



HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

29th Report of Session 2024–25

Drawn to the special attention of the House:

**Draft Criminal Justice Act 2003
(Suitability for Fixed Term Recall) Order
2025**

**Draft Online Safety Super-Complaints
(Eligibility and Procedural Matters)
Regulations 2025**

Includes information paragraphs on:

Draft Waste Electrical and Electronic Equipment
(Amendment, etc.) Regulations 2025

Branded Health Service Medicines (Costs)
(Amendment) Regulations 2025

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Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as agreed on 29 July 2024, 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 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), India Kearsley (Adviser), Philipp Mende (Adviser), Chris Smith (Adviser) and Kezia Williamson (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/ukxi>.

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 h1seclegscrutiny@parliament.uk.

Twenty Ninth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Criminal Justice Act 2003 (Suitability for Fixed Term Recall) Order 2025

Date laid: 9 June 2025

Parliamentary procedure: affirmative

This Order would mandate that recalls for offenders aged 18 or over serving prison sentences of under four years would be for a 28-day fixed term, with certain exceptions. The effect would be that some recalled prisoners are re-released on licence earlier than presently, thereby freeing up an estimated 1,400 prison places. The measure is proposed in response to an acute shortage of prison capacity. Without such action, the Government expects to run out of prison places in November 2025, which the Ministry of Justice (MoJ) says would “threaten a breakdown of law and order”.

*We recognise the need to take action on prison capacity. Our concerns arise from how the change is implemented. We asked whether there are adequate safeguards in place to protect victims, especially of domestic abuse, and whether the services that will see an increase in demand as a result of the measure, in particular the Probation Service, will have sufficient resources. In relation to victim support, the MoJ outlined existing facilities and stated that, while it was currently impossible to identify all domestic abuse offenders, the Government was taking steps to make that possible. On affected services, the MoJ provided details of specific steps being taken to support the Probation Service and ensure sufficient accommodation is available. **The House may wish to enquire further how the MoJ will monitor the position of such services and how the Government will ensure it can react appropriately if and when required. Further, noting the critical role of tagging in relation to this policy change, including to mitigate the risks to victims, we are alarmed about reports of poor performance by Serco, the contractor that operates the tagging system.***

*Certain aspects of the policymaking process have been sub-optimal; for example, the lack of a review of the most recent, 2024, changes to recall rules and the lack of a consultation. Again, we recognise the need to react at speed to the shortage of prison capacity. **However, we expect the MoJ, if time permits, to evaluate the effects of this change, as well as that in 2024, before making any further changes to the rules. We also reiterate that, if no consultation is undertaken, the Explanatory Memorandum should explain why.***

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. For the majority of determinate (fixed-length) prison sentences in England and Wales, the offender is eligible for automatic release from custody part-

way through their sentence.¹ The remainder of the sentence is spent in the community ‘on licence’, meaning that the person is under supervision and subject to certain conditions.

2. If an offender on licence breaches the conditions of that licence, or their risk is otherwise elevated so that they can no longer safely be managed in the community,² they may be ‘recalled’ to prison. When recalled, offenders either serve a ‘fixed term recall’, where they are re-released automatically after a fixed period in custody, or a ‘standard recall’, under which re-release may only be directed by the Parole Board or the Secretary of State. Under a standard recall an offender may be held in custody until the end of their sentence.
3. In April 2024, the then Government introduced legislation that, with some exceptions, mandated fixed term recalls of 14 days for offenders over the age of 18 serving a determinate sentence of less than 12 months.³ The aim of the change was to reduce pressure on available spaces in the prison estate. At the time of laying the legislation, the Ministry of Justice (MoJ) estimated that 4,000 recalled prisoners would be affected by the measure.
4. Nevertheless, the MoJ states that recall “continues to be a significant driver of prison demand”. For example, at the end of March 2025, there were 13,583 recalled prisoners in custody, around 15% of the total prison population of 87,919 in England and Wales.⁴ The MoJ also told us that the number of prisoners on recall has more than doubled since 2018, when the figure stood at 6,000.
5. Moreover, without further action, the Government expects to run out of prison places in November 2025. The MoJ says that would “threaten a breakdown of law and order” as court trials would not be able to go ahead and planned arrests would be cancelled, resulting in an increase in crime.

The measures in the draft Order

6. This Order would therefore go further and mandate a 28-day fixed term recall for offenders aged 18 or over serving sentences of under four years (but retain the 14 day period for those serving a sentence of under 12 months). The Government expects this to free up a further 1,400 prison places.
7. Certain categories of prisoner are excluded from the change. These include: the highest risk violent, dangerous and sexual offenders (those managed at level 2 or 3 under the Multi Agency Public Protection Arrangements (“MAPPA”)); offenders who have been recalled because they were charged

1 The default point of automatic release for most offenders was reduced from 50% to 40% of the sentence by the Criminal Justice Act 2003 (Requisite and Minimum Custodial Periods) Order 2024 ([SI 2024/844](#)), drawn to the special attention of the House in SLSC, [2nd Report](#) (Session 2024–25, HL Paper 4).

2 The MoJ gave us examples of possible reasons for a recall, including: missing curfew; failing to attend substance misuse treatment; being under the influence of alcohol or drugs when that is against licence conditions; entering an exclusion zone; being in contact with individuals named in a licence condition; being aggressive towards probation staff; and being out of touch with their probation practitioner.

3 Criminal Justice Act 2003 (Suitability for Fixed Term Recall) Order 2024 ([SI 2024/408](#)), on which we commented in SLSC, [16th Report](#) (Session 2023–24, HL Paper 78).

4 Ministry of Justice, ‘Prison population: monthly prison figures 2025’ (data as of 31 March 2025): <https://www.gov.uk/government/publications/prison-population-monthly-prison-figures-2025> [accessed 18 June 2025].

with a further offence; and those convicted of terrorist or national security offences or who pose a terrorist risk.

8. Those re-released following a period of recall would be managed by the local prison and probation services. The MoJ says that “robust” licence conditions will be put in place, including electronic monitoring via tags where appropriate. Those released can also be subject to further recall if necessary.

Impact on victims

9. External commentators, such as the Victims’ Commissioner and the Domestic Abuse Commissioner, have raised issues about the impact of the changes on victims.⁵ In particular, they have expressed concerns that those who would be released include some violent and sexual offenders and some prisoners convicted of domestic abuse, who may be likely to “breach protective orders and show disregard for safeguarding measures, putting their victims at high risk of serious harm or death”.
10. We asked specifically whether perpetrators of domestic abuse serving sentences of an appropriate length would ordinarily be eligible under the new scope of fixed term recall, or whether they would fall under one of the exclusions. We also asked how many fewer prison places would be made available if domestic abuse offenders were excluded from the change. Responding, the MoJ said that “domestic abuse can take many forms and therefore can be prosecuted under many different laws”. Therefore, the MoJ could not make a generalised statement about whether domestic abuse offenders would be included or excluded, and was not able to provide an estimate of the number of people in that category.
11. However, the MoJ pointed to a number of safeguards for victims, such as: that the risk to victims is considered as part of release planning; appropriate licence conditions will be set including tagging, curfews, protective orders and exclusion zones; eligible victims will be contacted prior to release and will have the opportunity to make representations about these licence conditions; and that, if further information is received that an offender represents a higher risk, they may be detained for longer on a standard recall. The MoJ further noted that the Victims and Courts Bill, currently before Parliament, includes measures intended to give victims greater confidence about how they can receive information about an offender’s release, including a new dedicated helpline.
12. In relation to the identification of domestic abuse offenders, the MoJ stated that “as part of our broader strategy to tackle domestic abuse, the Government is developing a new data marker for domestic abuse offenders to improve offender identification and management and inform policy and data analysis in future”. The MoJ told us that this marker is expected to come into force in April 2026: however, this is dependent on the progress of the forthcoming bill that is intended to implement measures from the Independent Sentencing

5 Letter from Baroness Newlove, Victims’ Commissioner for England and Wales, to Rt Hon. Shabana Mahmood MP, Secretary of State for Justice (15 May 2025): <https://victimscommissioner.org.uk/document/letter-to-the-lord-chancellor-early-release-of-offenders-who-have-previously-been-recalled-to-prison/>; and letter from Dame Nicole Jacobs, Domestic Abuse Commissioner for England and Wales, to Rt Hon. Shabana Mahmood MP, Secretary of State for Justice (15 May 2025): <https://domesticabusecommissioner.uk/wp-content/uploads/2025/05/2505-Lord-Chancellor-recall-changes.pdf> [accessed 18 June 2025].

Review.⁶ **We welcome this initiative and encourage the Government to use the new data to ensure that the effects of changes such as this are better analysed and understood.**

13. In their letters to the Lord Chancellor, referred to above, the Victims' Commissioner and the Domestic Abuse Commissioner asked, respectively, for a response to the points they have raised and a meeting with the Lord Chancellor. Asked what follow up there had been on these requests, the MoJ told us that the Parliamentary Under Secretary of State, Alex Davies-Jones MP, met with the two Commissioners immediately following publication of their letters and the Permanent Secretary also met with the Victims' Commissioner. The MoJ also stated that there was a further call between the Commissioners and Ms Davies-Jones prior to the SI being laid and that an explainer and FAQ document on the policy changes were shared with the Commissioners. The MoJ said that neither this document, nor readouts from these meetings, is in the public domain.
14. The Explanatory Memorandum (EM) accompanying the instrument also states that a person on recall may become eligible for automatic re-release even if their case has previously been considered by the Parole Board and the Board has decided that they should not be released. In such cases there will be a delay in re-release, such that 56 days must pass following the Parole Board's decision. We asked why automatic re-release (albeit with a delay) was appropriate in such cases. The MoJ replied that the additional 56-day period enables "more work to be done to address the issues identified and put in place robust risk management plans and stringent licence conditions". Further, the MoJ stated that the time period aligns with the recommendation from the Independent Sentencing Review to replace standard and fixed-term recalls with a longer fixed-term recall of 56 days.⁷ That change cannot be made without primary legislation, but the MoJ said the measure in the draft Order "allows us to transition towards this recommendation using the powers we have".

Impact on the Probation Service

15. The EM and the Impact Assessment (IA) set out how the change will lead to an increase in demand for various services, in particular the Probation Service. According to the IA, the measures will lead to additional demand equivalent to 70 to 90 full-time probation officers.
16. We note that, even before this proposed change is introduced, there are already concerns about the performance of the Service. For example, the Chief Inspector of Probation has recently rated the Service "inadequate", finding that it was not "adequately prepared to respond effectively to further change and challenge. Major shortfalls were found in service delivery and work to keep people safe remains a significant cause for concern."⁸ The Chief Inspector found a "high shortfall of probation officers in some

6 Ministry of Justice, 'Press release: Landmark sentencing reforms to ensure prisons never run out of space again' (22 May 2025): <https://www.gov.uk/government/news/landmark-sentencing-reforms-to-ensure-prisons-never-run-out-of-space-again> [accessed 24 June 2025].

7 Ministry of Justice, 'Independent Sentencing Review: Final report' (22 May 2025), pp 67–8: <https://www.gov.uk/government/publications/independent-sentencing-review-final-report> [accessed 19 June 2025].

8 HM Inspectorate of Probation, "Major shortfalls" found in national arrangements of the Probation Service' (29 April 2025): <https://hmiprobation.justiceinspectorates.gov.uk/news/major-shortfalls-found-in-national-arrangements-of-the-probation-service/> [accessed 18 June 2025].

regions” and observed significant issues around staff retention. We also note that the Probation Service will have experienced an increase in demand as a result of other measures to ease the shortage of prison places; for example, the reduction in minimum custodial periods from 50% to 40% for most sentences.⁹

17. Given these factors, we asked whether the Service was adequately prepared for the change. The MoJ described a number of initiatives:

“Probation will receive up to £700 million by the final year of the spending review, around a 45% increase in funding. This will mean thousands more tags, more staff and more accommodation to ensure that offenders are tracked and monitored closely in the community.

In the 2024/25 financial year, we recruited 1,057 new trainee probation officers, and will recruit a further 1,300 by March 2026.

We are investing an initial £8 million to pilot new technology that reduces the administrative burden on frontline staff, so they can focus on what they do best—managing and rehabilitating offenders.

We are focusing efforts on enhanced, centralised recruitment and retention support in priority regions based on research into the main drivers of attrition.

We are improving the wellbeing offer for both prison and probation staff to ensure they feel properly supported in their vital work to keep the public safe.”

18. **We welcome the efforts being made to support the Probation Service. However, given the seriousness of the concerns expressed by the Chief Inspector of Probation, the House may wish to seek reassurance that sufficient attention will be paid to the Service’s capacity as the change comes into effect.**

Resourcing of other affected services

19. The EM and IA also observed that the change would lead to an increase in demand for other services, such as: community accommodation; health services including mental health; organisations dealing with substance misuse; the police; and charities that support offenders in the community. We therefore also asked about the adequacy of resources in these areas. The MoJ said that it has “been working closely with partners nationally and regionally to ensure the impacts of this measure on other services are well-understood and mitigated”.
20. In relation to housing, the MoJ stated that the Probation Service will take steps to “minimise” the chances that individuals are released without accommodation and that “further accommodation provision from commissioned providers has already been modelled and staffed to deliver these volumes as part of the current contracts.”
21. We asked for further details about what this meant in practice. The MoJ noted a number of initiatives and that it was working with a range of partner

9 Criminal Justice Act 2003 (Requisite and Minimum Custodial Periods) Order 2024 ([SI 2024/844](#)), drawn to the special attention of the House in SLSC, *2nd Report* (Session 2024–25, HL Paper 4).

organisations. For example, the MoJ referred to: 49 Strategic Housing Specialists based in prisons; probation-based Homeless Prevention Teams; “multi-agency pre-release panels”; and Commissioned Rehabilitative Services, whose role is to submit housing applications and referrals to Community Accommodation Service Tier 3 (CAS3), a temporary housing service for individuals leaving prison who are at risk of homelessness. The MoJ said that CAS3 capacity was being increased and the use of existing places maximised, although it noted that CAS3 is a consent-based service and therefore “some individuals may opt to decline the offer and make their own arrangements”.

22. In relation to substance misuse and mental health services, the MoJ said that maintaining engagement with such services “is critical to reducing reoffending”. The MoJ said it would “continue to work closely with the Department of Health and Social Care and healthcare providers to support continuity of treatment and share information effectively”. Similarly, in relation to charities, the MoJ said that “the Probation Service will continue to work closely with local partners, including the charity and voluntary organisations working with offenders in the community, to manage the impact of this measure”.
23. **The House may wish to probe further on the steps being taken to support the wide variety of services impacted by the change and the extent to which capacity in them will be monitored. We also note the need for the UK Government to work closely with the Welsh Government and the NHS in Wales, given that substance misuse and health services are devolved. As in England, these services will be required to play a significant role in reducing reoffending.**

Tagging services

24. The measure will also increase the demand for electronic tagging services, as it will lead to an increase in the number of offenders on licence in the community. We note recent concerns about the performance of Serco, which is the contractor that provides the tagging service, including reports that a backlog was leading to high-risk and violent criminals left unmonitored for up to two months.¹⁰ We therefore asked the MoJ about the preparedness of tagging services and Serco. The MoJ said:

“While the performance of Serco has been unacceptable, and we have imposed fines for poor performance, their delivery of the service is improving.

The backlog of outstanding visits that built up during 2024 was brought to within tolerable levels in line with Serco’s recovery plan in November last year and remains at tolerable levels. We are working closely with Serco to ensure that any additional EM [electronic monitoring] demand is deliverable for the introduction of this new measure. We remain confident in our ability to expand the EM service.

We continue to monitor Serco’s delivery of the service closely and will not hesitate to levy further penalties or use other measures should they

¹⁰ BBC News, ‘PCC seeks answers over criminal-tagging contracts’ (9 June 2025): <https://www.bbc.co.uk/news/articles/cwy7qkzxw3yo> [accessed 18 June 2025].

be required. Ministers and senior officials are in regular contact with Serco and continue to impress upon them the need to improve.”

25. **While improvements in performance are welcome, this is from a low (“unacceptable”) base. Tagging is a critical aspect of the implementation of this measure, including to mitigate the risks to victims described above, and the House may wish to seek further assurances that it will operate as it should.**

Review of the 2024 changes

26. Given that the rules around fixed term recall changed last year, we asked whether any review of the effects of this had been conducted to inform the measures in this draft Order. The MoJ said only that the 2024 change “did not undergo a formal review but was monitored”, and that the monitoring “has informed this policy’s development and impact assessment”.
27. We appreciate the need to take urgent steps to avoid a crisis in the criminal justice system. However, previous instances of changes to recall provide good opportunities to inform the possible effects of further measures; for example, to allow more effective preparation for implementation. **We expect the MoJ, if time permits, to evaluate the effects of this change, as well as that in 2024, before making any further changes to the rules.**

Additional explanatory material

28. When the Order making the 2024 changes was laid, the supporting material lacked key impact information; most notably, any estimate of the number of offenders affected. As noted above, the MoJ provided more comprehensive information with this instrument, including a full IA, which we welcome.
29. However, despite acknowledging in the IA that a wide range of stakeholder groups would be affected by the policy,¹¹ the EM stated only that “no consultation exercise has been conducted”. We asked why this was, and the MoJ replied that it was due to “the rapid development of this policy in order to avoid reaching critical capacity”.
30. We appreciate the need for rapid action, although we suspect it could have been foreseen, given medium-term projections of prison capacity. **Nevertheless, as an absolute minimum, the EM should state why no consultation was undertaken; it is not acceptable simply to say that there was no consultation.**
31. We also note public concern when, following the earlier measures to reduce the point of early release, mistakes led to some prisoners being released who should not have been.¹² **The House may wish to ask what steps the MoJ is taking to ensure there will be no such errors when implementing this Order.**

¹¹ Including offenders, victims, support services and the general public.

¹² For example, Victims’ Commissioner, ‘Victims’ Commissioner responds to mistaken early prison releases under the SDS40 scheme’ (26 September 2024): <https://victimscommissioner.org.uk/news/victims-commissioner-responds-to-the-incorrect-early-release-of-certain-offenders-under-the-sds40-scheme/> [accessed 24 June 2025].

Conclusion

32. This Order would implement a further measure to reduce the pressure on prison capacity. We recognise the need to take action in this area in advance of longer-term reforms arising from the Independent Sentencing Review, to be taken forward in a forthcoming sentencing bill. Our concerns arise from the implementation process and, in particular, relate to the safeguards for victims and whether affected services are adequately prepared and resourced to cope with the additional demand. **The House may wish to enquire further how the MoJ will ensure it is monitoring the position of such services and is able to react appropriately if and when required.**

Draft Online Safety Super-Complaints (Eligibility and Procedural Matters) Regulations 2025

Date laid: 9 June 2025

Parliamentary procedure: affirmative

The purpose of these draft Regulations is to establish the framework for making super-complaints about systemic online safety issues to Ofcom, the online safety regulator, as provided for under the Online Safety Act 2023 (“the OSA”). The Department for Science, Innovation and Technology (DSIT) says that due to the “dynamic nature” of the online environment, new harms are constantly emerging, and that the super-complaints regime will have an important function by providing a route to raise systemic issues with Ofcom and to make the regulator aware of existing and emerging harms or impacts on freedom of expression. This instrument proposes the detailed criteria and procedural requirements that underpin the operation of the super-complaints regime, including eligibility criteria for complainants and timescales for Ofcom’s complaint handling. We note some important differences to other regulatory systems which provide for super-complaints, such as only allowing organisations to make one super-complaint over a six-month period and assessing the eligibility of complainants every time a complaint is made, rather than using a pre-designated list of complainants.

*We previously commented on the complexity of the regulatory framework and questioned whether Ofcom has sufficient resources to carry out its extensive responsibilities under the OSA. **As this instrument adds to the complexity and to Ofcom’s duties, the regulator’s ability to carry out its wide-ranging online safety functions, including the new super-complaints function, remains a concern. The House may wish to seek further assurance from the Minister on this.***

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

33. This instrument proposes the framework for making super-complaints about systemic online safety issues to Ofcom, the online safety regulator. Section 169 of the Online Safety Act 2023 (“the OSA”) enables super-complaints where there appears to be a “material risk” that online services: are causing significant harm to users or members of the public; are significantly adversely affecting the right of users or members of the public to freedom of expression;

or are otherwise having a significant adverse impact on users or members of the public.

Context

34. The Department for Science, Innovation and Technology (DSIT) says that due to the “dynamic nature” of the online environment, new harms are constantly emerging; the super-complaints regime will have an important function by providing a route to raise systemic issues with Ofcom and to make the regulator aware of existing and emerging harms or impacts on freedom of expression, which Ofcom must then consider. According to DSIT, super-complaints will also support Ofcom’s horizon scanning function and support the regulator in taking an “agile approach” to regulating online harms.
35. This instrument is the latest in a series of legislative measures that implement the new UK online safety regulatory regime established by the OSA. Previous measures include: regulations specifying the steps companies must take to comply with the requirement to report child sexual exploitation and abuse content to the National Crime Agency;¹³ Codes of Practice setting out practical measures that online service providers can take to meet their legal responsibility to protect children online under the OSA;¹⁴ and, most recently, a draft Statement of Strategic Priorities for Online Safety.¹⁵
36. Super-complaints are an established feature of other regulatory regimes, including in the financial industry (Financial Conduct Authority super-complaints), the criminal justice system (Police super-complaints) and in the UK consumer protection regime (super-complaints under the Enterprise Act 2002). We note, however, that there are some important differences between the proposed arrangements for making super-complaints about online safety issues to Ofcom and other established regulatory systems. One of these differences is the existence in other regulatory regimes of ombudsman schemes, such as the Financial Ombudsman Service, to handle complaints about service providers, in addition to the super-complaints function. **We note that as there is no ombudsman scheme to deal with complaints about online safety, Ofcom’s super-complaints function will play a particularly important role in identifying and addressing concerns about online safety.** Two other unique aspects of the proposed online safety super-complaints system are considered below, in relation to the eligibility of complainants and a restriction on the number of super-complaints that may be submitted by a complainant over a six-month period.

How the process for super-complaints would work in practice

37. The DSIT says that the super-complaints mechanism is designed to allow expert bodies to highlight serious or widespread online safety issues or risks to Ofcom. A super-complaint could be, for example, that a common feature across a type of online service is causing harm to a particular group, or that the terms of service of a service provider are being applied inconsistently or

13 Online Safety (CSEA Content Reporting by Regulated User-to-User Service Providers) Regulations 2025 ([SI 2025/368](#)), see: SLSC, [22nd Report](#) (Session 2024–25, HL Paper 106).

14 Draft Protection of Children Code of Practice for user-to-user services and [draft](#) Protection of Children Code of Practice for search services, see: SLSC, [25th Report](#) (Session 2024–25, HL Paper 123).

15 [Draft](#) Statement of Strategic Priorities for online safety, see: SLSC, [26th Report](#) (Session 2024–25, HL Paper 129).

unfairly such as to cause harm. Asked for a practical example of a potential super-complaint, the Department told us:

“We would expect super-complaints to usually be about cross-platform systemic issues and only relate to a single service provider if the complaint is particularly important or [if it] relates to impacts on a large number of users or members of the public. Some practical examples could include that recommender systems are promoting harmful content to child users.”

38. This instrument proposes the detailed criteria and procedural requirements that would underpin the operation of the super-complaints regime. The arrangements were subject to consultation, and the Department made changes to its proposals in the light of the feedback received.¹⁶
39. One of the requirements of the OSA is that only eligible entities can make a super-complaint; an eligible entity is any organisation that Ofcom deems suitable at the time for the purpose of making a super-complaint. This is in contrast to the approach taken in other super-complaints regimes which typically depend on a pre-designated list of eligible complainants listed in legislation. According to the DSIT, this new approach seeks to provide a future-proofed way of enabling a range of organisations to access the super-complaints mechanism in a fast-changing environment. We note that during consultation, some respondents made the case for the more typical pre-designation approach. We consider that the Department could have opted for a model that combines both approaches: a list of pre-designated established organisations that may make super-complaints as well as arrangements to enable new organisations to be assessed for their eligibility to submit a super-complaint. **We note that the Department’s decision against such a pre-designated list of eligible complainants will have resource implications for Ofcom, as the regulator will have to assess the eligibility of the complainant each time a super-complaint is submitted.**
40. The instrument defines the eligibility criteria for would-be complainants, including that a complainant must represent the interests of service users or members of the public and that it must be independent from the services that are regulated by the OSA. The DSIT says that while many civil society groups and charities receive financial or other support from the tech industry, for example to promote media literacy campaigns, the proposed eligibility rules do not automatically stop such organisations from being eligible. Instead, Ofcom, when assessing the eligibility of the complainant, will consider whether the organisation has the necessary governance and accountability mechanisms in place to ensure that the organisation is not influenced “unduly” by any support it may receive from a regulated service.
41. A further eligibility criterion requires that an organisation contributes routinely to discussions about online safety matters as an expert. The DSIT says that because the super-complaints mechanism was designed to enable organisations to raise concerns with the regulator about systemic online safety issues, it was appropriate to require organisations to “demonstrate

¹⁶ See: Department for Science, Innovation and Technology (DSIT), *Super-complaints eligible entity criteria and procedural requirements, Government response to consultation* (9 June 2025), pp 7-8: https://assets.publishing.service.gov.uk/media/6841980141cb2525c1211ce3/super_complaints_eligible_entity_criteria_and_procedural_requirements_government_response.pdf [accessed 20 June 2025].

expertise” to ensure they have the “relevant knowledge to submit a high-quality and well-evidenced complaint”. According to the DSIT, expertise in this context could include being asked to comment on online safety matters in the press; simply generating material and posting it on social media would not be sufficient to be considered an expert.

42. The Department told us that charities and expert online safety organisations which meet the eligibility criteria would typically be those that have conducted campaigns and research about online safety, including child safety, or freedom of expression, or organisations that give advice to users about these topics. The Department expects that “fewer than 100” organisations will meet the eligibility criteria and have a sufficient interest in the technical issues to engage with the super-complaints function. The proposed rules also require that super-complaints must be accompanied by “current, objective and relevant evidence”, such as research, and an explanation of how this evidence supports the complaint.
43. Concerns were raised during consultation that the eligibility criteria could have the effect of excluding or deterring new, smaller and less well-resourced groups from making super-complaints. **We also consider that there is a risk of organisations spending time and resources to prepare a super-complaint but to be subsequently rejected by Ofcom on the ground that they are not eligible. Ofcom should monitor closely its practical application of the eligibility criteria to ensure that it does not lead to valid complaints about systemic failings or significant online harms being missed because of a complainant’s ineligibility.**
44. The instrument defines the detailed procedural arrangements to be followed by organisations when making a super-complaint and by Ofcom when assessing the complaint. This includes specified timescales, for example 30 days for Ofcom to decide whether an organisation meets the eligibility criteria (reduced to 15 days where an organisation has previously been found to be eligible within the past five years), and 90 days for completing the assessment of a super-complaint. Ofcom may reject a complaint for a number of reasons, including if the complaint is being considered by another regulator or a court, or an organisation is submitting more than one super-complaint in a six-month period. The DSIT told us that while there is no appeals mechanism if a complaint is rejected, Ofcom is “subject to standard regulatory redress mechanisms, such as judicial review”.
45. Asked whether a restriction on the number of super-complaints that a complainant may submit also existed in other regulatory regimes, the Department explained that other regulated sectors “do not explicitly limit” the number of super-complaints which can be submitted. The DSIT added:

“However, we do not expect there to be many cases where an entity wishes to submit more than one case within a 6-month period. This is because a) submitting an online safety super-complaint will require a reasonable amount of resource, and b) one super-complaint (from an eligible entity, assessed as such on a case-by-case basis) can cover multiple issues linked to one criterion under section 169(1) of the Online Safety Act 2023. [See para 33 above.]

There are also unique features of this super-complaints regime that mean a 6-month limit is appropriate. Unlike other regimes there will be no list

of pre-designated organisations that could submit complaints. This is to enable new and emerging groups with expertise in the online safety space to submit complaints. As such, the restriction on the number of complaints within a certain time-period is important to help manage Ofcom's resources, given that Ofcom will need to assess eligibility (or retained eligibility) every time a complaint is submitted. In addition, this restriction is important to ensure that each super-complaint is properly and robustly considered.

Note that an eligible entity can withdraw their initial complaint, and submit a replacement complaint, if they deem the subsequent complaint should be prioritised over the first complaint. This will help ensure that the most important issues are prioritised.”

46. We note that the purpose of limiting the number of super-complaints which a complainant may submit over a six-month period is to control the number of complaints going to Ofcom, to help the regulator manage its resources, and that this is especially important given the requirement on Ofcom to (re-) assess an organisation's eligibility every time a complaint is submitted. **This reinforces our view that using a list of pre-designated complainants in addition to the eligibility assessment process could have reduced the burden on Ofcom**, especially in the context of the Department's estimate of the number of organisations (“fewer than 100”) which will meet the eligibility criteria and have sufficient interest to engage with the super-complaints function. This appears to be higher than in other regulatory areas; we understand that only 16 organisations, for example are eligible to make Police super-complaints.¹⁷
47. Asked what forms of redress or outcomes Ofcom could typically achieve when upholding a complaint, the DSIT responded:

“Ofcom does not have specific powers of redress in relation to super-complaints but following a super-complaint investigation may act on that information using its full range of online safety powers. [...] There are a range of possible outcomes. One possible outcome is that a super-complaint indicates non-compliance under the Act and Ofcom opens an enforcement case. Other outcomes could include further research to consider the issue, engaging with services on a voluntary basis, or considering changes to Codes of Practice.”

Ofcom's resources

48. We have previously commented on the complexity of the online safety regime and have questioned whether Ofcom has sufficient funding and enough staff with appropriate expertise to carry out its regulatory responsibilities under the OSA.¹⁸ As super-complaints add another function to Ofcom's already extensive range of duties, we asked the DSIT whether the regulator had received additional funding specifically for handling super-complaints. The Department responded:

“The government has ensured that Ofcom has the funding it needs to deliver online safety regulation effectively, with £72.6 million allocated for online safety spend in 2025/26. This decision followed a business

¹⁷ See [regulation 3](#), Police Super-complaints (Designation and Procedure) Regulations 2018 (SI 2018/748).

¹⁸ SLSC, [25th Report](#) (Session 2024–25, HL Paper 123).

case process that included Ofcom submitting its requirements, which incorporated delivering the super-complaints function. Ofcom will keep this under review as the super-complaints regime is implemented to ensure that it has the necessary resource and expertise in place. Ofcom has recruited an expert online safety team from various sectors including regulation, tech platforms, law enforcement, civil society and academia.”

49. **We note the Department’s explanation but remain concerned about the adequacy of the resources available to Ofcom, given its already extensive online safety responsibilities would be expanded further by this instrument. As super-complaints will play a key role in alerting the regulator to new and emerging systemic online safety issues and harms, the House may wish to seek assurance from the Minister that Ofcom will have sufficient resources to carry out this important function.**

INSTRUMENTS OF INTEREST

Draft Waste Electrical and Electronic Equipment (Amendment, etc.) Regulations 2025

50. These draft Regulations would shift the costs of dealing with the waste from electrical and electronic equipment (EEE) supplied by overseas sellers via online marketplaces (OMPs) in the UK from those sellers to the OMP operators. The Department for Environment, Food and Rural Affairs (Defra) explains that, under the current rules, businesses which place EEE on the UK market are defined as producers and are subject to financial obligations arising from EEE waste, irrespective of whether they are based in the UK. Such businesses must join a Producer Compliance Scheme (PCS) which discharges the financial obligations arising from the EEE waste of its members and reports the amount of EEE placed on the market to the relevant authorities.
51. Defra says that, in practice, non-UK suppliers which sell products via an OMP are often not registered with a PCS and thereby avoid their financial obligations, leading to the full costs of EEE waste falling on producers which are PCS-registered, including ‘bricks and mortar’ stores. Under the new policy, OMP operators would: be defined as producers and become responsible for the EEE placed on the market by their non-UK suppliers; need to register with a PCS; have to submit data on the volume of all EEE being sold by non-UK suppliers on their platforms; and be responsible for the EEE waste costs. This seeks to ensure that OMPs and, by extension, overseas sellers will pick up a fairer share of the costs of the collection, treatment, recovery and environmentally sound disposal of EEE waste.
52. The instrument also proposes a new waste category for EEE used to consume tobacco, nicotine or vapour, such as e-cigarettes and vapes. Under the current rules, such devices fall within the ‘toys and leisure equipment’ waste category. According to Defra, they are, however, much more expensive to collect and treat for recycling than toys and other leisure equipment because of the materials used and their nicotine content. As a result, producers of toys and leisure equipment have disproportionately high waste disposal costs, while producers of e-cigarettes and vapes do not cover the full waste costs of their products. The proposed changes seek to ensure that the financial cost of the collection, treatment, recovery and environmentally sound disposal of these products falls directly on producers. The new policy would also allow Defra to set waste collection targets specifically for products such as e-cigarettes and vapes.

Branded Health Service Medicines (Costs) (Amendment) Regulations 2025 (SI 2025/667)

53. A statutory scheme and a voluntary scheme control the cost of branded prescription medicines to the NHS. Both schemes require suppliers to pay back a set percentage of their receipts arising from NHS sales. Pharmaceutical firms representing 98% of medicines sold to the NHS have signed up to the voluntary scheme and the remainder default to the statutory scheme. The Government aims to maintain broad commercial equivalence (BCE) between the two schemes, which necessitates that their percentage payment rates are comparable (but not necessarily identical).

54. Payment rates for the voluntary scheme are affected by sales and were last updated in December 2024. Since then, additional sales information has become available, resulting in higher rates in the voluntary scheme. The principal purpose of these Regulations is therefore to increase the payment rate in the statutory scheme to maintain BCE. The payment rate for 2025 is increased from 15.5% to 23.4%, with companies who made payments in the first half of the year paying an uplifted rate of 31.3% for the remainder of the year to achieve an average of 23.4%. The instrument also increases the 2026 payment rate from 17.9% to 24.3%, and the 2027 payment rate from 20.1% to 26%. In addition to supporting BCE, this is expected to provide £31 million in additional NHS income over three years at the equivalent cost to industry, which the Department of Health and Social Care (DHSC) acknowledges could impact investment in drug development.
55. The DHSC states that setting the rates for 2026 and 2027 in advance is in the interests of the predictability of the scheme, with BCE between the two schemes intended to support the stability of the overall pricing system. The DHSC also states that industry has significant indicators of future payment percentages, with information available well in advance of any change being made. We note that there is a current review of the voluntary scheme which is due to conclude in June 2025 and that this is taking place in the context of significant disquiet in the industry about the consequences of the applicable rates.¹⁹ **As the review may necessitate further changes to the payment rates for the statutory scheme to maintain BCE, it calls into question the reliability of any predictions for rates for 2026 and 2027.**

19 As expressed in responses to the consultation on this measure. For example, 57% of respondents suggested that the proposed statutory scheme update, coupled with the voluntary scheme, would be “acutely harmful to the UK life sciences ecosystem, and would lead to company decisions on headcount, the scale of their operations in the UK and the viability of the UK as a destination for future pharmaceutical activity”: Department of Health and Social Care, ‘Consultation outcome: Response to consultation on the proposed review of the 2025 scheme to control the cost of branded health service medicines’ (10 June 2025): <https://www.gov.uk/government/consultations/proposed-review-of-the-statutory-scheme-for-branded-medicines-pricing/outcome/response-to-consultation-on-the-proposed-review-of-the-2025-scheme-to-control-the-cost-of-branded-health-service-medicines> [accessed 24 June 2025].

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft	Armed Forces Act 2006 (Continuation) Order 2025
Draft	Buckinghamshire Council, Surrey County Council and Warwickshire County Council (Housing and Regeneration Functions) Regulations 2025
Draft	Electricity and Gas (Energy Company Obligation) (Amendment) Order 2025
Draft	Waste Electrical and Electronic Equipment (Amendment, etc.) Regulations 2025

Made instruments subject to annulment

SI 2025/655	Coroners and Justice Act 2009 (Alteration of Coroner Areas) Order 2025
SI 2025/658	Code Manager Selection (Competitive) Regulations 2025
SI 2025/660	Institute for Apprenticeships and Technical Education (Transfer of Functions etc) Act 2025 (Consequential Amendments) Regulations 2025
SI 2025/661	Road Vehicles (Type-Approval) (Amendment) Regulations 2025
SI 2025/663	Immigration (Exemption from Control) (Amendment) Order 2025
SI 2025/664	Private Security Industry Act 2001 (Exemption) (Aviation Security) (Amendment) Regulations 2025
SI 2025/667	Branded Health Service Medicines (Costs) (Amendment) Regulations 2025
SI 2025/672	Antarctic (Amendment) Regulations 2025

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 24 June 2025, Members declared the following interests:

Branded Health Service Medicines (Costs) (Amendment) Regulations 2025 (SI 2025/667)

Lord Bethell

Advice on general business development to Conquer Technology Ltd (software)

Member, Advisory Board, The Last Food Fight (health tech company)

Senior Counsel, Oviva UK Limited (suppliers of health tech and behavioural change)

Non-executive director, Regenerus Labs (diagnostics centre)

Advisor, Human Digital Twin Ltd trading as Sanome

Trustee of the Royal Society of Public Health

Attendance

The meeting was attended by Lord Bethell, Baroness Harris of Richmond, Lord Kempson, Lord Kerr of Kinlochard, Baroness Lea of Lymm, Lord Pack, Baroness Ritchie of Downpatrick, Lord Russell of Liverpool and Lord Watson of Invergowrie.