

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

12th Report of Session 2024–25

Drawn to the special attention of the House:

Advertising (Less Healthy Food Definitions and Exemptions) Regulations 2024

Includes information paragraphs on:

Draft Airports Slot Allocation (Alleviation of Usage Requirements etc.) Regulations 2025

Draft Register of Overseas Entities (Protection and Trusts) (Amendment) Regulations 2025

Draft Separation of Waste (England) Regulations 2025

Prison and Young Offender Institution (Interception of Communications) (Amendment) Rules 2024

Damages (Personal Injury) (England and Wales) Order 2024

Branded Health Service Medicines (Costs) (Amendment) Regulations 2024

Tribunal Procedure (Amendment No. 2) Rules 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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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/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.

Twelfth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Advertising (Less Healthy Food Definitions and Exemptions) Regulations 2024 (SI 2024/1266)

Date laid: 3 December 2024

Parliamentary procedure: negative

These Regulations define the products, businesses and services in scope of the restrictions on advertising less healthy food and drink on TV and online. The policy is aimed at tackling the childhood obesity crisis, by reducing children's exposure to advertising and therefore the likelihood of excess calorie consumption. The Explanatory Memorandum (EM) makes a strong case for intervention, which is expected to have a positive impact on the level of childhood obesity and on costs to the NHS.

*Whilst we welcome these Regulations, we regret that their introduction was subject to significant delay by the previous Government. We are also disappointed that the EM to these Regulations fails to explain fully how products will be determined to be 'less healthy', as well as 'identifiable' in advertisements, and therefore in scope of the advertising restrictions, which is the purpose of the Regulations. **The House may wish to seek further explanation from the Government on the determination of products and advertisements in scope, as well as assurances that this is fully understood by industry.***

We welcome the Government's recognition that childhood obesity is a complex issue for which there is no single solution. In its efforts to tackle the crisis, we urge the Government to take bold action and to include education for both children and their families as a key element.

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

1. The Health and Care Act 2022 made provision for a restriction on the advertising of less healthy food and drink products on TV, between 5:30am and 9:00pm (the "9pm watershed") and for a restriction on paid-for advertising online that applies at all times. These Regulations define the scope of those restrictions, including the products, businesses and services affected, giving practical effect to the provisions in the Health and Care Act 2022. The restrictions come into force on 1 October 2025.
2. The restrictions aim to tackle the 'childhood obesity crisis' and in the Explanatory Memorandum (EM), the Department of Health and Social Care (DHSC) explains that the objectives of the policy are two-fold: to reduce children's online exposure to advertising of less healthy food and drink on TV and online; and to encourage businesses to reformulate their products and help create a healthier food environment.

Policy rationale

3. The EM highlights the scale of the childhood obesity crisis. In the 2023/24 school year, almost 10% of four- to five-year-olds suffered with obesity, rising to almost 25% of ten- to 11-year-olds. Children with obesity are five times more likely to live with obesity in adulthood, and excess weight in childhood is associated with increased risk of type 2 diabetes, coronary heart disease, high blood pressure and some cancers in adulthood. The scale and health impacts of childhood obesity are stark, but the EM also makes an economic argument for tackling obesity: it costs the NHS £11.4 billion per year.
4. The DHSC sets out a strong, well-evidenced case in the EM for restrictions on advertising of less healthy food and drink. The DHSC states that evidence shows that exposure to advertising of less healthy products can affect what and when children eat, shaping their dietary preferences from a young age. The EM says it is estimated that in the UK, 6.4% of childhood obesity and 5% of childhood excess weight is attributable to the advertising of less healthy food and drink.
5. There are existing, non-statutory restrictions on advertising less healthy food and drink to children. The Advertising Standards Authority (ASA) enforces UK codes of advertising, which prohibit the advertising of less healthy products, described as ‘high in saturated fat, salt or sugar’ (HFSS), around TV programming commissioned for or likely to appeal to children, as well as non-broadcast media of obvious appeal to children, or where more than 25% of the audience is under 16 years old.
6. The DHSC says evidence shows that this audience threshold is often not met for the TV shows most watched by children, and that children are spending an increasing amount of time online, and that therefore, a broader set of advertising restrictions for less healthy food and drink products is necessary to reflect children’s media consumption. In supplementary material, the DHSC expanded on this evidence:

“Ofcom research shows that children’s viewing peaks in the hours after school, with the largest number of child viewers concentrated around family viewing time, between 6pm and 9pm. In this period children are watching programming not specifically aimed at them.

Although the TV set remains the home of broadcast TV, how children watch and what they watch is changing. As technology develops televisions can now be used to watch non-broadcast content, with many different video on demand (VoD) services competing for viewers, including broadcast on demand players (BVoDs) like All4 or ITV Hub, subscription video on demand providers (SVoDs) like Netflix, and video sharing platforms (VSPs) such as YouTube. In 2019, eight in ten children aged 5–15 (80%) watch some form of VoD content. By comparison, three-quarters of [children aged] 5–15 watch live broadcast TV, meaning a quarter do not watch live broadcast TV at all. [...]

Such has been the pace of change in children’s media use that Ofcom has found that children aged 12 to 15 now spend more time online than watching broadcast TV. Five to fifteen-year-olds are more likely to pick YouTube as their platform of choice over on-demand services such as Netflix, or TV channels including the BBC and ITV. [...]

Children aged 5–15 who use the internet spend more than 15 hours per week online, and online time has increased significantly in the last 10 years. For comparison, this is higher than television viewing on a television set, which averaged at 14 hours per week for 5–15-year-olds.”

Scope of the restrictions

7. The restrictions on TV advertising apply before the 9pm watershed to broadcast TV as well as to all on-demand programming services within the UK’s jurisdiction (and therefore regulated by Ofcom). The restrictions on online advertising apply on a 24-hour basis to paid-for advertising. This online restriction also includes on-demand programming services outside of the UK’s jurisdiction (and therefore not regulated by Ofcom). The restrictions will not apply to ‘owned media’ such as a brand’s website or social media channels.
8. Several services are exempt from the online advertising restrictions: audio services (such as podcasts, as the impact of these services on children’s exposure to advertising is unclear); Ofcom-regulated TV delivered live over the internet (to avoid double regulation, as these are captured by the TV broadcasting restriction); and non-Ofcom-regulated TV delivered live over the internet where the content is simultaneously available on a regulated platform. Broadcast radio is also not in scope of the policy.
9. In relation to the products in scope of the advertising restrictions, the EM makes a single reference to a ‘two-step’ approach for determining the products that are ‘less healthy’ but fails to provide any detail on how this will work. When we asked the DHSC to elaborate, it replied:

“Regulation 3 of the Advertising Regulations explains that the advertising restrictions will apply to identifiable less healthy food or drink products. There is a two-step approach for defining a ‘less healthy’ product as set out in regulation 3(1) of the instrument. It must both: a) fall within one of the product categories included in paragraphs 2 to 17 of the Schedule to the Advertising Regulations and b) score 4 or above for food, or 1 or above for drink when applying the 2004 to 2005 Nutrient Profiling Model (NPM)¹ using the 2011 Technical Guidance.²

A food or drink product may be included in paragraphs 2 to 17 of the Schedule but it will only be in scope of the advertising restrictions if the product is also deemed ‘less healthy’ when applying the NPM.

The categories included in the Schedule were identified as the categories of food or drink of most concern for childhood obesity and were decided on following extensive consultation. [...]

Whether or not an advert for a less healthy food or drink product is subject to the advertising restrictions ultimately depends on whether the product is ‘identifiable’ within the advertisement itself. This will

1 The NPM is a tool that uses a scoring system for seven nutrient/food components based on 100g of food or drinks ‘usually as sold’ to define whether a product is ‘healthier’ or ‘less healthy’. It was first developed by the Food Standards Agency in 2004–2005 to translate UK government dietary recommendations into a form Ofcom could apply to regulate advertising on children’s TV. It has since been adopted as the underpinning model for the Food (Promotion and Placement) (England) Regulations 2021 and the DHSC says it is widely used and understood by industry.

2 Department of Health, *Nutrient Profiling Technical Guidance* (January 2011): https://assets.publishing.service.gov.uk/media/5a7cdac7e5274a2c9a484867/dh_123492.pdf [accessed 12 December 2024].

be determined by the Advertising Standards Authority (ASA) as the frontline regulator and they will be publishing implementation guidance in due course.”

10. This two-step approach is key to understanding how the policy will work and how products will be determined to be in scope. **We therefore consider the omission of this explanation from the EM to mean it is incomplete in its explanation of the policy.**
11. Further, the EM makes no mention of the ASA’s role in determining whether products are ‘identifiable’ within advertisements or how it will do this, which appears to be the ultimate test as to whether adverts are subject to the restrictions. It is important that the meaning of ‘identifiable’ is clearly defined in the ASA’s guidance. We also note that for some less healthy food and drink, the strength of the brand means that the products themselves may not need to appear in advertisements in order for them to have an impression on children and their eating habits. There is a risk that brand advertisements would not be in scope of the restrictions which could undermine the policy intention. However, without the ASA’s guidance we cannot be assured on this point; we regret that the guidance has not been published at the time the instrument was laid. **The House may wish to seek further explanation from the Government on how the ASA will apply this determination and whether brand advertisements will be in scope, as well as assurances that the guidance will be published with sufficient time to allow industry to prepare.**
12. When the DHSC consulted on a draft of the Regulations, from December 2022 to March 2023, almost 50% of respondents (of which over half were businesses) felt the process for determining whether a product is in scope was unclear.³ In response, the Government committed to publishing further guidance on this process, which it has done.⁴ **The House may wish ask the Government how confident it is that the process for determining the products in scope of the restrictions is understood by industry.**
13. Whilst the EM does not fully explain what products are in scope of the policy, it does outline a number of product exemptions from the advertising restrictions, including: infant formula; baby food; follow-on formula and processed cereal-based foods for infants; total diet replacements for weight control products; meal replacement products with an approved health claim; and food for special medical purposes. According to the DHSC, these products are not intended to be subject to the advertising restrictions because “they are products intended for specific consumers in specific circumstances and do not contribute to childhood obesity”.

3 Department of Health and Social Care and Department for Culture, Media and Sport, ‘Introducing further advertising restrictions on TV and online for products high in fat, salt or sugar: government response to consultation on secondary legislation’: <https://www.gov.uk/government/consultations/introducing-further-advertising-restrictions-on-tv-and-online-for-products-high-in-fat-salt-or-sugar-secondary-legislation/outcome/introducing-further-advertising-restrictions-on-tv-and-online-for-products-high-in-fat-salt-or-sugar-government-response-to-consultation-on-secondar> [accessed 12 December 2024].

4 Department of Health and Social Care, ‘Restricting advertising of less healthy food or drink on TV and online: products in scope’: <https://www.gov.uk/government/publications/restricting-advertising-of-less-healthy-food-or-drink-on-tv-and-online-products-in-scope/restricting-advertising-of-less-healthy-food-or-drink-on-tv-and-online-products-in-scope> [accessed 12 December 2024].

Wider measures

14. The EM notes that “whilst there is clear evidence that the advertising restrictions will help to address childhood obesity, it is a complex issue for which there is no single solution”. It goes on to explain that the Regulations are intended to work alongside other measures, such as restrictions on location and volume price (multi-buy) promotions of HFSS products in certain businesses that sell food or drink in England.⁵ We also suggest that education should be a key component of any strategy to tackle childhood obesity, including teaching children to eat a balanced diet and cook nutritious food. Further, we note that for many cases of childhood obesity, excess weight may be a wider problem within the family. In such instances, education for adults is also important.

Delays to implementation

15. Whilst the rationale for intervention is clear, implementation of the policy has been subject to some delay. The restrictions were originally intended to come into force on 1 January 2023, but, in December 2022, the previous Government laid regulations to delay the implementation date to 1 October 2025, which the DHSC said was needed to give industry more time to prepare.⁶ At the time, we expressed concern about the impact of the delay which meant children would continue to be exposed to advertising of less healthy food and drink on TV and online for a further almost three years.⁷ **We therefore welcome that these Regulations have now been laid to ensure the restrictions will take effect from 1 October 2025.**
16. The implementation of related measures, such as the volume price (multi-buy) promotion restrictions, was also subject to delay under the previous Government. They were originally intended to take effect from 1 October 2022, but were delayed for three years via two statutory instruments.⁸ Again, we expressed concern about the impact of the delay on costs to the NHS and public health from increasing obesity levels.⁹ The volume price promotion restrictions will also take effect from 1 October 2025, aligning with the advertising restrictions and a common commencement date.

Impact

17. The EM outlines the expected impact of the advertising restrictions on childhood obesity: it is estimated to remove 7.2 billion calories from children’s diets per year and reduce the number of children living with obesity by 20,000. This will lead to wider benefits to society and the public sector, including £2 billion in health benefits due to fewer cases of obesity-linked diseases, £50 million in savings for the NHS and £40 million in savings for social care. Further, reduced premature mortality is estimated to deliver £119 million in additional economic output.
18. Whilst these impacts appear significant, it should be noted that these estimates are modelled based on an assumption of the policy being in place

5 Food (Promotion and Placement) (England) Regulations 2021 ([SI 2021/1368](#)).

6 Communications Act 2003 (Restrictions on the Advertising of Less Healthy Food) (Effective Date) (Amendment) Regulations 2022 ([SI 2022/1311](#)).

7 SLSC, [24th Report](#) (Session 2022–23, HL Paper 123).

8 Food (Promotion and Placement) (England) (Amendment) Regulations 2022 ([SI 2022/1007](#)) and Food (Promotion and Placement) (England) (Amendment) Regulations 2023 ([SI 2023/949](#)).

9 See SLSC, [15th Report](#) (Session 2022–23, HL Paper 82) and SLSC, [55th Report](#) (Session 2022–23, HL Paper 263).

for 25 years, but the benefits accruing over 100 years, as the impact of early childhood health habits are expected to sustain over the entire life course of the current cohort of children. We also note that the House of Lords Food, Diet and Obesity Committee heard evidence that the Government's impact assessment on the advertising restrictions may have downplayed the impact, meaning it could be greater than estimated.¹⁰

19. On the other hand, the policy will result in costs to businesses, estimated at £199 million per year. Over 25 years, advertisers are expected to forgo £659 million in returns to advertising spending.

Conclusion

20. Whilst we broadly welcome these Regulations, given the strong case for intervention and the positive impacts expected as a result, we regret that they have been subject to delay, alongside other measures to tackle the childhood obesity crisis. **We are also disappointed by the lack of explanation in the EM for determining the products and advertisements in scope of the Regulations, which is key to understanding how the policy will work.**
21. The Food, Diet and Obesity Committee also heard evidence that, as a result of these restrictions, advertising of less healthy food and drink may move elsewhere in response.¹¹ We are pleased to see that the Regulations include a statutory review clause requiring a review at least every five years. **We urge the Government to ensure this includes an assessment of whether other methods of advertising should be subject to restrictions to limit children's exposure to the advertising of less healthy food and drink.**
22. The Government's response to the Food, Diet and Obesity Committee's recent report is due in January 2025. Given the scale of the childhood (and adult) obesity crisis and the fact that no single measure is sufficient to tackle it, **we would welcome a comprehensive and bold response from the Government.**

¹⁰ Food, Diet and Obesity Committee, *Recipe for health: a plan to fix our broken food system* (Session 2024–25, HL Paper 19), paras 314–315.

¹¹ *Recipe for health: a plan to fix our broken food system*, para 317.

INSTRUMENTS OF INTEREST

Draft Airports Slot Allocation (Alleviation of Usage Requirements etc.) Regulations 2025

23. An airport “slot” is a permission to use all necessary airport infrastructure at a specified date and time for take-off or landing. These Regulations would make amendments to the rules for allocating slots at congested UK airports. First, they would amend the definition of a “new entrant carrier” from an airline which has fewer than five slots at an airport on a given day, to one which has fewer than seven. Airlines with a smaller presence at an airport benefit from greater priority in the allocation of slots; expanding the definition would mean more smaller airlines can benefit, which in turn is expected to increase competition. This change would also bring UK legislation in line with international guidelines which were updated in 2020. The Department for Transport consulted on this change in 2023, which it says “was the earliest opportunity to do so once the industry had begun to recover following the [COVID-19] pandemic”.
24. Second, currently, airlines must use 80% of their slots in the preceding winter or summer season to retain the same slots in the following season. An airline is not required to comply with this rule where it can demonstrate it was justified to not use slots; this is known as “slot alleviation”. Given significant disruption to aviation travel during the pandemic, slot alleviation was granted on a temporary basis to avoid airlines running empty flights to retain their existing slots. These Regulations would make available, on a permanent basis, slot alleviation in any future instances where there are Government-imposed measures relating to a pandemic, epidemic or other outbreak of disease, provided certain criteria are met. This includes that measures must ‘severely’ reduce passenger demand for travel, which would be a judgment made by the slot coordinator. This mirrors the approach taken during the pandemic, and 93% of respondents supported this permanent change during consultation.

Draft Register of Overseas Entities (Protection and Trusts) (Amendment) Regulations 2025

25. This instrument proposes to expand the category of individuals who can apply to Companies House to have their information protected where it may be disclosed under the Register of Overseas Entities (ROE). It would also allow trust information on the ROE that is currently restricted from public inspection to be accessed by application, if certain conditions are met.
26. The Department for Business and Trade explains that the ROE was established under the Economic Crime (Transparency and Enforcement) Act 2022 (“the Act”) to improve transparency regarding the beneficial ownership of overseas companies or other corporate entities holding land in the UK. The Act requires overseas entities that own or buy property in the UK to provide certain information to the ROE, including about their beneficial owners or managing officers, but the information may be protected where people are at serious risk of violence or intimidation. This instrument would enable anyone whose information could be published or disclosed to make an application for protection, not just a beneficial owner or managing officer.

27. While most information on overseas entities and beneficial owners is publicly available, the only information currently displayed publicly on the ROE in relation to a trust is the name of the beneficial owner who is a trustee. Other information may be disclosed to public bodies such as HM Revenue and Customs and law enforcement agencies. This instrument proposes a mechanism by which anyone can apply to the registrar for disclosure of trust information, but certain conditions are proposed for such disclosure applications, for example that someone making an application relating to more than one overseas entity would have to demonstrate that they have a legitimate interest.

Draft Separation of Waste (England) Regulations 2025

28. These draft Regulations propose to amend the recycling requirements for municipal waste that will be introduced between 31 March 2025 and 31 March 2027 under the ‘Simpler Recycling’ policy. According to the Department for Environment, Food and Rural Affairs (Defra), Simpler Recycling seeks to address the “fragmented and inconsistent approach” to kerbside waste collection and recycling across England by making recycling easier and ensuring there is a comprehensive, consistent service. Defra says that the aim is to increase both the quantity and quality of recyclable waste that is collected, including materials that are not yet collected widely, such as plastic films. The target is to achieve a household recycling rate of 55.9% by 2035, up from the current rate of 44–45% which has not increased since 2015.
29. The Environment Act 2021 introduced six recyclable waste streams that will need to be collected separately unless an exemption applies. The six waste streams are plastic, glass, metal, paper and card (“dry recyclable waste”), food waste and garden waste. This instrument proposes an exemption to allow local authorities to co-collect the plastic, metal and glass recyclable waste streams together, and the food and garden waste streams together, in the same container in all circumstances. According to Defra, the co-collection of these waste streams will not significantly affect the potential for those materials to be recycled or composted. By default, paper and card must be collected separately from other dry recyclable waste streams, however, unless separate collection is not technically or economically practicable, or provides no significant environmental benefit. The instrument also proposes to exempt micro-firms with fewer than ten staff from the recycling requirements until 31 March 2027.
30. The instrument replaces earlier draft affirmative Regulations which were laid by the previous Government in May 2024¹² but were not approved because of the General Election. The earlier Regulations were identical except that they would have allowed the co-collection of paper and card with other dry recyclable waste. Defra says that it has decided in favour of separate collection of paper and card because the material is “particularly vulnerable” to cross-contamination from food and liquid often found on other recycling waste which can reduce the quality of the collected material.
31. We received two short submissions. Whilst welcoming the separate collection of paper and card, British Glass called on local authorities to “not just take easy options” and continue with existing collection systems but to “take bold action

12 [Draft Separation of Waste \(England\) \(No. 2\) Regulations 2024](#), in SLSC, *1st Report* (Session 2024–25, HL Paper 3).

to increase the quality of collected packaging waste from households for the creation of a truly circular economy”. Wildlife and Countryside Link/Green Alliance asked how the Department will measure whether allowing combined waste collection will reduce recycling rates. In response, Defra said that local authorities were best placed to determine the effective delivery of local services and could still choose to collect recyclable waste streams separately, adding that it would monitor the success of Simpler Recycling and had commissioned an evaluation of its resources and waste policy programme. We have published the submissions and Defra’s response in full on our website.¹³

Prison and Young Offender Institution (Interception of Communications) (Amendment) Rules 2024 (SI 2024/1217)

32. This instrument allows prison staff to monitor the video, but not the sound, of prisoners’ discussions with a legal advisor or an approved ‘Confidential Access’ organisation that take place via a video call. This mirrors the arrangements for monitoring in-person meetings with the same representatives.
33. The Ministry of Justice (MoJ) states that the purpose of such monitoring is “to ensure safety, safeguarding and the welfare of all official meeting participants”, including to check that the prisoner is not in distress or being violent. **Participants must be authorised to be in such meetings, but we note that this is difficult to ensure in the context of a video call, because other people may be in the room but not on camera.** In response to our question on this, the MoJ said only that the Rules enable prison officers to “intermittently check the face of the person at the other end is the same person(s) authenticated at the beginning of the call” and to ‘lock’ the call so others cannot join after all participants have been authorised.
34. The MoJ also assured us that the monitoring can only take place in real time and that there will be no facility to intercept or record the audio, and that no material will be retained, so that retrospective observation will not be possible.

Damages (Personal Injury) (England and Wales) Order 2024 (SI 2024/1261)

35. This Order increases, from -0.25% to +0.5%, the interest rate used in England and Wales to calculate how much money should be paid in lump-sum compensation to people who have suffered life-changing injuries to cover their predicted future losses and care costs. The intention is that this interest (or ‘discount’) rate should not over- or under-compensate the victims. The rate is calculated by assessing the return that the recipient could reasonably be expected to achieve by investing the lump sum. The assessment was informed by a call for evidence¹⁴ and a report of an independent expert group.¹⁵ As when the rate was last changed,¹⁶ we commend the Ministry of Justice (MoJ) for a thorough and transparent approach to the re-calculation, although on future occasions it would be helpful for the Explanatory Memorandum to include HM Treasury’s opinion, as a statutory consultee.

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

14 Ministry of Justice, ‘Setting the Personal Injury Discount Rate’ (2 December 2024): <https://www.gov.uk/government/calls-for-evidence/setting-the-personal-injury-discount-rate> [accessed 9 December 2024].

15 Expert Panel, *Review of the Personal Injury Discount Rate* (25 September 2024): https://assets.publishing.service.gov.uk/media/67502d5e0b3e68dfc448c835/Expert_Panel_report_to_the_Lord_Chancellor_and_annexure_GAD_advice_to_EP.pdf [accessed 9 December 2024].

16 SLSC, *58th Report* (Session 2017–19, HL Paper 415).

36. The increase in the discount rate will reduce the amount of upfront compensation required to meet future costs. An Impact Assessment for the Order estimates, as a result, there will be per annum savings for the NHS of around £200 million, and for insurance companies of around £150 million. The MoJ states that it assumes “in an open and competitive market insurance companies will pass on most of the savings [...] onto consumers in the form of lower insurance premiums”. One press report suggested that this may lead to a decrease in motor insurance premiums of around £50 on average.¹⁷
37. We also note that the change brings into line discount rates throughout the UK, as those applicable in Scotland and Northern Ireland were both changed to +0.5% in September 2024 (from -0.75% in Scotland and from -1.5% in Northern Ireland).

Branded Health Service Medicines (Costs) (Amendment) Regulations 2024 (SI 2024/1277)

38. The cost of branded medicines to the NHS is controlled by a statutory scheme and a voluntary scheme which both require suppliers to pay back a set percentage of their sales to the NHS. Pharmaceutical firms representing 98% of medicines sold to the NHS have signed up to the voluntary scheme, the remainder default to the statutory scheme. The Government aims to maintain broad commercial equivalence (BCE) between the two schemes to ensure they work together effectively to control the cost of branded medicines.
39. From 1 January 2024, the voluntary scheme introduced differentiated payment percentages for newer and older medicines. To maintain BCE, these Regulations amend the statutory scheme in a similar way, as well as updating the payment percentages. In the statutory scheme, older medicines that have observed a price decline of less than 35% will incur an additional payment percentage. This will result in higher payment rates for older medicines that have not seen a significant price decline, and lower payment rates for newer medicines and older medicines which have seen significant price reductions in competitive markets. This reflects the Government’s concern that for many older medicines, post-patent competition from unbranded medicines is not delivering the expected level of savings. The changes to the statutory scheme will reduce expected NHS funding from branded medicines by between £34–£49 million, to an estimated £164–£183 million over three years. The Department of Health and Social Care (DHSC) says this short-term impact is balanced against the need for long-term stability of the mechanisms to control the cost of branded medicines and support patient access to them.
40. The current voluntary scheme was negotiated between the Government and industry in 2023. We note with interest that the voluntary scheme is significantly more important than the statutory one, as it covers the vast majority of branded medicines used by the NHS and appears to drive changes to the statutory scheme, but that there is no Parliamentary oversight for changes to the voluntary scheme. The DHSC told us the voluntary scheme is negotiated between the DHSC, NHS England and the Association of the British Pharmaceutical Industry, and is governed by a biannual operational review process, the minutes of which are available online.¹⁸

17 Insurance Age, ‘Industry reacts to discount rate change’ (2 December 2024): <https://www.insuranceage.co.uk/insight/7955782/industry-reacts-to-discount-rate-change> [accessed 9 December 2024].

18 Department of Health and Social Care, ‘The 2024 VPAG operational review minutes’: <https://www.gov.uk/government/collections/the-2024-vpag-operational-review-minutes> [accessed 12 December 2024].

Tribunal Procedure (Amendment No. 2) Rules 2024 (SI 2024/1283)

41. Amongst these changes to procedures in the First-tier and Upper Tribunals is a measure to allow the Health, Education and Social Care Chamber to consider proceedings relating to mental health without a hearing where they refer to patients detained in hospital. The intention is to provide hospital-based patients with the same rights as community patients, to elect that their Tribunal cases may be decided ‘on the papers’. The changes will only apply to patients aged 18 or over who have capacity to decide and have stated (or a representative has stated) in writing that they do not wish to attend or be represented at a hearing.
42. A majority of respondents to a consultation opposed this measure, citing reasons such as that it would result in less scrutiny and was aimed at making more efficient use of resources rather than being in the patient’s best interests. However, the Tribunal Procedure Committee has decided to go ahead, stating that the change provides patients with greater choice, would only apply to where patients had capacity and were legally represented, and that the Tribunal retained powers to require further information and to order a hearing if considered necessary.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft	Airports Slot Allocation (Alleviation of Usage Requirements etc.) Regulations 2025
Draft	Armed Forces (Court Martial) (Amendment No. 2) Rules 2024
Draft	Greater Lincolnshire Combined County Authority Regulations 2025
Draft	Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2025
Draft	Procurement Act 2023 (Consequential and Other Amendments) Regulations 2025
Draft	Register of Overseas Entities (Protection and Trusts) (Amendment) Regulations 2025
Draft	Separation of Waste (England) Regulations 2025

Draft instruments subject to annulment

Draft	Games Rating Authority Proposal for Designation of the Appointment of a New Chair
Draft	Canterbury (Electoral Changes) Order 2025
Draft	Thurrock (Electoral Changes) Order 2025
Draft	Walsall (Electoral Changes) Order 2025

Made instruments subject to annulment

SI 2024/1155	Employment Tribunal Procedure Rules 2024
SI 2024/1156	Employment Tribunals (Procedure Rules) (Consequential Amendments) Regulations 2024
SI 2024/1217	Prison and Young Offender Institution (Interception of Communications) (Amendment) Rules 2024
SI 2024/1257	National Security Act 2023 (Prohibited Place) Regulations 2024
SI 2024/1261	Damages (Personal Injury) (England and Wales) Order 2024
SI 2024/1267	Markets in Financial Instruments (Equivalence) (Singapore) Regulations 2024
SI 2024/1270	Criminal Legal Aid (Remuneration) (Amendment) (No. 2) Regulations 2024
SI 2024/1271	Voter Identification (Principal Area, Parish and Greater London Authority Elections) (Amendment) Rules 2024
SI 2024/1276	Greater London Authority (Consolidated Council Tax Requirement Procedure) Regulations 2024

- SI 2024/1277 Branded Health Service Medicines (Costs) (Amendment) Regulations 2024
- SI 2024/1279 Tuberculosis (Non-bovine animals) Slaughter and Compensation (England) (Amendment) Order 2024
- SI 2024/1281 International Waste Shipments (Amendment) Regulations 2024
- SI 2024/1283 Tribunal Procedure (Amendment No. 2) Rules 2024
- SI 2024/1285 First-tier Tribunal and Upper Tribunal (Chambers) (Amendment No. 2) Order 2024
- SI 2024/1293 Aviation Security (Amendment) (No. 2) Regulations 2024
- SI 2024/1309 Housing (Right to Buy or Acquire) (Designated Rural Areas etc.) (England) Order 2024

APPENDIX 1: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://members.parliament.uk/members/lords/interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 17 December 2024, Members declared the following interests:

Damages (Personal Injury) (England and Wales) Order 2024 (SI 2024/1261)

Lord Hunt of Wirral

Practising Solicitor and Partner at DAC Beachcroft LLP, an international commercial law firm which deals with some personal injury cases.

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.