a level that would fully recover costs.

14. Some of the increases in maxima are high in percentage terms.[6] However, many of the actual fees remain significantly below the maxima. Moreover, the Home Office told us that the majority of the maxima have not been increased since 2016.

15. One noticeable exception is the student visa, where the maxima was last increased in January 2022 and the current fee is at the maxima level (£490), despite an estimated unit cost for processing an application of less than half that (£221 to £223). The Order would increase the maxima to £600, a further 22% increase. The EM states the increase is required because student fees are already set at the maxima, with the increase providing "a reasonable degree of flexibility to consider fee increases in future years". This is a somewhat circular argument: the Home Office increased the maxima then chose to set the fee at that maximum level, and now states that it needs to increase the maxima again to permit future fee increases. **The House may wish to enquire further about whether the Home Office proposes to increase these fees in practice and, if so, why.**

Conclusion

16. This Order would set the maximum fee that can be charged for the new ETA and would increase maxima for a wide range of other immigration and nationality fees (although the Order does not itself set or change any fees). The Home Office provided limited information about the 'bigger picture' of the ETA policy, including the intended level of fees and the rationale for them. **This has been a theme of recent Home Office EMs:[7] we ask the Home Office to reconsider its approach to them.**

17. Alongside the Order, the Home Office laid the IA for the ETA policy as a whole. This showed that the economic impact of ETAs is sensitive to assumptions about falls in travel and tourism to the UK but provided limited information in this (admittedly difficult to forecast) area. **We encourage the Home Office to undertake, and publish, comprehensive analysis**

6 The Impact Assessment for the Order contains a full table of changes to maxima: see Home Office, 'Impact assessment for Immigration and Nationality (Fees) Order (Amendment) 2023' (23 May 2023), pp 33–5: https://www.legislation.gov.uk/ukia/2023/63/pdfs/ukia_20230063_en.pdf [accessed 19 June 2023].

7 As well as the instruments and correspondence referred to earlier in this Report, see also our Report on the Draft Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023—*38th Report* (Session 2022–23, HL Paper 189), paras 11–25.

of the effect of ETAs in practice, including specifically in Northern Ireland.

18. The increased maxima would include a large increase in that for a student visa not long after it was last increased, with an unconvincing explanation. **The House may wish to enquire further about the Government's intention and rationale for this change.**

Draft Pensions Dashboards (Amendment) Regulations 2023

Date laid: 8 June 2023

Parliamentary procedure: affirmative

These Regulations amend the Pensions Dashboards Regulations 2022 to move the staged implementation programme (by size of pension scheme) from legislation into guidance and to delay the compliance date by a year to 31 October 2026. The Explanatory Memorandum (EM) provided simply states that the change in the implementation programme is being made without adequately explaining the reasons or the consequences. This Report contains additional information for the benefit of the House and recommends that the Department for Work and Pensions (DWP) replaces the EM so that the information is made available to any reader. ***We are disappointed to once again find our Report supplying basic information to the House that DWP should have published in the EM.***

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 and intended implementation.

Background

19. The Pension Dashboard Regulations 2022 ("the original Regulations") set out provision for the construction of the proposed online 'Pensions Dashboards' that are intended to reunite a user with all their pensions information, including their state pension. This is not intended to be a single central database, but what the Department for Work and Pensions (DWP) described as an "ecosystem" which functions like a giant switchboard, connecting users with their pensions supplier via dashboards.

20. We took a keen interest in the original Regulations and our 16th Report included additional practical details about DWP's implementation plans.[8] In that Report we commented that it was evident that DWP had not, at that stage fully worked out the mechanics of the proposed system.

21. Schedule 2 to the original Regulations nonetheless included a detailed timetable of which schemes would join the dashboards first. As the first of the deadlines approaches, these new Regulations remove that schedule as "the digital architecture will not be ready to facilitate the connection of pension schemes in time for the first connection deadline in the staging profile of 31 August 2023".

22. Instead, these Regulations move the connection timetable into guidance, which allows for greater flexibility. The legal obligation for schemes of all

8 *16th Report* (Session 2022–23, HL Paper 88), Appendix 1.

sizes to have complied by 31 October 2025 is also delayed by 12 months to 31 October 2026.

What is the nature of the delay?

23. While our 16th Report noted that the implementation programme was evidently still "a work in progress", we found it surprising that the Minister announced that the timeline was not deliverable, less than three months after the original regulations took effect.[9] We therefore asked DWP to explain the nature of the problems with the digital architecture. DWP responded:

> "The PDP [Pensions Dashboard Programme] had challenges with several issues. The technical solution has not been sufficiently tested, more work is needed to set up adequate support for industry with their connection journey and there is still work to do to finalise the necessary supporting guidance and standards.
>
> DWP acted swiftly in investigating the PDP's delivery plans and found that a reset of the Programme was required, and we informed Parliament and the pensions industry at the earliest opportunity. We have now laid amendment Regulations and are fully focussed on the reset of the PDP.
>
> The work of the reset so far has ensured that we have clarity on what needs to be delivered and the steps to achieve this. Resilience and contingency time have been built into this approach to ensure PDP has time to deliver before industry begins to connect. This will also allow for greater collaboration with industry on areas such as user testing.
>
> DWP is confident that this timeline is deliverable and achievable for PDP and industry."

24. We also noted that in her statement, the Minister, Laura Trott MP, said that she would update the House before the summer recess. We asked how Parliament would be informed about the continuing progress of the dashboards. DWP replied:

> "The Pensions Dashboards Programme issues Progress Update Reports which are published in April and October each year. These reports will continue to be deposited in the House Library. The Department for Work and Pensions has also committed to facilitating meetings between the Pensions Dashboards Programme and interested Peers following publication of each report and we expect these meetings to continue."

How will guidance be enforced?

25. These Regulations move the dates for the pensions schemes to comply out of legislation and into guidance "to which the industry must have regard". We were uncertain what this meant in practice if the legal requirement is only for schemes to have complied by the end of October 2026 and, therefore, enquired what sanction would be available for schemes that missed the connection date set out in guidance. DWP replied:

> "All trustees must connect by the connection deadline set out in the Regulations (31 October 2026). Failing to do so could result in regulatory action by the regulator.

9 HC Deb, 2 March 2023, HCWS594.

> The Regulations include a requirement to have regard to guidance issued on connection. We expect to set out a staging profile in guidance in due course, developed in collaboration with industry. Although the timeline in guidance will not be mandatory, trustees will be expected to demonstrate how they have had regard to the guidance. Trustees must have regard to the guidance and not doing so will also be a breach.
>
> The 2022 Regulations provided the Pensions Regulator with new pensions dashboards-specific powers to tackle non-compliance.
>
> In the event of non-compliance with any of the requirements in Part 3 of the Regulations, the Pensions Regulator may at their discretion issue compliance notices, third party compliance notices, and penalty notices. If the Regulator chooses to issue a financial penalty, this can be up to a maximum of £5,000 in the case of an individual, or up to £50,000 in other cases, such as corporate trustees. The levels are consistent with other areas of pensions legislation. In the event of multiple breaches of the Regulations, the Pensions Regulator may issue multiple penalties.
>
> If the Pensions Regulator is of the opinion that non-compliance by a trustee or manager was "wholly or partly, a result of an act or omission by another person", then they may issue third party compliance notices to that person. A failure to comply with a third party compliance notice may lead to a penalty notice being issued.
>
> The Pensions Regulator will also continue to be able to utilise its general powers where appropriate, which includes the ability to issue improvement notices, appoint skilled persons to a scheme, remove trustees, or even wind up a scheme."

What are the costs of the delay?

26. We are sensitive to the costs of pensions legislation, because costs imposed on pension providers ultimately reduce the potential payments to scheme members. DWP has revised the original Impact Assessment (IA) to reflect the change in the programme but chose not to identify the changes caused by the delay and the extension in the EM. We asked for clarification. DWP responded:

> "We have estimated that total costs for dashboards have decreased from the 2022 impact assessment. This is driven by a decrease in ongoing costs as a result of the new staging profile (to be set out in guidance) happening at a later date in the 10-year period. We understand some schemes may have faced upfront costs already due to the timetable changes. We have reflected this by assuming an additional 10% of upfront costs are faced for large schemes in each year until 2026/27. This assumption adds around £69 million (undiscounted) to transitional costs but doesn't offset the overall decrease in total costs.
>
> The benefits to all dashboards' users have been revised slightly downwards from around £1.1bn to around £1.0bn. This reflects a reduction in the number of years consumers "benefit" from accessing Dashboards over a 10-year period (note that net benefits are estimated to increase going forwards past the ten-year period). However, this is largely offset by an increase in our estimate of lost pots recovered. The significant increase in the value of lost pots and those recovered for a key demographic of

users (55–74 year-olds) is based on new evidence from a Pensions Policy Institute survey.

We have increased our estimate of the net present value of dashboards from £30 million to £174 million. This reflects the fact that ongoing industry costs have decreased as they have moved to occur later in the 10-year profile, but many benefits (particularly driven by the recovery of lost pots) are forecast to still be captured within 10 years and remain over £1 billion.

The total transitional cost is estimated at £463.9 million (55% of the industry and public costs) and this covers the period from 2022/23 to 2026/27. In the 2022 impact assessment, transitional costs were estimated at £344.3 million over a two-year period. **Therefore, we estimate industry and public transitional costs have increased by around £120 million.**"

Conclusion

27. In our 16th Report, in relation to the original Regulations, we said: **"We encourage the Government to take this opportunity to address the complexity and costs of the dashboard, [...] by simplifying and standardising the system wherever possible."** This remains our position..

28. We also remind DWP that an EM is not supposed to just state that a change has been decided, consultation has taken place and the IA has been updated – as this EM does. It also needs to set out the reasons for the change and the consequences, and we ask for the EM to be substantially revised to make the additional information in this Report available to any reader. Parliament agreed the original Regulations on the basis of specific information; if DWP later decides, as now, to move the goal posts, then the background and consequences of that change need equally specific explanation. **We are disappointed to, once again, find our Report supplying basic information to the House that DWP should have published in the EM.**

Relationships and Sexuality Education (Northern Ireland) (Amendment) Regulations 2023 (SI 2023/602)

Date laid: 6 June 2023

Parliamentary procedure: made affirmative

These Regulations make Relationship and Sexuality Education (RSE), with certain specified components, compulsory for children in key stages 3 and 4 (ages 11 to 16) in Northern Ireland (NI). The Regulations implement a commitment contained in primary legislation, itself deriving from a recommendation of a United Nations Committee. This is a controversial area of policy, as a number of submissions we have received, including from diverse religious denominations, make clear.

The Regulations allow parents to withdraw their children from sexuality education, but NIO cannot guarantee that the necessary procedures for this will be in place by the policy implementation date of 1 January 2024. ***We understand that the ability to withdraw children will be an important protection for parents in NI, and we would be concerned if it were not available***

from the outset. *NIO has also brought the Regulations into force immediately, to "allow the DE as much time as possible to progress work on the guidance in preparation for delivery of the education". Bringing the Regulations into force immediately should only be done where there is an 'urgent need', to justify the adverse impact on parliamentary scrutiny; given the implementation date, this is concerning.* ***Considering these points together, we are concerned that the implementation schedule may be rushed.***

Moreover, many of the submissions highlighted the absence of a full consultation on the Regulations. We agree that such a consultation would be appropriate, and we note that prior to other comparable policy changes–including to RSE in England–a public consultation was carried out. ***When taken alongside the other concerns on timing, the House may wish to press the Minister to bring forward the necessary legislation to push back the implementation date. This could allow time for a public consultation and would ensure the policy can be fully developed.***

These Regulations are drawn to the special attention of the House on the ground that there appear to be inadequacies in the consultation process which relates to the instrument.

Background

29. These Regulations make "age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights", including on the prevention of early pregnancy and access to abortion, compulsory for children in key stages 3 and 4 (ages 11 to 16) in Northern Ireland (NI).

30. The Regulations implement a provision in the Northern Ireland (Executive Formation etc) Act 2019 ("the Act") that, in turn, requires the implementation of recommendations in a 2018 report by the United Nations' Committee on the Elimination of Discrimination against Women (CEDAW).[10] CEDAW found that "young people in Northern Ireland were denied the education necessary to enjoy their sexual and reproductive health and rights", and suggested this was due to the influence of both Catholic and Protestant church representatives in school management. CEDAW also found that "where relationship and sexuality education is delivered, it is frequently provided by third parties and based on anti-abortion and abstinence ethos."

31. CEDAW concluded that these factors point to "state negligence in pregnancy prevention through a failure to implement its recommended curriculum on relationship and sexuality education". The report made a number of recommendations, including that the state should:

> "Make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation."

32. The Northern Ireland Office (NIO) says these recommendations were incorporated into the Act due to the absence of a functioning Northern

10 United Nations, 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women: report of the Committee on the Elimination of Discrimination against Women' (March 2018): https://digitallibrary.un.org/record/1480026?ln=en. [accessed 21 June 2023].

Ireland Executive in 2019. The NI Assembly was restored in January 2020 but dissolved again in February 2022 (although some ministers, including the Minister of Education, remained in post as 'caretaker ministers' until October 2022).

33. We have received around 40 submissions on the Regulations, including from representatives of the Catholic and Presbyterian Churches, the Christian Institute, Right to Life, the Democratic Unionist Party and the Transferor Representatives' Council, as well as from individual teachers, school governors and parents. All submissions are published in full on our website.[11]

Committee's role and remit

34. Some of the submissions implied that our role in relation to these Regulations is to agree or "pass" the legislation. That is not correct. Our role is only to consider instruments laid before the House of Lords and to draw the House's attention to those that meet our reporting grounds.[12] It is then for the House to determine what further action, if any, to take.

35. Several of the submissions also made representations to the effect that the relevant measures were included in the Act only as a result of an "unusual" and "undesirable" legislative process. We note that our remit only allows us to consider the instruments before us, not the legitimacy of the powers in the parent Act.

What do the Regulations require?

36. The measures in the Regulations apply only to grant-aided schools in NI and apply only to those in education key stages 3 and 4 (ages 11 to 16). The instrument requires that the curriculum for all such pupils should include Relationships and Sexuality Education (RSE) that meets the CEDAW recommendation, quoted above.

37. The Regulations place a duty on the NI Department of Education (DE) to issue, by 1 January 2024, guidance on the content and delivery of RSE. They also place a duty on school governing boards to have regard to this guidance when formulating their RSE policies. NIO states that this guidance is being developed by DE alongside the Council for the Curriculum, Examinations and Assessment (CCEA), and with "significant" stakeholder consultation.

38. The Government recognise that relationship and sexuality education in NI "can be politically sensitive", but state that the overarching policy aim is to ensure that adolescents receive RSE "without advocating a particular view on the moral and ethical considerations".

Is the legislation needed?

39. The Explanatory Memorandum (EM) to the Regulations examined the question of whether the Regulations were necessary, given DE's steps to implement the CEDAW recommendation to date. NIO states that DE "initially provided assurances" that it was implementing the recommendation. Likewise, several submissions argued that the Regulations are unnecessary because DE is already meeting, or making progress towards meeting, the

11 Secondary Legislation Scrutiny Committee, 'Scrutiny Evidence': https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/.

12 Secondary Legislation Scrutiny Committee, 'Terms of reference': https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/content/120278/terms-of-reference/.

requirements of the 2019 Act. Some referred to the measures noted in a follow-up to the CEDAW report, published in January 2023,[13] and to existing work by the CCEA in providing RSE teaching resources.

40. However, NIO assessed that the legislation is necessary because "actions taken to date, and evidence provided have so far fallen short" of ensuring the CEDAW recommendation is implemented. In addition, NIO reported that, in July 2022, the then NI Minister for Education stated DE's position was that RSE was "a matter for schools and teachers to decide how it should be delivered, which resources to use, and which specific topics should be covered". NIO said this position is "in direct conflict" with the legal duty to implement the CEDAW recommendation.

What will the guidance contain?

41. We asked NIO about the extent to which DE's guidance will prescribe how schools deliver RSE and how far schools will have their own discretion. NIO said the guidance will "set out for teachers and schools the specifics of what should be taught at each Key Stage in schools, and include approaches to teaching sensitive issues such as abortion, consent and domestic and sexual violence." NIO also stated that CCEA's resources and materials for schools "will need to be examined to ensure that they comply with the updated curriculum". Similarly, NIO said that schools using third party providers to deliver RSE will need to ensure that resources used are appropriate.

42. Several submissions referred to the difficulty in defining "age-appropriate, comprehensive and scientifically accurate" for the purposes of the legislation. For example, the Catholic Schools' Trustee Service notes that the wording implies that there is scientific agreement on the point, which the Trustee Service says is "manifestly untrue", going on to state that "in every major democratic jurisdiction, issues such as abortion, gender bioethics, human sexuality, are highly contested scientific and ethical issues, subject to democratic debate and shifting electoral and legislative positions". The Council for Public Affairs of the Presbyterian Church in Ireland said that there is "no such thing as 'value neutral' RSE" and asked how, without such definitions, "the Secretary of State can ensure the implementation of the legislation is adequately assessed and measured".

43. When we asked NIO how "age-appropriate, comprehensive and scientifically accurate" guidance would be determined, NIO responded that this was a matter for DE. **On such a key point, this is not an illuminating response; at the least, it would have been helpful for NIO to have liaised with DE to provide more detailed information. Questions remain about how this key aspect of the legislation will be implemented**.

Parents' right to withdraw children

44. The Regulations provide that parents should have the opportunity to withdraw their children from receiving sexuality education or elements of it (but not from relationships education). For parents, this could be a

13 United Nations Committee on the Elimination of Discrimination against Women, 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland conducted under article 8 of the Optional Protocol to the Convention: Follow-up report submitted by the United Kingdom of Great Britain and Northern Ireland' (16 January 2023): https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FOP.8%2FGBR%2F3%2FADD.1&Lang=en [accessed 21 June 2023].

key provision; for example, the submission we received from the Christian Institute suggested that the new RSE framework could significantly increase such withdrawals.

45. The instrument requires DE to make regulations about the circumstances in which, at the request of a parent, a pupil may be excused. However, NIO has stated that "there is no guarantee" that DE will have these regulations in place by 1 January 2024. This leads to the possibility that parents will not be able to excuse their children at the point the education begins to be delivered. NIO accepts that this "may attract criticism from faith-based schools, and some teachers and parents". NIO told us that "this is for the DE to lead on. The DE has yet to advise on a timeline for making regulations. We will continue to engage with the department on this issue." **The House may wish to enquire further why the instrument does not place a *duty* on DE to have regulations in place to facilitate parents withdrawing their children from sexuality education by the implementation date of the policy, and what steps NIO is taking to ensure DE does in fact have such regulations in place.**

Conscientious objection by teachers

46. We asked NIO whether teachers would have the right to 'conscientiously object' to delivering the approved material. Again, NIO said this would be a matter for DE, although NIO noted that a "large majority" of schools currently outsource RSE to third party providers.

Funding

47. We asked NIO whether schools will require any additional funding to implement the new requirements. NIO said that it was "not setting a new policy direction" but would "work with the DE to understand the level of any funding pressures, and if any mitigations can be put in place. As with any other devolved responsibility, it remains the responsibility of the Northern Ireland Executive to fund education in Northern Ireland".

Interaction between NIO and DE

48. The range of matters falling within the remit of DE, as discussed in the preceding paragraphs, mean that important contextual information on the policy—for example, on how key terms will be interpreted, on the rights of teachers to conscientiously object and on funding—has not yet been determined or, at least, has not been made available to Parliament. **This is unfortunate; it would have helped if NIO had liaised with DE to ensure more detailed information was available, even on matters not specifically the responsibility of NIO. The House may wish to press the Minister for further specifics.**

Sanctions

49. We asked the NIO what sanctions would be available if a school did not conform to the requirements. NIO said that this "could be challenged by way of an application for judicial review."

Impact

50. Some of the submissions said that the statement in the EM that the Regulations would have "no, or no significant, impact on the private, voluntary or public

sector" understated the effect of the Regulations on schools. For example, the Catholic Schools Trustee Service argued that "the imposition of the legislation will create challenge to and from schools, parents, and carers", particularly if it is not consistent with the school's broader ethos.

Differences from England

51. A number of submissions argued that the approach suggested in the Regulations would put NI at variance with England. For example, the Council for Public Affairs of the Presbyterian Church in Ireland stated that guidance on RSE in England places more weight on the context of teaching, including the wider ethos of the school, the religious background of pupils and the resulting "faith perspectives" on relationships and sex.

Lack of public consultation

52. The Regulations have not been subject to a public consultation. The EM stated there is no legal requirement to do so and that "during the course of developing the policy, we engaged with a range of stakeholders and statutory organisations to ensure the aims of the policy were met".

53. In response to our questions, NIO also said that a consultation was not necessary because each school must have a written policy on how it will deliver Relationship and Sexuality Education, and that this policy should be subject to consultation with parents. However, school policies will only be able to operate within the already-established government guidance, meaning that such consultation is too late to affect the framework of RSE delivery.

54. **It is striking that full public consultations were carried out when comparable regulations were introduced in England,**[14] **and when similarly controversial regulations on abortion were introduced in NI.**[15] NIO has not offered any convincing reasons why these Regulations should be treated differently.

55. The lack of a consultation was also the criticism most frequently mentioned in the submissions, including from teachers, parents and school governors as well as representative organisations. Other points advanced in submissions included:

- The Council for Public Affairs of the Presbyterian Church in Ireland argued that school governing bodies and principals should have been consulted because they will be the organisations charged with implementing the policy.
- The Transferor Representatives' Council suggested that the current lack of a NI Assembly made it "unusual" that the Secretary of State would act without engaging in consultation.
- The Democratic Unionist Party (DUP) said that the absence of a consultation was "particularly striking" in view of the High Court's judgment in a Judicial Review of earlier Northern Ireland abortion regulations, in which the court said "in the event that Regulations or

14 Relationships Education, Relationships and Sex Education and Health Education (England) Regulations 2019 (SI 2019/924).
15 Abortion (Northern Ireland) Regulations 2020 (SI 2020/345).

> Directions are made in the future to deal with [education on sexual and reproductive health] then there will be an opportunity for the Secretary of State to carry out a consultation".[16]

- The DUP also argued that the absence of a consultation may be contrary to the European Convention on Human Rights, on the grounds that the Convention states that "in the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions".[17]

56. In our recent Interim Report on the work of the Committee, we set out how consultations can, even if not legally required, provide opportunities to improve a policy and can also help to improve confidence in the policy.[18] **Given that this is a controversial policy with a wide range of interested parties and strongly felt views, a public consultation would have been appropriate as a matter of good policy making.**

Parliamentary process

57. Parts of the Regulations were brought into effect on 6 June 2023, the same day that they were laid. We asked NIO why it had chosen to breach the convention that at least 21 days should be allowed between laying an instrument and bringing it into effect. NIO said that this was "to allow the DE as much time as possible to progress work on the guidance in preparation for delivery of the education".

58. Statutory Instruments Practice, the National Archives' guidance for government departments, states:

> "If the 21-day period is reduced, you are reducing the time Parliament has to scrutinise the SI. This should not be done simply for Departmental convenience. If observing the '21-day rule' is impossible, you must explain in the EM why the SI could not have been made and laid sooner, and why it had to come into effect on the day specified. If the reasons are matters of policy, explain why the policy requires such urgent action. The explanation in the EM should also include what the financial or other impact of delaying the legislation to meet the rule would be."[19]

59. It is doubtful whether the need to prepare guidance in advance of the (self-imposed) implementation deadline of 1 January 2024 constitutes a requirement for "urgent action" that justifies the adverse impact on parliamentary scrutiny. Moreover, there is no explanation in the EM, or in NIO's responses to us, of what the impact of delaying the coming-into-force date to meet the rule would be, and we are not clear whether work on the guidance could have progressed immediately, even with a later coming-into-force date. We also note that we made a very similar criticism of NIO when it introduced regulations relating to abortions in NI in 2020.[20]

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16 High Court of Justice in Northern Ireland, *In the Matter of an Application by SPUC Pro-Life Ltd for Judicial Review*, [2022] NIQB 9 (8 February 2022).

17 Council of Europe, 'European Convention on Human Rights', p 34: https://www.echr.coe.int/documents/convention_eng.pdf [accessed 21 June 2023].

18 *Interim Report on the Work of the Committee in Session 2022–23* (42nd Report, Session 2022–23, HL Paper 205), para 24.

19 National Archives, *Statutory Instruments Practice: 5th Edition* (November 2017), para 2.11.4: https://www.legislation.gov.uk/pdfs/StatutoryInstrumentPractice_5th_Edition.pdf [accessed 21 June 2023].

20 *51st Report* (Session 2019–21, HL Paper 264), paras 16–18.

60. It would appear that either the NIO has breached the convention without adequate reason, or the timetable for producing guidance in advance of the implementation date of 1 January 2024 is so tight that a 21-day delay now would put it in jeopardy. **The House may wish to press the Minister for further justification on why the 21-day convention was breached. We also ask NIO to consider carefully any possible future breaches of the convention.**

Conclusion

61. These Regulations make RSE, with certain specified components, compulsory for children in key stages 3 and 4 in Northern Ireland. They implement a commitment contained in primary legislation, itself deriving from a recommendation of a United Nations Committee.

62. DE is responsible for implementing the details of the policy, including preparing guidance to enable schools to meet the requirements. As a result, NIO has not been able to provide some details on the policy that would have assisted scrutiny. **It would have been helpful for NIO to liaise with DE to ensure that more information was available.**

63. There are some indications that the implementation date of 1 January 2024 might not allow sufficient time for all the components of the policy to be fully developed. These include the possibility, acknowledged by NIO, that procedures may not be in place to allow parents to withdraw children from sexuality education. In addition, the bringing into force of the Regulations on the same day they were laid raises concerns that the process of writing guidance prior to the implementation date may be rushed.

64. In the submissions we received, the most commonly raised issue, including from diverse religious denominations, was the lack of a consultation. Based on both the principles of good policymaking and on a comparison with comparable prior legislation, we agree that there should have been a public consultation. **When taken alongside the other concerns on timing outlined above, the House may wish to consider pressing the Minister to bring forward the necessary legislation to push back the implementation date. This could allow time for a public consultation and would ensure the policy can be fully developed.**

CORRESPONDENCE

Aviation Safety (Amendment) Regulations 2023 (SI 2023/588)

65. In our 43rd Report,[21] we commented on the Aviation Safety (Amendment) Regulations 2023 (SI 2023/588), because its Explanatory Memorandum (EM) was so sparse. The EM simply described what the Regulations do at a technical level, without providing any context or information about the policy choices made. The Department for Transport (DfT) was able to respond to our questions fully and has since revised the EM to explain, among other things, why they consider there to be no safety risk from the delays the legislation implements. We wrote to the responsible Minister, Baroness Vere of Norbiton, to ask why, when they had all the necessary information, the Department had not published it in the EM and why so defective an explanation had been authorised for laying before Parliament. Her response is published at Appendix 2.

66. It states that although a system of third-party quality checking is in place in DfT, it was not applied to this instrument. A system that is so easily circumvented is not fit for purpose, and we look forward to seeing the results from the stringent review and extensive training of officials that the letter promises.

Sentencing Act 2020 (Special Procedures for Community and Suspended Sentence Orders) Regulations 2023(SI 2023/559)

67. We wrote in similar terms to Damian Hinds MP, Minister of State for Justice, to enquire why the explanation of this instrument, introducing the pilots of Intensive Supervision Courts, lacked detail to the extent that we needed to publish several pages of additional information in our 43rd Report. Our Report also raised doubts as to whether the approach to the pilots would yield the maximum possible benefits.[22] Mr Hinds responded promising to assess whether the current structures in the Ministry of Justice to check the quality of EMs are adequate. The correspondence is published at Appendix 3.

68. It is a matter of continuing concern to us that a wide range of government departments (see also the Department for Work and Pensions instrument at paragraphs 19 to 28) seem unable to provide an adequate explanation of their legislation, the rationale for changing the existing law, and what the anticipated effects will be.

21 *43rd Report* (Session 2022–23, HL Paper 207) para 34.
22 *Ibid.*, paras 1–20.

INSTRUMENTS RELATED TO COVID-19

Draft Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2023

69. These Regulations propose to extend until 30 September 2024 temporary provisions which were introduced during the pandemic to speed up the application process for pavement licences. Pavement licences are issued by local authorities and allow businesses that sell food or drink to place tables, chairs and other furniture on the highway adjacent to their premises. Under the temporary provisions, the application fee is capped at £100, and applications have a seven-day consultation period (compared to 28 days under the regular process), followed by a seven-day approval period (compared to an average approval time of 42 days under the regular process). During the consultation period, local residents may raise objections which the local authority must take into consideration when determining whether to grant a licence, and whether to impose any conditions.

70. The temporary provision was originally introduced by the Business and Planning Act 2020 and was due to expire on 30 September 2021. It was subsequently extended twice until 30 September 2022 and 30 September 2023 respectively.[23] The Department for Levelling Up, Housing and Communities (DLUHC) says that as businesses need certainty to help them recover economically from the coronavirus pandemic, this instrument proposes a third 12-month extension until 30 September 2024. Provisions for making the arrangements permanent have been included in the Levelling-up and Regeneration Bill which has completed its Committee Stage in the House.

71. We asked whether disability groups had raised any concerns during the Department's informal consultation exercise, and how any potential concerns had been addressed. DLUHC told us that:

> "Some concerns were raised regarding accessibility and in particular ensuring that disabled people have clear lines of access and are not disadvantaged and unable to use the pavement as a result of a licence having been granted. The measures require that local authorities have regard to the needs of disabled people when granting a licence, and minimum distances required for access by disabled people as set out in the guidance."[24]

23 Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021 (SI 2021/866) and Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2022 (SI 2022/862).

24 See: Department for Levelling Up, Housing and Communities, 'Guidance: pavement licences (outdoor seating)' (26 July 2022): https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal [accessed 19 June 2023].

INSTRUMENTS OF INTEREST

Central Counterparties (Equivalence) (India) (Reserve Bank of India) Regulations 2023 (SI 2023/599)

72. These Regulations recognise the Reserve Bank of India's (RBI) regulatory regime for Central Counterparties (CCPs) as being equivalent to the UK's own. CCPs sit between the buyers and sellers of financial instruments and reduce risk by providing assurance that contractual obligations will be fulfilled. The instrument allows individual CCPs authorised by the RBI to be considered for recognition by the Bank of England and, if they are recognised, to provide their services to UK companies. HM Treasury (HMT) says that this will give UK firms greater choice and the opportunity to engage more directly in overseas derivatives markets.

73. At present, under a 'Temporary Recognition Regime' (TRR), overseas CCPs can offer services in the UK if they were recognised by the EU at the end of the Brexit transition period. In December 2022, we expressed our disappointment that the intended new UK approach to assessing equivalence of overseas regimes had not been established.[25] These Regulations are welcome as the first instance of an equivalence decision under the UK system. However, HMT told us that only one overseas CCP, out of a total of 46 temporarily recognised, could currently be covered–the remainder being based in other jurisdictions.

Republic of Belarus (Sanctions) (EU Exit) (Amendment) Regulations 2023 (SI 2023/616)

74. As their economies are closely integrated, this instrument extends the sanctions imposed on the Belarusian regime which continues to openly facilitate Russia's illegal invasion of Ukraine. The instrument amends the designation criteria to:

- allow the Foreign, Commonwealth and Development Office (FCDO) to target more effectively key individuals;
- further restrict dealing with transferable securities or banknotes;
- add new measures relating to internet services and online media;
- prohibit the import from Belarus of cement, rubber, wood and gold; and
- prohibit the export of machinery and precursor materials for chemical and biological weapons and technology to Belarus.

75. These Regulations were brought into effect within 24 hours of laying before Parliament, but we were surprised to learn that—16 months into the conflict—the FCDO is only now prohibiting the export of precursor materials for chemical and biological weapons to a conduit country known to aid Russia.

25 *24th Report* (Session 2022–23, HL Paper 123), paras 3–5.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft	Agriculture and Horticulture Development Board (Amendment) Order 2023
Draft	Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2023
Draft	Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023
Draft	Healthcare (International Arrangements) (EU Exit) Regulations 2023
Draft	Industrial Training Levy (Engineering Construction Industry Training Board) Order 2023
Draft	International Atomic Energy Agency (Immunities and Privileges) (Amendment) Order 2023

Made instruments subject to affirmative approval

SI 2023/616	Republic of Belarus (Sanctions) (EU Exit) (Amendment) Regulations 2023

Draft instruments subject to annulment

Draft	Cheltenham (Electoral Changes) Order 2023
Draft	Epping Forest (Electoral Changes) Order 2023

Instruments subject to annulment

SI 2023/599	Central Counterparties (Equivalence) (India) (Reserve Bank of India) Regulations 2023
SI 2023/601	Common Procurement Vocabulary (Amendment) Regulations 2023
SI 2023/603	Care Quality Commission (Fees) (Reviews and Performance Assessments: Integrated Care System) Regulations 2023
SI 2023/623	Windsor Framework (Disclosure of Revenue and Customs Information) Regulations 2023

APPENDIX 1: DRAFT IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT) ORDER 2023

Letter from the Rt Hon. Lord Hunt of Wirral MBE, Chair of the Secondary Legislation Scrutiny Committee, to Lord Murray of Blidworth, Parliamentary Under Secretary of State for Migration and Borders at the Home Office

Statement of Changes in Immigration Rules (HC 1160) and Immigration (Electronic Travel Authorisations) (Consequential Amendment) Regulations 2023

I am writing to thank you for attending this morning's evidence session in relation to the above statutory instruments (SIs). We will send you the uncorrected transcript of the session for checking as soon as it is available.

I look forward to receiving, in due course, the impact assessment and the guidance on how Electronic Travel Authorisations (ETAs) will operate on the Ireland/ Northern Ireland border. I also await with interest your further thoughts on inter-departmental contact at official and Ministerial level with a view to improving the quality of the explanatory material around SIs.

I hope we can continue to engage on the matter of how the Home Office prepares its SI material. The Committee's. staff remain, of course, available to assist with any training on the subject if that would be helpful.

11 May 2023

Letter from Lord Murray of Blidworth to the Rt Hon. Lord Hunt of Wirral MBE

Thank you again for the opportunity to give evidence to the Secondary Legislation Scrutiny Committee on 11 May. Please see below our responses to the Committee's follow up questions.

1. You asked for further details on when the guidance will be published. As part of the preparations to launch the UK Electronic Travel Authorisation (ETA) scheme in October 2023, the Home Office will be providing full guidance for those travelling to the UK; carriers bringing travellers to the UK; and frontline staff. This will also include the guidance on the types of physical evidence that those who are legally resident in Ireland and who would require an ETA, could produce if encountered in the UK to demonstrate their exemption. The department will endeavour to publish this guidance before summer recess. We believe this provides those covered by the scheme, and those benefiting from the exemption, ample time to prepare for the introduction of the ETA requirement in October.

As the Committee will be aware, from 25 October 2023 we will open the ETA scheme to allow Qatari nationals to start applying for their ETA which they will then be able to use for travel from 15 November. Subsequently, from February 2024 the ETA scheme will be opened up to the remaining Gulf States: Kuwait, Oman, UAE, Bahrain, Saudi Arabia and Jordan.

The Home Office will provide further details about which country will be next to benefit from the ETA scheme in due course. The scheme will eventually apply to

all other non-visa nationals. We will provide ample time to ensure all those who are impacted are acquainted with the changes.

In regard to the publication of the ETA Impact Assessment, you will recall that I made a commitment to publish the Impact Assessment once the fee for an ETA had been finalised. On 6 June, I confirmed to Parliament that the Home Office will charge £10 for an ETA application during the initial roll out period. As per my commitment, the department published the Impact Assessment on the same day.

2. The Committee also enquired about interdepartmental contact between ministers with responsibility for secondary legislation. The Parliamentary Business and Legislation Committee (PBL) Secretariat regularly shares advice and guidance with departments to ensure that secondary legislation is delivered to a high standard. This sets out overarching principles of best practice and is used in conjunction with the department's own guidance. As the chair of PBL, the Leader of the House of Commons communicates with SI Ministers as appropriate to raise issues and promote best practice – the most recent of which was a letter sent to all SI Ministers in February.

3. Finally, during his questioning, Lord Russell referenced the number of explanatory memoranda (EMs) that the Home Office has had to replace because they were not up to the required standard. He cited that this was 17% in recent months. While I recognise there has been a higher number of EMs replaced recently, this figure is less than 10% when contextualised in the whole of this session. It should also be noted that these figures include a number of EMs which required very minor changes such as a broken hyperlink in the uploaded document. The Home Office has robust processes in place to assure the quality of its EMs. As I said in my evidence, I take our obligations to Parliament extremely seriously and appreciate the vital role which EMs play in providing a clear explanation about the impact of legislation.

7 June 2023

APPENDIX 2: CORRESPONDENCE ON THE AVIATION SAFETY (AMENDMENT) REGULATIONS 2023 (SI 2023/588)

Letter from the Rt Hon. Lord Hunt of Wirral MBE, Chair of the Secondary Legislation Scrutiny Committee, to Baroness Vere of Norbiton, Minister for Aviation, Maritime and Security at the Department for Transport

Yesterday, the Secondary Legislation Scrutiny Committee considered the Aviation Safety (Amendment) Regulations. We were disappointed to find that the Explanatory Memorandum (EM) accompanying the instrument fell far short of the standard expected in that it described what the Regulations do in legal terms without providing any context or rationale for the policy underlying them.

The Department was able to respond to our many questions promptly and fully, for which we are grateful, but this material should have been set out in the original EM. We have therefore asked for the EM to be revised. Given that the missing information was available at the outset but the original EM was authorised for laying without it, we would welcome an explanation of why this happened, what structures your Department has in place for clearing parliamentary material, and whether there are any plans to review them.

We also noted that, to explain the delay in implementing the changes made by this instrument, paragraph 7.2 of the EM says:

> "Since we left the EU, we... have been working to move to compliance on this, but we have had to make prioritisation decisions regarding regulatory changes, so are bringing this forward now."

Your letter of 28 April 2023 reassured us that sufficient resource, in particular legal resource, will be available to complete work on the maritime backlog and to deal with the outcome from the Retained EU Law (Revocation and Reform) Bill when enacted. In the light of the delay in drafting this set of Regulations on aviation safety, we also seek your reassurance that the implementation of international commitments in other areas of transport policy will not fall behind as a result.

7 June 2023

Letter from Baroness Vere of Norbiton to the Rt Hon. Lord Hunt of Wirral MBE

Thank you for your letter of 7 June 2023 regarding the Aviation Safety (Amendment) Regulations 2023. I share the Committee's disappointment that the accompanying Explanatory Memorandum (EM) did not meet the expected standards, and I remain committed to ensuring the highest quality of EMs across my Department's programme of secondary legislation.

I am pleased that my officials were able to respond promptly and fully to the questions raised, and we will re-lay the updated EM to the Committee by 19 June as requested.

We are clear that we must set out the appropriate level of detail on the policy changes in the EM, and accept that in this case we fell short. I recognise too that the EM was not as accessible to a lay reader as it should have been. My officials are

reviewing their processes once more to prevent this from happening again, and we will ensure that lessons learned are disseminated across the Department.

You asked about the structures in place for clearing parliamentary material. I can confirm that all SIs and associated documentation must be cleared through Senior Civil Servants (SCS) within their local policy and legal chains. Last year, we incorporated an additional layer of clearance for EMs involving independent SCS review. Unfortunately, in this circumstance, the EM did not go through this independent SCS review which, had it happened, may have helped identify the issues found by the Committee. This was an oversight which we regret, and I would like to reassure you that independent SCS clearance will be completed before the EM is re-laid.

My officials are establishing new processes to ensure the peer review process is followed in full for every EM, including instituting formal confirmation points. This is alongside our existing secondary legislation reform programme, a key strand of which is to upskill officials across the Department on secondary legislation. Our work is focused on developing robust guidance materials, communications and training opportunities for secondary legislation. For example, earlier this month I had the pleasure of speaking at a DfT training event on Effective EMs which was attended by over 100 officials.

We will keep all secondary legislation practices under review to ensure quality is continuously improved.

I understand the Committee is also concerned about the risk of delays to implementing international commitments on transport policy. I would like to reassure you that we remain on track to meet our commitment to completing the backlog of international maritime secondary legislation before the end of 2023.

More broadly, the Department will soon undertake a trawl of future SIs with a specific focus on identifying instruments relating to international commitments. Any instruments identified will be given appropriate priority and oversight to ensure that they are delivered alongside our REUL reforms. We have increased the resource allocated to central coordination of secondary legislation which will ensure we can prioritise effectively and identify risks early.

I would like to thank the Committee for working with us to get this right, and I hope that this letter provides you with reassurance on the concerns raised. Secondary legislation remains a matter of the utmost importance to myself and my Department.

13 June 2023

APPENDIX 3: CORRESPONDENCE ON THE SENTENCING ACT 2020 (SPECIAL PROCEDURES FOR COMMUNITY AND SUSPENDED SENTENCE ORDERS) REGULATIONS 2023

Letter from the Rt Hon. Lord Hunt of Wirral MBE, Chair of the Secondary Legislation Scrutiny Committee, to the Rt Hon. Damian Hinds MP, Minister of State at the Ministry of Justice.

The Secondary Legislation Scrutiny Committee (SLSC) has published a commentary on these Regulations in its 43rd Report. We were disappointed to find that the Explanatory Memorandum (EM) accompanying the instrument fell short of the standard expected in that it did not provide any detail on the design, implementation and review of the pilots of Intensive Supervision Courts (ISCs) that these Regulations implement.

Ministry officials were able to respond to our questions promptly and fully, for which we are grateful, but this material should have been set out in the EM. We have drawn attention to exactly this issue, of our needing to obtain additional information that should have been in the EM, in our recent Interim Report on the Work of the Committee.[26]

Given that the missing information was available but the EM was authorised for laying without it, we would welcome an explanation of why this happened, what structures your Department has in place for clearing parliamentary material, and whether there any plans to review them.

12 June 2023

Letter from the Rt Hon. Damian Hinds MP to the Rt Hon. Lord Hunt of Wirral MBE

Thank you for your letter of 12 June 2023 and the important issues you have raised in consideration of this instrument and its accompanying Explanatory Memorandum (EM). While I am pleased that my officials were able to sufficiently answer your subsequent questions on the pilot, I acknowledge that on this occasion the EM provided did not meet the required standard. Please accept my apologies for that.

All EMs are cleared through policy senior civil servants, drafting lawyers, the parliamentary team and the responsible policy Minister.

To help ensure that future EMs provide the right level of detail my parliamentary team will be running a series of secondary legislation capability sessions this summer with a particular focus on the importance of drafting good quality EMs. Policy teams will be aided with guidance material published by the National Archives as well as internal guidance providing helpful information from experienced drafters with examples of what a good EM should look like.

I am also grateful to your committee advisor for agreeing to hold a session on 6 July with officials here about parliamentary scrutiny of secondary legislation and the role EMs play in that.

26 *Interim Report on the Work of the Committee in Session 2022-23* (42nd Report, Session 2022–23, HL Paper 205).

In addition to the above, and in light of your comments both on this instrument and those in your recent 42nd Interim Report for this session, I have asked my officials to assess whether the current structures in place to check the quality of EMs are adequate.

I hope this response provides some reassurance of our commitment in providing you with good quality supporting documents.

15 June 2023

APPENDIX 4: 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 20 June 2023 and included in this report, Members declared no interests.

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, Lord Powell of Bayswater, Baroness Randerson, Baroness Ritchie of Downpatrick, and Lord Thomas of Cwmgiedd.