HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

1st Report of Session 2023–24

Drawn to the special attention of the House:

Draft Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Amendment) Regulations 2023

Draft Vehicle Emission Trading Schemes Order 2023

Misuse of Drugs (England and Wales and Scotland) (Amendment) Regulations 2023

Countryside and Rights of Way Act 2000 (Substitution of Cut-off Date Relating to Rights of Way) (England) Regulations 2023

Correspondence: Letter from Rt Hon. Robert Jenrick MP on Home Office breaches of the 21-day rule

Includes information paragraphs on:

Draft Health Care Services (Provider Selection Regime) Regulations 2023

Draft Health Protection (Coronavirus, Testing Requirements and Standards) (England) (Amendment and Transitional Provision) Regulations 2023

Draft Plant Health etc. (Miscellaneous Fees) (Amendment) (England) Regulations 2023

Draft Plant Protection Products (Miscellaneous Amendments) Regulations 2023

Draft Representation of the People (Overseas Electors etc.) (Amendment) Regulations 2023 and Draft Representation of the People (Overseas Electors etc.) (Amendment) (Northern Ireland) Regulations 2023 (linked)

Draft Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023

Courts and Tribunals (Fee Remissions and Miscellaneous Amendments) Order 2023

Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2023

Allocation of Housing and Homelessness (Eligibility) (England) and Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) (No. 2) Regulations 2023 and Allocation of Housing and Homelessness (Eligibility) (Amendment) (No. 2) Regulations (Northern Ireland) 2023 (linked)

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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.

First Report

DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Amendment) Regulations 2023

Date laid: 18 October 2023

Parliamentary procedure: affirmative

These draft Regulations would implement the UK's obligations on the recognition of professional qualifications (RPQ) contained in the Free Trade Agreement (FTA) that the UK concluded with Norway, Iceland and Liechtenstein ("the EEA EFTA states") in July 2021. The parties to the FTA have committed to deliver a system for RPQ by 1 December 2023. This is the first use of the power under the Professional Qualifications Act 2022 to implement an international RPQ agreement. The Regulations would place a legal duty on UK professional regulators, including healthcare regulators such as the General Medical Council (GMC), to recognise comparable professional qualifications obtained in the EEA EFTA states. The Department for Business and Trade (DBT) says that while UK regulators would be required to recognise comparable professional qualifications, they may still refuse this recognition, for example where an applicant has inadequate English language proficiency. We note that the GMC has expressed concern that the FTA with the EEA EFTA states should not be used as the basis for any RPQ arrangements in future agreements with other countries. ***We regret that DBT did not publish its response to its consultation with regulators but welcome the Department's commitment to consider how to improve its consultation and engagement processes ahead of future negotiations on RPQ and trade.***

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

1. These draft Regulations propose to implement the UK's obligations on the recognition of professional qualifications (RPQ) contained in Chapter 12 of the Free Trade Agreement (FTA) that the UK concluded with Norway, Iceland and Liechtenstein ("the EEA EFTA states")[1] in July 2021. Chapter 12 of the FTA provides for a comprehensive system for RPQ[2] which the UK and EEA EFTA states have committed to deliver by 1 December 2023. According to the Department for Business and Trade (DBT), this is the first use of the power in section 3 of the Professional Qualifications Act 2022 to implement an international RPQ agreement.

1 European Ecoonomic Area (EEA) and European Free Trade Association (EFTA).

2 Foreign, Commonwealth & Development Office, 'Free Trade Agreement between Iceland, the Principality of Liechtenstein and the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland [MS No.3/2021]' (16 July 2021): https://www.gov.uk/government/publications/free-trade-agreement-between-iceland-the-principality-of-liechtenstein-and-the-kingdom-of-norway-and-the-united-kingdom-of-great-britain-and-northern [accessed 3 November 2023].

Background

2. Until the end of the EU exit transition period on 31 December 2020, the UK was subject to EU laws governing RPQ which provided for a general system to enable individuals with professional qualifications gained in one state to have a route to recognition within the European Economic Area (EEA) and Switzerland. At the end of the transition period, an interim system was put in place under which UK regulators were required to recognise equivalent EEA or Swiss qualifications. The Professional Qualifications Act 2022 included powers to revoke these interim arrangements and, according to DBT, introduced a new approach "giving regulators greater freedom to decide on the right approach to RPQ for the needs of their profession".

How the new RPQ system would work

3. The draft Regulations propose to place a legal duty on UK professional regulators, including healthcare regulators such as the General Medical Council (GMC) and the Nursing and Midwifery Council, to recognise comparable professional qualifications obtained in the EEA EFTA states. The Regulations would apply to all professions regulated in law on a UK-wide basis (such as architects or doctors) as well as those regulated separately across the four nations (such as teachers). The Regulations would not apply to regulators and professions listed in Schedule 2 to the instrument which covers certain aviation, maritime and dangerous goods driver professions where, according to DBT, there are existing international RPQ arrangements in place between the UK and the EEA EFTA states.

4. As a result of the Regulations, all UK regulators would need to ensure that their processes comply with the system for RPQ set out in the Regulations: they would be required to recognise comparable professional qualifications obtained in the EEA EFTA states and follow the procedure prescribed in the Regulations, including acknowledging an application within one month of receipt and notifying an applicant about the outcome within four months of the application being submitted. DBT says that this may require regulators to change some of their current processes.

5. The Department emphasises that while UK regulators would be required to recognise comparable professional qualifications from the EEA EFTA states, they may still refuse that recognition, for example where an applicant has inadequate English language proficiency. Regulators may also prescribe compensatory measures which a professional can be required to take in certain circumstances, such as to sit an aptitude test or undergo an adaptation period.

6. Specifically in relation to the regulation of doctors, the Department told us that "the GMC would be able to make an appropriate decision about recognising the qualifications of a professional that they had concerns about", and that, more generally, regulators would remain "the sole arbiter of whether the applicant meets the knowledge and skills required and any other conditions". DBT added that regulators' supervisory powers would not be affected by the Regulations.

Consultation

7. The Department ran a targeted consultation with professional regulators in early 2023 and a further consultation with the Devolved Administrations

in mid-2023. The Government's response to the consultation with the Devolved Administrations has been published.[3] Both the Scottish and Welsh Governments will make technical amendments to relevant devolved legislation to deliver the RPQ system; all amendments needed in relation to Northern Ireland are included in this instrument.

8. DBT says that the consultation with regulators received "generally supportive" feedback, but that the consultation paper and Government response, while available on request, have not been published because the consultation was "targeted to a specific group". **We do not accept this reasoning and regret the Department's decision not to publish the documents**, which contain useful contextual information, such as a helpful list of the professional regulators that will be covered by the Regulations.

9. **Where a consultation is conducted, a full analysis of the consultation responses should always be published at the time an instrument is laid before Parliament**. As we have stated previously, the feedback provided during consultation may not only identify unforeseen consequences but can also improve the policy design and practical implementation and may improve confidence in a policy where there may be concerns.[4] **It is therefore important that an analysis of the feedback is made available, in the interest of transparency and so that all relevant material is available to support the scrutiny process**.

Views of the General Medical Council

10. The Department told us that together with the Department of Health and Social Care it had "engaged extensively" with medical regulators, including the GMC, on the development of these Regulations. A briefing by the GMC that has been shared with us and other parliamentary committees nevertheless expressed concerns that the FTA with the EEA EFTA states should not be used as the basis for any RPQ arrangements in future agreements with other countries, and that the inclusion of any RPQ framework in future trade agreements must not undermine the important patient safety checks that the GMC makes on doctors wishing to practise in the UK. We put these concerns to the Department which told us that:

> "Should there be any future negotiations on a standalone recognition of professional qualifications agreement, the Department for Business and Trade will consider how to improve the consultation process.
>
> The Department for Business and Trade is deliberating how to broaden and deepen its approach to engagement on trade policy, to ensure it is fit for purpose. The Department values engagement with businesses, which takes place at all levels with all key stakeholders to help secure the best outcomes for the UK in trade policy.

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3 Department for Business & Trade, 'Report on the consultation of the devolved administrations on regulations under the Professional Qualifications Act 2022 to implement the Recognition of Professional Qualifications (RPQ) provisions in the EEA EFTA Free Trade Agreement' (13 October 2023): https://www.gov.uk/government/publications/consultation-on-eea-efta-professional-qualifications-implementation/report-on-the-consultation-of-the-devolved-administrations-on-regulations-under-the-professional-qualifications-act-2022-to-implement-the-recognition [accessed 3 November 2023].

4 *Work of the Committee in Session 2022–23* (56th Report, Session 2022–23, HL Paper 264), see paras 27–29.

> For new FTA negotiations the Government will continue to undertake a public consultation or call for input. The Government will publish its negotiation objectives as well as a scoping assessment before the start of negotiations and will publish its response to the consultation/call for input."

Future agreements

11. We note that the lack and quality of consultation was a concern raised in the House of Lords International Agreements Committee's report on an RPQ agreement with Switzerland which will also require a statutory instrument to be implemented.[5] DBT aims to have these Regulations in force by 1 January 2025.

12. Asked whether there were further FTAs or agreements on RPQ which required secondary legislation, the Department told us that:

> "Some of the UK's Trade Agreements contain frameworks for individual profession-specific recognition arrangements (RAs) to be agreed between the Parties. For example, the UK-EU Trade and Cooperation Agreement contains provision in Article 158 for such RAs to be agreed. Should any RAs be agreed under such frameworks, obligations may be implemented using secondary legislation. RAs agreed between regulators who already have power to do so may not require legislative implementation.
>
> The only other trade agreement that the UK has signed but is not yet in force is the agreement with the CPTPP trade bloc. This deal does not contain any provisions on recognition of professional qualifications that require legislative implementation."

13. **We welcome the Department's commitment to consider how to improve its consultation and engagement processes ahead of any future negotiations on RPQ and trade agreements.**

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5 International Agreements Committee, *Scrutiny of International Agreements: Agreement with Switzerland on the Mutual Recognition of Professional Qualifications* (24th Report, Session 2022–23, HL Paper 257), paras 38–40.

Draft Vehicle Emission Trading Schemes Order 2023

Date laid: 16 October 2023

Parliamentary procedure: affirmative

The UK Government has committed to all new car and van sales being zero emission vehicles (ZEVs) by 2035. To support this target, this Order establishes two incentive schemes to encourage the production and sale of new ZEVs. A letter of support for the scheme has been received from the Green Alliance and is published in full on our website. It sets out economic benefits to industry and the consumer from this policy as well as describing it as a major contributor to the required emissions savings for the fifth carbon budget period (2028–32).

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

14. The Department for Transport states that transport is the largest contributor to greenhouse gas emissions in the UK, and that cars and vans powered by fossil fuels represented two-thirds of domestic transport emissions in 2019. The UK Government has committed to all new car and van sales being zero emission vehicles (ZEVs) by 2035. To support this target, this Order establishes two incentive schemes to encourage the production and sale of new ZEVs.

The Registration Schemes

15. The registration schemes, with separate targets for cars and vans, impose a set of legally binding annual minimum sales proportions for ZEVs (the ZEV target). The scheme administrator calculates each participant's target according to a formula set out in the Order, which will increase annually. For cars, the ZEV target rises from 22% in 2024 to 80% in 2030, and for vans from 10% in 2024 to 70% in 2030.

16. Credits for the sale of a ZEV are tradeable between scheme members. Those who have not met their ZEV targets will be required to make a payment to the scheme administrator of £15,000 per car or £9,000 per van in 2024, increasing to £18,000 from 2025 onward.

The CO2 Trading schemes

17. The CO2 Trading schemes, again with different trajectories for cars and vans, set a per vehicle emissions target, derived from a manufacturer's 2021 performance and compliance with existing criteria, using formulae set out in the Order. The schemes' administrator will allocate "allowances" to car and van manufacturers annually, where one allowance is equivalent to 1gCO2e/km. Manufacturers who fail to meet their targets are required to make a payment to the administrator of £86 per allowance.

Impact

18. As well as the reduction in carbon emissions, the schemes are expected to encourage investment in ZEV infrastructure such as charge points and electric vehicle battery manufacture because they demonstrate the Government's backing for the Net Zero targets.

19. A letter of support for the scheme has been received from the Green Alliance and is published in full on our website.[6] It sets out the economic benefits to industry and the consumer from this policy as well as describing it as a major contributor to the required emissions savings for the fifth carbon budget period (2028–32).

Other considerations

20. Small and micro volume manufacturers (defined as registering fewer than 1,000 vehicles per year) may be derogated from targets. There are also some further exemptions for special purpose vehicles (such as ambulances or adapted vehicles).

21. The data that is used to assess compliance is primarily collected by the Driver and Vehicle Licensing Agency through new vehicle registrations. The schemes include both enforcement and appeal mechanisms where those figures are disputed.

22. This policy framework has been produced under the Common Framework mechanism, and the Order has been laid simultaneously before the Westminster, Scottish and Welsh parliaments. It includes the facility to extend the provisions to Northern Ireland at such time as a sitting Assembly chooses.

Misuse of Drugs (England and Wales and Scotland) (Amendment) Regulations 2023 (SI 2023/1099)

Date laid: 18 October 2023

Parliamentary procedure: negative

These Regulations introduce the regime that allows for the legitimate uses of nitrous oxide, alongside the reclassification of the gas as a Class C drug (implemented through a previous instrument). The regime provides that the import, production, supply and possession of nitrous oxide is legitimate if the person does not intend "wrongfully" to inhale the substance (in other words, outside a medical setting) and/or is not "reckless" as to whether someone to whom they are supplying the drug will wrongfully inhale it.

This approach was preferred to more formal licensing as it leads to lower burdens on businesses. However, it introduces significant elements of judgement; for example, by a supplier in assessing whether or not a purchaser is buying for legitimate purposes, and by the police when assessing the actions of such suppliers. ***As such, comprehensive guidance on how the law will operate is critical.*** *The Home Office has promised such guidance, but at the time of our meeting (7 November), just one day before the regime came into force, it has still not been published.*[7] ***This makes it impossible for those concerned—both vendors and the police—to adjust to and operate the regime by the***

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

7 Update note: after our meeting, the guidance was published shortly after midnight on 8 November 2023, the day the law came into force. See Home Office, 'Nitrous oxide ban: guidance': https://www.gov.uk/government/publications/nitrous-oxide-ban/nitrous-oxide-ban-guidance [accessed 8 November 2023].

time the law takes effect. This is unacceptable policymaking and, at least initially, could make the regime unenforceable.

Guidance should be published alongside the instrument, to allow the public time to adjust to the changes in the law and to allow Parliament properly to scrutinise the instrument: particularly, as here, when the interpretation of the law will be critical in its operation. It is also not clear what steps the Home Office has taken to publicise the new regime, raising further questions of whether legitimate suppliers and users will be aware of it.

These Regulations are drawn to the special attention of the House on the ground that they may imperfectly achieve their policy objectives.

Background

23. In September 2023, the Home Office laid an Order to reclassify nitrous oxide as a Class C drug, increasing the restrictions around its use and the penalties available for breaches.[8] The Order has now been approved by both Houses of Parliament and came into force on 8 November 2023. These Regulations, which also came into force on 8 November, introduced an 'exemptions' regime to make provision for legitimate uses of nitrous oxide.

24. We drew the September 2023 Order to the special attention of the House in our 51st Report.[9] We noted that the reclassification of nitrous oxide was against the advice of the Advisory Council on the Misuse of Drugs (ACMD) and that other stakeholders, such as the police, had provided mixed views. We concluded that the Government is entitled to take a different approach, based on its "broader view" of the issues, but that it should establish robust methods of analysing and reporting on the effects of the policy. We also expressed concerns that the reclassification had not been the subject of a public consultation. The exemptions regime, however, has been consulted on.[10]

Basis of the exemptions regime

25. The basis of the regime, as described in the Explanatory Memorandum (EM), is that the instrument introduces:

> "A bespoke exemption from the prohibition on importation and exportation, production, supply and possession of nitrous oxide where a person does not intend to wrongfully inhale the substance and/or, in the cases of importation, exportation, production and supply, does not know or is not reckless as to whether it is likely that another person will wrongfully inhale it.
>
> […]
>
> "In practical terms, that means those who are importing or possessing nitrous oxide because they plan to inhale it themselves for its psychoactive effect, or to provide it to others for them to do so, or the producers or suppliers who are turning a blind eye to whether the people who buy their

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8 The Draft Misuse of Drugs Act 1971 (Amendment) Order 2023.

9 *51st Report* (HL Paper 250, Session 2022–23), paras 1–15.

10 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/outcome/nitrous-oxide-legitimate-uses-and-appropriate-controls [accessed 3 November 2023].

> products are using it for proper purposes or simply for its psychoactive effect, will be committing offences. Legitimate businesses, individual users and organisations will not".

26. "Wrongfully" inhaling is defined in the EM as "inhalation other than for medical or dental purposes, and which is not accidental inhalation of nitrous oxide which has been released into the atmosphere (such as in industrial processes)".

27. In the consultation, the Home Office put forward other possible approaches, such as requiring licensing for all legitimate uses of the gas. The Home Office concluded that the chosen approach was "a proportionate and targeted response which will reduce abuse and harms, while not unduly inhibiting legitimate businesses and users".

Requirement for judgement

28. In the absence of a licensing system, the regime requires retailers selling the drug to judge whether, for a particular sale, the buyer may, or may not, be purchasing for legitimate use. Similarly, the police will be expected to assess whether such retailers have taken "appropriate" steps to ensure they are not being "reckless" in selling the drug to someone who may wrongfully inhale it.

29. We asked the Home Office how this would operate in practice. The Home Office stated that the "recklessness" test exists already in the existing tests for similar offences under the Psychoactive Substances Act 2016. In assessing this, the Home Office said the police "will have to consider the proof offered by the person in question and whether the evidence put forward is sufficient" to satisfy the police that the sale fell within the exemptions. The Home Office stated that the National Police Chiefs' Council (NPCC) was supportive of the recklessness test, but that the NPCC "noted that clear and detailed guidance as to the interpretation of the new laws will further assist".

Guidance and practical implementation

30. To help in interpreting the law, the Home Office committed to publishing guidance that will include "indicative examples". The Home Office provided us with this example:

> "A supplier to a person purporting to buy nitrous oxide for motorsport would wish to see proof that the buyer participated in the sport, or was linked to the sport and that the nitrous oxide supplied to him would be used for that purpose, for example by way of a proof of membership of Motorsport UK, the governing body for four wheeled motorsport or the Auto-Cycle Union (ACU), the governing body for motorcycle sport".

31. We note the ACMD's observation[11] that nitrous oxide "has many legitimate medical, commercial and industrial uses", including: "widespread" uses in catering, such as for whipping cream and as a foaming agent; as an additive to fuels in car racing; and as a propellant in model rocketry. We can see how the regime could operate in some cases, such as the motor sport example quoted above. However, it is less obvious in other instances, such as sales for

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11 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 3 November 2023], para 2.1.

culinary purposes. For instance, would purchases for home use be permitted, or only by those providing professional catering services? If so, how would an individual buyer prove their purchase was for legitimate use? **Given the many legitimate uses of nitrous oxide, we would expect the guidance to be wide-ranging and detailed to assist everyone in 'legitimate use' supply chains.**

32. Moreover, legitimate users and suppliers, and the police, need to familiarise themselves with the new regime and put systems and controls in place to operate it. To do so, the promised guidance will be critical—especially given that the regime is reliant on judgement rather than licensing. However, at the time of our meeting (7 November 2023), just one day before the coming-into-force date, the guidance has not yet been published.[12] **This is unacceptable: those operating the system will not have time to understand and implement it before it becomes law.** Neither does the EM provide any information on how the regime will be publicised to those with an interest, so awareness may also be low.

33. Without authoritative guidance being available in time for users to have an adequate opportunity to implement the new law, there is a risk that courts may not convict in situations that the Government envisages as being illegitimate. **In other words, the regime is potentially unenforceable at the point it is introduced.**

Conclusion

34. **When guidance sets out the way the law should be interpreted, and how a decision on whether to prosecute should be made, it should be published alongside the instrument.** This serves two functions: to allow Parliament properly to scrutinise the instrument, but also to give the public and enforcement authorities time to understand and adjust to the changes. That is particularly important when, as here, judgement and interpretation of the new laws will be critical to their operation. **Failure to publish guidance in good time is bad policymaking but may also be so significant as to undermine the operation of the change in the law.**

12 Update note: after our meeting, the guidance was published shortly after midnight on 8 November 2023, the day the law came into force: Home Office, 'Nitrous oxide ban: guidance' (8 November 2023): https://www.gov.uk/government/publications/nitrous-oxide-ban/nitrous-oxide-ban-guidance#steps-producers-and-suppliers-can-take-to-ensure-they-are-complying-with-the-law [accessed 8 November 2023]. The guidance does not include the example related to motorsport quoted above.

Countryside and Rights of Way Act 2000 (Substitution of Cut-off Date Relating to Rights of Way) (England) Regulations 2023 (SI 2023/1126)

Date laid: 25 October 2023

Parliamentary procedure: negative

These Regulations extend the cut-off date by which applications have to be made to local authorities to register historic rights of way, such as footpaths or bridleways, from 1 January 2026 to 1 January 2031. After that new date, any unregistered historic rights of way in England will be extinguished, unless they are exempt from the cut-off date. The new date marks a change from the previous policy which sought to repeal the cut-off date. While the Department for Environment, Food and Rural Affairs (Defra) states that it does not expect any significant impact on businesses, charities or local authorities, there is already a considerable backlog of unprocessed applications, and a submission by the Open Spaces Society anticipates several thousand more. Planned reforms may streamline the process, but many local authorities are still likely to receive a significant number of new applications, adding to the existing backlogs and to current resource pressures.

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

35. Part II of the Countryside and Rights of Way Act 2000 ("the 2000 Act") extinguishes historical pre-1949 footpaths and bridleways unless they are recorded on so-called definitive maps and statements maintained by local authorities. Applications can be made to local authorities to have historic rights of way recorded; the local authority will determine the application and decide whether to make an order to modify the definitive map and statement. The aim of this system is to produce a final and complete record of historical public rights of way. The 2000 Act includes a cut-off date of 1 January 2026 after which no further applications can be made, and all unrecorded historic rights of way are extinguished.

36. This instrument replaces the current cut-off date of 1 January 2026 with the new date of 1 January 2031.[13] This new cut-off date, first announced in March 2023,[14] reverses the Government's earlier policy of seeking to repeal the cut-off date provisions.[15]

37. Policy on rights of way is devolved. England and Wales share the same legal framework, but Defra told us that the Welsh Government intends to repeal the cut-off date provisions. Separate statutory frameworks exist in Scotland and Northern Ireland, and the cut-off date does not apply there.

Plans for future rights of way reform

38. The Department for Environment, Food and Rural Affairs (Defra) says that further regulations will specify exemptions from the cut-off date, such as historic rights of way in urban areas, and enable valid applications that are

13 A separate order has been made to commence the cut-off date, the Countryside and Rights of Way Act 2000 (Commencement No. 16) Order 2023 (SI 2023/1121) which is not subject to parliamentary procedure.

14 Defra, 'Decision to retain cut-off date for registering historic rights of way' (24 March 2023): https://deframedia.blog.gov.uk/2023/03/24/decision-to-retain-cut-off-date-for-registering-historic-rights-of-way/ [accessed 6 November 2023].

15 Written Answer UIN 5327, 19 May 2022, Session 2022–23.

submitted before the new cut-off date of 1 January 31, to be determined after that date.

39. The Department told us that these changes will form part of a larger package of rights of way reform. According to Defra, this will also include a 'Right to Apply', a new legal right for those owning or occupying land to apply for a right of way crossing their land to be diverted or extinguished. Further changes will aim to "speed up and streamline existing bureaucratic procedures" for adding unrecorded pre-1949 rights of way, including:

- a higher evidence threshold for applications;
- enabling authorities to agree minor modifications directly with landowners or to reject irrelevant objections;
- measures to reduce conflict between applicants and landowners; and
- the introduction of a shorter process for correcting obvious errors on the definitive map.

Impact of the new cut-off date

40. The Explanatory Memorandum (EM) states that there will be no impact on business, charities, voluntary organisations or the public sector. As local authorities are responsible for assessing and determining applications to record historic rights of way, we asked Defra about the number of applications and the progress made in processing them to date. The Department told us that:

> "These figures are not readily available for every authority in England responsible for producing a definitive map. However, of 21 authorities for which we were able to obtain figures in April this year, there are approximately 4,000 applications for a Definitive Map Modification Order waiting to be determined. Around 80% of these are likely to be for recording pre-1949 rights of way via documentary evidence, and the remainder mostly based on user evidence. The figures across authorities are highly variable (mean = 181 +/- standard deviation of 143). At the high end, six had backlogs of >300 applications and 12 of >200. At the low end, six had backlogs of less than 50 and nine of less than 100. As an indication based on a simple calculation of four cases cleared per four FTE per authority annually, the six highest backlogs would take >20 years to work through.
>
> The number of applications will continue to increase up to the cut-off date, so the backlogs are likely to be greatest by the end of 2030. For example, one authority currently has a backlog of 177 but estimates up to 400 by the cut-off date, and another has 227 but knows of a further 117 are waiting to be submitted.
>
> [The future rights of way reforms] are intended to make applications faster to process, principally through a new higher evidence threshold screening process and by reducing the likelihood of landowners objecting/giving authorities the power to reject irrelevant objections".

41. We note the backlog of applications which has already formed, and which is likely to increase significantly in the run-up to the 2031 cut-off date. This is also an issue raised in a submission we received from the Open Spaces

Society (OSS) which, while not opposing the Regulations, questioned Defra's assumption that there will be no significant impact.

42. The OSS suggests that setting back the cut-off date "will have a very substantial impact on charities and voluntary bodies", that "the additional costs imposed on local authorities will be severe", and that "[l]andowners, and particularly farming and landowning businesses, also will incur unexpected costs because of the additional applications which will be made during the five-year extended period", adding that "[e]mploying a legal team to oppose an order adding a right of way to the definitive map and statement can cost a substantial five-figure sum". The OSS makes a "rough-and-ready" calculation according to which 6,000 applications at an estimated cost of £6,750 per application will result in total costs of around £40.5 million.

43. In response to the submission, the Department told us that:

> "Government does not set any obligations or legal requirements on bodies such as the OSS to submit applications, and nor are any obligations or requirements introduced by these regulations. The Wildlife and Countryside Act 1981 sets out the existing procedures which applicants and local authorities are obliged to follow, and this will remain unchanged. These regulations will have no direct impact on whether applications should be made, how they are to be made or how they are to be treated by local authorities. The only effect of these regulations is to maintain the original intention of the Countryside and Rights of Way Act 2000 but to extend the cut-off date by a further 5 years and allow more time during which applications can be made. It is a matter for the OSS and others how to allocate resources during this time. Local authorities are responsible for determining applications and will continue to follow existing legislation until the rights of way reform measures are implemented. As noted in the letter, some unrecorded routes will be covered by exceptions and remain unaffected by the cut-off date, reducing the number which need to be claimed before 2031.
>
> For the above reasons we concluded there will be no significant impact and that it was therefore not necessary to conduct an impact assessment. Had the present regulations not been laid, the OSS would undoubtedly have asked for them. The rest of the rights of way reforms will have a direct impact on applicants (including user groups such as the OSS), landowners and local authorities because they will make changes to existing procedures. We will therefore be preparing impact assessments for when these regulations are implemented".

44. We note the submission by the OSS and Defra's response which we have published in full on our website.[16] We accept that a formal Impact Assessment was not required for these Regulations, but we take the view that it would have been helpful to explain the current backlog of applications in the EM. While the planned rights of way reform may streamline the application and determination process, many local authorities are nevertheless likely to receive a significant number of new applications, adding to the existing backlog and to current resource pressures. **The House may wish to raise the resourcing issue with the Minister.**

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

CORRESPONDENCE: LETTER FROM THE RT HON. ROBERT JENRICK, MP, ON HOME OFFICE BREACHES OF THE 21 DAY RULE

45. In our 51st, 52nd and 55th Reports of Session 2022–23, we drew three instruments dealing with various aspects of the immigration system to the special attention of the House. Amongst other issues, each broke the rule that an instrument should be laid before Parliament at least 21 days before it is to come into force.[17] This rule is intended to allow Parliament time to scrutinise the instrument and to allow those affected by the change in the law to adapt to it.

46. While breaking the 21-day rule may on occasion be justifiable, our view is that the conditions for doing so were not met in any of these three instances. We therefore wrote to the minister who signed the instruments, the Rt Hon. Robert Jenrick MP, to set out our concerns and seek assurances that there would be no further such breaches. The exchange of letters can be found in Appendix 1.

47. Mr Jenrick's reply recognises the importance of parliamentary scrutiny and describes the most recent breach as "regrettable". The response also commits to explaining better any future breaches. **We welcome this commitment, but are concerned that the letter does not commit to reducing or eliminating further unjustified breaches.**

17 Statement of Changes in Immigration Rules (HC 1496), in *51st Report* (Session 2022–23, HL Paper 250); Immigration (Passenger Transit Visa) (Amendment) (No. 2) Order 2023 (SI 2023/980), in *52nd Report* (Session 2022–23, HL Paper 256); and Immigration and Nationality (Fees) (Amendment) (No. 2) Regulations 2023 (SI 2023/1004), in *55th Report* (Session 2022–23, HL Paper 263).

INSTRUMENTS OF INTEREST

Draft Health Care Services (Provider Selection Regime) Regulations 2023

48. Following changes made by the Health and Care Act 2022, this instrument will introduce the new Provider Selection Regime which will govern the procurement of health care services in England by relevant authorities.[18] The existing system will be revoked on the same day.

49. The intention is to give relevant authorities more flexibility when awarding contracts to a provider of health care services and to allow more direct awards. Recognising that competitive tendering is not always the most efficient route is expected to save £230 million over ten years, and to improve the integration of services.

50. The instrument sets out the overarching procurement principles for relevant authorities and the "key criteria" which they must take into account when selecting a provider using *Direct Award Process C*, the *Most Suitable Provider Process* or the *Competitive Process*. The different commissioning paths and other criteria are described in a thorough Explanatory Memorandum. **We are pleased to note that the policy is informed by both a voluntary Impact Assessment and an extensive consultation which received 70% support from 420 respondents.**

Draft Health Protection (Coronavirus, Testing Requirements and Standards) (England) (Amendment and Transitional Provision) Regulations 2023

51. Self-accreditation by private providers and its effect on the quality of Coronavirus testing was a matter of concern to us during the pandemic.[19] These Regulations mark the return to normal standards of approval.

52. In line with the Government's *Living with Covid* strategy, the pandemic testing Regulations[20] have been reviewed and these Regulations update them to reflect the changing epidemiological and immunological picture in England. Pandemic measures that allowed firms to operate before receiving full accreditation are removed and, from 1 January 2024, all private providers of COVID-19 testing in England must be accredited against the appropriate ISO Standards (including the updated ISO Standard 15189:2022). This instrument also requires all private providers to use an approved test device which meets the requirements of the Medical Devices Regulations 2002.

Draft Plant Health etc. (Miscellaneous Fees) (Amendment) (England) Regulations 2023

53. These draft Regulations propose to extend the Movement Assistance Scheme (MAS) under which businesses are exempt from the payment of fees to the Department for Environment, Food and Rural Affairs (Defra) and to

18 A relevant authority is defined as a combined authority, an integrated care board, a local authority in England, NHS England, an NHS foundation trust or an NHS trust.

19 See *5th Report* (Session 2021–22, HL Paper 21): Health Protection (Coronavirus, Testing Requirements and Standards) (England) (Amendment) Regulations 2021 (SI 2021/682).

20 Health Protection (Coronavirus, Testing Requirements and Standards) (England) Regulations 2020 (SI 2020/1549).

the Forestry Commission, for pre-export and export certification services. The fee exemption applies to export health certificates for the movement of products of animal origin and to phytosanitary certificates for the trade in regulated plants, plant products, wood products and other material between England and Northern Ireland (NI). The fees exemption is currently due to expire at the end of 31 December 2023; this instrument proposes an extension until 30 June 2025 to align it with the delivery of the Windsor Framework agreement between the UK and the EU which is to be implemented fully by 1 July 2025. Defra says that the aim is to facilitate trade between England and NI, and that Scotland and Wales plan to make parallel legislation.

Draft Plant Protection Products (Miscellaneous Amendments) Regulations 2023

54. These draft Regulations propose to extend temporary provisions which allow the import into Great Britain (GB) of plant protection products (PPPs) from the European Economic Area (EEA) which are not currently authorised in GB. The instrument would allow seeds treated with PPPs which have been authorised in at least one EEA Member State before the end of the Brexit Implementation Period on 31 December 2020 to be imported, marketed and used in GB for an additional 3.5 years up to 1 July 2027 as long as they remain authorised in at least one EEA Member State. Without this instrument, the arrangement would end on 31 December 2023. The instrument would also allow those who held a valid Parallel Trade Permit (PTP) on 31 December 2022 to apply for it be reinstated for a maximum of two years. PTPs enable the import of a PPP from the EEA that was not authorised in the UK if it is identical to a UK-authorised product.

55. The Department for Environment, Food and Rural Affairs (Defra) explains that the provisions seek to ensure that farmers and growers have access to PPPs for the 2024 growing season, while allowing manufacturers sufficient time to submit applications for product authorisations, and PPP users to source alternative solutions to pest management. The Department says that without the provisions, there could be a "severe impact on certain key agricultural sectors" and that, for example, "99% of all maize seeds are treated with at least one of three PPPs that do not currently have GB authorisation for use as seed treatments".

56. This instrument extends, for the first time, transitional arrangements which were introduced as part of the UK's withdrawal from the EU. We are concerned that further extensions may be needed, should the sector fail to seek GB authorisations. We asked Defra whether the lack of GB authorisations was due to a lack of authorisation capacity or high costs, and how it was being addressed. The Department responded that:

> "There is no indication that Health and Safety Executive (HSE) capacity or concerns on the part of manufacturers about cost have led to the lack of product authorisations for treated seeds. However, the preparation, submission and assessment of new GB applications is a multi-year process. One application has already reached the assessment stage for maize seed treatment and is currently being considered. We will continue and intensify our work with HSE to support and encourage industry applications, including, if necessary, by streamlining relevant guidance. In addition, the Government is committed to Integrated Pest

Management. As such, we will continue to support the development and promotion of cost-effective approaches that can be used in conjunction with pesticide products across a range of crops. We expect to set out more detail on this in the National Action Plan on Pesticides, which will be published shortly".

Draft Representation of the People (Overseas Electors etc.) (Amendment) Regulations 2023

Draft Representation of the People (Overseas Electors etc.) (Amendment) (Northern Ireland) Regulations 2023

57. These two sets of draft Regulations propose to implement the changes to the voting rights of British citizens overseas that are made by Elections Act 2022 ("the Act"). The Act removed the 15-year limit on voting rights for British citizens abroad and extended the overseas franchise to all British citizens who have been registered or resident in the UK previously.

58. The proposed changes include enabling eligible overseas electors to apply to be registered and enabling Electoral Registration Officers to determine their eligibility under new criteria, as well as changes to the existing voter identity verification requirements.

59. We have received a submission from British in Europe (BiE), a coalition group representing UK citizens living and working in European Economic Area and EU states as well as in Switzerland, which questions some of the arrangements and how they will work in practice. We have published the submission and the response from the Department for Levelling Up, Housing and Communities, which addresses the issues raised, on our website.[21] We particularly note the Department's assurance that "an awareness raising strategy will look to maximise the opportunity to reach and inform newly enfranchised British citizens overseas of their voting rights and how to exercise them", and that additional funding will be made available to local authorities to cover the costs of registering newly enfranchised overseas electors. **We are pleased to note that the Department has provided a helpful Impact Assessment of the costs arising from the new arrangements.**

Draft Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023

60. These Regulations would introduce two new aggravating factors, and one new mitigating factor, in the determination of the minimum sentence for murder. The new aggravating factors are that the offender: used "sustained and excessive violence" towards the victim, described in the Explanatory Memorandum (EM) as "overkill"; or had repeatedly engaged in "controlling or coercive" behaviour towards the victim. The new mitigating factor is that the victim had repeatedly engaged in controlling or coercive behaviour towards the offender. The changes follow recommendations of the independent 'Wade Review'.[22]

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

22 Ministry of Justice, 'Domestic Homicide Sentencing Review and government response' (17 March 2023): https://www.gov.uk/guidance/domestic-homicide-sentencing-review [accessed November 2023].

61. In the EM, the Ministry of Justice (MoJ) stated that it had consulted the Sentencing Council on the proposals but did not describe the Council's views. In response to our questions, MoJ sent us the exchanges of letters between it and the Council. These revealed that the Council initially had reservations, saying "the proposals will not have any impact on sentencing and that they risk complicating the sentencing process to the disadvantage of victims". In response, the MoJ changed the wording of the overkill provision but retained its position on those relating to coercive behaviour.

62. The Sentencing Council was a statutory consultee and its reservations are important. It is regrettable that the EM did not explain them. **An EM should provide a balanced description of the proposals, including acknowledging any significant concerns about the policy and explaining how they have been addressed, if at all.**

63. The 2023 King's Speech[23] included commitments to introduce further aggravating factors in certain crimes, including, in the case of murder, that it takes place at the end of the relationship—a change also announced in the Government's response to the Wade Review. We asked the Ministry of Justice (MoJ) why all the changes could not have been made together. MoJ told us that it had announced the proposed changes on overkill and coercion in an 'interim' response, to enable their implementation as soon as possible, whereas the change relating to the end of the relationship was contained in a later, 'full' response, meaning that its implementation would also be later. **We understand the desire to make changes rapidly where possible but suggest that, in general, it is better policymaking to make all related changes at the same time**.

Courts and Tribunals (Fee Remissions and Miscellaneous Amendments) Order 2023 (SI 2023/1094)

64. Amongst other changes, this Order revises the Help with Fees (HwF) scheme that provides reductions in court or tribunal fees to those on low income and with low savings. The changes follow a "comprehensive review" and are designed to make the scheme: more generous to those with limited means; better targeted at those who need it most; and better value for taxpayers. Changes include increasing the income threshold below which HwF can offer support, while reducing the threshold at which full support is provided. They are expected to cost around £18 million per annum in real terms, from a baseline of £99 million.

65. In a consultation on the proposals, some objectors argued that the income thresholds should be increased further, fully to take account of increases in the cost of living. The Ministry of Justice (MoJ) responded that its methodology was "balanced and robust". We questioned MoJ further on why threshold changes could not be more regular (prior to these changes, they have only been increased once since HwF's introduction in 2013), and when they would next be reviewed. MoJ said "the relationship of the thresholds to fee levels, inflation and wider economic circumstances is a multi-faceted issue", and that it would not commit to routine increases but would keep the position "under regular review".

23 Prime Minister's Office, 'The King's Speech 2023: background briefing notes' (7 November 2023): https://www.gov.uk/government/publications/the-kings-speech-2023-background-briefing-notes [accessed 8 November 2023], pp 66–7.

Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2023 (SI 2023/1110)

66. This Order introduces a new time-limited permitted development right (PDR) to make it easier for schools which have reinforced autoclaved aerated concrete (RAAC) in their buildings to provide temporary accommodation on their sites. The PDR can be used from 25 October 2023 until 24 October 2026. Should temporary buildings be needed beyond that time, schools will have to submit a planning application.

67. According to the Department for Levelling Up, Housing and Communities (DLUHC), the PDR will be subject to certain limitations and conditions to manage impacts and protect local amenity. For example, developments cannot lead to an increase in the school's published admission number, and the maximum total floor space allowed will be 125% of the floor space of the buildings which have been vacated. The school will have to notify the local planning authority and the fire and rescue authority of its use of the PDR.

68. DLUHC told us that while no data is published on the number of schools that require temporary accommodation as part of the RAAC mitigation, as of 16 October 2023, there were 214 education settings with confirmed RAAC in some of their buildings.

69. We note that RAAC has also been found in other public buildings, including hospitals. Asked whether the Department was considering extending the temporary PDR to other buildings, DLUHC told us that the situation was being monitored:

> "The professional advice from experts on [RAAC] has evolved over time. The Government's approach throughout has been to follow the best technical advice. Departments have been surveying properties and depending on the assessment of the RAAC, decided to either continue to monitor the structure, reinforce it, or replace it. Carefully monitoring and mitigating RAAC until it can be removed is fully in line with current evidence and recommendations from IStructE [the Institution of Structural Engineers]."

Allocation of Housing and Homelessness (Eligibility) (England) and Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) (No. 2) Regulations 2023 (SI 2023/1142)

Allocation of Housing and Homelessness (Eligibility) (Amendment) (No. 2) Regulations (Northern Ireland) 2023 (SR 182)

70. These two sets of Regulations ensure that those arriving from Israel, the Occupied Palestinian Territories (the West Bank, Gaza Strip, East Jerusalem and the Golan Heights) or Lebanon after the Hamas terrorist attack on 7 October 2023 can access housing and homelessness assistance more easily.

71. **SI 2023/1142** ensures that certain persons who are subject to immigration control and arrive from Israel, the Occupied Palestinian Territories or Lebanon are eligible for the provision of housing and homelessness assistance in England. This applies to people who have been given leave to enter or remain in the UK in accordance with the immigration rules, provided that their leave is not subject to the condition that there must be 'no recourse to

public funds'. The instrument also enables housing authorities in England, Scotland and Northern Ireland to provide housing and homelessness assistance to these persons. The instrument further ensures that those who are not subject to immigration control, including British nationals, do not have to satisfy the Habitual Residence Test to be eligible for provision of housing and homelessness assistance in England. **SR 2023/182** disapplies the Habitual Residence Test in Northern Ireland. The Welsh Government will introduce equivalent legislation separately, while Scotland does not apply the Habitual Residence Test to those who are not subject to immigration control. Other instruments have been laid to make equivalent changes in the benefit system and to child benefit.[24]

24 See the Child Benefit and Tax Credits (Miscellaneous Amendments) Regulations 2023 (SI 2023/1139) and the Social Security (Habitual Residence and Past Presence, and Capital Disregards) (Amendment) Regulations 2023 (SI 2023/1144).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Instruments subject to affirmative approval

Draft	Aviation (Consumers) (Amendment) Regulations 2023
Draft	Counter-Terrorism and Border Security Act 2019 (Port Examination Code of Practice) Regulations 2023
Draft	Design Right, Artist's Resale Rights and Copyright (Amendment) Regulations 2023
Draft	Financial Services and Markets Act 2023 (Resolution of Central Counterparties: Partial Property Transfers and Safeguarding of Protected Arrangements) Regulations 2023
Draft	Green Gas Support Scheme (Amendment) Regulations 2023
Draft	Health Care Services (Provider Selection Regime) Regulations 2023
Draft	Health Protection (Coronavirus, Testing Requirements and Standards) (England) (Amendment and Transitional Provision) Regulations 2023
Draft	Higher-Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2023
Draft	Intellectual Property (Exhaustion of Rights) (Amendment) Regulations 2023
Draft	Legal Services Act 2007 (Approved Regulator) Order 2023
Draft	National Security Act 2023 (Consequential Amendments of Primary Legislation) Regulations 2023
Draft	National Security Act 2023 (Video Recording with Sound of Interviews and Associated Code of Practice) Regulations 2023
Draft	Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023
Draft	Persistent Organic Pollutants (Amendment) (No.2) Regulations 2023
Draft	Plant Health etc. (Miscellaneous Fees) (Amendment) (England) Regulations 2023
Draft	Plant Protection Products (Miscellaneous Amendments) Regulations 2023
Draft	Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes A, B, C, D and H and New Code I) Order 2023
Draft	Public Service Obligations in Transport Regulations 2023
Draft	Representation of the People (Overseas Electors etc.) (Amendment) Regulations 2023
Draft	Representation of the People (Overseas Electors etc.) (Amendment) (Northern Ireland) Regulations 2023

Draft	Resolution of Central Counterparties (Modified Application of Corporate Law and Consequential Amendments) Regulations 2023
Draft	Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023
Draft	Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023

Draft instruments subject to annulment

Draft	Stockton-on-Tees (Electoral Changes) Order 2023

Instruments subject to annulment

SI 2023/1077	M20 Motorway (Junction 7 to 11) (Temporary Restriction and Prohibition of Traffic) Regulations 2023
SI 2023/1094	Courts and Tribunals (Fee Remissions and Miscellaneous Amendments) Order 2023
SI 2023/1095	Government of Wales Act 2006 (Schedule 9A–Devolved Welsh Authorities) (Amendment) Order 2023
SI 2023/1097	Armed Forces (Amendment of Court Rules) Rules 2023
SI 2023/1103	Service Custody and Service of Relevant Sentences (Amendment) Rules 2023
SI 2023/1104	British Nationality (British Overseas Territories) (Amendment) Regulations 2023
SI 2023/1105	National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2023
SI 2023/1110	Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2023
SI 2023/1111	M621 Motorway (Off Side Lane Prohibition Disapplication) (No. 3) Regulations 2023
SI 2023/1114	National Security (Prohibited Places) (Civil Nuclear) Regulations 2023
SI 2023/1118	European University Institute Regulations 2023
SI 2023/1127	Immigration (Removal Notices) Regulations 2023
SI 2023/1129	Nationality and Borders Act 2022 (Consequential Amendments) Regulations 2023
SI 2023/1139	Child Benefit and Tax Credits (Miscellaneous Amendments) Regulations 2023
SI 2023/1140	Criminal Legal Aid (Remuneration) (Amendment) (No. 4) Regulations 2023
SI 2023/1142	Allocation of Housing and Homelessness (Eligibility) (England) and Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) (No. 2) Regulations 2023

SI 2023/1144	Social Security (Habitual Residence and Past Presence, and Capital Disregards) (Amendment) Regulations 2023
SR 182	Allocation of Housing and Homelessness (Eligibility) (Amendment) (No. 2) Regulations (Northern Ireland) 2023

APPENDIX 1: CORRESPONDENCE

Letter from the Rt Hon. Lord Hunt of Wirral MBE, Chair of the Secondary Legislation Scrutiny Committee, to the Rt Hon. Robert Jenrick MP, Minister of State for Immigration at the Home Office

I am writing to you in my capacity as Chair of the House of Lords Secondary Legislation Scrutiny Committee in relation to the following instruments which you signed:

- Statement of Changes in Immigration Rules (HC 1496)
- Immigration (Passenger Transit Visa) (Amendment) (No. 2) Order 2023
- Immigration and Nationality (Fees) (Amendment) (No. 2) Regulations 2023

In each case, the Home Office was in breach of the 21-day rule, the rule that an instrument should be laid before Parliament at least 21 days before it is to come into force in order to enable Parliament to consider the instrument and those affected to make necessary changes before the instrument comes into force.

We acknowledge that there are occasions where speed is justified. However, Statutory Instruments Practice (SIP) (5th edition) (paragraph 2.11.4) makes clear that "this should not be done simply for Departmental convenience", it should only occur in "urgent" cases and that the Explanatory Memorandum (EM) to the instrument should include information on "what the financial or other impact of delaying the legislation to meet the rule would be". SIP also states (paragraph 2.11.5) that reasons such as "pressure of work, poor planning or a Minister not being available to sign the instrument" are unlikely to be acceptable.

In our view, none of these instruments meets these criteria. In the case of the first two, the reasons were set out in our 51st and 52nd Reports of this session. We will be publishing our comments on the third, the Immigration and Nationality (Fees) (Amendment) (No. 2) Regulations 2023, in our forthcoming 55th Report in which we state that if a minister specifies a coming into force date in an instrument, it is the responsibility of the minister's department to lay the instrument in time to satisfy the requirement of the 21-day rule. I should add that it was also only in response to our questions, rather than in the EM, that full information was supplied on what "the financial or other impact of delaying the legislation to meet the rule would be".

We find these repeated breaches of the 21-day rule a source of concern and we would welcome your assurance that there will be no further unjustified breaches. I would be grateful if you could respond to this letter by Wednesday, I November 2023, to enable us to consider your response at our first meeting of the new session.

25 October 2023

Letter from the Rt Hon. Robert Jenrick MP, Minister of State for Immigration at the Home Office, to the Rt Hon. Lord Hunt of Wirral MBE, Chair of the Secondary Legislation Scrutiny Committee.

Thank you for your letter of 25 October, regarding recent breaches of the 21-day rule, specifically in laying the Immigration and Nationality (Fees) (Amendment) (No.2) Regulations 2023, Immigration (Passenger Transit Visa) (Amendment) (No.2) Order 2023, and Statement of Changes in Immigration Rules.

Please be assured that I take my obligations to Parliament extremely seriously and appreciate the vital importance of ensuring Parliament, including your committee, has sufficient opportunity to consider instruments before they come into force. It is only by exception that the Home Office lays an instrument within 21 days of it coming into force and is done in situations where it is absolutely necessary and reasonable. On such occasions, we would include a clear explanation of why the policy requires urgent action in the explanatory memoranda as set out in the Statutory Instrument Practice. The department has also previously sought to ensure any reduction in the time Parliament has to scrutinise instruments is offset by proactive engagement with members in both Houses.

Immigration is however a complex policy area where urgency is sometimes required. On the Immigration (Passenger Transit Visa) (Amendment) (No.2) Order 2023, I believe the breach was necessary in order to prevent a surge in non-genuine arrivals abusing the provision to transit to the UK without a visa and claim asylum at the UK border. Implementation was also accompanied here by a four-week transition period to prevent general unfairness and to mitigate the risk that people who arranged travel before the visa requirement was imposed suffer a financial loss.

Similarly, on the changes to the Immigration Rules relating to students, these were designed to make a tangible difference to net migration. Departing from the usual convention in pausing the differentiation policy enabled us to support swifter asylum decision making, in particular under the Streamlined Asylum Process, which promotes more efficient processing of manifestly well-founded asylum claims. This change does not disadvantage those affected, with all individuals granted refugee status now receiving the same form of permission to stay. The departure from the 21-day rule also helped to reduce the cohort of individuals (Group 2 refugees) who required their permission to stay to be varied to align with the change in policy. Quicker decisions are helping to give much-needed certainty to those in need of protection.

Regarding the breach in respect of the Immigration and Nationality (Fees) (Amendment) (No.2) Regulations 2023, it is regrettable that there were delays to finalising the instrument and supporting documents. The department has subsequently conducted a lessons learnt review ahead of future fees changes and will implement actions to ensure necessary improvements. However, while I recognise the Committee's comments that the £2 million cost of delaying the instrument by two days in order to meet the 21-day rule appears to be relatively minimal in the context of the overall operating costs, it is nonetheless a significant amount which would have impacted priority functions.

I am mindful that there is a necessary balance to be struck between enabling good scrutiny while also achieving the policy aims of complex instruments. In recognition of the Committee's views that the evidence provided did not justify breaching the 21-day rule on these occasions, I will work with my officials to ensure that, in the exceptional cases where the minimum period is not possible, more detailed information is incorporated into the EM.

2 November 2023

APPENDIX 2: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 7 November 2023 and included in this report, Members declared the following interest:

Countryside and Rights of Way Act 2000 (Substitution of Cut-off Date Relating to Rights of Way) (England) Regulations 2023

Lord de Mauley

Owner of farmland and other property in Oxfordshire and Gloucestershire

Attendance:

The meeting was attended by Baroness Harris of Richmond, Lord Hunt of Wirral, Lord Hutton of Furness, Baroness Lea of Lymm, Lord de Mauley, Lord Powell of Bayswater, Baroness Randerson, Baroness Ritchie of Downpatrick, Lord Rowlands, Lord Russell of Liverpool and Lord Thomas of Cwmgiedd.