

# HOUSE OF LORDS

## Secondary Legislation Scrutiny Committee

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### 16th Report of Session 2023–24

Drawn to the special attention of the House:

**Statement of changes in Immigration Rules (HC 556)**

**Correspondence: Letters from DESNZ and DLUHC**

#### Includes information paragraphs on:

Draft Code of Practice on Dismissal and  
Re-engagement 2024

Draft Criminal Justice Act 2003 (Suitability  
for Fixed Term Recall) Order 2024

Draft Fair Dealing Obligations (Milk)  
Regulations 2024

Draft Renewable Transport Fuel Obligations  
(Amendment) Order 2024

Draft Strategy and Policy Statement for  
Energy Policy in Great Britain 2024

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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.

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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 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](mailto:hlseclegscrutiny@parliament.uk).

# Sixteenth Report

## DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Statement of changes in Immigration Rules (HC 556)

*Date laid: 19 February 2024*

*Parliamentary procedure: negative*

*These Regulations include two separate sets of changes in the Immigration Rules, relating to the Ukraine support schemes and health and social care visas. Both sets of changes suffered from poor explanations in the Explanatory Memorandum (EM). For the Ukraine measures, the EM did not explain a parallel policy change, made in guidance, that was critical context. In several other areas the explanation of the policy, or its rationale, was inadequate or unconvincing. The Home Office's contention that the changes will only have a "small" effect, but that providing advance notice could have prompted an "overwhelming" surge in applications, requires further explanation.*

*In relation to the health and care measures, we are particularly exercised by the lack of impact information, given the concerns expressed about the effect of the changes on the sector. **The absence of such information makes it impossible for Parliament to carry out its scrutiny function properly and to form a view on the extent to which service provision in the health and care sector will be impacted, and we will be writing to the Minister to request further details.** There are also significant elements of information missing from this section of the EM, including any explanation for the lack of a consultation. The Home Office told us was because it feared a 'closing down sale' if the measures became known in advance, but, if so, there appears to be an inconsistency in the Home Office's logic, as these policy changes were pre-announced on 4 December 2023. We would expect that an announcement in Parliament would have at least as much effect on applications as a consultation.*

***This is another example in the long list of recent instruments for which the Home Office's information provision has been inadequate. We will continue to press the Home Office to improve, and support it in doing so where we can, but we will also continue to highlight examples where it falls short.***

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

#### *Background*

1. Amongst other changes, this instrument:
  - makes changes to the schemes that allow those fleeing the war in Ukraine to enter the UK; and
  - narrows the eligibility criteria for those people entering the UK as health or social care workers and removes the provision for dependants

to accompany or join people entering the UK as workers in these occupations.

2. We have received a joint submission on this instrument from the Immigration Law Practitioners' Association and the Work Rights Centre. This submission, and the Government's responses to our questions that cover the issues raised, have been published on our website.<sup>1</sup>

*Changes to the Ukraine schemes: overview and rationale*

3. The changes to the Ukraine schemes, which came into force on the day the instrument was laid (19 February 2024) include:
  - Closing the Ukraine Family Scheme (UFS) to new applicants. The UFS allowed a person who is settled in the UK to sponsor Ukrainians in their family to join the sponsor in the UK.
  - A reduction in the period of permission granted to new applicants under the Homes for Ukraine (HFU) scheme, from 36 months to 18 months. HFU allows a UK household to sponsor Ukrainians if they can demonstrate their commitment and ability to provide suitable accommodation for a minimum period of six months.
  - Alongside this reduction, although not contained in the instrument, the Home Office is introducing a new Ukraine Permission Extension (UPE) scheme, which will allow those who are in the UK on a Ukraine humanitarian scheme to extend their stay by an additional 18 months.
  - Applying the General Grounds for Refusal in Part 9 of the Immigration Rules<sup>2</sup> to the Ukraine schemes. These were initially omitted, "so as not to lead to refusals of visas that would have been disproportionate at the height of the invasion".
  - Although not contained in this instrument, the Home Office has also tightened the sponsor eligibility criteria under the HFU. Prior to the changes, sponsors were required to hold a minimum of six months permission to remain in the UK. Following the amendments, sponsors are required to be British, Irish or 'settled' (holding indefinite leave to remain) in the UK.
4. The Home Office states that the reason for the closure of the UFS is "to rationalise the offer for Ukrainians". Specifically, the UFS was introduced with "broad eligibility criteria to facilitate the urgent need for a high-volume migration event", but "given the length of time since the invasion of Ukraine (almost 2 years) and in light of the availability and success of the HFU, the government consider that it is now right to refine our offer in favour of the more sustainable Homes for Ukraine Sponsorship Scheme." The Home Office believes that the HFU is more sustainable because, for example, it involves accommodation suitability checks, safeguards such as DBS checks and funding to encourage and support sponsors. The Home Office also notes that UFS applications have dropped significantly, from approximately 26,800 in March 2022 to approximately 1,000 in September 2023.

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1 SLSC, 'Scrutiny evidence': <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/>.

2 These are cross-cutting suitability requirements that must be met on most routes in addition to validity and eligibility requirements; for example, they act to exclude serious criminals.

5. The Home Office states that the closure of the UFS will affect only a “small proportion” of potentially eligible individuals, as “the same Ukrainian nationals who qualify under UFS can qualify under HFU if their family member is approved as a sponsor and they meet the other requirements of the rules. UFS sponsors already have to be British or Irish citizens or settled in the UK (as will now be the case for HFU sponsors)”. The Home Office says that those who would have been eligible under UFS, but are not eligible under HFU, include third country nationals who are either not an immediate family member of a Ukrainian national, or who are an immediate family member but are not accompanying or joining their Ukrainian national family member in the UK.
6. Regarding the reduction in the period of permission for new applicants under HFU, the Home Office says that this is to “prevent a significant imbalance” between the UK and EU schemes, as the EU system grants permission for only one year at a time.

*Changes to HFU sponsorship criteria*

7. The submission we received states that the changes to the HFU sponsorship criteria will reduce the availability of homes, including by excluding those who are themselves on Ukraine schemes from acting as sponsors. The Home Office said that these people “were never intended to be allowed to function as sponsors themselves”. It reports that, currently, such “chain sponsorships” constitute 10.5% of all Ukraine sponsorships. The Home Office notes that people seeking to join a family member in the UK may still have recourse to an application under Article 8 of the European Convention on Human Rights (the right to respect for private and family life).
8. This change in policy, introduced via guidance, was highlighted in the written statement relating to the measures<sup>3</sup> and analysed at some length in the Economic Note accompanying the instrument. **We conclude that it was an important part of the context for the Statement of Changes and should have been discussed more fully in the Explanatory Memorandum (EM).**

*Breach of the 21-day rule*

9. As noted above, the changes to the Ukraine schemes were brought into force on the same day the instrument was laid, 19 February 2024, breaching the convention that a negative instrument should be laid in Parliament at least 21 days before it comes into effect. The Home Office says that it considered “this was justified and proportionate in order to maintain the orderly operation of the immigration system”, and specifically to avoid a “surge in applications”.
10. However, as mentioned above, the Home Office also argues that the changes will only affect a “small proportion” of potential applicants. We therefore asked further questions on why it was necessary to bring the measures into force immediately. The Home Office said:

“We know from closing visa routes in the past that announcing a closure tends to lead to an increase in last minute applications, a proportion of which may be speculative in an attempt to qualify for the visa route. This sharply increases the workload for caseworkers, impacts

operational resilience of the immigration system, and in turn, increases visa processing times overall”.

11. The Government is arguing both that the effect of the changes is small, but also that they may lead to a “substantial increase in application levels in advance of the deadline” that could “overwhelm the system”. However, the Home Office says that such a “surge” would be “arguably unnecessary [...] because other routes for Ukrainians to come to the UK remain open”. **The House may wish to press further on why, if most applications would be unnecessary, the Government believes there could be such a “surge” and hence why this is an adequate justification for breaching the 21-day rule.**

*Lack of consultation*

12. The Home Office used similar arguments to explain the lack of a consultation on the measures, repeating that the changes affect “a small proportion of potentially eligible individuals”, but suggesting that consultation outside the public sector would have risked prompting a surge in applications. **As set out in the previous paragraph, we are not clear why such a surge would arise and therefore why this is an adequate justification for not consulting.**
13. The Government did state that it had held discussions with the Ukrainian Embassy but did not report the outcome. In response to our questions the Home Office said that “we cannot divulge what was said in confidential discussions with the Ukraine Embassy. However, post-announcement we are engaging with stakeholders in the Ukrainian community and relevant organised groups”. We understand why discussions with an embassy might be confidential, but the outcome is that the views of those representing Ukrainians were not discussed in the explanatory material. **Given that the changes are now public, and the Home Office has held additional discussions since, the House may wish to enquire further on what those views are.**

*Interaction of the restrictions under HFU with the UPE*

14. The submission argued that the reduction in the period of permission under HFU, from 36 to 18 months, could impact a migrant’s ability to find employment and accommodation. In response to questions on this point, the Home Office stated that, in combination, the HFU and UPE schemes provide “36 months of certainty for the Ukrainian nationals who seek sanctuary in the UK”. **If all those accepted under the revised HFU scheme have permission for 18 months plus access to an 18-month extension, we do not understand why it was necessary to replace the previous 36-month scheme. The House may wish to explore this point further.**
15. **More generally, we welcome the proposed introduction of the UPE to bring greater certainty around the process of extending stays in the UK under the Ukraine schemes.** The Home Office told us that the intention is to lay the necessary legislation for UPE in autumn 2024, or in any case with sufficient time before the scheme opens (early 2025). **We expect this legislation to be accompanied by sufficient information about the impact of the UPE, including on host families, for Parliament to understand fully its effects.**

*Applying the ‘General Grounds for Refusal’*

16. We asked the Home Office why applying the General Grounds for Refusal in Part 9 of the Immigration Rules was appropriate now, when it was not at the beginning of the war—even though other government material suggests that the situation on the ground in Ukraine is little changed.<sup>4</sup> The Home Office’s response was unilluminating, saying “the conflict, the urgency of the situation in Ukraine and the responses to it have evolved”. **Given the “full-scale” continuation of hostilities, the House may wish to probe further on why it has now become appropriate to apply the General Grounds for Refusal.**

*Provisions for health and care workers*

17. The changes relating to new applicants on the Health and Care Worker route for Skilled Workers are as follows:
- narrowing the eligibility for workers to be sponsored, from all posts to only those where the sponsor is registered with the Care Quality Commission (CQC) and is currently carrying on a regulated activity. This change applies in England only; and
  - removing the provision for dependants to accompany or join workers sponsored in these occupations, apart from children born in the UK.
18. Explaining the rationale for the changes, the Home Office says that they are:
- “In response to high levels of non-compliance and worker exploitation and abuse, as well as unsustainable levels of demand. In the year ending September 2023, 83,072 visas were granted for care workers and a further 18,244 visas for senior care workers, comprising 30% of all work visas granted. In addition, there were 250,297 visas granted for work-related dependants, 69% of which were for Health and Care Worker dependants.”
19. There have also been recent press reports of abuse of the visa rules in this area.<sup>5</sup>

*Lack of an Impact Assessment*

20. The submission we received argued that the changes would deter overseas workers from pursuing employment in the UK care sector, and that this could worsen existing labour supply pressures. For example, the submission quoted data suggesting that in 2022–23, 9.9% of social care jobs were vacant, there were on average 152,000 vacancies in the adult care sector at any time, and the turnover rate was 30%.
21. The EM contained no analysis of the impact of the measures. The EM did say that an Impact Assessment (IA) “was being prepared” that would cover both these changes and “a wider package of Rules changes being laid in

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4 For example, the Economic Note to this instrument states that “the full-scale continuation of hostilities in the region demonstrates the pertinence and sustained need for the UK’s humanitarian protection schemes”.

5 ‘One in four foreign care workers abuse UK visa rules’, *The Times* (18 February 2024): <https://www.thetimes.co.uk/article/one-in-four-foreign-care-workers-abuse-uk-visa-rules-lpqzmsk6g> [accessed 4 March 2024].

March (which also affect the same group)".<sup>6</sup> The Home Office stated that given the "short timeframe" between the two sets of Rules, and "resource constraints", "it would not have proved feasible to deliver two Impact Assessments".

22. Given the "short timeframe" until the remaining measures are implemented, we asked the Home Office why these changes could not be delayed so that all the changes could be made together and the IA would be available. The Home Office replied that "the changes being brought in are subject to a rigid timeframe given the pressing need to tackle a rising volume of applications and concerns about abuse within the adult social care sector". **If the Home Office wishes to set "rigid timeframes" for introducing legislation, these should allow due process to be completed, including the completion of analysis of the effects of the changes, about which concerns have been expressed.**
23. We had lengthy exchanges with the Home Office about the absence of an IA for one of last year's Statements of Changes in Immigration Rules, including asking the then Minister, Lord Murray of Blidworth, to give oral evidence.<sup>7</sup> In that evidence session, Lord Murray accepted the importance of transparency, scrutiny and of publishing IAs. **That statement of intent is all very well, but little appears to have changed in practice. At the least, a summary of the impact information for these measures should have been included in the EM; ideally, the instrument should have only been laid when the IA was available.**
24. In its replies to us, the Home Office did note that an estimate of the impacts of the changes on migrant inflows was published on 4 December 2023.<sup>8</sup> This suggests that the CQC restrictions will reduce the number of foreign health and social care workers entering the UK by 20,000 per year. It contains a figure for the expected reduction in the number of dependants coming to the UK as a result of the ban (120,000), but it assumes that there will be no reduction in the number of workers themselves who come because of the dependant ban. The analysis gives reasons including: a high level of global labour supply; workers seeking to come to the UK without their dependants; and a reduction in demand, given the CQC policy change. **This is a helpful, although incomplete, analysis of the impact of the policy change, but, inexplicably, it was not summarised or even referred to in the EM. Furthermore, the Home Office has provided minimal evidence for its assertion that the dependant ban will have no effect on worker numbers. In contrast, we are aware of significant concern in the social care sector about the effects of the changes.**<sup>9</sup> **We will be writing to the Minister (Tom Pursglove MP) to ask for additional information about this aspect of the Statement of Changes, including**

6 The "wider package" of changes includes an increase to the salary threshold for health and care workers. Further details are contained in: HC Deb, 30 January 2024, [cols 40–2WS](#).

7 *35th Report* (Session 2022–23, HL Paper 177), paras 53–68; and *40th Report* (Session 2022–23, HL Paper 197), paras 1–16.

8 Home Office, 'Legal migration statement: estimated immigration impacts' (4 December 2023): <https://www.gov.uk/government/publications/legal-migration-statement-estimated-immigration-impacts/legal-migration-statement-estimated-immigration-impacts-accessible#illustrative-volume-impacts-of-policy-on-inflows> [accessed 4 March 2024].

9 For example, Care Provider Alliance, 'Care Provider Alliance responds to migration changes, as minimum wage rises without extra funding' (4 December 2023): <https://careprovideralliance.org.uk/press-release-cpa-responds-to-migration-and-minimum-wage-changes> [accessed 5 March 2024].

**with reference to the views of the Department for Health and Social Care.**

25. For both the health and care measures, and the Ukraine scheme changes, there is no mention in the EM of whether the Government has carried out an Equalities Impact Assessment (EIA), which is intended to assess the impact of policy proposals on individuals with protected characteristics. When we questioned the Home Office further, it responded that EIAs “are carried out and submitted to Ministers when they are being advised on policy changes, including for the Health and Care Worker visa policy changes. Government has agreed to publish this, alongside the Regulatory Impact Assessment, in due course”. **As with the IA, the EIA is an important part of the supporting information on a policy change that should be available when an instrument is laid. We expect the EIA to be published alongside the IA when the forthcoming “wider package” of rules changes is laid.**

*Consultation*

26. The Home Office appears to have undertaken no consultation at all on the health and social care measures, with the EM stating only that “this would be disproportionate given the nature of the changes”. Again, we note that opinion in the care sector does not necessarily support the Government’s view that the dependant ban will not affect the supply of overseas workers.
27. In response to our further questions in this area, the Home Office said that the Government wished to avoid a “closing down sale”; in other words, that “an external consultation would carry an unacceptably high risk of a prolonged spike in applications pre-empting the rules changes”. In theory, this might be a sound argument. **However, we cannot help observing an inconsistency, as the Rules changes were publicly pre-announced on 4 December 2023.<sup>10</sup> We would expect that an announcement in Parliament would have at least as much effect on applications as a consultation and, therefore, the suggestion that the consultation was omitted to avoid a closing down sale is unconvincing; as is the argument in the EM that a consultation would be “disproportionate”.**
28. **Given the concern in the sector about the impact of the measures, we expect the Home Office to keep their effects under close review.**

*Conclusion*

29. We noted in our 15th Report of this session, in relation to a separate instrument, that the Home Office’s information provision has fallen short much more frequently than in the case of any other department. This is yet another example, in which explanations have lacked key information, have been unconvincing or have given rise to difficulties in understanding the consistency of the Department’s logic. **We noted in our 15th Report that we have written to a minister in the Home Office to seek assurances that the Department will address the shortcomings we have identified in its information provision, and we are writing again to follow up similar issues raised in this report. We will relate the Home Office’s responses in the near future. We will also continue to press the Department to improve its performance, and support it in doing so where we can, while highlighting any further examples where it falls short.**

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<sup>10</sup> HC Deb, 4 December 2023, [cols 41–2](#).

## **CORRESPONDENCE: LETTERS FROM DESNZ AND DLUHC**

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### **Draft Energy Bills Discount Scheme (Amendment) Regulations 2024**

30. We commented on these draft Regulations in our 15th Report.<sup>11</sup> They would enable the setting of an end date for applications to one of the energy bill support schemes which is aimed specifically at domestic customers of heat networks. This is to avoid the Government having a legal obligation to process applications indefinitely.
31. Our comment highlighted that because not all heat networks have applied for the support available, up to 60,000 domestic customers may be losing out on discounts of up to £1,200. The Department for Energy Security and Net Zero said that the losses would disproportionately affect disadvantaged groups - namely the elderly and ethnic minorities - who are significantly more likely to be on a heat network.
32. While the Department had given us information about the work it is doing to encourage heat networks to apply for support and to reach these disadvantaged groups, we wrote to the Minister, Amanda Solloway MP, to seek further assurance that every effort is being made to ensure that as many customers as possible receive the support to which they are entitled. The Minister's response, published in Appendix 1, sets out the additional activities undertaken by the Department to maximise the number of applications. We welcome the particular focus on social housing providers, which are likely to have more vulnerable domestic customers, and note the Department's view that the actual number of customers missing out on support is likely to be lower than 60,000.

### **Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2024 (SI 2024/141)**

33. We drew this Order to the special attention of the House in our 15th Report<sup>12</sup> on the ground that the explanatory material laid in support provided insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation. The Order makes it easier to convert the use of a building from commercial to residential use without planning permission. This is achieved by removing a floor space limit on conversions and a requirement that the building must have been vacant for at least three months.
34. We were concerned about the lack of an Impact Assessment (IA) or even basic impact information. We concluded that without such information, it was not possible for Parliament to carry out its scrutiny function properly and to form a view on whether the changes made by the instrument are material and to what extent they will support the delivery of new housing. We wrote to the Minister, Lee Rowley MP, in the Department for Levelling Up, Housing and Communities to raise our concerns about the insufficient explanatory material and to request the missing impact information.
35. The Minister's response, which includes basic impact information is published in Appendix 2. While we note that the Department expects the changes to deliver an additional 1,700 residential units by 2029–30, we

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<sup>11</sup> *15th Report* (Session 2022–23, HL Paper 75).

<sup>12</sup> *Ibid.*

regret that the Department was unable to clear all elements of the IA and submit the IA to the Regulatory Policy Committee (RPC) for scrutiny before laying the instrument. As we highlighted in our 15th Report and as the Government's own Better Regulation Framework makes clear, the "final IA must be laid in Parliament alongside the legislation, permitting scrutiny by parliamentarians and other relevant bodies. This is an important consideration, not only for public and parliamentary transparency, but also to enable the UK Government to meet its legal obligations under international law."<sup>13</sup>

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13 Department for Business and Trade, 'Better Regulation Framework: Guidance' (September 2023): [https://assets.publishing.service.gov.uk/media/65420ee8d36c91000d935b58/Better\\_Regulation\\_Framework\\_guidance.pdf](https://assets.publishing.service.gov.uk/media/65420ee8d36c91000d935b58/Better_Regulation_Framework_guidance.pdf) [accessed 6 March 2024], para 3.7.

## INSTRUMENTS OF INTEREST

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### Draft Code of Practice on Dismissal and Re-engagement 2024

36. The purpose of this draft Code of Practice is to address concerns about a specific form of dismissal and re-engagement, known as ‘fire and rehire’, which received media attention during the COVID-19 pandemic. The Department for Business and Trade (DBT) says that, at the time, concerns were raised about threats of dismissal being used as a pressure tactic in the early stages of discussions around changing employees’ terms and conditions. The Code intends to clarify and give some legal force to accepted standards of behaviour and to provide practical guidance on avoiding, managing and resolving disputes. It is being issued under section 203 of the Trade Union and Labour Relations (Consolidation) Act 1992 which gives the Secretary of State powers to issue guidance to promote better industrial relations.
37. Under the Code, employers are expected to take all reasonable steps to explore alternatives to dismissal and re-engagement, and to engage in meaningful consultation with a view to reaching an agreed outcome with individual employees and/or their representatives. Employers should not raise the prospect of dismissal unreasonably early or threaten dismissal where this is not actually envisaged. DBT says that, while a failure to follow the Code will not in itself make an employer liable to proceedings, the Code will be admissible in evidence in proceedings before a court, employment tribunal or the Central Arbitration Committee, and that any provision of the Code which is relevant to those proceedings must be taken into account. A tribunal may increase an award by up to 25% if the employer has failed to comply with the Code or reduce it by up to 25% if it is the employee who has failed to comply. We note that the second reading debate of Lord Woodley’s Employment and Trade Union Rights (Dismissal and Re-engagement) Bill explored concerns about the effectiveness of the draft Code in preventing cases of fire and re-hire.<sup>14</sup>

### Draft Criminal Justice Act 2003 (Suitability for Fixed Term Recall) Order 2024

38. This Order provides for the automatic re-release on licence after 14 days of recalled offenders who are serving a sentence of less than 12 months. The provision does not apply to those under 18, those charged with a serious further offence and those managed under Multi Agency Public Protection Arrangements (MAPPAs levels 2 and 3). Those re-released would still be subject to further recall. The Ministry of Justice (MOJ) states that those serving sentences of less than 12 months often do not have a parole review prior to release, meaning that if an offender is recalled to custody, they are released at the end of their sentence without a licence period and the support and supervision that implies. Releasing them quickly following a fixed term recall is intended to provide that support.
39. The Explanatory Memorandum (EM) states that the Order will reduce the burden on the prison estate, although, in consequence, probation officers and voluntary organisations will be managing more offenders within the community. However, the EM gave no indication of whether these groups have the capacity and resourcing to take on this work. **Further information from MOJ is included in Appendix 3 but should have been included in**

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<sup>14</sup> HL Deb, 1 March 2024, [cols 1270-1290](#).

**the EM; we have made it clear that merely stating that the threshold for a formal Impact Assessment has not been reached is unacceptable.**

40. Nor did the EM provide the most basic figure of all – the number of offenders likely to be in scope of this new provision. MOJ has subsequently informed us that approximately 4,000 recalled prisoners may be affected by this policy change. **That MOJ did not have an immediate answer to that question reflects poorly on its policy making process.**

#### **Draft Fair Dealing Obligations (Milk) Regulations 2024**

41. These draft Regulations propose to introduce minimum standards for the contracts that businesses use when purchasing cow’s milk from dairy farmers. The aim is to improve fairness and transparency in the UK dairy sector which, according to the Department for Environment, Food and Rural Affairs (Defra), is characterised by small, fragmented dairy producers selling perishable produce to a highly concentrated processing sector that has greater bargaining power and is able to force “unfair” commercial terms onto farmers. Defra says that a public consultation on dairy contracts in 2020<sup>15</sup> found that the current self-regulatory approach through adoption of a voluntary Code of Practice had failed, with many dairy processors not complying on issues such as length of notice periods, supply periods, pricing mechanisms and dispute resolution processes.
42. The proposed new requirements include that all contracts are made in writing and contain clear pricing terms through either a fixed or variable price, setting out how the price to be paid is generated and establishing a means for producers to challenge variable price calculations. Unilateral changes to contract terms would be prohibited. Under the new regime, the Secretary of State may impose fines on business purchasers of up to 1% of their UK turnover and order that they pay compensation to milk producers. Defra told us that while no formal consent was required for the instrument, the Devolved Administrations had provided input into the consultation document, summary of responses and the instrument itself and were supportive of the Regulations. The Department intends to develop further legislation to cover other agricultural sectors where there are concerns about fairness in business relationships.
43. We asked Defra about the impact of the instrument on dairy farmers in Northern Ireland (NI), as many of them sell their milk to businesses in the Republic of Ireland (ROI). The Department replied:

“On the topic of Northern Ireland, we have discussed the cross-border question at length with colleagues from DAERA [Department of Agriculture, Environment and Rural Affairs]. Our regulations apply to any business which has a footprint of economic activity in the UK, which in practise generally means they have a registered business address in the UK. This means that NI farmers who have a contract with ROI owned businesses are covered by the regulations, so long as those companies have operations in Northern Ireland (i.e. they own and operate a processing facility there). Whilst accurate numbers are not

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<sup>15</sup> Department for Environment, Food and Rural Affairs, ‘Consultation outcome: Dairy industry contractual relationships’ (3 February 2021): <https://www.gov.uk/government/consultations/dairy-industry-contractual-relationships> [accessed 4 March 2024].

available, DAERA colleagues estimate that about 90% of NI farmers who are contracted to ROI companies will be covered.

That does leave a small minority of NI farmers who sell milk directly across the border to businesses who are beyond the reach of the regulations. We couldn't legislate extra-territorially, so there was little we could do about this. However, there are equivalent regulations which have been introduced by the ROI government (the EU's UTP [Unfair Trading Practices] Directive), and these would apply to the farmers in question (any Northern Irish farmers supplying milk to a wholly owned-and-operated ROI company). So they do have a measure of protection from alternative regulations. We have established an informal link with the office responsible for enforcing the ROI regulations, and when our adjudicator is in post we intend to establish a more formal relationship."

### **Draft Renewable Transport Fuel Obligations (Amendment) Order 2024**

44. Following up an amendment made by the Energy Act 2023, this instrument extends the range of fuels that are eligible for tradeable certificates under the Renewable Transport Fuel scheme<sup>16</sup> to include "recycled carbon fuel" (RCF). RCFs are fuels produced from fossil wastes that cannot be avoided, re-used or recycled, such as industrial waste gases, or rejected plastics from a recycling plant. As RCF fuels are not renewable, support for them under the Order is being introduced at a rate of one certificate per litre equivalent: this is half the support received by comparable renewable fuels. They are included because converting these feedstocks into transport fuels can reduce greenhouse gas emissions by over 50% compared with traditional fossil fuels and their production provides a useful way of managing certain difficult to dispose of wastes.

### **Draft Strategy and Policy Statement for Energy Policy in Great Britain 2024**

45. This draft Strategy and Policy Statement (SPS) sets out the Government's strategic priorities for its energy policy for Great Britain, the policy outcomes it wants to achieve and the roles and responsibilities of those who are involved in implementing the policy, including the Secretary of State, the regulator (Ofgem) and the new Independent System Operator and Planner (ISOP, referred to in the SPS as the National Energy System Operator). The Department for Energy Security and Net Zero (DESNZ) says that the SPS will support strategic alignment between government, Ofgem, ISOP and industry by providing clarity on what the Government wants to achieve in the energy sector and on the actions and decisions that are needed to deliver the Government's policy goals. This includes enabling investment and innovation in the energy sector which is identified as a key sector for economic growth.
46. The Department explains that while Ofgem is independent of government, the regulator will be required to have regard to the strategic priorities in the SPS when carrying out its functions, as will the Secretary of State and ISOP. Ofgem and the Secretary of State will also be required to carry out their functions in a way which best supports the delivery of the policy outcomes

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<sup>16</sup> Department for Transport, 'Guidance: Renewable Transport Fuel Obligation' (19 January 2021): <https://www.gov.uk/guidance/renewable-transport-fuels-obligation> [accessed 4 March 2023].

in the SPS. This is the first SPS to be laid as required under Part 5 of the Energy Act 2013. We note that there were two rounds of consultation on the draft SPS,<sup>17</sup> including with the Devolved Governments. Asked about any issues or concerns they raised, DESNZ shared with us a helpful summary of the feedback the Devolved Governments provided, which we are publishing in full in Appendix 4.

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<sup>17</sup> Department for Energy Security and Net Zero, ‘Consultation outcome: Strategy and Policy Statement for energy policy in Great Britain’ (21 February 2024): <https://www.gov.uk/government/consultations/strategy-and-policy-statement-for-energy-policy-in-great-britain> [accessed 4 March 2024].

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

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### Instruments subject to affirmative approval

Draft	Accounting Standards (Prescribed Bodies) (United States of America and Japan) (Amendment) Regulations 2024
Draft	Code of Practice on Dismissal and Re-engagement 2024
Draft	Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) (Amendment) Regulations 2024
Draft	Criminal Justice Act 2003 (Suitability for Fixed Term Recall) Order 2024
Draft	Economic Crime and Corporate Transparency Act 2023 (Financial Penalty) Regulations 2024
Draft	Fair Dealing Obligations (Milk) Regulations 2024
Draft	Renewable Transport Fuel Obligations (Amendment) Order 2024
Draft	Strategy and Policy Statement for Energy Policy in Great Britain 2024

### Instruments subject to annulment

SI 2024/150	Communications (Television Licensing) (Amendment) Regulations 2024
SI 2024/153	Registrar of Companies (Fees) (Register of Overseas Entities) Regulations 2024
SI 2024/155	Registrar of Companies (Fees) (Amendment) Regulations 2024
SI 2024/165	Nutrition and Health Claims (England) (Amendment) Regulations 2024
SI 2024/166	Customs (Preferential Trade Arrangements: Error in Evidence of Origin) Regulations 2024
SI 2024/168	Electricity (Criteria for Relevant Electricity Projects) (Transmission) Regulations 2024
SI 2024/170	Firefighters' Pension Scheme (England) (Amendment) Regulations 2024
SI 2024/172	Extradition Appeals (Scotland) Order 2024
SI 2024/175	Crime and Courts Act 2013 (Application and Modification of the Extradition Act 2003) (England and Wales) Order 2024
SI 2024/176	Tax Credits (Miscellaneous Amendments) Regulations 2024
SI 2024/178	Haiti (Sanctions) (Amendment) Regulations 2024
SI 2024/181	Police and Crime Commissioner Elections (Returning Officers' Accounts) Regulations 2024

- SI 2024/183 Non-Domestic Rating (Designated Areas) Regulations 2024
- SI 2024/184 Non-Domestic Rating (Rates Retention and Renewable Energy Projects) (Amendment) Regulations 2024
- SI 2024/187 Social Security (Contributions) (Amendment) Regulations 2024
- SI 2024/192 Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2024

## **APPENDIX 1: CORRESPONDENCE WITH DESNZ**

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### **Letter from the Rt Hon. Lord Hunt of Wirral MBE, Chair of the Secondary Legislation Scrutiny Committee, to Amanda Solloway MP, Minister for Affordability and Skills at the Department for Energy Security and Net Zero**

I am writing to you about the above instrument in my role as Chair of the Secondary Legislation Scrutiny Committee. The Committee considered the draft Regulations at its meeting yesterday and will comment on them in its 15th Report which will be published tomorrow, 29 February.

While we recognise that there is significant uncertainty in the figures, we are concerned that up to 60,000 domestic customers of heat networks could lose out on discounts of up to £1,200 under the Energy Bill Discount Scheme (EBDS). We are particularly concerned that this could disproportionately affect disadvantaged groups, such as the elderly and ethnic minorities, who are significantly more likely to be on a heat network. Your Department provided us with a helpful list of activities it has undertaken to encourage qualifying heat networks to apply for EBDS support and to reach these disadvantaged groups. We will publish the information in full in our 15th Report.

I would like to draw your attention to the Committee's concerns and to seek further assurance that every effort is being made by your Department to ensure that as many domestic customers as possible receive the support to which they are entitled before the EBDS ends in March.

**28 February 2024**

### **Letter from Amanda Solloway MP, Minister for Affordability and Skills, at the Department for Energy Security and Net Zero, to the Rt Hon. Lord Hunt of Wirral MBE, Chair of the Secondary Legislation Scrutiny Committee**

I would like to thank you for your letter on the 28th February, regarding the Committee's concerns about reaching the maximum number of domestic customers through the Energy Bills Discount Scheme. I want to assure you that this is an absolute priority for my department, and that we are committed to ensure that as many customers as possible receive the support that they are entitled to.

I would like to set out some further activities taken to maximise the number of applications received, since my officials sent your committee the original list of activities.

We previously mentioned that we had identified a subset of heat suppliers which may have more vulnerable domestic customers, including social housing providers such as local authorities and housing associations. We have since expanded the scope of this activity and are now prioritising for approval all applications from charitable and non-profit heat suppliers. This has allowed us to approve 1,668 heat network applications, reaching thousands more domestic customers. We prioritised these sectors precisely because they are more likely to have customers from more disadvantaged groups.

We have issued another set of reminders to all known heat suppliers and associations in government databases. This has c.2800 subscribers and includes groups such as the National Housing Federation, the representative body for housing associations, and the Association for Decentralised Energy. This focused on encouraging further applications, the legal obligation to apply and pass this support onto customers, and enforcement activity being underway. We also asked them to contact any groups in their network who may be eligible for the scheme. We also plan to issue comms in early March to Local Authorities via DLUHC and other local government partners.

We are engaging with stakeholders such as Heat Trust to learn of any issues with the customer journey. For example, any issues customers are having on the pass-through, as well as learn of any other heat networks struggling with their applications so that we can provide support.

Lastly, you noted the significant uncertainty in the figures. I would like to reiterate that we think the actual number of customers missing out on support is likely to be lower than 60,000. We based this estimate on data from the Heat Network Metering and Billing Regulations (HNMBR), which has significant shortcomings, for example, duplication of networks and outdated heat network and supplier details. Like you, I remain concerned with how even a lower number of customers missing out is unfair, and I and my civil servants will continue to work hard to bring down these numbers before the scheme closes.

I hope that goes some way in assuaging the concerns of the committee, but we fully recognise this challenge and are determined to reach as many customers as feasibly possible.

**4 March 2024**

## APPENDIX 2: CORRESPONDENCE WITH DLUHC

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### Letter from the Rt Hon. Lord Hunt of Wirral MBE, Chair of the Secondary Legislation Scrutiny Committee, to Lee Rowley MP, Minister of State for Housing, Planning and Building Safety at the Department for Levelling Up, Housing and Communities

I am writing to you about the above instrument in my role as Chair of the Secondary Legislation Scrutiny Committee. The Committee considered the Order at its meeting yesterday and will be drawing it to the special attention of the House on the ground of insufficient explanatory material. The Committee was particularly concerned about the lack of an Impact Assessment (IA). The report will be published tomorrow, 29 February.

Your Department says that the changes made by the Order will help to deliver more housing, but in the absence of an IA or basic impact information it is not possible to assess how significant the changes are, and how much they will contribute towards the Department's objective for more housing. When we inquired about this, the Department explained that an IA had been carried out, would be submitted for scrutiny by the Regulatory Policy Committee (RPC) and would be published "in due course". Asked about any headline impact information, we were told that this was "not currently available to share", but that the Department aimed "to make this information available as soon as possible".

We find this unsatisfactory. You will be aware that the Government's own Better Regulation Framework reminds departments that the "final IA must be laid in Parliament alongside the legislation, permitting scrutiny by parliamentarians and other relevant bodies". We regret that in this case the Department failed to meet this requirement and was unable to share even basic impact information, making it impossible for Parliament to scrutinise the Order effectively.

We therefore ask that you:

- explain why the Department was unable to complete RPC scrutiny of the IA and publish the IA in time for the laying of the instrument, given that the public consultation on the policy finished in summer 2023;
- share the Department's estimates on the extent to which this Order is expected to contribute to the delivery of more housing; and
- provide further information, including available data, on the risk that removing the vacancy requirement could result in viable businesses closing or being displaced. This concern was raised during public consultation.

**28 February 2024**

### Letter from Lee Rowley MP, Minister of State for Housing, Planning and Building Safety at the Department for Levelling Up, Housing and Communities, to the Rt Hon. Lord Hunt of Wirral MBE, Chair of the Secondary Legislation Scrutiny Committee

Thank you for your letter of 28 February and for taking the time to write to me regarding a Statutory Instrument (SI 2024/141) that was laid by the Department on 13 February.

I take your concerns very seriously and I am writing to reassure you that I understand the importance of providing Parliament with all the evidence necessary to ensure that secondary legislation can be scrutinised effectively. I apologise that in this case, the Department was unable to provide the full suite of supporting information to accompany SI 2024/141.

The Government is committed to its long-term plan for housing to ensure that more homes get built where they are needed most. Permitted development rights make an important contribution to housing delivery and, in the eight years to March 2023, they have delivered just under 104,000 homes to rent or buy. SI 2024/141 makes changes to permitted development rights to support housing delivery, specifically it amends the right that allows for the change of use of commercial, business and service uses to dwellinghouses (known as “Class MA”). The Government acted quickly to implement these changes so that we can ensure that we are doing everything we can to ensure new homes can be delivered and further support our commitment to build one million homes over this Parliament.

In this instance the Department was unable to clear all elements of the Impact Assessment or submit to the Regulatory Policy Committee prior to laying the Statutory Instrument. However, I am pleased to say that the Impact Assessment has now been submitted to the Regulatory Policy Committee for scrutiny.

I have enclosed the details that you have requested on the Department’s expected housing delivery estimates and further information on the risks of viable businesses being closed or displaced as a result of removing the vacancy requirement.

In our central scenario, we estimate that removing the floorspace limit will deliver 1,500 additional units up to 2029-30 (a peak of 334 in 2025-26). We estimate that removing the vacancy requirement will deliver a further 200 net additional units up to 2029-30 (a peak of 41 in 2025-26). This yields a combined impact of 1,700 net additional units up to 2029-30 (a peak of 375 in 2025-26).

The actual number of businesses displaced by removing the vacancy requirement each year is likely to be very small, as we expect that the majority of schemes will have a strong financial case and would have likely changed use even if the vacancy requirement remained in place. We estimate that the number of businesses displaced will peak in 2024-25 at six businesses (low scenario: 2 businesses, high scenario: 12 businesses).

Thank you again for raising your concerns with me. I hope the above information provides reassurances to the Committee.

**4 March 2024**

## APPENDIX 3: DRAFT CRIMINAL JUSTICE ACT 2003 (SUITABILITY FOR FIXED TERM RECALL) ORDER 2024

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### Further information from the Ministry of Justice

*Q1: The EM says that the impact on the public sector would be an increased workload for the probation service. Does the Probation Service have the spare capacity to deliver this? Is any additional resource being provided to them to deal with the change that this Order effects?*

A1: We are aware of the caseloads that Probation have and have already taken action. On the supply side, we have 4,000 more probation officers since 2020 and are hiring more to ensure the probation service is equipped to handle increases in demand. This will help with caseloads and has come with £155 million of investment. More widely, we are also developing a package of operational measures to ensure probation staff have the capacity to deal with the changes resulting from this SI and wider demand on the probation service, ensuring that all their day to day work adds to public protection or rehabilitative outcomes. With that said, it is important to note that this is a cohort probation already work with in terms of recalling them then preparing them for release and receiving them back into the community, and this SI will compresses timescales for release rather than creating new cases.

*Q2: Similarly the EM refers to “an increase in support necessary from charity and voluntary organisations to support those in the community, who would otherwise be in custody.” – could you elucidate what you mean by that, and whether you have consulted these organisations about their capacity to deal with additional prisoners being released into the community, or provided them with any additional funding.*

A2: The probation service maintains relationships with third sector organisations working with offenders in the community, including contractual relationships which are designed to deal with fluctuating demand. We will keep these under review as this measure comes in to force to ensure adequate provisions are made.

### 29 February 2024

*Q3: How many prisoners are in scope?*

A3: We estimate based on recent data that each year around 4,000 standard recalls would be eligible for this change to recall policy. This is the number of prisoners sentenced to less than 12 months in custody who both received a standard term recall whilst on licence and who met the eligibility criteria (e.g. it excludes those who were charged with a serious further offence and / or quickly moved to the remand population, or those managed at level 2 or 3 under the Multi Agency Public Protection Arrangements, also excludes those whose standard recall period would have been less than or equal to 14 days).

Please note this is an estimate based on operational management information that enables us to consider how many offenders recalled would not be eligible for the policy, however the dataset is not one we routinely publish as it is not subject to the same level of assurance as national statistics. The number should therefore be considered an indicative estimate only rather than absolute. The estimate is based on observed recall volumes data and does not project any changes to prison sentence volumes or lengths.

### 4 March 2024

## APPENDIX 4: DRAFT STRATEGY AND POLICY STATEMENT FOR ENERGY POLICY IN GREAT BRITAIN 2024

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### Additional information from the Department for Energy Security and Net Zero

*Q: Could you explain a bit more please how the Devolved Governments responded to the consultations? Did they support the Statement? Did they raise any issues or concerns and, if so, how have these been addressed?*

A: We held a two-stage consultation. The first was a private consultation with Scottish and Welsh governments (and Ofgem) in July 2022. This was followed by a public consultation in August 2023.

Both devolved governments have voiced support for the introduction of the SPS.

During the private consultation, we held information sessions with officials from both devolved governments to seek their feedback.

The Welsh government asked for:

- The Welsh net zero targets to be included in the SPS – these were added to the introduction
- A greater focus on consumers – we ensured that there were specific strategic priorities related to consumer protection.

The Scottish government asked for:

- The Scottish net zero targets to be included in the SPS – these were added to the introduction
- The networks section to be strengthened so that it was clear that government wanted Ofgem to make faster regulatory decisions in this area – this was added to the networks section of the document.

While the public consultation was live, we also held a stakeholder roundtable which we invited officials from both devolved governments to attend. Welsh government representatives joined the roundtable, however they didn't raise any specific issues and did not provide a written response to the public consultation.

Scottish government representatives joined the roundtable and subsequently Neill Gray MSP wrote to our SoS at the time (Grant Shapps MP) confirming that they welcomed the SPS and that many of the strategic priorities and policy outcomes which have been set out in the SPS were aligned with Scotland's ambitions for a transition to a net zero energy system. Specifically, the letter requested:

- An addition that highlighted the importance of rural communities, as they were more likely to experience fuel poverty – we added into the roles and responsibilities section that Ofgem's principal objective to protecting consumers includes consumers living in rural areas. We also added a fuel poverty section.
- Emphasis that network development should facilitate opportunities for consumers to participate and benefit from flexibility and demand response markets – this was already in the SPS so we ensured that this remained in the final version.

- A long-term CCUS strategy – we included more detail on CCUS [carbon capture, utilization and storage] and also added information on how a future CCUS SPS would interact with this document.

**28 February 2024**

## APPENDIX 5: 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 March 2024 and included in this report, Members declared the following interests:

### Statement of changes in Immigration Rules (HC 556)

Lord Rowlands

*Host of a Ukrainian family under the Homes for Ukraine Scheme*

### Attendance:

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