

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

5th Report of Session 2024–25

Correspondence with the Leader of the House of Lords and the Leader of the House of Commons regarding the role of the House of Lords in scrutinising Secondary Legislation

Includes information paragraphs on:

Draft Terrorism Act 2000 (Alterations to the Search Powers Code for Northern Ireland) Order 2024

Draft Voter Identification (Amendment of List of Specified Documents) Regulations 2024

Parole Board (Amendment) Rules 2024

Sea Fisheries (Amendment) (No. 2) Regulations 2024

School Teachers' Pay and Conditions (England) Order 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.

Members

[Lord De Mauley](#)

[Baroness Harris of Richmond](#)

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

[Baroness Lea of Lymm](#)

[Lord Powell of Bayswater](#)

[Baroness Randerson](#)

[Baroness Ritchie of Downpatrick](#)

[Lord Rowlands](#)

[Lord Russell of Liverpool](#)

[Lord Thomas of Cwmgiedd](#)

[Lord Watson of Wyre Forest](#)

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 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.

Fifth Report

CORRESPONDENCE WITH THE LEADER OF THE HOUSE OF LORDS AND THE LEADER OF THE HOUSE OF COMMONS REGARDING THE ROLE OF OF THE HOUSE OF LORDS IN SCRUTINISING SECONDARY LEGISLATION

1. Early this Parliament we wrote to the Leaders of the House of Lords and the House of Commons to ask about: how they see the role of the House of Lords in scrutinising secondary legislation; any steps they plan to take to ensure that both statutory instruments themselves and the material provided to Parliament for scrutiny continue to improve; and for assurance that the Government's legislative programme will respect the Committee's concerns from the outset.
2. We are reassured by the Leaders' response, which recognises the significance of secondary legislation and the House's role in its scrutiny, and we look forward to working with them. The exchange of letters is published in Appendix 1.

INSTRUMENTS OF INTEREST

Draft Terrorism Act 2000 (Alterations to the Search Powers Code for Northern Ireland) Order 2024

3. This draft Order would bring into force a revised version of Northern Ireland’s Code of Practice relating to stop and search powers under the Terrorism Act 2000.¹ The changes principally relate to a new power introduced into the Act, as Section 43C, by the Police, Crime, Sentencing and Courts Act 2022. This power enables the police to stop and search a terrorist offender to protect the public from a risk of terrorism, if that person has been released on licence with a condition that they are required to submit to a search. Such a licence condition may be included if the person has been convicted of an offence connected to terrorism and is assessed as posing a “high or very high risk of serious harm to the public”.
4. To carry out a search under Section 43C, an officer does not, as in other cases, require reasonable grounds of suspicion (for example, that the person is acting suspiciously or carrying a suspicious item). However, they must be satisfied that the search is necessary “for purposes connected with protecting members of the public from a risk of terrorism”. The Northern Ireland Office (NIO) described this to us as being a “lower bar needed to conduct the search”, **but the Code does not provide clarity on how the police will make such decisions in practice.**
5. The Code would align Northern Ireland (NI) with the rest of the UK, for which a revised Code came into force in October 2022.² The NIO told us that the reasons for the later implementation of the NI Code included that there were “many other pieces of legislation and policy that have required urgent attention”, including related to the restoration of the NI Assembly, as well as the general election. The NIO clarified that the existing GB Code covers any officer, whether from GB or NI, in relation to stop and searches in GB, while the new NI code similarly applies to any UK officer operating in NI.

Draft Voter Identification (Amendment of List of Specified Documents) Regulations 2024

6. The purpose of these draft Regulations is to update the list of accepted forms of photographic identification (photo ID) that voters can use when voting in person in a polling station.³ The current rules for photo ID were introduced by the Elections Act 2022. Specifically, this instrument would:
 - Add the HM Armed Forces Veteran Card (Veteran Card), which was introduced in January 2024, to the list of accepted forms of photo

1 Northern Ireland Office, *Code of practice (Northern Ireland) for the authorisation and exercise of stop and search powers relating to sections 43, 43a, 43c and 47a of, and schedule 6b to, The Terrorism Act 2000*, Transparency data (15 October 2024): <https://www.gov.uk/government/publications/code-of-practice-northern-ireland-for-the-authorisation-and-exercise-of-stop-and-search-powers-relating-to-sections-43-43a-43c-and-47a-of-and-sch> [accessed 22 October 2024].

2 Home Office, *Police stop and search powers: code of practice*, Policy paper (9 January 2023): <https://www.gov.uk/government/publications/police-stop-and-search-powers-code-of-practice> [accessed 22 October 2024].

3 For a list of photo IDs that are currently accepted, see: The Electoral Commission, ‘Accepted form of voter ID’: <https://www.electoralcommission.org.uk/voting-and-elections/voter-id/accepted-forms-photo-id> [accessed 22 October 2024].

ID, implementing an election manifesto commitment of the current Government.

- Clarify the entries relating to Commonwealth passports, so that Zimbabwean passports are accepted as photo ID. The Ministry of Housing, Communities and Local Government (MHCLG) explains that while Zimbabwe is not currently a member of the Commonwealth, under electoral legislation people may register as eligible voters if they are qualifying Commonwealth citizens. This is not defined by a country's current Commonwealth membership status, but by a country's inclusion in a separate list under the British Nationality Act 1981.
 - Amend the entry relating to the Scottish National Entitlement Card (Scottish NEC), so that all Scottish NEC cards, including those that have been issued for non-travel purposes such as access to libraries or for membership of council run leisure centres, are accepted.
7. The new rules apply in England, Wales and Scotland. The Voter ID system in Northern Ireland (NI) is similar but has separate rules and regulations. The Government told us that it intends to bring forward legislation to add the Veteran Card to the list of ID documents that may be used in NI polling stations in advance of the next scheduled elections in NI which will be held in 2027.
8. We asked whether there had been an assessment of the impact of the photo ID requirement on the 2024 general election, whether people had been turned away from polling stations because they did not have a valid voter ID, and whether the Government had plans to address any potential inconsistencies between the types of photo ID that are accepted. MHCLG replied that:
- “[The Government] has been evaluating the impact of the policy—as required by legislation - and will be publishing our report in due course.
- The Electoral Commission has also conducted research on this.⁴ [...] We are pleased to see that in the Electoral Commissions report that there were high levels of satisfaction with the process of voting and only 0.08% of electors were unable to vote due to a lack of identification.
- As our manifesto made clear, the Government will address the inconsistencies in voter identification that prevent legitimate electors from voting. We are currently considering what further changes should be made in order to achieve this, bringing forward proposals in due course.”
9. We note that the 0.08% of electors who were unable to vote in the general election is the proportion of people who tried to vote, were turned away at the polling station for not having an appropriate photo ID and did not return subsequently. While this proportion appears small, it is nevertheless equivalent to 16,000 people who were unable to cast their vote across Great Britain.⁵ Moreover, it does not include people deterred from going to a polling station in the first place because they did not believe they had appropriate ID. **The House may wish to press the Minister on the timetable and**

4 The Electoral Commission, ‘Accepted form of voter ID’: <https://www.electoralcommission.org.uk/voting-and-elections/voter-id/accepted-forms-photo-id> [accessed 22 October 2024].

5 *Ibid.*

extent of the planned further changes, and on how the Government intends to address the deterrent effect and any inconsistencies in the types of voter ID that are accepted, especially in relation to young people.

Parole Board (Amendment) Rules 2024 (SI 2024/1011)

10. These Rules make various changes to the operation of the Parole Board, which assesses whether prisoners can safely be released into the community. One of the amendments allows the Chair of the Parole Board to delegate specified “appropriate tasks” to its staff. The Ministry of Justice (MoJ) states this will make the Parole Board more efficient, allowing it to hold approximately 200 additional parole hearings per year. Safeguards include that actual decisions on whether a prisoner should be released will still be taken by a Parole Board Member, and a right of review against any decision taken by the secretariat.
11. We note that the MoJ only consulted the Probation Service and the Parole Board itself on this change. The MoJ told us that it does not routinely consult beyond those two organisations if the changes are “technical in nature”. However, we question this default position, observing that other similar bodies, such as courts and tribunals, regularly consult widely on changes to their rules. We also question the decision in this instance, given that case management decisions can have an important bearing on the prisoner’s liberty. Consultation would have enabled greater consideration of the degree of the discretion to delegate and the extent to which the Rules should circumscribe when delegation is possible. Moreover, it would have been straightforward to consult with interested parties, such as groups representing prisoners. **Given the current issues in the criminal justice system and the prominence of the Parole Board’s role, we encourage the MoJ to ensure it consults widely on any further significant changes.**

Sea Fisheries (Amendment) (No. 2) Regulations 2024 (SI 2024/1028)

12. This instrument implements several fisheries management measures which have been set out in three fisheries management plans (FMPs). FMPs are required under the Fisheries Act 2020; they are long-term plans which are developed by the Department for Environment, Food and Rural Affairs (Defra) and the devolved Governments in Northern Ireland, Scotland and Wales in collaboration with relevant stakeholders. FMPs set out the actions and policies required to restore or maintain stocks at sustainable levels. This instrument relates to FMPs in English waters for Channel demersal non-quota species, such as lemon sole, turbot and brill; flyseining fishing;⁶ and crawfish. According to Defra, these FMPs have been prioritised for development as the fish stocks covered are “commercially valuable, data poor and there are concerns that these fisheries are at risk of over exploitation”.
13. We note that, amongst other changes, the instrument will remove from secondary legislation catch limits for commercially caught sea bass which are negotiated annually between the UK and the EU, so that they can instead be implemented through fishing licence conditions. Defra explains that because licence conditions can be introduced more quickly, this will allow the catch limits to be updated promptly following international negotiations and in

⁶ Flyseining involves fishing with an encircling and towed net which is operated from a boat through two long ropes (seine ropes) designed to herd the fish towards the opening of the net.

similar timescales to the EU and also makes it easier to align them with evolving evidence. This particular change will apply UK-wide; the devolved Governments have given their consent.

14. We asked the Department whether there was a precedent for removing parliamentary oversight in this way. Defra replied that: “Fisheries licence conditions are routinely used to manage where and how vessels can fish and what they are allowed to catch and land. Since the UK left the EU, the annually negotiated UK/EU quota limits and allocations are directly applied into UK domestic licences for most stocks.” The Department also provided an explanation of how Parliament is being kept informed of fishing negotiations between the UK and the EU. We have published Defra’s response to our questions in Appendix 2.

School Teachers’ Pay and Conditions (England) Order 2024 (SI 2024/1037)

15. This Order updates the pay and conditions of teachers in maintained schools in England for the 2024–25 academic year, with retrospective effect from 1 September 2024. The instrument increases pay by 5.5% for all pay and allowance ranges and advisory points. The Department for Education (DfE) states that the award implements the recommendations of the School Teachers’ Review Body (STRB) “in full”. The DfE is providing £1.1 billion to achieve this.⁷ The Order also makes other changes to teachers’ conditions, including to remove the requirement for schools to use performance-related pay as the statutory basis for all pay decisions. Consultees generally welcomed these changes.
16. Over recent years, consultees have criticised delays in the annual pay review process. DfE told us that the process for the 2025–26 award has already been initiated, some three months earlier than for the previous year. This aims to address the issue that schools do not know the pay award until after many should have finalised their budgets.
17. The STRB’s report contains a discussion about targeting pay to support recruitment and retention in subjects where there are teacher shortages. Several consultees expressed concerns about such an approach. For example, in a joint response, five teaching unions said that pay differentiation actually added to recruitment and retention problems. Other issues raised included possible unfairness, divisiveness, the risk of “unequal pay for equal value” and practical difficulties, such as where teachers are deployed across a range of subjects. The DfE has committed to further consideration of the issue, including “detailed sector engagement”.

7 HC Deb, 29 July 2024, [col 35WS](#).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft	Bail and Release from Custody (Scotland) Act 2023 (Consequential Modifications) Order 2024
Draft	Building Societies Act 1986 (Modifications) Order 2024
Draft	Collective Investment Schemes (Temporary Recognition) and Central Counterparties (Transitional Provision) (Amendment) Regulations 2024
Draft	Criminal Finances Act 2017 and Economic Crime and Corporate Transparency Act 2023 (Consequential Amendments) Regulations 2024
Draft	Judicial Pensions (Amendment) Regulations 2024
Draft	Terrorism Act 2000 (Alterations to the Search Powers Code for Northern Ireland) Order 2024
Draft	Trade Union and Labour Relations (Consolidation) Act 1992 (Amendment of Schedule A2) Order 2024
Draft	Voter Identification (Amendment of List of Specified Documents) Regulations 2024

Instruments subject to annulment

SI 2024/1011	Parole Board (Amendment) Rules 2024
SI 2024/1023	Child Trust Funds (Amendment) (No. 2) Regulations 2024
SI 2024/1024	Building Societies Act 1986 (Amendment of Small Business Turnover Limit) Order 2024
SI 2024/1028	Sea Fisheries (Amendment) (No. 2) Regulations 2024
SI 2024/1029	Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) (Amendment No. 2) Order 2024
SI 2024/1037	School Teachers' Pay and Conditions (England) Order 2024
SI 2024/1040	Magistrates' Courts (Conversion of Cryptoassets) Rules 2024
SI 2024/1041	Magistrates' Courts (Conversion of Terrorist Cryptoassets) Rules 2024
SI 2024/1042	Magistrates' Courts (Detention, Freezing and Forfeiture of Terrorist Cryptoassets, and Miscellaneous Amendments) Rules 2024
SI 2024/1043	Magistrates' Courts (Detention, Freezing and Forfeiture of Cryptoassets, and Miscellaneous Amendments) Rules 2024
SI 2024/1044	Employment Appeal Tribunal (Amendment) Rules 2024

APPENDIX 1: CORRESPONDENCE WITH THE LEADER OF THE HOUSE OF LORDS AND THE LEADER OF THE HOUSE OF COMMONS REGARDING THE ROLE OF THE HOUSE OF LORDS IN SCRUTINISING SECONDARY LEGISLATION

Letter from Lord Hunt of Wirral, Chair of the Secondary Legislation Scrutiny Committee to the Rt Hon. Baroness Smith of Basildon, Leader of the House of Lords and Lord Privy Seal, and the Rt Hon. Lucy Powell MP, Leader of the House of Commons on the role of the House of Lords in scrutinising Secondary Legislation

Congratulations on your appointments as Leaders of the House of Lords and Commons.

You will be aware that the Secondary Legislation Scrutiny Committee (SLSC), which I Chair, examines the policy merits of statutory instruments (and other types of secondary legislation) in order to draw Members' attention to those items which may be of interest to the House or are in some way flawed.

In order to do so we rely on receiving timely, high-quality explanatory material and cooperation from Ministers and Departments. Sadly, not all of the material provided in recent years has been up to scratch.

In November 2021 the Committee published a major report, *Government by Diktat: A call to return power to Parliament*.⁸ The Report issued a stark warning that the balance of power between Parliament and the government had for some time been shifting away from Parliament, and called for the balance to be re-set as a matter of urgency. The summary and conclusions of that report are attached to this letter.

Since the publication of that report we have, regrettably, continued to see examples of poor practices. These have been summarised in our End of Session reports. For example, in *What next? The Growing Imbalance between Parliament and the Executive: End of Session Report 2021–22*⁹ we highlighted failures to provide information on impact, inadequate consultation, poor quality explanations and the inappropriate use of guidance; and we returned to the issue of poor impact assessments in our report on the *Work of the Committee in Session 2022–23*.¹⁰

We should, however, note that we were pleased with the co-operation we received from one of your predecessors, the Rt Hon. Lord True CBE, who recognised the benefits to the House as well as to the public if the regulations Departments present for scrutiny are evidence-based and well explained. On 18 September 2023 I met the then-Leader of the House of Lords and he explained the work being done by the Cabinet Office to address our concerns, including strengthening the role of the Ministers within each Department who have a role in overseeing statutory instruments and the creation of the Steering Review Group, which, for example, implemented a simplified Explanatory Memorandum format that appears to be working well. I was also pleased to accept Lord True's invitation to a meeting of

8 SLSC, *Government by Diktat: A call to return power to Parliament* (20th Report, Session 2021–22, HL Paper 105).

9 SLSC, *What next? The Growing Imbalance between Parliament and the Executive: End of Session Report 2021–22* (38th Report, Session 2021–22, HL Paper 200).

10 SLSC, *Work of the Committee in Session 2022–23* (56th Report, Session 2022–23, HL Paper 264).

the previous Government's front bench in the Lords to discuss the significance of explanatory material presented with secondary legislation.

We draw these issues to your attention in the hope that we will not need to revisit the issues of the last Parliament, but rather move forward in the expectation that these concerns will be fully taken into account in the future preparation and presentation of secondary legislation.

We would be grateful to hear from you about how you see the role of the House of Lords in scrutinising secondary legislation, any steps you plan to take to ensure that both statutory instruments themselves and the material provided to Parliament for scrutiny continue to improve, and assurance that the Government's legislative programme will respect the Committee's concerns from the outset.

We would appreciate a response by 18 October. We look forward to working with you.

4 September 2024

Letter from the Rt Hon. Baroness Smith of Basildon, Leader of the House of Lords and Lord Privy Seal, and the Rt Hon. Lucy Powell MP, Leader of the House of Commons to Lord Hunt of Wirral, Chair of the Secondary Legislation Scrutiny Committee

Thank you for your letter and for congratulating us on our appointments. We look forward to continuing to work closely with you and the Committee on the vital role Parliament plays in the scrutiny of secondary legislation.

The House of Lords and your Committee play a particularly vital role in this process, with your reports informing high quality debate in both Houses. We are clear that the Government will work closely with Parliament to champion high standards and uphold best practice. As part of this, we agree that departments should provide high quality explanatory material alongside their secondary legislation and we are already taking steps to ensure meaningful improvements continue to be delivered.

With your reports in mind, our officials have begun to circulate regular summaries of your findings across Whitehall. We believe that these will provide a further opportunity for reflection and continuous improvement through sharing best practice and common themes. The PBL [Parliamentary Business and Legislation Committee] Secretariat will monitor common trends and look to support Whitehall to learn from them and improve practice.

We will be convening meetings of new SI [statutory instrument] Ministers to discuss the delivery of secondary legislation. We would welcome representation from your Committee at a portion of one of those meetings. Subject to your views, our offices will work with your Clerk to find a suitable time and date.

With regards to training, it is important that we continue to ensure that Whitehall receives opportunities to learn from best practice and improve capability. The PBL Secretariat and the Parliamentary Capability Team based in the Cabinet Office have been finalising a new programme of e-learning. This will be launched alongside the next series of the SI Capability Programme (monthly seminars on secondary legislation for civil servants) which is expected to start from the end of October. We understand that the Committee's advisers have previously presented

at these seminars, and supported other capability initiatives. We would warmly welcome their continued support.

Finally, we are grateful for your comments on the Secondary Legislation Steering Group. It is continuing to consider improvements in the delivery of secondary legislation and is currently considering reform of the free issue procedure, following a 2018 report by the Joint Committee on Statutory Instruments. We will update you as this progresses.

We are very much looking forward to working with you, and your Committee.

21 October 2024

APPENDIX 2: SEA FISHERIES (AMENDMENT) (NO. 2) REGULATIONS 2024 (SI 2024/1028)

Additional information from the Department for Environment, Food and Rural Affairs

Q1: Is there precedent for moving the catch limits from secondary legislation into Marine Management Organisation fishing licence conditions? For example, are other fishing limits/conditions managed through licenced conditions rather than secondary legislation?

A1: Fisheries licence conditions are routinely used to manage where and how vessels can fish and what they are allowed to catch and land. Since the UK left the EU, the annually negotiated UK/EU quota limits and allocations are directly applied into UK domestic licences for most stocks. For example, fishers in England eligible for the under 10 metre fishing quota limits are told each month how much they can catch from the quota pool and this is managed through licence variations.

In addition, the Sea Fisheries (Amendment etc.) Regulations 2021¹¹ removed technical measures in the Celtic Sea from secondary legislation which were then applied through licence conditions. In summary therefore, there are precedents.

Q2: Using secondary legislation of course means parliamentary oversight/scrutiny and also publicity and the ability of interested parties to submit evidence. Can interested parties provide evidence as part of the fishing negotiations between the UK and EU? Is there engagement with interested parties and how are the negotiations publicised, so that interested parties, including Parliament, can scrutinise the positions and contribute evidence/expertise?

A2: The commercial bass catch limits will continue to be updated in line with what is agreed at the annual EU/UK negotiations. Interested parties, including fisheries stakeholders, [environmental] eNGOs, and the devolved governments are engaged in the development of the UK positions and approach to the negotiations. Development of these positions is based on the best available scientific evidence, and this engagement commences upon receipt of the first tranche of that advice in June. Defra officials meet industry and eNGO stakeholders frequently, with a mix of broad monthly meetings and more frequent policy discussions targeted at specific issues. Defra's approach to the negotiations is taken in line with legislation including the Fisheries Act 2020 and Joint Fisheries Statement which were subject to Parliamentary scrutiny during their development.

Ministers sign off on mandates that set out what the negotiating teams for each of the negotiations are aiming to achieve. What has been agreed in negotiations is recorded in written records which are published on gov.uk.

Following the outcome of the negotiations, a written ministerial statement covering the outcomes is tabled and Defra writes to the relevant Parliamentary committees, in particular the Environment, Food and Rural Affairs Committee (EFRA). EFRA usually invites the Minister to an oral evidence session around February/March to cover the outcomes in detail and these arrangements are agreed with the relevant parliamentary team supporting those committees.

23 October 2024

¹¹ Sea Fisheries (Amendment etc.) Regulations 2021 ([SI 2021/698](#)).

APPENDIX 3: 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 29 October 2024, Members declared the following interests:

School Teachers' Pay and Conditions (England) Order 2024 (SI 2024/1037)

Baroness Harris of Richmond

Husband is a former teacher

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, Lord Thomas of Cwmgiedd and Lord Watson of Wyre Forest.