

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

51st Report of Session 2022–23

Drawn to the special attention of the House:

Draft Misuse of Drugs Act 1971

(Amendment) Order 2023

Statement of Changes in Immigration Rules

(HC 1496)

Windsor Framework (Retail Movement

Scheme) Regulations 2023 and four linked

instruments

Includes information paragraphs on:

Draft Local Elections (Northern Ireland)
Order 2023 and two linked instruments

Draft Terrorism Act 2000 (Proscribed
Organisations) (Amendment) Order 2023

Draft Town and Country Planning (Fees for
Applications, Deemed Applications, Requests
and Site Visits) (England) (Amendment)
Regulations 2023

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Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as agreed on 17 July 2023, are set out on the website but are, in summary:

To report on draft instruments and memoranda laid before Parliament under section 23(1) of the European Union (Withdrawal) Act 2018 and sections 11, 12 and 14 of the Retained EU Law (Revocation and Reform) Act 2023.

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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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.

Fifty First Report

DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Misuse of Drugs Act 1971 (Amendment) Order 2023

Date laid: 5 September 2023

Parliamentary procedure: affirmative

This Order would reclassify nitrous oxide as a Class C drug, increasing the restrictions around its use and the penalties available for breaches. The proposed change is made contrary to the recommendations of the independent Advisory Council on the Misuse of Drugs (ACMD), whose function is to advise Government on such issues. The limited information available on the views of key stakeholders, such as the police, also suggested they had mixed feedback.

*The Government are entitled to take a different approach to that recommended, based on its “broader view” of the issues. **However, in so doing it should establish robust methods of analysing and reporting on the effects of the policy, including committing to a post-implementation review.** Such analysis should cover any concerns raised by the police and other interested parties. **The House may wish to press the Minister on the Home Office’s plans in this area.***

*The Government have not conducted a public consultation on the reclassification, stating that this was because they were already “minded to introduce a ban”. **Consultations can serve several purposes and this is not an adequate reason for dispensing with one, particularly where key stakeholders have expressed reservations. It should not set a precedent. In any case, the views of the police and other interested parties should have been set out in more detail, whether supporting the policy or opposing it. The House may wish to enquire further of the Minister on what those views were.***

This Order is drawn to the special attention of the House on the ground that that there appear to be inadequacies in the consultation process which relates to the instrument.

Background

1. This Order would bring nitrous oxide under control as a Class C drug under the Misuse of Drugs Act 1971 (“the 1971 Act”). Class C is the lowest of three tiers of controlled drugs under the 1971 Act, classified by the harm they cause.
2. Nitrous oxide is currently controlled under the Psychoactive Substances Act 2016. This means that while it is an offence to produce, supply, offer to supply, possess with intent to supply, import or export the gas, possession is not usually illegal. Bringing it under the 1971 Act would make possession an offence (unless the person is exempt) and would allow more stringent penalties and enforcement provisions to apply.

Advisory body's recommendations

3. The treatment of nitrous oxide under the law was considered by the Advisory Council on the Misuse of Drugs (ACMD) in a report published in March 2023.¹ The ACMD is the independent body that makes recommendations to government on the control of harmful drugs, including their classification under the 1971 Act.
4. The ACMD concluded that “the Psychoactive Substances Act 2016 remains the appropriate drug legislation to tackle supply of nitrous oxide for non-legitimate use”, and, therefore, that “nitrous oxide should not be subjected to control under the Misuse of Drugs Act 1971”. The ACMD gave three reasons:
 - “Current evidence suggests that the health and social harms are not commensurate with control” under the 1971 Act.
 - The penalties under the 1971 Act would be “disproportionate for the level of harm associated with nitrous oxide and could have significant unintended consequences”.
 - Control under the 1971 Act “could produce significant burdens for legitimate medical, industrial, commercial, and academic uses”.
5. While not recommending a change in the legal treatment, the ACMD did suggest a number of other interventions. These included: measures to tackle non-legitimate supply, such as restrictions on direct-to-consumer sales and smaller canister sizes; a public education campaign on the harms associated with nitrous oxide use; and a programme of monitoring to understand better the health and social harms associated with the drug.

Why are the Government proceeding contrary to ACMD's advice?

6. The Home Office acknowledged the ACMD's recommendations but is proceeding with the reclassification. The Home Office said that this was justified when taking a “broader view” of the impact of nitrous oxide on society, in addition to considering the scientific advice. In particular, it cited “widespread misuse” of the drug and the degree of “health and social harm”, such as nerve damage, that results. The Home Office also noted “anecdotal reports of links to anti-social behaviour” in the ACMD report and stressed the usage of the drug by children and young adults. For example, the Home Office said that nitrous oxide was the third most misused substance among those aged 16 to 24, according to the 2021/22 Crime Survey of England and Wales.
7. We asked the Home Office about the possible “unintended consequences” of classification under the 1971 Act, such as the possibility of criminal networks becoming involved in distributing the drug. The Home Office replied that there was “anecdotal evidence” of this happening already. It also noted that illegal suppliers of the drug would face stricter punishments under the 1971 Act; for example, a maximum sentence of 14 years in prison (double the maximum under the Psychoactive Substances Act 2016), an unlimited fine, or both.

¹ Advisory Council on the Misuse of Drugs, ‘Nitrous oxide: Updated harms assessment’ (6 March 2023): <https://www.gov.uk/government/publications/nitrous-oxide-updated-harms-assessment> [accessed 8 September 2023].

8. We asked the Home Office if it was aware of any precedents for Governments not following the ACMD's advice. The Home Office cited two:
- In 2013, the Government brought Khat under the control of the 1971 Act, contrary to the recommendations of the ACMD.
 - In 2008, the Government reclassified Cannabis from a Class C to a Class B drug, against the advice of the ACMD.

Consultation

9. The Home Office told us it had not conducted a public consultation on the reclassification of nitrous oxide because it was already "minded to introduce a ban in light of the evidence emerging as it developed its Anti-social Behaviour Action Plan". **This response is concerning.** Consultations can gather views from interested parties about whether they are in favour of the policy, but they also serve to bring out any unintended consequences or unforeseen difficulties, drawing on the expertise of those operating in the field. They can also help to improve confidence in the policy. **It would be an unwelcome departure from good practice if Government could omit the consultation stage simply because it had already made up its mind on the policy direction. This example should not set a precedent.**
10. The Home Office did say that, in addition to the ACMD, it had engaged with "interested stakeholders", such as the British Compressed Gases Association (BCGA), the police, the courts, the Border Force, drug charities, and representatives of the night-time industries and online retailers. The Government reported that the BCGA "largely" supported tighter controls but did not record the views of other bodies.
11. We asked about the views of police forces. The Home Office told us only that their feedback "reflected the range of views from within policing". **It is concerning if the police, who will be responsible for implementing the policy, have mixed views about it. The police must have had reasons for their reservations and these, along with feedback from other key stakeholders, should be explained more fully. The House may wish to press the Minister further on this point. The existence of these alternative views also reinforces the need for a consultation.** Any issues raised by interested parties should form part of the monitoring programme recommended below.

Reviews of the policy and other measures

12. In response to our questions about whether it was taking forward other ACMD recommendations, the Home Office stated it was in "early discussions" about an update of the FRANK resource for drug advice and had "initiated planning" for data collection on nitrous oxide use. The Home Office also said that a post-implementation review of the policy "would be considered".
13. The Home Office is entitled to proceed with the reclassification based on its "broader view" of the issues than is presented in the ACMD report. **However, given the ACMD's opposition, the apparently ambivalent feedback from key stakeholders such as the police and the current absence of good data and evidence on nitrous oxide, we encourage the Government to monitor the policy closely and report publicly**

on its effects. This should include committing firmly to a post-implementation review.

Impact assessment

14. An impact assessment for the policy gave an expected cost of £68 million over ten years, of which around £40 million was direct financial costs; for example, to the police, courts, the prison system and the legal aid budget. The Home Office told us that there would be no additional funding available to implement this policy in the current spending review period (to 2024/25). The Home Office also said it expected the policy to result in around 26 additional prison places being required per year. **This is useful additional impact information that should have been summarised in the Explanatory Memorandum. The policy monitoring should include an assessment of whether adequate resources are available to implement the changes effectively.**

Exemptions

15. The Home Office has stated that it will lay a further statutory instrument, coming into force at the same time as this Order, to make provision for legitimate access to nitrous oxide; for example, in healthcare. This follows a public consultation earlier this year to improve the Government’s understanding of legitimate uses of nitrous oxide and to help with designing a regime that enables, and minimises burdens on, legitimate use.² **It is notable that the Home Office felt it was appropriate to consult on exemptions to the policy. This underlines our concerns about the lack of a consultation on the reclassification itself.**

Statement of Changes in Immigration Rules (HC 1496)

Date laid: 17 July 2023

Parliamentary procedure: negative

Amongst other changes to the immigration rules, this instrument increases restrictions on those who can come to the UK under the student visa route. This is expected to lead to a “tangible” decrease in net migration.

*The Home Office acknowledges that the measures will have a “significant” impact on universities and the public sector. However, it has not provided any quantification of these effects. The Home Office has refused to publish an Impact Assessment, which it initially said had been prepared but later said was still to be finalised. The absence of any such information makes full scrutiny of this instrument impossible. **The House may wish to seek further information on the “significant” impact of these policies on the university and public sectors.***

*The Home Office also brought the student visa measures into effect immediately, again restricting scrutiny. One of its arguments was that the policy had been announced in May 2023 and had attracted significant publicity. **However, publicity based on a press release or statement is not a substitute for scrutiny, which requires the instrument and all supporting explanatory information to be made available.***

² Home Office, ‘Consultation outcome: Nitrous oxide: legitimate uses and appropriate controls’ (5 September 2023): <https://www.gov.uk/government/consultations/nitrous-oxide-legitimate-uses-and-appropriate-controls/nitrous-oxide-legitimate-uses-and-appropriate-controls> [accessed 11 September 2023].

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

Background

16. This instrument makes a number of changes to the immigration rules, including:
- **Student visas:** removing the right for most international visitors on student visas to bring dependants; and removing the ability for international students to switch out of the ‘student’ visa route into ‘work’ routes before their studies have been completed.
 - **Ukraine Extension Scheme:** extending eligibility for this scheme, which allows a stay in the UK of up to 36 months, to anyone granted initial permission before 16 November 2023 (previously 18 March 2022).
 - **Shortage occupations:** adding jobs in the construction and fishing industries to the list of ‘shortage occupations’, for which work visas can be granted on the basis of a lower salary.
17. No significant issues arise in relation to the Ukraine Extension Scheme, the shortage occupations list or the other policies in the instrument. The remainder of this paper, therefore, comments only on the measures relating to student visas.

Impact on universities and public sector

18. The Explanatory Memorandum (EM) to the instrument said that the changes to the student visa were expected to bring about a “tangible” reduction in net migration.
19. Correspondingly, the EM stated the changes will also have “significant” impacts on universities and impacts on the public sector. The EM said these effects “are set out in the Impact Assessment which has been prepared for these Rules changes”. However, no Impact Assessment (IA) was provided and the EM contained no further details or any quantification of the likely effects.
20. We asked the Home Office to provide the IA. The Home Office responded that:
- “Any impacts, including significant impacts on universities and the public sector, are being assessed for the purposes of the Impact Assessment which has been prepared to assess the impact of these Rules changes. The Impact Assessment is still to be finalised and is subject to final Departmental clearances and will be published in due course.”
21. The absence of any impact information makes proper scrutiny of this instrument impossible, particularly given that the Home Office has acknowledged that the effects will be “significant”. **The House may wish to seek further information on the impact of these policies on the university and public sectors.**

22. In addition, we do not see how the statements above from the EM and from the Home Office’s answers to us can be consistent. The EM states that the impacts are set out in an IA that has been prepared, but the later answers say that the impacts are being assessed and the IA is still to be finalised. **If the EM is accurate, we do not see any reason why the Home Office could not have provided the IA. If the EM is inaccurate, it should be revised. The House may wish to ask further questions about the status of the IA.**

Timing of coming into force of the measures

23. The student visa measures were brought into force on the day the instrument was laid, breaching the convention that at least 21 days should be allowed between laying an instrument and bringing it into effect. The Home Office justified this on the basis that “the changes were announced in Parliament and widely reported on 23 May 2023³ and there has therefore already been sufficient notice that the changes are taking place”. **However, notice that a policy will be introduced does not enable proper scrutiny of the measures, which can only take place once the instrument and its supporting information have been published.**
24. The Home Office also argued that the usual notice period could have led to “a large number of applications” in a “closing down sale”. We queried why any such effect would not have arisen when the changes were announced in May, given the significant publicity they attracted. The Home Office argued that, based on its “experience from previous such instances of restricting or closing routes”, it is “the implementation date and laying of the immigration rules which triggers the rush to apply, rather than any media speculation or announcement”.
25. It is a delicate argument to suggest that announcing the changes in May was sufficient to ensure that they are widely known about and could be scrutinised, but would not lead to a closing-down sale. We are not in a position to disagree with the Home Office’s analysis based on its prior experience. **However, we would reiterate that the 21-day rule should only be breached when urgent action is necessary.**

Conclusion

26. We have repeatedly made clear that all supporting material used to formulate a policy, including impact information, should be made available when the instrument is laid. We welcome the Government’s explicit endorsement of this position in its response to our Interim Report.⁴ **However, we continue, as in this instance, to see some departments not acting in line with the wider Government position, hindering scrutiny of policies.** For our part, we will continue to highlight such bad practices and encourage departments to improve.

3 HC Deb, 23 May 2023, [cols 14–15WS](#) [Commons written ministerial statement].

4 [50th Report](#) (Session 2022–23, HL Paper 245).

Windsor Framework (Retail Movement Scheme) Regulations 2023 (SI 2023/896)

Date laid: 8 August 2023

Parliamentary procedure: negative

Draft Windsor Framework (Enforcement etc.) Regulations 2023

Date laid: 4 September 2023

Parliamentary procedure: affirmative

Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023 (SI 2023/956)

Windsor Framework (Plant Health) Regulations 2023 (SI 2023/957)

Windsor Framework (Retail Movement Scheme Public Health Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023 (SI 2023/959)

Dates laid: 4 September 2023; 5 September 2023

Parliamentary procedure: negative

These five sets of Regulations introduce the practical measures required to deliver the new ‘Green Lane’ arrangements for trade between Northern Ireland (NI) and Great Britain (GB) from 1 October 2023, as agreed in the Windsor Framework between the UK and the EU on 27 February 2023. The instruments:

- *establish the NI Retail Movement Scheme which seeks to replace temporary arrangements with a new long-term legal framework for trade in agri-food goods between GB and NI;*
- *establish a new NI plant health label scheme to ease the movement of relevant goods and products between GB and NI;*
- *extend GB rules for public health, marketing and organic standards to NI to enable the operation of the new schemes;*
- *enable the establishment of a financial assistance scheme to support traders with the labelling costs arising from the new arrangements; and*
- *propose a regime to enforce the new arrangements.*

We have received submissions from the Democratic Unionist Party (DUP) which raise several concerns, including about the constitutional implications of the new arrangements and NI’s position in the UK, trade diversion, the complexity and costs of the new schemes and a lack of public consultation. While this report reflects some of these concerns and the response of the Department for Environment, Food and Rural Affairs, it would not be appropriate for us to adjudicate on the views expressed. We note that these submissions reflect the views of the DUP, and that no other submissions were received.

We are concerned about the lack of an Impact Assessment or even basic impact information. The absence of such information when secondary legislation is laid before Parliament is a concern which we have raised repeatedly. The House may wish to press the Minister further on this.

We also regret that the provisions establishing the new NI Retail Movement Scheme came into force during the Summer Recess, thereby denying Parliament the opportunity to form a view on the scheme before its launch. We note that the Department does not expect new permanent facilities for sanitary and phytosanitary checks, which will be needed for the effective operation of the new arrangements, to be ready until July 2025.

The 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.

27. These five instruments have been laid before Parliament by the Department for Environment, Food and Rural Affairs (Defra), each with an Explanatory Memorandum (EM). The instruments introduce the practical measures required to deliver the new ‘Green Lane’ arrangements for trade between Northern Ireland (NI) and Great Britain (GB) from 1 October 2023, as agreed in the Windsor Framework between the UK and the EU on 27 February 2023.⁵ The ‘Green Lane’ will be for goods that are moved from GB to NI and stay in NI. In contrast, the ‘Red Lane’ will apply to goods that are moved from GB to the Republic of Ireland or the rest of the EU via NI.
28. Specifically, the instruments:
- establish the NI Retail Movement Scheme to replace temporary arrangements with a new long-term legal framework for trade in agri-food goods between GB and NI (SI 2023/896);
 - establish a new NI plant health label (NIPHL) scheme to ease the movement of relevant goods and products between GB and NI (SI 2023/957);
 - extend GB rules for public health, marketing and organic standards to NI to enable the operation of the two schemes (SI 2023/959);
 - enable the establishment of a financial assistance scheme to support traders with the labelling and other costs arising from the new arrangements (SI 2023/956); and
 - propose a regime to enforce the new arrangements (draft Windsor Framework (Enforcement etc.) Regulations 2023).
29. We have received submissions from the Democratic Unionist Party (DUP) which raise several concerns in relation to SI 2023/896, SI 2023/957 and the draft Windsor Framework (Enforcement etc.) Regulations 2023, including about the constitutional implications of the new arrangements and NI’s position within the UK, trade diversion, the complexity and costs of the new schemes and a lack of public consultation. Some of these concerns and the Department’s response to the issues raised are reflected in the report. We have published the DUP’s submissions and Defra’s response in full on our website.⁶

5 Prime Minister’s Office, ‘The Windsor Framework’ (27 February 2023): <https://www.gov.uk/government/publications/the-windsor-framework> [accessed 11 September 2023].

6 See ‘Scrutiny evidence’ webpage: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/> [accessed 11 September 2023].

30. We note the report of the House of Lords European Affairs Committee Sub-Committee on the Protocol on Ireland/Northern Ireland (“the Sub-Committee”) on the Windsor Framework⁷ and the Government’s response to that report,⁸ which provide a comprehensive analysis of the new arrangements.

Background

31. Following the UK’s withdrawal from the EU and the end of the Transition Period, the Northern Ireland Protocol (“the Protocol”) to the UK-EU Withdrawal Agreement required all agri-food goods to comply with full EU third country controls before being moved from GB into NI, including full inspection and certification by veterinary or plant health officers at NI sanitary and phytosanitary (SPS) facilities, in line with EU regulations. Defra says that implementing these requirements would have led to delays in the movement of goods and increased waste, especially for supermarkets, and may have resulted in the withdrawal of goods and traders from the NI market.
32. Grace periods and temporary arrangements were therefore introduced under the Scheme for Temporary Agri-food Movements to Northern Ireland (STAMNI) on 1 January 2021. The new arrangements introduced by these instruments will replace STAMNI from 1 October 2023. According to Defra, this will bring a sustainable, long-term solution which simplifies the movement of retail goods from GB to NI by reducing significantly official certification and inspection requirements. The EU has adopted Regulation (EU) 2023/1231⁹ which sets out the specific rules for the movement of relevant goods from GB to NI which the new arrangements implement.

How the new arrangements will work

33. Under the new NI Retail Movement Scheme, traders who move agri-food goods for final consumers in NI will be allowed to move an entire consignment using a single remotely approved digital certificate, rather than separate health certificates for each individual food product, without routine physical inspections, and in line with GB, rather than EU, public health, marketing and organics standards. Defra says that these new ‘Green Lane’ arrangements will lead to a significant reduction in checks compared to what would have occurred if the NI Protocol had been implemented fully, including an absence of routine physical checks. The Department says that this will also allow for the movement of goods which are currently prohibited under EU regulations, such as certain chilled meat products.
34. The relevant GB and NI authorities will continue to carry out documentary checks on all consignments moving to NI under the Scheme. They will also carry out so-called identity checks¹⁰ although at a lower rate than would have occurred under the Protocol. The rate will reduce gradually over time: a minimum of 10% of consignments will require identity checks from 1 October

7 European Affairs Committee Sub-Committee on the Protocol on Ireland/Northern Ireland: *The Windsor Framework*, 7th Report (Session 2022–23, HL Paper 237).

8 Government response to the Northern Ireland Protocol Sub-Committee Report (11 September 2023): <https://committees.parliament.uk/publications/41378/documents/203397/default/>.

9 See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32023R1231>.

10 Identity checks involve checking whether the number on the seal on each consignment of relevant goods moving into NI corresponds with the number on the seal on the consignment at the point when the consignment left GB.

2023, 8% of consignments from 1 October 2024 and 5% of consignments from 1 July 2025.

35. According to Defra, the GB and NI authorities will carry out physical checks on consignments only where they consider that there may be a potential risk. They may enter retail premises to seize goods if the goods pose a risk to the biosecurity of the island of Ireland or if there is a risk of goods moving into the EU in contravention of the NI Retail Movement Scheme.
36. The NI Retail Movement Scheme will be open to all traders of agri-foods goods, including supermarkets and other shops, retailers and wholesale outlets. It will cover goods which are delivered directly to the final consumer, for example by restaurants, caterers, canteens and those providing food to schools or hospitals as well as supermarket distribution centres and terminals which distribute retail goods under controlled temperatures. Businesses will have to register if they want to use the Scheme.
37. The new NIPHL scheme removes the requirement for plants for planting and machinery and vehicles which have been used in agriculture or forestry to have a full third country certification, including individual phytosanitary certificates costing up to £150, when they are moved from GB to NI. Instead, businesses can register and become authorised to issue and attach a NIPHL to any such goods. The current prohibition on seed potatoes entering NI from GB will be lifted. Defra says that the NIPHL scheme requirements closely reflect the existing UK plant passport regime for trade within GB.
38. To enable the new arrangements, GB rules for public health, marketing (including in relation to fisheries) and organics standards are extended to NI so that goods moved from GB to NI under the NI Retail Movement Scheme can meet GB standards, rather than EU rules. However, Defra says that because the UK is “committed to protecting the biosecurity of the island of Ireland” and “recognising the longstanding treatment of the island of Ireland as a single epidemiological unit”, EU animal and plant health standards will still apply.
39. A new financial assistance scheme will provide support to businesses with the costs of adapting to the new requirements. According to Defra, the new scheme will award financial assistance “to reimburse or subsidise costs of introducing ‘Not for EU’ markings on packaging and boxes”, as required for goods moving under the new arrangements. The labelling requirements will be introduced in three phases, starting on 1 October 2023 when individual product labels will be required for all meat products and certain higher risk dairy products (all other products will require box-level labels and in store shelf labels). By 1 July 2025, all retail goods will have to be individually labelled unless they have a specific exemption. Assistance will be available for the first phase covering costs arising during the period from 27 February to 31 December 2023, with the funding scheme opening for applications in early 2024.

The DUP’s concerns about the new Scheme

40. Amongst other concerns, the DUP’s submissions criticise the assertion that the new arrangements make provision for “unfettered access” between GB and NI and effect the “full and proper integration” of NI in the UK single market. They suggest that, in practice, traders will still require an export number, will have to complete customs and SPS paperwork and go through

border controls with up to 10% identity checks. The submissions also argue that the new arrangements will be complicated and expensive compared to the temporary STAMNI scheme that they replace, and that since the Windsor Framework was announced, there has been a “significant reduction in goods travelling from GB to NI”, diverting trade and impacting on the haulage sector. In response, the Department explained that:

“Without the new [NI Retail Movement] Scheme, Northern Ireland would face significant trade impacts associated with full compliance with the old Northern Ireland Protocol. Traders would be obliged to comply with full EU third-country controls, which would increase costs, reduce the shelf life of goods (as certification and sign-off adds to transit times) and certain banned goods (like chilled sausages and chicken nuggets) would be excluded from the market. All of this could result in negative impacts for consumers if traders were to increase the cost of goods, exit the market, or withdraw products to avoid the complexities of compliance. The Scheme removes these unnecessary burdens and will allow those goods which are currently prohibited by EU regulations to once again move to NI. As such we do not recognise at all the suggestion that these arrangements represent little change compared to the burdens of the original Protocol, and are indeed a significant shift away from them.

[The] current grace periods [...] were explicitly temporary and were the subject of an ongoing UK-EU dispute, and were not the basis for stable, long-term arrangements. In addition, those existing arrangements relied entirely on EU standards, precluding a range of goods from being able to move; and also involved more extensive paperwork on goods, like chilled meats, that were subject to prohibitions and restrictions in the EU system. In addition, the grace period scheme was a closed shop and could not be expanded, whereas under these arrangements a whole range of new retailers will be able to join the scheme and enjoy its benefits. So we are clear that these new arrangements are the right, sustainable and durable basis on which to support internal UK trade now and in the future.”

41. The submissions raise further concerns about the political and constitutional aspects of the new arrangements, including in relation to the way risk and biosecurity will be considered separately and independently for GB and NI which, according to the submission, will be “completely destructive of the UK body politic and UK political demos”. Defra’s response highlights that the “Windsor Framework achieves a longstanding UK Government objective to provide for an effective set of trading arrangements for goods remaining within the [UK], as part of supporting the UK internal market. Through its arrangements, it supports the smooth flow of trade within the UK internal market, freeing movements of unnecessary paperwork, checks and complex certification requirements.” **While it would not be appropriate for us to adjudicate on these different views of the political and constitutional implications of the new arrangements, it is clear that the changes made by these instruments are politically significant. We also note that the submissions reflect the view of the DUP, and that no other submissions were received.**

Legislative timetable and level of preparedness

42. SI 2023/896 was laid on 8 August 2023. Part 2 of the instrument, which establishes the NI Retail Movement Scheme, came into effect on 1 September 2023. **We regret that the instrument, which implements a key aspect of the Windsor Framework, was laid during Parliament’s summer recess and that the provisions establishing the NI Retail Movement Scheme came into force before Parliament’s return, denying Parliament the opportunity to form a view of this part of the legislation before it came into effect.** The Windsor Framework was agreed at the end of February; this should have given the Department enough time to finalise the instrument and lay it before Parliament before the start of the summer recess.
43. Defra says that because SPS matters are a devolved responsibility, it developed the instrument together with the devolved administrations and sought legislative consent in line with a commitment made by the Government during the passage of the European Union (Withdrawal) Act 2018. The Department told us that it had obtained consent from the Scottish and Welsh Governments. We note, however, that when the Rural Affairs and Islands Committee of the Scottish Parliament gave its consent for the NI Retail Movement Scheme to be included in UK secondary legislation, the Committee expressed its “regret” that the timescale had “limited the Committee’s, and presumably the Scottish Government’s, ability to fully consider the implications” of the legislation. **We share this concern about the truncated timetable.**
44. Asked whether the timetable had left businesses and public authorities with too little time to prepare for the new arrangements, Defra told us that:
- “Defra is working alongside the competent authorities to ensure they are prepared for the delivery and operation of the NI Retail Movement Scheme from 1 October. This includes operating, and assuring compliance with, scheme requirements, including 10% identity checks of consignments on arrival in NI.
- The Scheme [opened] for applications on 1 September to allow applicants time to register, familiarise themselves with the terms and conditions and to prepare for the movement of consignments on 1 October. Applications can be made at any time after 1 September.”
45. Asked whether there were sufficient SPS facilities in NI to carry out the controls required under the new arrangements, Defra told us that:
- “The Government has always been clear that the proposed arrangements for the red lane [for all goods destined for the EU, rather than NI] will require the enhancement or replacement of existing SPS facilities in Northern Ireland, as current infrastructure is insufficient. Construction of replacement SPS facilities at Belfast, Larne, Warrenpoint and Foyle ports will fulfil our commitment to protect the EU’s Single Market and the ability of NI businesses to access it. We have committed to construction of an additional, temporary, product inspection facility at Belfast Port to be in place by October 2023. This will allow additional sanitary and phytosanitary (SPS) checks, in advance of the permanent facilities being ready by July 2025.”

46. We note that the additional permanent SPS infrastructure which is needed to deliver the ‘Red Lane’ will not be ready until July 2025. **The House may wish to seek assurance from the Minister that this will not hinder the operation of the new schemes.**

Consultation

47. The Department states that the Government “considered and reflected engagement with interested stakeholders, including representatives of traders moving goods between GB and NI” when drafting the Regulations. The DUP’s submission criticises this approach, saying that, given the importance of the new arrangement, “there would have been benefit in having an open public consultation to which anyone can respond, not just those Government chooses to talk to”. The Department responded that:

“The UK Government has put engagement with stakeholders at the forefront of its efforts, including with organisations moving goods between GB and NI, in drafting these Regulations. Defra has engaged with businesses through regular forums, including the weekly GB-NI Supply Chain Forum—frequently attended by over 200 representatives of organisations across the supply chain—alongside ad hoc engagement. Defra continue to take on board stakeholder feedback, which is why we are now delivering weekly webinars on the end-to-end journey for products travelling under the Scheme, alongside training sessions on the systems that underpin the Scheme, a new FAQ, and further opportunities for co-design.”

48. While we welcome the Department’s engagement with stakeholders, we share the view that it would have been desirable to consult formally on the details of how the new arrangements will be implemented in practice. We have previously noted that formal public consultation can provide opportunities to improve a policy and can also help to improve confidence in a policy,¹¹ especially in an area, such as this, which appears to be politically significant. We also note the Sub-Committee report’s conclusion that there was “significant concern over the lack of clarity about the Windsor Framework’s operation in the weeks after its publication, against the backdrop of tight deadlines for implementation”.¹² **Given the complexities of the new arrangements, engagement and consultation with businesses should have started at the earliest opportunity following the publication of the Windsor Framework at the end of February 2023.**

Impact

49. The EM to SI 2023/896, which establishes the NI Retail Movement Scheme, states that an Impact Assessment (IA) will be published in “due course”, while the EM to SI 2023/956, which enables the financial assistance scheme, states that no IA was prepared for the instrument because the new grant scheme will be optional for traders. We note that the Regulatory Policy Committee which scrutinises IAs and gives them a red/amber/green rating has stated that the IA for SI2023/896 has not yet been submitted for scrutiny.¹³

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

12 See: para 39, European Affairs Committee Sub-Committee on the Protocol on Ireland/Northern Ireland: *The Windsor Framework*, 7th Report (Session 2022–23, Paper 237).

13 See: <https://www.gov.uk/government/news/the-windsor-framework-retail-movement-scheme-regulations-2023-impact-assessment-statement-from-the-rpc>.

We questioned the Department about the lack of IAs and also asked about any assumptions it had made about the costs for businesses under the new arrangements and the costs for the public purse. Defra responded:

“Whilst there are some costs associated with the implementation of the Windsor Framework, like labelling, when compared to the previously negotiated Northern Ireland Protocol, the Windsor Framework represents a net benefit to businesses and society as a whole. This wide package of legislation has been brought forward by Defra to implement the NI Retail Movement Scheme, which aims to ease movement of retail goods between GB and NI and therefore facilitate agri-food retail trade for business. Defra is considering the best means of setting out what the NI Retail Movement Scheme and other arrangements as a whole mean for businesses and the public sector.”

50. **We do not agree with the Department’s approach: it is a matter of concern that an important legislative package that will change trade between NI and GB has been laid for parliamentary scrutiny, but Parliament has not been provided with an IA. At a minimum, basic information on the expected financial impact on businesses and the public purse should have been included in the EM. This lack of impact information undermines Parliament’s ability to scrutinise the legislation effectively. Since our special report on IAs,¹⁴ we have repeatedly raised concerns about the absence of impact information when instruments are laid before Parliament, including recently in relation to the application of customs requirements to parcel movements from GB to NI under the Windsor Framework.¹⁵ We regret that this is yet another example.**

Conclusion

51. These five instruments introduce the measures required to deliver the new ‘Green Lane’ arrangements for trade between NI and GB under the Windsor Framework. The new arrangements are politically significant. There remain questions about the timing of the legislation, with a key element of the new schemes having come into force during the parliamentary recess, a lack of permanent SPS infrastructure in NI, the absence of public consultation and a lack of information on the impact of the new arrangements. **These are issues which the House may wish to pursue further with the Minister.**

14 *Losing Impact: why the Government’s impact assessment system is failing Parliament and the public*, (12th Report, Session 2022–23, HL Paper 62).

15 *46th Report* (Session 2022–23, HL Paper 231).

INSTRUMENTS OF INTEREST

Draft Local Elections (Northern Ireland) Order 2023

Draft Representation of the People and Recall Petition (Northern Ireland) (Amendment) Regulations 2023

Draft Representation of the People (Franchise Amendment and Eligibility Review) (Northern Ireland) Regulations 2023

52. These three sets of draft Regulations are part of a package of measures needed to implement provisions which were introduced in the Elections Act 2022 (“the Act”). The instruments cover a range of measures specific to Northern Ireland (NI), but also propose changes with regard to the proxy voting regime in NI and the voting rights of EU citizens which mirror changes that have already been proposed in other statutory instruments for the rest of the UK.¹⁶ The Government’s intention is to debate the instruments dealing with NI and the rest of the UK together.
53. The first instrument proposes to replace certain prescribed forms used at local elections in NI to: ensure that they include updated information on the number of electors for whom a person may act as a proxy under the Act; restrict access to the dates of birth lists that must be provided by the Chief Electoral Officer (CEO) to polling stations in NI at local elections; and to change provisions on postal vote redirections to prevent fraud.
54. The second instrument proposes, amongst other changes, amendments to reflect the new arrangements for proxy voting and dates of birth lists for both Parliamentary elections in NI and NI Assembly elections. The instrument would also extend a period for the retention of electors on the register who, following a canvass, have not returned a completed form. The Northern Ireland Office (NIO) explains that unlike in Great Britain, voters in NI have to complete a full application in order to be retained on the register, but entries on the register may be retained in certain circumstances and for a certain period, even if a canvass form has not been returned. The NIO estimates that there are currently 100,000 electors who will be removed from the register at the end of the retention period on 1 December 2023. The instrument proposes to extend this period until 1 December 2024. Asked whether there were plans for a more permanent solution, the NIO told us:

“[W]e are working with the Chief Electoral Officer for Northern Ireland (CEO) on a plan to get these individuals successfully re registered. Among the current proposals are:

- The CEO has indicated he plans to engage with Northern Ireland political parties and provide them with all the detailed maps from canvass showing poor response areas and encourage them to use any public engagement they have to increase registration take up. It is in the interests of the political parties to ensure their supporters are on the register and grass roots activists are well placed to do that.
- The CEO is considering what other registration drives he could promote in order to reach both this group and any under registered communities.

16 See: [47th Report](#) (Session 2022–23, HL Paper 236).

- We will again be asking the Electoral Commission (who supported the retention measure) to use all their available communication avenues to encourage anyone who has not recently registered to do so.
- We would expect the CEO to, once again, write to the individuals concerned in the latter half of next year in advance of removal.
- Additionally any large electoral event, a Parliamentary or Assembly election for example, will be likely to prompt a significant proportion of these individuals to re register. If there is an election both the CEO and the Electoral Commission will use the accompanying media focus to remind people to register before the deadline.

In the medium term we will keep the success of the NI canvass process under review.”

55. The third instrument proposes arrangements to implement provisions under the Act which remove the automatic right of EU citizens to vote and stand in local elections in relation to NI. The instrument would enable EU citizens to register to vote in NI under new eligibility criteria and require the CEO to conduct a one-off review of all already-registered EU citizens under the new criteria.

Draft Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2023

56. This Order would proscribe the Wagner Group under the Terrorism Act 2000. It is a criminal offence for a person to belong to, support or invite support for a proscribed organisation. The Home Office states that Wagner Group is a terrorist organisation that “has acted as a proxy military force on behalf of the Russian state”, with activities including “use of serious violence against Ukrainian Armed Forces, and against civilians to advance Russia’s political cause”, and operations in a number of African countries “in pursuit of Russia’s foreign policy objectives”, along with human rights abuses. The Home Office told us its assessment has not changed despite Wagner’s attempted coup in Russia in June and the recent death of the group’s leader, Yevgeny Prigozhin.
57. Proscription orders, such as this, are often expedited through the Parliamentary process, providing less than four days between being publicly announced and becoming law, to minimise the scope for members of the proscribed group to circumvent the provisions of the Act; for example, by withdrawing funds from the UK. In this case, the policy appeared in the press on 5 September 2023 and it is likely to be more than nine days between that point and its becoming law. **It is unfortunate that the Home Office has not followed the normal process for such emergency Orders; in particular, that the content was reported in the media before the instrument had been laid before Parliament. The House may wish to enquire whether this might have any implications for the effectiveness of the Order.**
58. We are not clear why it has taken the Home Office this long to proscribe the Wagner Group when its own supporting evidence highlights activities that have taken place over a number of years. **We have previously expressed**

surprise at how long some of the Government’s responses to the Ukraine crisis have taken¹⁷ and this Order adds to those concerns.

Draft Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023

59. These draft Regulations propose to increase the current fees for planning applications by 35% for major applications¹⁸ and 25% for all other applications and to add an annual inflation indexation of those fees from 1 April 2025. According to this indexation, planning fees are to increase annually in line with the percentage increase in the Consumer Price Index or 10%, whichever is the lower, mirroring the arrangements in place for the Nationally Significant Infrastructure regime. The draft Regulations would also remove the exemptions from fees for repeat applications and reduce the so-called Planning Guarantee period for non-major planning applications, which provides applicants with a refund of the fee if the application has not been determined within the relevant period and an extension has not been agreed, from 26 to 16 weeks.
60. The Department says that the fees were last increased in 2018. The proposed increases aim to reduce the funding shortfall in the planning application service which is currently around £225 million per year. Local planning authorities fund the shortfall from their general budgets, leaving other areas with reduced funding. The Department says that the proposed fee increases are expected to provide an additional £65 million annually for local planning authorities, leaving an annual shortfall of £160 million, but that it would not be appropriate to increase fees to full cost recovery level as this may deter development. **We regret that DLUHC has had to replace the original Explanatory Memorandum (EM) which included an incorrect annual shortfall figure.**
61. We have received a submission from the British Property Federation (BPF) which criticises that the additional fee income will not be ringfenced, contrary to proposals in the consultation.¹⁹ The BPF explained that:
- “Most of our developer members are willing to pay more for a better planning service, but without ringfencing, the funds raised will just be cannibalised by other spending areas within the local council directorate or pooled to the centre as a ‘saving’ during budget build. [This instrument] is not delivering what was consulted on, nor delivering how the funds raised were proposed to be spent.”
62. Asked why the Department had decided against ringfencing the additional revenue, and how it will ensure that local authorities will not use the additional fee income on other spending areas, DLUHC responded that:

17 *44th Report* (Session 2022–23, HL paper 217), para 75.

18 Major applications are defined as a residential development of ten dwellings or more, or a site area of over 0.5 hectares if the number of dwellings is not known, development of a floorspace of 1,000 square meters or more, or a site area of 1 hectare or more, or applications in relation to minerals extraction and waste development.

19 Department for Levelling Up, Housing and Communities, ‘Consultation outcome: Technical consultation: Stronger performance of local planning authorities supported through an increase in planning fees: government response’ (25 July 2023): <https://www.gov.uk/government/consultations/increasing-planning-fees-and-performance-technical-consultation/outcome/technical-consultation-stronger-performance-of-local-planning-authorities-supported-through-an-increase-in-planning-fees-government-response> [accessed 11 September 2023].

“Whilst there was strong support for ringfencing, there were also respondents who did not support the ringfencing of planning fees, most notably from the Local Government Association, on the basis that local planning authorities were best placed to make decisions about funding local services, including planning departments. Following the consultation, we were also advised that the strict legal definition of ‘ringfencing’ would be unreasonably restrictive for local planning authorities. [...] [W]e have been clear that whilst we will not be taking forward ringfencing through legislation, we would expect local planning authorities to protect at least the income from the planning fee increase for direct investment in planning services.”

63. We note the Local Government’s Association’s (LGA) opposition to ringfencing during consultation, but also that the LGA highlighted in its response that local planning authorities had “borne the brunt of budget cuts since 2010”.²⁰ The Department states in the EM that the national planning fees rise “will increase resources for local planning authorities to determine planning applications in good time”. This increase in local planning resources is not guaranteed however: without ringfencing the additional revenue, local authorities may spend it in other policy areas. **The Department should therefore monitor whether the additional income really is used to deliver faster planning decisions as intended. This should also form part of the review of fee levels that DLUHC has committed to carry out within three years of the implementation of the proposed fee increases.**

²⁰ See response to Question 7 in the Local Government Association submission, ‘LGA Submission to DLUHC’s Stronger performance of local planning authorities supported through an increase in planning fees technical consultation’ (26 April 2023): <https://www.local.gov.uk/parliament/briefings-and-responses/lga-submission-dluhcs-stronger-performance-local-planning> [accessed 11 September 2023].

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Instruments subject to affirmative approval

Draft	Fluorinated Greenhouse Gases Amendment Regulations 2023
Draft	Local Elections (Northern Ireland) Order 2023
Draft	Representation of the People and Recall Petition (Northern Ireland) (Amendment) Regulations 2023
Draft	Representation of the People (Franchise Amendment and Eligibility Review) (Northern Ireland) Regulations 2023
Draft	Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2023
Draft	Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023

Instruments subject to annulment

SI 2023/898	Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations 2023
SI 2023/942	Public Service (Civil Servants and Others) Pensions (Remediable Service) Regulations 2023
SI 2023/945	National Health Service (Disapplication of NHS England's Powers of Direction) (England) Regulations 2023
SI 2023/948	Health and Care Act 2022 (Further Consequential Amendments) Regulations 2023
SI 2023/952	National Health Service Pension Schemes (Partial Retirement etc.) (Amendment) Regulations 2023
SI 2023/963	Public Service (Other Crown Servants) Pensions (Remediable Service) Regulations 2023
SI 2023/969	Personal Injuries (NHS Charges) (Amounts) (Amendment) (No. 2) Regulations 2023

APPENDIX 1: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 12 September 2023 and included in this report, Members declared the following interests:

Statement of Changes in Immigration Rules (HC 1496)

Baroness Harris of Richmond

Member of the Court of York University

Lord Powell of Bayswater

Chairman of Trustees, Said Business School Foundation, Oxford University; Vice-Chairman, Fudan University Business School, Advisory Board, Shanghai

Baroness Randerson

Chancellor of Cardiff University

Lord Thomas of Cwmgiedd

Chancellor of Aberystwyth University

Attendance:

The meeting was attended by 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, Lord Rowlands, Lord Russell of Liverpool and Lord Thomas of Cwmgiedd.