



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Government response to parliamentary scrutiny of statutory instruments

**Third Special Report of Session
2017–19**

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Joint Committee on Statutory Instruments

Current membership

House of Lords

[Baroness Bloomfield of Hinton Waldrist](#) (*Conservative*)

[Lord Lexden](#) (*Conservative*)

[Baroness Meacher](#) (*Crossbench*)

[Lord Morris of Handsworth](#) (*Labour*)

[Lord Rowe-Beedoe](#) (*Crossbench*)

[Lord Rowlands](#) (*Labour*)

[Baroness Scott of Needham Market](#) (*Liberal Democrat*)

House of Commons

[Jessica Morden MP](#) (*Labour, Newport East*) (Chair)

[Dan Carden MP](#) (*Labour, Liverpool, Walton*)

[Vicky Foxcroft MP](#) (*Labour, Lewisham, Deptford*)

[Patrick Grady MP](#) (*Scottish National Party, Glasgow North*)

[John Lamont MP](#) (*Conservative, Berwickshire, Roxburgh and Selkirk*)

[Julia Lopez MP](#) (*Conservative, Hornchurch and Upminster*)

[Sir Robert Syms MP](#) (*Conservative, Poole*)

Powers

The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 151 and House of Lords Standing Order No. 73, available on the Internet via www.parliament.uk/jcsi.

Remit

The Joint Committee on Statutory Instruments (JCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are not considered by JCSI unless they are required to be laid before Parliament.

The role of the JCSI, whose membership is drawn from both Houses of Parliament, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of each House to any instrument on one or more of the following grounds:

- i that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;
- ii that its parent legislation says that it cannot be challenged in the courts;
- iii that it appears to have retrospective effect without the express authority of the parent legislation;
- iv that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;

- v that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;
- vi that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;
- vii that its form or meaning needs to be explained;
- viii that its drafting appears to be defective;
- ix any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

Publications

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The reports of the Committee are published by Order of both Houses. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

Committee staff

The current staff of the Committee are Jeanne Delebarre (Commons Clerk), Jane White (Lords Clerk) and Liz Booth (Committee Assistant). Advisory Counsel: Daniel Greenberg, Klara Banaszak, Peter Brooksbank, Philip Davies and Vanessa MacNair (Commons); James Cooper, Nicholas Beach, John Crane and Ché Diamond (Lords).

Contacts

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Contents

Government response to parliamentary scrutiny of statutory instruments	3
Government response to our Reports	3
Conclusion	4

Government response to parliamentary scrutiny of statutory instruments

1. We are publishing this Special Report to highlight the impact of our parliamentary scrutiny of 144 statutory instruments considered in the Session 2017–19 so far and reported across 48 Reports.
2. Under the House of Commons Standing Order No. 151 and the House of Lords Standing Order No. 73, we report weekly on statutory instruments that fall within our remit. These include statutory instruments made¹ in exercise of powers conferred by an Act of Parliament and subject to parliamentary proceedings, and general statutory instruments not laid² before Parliament. They do not include most local instruments and most instruments made by devolved administrations.
3. The Committee is empowered to draw the special attention of the two Houses to an instrument on any one of the grounds specified in the Standing Orders or on any other ground so long as it does not impinge upon the merits of the instrument or the policy behind it. (Other parliamentary committees are responsible for scrutiny of the policy aspects of instruments.)
4. The Government's responses to the questions we raise can be found in the explanatory memoranda published as appendices to our Reports. In this Special Report, we set out a statistical breakdown of the impact our scrutiny has had so far in this Session.

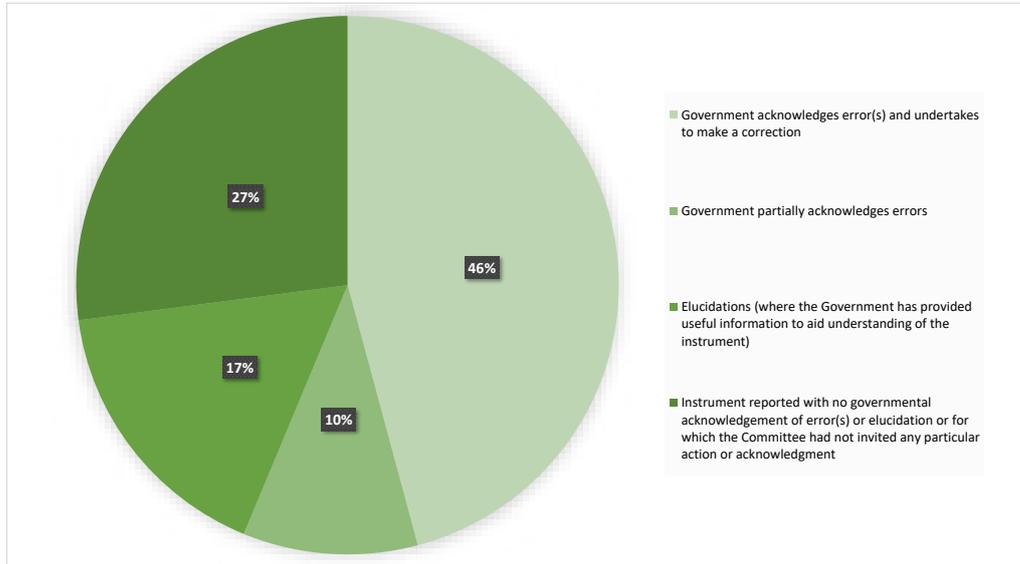
Government response to our Reports

5. Our analysis (see Picture 1 below) shows that, for the majority—73%—of instruments reported on during the Session so far, the Government has acted, in some form or other, in response to the issues we have raised. The Government acknowledged the errors in 46% of the instruments reported and in almost all of these cases undertook to correct the errors. In 10% of the instruments reported, the Government acknowledged at least one error (in most of these cases the instruments were reported on more than one ground). In 17% of the instruments reported, the Government provided useful additional information to aid understanding, and the instrument was therefore reported for elucidation.
6. Of the remaining 27% of instruments reported, not all are instances where the Government has ignored a recommendation. They include, for example, instances where we have not invited any action or acknowledgment by the Government (as in late-laying cases, for example). Furthermore, where a Report includes criticism, inclusion in the 27% does not necessarily mean that a Department has not taken the issues raised by the Committee into account. For example, it may mean that the Department:
 - has not yet decided what, if any, action to take but has undertaken to consider the issue further;

1 A statutory instrument is made when it has been signed and any other necessary formalities have been completed (for example, consent or concurrence of the Treasury or other persons).

2 The purpose of laying a paper before Parliament is to make the information contained in the document available to Members of Parliament and Peers.

- has acknowledged that the provision in question could have been expressed more clearly but does not think the interpretation of the instrument is affected;
- does not think, on further consideration, that the risk we pointed out is a significant one.



Picture 1. Breakdown of Government response to instruments reported by the Joint Committee on Statutory Instruments in the Session 2017–19 across 48 Reports

Conclusion

7. Although we have a duty under Standing Orders to scrutinise every statutory instrument within our remit, our recommendations are advisory only and the Government is not under an obligation to comply with them. It is clear from this analysis, however, that the Committee’s scrutiny has had a positive and substantial impact on secondary legislation so far this Session. We will continue to apply the same rigorous standards notwithstanding the higher volume of instruments laid as a result of the decision to withdraw from the European Union.

8. That said, while we are pleased to report that the Government has acted in response to a majority of the instruments reported by the Committee, there is room for improvement. We look to the Government to ensure that there are no instances where a recommendation is simply ignored, and we remind the Government that the Committee, and the Houses, expect Ministers, during debates on instruments, to respond to any issues raised by the Committee. This is so that members of each House have the opportunity to challenge the Government about them.