

# HOUSE OF LORDS

## Secondary Legislation Scrutiny Committee

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### 5th Report of Session 2023–24

Drawn to the special attention of the House:

**Draft Immigration (Health Charge)  
(Amendment) Order 2023**

**Universal Credit (Transitional Provisions)  
(Amendment Regulations) 2023**

#### Includes information paragraphs on:

Draft Immigration Act 2014 (Residential  
Accommodation) (Maximum Penalty) Order  
2023 and two linked instruments

National Security Act 2023 (Prevention  
and Investigation Measures) (Polygraph)  
Regulations 2023

Draft Data Protection and Journalism Code of  
Practice 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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[Baroness Harris of Richmond](#)

[Lord Hunt of Wirral](#) (Chair)

[Lord Hutton of Furness](#)

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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 Jennifer Mills (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](mailto:hlseclegscrutiny@parliament.uk).

# Fifth Report

## PROPOSED NEGATIVE INSTRUMENTS LAID FOR SIFTING UNDER THE RETAINED EU LAW (REVOCATION AND REFORM) ACT 2023

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**Proposed negative instrument about which no recommendation to  
upgrade is made**

- Railways (Revocation and Consequential Provision) Regulations 2024

## **DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE**

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### **Draft Immigration (Health Charge) (Amendment) Order 2023**

*Date laid: 19 October 2023*

*Parliamentary procedure: affirmative*

*This draft Order includes measures that would increase the Immigration Health Surcharge (IHS), the charge payable by some migrants to access the NHS, by 66%, a rate significantly greater than the increase in NHS costs over the comparable period (25%). The Home Office states that the increases are necessary due to the increased cost of migrants' healthcare, and the Prime Minister has cited the rise as one of the measures being taken to reduce immigration.*

*The key driver of the increases is a rise in the Government's own estimates of the cost of migrants' use of the NHS, relative to an average member of the population. We are not in a position to comment on the details of the Home Office's calculations. **However, we do note that in one respect the methodology is unconvincing, leading to an additional cost to migrants that has not been adequately explained. We encourage the Government to review its approach in this area.***

*The Home Office has made estimates of the knock-on effects of the proposed increases on, for example, the volume of visa applications, the number of IHS fee waiver applications made and granted, and the loss of income for higher education institutions resulting from a drop in the number of overseas students. However, these contain a high degree of uncertainty and have not been informed by reviews of the impact of past changes. **Future decisions on changes to the IHS would be better informed if the Government closely monitors the effects of these planned rises—in conjunction with other related changes, such as recent increases in visa fees.** Such monitoring could also help in assessing the impact on the higher education sector.*

**This draft 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.**

#### *Background*

1. Amongst other changes, this draft Order would increase the Immigration Health Surcharge (IHS), a charge payable by some migrants who are subject to immigration control to allow them to access NHS services free of charge (subject to charges UK residents must pay, such as for prescriptions and dental treatment in England). The intention of the change is to cover the costs to the NHS of treating IHS payers due to the increased cost of healthcare provision. The Home Office argues that, because the charge has not been increased since 2020, it does not currently meet these costs. The Prime Minister has also cited the increase in the IHS as one of the measures the Government is taking to reduce immigration.<sup>1</sup>
2. The IHS generated £1.7 billion of revenue in 2022/23. The change is expected to increase net public sector revenue by approximately £1 billion per year.

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<sup>1</sup> HC Deb, 29 November 2023, [col 827](#) [Commons Chamber].

3. The proposed increases in the IHS are being implemented shortly after substantial increases to the costs of other immigration and nationality fees, on which we commented in our 55th Report of Session 2022–23.<sup>2</sup>
4. As with other immigration and nationality fees, full or partial waivers are available for those considered unable to pay the IHS (specifically, if they would not have sufficient funds at their disposal after meeting essential living needs such as housing and food, and/or that the needs of a child would not be met). In addition, several groups of migrants are exempt from the charge; for example, asylum seekers, victims of human trafficking, those entering on the Ukraine schemes, those with indefinite leave to remain and migrants employed in the health and care sector.
5. Like most public sector fees and charges (although unlike immigration and nationality fees), the IHS cannot exceed the costs of delivering the underlying service.
6. Income from the surcharge, minus an amount the Home Office retains to cover its costs, is distributed to the devolved administrations under the Barnett Formula.

#### *Scale of the increase*

7. The draft Order would increase the IHS by 66%, from £624 to £1,035 per year on the main rate. The reduced rate, applicable to students, their dependents, applicants for the Youth Mobility Scheme and children under 18, would increase from £470 to £776 per year.
8. The Explanatory Memorandum (EM) to the instrument provided no details on why the charge was being increased at a rate well in excess of health spending, which has risen by 25% since the IHS was last amended. An Impact Assessment (IA) provided limited additional information, stating that the calculations now incorporate “updated evidence and assumptions about IHS payers’ use of services”.
9. We asked the Home Office for more details. The Home Office said that there were three main elements to the calculation (which uses data from England only, due to greater availability, although the charge is applicable throughout the UK):
  - The overall cost of the NHS.
  - The total population.
  - A factor that adjusts for the fact that migrants tend to use the NHS less than the average person; for example, because they are younger on average.

Dividing the overall cost by the population, and then multiplying by the NHS migrant cost factor, provides an estimate of the cost of the average migrant to the NHS.

10. The Home Office said that it performs this calculation in different care settings, and then adds the results together to provide a final figure (which

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<sup>2</sup> *55th Report* (Session 2022–23, HL Paper 263) paras 65–89.

is then rounded down to the nearest £5 to produce the actual IHS). For the proposed new IHS, the Home Office provided the following summary table:

**Table 1: Calculation of amended IHS**

Budget area	Overall cost (£ billion) (A)	Population (million) (B)	Overall cost per capita (£) (C)=(A)/ (B)	NHS migrant cost factor (D)*	IHS payer cost per capita (£) (E)=(C)*(D)
1. Primary care	20.6	56.3	366	49% (47%)	179
2. General and acute care	59.6	56.3	1,059	24% (21%)	253
3. Other settings/ administrative budgets	43.1	56.3	766	52% (28%)	402
4. Uplift to implementation year	30.3	57.6	527	38% (28%)	201
<b>Total</b>	<b>153.6</b>		<b>2,718</b>	<b>38% (28%)</b>	<b>1,036</b>

\*The numbers in brackets in column D are the NHS migrant cost factors used in the previous calculation of the IHS, when it was increased in 2020.

The figures in rows 1–3 for the overall cost of the NHS and the population relate to 2019/20, which the Home Office said was because that year is least impacted by COVID-19 and is therefore “the best available option to reflect the future distribution of spend across care settings”. The figure for the overall cost of the NHS in row 4 reflects the increase in spend between 2019/20 and 2023/24.

11. Two key issues arise from this table. First, the substantial increases in the NHS migrant cost factor (column D) since the IHS was last calculated; in particular, in row 3 “other settings/ administrative budgets”, where the factor has increased from 28% in 2020 to 52% now. Asked to provide a further explanation, the Home Office said this change was because of a different method of calculating migrants’ NHS use that takes account of the per-person costs of providing services to people in different age and sex groups. The Home Office cited community and mental health services costs as examples of areas where the new approach indicates “high levels of use” by IHS payers.
12. The Home Office also stated that the results of the NHS migrant cost factor calculations have been sense-checked against external sources. For example, the Home Office referred to research by the Health Foundation,<sup>3</sup> which found that “on average, health care utilisation among migrants to the UK

<sup>3</sup> Health Foundation, ‘International migrants use NHS services less frequently than non-migrants’ (27 March 2020): <https://www.health.org.uk/news-and-comment/blogs/international-migrants-use-nhs-services-less-frequently-than-non-migrants> [accessed 6 December 2023].

is up to 40% lower than utilisation among the UK-born population” (which could imply an NHS migrant cost factor of at least 60%). The Home Office therefore concluded that its overall 38% figure “remains on the cautious end of the spectrum and may not fully reflect the full impact of legal migration on health and care spending”.

13. **We are not in a position to comment on the details of the Home Office’s calculations, but we note that the increases in the NHS migrant cost factor estimates are the key reason that the IHS is increasing much more rapidly than the NHS budget.**
14. The second issue arising from the table is an aspect of the calculations that we find unconvincing. Specifically, applying the higher current population only to the difference in NHS spending between 2019/20 and 2023/24 (row 4), rather than to all spending (including rows 1–3), means that the current per capita cost is overstated and, hence, the IHS is higher than it otherwise would be. This is most clearly evident from the Total row in Table 1, in which the overall NHS cost (£153.6 billion), divided by the current population (57.6 million), multiplied by the overall NHS migrant cost factor (0.38), would give a result of £1,013, not £1,036. The Home Office has not provided any justification for this approach. **Although a less significant component of the increase than changes to the migrant cost factor, this is nevertheless an additional cost to migrants that has not been adequately explained. Moreover, it is worrying that the Home Office should use such a questionable methodology and it may cast doubt on the accuracy of other underlying calculations that we have not scrutinised. We encourage the Government to review its approach next time the IHS is recalculated.**

#### *Effect of the changes on migrant numbers*

15. The IA recognises that an increase in the IHS could “deter some potential migrants from applying to enter or remain in the UK”. The IA states that “there is very limited research” on the size of this effect but estimates that it will be small—in general, a less than 1% decrease in applications across visa types—due to “the IHS representing a relatively small proportion of the overall cost, or benefit, of an individual moving to or remaining in the UK”.
16. We are not in a position to confirm or dispute these estimates. We do, however, note that the IHS was increased by a comparable proportion (56%) in 2020. The Home Office told us that it had not undertaken a review of the effect of that change on application volumes. This is understandable, given that the effects would be difficult to isolate from those of the COVID-19 pandemic and Brexit, which occurred around the same time. **However, future decisions on IHS changes would be better informed if the Home Office undertakes a review of the effects of the change in this draft Order.**

#### *Effects on the education sector*

17. The IA indicates that the main impact of the changes, other than the net exchequer gain from the increases, will fall on the education sector. The Home Office expects a drop in applications from overseas students, leading to a fall in tuition fee revenue of £200 million over five years.

18. We note that the increases are being brought in alongside sharp increases in some student visa fees.<sup>4</sup> We asked the Home Office whether the combined effect of these changes had been considered. The Home Office said that each had been appraised separately within the IA for the relevant instrument, but that it would “continue to work with other Government departments to understand the impacts of the IHS increase alongside further changes to immigration policy”.
19. **It is conceivable that the combination of the effects of the visa fee and IHS increases are greater than the sum of each individually and could be significant for the education sector. We encourage the Home Office and the Department for Education to keep this under close review.**

*Delays in parliamentary scrutiny*

20. This draft Order was laid before Parliament by the Home Office on 19 October 2023. We asked the Home Office two sets of questions, the second of which we sent on 31 October 2023. The Home Office did not reply until 28 November 2023. We appreciate that the Home Office needed to consult the Department of Health and Social Care, and that an intervening reshuffle may have delayed responses. **Nonetheless, we are disappointed that the response time was significantly longer than we would expect and has meant that Parliament’s scrutiny of the draft Order has been delayed unnecessarily.**

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<sup>4</sup> Immigration and Nationality (Fees) (Amendment) (No. 2) Regulations 2023 ([SI 2023/1004](#)) in [55th Report](#) (Session 2022–23, HL Paper 263), paras 71–4.



## Universal Credit (Transitional Provisions) (Amendment Regulations) 2023 (SI 2023/1238)

*Date laid: 20 November 2023*

*Parliamentary procedure: negative*

*This instrument provides another example of the ‘too narrow’ approach to Explanatory Memoranda (EM) to which we have drawn attention in recent reports. The EM explains accurately and in some detail what the legislation in this specific instrument does but does not adequately explain the policy context or the numbers involved. **When the policy involves correcting the payment of benefits to individuals with severe disabilities, the House will always wish to have the full picture.***

*A court judgment in January 2022 found that the Department for Work and Pensions’ (DWP) arrangements for transitioning claimants to Universal Credit discriminated unfairly between two similar groups of claimants entitled to severe disability payments. These Regulations amend the process, so that from 14 February 2024 new claimants for Universal Credit who move from a legacy benefit will receive an additional ‘transitional severe disability premium element’.*

***What the EM fails to explain is why DWP required two years to make that change, and how long it will be before DWP remedies the situation of the more than 44,000 existing claimants who have been adversely affected as the continued delay prolongs the financial discrimination against them.***

**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.**

### *Background*

21. Universal Credit was introduced by the Welfare Reform Act 2012 to replace six types of benefit now referred to as “legacy benefits”:
  - income-based jobseekers’ allowance
  - income-related employment and support allowance (“ESA”)
  - income support (“IS”)
  - housing benefit
  - child tax credit (“CTC”)
  - working tax credit
22. In the initial phase, Universal Credit was rolled out to new claimants only, but, as the system matured, the Government began to move claimants on legacy benefits over to the new system, under the arrangements set out in the *Universal Credit (Transitional Provisions) Regulations 2014* (the 2014 Regulations).<sup>5</sup> This process distinguished those subject to “natural migration”, who were making a new claim to Universal Credit because of a change in their circumstances, and those subject to “managed migration”,

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5 Universal Credit (Transitional Provisions) Regulations 2014 ([SI 2014/1230](#)).

who were notified by the Department for Work and Pensions (DWP) that they must make a claim for Universal Credit as part of the gradual transition.

23. The Government had stated that in most cases the benefits under Universal Credit would be similar or higher, and committed to ensuring that “[t]here will be no cash losers at the point of change, ensuring that no one will see their benefits reduced when Universal Credit is introduced”.<sup>6</sup> To provide for this, DWP introduced a “transitional element” for the managed migration group to compensate for any shortfall from their level of legacy benefits. It should be noted that this transitional uplift erodes over time until the level of Universal Credit assessed under the new rules is reached (like mark time pay).
24. Particularly vulnerable were those claimants in receipt of Severe Disability Premium (SDP) or Enhanced Disability Premium (EDP) as part of their legacy payments, as Universal Credit did not include an equivalent. To address this, the Government introduced the SDP Gateway to prevent claimants who were entitled to an SDP-type premium in their existing legacy benefit from moving to Universal Credit, so as to conserve their level of payments. However, the courts found this mechanism to discriminate between different groups of claimants, and the Gateway was subsequently removed on 27 January 2021.
25. We have published several reports on DWP’s proposed transitional arrangements and urged DWP to conduct and evaluate a structured pilot exercise to migrate 10,000 claimants before rolling out the managed migration programme nationally, though the department took an alternative approach.<sup>7</sup>

#### *The latest judgment*

26. The latest judgment, Queen (on the application of) TP and AR,<sup>8</sup> concluded that there was an unjustified difference in treatment because of the SDP Gateway, resulting in a significant reduction in the overall level of benefit, referred to as a “cliff-edge” effect, payable to those migrating naturally to Universal Credit due to a change in their circumstances.
27. In supplementary material, DWP clarified that the two groups of claimants are:
  - “1) claimants who were prevented from making a claim to Universal Credit when the Severe Disability Premium (SDP) Gateway was in force between 16 Jan 2019 to 26 Jan 2021<sup>9</sup> who therefore had their benefit entitlement fully protected, and who would only be moved to Universal Credit by the DWP’s managed migration process; and
  - 2) those claimants who moved to Universal Credit either before the SDP Gateway was introduced or after the provision was revoked.

6 Department for Work and Pensions White Paper, *Universal Credit: Welfare that works*, Cm 7957 (November 2010), Chapter 2: <https://assets.publishing.service.gov.uk/media/5a79581640f0b63d72fc4fd9/universal-credit-full-document.pdf>.

7 See for example SLSC Sub-Committee B, *8th Report* (Session 2017–19, HL Paper 244), *14th Report* (Session 2017–19, HL Paper 273) and SLSC, *10th Report* (Session 2022–23, HL Paper 56).

8 Royal Courts of Justice, *TP & Anor, R (On the Application Of) v Secretary of State for Work and Pensions*, [2022] EWHC 123 (Admin) (21 January 2022).

9 In regulation 4A of the Universal Credit (Transitional Provisions) Regulations 2014 (SI 2014/1230).

This second group of claimants receive a lower Universal Credit benefit entitlement compared to those in the first group who were protected by the Gateway.”

28. The changes made by this instrument provide that all eligible claimants who move from a legacy benefit to Universal Credit on or after 14 February 2024 will be entitled to receive the ‘transitional severe disability premium element’ (tSDPe) with their Universal Credit award.

#### *Unexplained delays*

29. We asked why, if the judgment was handed down in January 2022, these Regulations were not coming into effect until February 2024. In supplementary information, DWP explained:

“The Secretary of State for Work and Pensions (SSWP) sought permission to appeal the original judgment in February 2022, and the decision from the Court of Appeal refusing permission was not received until January 2023.

The original High Court judgment did not specify the action the Government should take, however in response the Government decided to amend the Universal Credit (Transitional Provisions) Regulations 2014.

Work commenced in February 2023 to obtain SSWPs approval for introducing new regulations, followed by HMTs funding approval. The UC service delivery programme were commissioned to design, build, and test the system automation required to deliver the changes being introduced by the regulations.

Due to operational constraints the earliest date from which the regulations can come into force will be 14 February 2024.”

30. Given the series of judgments against DWP on this issue, we find it surprising that DWP did not start work on a remedy at an earlier stage. **We also note that, “due to operational constraints”, it will be just over two years between the latest judgment finding the provision discriminatory and DWP taking action to prevent new claimants being subject to the discrimination identified.**

#### *Redress?*

31. This instrument ensures that, from 14 February 2024, new claimants formerly entitled to SDP will be identified and paid the additional tSDPe sum automatically. DWP estimates around 600 claims per month will be impacted initially.
32. We also enquired whether the claimants who transitioned earlier will get backdated benefits. DWP told us that

“A financial settlement was agreed for the three claimants who brought the legal challenge. They have received arrears payments covering the period up to the date they moved to Universal Credit and continue to receive monthly payments covering the shortfall between Universal Credit and the amount they were receiving before their move [ ... ]

SSWP is currently developing an approach to delivering this additional support to eligible claimants.”

33. The Explanatory Memorandum (EM) gave no indication of the number of claimants affected by the judgment. In supplementary material DWP explained:

“[I]n May 2023 there were around 44,000 claimants who received a transitional SDP element as part of their Universal Credit award and these (and others newly receiving the SDP element between then and 14 February 2024) will be considered for additional transitional protection, as outlined in the regulations, at a future date to be determined.”

34. We also questioned why the EM states that there is no significant impact on the public sector, reasoning that acting on this judgment would require unplanned extra DWP expenditure and additional staff resource in reviewing the relevant cases, as well as substantial sums in back pay for those identified as unfairly discriminated against by the judgment. DWP responded that the current Regulations will only apply to eligible new claimants from 14 February 2024, when the process to identify and make the transitional protection payments will be automated. The assessment of the additional costs to identify and compensate other claimants will form part of the approach that DWP is currently developing.
35. **The House may wish to press the Minister on how and when DWP is going to remedy the position of this large group of severely disabled claimants.** In particular, it is not simply a matter of the back payments owed them, but also that further delay by DWP prolongs the underpayments to these claimants that the judgment identified as discriminatory.

### *Conclusion*

36. This instrument provides another example of the ‘too narrow’ approach to EMs to which we have drawn attention in recent reports. The EM explains accurately and in some detail what the legislation in this instrument does but fails to explain the policy fully or the numbers involved. **When the policy involves correcting the payment of benefits to individuals with severe disabilities, however, the House will always wish to have the full picture.**

## INSTRUMENTS OF INTEREST

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### Draft Immigration Act 2014 (Residential Accommodation) (Maximum Penalty) Order 2023

### Draft Immigration (Employment of Adults Subject to Immigration Control) (Maximum Penalty) (Amendment) Order 2023

### Immigration Act 2014 (Commencement No. 9) and Immigration Act 2014 (Commencement No. 8) (Revocation) Order 2023 (SI 2023/1245)

37. This suite of instruments, and associated revised codes of practice,<sup>10</sup> would increase the maximum penalties for: (i) an employer who employs a person who is disqualified from working by reason of their immigration status in the UK, from £20,000 to £60,000; and (ii) a landlord or agent who rents property to individuals who do not have a right to rent, again because of their immigration status, from £3,000 to £20,000. The draft codes set out the actual fines payable, which in some cases will be lower; for example, for a first breach. The Home Office states that the penalties have not been increased since 2014 and that the changes are intended to deter those contemplating entering the UK illegally, deter non-compliant employers and landlords, and to reflect the full socio-economic costs of illegal labour and illegal letting. In response to our questions, the Home Office said that the new levels had been chosen “based on evidence and research, from international comparisons to other civil penalty schemes operated within the UK [ ... ] and the challenges raised by illegal working and renting”.
38. An accompanying Economic Note reported that only 1,105 penalties were issued to employers, and 45 to landlords/agents, for breaching these rules in 2022–23. An Equalities Impact Assessment (EIA) published alongside the instruments noted a risk that the increases in penalties might lead employers and landlords to favour British and Irish nationals, at the expense of migrants, as being ‘lower risk’ and not requiring further checks. The EIA concluded that any such indirect discrimination “is justified as a proportionate means of achieving a legitimate aim”.

### Draft Data Protection and Journalism Code of Practice 2023

39. This draft Code of Practice<sup>11</sup> provides practical advice for journalists on compliance with data protection legislation. The Code has been prepared by the Information Commissioner, as required under section 124 of the Data Protection Act 2018, and has been laid before Parliament by the Department for Science, Innovation and Technology (DSIT). The Code builds on

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10 Home Office, *Draft Code of practice on right to rent: Right to Rent Scheme for landlords and their agents* (November 2023): [https://assets.publishing.service.gov.uk/media/65548f5250475b000dc5b5df/E03016069\\_COP\\_Right\\_to\\_Rent\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/media/65548f5250475b000dc5b5df/E03016069_COP_Right_to_Rent_Web_Accessible.pdf); Home Office, *Draft code of practice on preventing illegal working: Right to Work Scheme for employers* (November 2023): [https://assets.publishing.service.gov.uk/media/6554d9d8046ed400148b9970/E03016066\\_COP\\_Preventing\\_Illegal\\_Working\\_Accessible.pdf](https://assets.publishing.service.gov.uk/media/6554d9d8046ed400148b9970/E03016066_COP_Preventing_Illegal_Working_Accessible.pdf) [accessed 4 December 2023]. A further instrument (or instruments) will be required to bring the revised codes of practice into force. These are expected to be laid once the draft affirmatives have completed their parliamentary process.

11 The draft Code has been published, together with supporting reference notes, here: IOC, ‘Data protection and journalism code of practice’: <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/data-protection-and-journalism-code-of-practice/journalism-code/> [accessed 4 December 2023].

previous non-statutory guidance<sup>12</sup> and will come into force 21 days after being issued.

40. The Department says that the Code does not impose any new legal obligations but seeks to address recommendations of the Leveson Inquiry regarding the intrusion of journalists into the private lives of individuals. While the Code is not concerned with press standards, it aims to strike a balance between freedom of expression and protection of privacy. Courts and tribunals must take the Code into account where relevant to any proceedings.
41. The Code sets out the requirements to process data fairly, lawfully, and transparently and the need to comply with certain rights of individuals, such as the rights of access and erasure. It also specifies the circumstances when the “journalism exemption” applies and personal data can be used for a journalistic purpose: the activity must be “with a view to publication”, and the individual must reasonably believe that publishing the personal data would be in the public interest and complying with a specific requirement of data protection legislation would be incompatible with the journalistic purpose.

#### National Security Act 2023 (Prevention and Investigation Measures) (Polygraph) Regulations 2023 (SI 2023/1249)

42. The National Security Act 2023 added individuals subject to State Threats Prevention and Investigation Measures (STPIM) to those who can be required to participate in a polygraph (lie detector) session. These Regulations specify how STPIM polygraph sessions should be conducted; for example, setting out qualification requirements for polygraph operators and supervisors, making provision for review of every polygraph session and providing for regular reporting to the Home Office. Currently, polygraphs can be used: on terrorist offenders and as a terrorism prevention and investigation measure; on sexual offenders on licence; and on domestic abuse offenders. The Home Office states that these Regulations are consistent with the way that polygraphs operate in those existing cases. The Home Office told us that it expects there to be only one or two polygraph tests on STIPM subjects per year.
43. The Home Office said that while there have been independent evaluations of the usefulness of polygraph as a “risk management tool” in the UK, the accuracy of polygraphs has not been assessed, with the Government instead referring to reviews by the American Polygraph Association. **We encourage the Home Office to consider commissioning an independent assessment of the accuracy of its polygraph tests.**

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12 ICO, *Data protection and journalism: a guide for the media* (September 2014): <https://ico.org.uk/media/for-organisations/documents/1552/data-protection-and-journalism-media-guidance.pdf> [accessed 4 December 2023].

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

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### Instruments subject to affirmative approval

- Draft            Immigration (Employment of Adults Subject to Immigration Control) (Maximum Penalty) (Amendment) Order 2023
- Draft            Immigration Act 2014 (Residential Accommodation) (Maximum Penalty) Order 2023

### Draft instruments subject to annulment

- Draft            West Northamptonshire (Electoral Changes) Order 2024
- Draft            Data Protection and Journalism Code of Practice 2023

### Instruments subject to annulment

- SI 2023/1216    The Merchant Shipping (Small Workboats and Pilot Boats) Regulations 2023
- SI 2023/1219    British Nationality (Eswatini, Gabon and Togo) Order 2023
- SI 2023/1220    Electronic Communications Code (Jurisdiction) (Amendment) Regulations 2023
- SI 2023/1221    Data Protection (Law Enforcement) (Adequacy) (Bailiwick of Jersey) Regulations 2023
- SI 2023/1226    Climate Change Agreements (Administration and Eligible Facilities) (Amendment) Regulations 2023
- SI 2023/1227    Police and Crime Commissioner Elections (Amendment) Order 2023
- SI 2023/1228    Electricity (Designation of Delivery Bodies) (Transmission) Regulations 2023
- SI 2023/1233    Overseas Electors, Postal Vote Handling and Secrecy (Amendment) Rules 2023
- SI 2023/1237    Social Security (Widow's Benefit and Retirement Pensions) (Amendment) Regulations 2023
- SI 2023/1243    Controlled Waste (England and Wales) (Amendment) (England) Regulations 2023
- SI 2023/1244    Producer Responsibility Obligations (Packaging Waste) (Amendment) (England and Wales) Regulations 2023
- SI 2023/1245    Immigration Act 2014 (Commencement No. 9) and Immigration Act 2014 (Commencement No. 8) (Revocation) Order 2023
- SI 2023/1246    Common Organisation of the Markets in Agricultural Products (Marketing Standards and Organic Products) (Transitional Provisions) (Amendment) Regulations 2023
- SI 2023/1247    Non-Domestic Rating (Heat Networks Relief) (England) Regulations 2023

- SI 2023/1249 National Security Act 2023 (Prevention and Investigation Measures) (Polygraph) Regulations 2023
- SI 2023/1250 Non-Domestic Rating (Small Business Rate Relief) (England) Regulations 2023
- SI 2023/1251 Non-Domestic Rating (Consequential and Other Amendments etc.) (England) Regulations 2023
- SI 2023/1256 Civil Enforcement of Parking Contraventions Designation (No.2) (West Sussex) (Chichester and Crawley) (Amendment) and the Civil Enforcement of Parking Contraventions Designation Order 2023
- SI 2023/1257 Car, Van and Heavy Duty Vehicle Carbon Dioxide Emissions Performance Standards (Civil Liberties and Miscellaneous Amendments) Regulations 2023



## **APPENDIX 1: INTERESTS AND ATTENDANCE**

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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 5 December 2023 and included in this report, Members declared the following interests:

### **Draft Immigration (Health Charge) (Amendment) Order 2023**

Lord Thomas of Cwmgiedd  
*Chancellor of Aberystwyth University*  
Baroness Randerson  
*Chancellor of Cardiff University*

### **Draft Data Protection and Journalism Code of Practice 2023**

Lord Hunt of Wirral  
*Former Chair of the Press Complaints Commission and former Chair of the Independent Press Standards Organisation.*

### **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, Lord Rowlands, Lord Russell of Liverpool and Lord Thomas of Cwmgiedd.