HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

3rd Report of Session 2024–25

Drawn to the special attention of the House:

Draft Franchising Schemes (Franchising Authorities) (England) Regulations 2024

Draft Immigration and Nationality (Fees) (Amendment) Order 2024

Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024

Includes information paragraphs on:

Draft Misuse of Drugs Act 1971 (Amendment) (No. 2) Order 2024

Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations 2024

Social Fund Winter Fuel Payment (Amendment) Regulations 2024

Accounts and Audit (Amendment) Regulations 2024 and one related instrument

Statement of Changes in Immigration Rules (HC 217) and two related instruments

Police Pensions (Employer Contributions) (Amendment) Regulations 2024

Central Counterparties (Transitional Provision) (Extension and Amendment) Regulations 2024

Social Security (Infected Blood Capital Disregard) (Amendment) Regulations 2024

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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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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 Clayton Gurney (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.

Third Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Franchising Schemes (Franchising Authorities) (England) Regulations 2024

Date laid: 9 September 2024

Parliamentary procedure: affirmative

Outside London, bus services are deregulated which means local transport authorities have little control over the services provided by commercial operators. The power to franchise bus services and enable local authorities to decide how they are run is currently only available to Mayoral Combined Authorities, such as Greater Manchester, and Mayoral Combined County Authorities. These Regulations would provide bus franchising powers to all other types of local authority, subject to the Secretary of State's consent to prepare a franchising assessment. The Regulations are a key element of the Government's manifesto commitment to give "new powers for local leaders to franchise local bus services".

The Explanatory Memorandum is short on information about what bus franchising is, how local bus services are currently run, how many local authorities are expected to pursue bus franchising as a result of this instrument, what impact this is expected to have on local bus services and the work underway to reduce cost and other non-legislative barriers to more bus franchising. While the Department for Transport has provided helpful supplementary material which is reflected in this report, ***the House may wish to seek further clarity on these issues from the Minister.***

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

Background

1. The Bus Services Act 2017 created bus franchising powers for local transport authorities (LTAs) in England, outside of London. Bus franchising powers were automatically given to Mayoral Combined Authorities (MCAs) and later, Mayoral Combined County Authorities (MCCAs) when they were created.

2. For all other types of LTAs wishing to access bus franchising powers, a two-stage process is required. First, regulations must be made to provide bus franchising powers to the particular category of LTA; and second, the Secretary of State must give their consent to the individual authority to prepare a franchising assessment (a business case for franchising). This instrument would remove the first stage of that process by providing bus franchising powers to all other categories of LTA. The requirement for consent from the Secretary of State is maintained.

Current approach and bus franchising

3. The Explanatory Memorandum (EM) to the Regulations omits any explanation of bus franchising and contains little detail on how bus services are currently run by LTAs and what difference franchising will make. In supplementary material, the Department for Transport (DfT) told us:

> "Bus services outside London were deregulated in 1986. Since then, there have been two systems of bus provision–one for London and one for the rest of England. In London, Transport for London [TfL] (accountable to the Mayor) specifies what bus services are to be provided. TfL decides the routes, timetables and fares. The services themselves are operated under contract by private companies through a competitive tendering process. In the rest of the country, a deregulated market operates in which anyone, subject to minimum safety and operating standards, can operate bus services. Bus operators are free to run whatever services they like, the fares they will charge and the vehicles they will use. The LTA role is limited to subsidising socially necessary services that are not commercially viable. This has resulted in an uncoordinated network with a large array of ticketing options. Operators focus on the most profitable journeys, with local transport authorities having to subsidise operators to run journeys and routes that are not commercially viable but they consider socially and economically necessary.
>
> Local Transport Authorities do use an Enhanced Partnership to work collaboratively with their local bus operators to support improvements to the network, but decisions on running the commercial network still rest with the operator.
>
> Under bus franchising, the deregulated bus market is suspended, and bus operators are only able to provide services under contract to the local transport authority. Bus franchising gives local transport authorities decision-making powers over bus routes, timetables and fares. This has the potential to improve transport for users because services can be coordinated and tailored to the needs of local communities."

Barriers to franchising

4. At present, no local authorities other than MCAs are preparing franchising scheme assessments. The EM explains that this is due to the "uncertainty over the current two-stage process for obtaining consent [which has] acted as a barrier to local authorities seeking these powers".

5. We enquired as to whether there are any other reasons why other types of LTAs have not yet pursued franchising. The DfT responded that "some LTAs have reported that the upfront cost of franchising is a barrier and that the franchising process, including the pre-assessment and assessment stages, are onerous". This is because LTAs are expected to cover the cost of franchising in their areas, though the DfT also stated that "the costs, timings and resource requirements of pursuing bus franchising can vary depending on the model chosen".

6. The DfT told us that it is working with local authorities to develop proposals to make franchising easier and cheaper to deliver, as well as "building its capacity to provide tangible on the ground support to local authorities which wish to use franchising to deliver bus services". **The House may wish to**

ask the Minister for more detail on these proposals and for an update on the progress that has been made. The House may also wish to press the Minister on the Government's plans and timetable for wider legislative reform to improve bus services across the country.

Impact

7. It is unclear from the EM how many LTAs are expected to pursue bus franchising as a result of the changes being made, and what impact franchising can have on local bus services. When asked for further information, the DfT provided an example:

> "The largest scale example of bus franchising–outside of London–is provided by Greater Manchester. The Bee Network, Greater Manchester's plan for a modern public transport system, was launched on September 24, 2023. Since franchising, Greater Manchester has already improved reliability, with 12% more franchised buses on time compared to the same period a year earlier, prior to franchising. Greater Manchester has also observed a growth of 5% in passenger numbers in less than a year since the bus franchising going live."

8. This example provides promising early results. However, the DfT currently does not know how many local authorities will choose to pursue franchising. Further, the Department told us that not all local authorities are equipped to run franchising. As such, the impact of these Regulations remains unclear. **The House may wish to press the Minister for further information on how many local authorities are expected to pursue franchising.**

Conclusion

9. Bus franchising is an option for local authorities seeking to improve local bus services, and this instrument aims to make that easier for those types of LTA for which the current franchising process is onerous. However, other non-legislative barriers remain, and it is not clear how many LTAs will be able to overcome those in order to pursue bus franchising for their local area.

Draft Immigration and Nationality (Fees) (Amendment) Order 2024

Date laid: 12 September 2024

Parliamentary procedure: affirmative

This Order would be the first step in regularising a current anomaly whereby certain fees in the immigration system have been charged to applicants without the necessary statutory authority to do so. Whilst correcting the error may be the appropriate course of action, the situation gives rise to questions such as: how this position arose; whether past users of these services have paid fees inappropriately; and what steps are now being taken in respect of these previous payments—including consideration of compensation. The sums of public money at stake appear to be large. Moreover, our questions revealed that these fees are still being charged, despite the Home Office knowing them to be unlawful. We find this extraordinary.

To make matters worse, the Explanatory Memorandum (EM) was missing information vital to understanding the instrument; for example, the EM did not: make clear that fees have been, and are being, charged without the necessary

authority; acknowledge the implication that past users of these services may have paid fees inappropriately; discuss what the Home Office intended to do about such cases; or divulge that the fees are still being charged.

We asked the Home Office to revise the EM, but the Home Office has so far refused, leaving us to fill in the missing information. ***This is unacceptable: the EM should provide a balanced and rounded description of the policy, its context, and any issues arising from its implementation. We will be writing to the Minister to request further information and a revision of the EM.***

This Order 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

10. The immigration rules require an applicant for a visa (and in some other areas of the immigration system) to demonstrate proficiency in the English language at a specified level. This can be achieved in a number of ways, one of which is to use an academic qualification obtained in English awarded by an educational establishment outside the UK. In some such cases, applicants must obtain verification that their qualification meets the required standard. To do so, they must use a service (the "Equivalency and Proficiency Service") operated by a third-party supplier, Ecctis Limited, on behalf of the Home Office. Ecctis charges applicants a fee for the service.

11. Following a review of the charging arrangements, the Home Office has identified that, because using the service and paying the fee are mandatory, these charges must be provided for by legislation. However, there is currently no such legislative backing. This instrument would correct the situation by providing the power to charge fees for the Equivalency and Proficiency Service.

12. The Order would also set a maximum level for those fees. As is customary in immigration fee legislation, the setting of a fee is a two-stage process: a first instrument is required to provide the power and to set a maximum, and a second instrument sets the actual fee at or below the maximum. This Order would set a maximum fee of £400. The Home Office told us that its intention is to lay the instrument containing the actual charges in "early December", and that they will be set at their current levels of £140+VAT for English language proficiency and £210+VAT for qualification equivalency assessments.

Clarity of description of the policy rationale

13. In explaining the rationale for the policy change, the Explanatory Memorandum (EM) to the draft Order said that "it has been identified that it is a legal requirement that, for fees to be charged, the fees for these services need to be set within the department's fees legislation […] We are therefore, required […] to make an amendment which will set a power to charge a fee and the maximum fee that can be charged by the Home Office."

14. On questioning, the Home Office agreed that it follows that fees to date have been charged by a contractor without a legal power to do so. We put it to the

Home Office that the EM was insufficiently clear on this point. The Home Office replied:

> "We are content that the current EM provides sufficient background on the purpose of the SI [statutory instrument], which is to take prospective action to regulate the fees, and is clear on the rationale for placing these fees on a statutory footing."

15. **We disagree.** As it stands, the EM requires the reader to deduce, from the fact that fees need to be put on a legal footing for the future, that fees have been unlawfully charged to service users in the past. This should not be necessary. **We regard a full, clear and open statement of why the instrument has been brought forward as central to understanding the policy change.**

Review of charges to date

16. As the EM failed to acknowledge that service users have been inappropriately charged in the past, it also did not address issues such as how this situation arose and what the Home Office intended to do about such cases. Further questioned on the latter point, the Home Office said:

> "The changes we are making in this Order and subsequent Regulations to regularise the position for fees has been treated as a priority by the department. We are in the process of considering all options, including restitution schemes and retrospective legislation and are undertaking this work at pace, but cannot at this time give an indication of when this review will be complete or the specific action that is likely to be taken."

17. **It is not unusual for reviews of past public sector errors to be prolonged. The House may wish to press the Minister for their views on likely timescales in this instance and to give a commitment that the results of the review will be made public.**

18. When we asked the Home Office for how long these fees have been charged, and how much has been paid over time, the Home Office said:

> "Our understanding is that these fees have been charged since 2008. We are undertaking further scoping of how many people have used the service and the amount of income generated but this information is held by a third party supplier, who are under contract by the Home Office to provide this service, and is not available at this time. However, we know that over the last three years, the supplier's revenue is in the region of £50m."

19. We trust that the Home Office will be able to access information on users of the service and revenue, regardless of whether it is outsourced. **We note that the number of people affected, and sums of money involved, are significant.**

Ongoing charging

20. The EM also did not state whether these fees are still being charged at present, given that the Home Office is now aware that they are inappropriate until the legal framework is in place. Asked further on this point, the Home Office responded that it "considers it important that there is consistency in the approach to fees charged prior to appropriate provisions being set

in Regulations […] Until such a time as that work is completed, fees will continue to be charged as they are currently."

21. **We are shocked that the Home Office puts more weight on consistency with the past approach–which is known to be unlawful–than on consistency with the law as it stands today. It is also indefensible that this issue was not discussed in the EM: it is clearly relevant to the introduction and operation of the policy.**

22. We accept that current cases may be included in any "restitution scheme" or similar mechanism, but, again, this may be some time in the future. The decision to continue charging does not appear to have been made with service users' interests in mind: given the options of not paying the fee now, or paying and having the prospect of an uncertain reimbursement at an uncertain point in the future, a current user is likely to prefer not to pay now.

Clarity of the Explanatory Memorandum

23. Given the omissions from the EM described above, we asked the Home Office to revise and relay the EM. The Home Office refused, saying that the EM was "sufficient".

24. **Again, we disagree. As stated above, the EM should contain a full, clear and open statement of why the instrument has been brought forward.** We welcome the Home Office considering options for those who have paid inappropriately in the past, but we are concerned about the treatment of current users paying fees now. **In any case, this is all important contextual information for the instrument that should be in the public domain without us having to ask for and provide it.**

Conclusion

25. This draft Order has some similarities to a Ministry of Justice (MoJ) instrument that we reported to the House in July 2023.[1] In both cases, it came to light that a government practice was unlawful. **As we said at the time, "for a government department to breach the law in this way is an inexcusable error".**

26. In both cases, the original EM was insufficiently clear on the unlawfulness of the current position and on what action was being taken in respect of those affected in the past (and, for this draft Order, ongoing). Again, as we stated at the time, "EMs laid alongside instruments should not mislead the reader or obscure issues with the policy".

27. The MoJ did, at least, agree to revise its EM to include further information. The MoJ also pledged to keep us updated on the outcome of its review and to make its conclusions public. However, as far as we are aware, more than fourteen months later, that review has not yet been completed. **We are concerned that the situation in this draft Order could result in another long-running review, leaving those affected out of pocket and frustrated for a lengthy period.**

28. **Moreover, this is yet another case where the Home Office seems unaware that the role of an EM is not just to explain the policy change**

1 Administration of Estates Act 1925 (Fixed Net Sum) Order 2023 (SI 2023/758), drawn to the Special Attention of the House in *47th Report* (Session 2022–23, HL Paper 236).

in the narrowest possible terms.[2] The EM should provide a balanced and rounded description of the policy, its context, and any issues arising from its implementation.

29. **We will be writing to the Minister, Seema Malhotra MP, requesting further details about the breach and what steps the Home Office is now taking, and asking again that the Home Office revises the EM.**

Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024 (SI 2024/853)

Date laid: 9 August 2024

Parliamentary procedure: negative

The purpose of this instrument is to expand the list of agri-food goods imported for retail into Great Britian (GB) from the rest of the world that can move to Northern Ireland (NI) under the Northern Ireland Retail Movement Scheme. This is achieved by making changes to the entry requirements for importing these goods into GB, so that the requirements align with the EU-derived entry requirements for importing such goods into NI. The Department for Environment, Food and Rural Affairs (Defra) says that the changes aim to support the effective functioning of the UK internal market.

We have received five submissions which raise concerns about the instrument, including about: the constitutional significance of the changes; the imposition of EU rules on England, Wales and Scotland; the continued existence of a border in the Irish Sea; a lack of consultation on the policy; and the range and origin of products covered by the Regulations. Defra says that the changes respond to demands from industry, and that with regard to the imposition of EU rules, the "UK will always be able to choose how to respond to changes in the EU's import controls for any of the affected products".

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

30. These Regulations make changes to the entry requirements for certain plant and animal products which are imported for retail into Great Britain (GB) from outside the UK or the EU ("rest-of-world"), so that they match the EU-derived entry requirements for imports of such products into Northern Ireland (NI).[3] According to the Department for Environment, Food and Rural Affairs (Defra), this will expand the list of rest-of-world products that are eligible to move from GB to NI under the Northern Ireland Retail Movement Scheme (NIRMS). NIRMS was introduced under the Windsor Framework to ease the flow of goods from GB to NI by reducing the certification and checking requirements of these goods.

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2 For other recent examples, see *20th Report* (Session 2023–24, HL Paper 94) and *16th Report* (Session 2023–24, HL Paper 78).

3 Article 9 of Regulation (EU) 2023/1231 provides a route for non-EU rest-of-world retail goods to become eligible to use the Northern Ireland Retail Movement Scheme to move from Great Britain into Northern Ireland.

31. The instrument covers a range of products such as fruit, cut herbs/flowers as well as processed poultry meat products from EU-approved plants in China and Thailand. Defra explains that the products have been chosen in response to demands from industry, and that they are commonly used as ingredients or are sold in significant quantities and are therefore critical for maintaining choice for NI consumers.

What the changes will mean in practice

32. The Explanatory Memorandum (EM) states that the instrument "adjusts" the GB entry requirements for the relevant goods, so that they match the EU-derived entry requirements for those goods into NI. Asked for further information on what these adjustments will mean in practice and whether they will lead to additional costs for business importing these goods into GB, Defra explained:

> "For processed poultry meat products from Thailand and China, this means they will be subject to the same animal health requirements to enter Great Britain as they are to enter Northern Ireland. Fruit, cut herbs and cut flowers in scope of the SI [statutory instrument], will be subject to the same physical and documentary check rates as they are to enter Northern Ireland. While the majority of products will retain the same rate of checks as they do now to enter Great Britain, identity and physical checks on basil and some cut flowers entering Great Britain will increase. In addition, cut roses from certain countries will require additional attestations of pest freedom. There will be no changes to the phytosanitary certificates required for these products. The costs of these changes to businesses have been assessed to be negligible."

33. Defra emphasises that the changes made by the instrument were sought by business. We asked the Department whether it had consulted companies which import relevant goods into GB but do not move them on to NI, as these businesses may now have to deal with stricter controls and therefore higher costs, without benefiting from the NIRMS. Defra replied:

> "We consulted businesses operating in Great Britain and Northern Ireland to identify priority products. Trade bodies representing retailers in both Great Britain and Northern Ireland were also consulted. The Devolved Governments of Scotland, Wales and Northern Ireland have been involved in the development of this policy.
>
> Businesses will need to familiarise themselves with the new requirements and changes in controls. The De Minimis Assessment identified negligible costs associated with the certification changes to Products of Animal Origin (PoAO) and the changes to frequency of checks on plant products."

34. The changes made by this instrument will ease the movement of certain goods from GB to NI via the NIRMS. They will also mean that for some of these goods, there will be additional entry requirements when they are imported into GB. We note, however, that Defra expects the costs of these changes to business to be "negligible".

Concerns raised about the instrument by external submissions

35. We received five submissions which expressed a range of concerns about the instrument. Due to time constraints, we were only able to put the first three submissions we received to the Department. All submissions and Defra's response have been published in full on our website.[4]

36. A submission from the Universal Meat Company suggested that there had been no consultation with traders on the exemption list of countries and questioned specifically why EU approved meat plants in China had been included in the instrument but not EU approved plants in Brazil. The Department responded:

> "The list of products which has been included in the scope of this legislation was developed with industry stakeholders in the United Kingdom, on the basis of factors such as volumes of trade (and on the impact on supply chains). The Government could, in future, decide to add further products to the list, and we will keep the list under ongoing review to ensure that we are able to reflect and respond to industry feedback. To that end we will continue to engage comprehensively with industry on this matter, as we have done previously with Universal Meats.
>
> It should be noted that Brazilian poultry can be moved under the NIRMS scheme if it has entered an EU BCP [Border Control Post] before entering the UK. Moreover, products can be imported directly into Northern Ireland; and when this is so, as of 30 September the new Tariff Rate Quota solution will enable traders to take advantage of over 13,000 tons of lamb, beef, and poultry worth of UK tariff quotas every year. This reflects Northern Ireland's integral place in the UK."

37. A submission from Jim Allister KC MP (Traditional Unionist Voice) criticised a lack of public consultation and also raised concerns about the imposition of EU rules and standards and the continued existence of a border in the Irish Sea. Similarly, a submission by Mr Christopher Howarth criticised the alignment with EU law as a result of this instrument. The submission by Lord Morrow of Clogher Valley (Democratic Unionist Party) argued that the changes were constitutionally significant. It also criticised the imposition of EU law on the UK without the UK Parliament having the power to scrutinise or amend the legislation, and that the instrument neither secured the UK internal market for goods nor the removal of the border in the Irish Sea. The submission by Baroness Hoey of Lylehill and Rathlin raised similar concerns about the imposition of EU law and an international border.

38. In response to the submissions by Mr Allister and Mr Howarth, Defra explained:

> "The UK will always be able to choose how to respond to changes in the EU's import controls for any of the affected products. If the UK and EU regimes diverge, the UK will determine whether to adopt measures in order to match.

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

> This SI delivers on specific commitments set out in the 'Safeguarding the Union' Command Paper in January 2024,[5] therefore no new policy has been introduced. Furthermore, this safeguards the ability for these goods to move under the simplified arrangements provided under the Northern Ireland Retail Movement Scheme, and thus support trade between Great Britain and Northern Ireland. On this and other aspects of the NIRMS arrangements, there has been extensive engagement with industry and stakeholders in Northern Ireland."

Conclusion

39. The submissions we received raise a range of concerns which the House may wish to pursue further with the Minister. Regarding the extent of consultation on the policy, the Department told us that the changes respond to demands from industry and that it had engaged with and consulted businesses. It is not our role to adjudicate between what appear to be different views on the extent of consultation that was undertaken. We note, however, that consultation can provide opportunities not only to improve a policy but also to help increase public confidence in the policy. The submissions we have received highlight the importance of consulting widely, especially where legislation deals with a policy area that is contentious and where interested parties have strongly felt views, as in this case of making changes under the Windsor Framework.

5 Northern Ireland Office, *Safeguarding the Union* (31 January 2024): https://www.gov.uk/government/publications/safeguarding-the-union.

INSTRUMENTS OF INTEREST

Draft Misuse of Drugs Act 1971 (Amendment) (No. 2) Order 2024

40. In December 2023, we commented on an Order that added 20 drugs to those controlled under the Misuse of Drugs Act 1971.[6] These included 14 'nitazenes', described as "super-strength" drugs reported to be linked to a spike in fatalities in the UK. We noted and welcomed the Home Office's plans to consult on and then legislate for a 'generic control' on nitazenes.

41. Amongst other measures, this Order would introduce such a generic definition and would specify that substances captured by it are controlled as Class A drugs. Again, we welcome this approach in principle, but observe that the Home Office will need to remain agile in amending the definition to capture new variants. Indeed, in response to our questions, the Home Office acknowledged that variants have appeared that would not be captured by the draft Order. Nevertheless, the Home Office told us this remained the "most effective" approach, saying that generic definitions have been used before in drug legislation and it is "not unusual" for them to require amendment.

Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations (SI 2024/900)

42. The purpose of this instrument is to amend the Russia (Sanctions) (EU Exit) Regulations 2019[7] to modify the prohibition on the provision of certain legal advisory services and ensure that legal advice in relation to compliance with global sanctions is permitted. This follows an amendment made by the Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2023[8] to the 2019 Regulations, which inadvertently had the effect of criminalising a wide range of legitimate international sanctions compliance advice.

43. In our 46th Report of Session 2022–23,[9] we drew the 2023 Regulations to the special attention of the House, following receipt of a submission from an international law firm which outlined their unintended effect. Following this, the Foreign, Commonwealth and Development Office (FCDO) urgently considered mitigating measures to ensure legitimate legal advisory services could continue lawfully. In August 2023, the FCDO issued a general licence to permit legal advisory services on non-UK sanctions compliance. This instrument replaces that licence and puts beyond doubt that legal advice in relation to compliance with global sanctions and criminal legislation is permitted. Further information on the FCDO's approach can be found in Appendix 1.

Social Fund Winter Fuel Payment (Amendment) Regulations 2024 (SI 2024/898)

44. This instrument corrects minor drafting errors in the Social Fund Winter Fuel Payment Regulations 2024 ("the original Regulations"),[10] which introduced a means test by limiting the Winter Fuel Payment to those of pensionable age in England and Wales who also receive specified benefits.

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6 Draft Misuse of Drugs Act 1971 (Amendment) Order 2024, later made as SI 2024/190, commented on in *7th Report* (Session 2023–24, HL Paper 36).
7 Russia (Sanctions) (EU Exit) Regulations 2019 (SI 2024/855).
8 Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2023 (SI 2023/713).
9 SLSC, *46th Report* (Session 2022–23, HL Paper 231).
10 Social Fund Winter Fuel Payment Regulations 2024 (SI 2024/869).

This instrument principally amends Schedule 2 to the original Regulations to correct a revocation; the Department for Work and Pensions (DWP) assured us that this error would have had no practical effect and that there would have been no impact on Winter Fuel Payments. This instrument breaks the 21-day rule to ensure the corrections enter into force at the same time as the original Regulations.

45. We were critical of the urgency with which the original Regulations were introduced,[11] which precluded both the appropriate scrutiny and created practical issues with bringing in the change at short notice. The fact that the DWP needed to correct drafting errors in that instrument within two weeks of it being laid illustrates our concern that the original Regulations were rushed.

Accounts and Audit (Amendment) Regulations 2024 (SI 2024/907)

Draft Code of Audit Practice

46. These two instruments are part of a package of measures that seeks to deal with the significant backlog of unaudited accounts of local public bodies in England and to put local audit on a sustainable footing. The Government announced the measures in a Written Ministerial Statement on 30 July 2024.[12]

47. **SI 2024/907** will require so-called Category 1 local bodies[13] to publish outstanding audited accounts for financial years up to 2022/23 by a statutory backstop date of 13 December 2024. Exemptions will apply if: auditors are considering a material objection; recourse to the court could be required; or from 2023/24, if the auditor is not yet satisfied with the local body's Value for Money arrangements. The instrument also provides for a series of further backstop dates for financial years 2023/24 to 2027/28 and gives, from 2024/25, local bodies an additional month to prepare and publish unaudited (draft) accounts. The Ministry of Housing, Communities and Local Government (MHCLG) says that the backstops will enable auditors to rebuild assurance following disclaimed or modified opinions over several audit cycles rather than in a single year, reducing the risk of the backlog re-emerging. According to MHCLG, only one percent of Category 1 bodies in England published audited accounts on time for the 2022/23 financial year.

48. Alongside the instrument, MHCLG has laid a **draft Code of Audit Practice** on behalf of the Comptroller & Auditor General. The draft Code sets out what local auditors are required to do to fulfil their statutory responsibilities. It replaces the current Code, introduced in 2020, and supports the measures introduced in SI 2024/907 by, for example, introducing a requirement on auditors to issue their opinion in time for local bodies to publish their accounts by the relevant backstop date.

49. We note that MHCLG has committed to updating the House in the Autumn "on the Government's longer-term plans to fix local audit".[14]

11 SLSC, *2nd Report* (Session 2024–25, HL Paper 4).
12 Local Audit Backlog, 30 July 2024, Statement UIN HLWS46.
13 Category 1 bodies include local authorities, police and fire bodies, as well as bodies such as National Parks Authorities, waste authorities and Passenger Transport Authorities.
14 See: Local Audit Backlog, 30 July 2024, Statement UIN HLWS46.

Statement of Changes in Immigration Rules (HC 217)

Immigration and Nationality (Fees) (Amendment) Regulations 2024 (SI 2024/928)

Immigration (Passenger Transit Visa) (Amendment) Order 2024 (SI 2024/922)

50. Amongst the changes made by these three instruments to the immigration rules and associated fees are the following two measures.

51. First, the re-imposition of a visa regime on Jordan. Jordanian citizens required a visa to visit the UK until February 2024. From that date, Jordan was removed from the visa regime, instead becoming one of the first tranche of countries requiring an Electronic Travel Authorisation (ETA). The Home Office states that this led to a rapid increase in non-permitted travel from Jordan. The Government is therefore moving Jordan back out of the ETA system and restoring the previous visa regime, and requiring Jordanians transiting in the UK to obtain a transit visa.

52. Second, completing the introduction of the ETA regime for all remaining nationalities who can currently travel to the UK without a visa. Visitors from remaining non-European non-visa countries will require an ETA from 8 January 2025, and from European countries from 2 April 2025. We have previously called on the Home Office to monitor the impact of the introduction of ETAs—for example, on tourism numbers—and publish its findings.[15] Questioned on the status of such monitoring, the Home Office told us that it was evaluating the rollout of ETAs and that, while it is too early to report, it would publish the findings of the evaluation when complete. **As there has been no published evaluation of ETA to date, the House may wish to seek assurance from the Minister that the Home Office is confident the ETA system is working smoothly and effectively.**

Police Pensions (Employer Contributions) (Amendment) Regulations 2024 (SI 2024/920)

53. These Regulations allow the employer's contribution rate in the police pension scheme in England and Wales to be determined by the Government, on advice from the scheme actuary, rather than (as previously) requiring secondary legislation to implement any change. The change simplifies the process of changing the rate but reduces Parliamentary oversight. The Home Office states that the revised arrangements mirror those of the Firefighters' Pension Scheme and are also similar to those in other public service pensions.

54. The change follows an actuarial valuation that recommended an increase in the contribution rate from 31% to 35.2%. The Explanatory Memorandum (EM) states that the Home Office has provided "additional funding" to mitigate the impact of the increase. The amount of this funding, £259 million for 2024–25, was provided in a written statement[16] that was linked from the EM but the amount was not included in the EM itself. The Home Office also told us that, while in theory the Secretary of State will have freedom to decide the contribution rate, its intention in practice is to set the rate at that recommended by the actuary. **These additional pieces of information are central to an understanding of the effects of the policy change and should have been in the EM.**

15 SLSC, *44th Report* (Session 2022–23, HL Paper 217).
16 HC Deb, 14 December 2023, col 132WS.

Central Counterparties (Transitional Provision) (Extension and Amendment) Regulations 2024 (SI 2024/923)

55. These Regulations provide for the third extension of two post-Brexit transitional periods relating to the regulation of overseas Central Counterparties (CCPs), which sit between the buyers and sellers of financial instruments to reduce counterparty risk. When the transition periods were first extended, we criticised one of the regimes that allows any firm to benefit from the status of a Qualifying CCP simply by applying to be recognised.[17] We urged HM Treasury (HMT) to consider reforms before any further extension and expressed disappointment that a new, permanent regime for regulating CCPs had not been established.

56. At the time of the second extension, in October 2023, HMT told us that the "first phase" of the work on a new regime was complete.[18] Asked for an update following the laying of these Regulations, HMT said that a new "framework" for the regulation of CCPs was commenced at the start of 2024, allowing the Government to work with the Bank of England to formulate a new regime. HMT told us that "while this work is a priority, we cannot give specific dates at this stage as to when this will be completed". **It is disappointing that, nearly four years on from the end of the Brexit transition period and nearly two years after our initial concerns, and despite this being a "priority" area, HMT is still not able even to provide a timeline for the reforms. We will be writing to the Minister, Tulip Siddiq MP, to request further details.**

Social Security (Infected Blood Capital Disregard) (Amendment) Regulations 2024 (SI 2024/964)

57. This instrument applies an infinite capital disregard to means-tested benefits assessments, to cover payments made to any beneficiary from the estate of a deceased person infected with contaminated NHS blood products, where that payment derives from an approved infected blood compensation scheme. In practice, this means that beneficiaries, such as a deceased infected person's children, can receive compensation (via an estate) from an infected blood compensation scheme and remain on means-tested benefits. This delivers on a commitment made by the Government in its proposal for the Infected Blood Compensation Scheme.[19]

58. The independent Social Security Advisory Committee (SSAC), which is required by law to consider all benefits regulations, has raised some concerns about the instrument, principally: the way in which the Regulations rely on the making of payments to 'estates' rather than a specific category of person and whether this is sufficiently clear; and the need for greater clarity over how income or interest derived from payments from an infected blood compensation scheme will be treated in means-tested benefits assessments. The Department for Work and Pensions is considering the SSAC's concerns, and an exchange of letters is available online.[20]

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17 SLSC, *24th Report* (Session 2022–23, HL Paper 123).

18 SLSC, *53rd Report* (Session 2022–23, HL Paper 260).

19 HM Government, 'Infected Blood Compensation Scheme Proposal Summary' (21 May 2024): https://www.gov.uk/government/publications/infected-blood-compensation-scheme-summary/infected-blood-compensation-scheme-summary [accessed 8 October 2024].

20 HM Government, 'The Social Security (Infected Blood Capital Disregard) (Amendment) Regulations 2024' (19 September 2024): https://www.gov.uk/government/publications/the-social-security-infected-blood-capital-disregard-amendment-regulations-2024 [accessed 8 October 2024].

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft	Animal Welfare (Livestock Exports) Enforcement Regulations 2024
Draft	Communications Act 2003 (Disclosure of Information) Order 2024
Draft	Insurance and Reinsurance Undertakings (Prudential Requirements) (Amendment and Miscellaneous Provisions) Regulations 2024
Draft	Misuse of Drugs Act 1971 (Amendment) (No. 2) Order 2024
Draft	Online Safety Act 2003 (Priority Offences) (Amendment) Regulations 2024
Draft	Scotland Act 1998 (Specification of Devolved Tax) (Building Safety) Order 2024
Draft	Vehicle Emissions Trading Schemes (Amendment) Order 2024

Made instruments subject to affirmative approval

SI 2024/900	Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations 2024
SI 2024/944	Iran (Sanctions) (Amendment) Regulations 2024

Draft instruments subject to annulment

Draft	Code of Audit Practice
Draft	Coventry (Electoral Changes) Order 2024
Draft	Derbyshire (Electoral Changes) Order 2024
Draft	Essex (Electoral Changes) Order 2024
Draft	Worcestershire (Electoral Changes) Order 2024
HC 217	Statement of Changes in Immigration Rules

Instruments subject to annulment

SI 2024/880	Local Government Pension Scheme (Information) Regulations 2024
SI 2024/889	Civil Legal Aid (Standard Civil Contract Miscellaneous Amendments) Regulations 2024
SI 2024/892	Charges for Residues Surveillance (Amendment) (England) Regulations 2024
SI 2024/893	Warm Home Discount (Reconciliation) (Amendment) Regulations 2024
SI 2024/894	National Health Service (Pharmaceutical and Local Pharmaceutical Services) (Amendment) (No. 2) Regulations 2024

SI 2024/895	Personal Injuries (NHS Charges) (Amounts) (Amendment) (No. 2) Regulations 2024
SI 2024/896	Ionising Radiation (Medical Exposure) (Amendment) Regulations 2024
SI 2024/898	Social Fund Winter Fuel Payment (Amendment) Regulations 2024
SI 2024/899	Seed Marketing (CMS Wheat Hybrids) (Temporary Experiment) (England) Regulations 2024
SI 2024/903	Response to the Committee on Climate Change Report (Extension of Period) Order 2024
SI 2024/904	Registration of Births and Deaths (England and Wales) (Amendment) (Transitional Provisions) Order 2024
SI 2024/905	Independent System Operator and Planner (Designation) Third Party Compensation Regulations 2024
SI 2024/906	Registration of Births and Deaths (Welsh Language) (Amendment) (Transitional Provisions) Order 2024
SI 2024/907	Accounts and Audit (Amendment) Regulations 2024
SI 2024/908	Education (School Inspection) (England) (Amendment) Regulations 2024
SI 2024/913	New Towns (Compulsory Purchase of Land) (Amendment) Regulations 2024
SI 2024/915	Land Compensation (Additional Compensation) (England) Regulations 2024
SI 2024/918	London Legacy Development Corporation (Establishment and Planning Functions) (Amendment and Revocation) Order 2024
SI 2024/919	Social Security (Scotland) Act 2018 (Disability Assistance) (Consequential Amendments) Order 2024
SI 2024/920	Police Pensions (Employer Contributions) (Amendment) Regulations 2024
SI 2024/922	Immigration (Passenger Transit Visa) (Amendment) Order 2024
SI 2024/923	Central Counterparties (Transitional Provision) (Extension and Amendment) Regulations 2024
SI 2024/928	Immigration and Nationality (Fees) (Amendment) Regulations 2024
SI 2024/934	Teesport (Extension of Limits) Harbour Revision Order 2024
SI 2024/936	Social Security (Genuine and Sufficient Link to the United Kingdom) (Amendment) Regulations 2024
SI 2024/946	Mali (Sanctions) (EU Exit) (Amendment) and Sanctions (Miscellaneous Amendments) Regulations 2024

SI 2024/947	Student Accommodation (Codes of Management Practice and Specified Educational Establishments) (England) Regulations 2024
SI 2024/948	Trade, Aircraft and Shipping Sanctions (Civil Enforcement) Regulations 2024
SI 2024/949	Supreme Court Rules 2004
SI 2024/954	Gas and Electricity Regulated Providers (Redress Scheme) (Amendment) Order 2024
SI 2024/964	Social Security (Infected Blood Capital Disregard) (Amendment) Regulations 2024

APPENDIX 1: RUSSIA (SANCTIONS) (EU EXIT) (AMENDMENT) (NO. 4) REGULATIONS (SI 2024/900)

Additional information from the Foreign, Commonwealth and Development Office

Q1. What was the response of stakeholders to the amendments being made by these Regulations? Have they agreed that the amendments will deliver the necessary clarity? Have they raised any further issues or unintended consequences?

A1. The Ministry of Justice has conducted extensive informal engagement on the amended legislation with the legal and financial representative bodies and law firms. We are broadly content that these stakeholders support the amended legislation. There have been no further concerns raised with the amendment since the legislation came into force.

We are content that this amendment has been developed with appropriate sector engagement, and we will continue to engage with the sector on this measure. We recognise that there may be further feedback from the sector, and we will continue to engage via official channels.

Q2. The Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2023 (SI 2023/713) were laid over a year ago. Why did it take so long to bring the amendments in these Regulations (SI 2024/900) forward, when the issues became known shortly after 2023/713 was laid?

A2. After the legal advisory services sanction was introduced in June 2023 and it became apparent that there were some issues with the scope, the previous government committed to engaging with the legal sector, to assess whether legislative changes were needed to address the unintended consequences of the Regulation.

As a temporary solution, a general licence was introduced in August 2023 to permit certain legal advisory services to continue, such as sanctions compliance advice. The amendment now removes the need for this general licence.

The general licence was an effective solution on a temporary basis, meaning that the most pressing issues in relation to the sanction were very quickly addressed. This gave officials time to conduct a detailed review of the provision, alongside stakeholders.

The extensive and thorough review of the legislation, with sector stakeholders and across government was necessary to ensure this version of the legislation properly balanced feedback from the sector and the overarching policy aims of the sanction.

Following the announcement of the General Election in July 2024 it was not possible to lay the legislation when Parliament returned, due to a very busy parliamentary period before summer recess. As a made affirmative SI which would need to be debated and approved in both Houses within 28 days to avoid automatically expiring, laying this SI in September will better ensure that time is allowed for the required parliamentary scrutiny.

Q3. The debate on SI 2023/713 in July 2023[21] raised a point about the definition of legal advisory services needing to be brought in line with that in EU and US jurisdictions–does this amendment to the definition bring the UK sanctions regime in line with that of the EU and US? If not, why not?

A3. UK sanctions are strategically coordinated with allies to impose severe cost on Putin and the Russian regime. We are closely aligned with international partners on our prohibitions. There are necessarily some differences in our prohibitions, owing to our different legal systems. As a group, we seek collective action for maximum impact.

The US and EU have differing sanction regimes when it comes to legal services. It is not the UK's intention to replicate precisely these prohibitions. As outlined in the Explanatory Memorandum, changes were made to the scope of the UK sanctions Regulation, amongst other reasons, in order to align more closely with the UK circumvention regulations. Therefore, creating greater parity between how a UK lawyer can advise a UK person and a non-UK person.

We have worked closely with the sector who have experience not only dealing with the UK sanctions regime, but also that of the EU and US and we have tested this approach with them.

Q4. A point was also raised in that debate about the complexity of the sanctions regime–this is the fourth amendment this year, and there were five last year. How are you ensuring that the legal and other sectors are able to understand the regime?

A4. The UK's Russia sanction policy rachets up pressure over time. Introducing new amendments to sanctions regimes underpins our approach of keeping UK sanctions targeted, effective and proportionate. Since the Russian invasion of Ukraine in February 2022, the FCDO has laid over 20 sanctions SIs, to keep pressure on Russia.

Every time a new SI is laid the Government issues statutory guidance to ensure business can understand the changes. We can supplement this with non-statutory guidance and other supporting documents, including Notice to Exporters and NCA Red Alerts, which promote awareness, encourage preventative action, and support on-going improvements to business practices to counter illicit activity. The FCDO and HMT's OFSI provide email alerts every time we update our sanctions lists, enact measures, publish a new license or guidance, or take enforcement action.

HMG also engages non-government stakeholders through business engagement teams. Our engagement informs sectors about our latest sanctions, addresses specific issues, and listens to feedback.

11 September 2024

21 HC Deb, 19 July 2023, cols 945-956.

APPENDIX 2: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 8 October 2024, Members declared the following interests:

Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations (SI 2024/900)

Lord Hunt of Wirral

Practising Solicitor and Partner, DAC Beachcroft LLP (international commercial law firm)

Social Fund Winter Fuel Payment (Amendment) Regulations 2024 (SI 2024/898)

Baroness Harris of Richmond, Lord Hunt of Wirral, Baroness Lea of Lymm, Lord Powell of Bayswater, Baroness Randerson, Baroness Ritchie of Downpatrick, Lord Rowlands, Lord Russell of Liverpool and Lord Thomas of Cwmgiedd.

Recipients of Winter Fuel Payments

Attendance

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