

# HOUSE OF LORDS

## Procedure Committee

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5th Report of Session 2013–14

Secondary Legislation Scrutiny Committee  
Written Answers and Statements  
Select Committee Membership  
Maiden Speeches in Hansard

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### *The Procedure Committee*

The Select Committee on Procedure of the House is appointed each session to consider any proposals for alterations in the procedure of the House that may arise from time to time, and whether the standing orders require to be amended.

### *Current Membership*

The members of the Procedure Committee are:

Baroness Anelay of St Johns  
Lord Bassam of Brighton  
Lord Blencathra  
Lord Butler of Brockwell  
Lord Campbell-Savours  
Baroness D'Souza (Lord Speaker)  
Lord Hill of Oareford  
Baroness Hollis of Heigham  
Lord Laming  
Baroness McIntosh of Hudnall  
Lord Newby  
Lord Patel  
Lord Roper  
Baroness Royall of Blaisdon  
Lord Sewel (Chairman)  
Baroness Thomas of Winchester  
Viscount Ullswater  
Lord Wakeham  
Lord Wallace of Tankerness

Alternate members:

Viscount Craigavon  
Baroness Hamwee  
Viscount Montgomery of Alamein  
Lord True

### *General Information*

General information about the House of Lords and its Committees is on the internet at <http://www.parliament.uk/lords/index.cfm>.

### *Contacts for the Procedure Committee*

All correspondence should be addressed to the Clerk to the Procedure Committee, House of Lords, London, SW1A 0PW. The telephone number for enquiries regarding the Committee's work is 020 7219 8796.

## 5TH REPORT OF SESSION 2013–14 FROM THE PROCEDURE COMMITTEE

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### Secondary Legislation Scrutiny Committee

1. We have considered a submission by the Secondary Legislation Scrutiny Committee. The text of the submission is given in an appendix to this Report. We agree with two of its proposals to add new grounds for the Committee to report instruments to the House.
2. **We recommend that the terms of reference of the Secondary Legislation Scrutiny Committee be amended to add two new grounds on which that Committee may draw the special attention of the House to a statutory instrument. These two new grounds are:**
  - (e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation;
  - (f) that there appear to be inadequacies in the consultation process which relates to the instrument.

### Written Answers and Statements

3. A bicameral project is nearing completion to develop an ICT application to allow electronic exchange of questions for written answer, their associated answers, and written ministerial statements between both Houses of Parliament and government departments. The new question and answer (Q&A) system will automatically publish all questions and answers on the parliament website. The new system will allow answering bodies to include attachments with their answers, containing tabular, graphic or illustrative material such as diagrams or maps, which cannot be printed in Hansard. At present such materials, when submitted along with written answers, are placed in the Library; in future they will be published immediately, alongside the substantive answers to which they relate, on the parliamentary website (members who wish to see hardcopies of the attachments will be able to ask the Library to print out those attachments from the Q&A system). The digital copy of answers will be the definitive record copy, but a printed version will continue to be published, and in addition the Leader of the House has asked Lords ministers to continue sending printed and signed versions of answers to all Lords members.
4. In order to ensure that the benefits of the new system are maximised we have considered what additional guidance is required about the format and general content of written answers to questions, taking account of the fact that the substantive answer to a question remains the responsibility of the relevant minister and is not a matter of procedure.
5. **We propose that the following rules should govern the content of written answers submitted using the new electronic Q&A system:**
  - **Only substantive answers to questions are admissible. Except where due to shortage of time answers cannot be prepared in response to questions tabled within five working days of the end of a Session, holding answers are not permitted.** (This replicates existing practice).

- **Answers should not exceed 500 words, though the Editor of Debates has discretion to exceed this in exceptional cases.** (This equates to the current limit on written answers of two column lengths).
- **Answers should be complete and comprehensible and should not rely on references to external documents or web pages.** (This replicates existing practice).
- **Up to three electronic attachments can be included with any answer. In the interests of long-term accessibility, supporting documents should be included as attachments, rather than by means of hyperlinks (which may break in the future). Electronic attachments will be published on the parliamentary website but will not be printed in Hansard (the Library will print attachments on demand).**
- **Electronic attachments should be referred to in the substantive answer so that readers of hard copy know that they exist. A note indicating where readers can find the additional material will be inserted in the printed text of Hansard.**
- **Tables will be printed only if submitted in such formats as are approved from time to time by the Editor of Debates. Tables not in approved formats can be included as one of the electronic attachments.**
- **Visual material such as graphs, charts or maps may be included in an electronic attachment.**

### Select Committee Membership

6. The rotation rule sets out the number of sessions for which members may serve on a select committee before they may not be reappointed in the following session. In 2005–06 the House increased the rotation length for all committees other than the House Committee from three to four sessions. That decision was made at a time when the membership of the House was less active and when fewer members sought to serve on committees. Since then, the average daily attendance of the House has risen, with increasing numbers of members keen to take part in select committee work.
7. We believe there is a strong case for bringing the rotation rule back to its original length of three years. We propose that the rule be applied to all select committees including the European Union Committee as a whole. It would be in keeping with the spirit of the rotation rule, and the objective of broadening participation, for a member to be able to serve only for a total of three sessions across all EU sub-committees before then having to wait for a period before becoming eligible to serve on those committees again.
8. **We recommend that from the end of the 2014–15 session the rotation rule for all select committees other than the House Committee should be three sessions. The rotation rule should apply to the European Union Committee as a whole. The rule would apply retrospectively to members appointed before 2014–15.**
9. **We recommend that the House Committee should also move to a three-session rotation from its current five-session rule. To avoid a sudden loss of many members by reducing the length of service by**

**two sessions at once we recommend that this change be implemented incrementally so that members who have served four sessions rotate off the House Committee at the end of the 2014–15 session and after that the three-session rule applies.**

10. **These recommendations are based on the assumption that most sessions will last approximately 12 months. If any future session was to last for a significantly longer or shorter period then the Committee of Selection should be asked to consider whether any ad hoc adjustments should be made to the operation of the rotation rule.**
11. We also considered other methods of maximising opportunities to serve on select committees including how to discourage reappointment of the same members to the same committees and how to discourage the same members being appointed to multiple committees.
12. **We propose that, from the end of the 2014–15 session, members who leave a committee under the rotation rule should only be eligible for reappointment to the same committee, or any of its sub-committees, after the lapse of two full sessions. This would apply retrospectively to members who left committees at the end of the 2013–14 session**
13. **We further recommend that it be set out in the Companion that it is desirable for a member to serve on only one sessional investigative select committee at any one time.**
14. If these recommendations are agreed to then the Companion would be amended to read:

“11.09 There is no formal rule on the political balance of committee membership, and in most cases no fixed number of committee members. It is desirable for a member to serve on only one sessional investigative select committee at any one time.”

“11.11 In order to secure a regular turnover of membership, a ‘rotation rule’ operates in the case of most committees, whereby members who have been appointed (or co-opted) for three successive sessions (or parts of sessions) may not be reappointed in the following two sessions. The three sessions may be extended to allow a member appointed as Chairman a three-session term as Chairman. Select committees apply the rotation rule to their sub-committees.”
15. The revised version of paragraph 11.11 would subsume existing paragraph 11.13.

### **Maiden Speeches in Hansard**

16. **We recommend that from the start of the 2014–15 session maiden speeches should be marked in Hansard.**

## APPENDIX

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### Submission to the Procedure Committee proposing amendments to the terms of reference of the Secondary Legislation Scrutiny Committee

The Committee invites the Procedure Committee to amend the grounds on which the Secondary Legislation Scrutiny Committee may draw the special attention of the House to a statutory instrument, so that:

- ground (a) is amended to read: “(a) that it is politically or legally important or relates to issues of public policy likely to be of interest to the House”;
- new ground (e) is added: “(e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation”;
- new ground (f) is added: “(f) that there appear to be inadequacies in the consultation process which relates to the instrument”.

#### *Current terms of reference*

The Committee’s terms of reference provide that it may bring an instrument to the special attention of the House on one or more of the following grounds:

- (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
- (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
- (c) that it may inappropriately implement European Union legislation;
- (d) that it may imperfectly achieve its policy objectives.

These are essentially the same grounds for reporting as those specified for the Committee when it was first established in 2003 (as the Select Committee on the Merits of Statutory Instruments).

#### *Proposed amendments*

In the light of our experience of scrutiny, we would like to propose the following amendments to the Committee’s grounds for reporting.

#### **Change to ground “(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House”**

Secondary legislation is frequently of considerable interest to House (such as the detail of new legal provision). However, since, in principle, its purpose is to implement policy which has been set out in a parent Act, it seems to us inaccurate to indicate that such legislation may “give rise to issues of public policy”. We propose that the ground be amended by substituting the words “gives rise” with the word “relates”. The amended ground would be as follows:

- “(a) that it is politically or legally important or relates to issues of public policy likely to be of interest to the House”.

**Proposed new ground: (e) “that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation”**

In our 35th Report of Session 2012–13, we voiced concern about the quality of the supporting explanatory information provided by the Government when instruments were laid before Parliament. A clear and complete Explanatory Memorandum (EM) is essential if we are to scrutinise secondary legislation effectively and to time. Towards the end of the Session, we found it necessary, on an increasing number of occasions, to seek supplementary information from Departments and publish it in one of our reports to ensure that the House was fully informed about an instrument. In our end-of-session report for 2012–13, we put Departments on notice that in 2013–14 we would require all inadequate EMs to be revised and re-laid. We have requested this in the case of some 5% of all EMs laid so far this Session.

If the Committee’s grounds for reporting were expanded to include the proposed new ground set out above, it would demonstrate to Departments the strength of the Committee’s concern and, all being well, improve the quality of EMs and reduce the number of occasions on which they had to be re-laid. The Committee would use the ground with discrimination and only in cases where significant information was missing. These would have included, for example, the explanatory material accompanying the Jobseeker’s Allowance which did not provide information about the projected costs and benefits of the proposal, and the Criminal Legal Aid (General) (Amendment) Regulations 2013 (SI 2013/2790) where the original EM did not make clear which services were being withdrawn from prisoners.

**Proposed new ground: (f) “that there appear to be inadequacies in the consultation process which relates to the instrument”**

The response to public consultation has always been a vital part of the information used in the Committee’s scrutiny of secondary legislation. It may, for example, indicate problems with the implementation of a piece of secondary legislation. This was the case with regard to the secondary legislation on Home Information Packs under the previous Government. More recently, the Committee was alerted to issues relating to NHS procurement regulations by the large number (2,200) of submissions from the public sent directly to the Committee.

Departments are required to provide information about consultation exercises as part of the explanatory material accompanying an instrument. Where this is either missing or inadequately expressed, the proposed new ground (e) (above) would apply. The purpose of proposed new ground (f) is to draw attention to instruments where the quality and timing of a Department’s consultation exercise is found wanting. Since the summer of 2012, we have been in correspondence with the Minister for Government Policy in the Cabinet Office, the Rt Hon. Oliver Letwin MP, about a change in the Government’s approach to consultation which has involved the reduction of the length of consultation exercises. We published a report of an inquiry into this in January 2013 (22nd Report, Session 2012–13), and we continue to highlight examples of good and bad practice in our weekly reports. We remain concerned about the implications of the Government’s new approach to consultation. We are suggesting new ground (f) in order to strengthen this strand of our scrutiny and to reinforce the Committee’s concern to see effective consultation.