HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

11th Report of Session 2023–24

Drawn to the special attention of the House:

Official Controls (Extension of Transitional Periods) (Miscellaneous Amendments) Regulations 2024 and one linked instrument

Includes information paragraphs on:

Public Lending Right Scheme 1982 (Commencement of Variation) Order 2024

Biodiversity Gain Site Register Regulations 2024 and three linked instruments

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Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as agreed on 8 November 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

Lord De Mauley
Baroness Harris of Richmond
Lord Hunt of Wirral (Chair)
Lord Hutton of Furness
Baroness Lea of Lymm
Lord Powell of Bayswater
Baroness Randerson
Baroness Ritchie of Downpatrick
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Lord Russell of Liverpool
Lord Thomas of Cwmgiedd

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 Jen 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.

Eleventh Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Official Controls (Extension of Transitional Periods) (Miscellaneous Amendments) Regulations 2024 (SI 2024/20)

Ship's Report, Importation and Exportation by Sea (Amendment) Regulations 2024 (SI 2024/9)

Date laid: 9 January 2024

Parliamentary procedure: negative

These two instruments support the implementation of the Border Target Operating Model (BTOM) and the Windsor Framework. They bring to an end some of the temporary exemptions from border controls which were introduced following Brexit or align them with the implementation milestones set out in the BTOM. The instruments also include provisions to ensure that most Qualifying Northern Ireland Goods that move from Northern Ireland to Great Britain via the Republic of Ireland are exempt from the new border controls and continue to have unfettered access to Great Britain. The Government says that Border Control Posts (BCP) are prepared for the new controls, and that it has engaged with EU member states and businesses to raise awareness of the new arrangements. We understand, however, that the full implementation of the BTOM will require further legislation, and we note that concerns have been raised about the level of preparedness and the impact of the new controls on supply chains. ***We therefore do not share the Government's confidence that the new BCP infrastructure and operators both in the UK and in the EU are ready. The House may wish to seek further assurance from the Minister on this. The House may also wish to ask the Minister how the agreement to restore power sharing in Northern Ireland will interact with the changes made by these two instruments.***

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.

1. These two instruments support the implementation of the Border Target Operating Model (BTOM)[1] and the Windsor Framework.[2] The BTOM was published in August 2023 and sets out a new approach to importing goods from third countries into Great Britain (GB) after Brexit. It will be introduced progressively from the end of January 2024 and seeks to protect biosecurity while supporting trade. The Windsor Framework was agreed by the UK and the EU in February 2023 and includes provisions on arrangements for trade between GB and Northern Ireland (NI).

1 Cabinet Office, 'The Border Target Operating Model' (August 2023): https://www.gov.uk/government/publications/the-border-target-operating-model-august-2023 [accessed 30 January 2024].

2 Prime Minister's Office, 'The Windsor Framework' (27 February 2023): https://www.gov.uk/government/publications/the-windsor-framework [accessed 30 January 2024].

Changes made by SI 2024/20

2. This instrument brings to an end some of the temporary exemptions from border controls which were introduced following Brexit or aligns them with the implementation milestones set out in the BTOM. Specifically, the instrument ends the current exemptions for health certificates and phytosanitary certificates for goods classified as medium risk,[3] so that certain plants, plant products and other objects which are imported from the European Economic Area (EEA), Greenland, Faroe Islands and Switzerland as a European Free Trade Association (EFTA) country need to be accompanied by a phytosanitary certificate from 31 January 2024. Similarly, medium risk products of animal origin, animal by-products and derived products[4] will need to be accompanied by a GB import health certificate. High-risk goods such as certain plants, live animals and germinal products have required prenotification and to be accompanied by an appropriate certificate since 1 January 2021.

3. The instrument also extends the Transitional Staging Period (TSP), which would otherwise expire on 30 January 2024, to 29 April 2024 to align it with the milestones under the BTOM. The TSP was introduced after Brexit to ease temporarily the requirements for official documents and controls for some categories of animals, plants and other goods imported into GB from the EEA, the Faroe Islands, Greenland, and Switzerland. This included suspending temporarily the requirement for goods to enter GB through a Border Control Post (BCP), the requirement for all such goods to undergo documentary checks and the requirement to provide prior notification for certain goods. The instrument phases out these suspensions and easements within the TSP in line with the BTOM.

4. The extension is only until the end of April and there have been reports in the media of industry concerns about BCP readiness and capacity.[5] We therefore asked the Department for Environment, Food and Rural Affairs (Defra) whether BCPs were prepared for the new controls from May onwards. The Department responded:

> "Defra is confident that existing and new BCP infrastructure will have sufficient capacity and capability to handle the volume of expected checks outlined in the Border Target Operating Model, with robust, dynamic, and effective operational measures ready to call upon if needed. Defra will continue to work with existing BCP operators to ensure they are prepared, and the Government has built new infrastructure at critical locations. Operators have not expressed concerns regarding under-capacity, we are therefore not anticipating queues but will continue working closely with operators to address any concerns they may have."

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3 Medium risk plants, plant products and other objects are the plants, plant products and other objects which are listed in Part A of Annex 11 to the Phytosanitary Conditions Regulation (Implementing Regulation) (SI 2019/2072).

4 Animal & Plant Health Agency and Department for Environment, Food & Rural Affairs, 'Guidance: Import risk categories for animal and animal product imports from the EU to Great Britain: summary tables' (December 2023): https://www.gov.uk/government/publications/risk-categories-for-animal-and-animal-product-imports-to-great-britain/target-operating-model-tom-risk-categories-for-animal-and-animal-product-imports-from-the-eu-to-great-britain [accessed 30 January 2024].

5 See, for example, The Guardian, 'New Brexit checks 'pose existential threat' to UK fruit and flower growers', (22 January 2024): https://www.theguardian.com/politics/2024/jan/22/brexit-checks-existential-threat-uk-fruit-flower-growers [accessed 30 January 2024].

5. We also note that the Government explained in its response to a Written Question in December 2023 that it is "working with EU member states to ensure they are prepared ahead of implementation", including through "a series of overseas visits to meet industry figures and raise awareness of the forthcoming controls" and through engagement "with the European Commission directly, and with EU Member States individually on a government-government level to ensure that EU authorities are prepared for the controls".[6]

6. We understand that implementation of the next milestones of the BTOM in April and October 2024 will require further legislation, and that concerns have been raised about the level of preparedness and the impact of the new controls on supply chains.[7] **We do not share the Government's confidence that the new BCP infrastructure and operators in the UK and in the EU have "sufficient capacity and capability" and are prepared for the phased introduction of the full controls under the BTOM. The House may wish to seek further assurance from the Minister on this and on the extent of continuing engagement with operators and other relevant stakeholders as the BTOM is implemented**.

7. The instrument also extends, until 29 April 2024, the temporary suspension of the specific requirement for meat preparations, such as sausages, which are imported into England from the EEA, the Faroe Islands, Greenland, and Switzerland, to be deep frozen, so that they can be imported in a chilled condition. Defra says that a permanent policy in this area is being developed, with the aim of bringing forward further secondary legislation to come into effect on 30 April 2024. This specific extension only applies to imports into England, but Scotland and Wales have taken forward equivalent legislation so that the same import rules will apply across GB in this area.[8]

8. Finally, the instrument limits the exemption from the requirement for prenotification which currently applies to certain goods entering GB from the Republic of Ireland (ROI), so that from 31 January 2024 it will apply only to Qualifying Northern Ireland Goods (QNIGs), which move from NI to GB via ROI.[9] Non-qualifying goods which may pose a risk to GB biosecurity will be subject to proportionate import controls. We asked Defra whether QNIGs will be labelled, so that they can be identified easily and distinguished from non-qualifying goods. The Department responded:

> "This instrument upholds the government's policy of unfettered market access in relation to Qualifying Northern Ireland Goods and allows most QNIGs to enter GB indirectly via Ireland without the requirement to prenotify. An export declaration will need to be lodged, though this is required by Irish authorities, not UK authorities. At ports using the Goods Vehicle Movement Service (GVMS), hauliers will still need to complete a Goods Movement Reference (GMR), but for most goods movements hauliers will only need to state that they are moving QNIGs in their GMR. Hauliers and drivers should also be prepared to present

6 Written Answer HL1358, Session 2023–24.

7 BBC News, 'Brexit food checks will test Britain's supply chains' (30 January 2024): https://www.bbc.co.uk/news/business-68135059 [accessed 31 January 2024].

8 Meat Preparations (Amendment and Transitory Modification) (Wales) (Amendment) Regulations 2024 (SI 2024/17) (W. 6) and Meat Preparations (Import Conditions) (Scotland) Amendment Regulations 2023 (SSI 2023/367).

9 As defined by the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020 (SI 2020/1454), see *31st Report* (Session 2019–21, HL Paper 153).

> commercial evidence confirming their goods are QNIGs which have merely passed through Ireland. This exemption from the requirement to prenotify for goods passing through ROI does not include live animals and germinal products, certain animal by-products and derived products not intended for human consumption, and high-risk food of non-animal origin. These goods will be required to prenotify and will be subject to the relevant SPS [Sanitary and Phytosanitary] checks and controls. Further, when UK Plant Passports are applied to QNIGs, required in certain cases for onward movement in the UK, a country code of GB(NI) is applied, and therefore these goods can be identified as originating from Northern Ireland."

9. We note that despite the special arrangements for QNIGs, there will still be controls for certain goods moving from NI to GB via ROI.

Changes made by SI 2024/9

10. This instrument, in combination with a further instrument laid only before the House of Commons,[10] applies full customs controls to goods arriving at specified locations in GB[11] by sea from ROI, to ensure that these goods will be treated the same way as those imported from other EU countries. (Goods arriving at other locations in GB are covered by other legislation.) QNIGs that pass from NI to GB through ROI will be exempt to promote "unfettered access" between NI and GB.

11. HM Revenue and Customs explains that, following Brexit, full customs controls were introduced from 1 January 2022 for goods entering GB from most EU countries. This includes a requirement to lodge a customs declaration for goods arriving at certain locations in GB and restrictions on when these goods can subsequently leave the port. These controls were not introduced for goods entering GB from ROI to maintain continuity for NI businesses which routinely move goods in this way, while discussions between the UK and EU on the operation of the old Northern Ireland Protocol were continuing.

12. Under the Windsor Framework, the exemption for goods from ROI is now being removed. This instrument applies a specific part of these changes, ensuring that the restrictions on when goods can leave the specified locations in GB apply to goods arriving by sea from ROI, except QNIGs.

13. **We note that at this stage it is unclear how the agreement to restore power sharing in NI will interact with the changes made by these two instruments. The House may wish to seek an explanation from the Minister on this**.

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10 Taxation (Cross-border Trade) (Miscellaneous Amendments) Regulations 2024 (SI 2024/12).

11 These specified locations are Roll-on Roll-Off (Ro-Ro) and other listed border locations, see: HM Revenue and Customs, 'Locations which need a pre-lodged declaration' (12 October 2023): https://www.gov.uk/guidance/check-which-locations-you-need-to-use-pre-lodged-declarations [accessed 30 January 2024].

INSTRUMENTS OF INTEREST

Public Lending Right Scheme 1982 (Commencement of Variation) Order 2024 (SI 2024/30)

14. This Order reduces the 'rate per loan' paid to authors under the Public Lending Right Scheme ("the PLR Scheme") from 30.53 pence to 13.69 pence. The PLR Scheme was launched in 1982 to provide annual payments from a central fund to authors whose books are loaned by public libraries in the UK. The British Library Board is responsible for administering the PLR Scheme.

15. The Department for Culture, Media and Sport (DCMS) says that the reason for the reduction is that the number of estimated loans made between 1 July 2022 and 30 June 2023 has now returned to a near pre-covid level. As the central fund for the PLR Scheme is fixed,[12] and paid in arrears, an increase in the borrowing of books means a reduction in the payment rate per loan.

16. We asked DCMS whether the cyber-attack on the British Library in October 2023,[13] which severely affected services, could impact on these payments. The Department explained that "workaround systems are being put in place", and that the "British Library is making good progress towards issuing UK PLR payments before the end of March at the latest, in line with the PLR Scheme legislation".

17. The well-drafted Explanatory Memorandum (EM) follows the new format, set out in the Government's response to our report on the *Work of the Committee in Session 2022–23*.[14] **We welcome the new EM template and supporting guidance, which will become mandatory from 1 April 2024 for all secondary legislation subject to parliamentary procedure.**[15] We hope that it will assist departments in improving the quality of the explanatory material they provide which, as our reports show, has too often been inadequate.[16]

12 The PLR central fund is part of the overall funding for the British Library, which is reviewed and set for each Spending Review period. There is no interim annual assessment of the overall sum dedicated for PLR payments.
13 BBC News, 'British Library starts restoring services online after hack' (15 January 2024): https://www.bbc.co.uk/news/entertainment-arts-67976183 [accessed 30 January 2024].
14 SLSC, *Government Response: Work of the Committee in Session 2022–23* (9th Report, Session 2023–24, HL Paper 42).
15 Cabinet Office, 'Explanatory Memorandum: Template and Guidance' (2 January 2024): https://www.gov.uk/government/publications/explanatory-memorandum-template-and-guidance [accessed 30 January 2024].
16 SLSC, *Work of the Committee in Session 2022–23* (56th Report, Session 2022–23, HL Paper 264).

Biodiversity Gain Site Register Regulations 2024 (SI 2024/45)

Biodiversity Gain Requirements (Exemptions) Regulations 2024 (SI 2024/47)

Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024 (SI 2024/48)

Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 (SI 2024/50)

18. These four instruments support the implementation of the biodiversity gain regime which was introduced into the existing planning regime by the Environment Act 2021. Under this regime, new development of land in England is required to deliver a 10% net gain in biodiversity (BNG), unless the development is exempt. The 10% uplift is required irrespective of whether the development impacts existing biodiversity and can be achieved either on-site or off-site, or as a last resort by buying statutory biodiversity credits. For significant on-site gains, and all off-site gains, the BNG must be maintained for at least 30 years.

19. **SI 2024/45** introduces a publicly accessible biodiversity gain site register. The register will be operated by Natural England and contain information about the habitat enhancements to be achieved on registered land. The instrument establishes the conditions which must be met for land to be eligible for registration and the processes for recording information in the register.

20. **SI 2024/47** sets out categories of planning permission that are exempt from the BNG requirement. This includes: a temporary exemption until April 2024 for small developments (as defined in the instrument); a de minimis exemption for developments of such a small scale that they would result in negligible or no loss of habitat; an exemption for householder applications due to their expected low impact on biodiversity; an exemption for planning permission for developments in support of the remaining phases of the High Speed Railway Transport Network; an exemption for BNG sites whose only purpose is to enhance BNG; and an exemption for certain self-build and custom build developments which are to be occupied as individual homes.

21. **SI 2024/48** defines what is considered “irreplaceable habitat” and sets out how the BNG requirements apply to developments where there is irreplaceable habitat onsite. The Department for Environment, Food and Rural Affairs says that where an impact on irreplaceable habitat cannot be avoided, developers will be required to deliver bespoke compensation agreed with local planning authorities on a case-by-case basis, as part of the planning application. Appropriate compensation should reflect the same type of habitat that is lost through the development.

22. **SI 2024/50** requires certain applications for planning permission to be accompanied by information on BNG, specifies the content of decision notices when planning permission is granted and sets out the processes for the submission and approval of BNG plans and for appealing decisions.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Instruments subject to affirmative approval

Draft	Guaranteed Minimum Pensions Increase Order 2024
Draft	Packaging Waste (Data Reporting) (England) (Amendment) Regulations 2024
Draft	Social Housing (Regulation) Act 2023 (Consequential and Miscellaneous Amendments) Regulations 2024
Draft	Social Security Benefits Up-rating Order 2024
Draft	Social Security (Contributions) (Limits and Thresholds, National Insurance Funds Payments and Extension of Veterans Relief) Regulations 2024
Draft	Tax Credits, Child Benefit and Guardian's Allowance Up-rating Regulations 2024
Draft	Water Industry Act 1991 (Amendment) Order 2024
Draft	Water Industry (Special Administration) Regulations 2024

Instruments subject to annulment

SI 2024/34	Public Lending Right Scheme 1982 (Commencement of Variation) Order 2024
SI 2024/45	Biodiversity Gain Site Register Regulations 2024
SI 2024/47	Biodiversity Gain Site Requirements (Exemptions) Regulations 2024
SI 2024/48	Biodiversity Gain Site Requirements (Irreplaceable Habitat) Regulations 2024
SI 2024/50	Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024
SI 2024/53	Register of Overseas Entities (Annotation and Removal) Regulations 2024
SI 2024/54	Registrar (Annotation, Removal and Disclosure Restrictions) Regulations 2024
SI 2024/58	Criminal Legal Aid (General) (Amendment) Regulations 2024
SI 2024/59	Police and Firefighters' Pensions (Remediable Service) (Amendment) Regulations 2024
SI 2024/62	Criminal Procedure (Amendment) Rules 2024

APPENDIX 1: 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 30 January 2024 and included in this report, Members declared the following interests:

Public Lending Right Scheme 1982 (Commencement of Variation) Order 2024 (SI 2024/30)

Lord Hutton of Furness

Recipient of payments under the Public Lending Right scheme

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.