

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

26th Report of Session 2017–19

**Draft Dorset (Structural Changes)
(Modification of the Local Government
and Public Involvement in Health Act 2007)
Regulations 2018, and one
related instrument**

**Draft Somerset West and Taunton
(Local Government Changes) Order 2018,
and one related instrument**

**Interim report on the Work of the Committee in
Session 2017–19**

**Correspondence: Education (Student Support)
Regulations 2018**

Includes 5 Information Paragraphs on 7 Instruments

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Secondary Legislation Scrutiny Committee

The Committee was established on 17 December 2003 as the Merits of Statutory Instruments Committee. It was renamed in 2012 to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee's terms of reference are set out in full on the website but are, broadly, 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 these specified 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;

(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.

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

Baroness Blackstone	Lord Haskel	Lord Sherbourne of Didsbury
Lord Faulkner of Worcester	Rt Hon. Lord Janvrin	Rt Hon. Lord Trefgarne (Chairman)
Baroness Finn	Lord Kirkwood of Kirkhope	Baroness Watkins of Tavistock
Lord Goddard of Stockport	Baroness O'Loan	

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 www.parliament.uk/seclegpublications

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/uksi>

Information and 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 hseclegscrutiny@parliament.uk.

Twenty Sixth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Dorset (Structural Changes) (Modification of the Local Government and Public Involvement in Health Act 2007) Regulations 2018

Draft Bournemouth, Dorset and Poole (Structural Changes) Order 2018

Summary: These instruments provide for the reorganisation of local government in Dorset. In place of the existing nine councils, there would in future be only two: a single council for the areas of Bournemouth, Poole and the part of the county of Dorset currently comprising the Borough of Christchurch, and a separate, single council for the remainder of the Dorset county area.

Christchurch Borough Council has opposed the changes since they were first mooted in early 2017, and in December 2017 held a local advisory poll in which 84% (numbering 17,676 votes) of those taking part voted “no” to the changes.

The Committee notes the scale of opposition to the proposal expressed both by Christchurch Borough Council and by its residents. The Ministry of Housing, Communities and Local Government has told us that Ministers intend to apply the criteria for local government restructuring “in the round” for the area subject to reorganisation, rather than considering whether the criteria would be met in relation to each individual council area.

We draw these instruments to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.

1. In the Explanatory Memorandum (EM) accompanying these two instruments, the Ministry of Housing, Communities and Local Government (MHCLG) says that, in the Dorset area, there are currently two small unitary councils, Bournemouth and Poole, which are surrounded by a two-tier structure made up of Dorset County Council and the district councils of Christchurch, East Dorset, North Dorset, Purbeck, West Dorset, and Weymouth and Portland – a total of nine existing councils. The proposal to which these instruments would give effect is that there should in future be only two councils, rather than nine: a single council for the areas of Bournemouth, Poole and the part of the county of Dorset currently comprising the Borough of Christchurch, and a separate, single council for the remainder of the Dorset county area.
2. MHCLG explains that the nine existing councils developed and consulted on the proposal to reorganise local government in their area. Six of the councils (Bournemouth Borough Council, Dorset County Council, North Dorset District Council, Poole Borough Council, West Dorset District Council, and Weymouth and Portland Borough Council) submitted the proposal to the Secretary of State on 9 February 2017. Christchurch Borough Council (“Christchurch BC”), East Dorset District Council (“East Dorset DC”) and Purbeck District Council (“Purbeck DC”) did not support the proposal.

3. On 7 November 2017, the Secretary of State announced that he was “minded to” implement the proposal. This was followed by a period until 8 January 2018 for interested parties to make representations. During this period, East Dorset DC made representations supporting the proposal, while Purbeck DC withdrew its opposition. However, Christchurch BC remains in opposition to the proposal.
4. MHCLG says that the establishment of the two new councils across Dorset would improve the sustainability of the services currently carried out by the existing councils. Estimated savings over the first six years would be at least £108 million, but there is the potential to save over £170 million over that period if a full transformation programme could be achieved.

Consultation

5. In section 8 of the EM, MHCLG gives a good deal of information about the consultation processes followed both by the councils and by the Secretary of State. The councils held a consultation from 30 August to 25 October 2016. This included a representative household survey based upon 20,000 randomly selected households. 73% of those responding to the survey agreed with the proposal to replace the nine existing councils with two new councils, with 65% supporting the two-council approach in the proposal embodied in these instruments.¹
6. During the period for representations, between November 2017 and January 2018, MHCLG says that 210 were received from members of the public, local councillors, businesses and community organisations; and that these were split, with 96 representations in favour of the proposal, 12 neutral and 99 opposed (three representations were received which did not express views about the proposal). In parallel, Christchurch BC held a local advisory poll, declaring the result on 14 December 2017. The poll had a 54% turnout: 84% (numbering 17,676 votes) of those taking part voted “no” to the question “Do you support the current proposal for a single Council covering Christchurch, Bournemouth and Poole?”² Following the results of this poll, Christchurch BC made a representation to the Secretary of State containing an alternative proposal³ which the Secretary of State did not consider to be implementable.
7. The Government have set out the criteria against which proposals to merge local authorities are to be considered.⁴ These are that a proposal is likely to improve local government in the area, commands local support, and comprises a merged area with a credible geography. In this case, MHCLG says that, having had regard to all the evidence - the proposal, the representations received, the Christchurch advisory poll (which related to 6% of the total area population), representations about the poll, and all information available to him - the Secretary of State is satisfied that “in the round”⁵ across the Dorset area the criteria for local government reorganisation are met.

1 Opinion Research Services (ORS), acting for the councils, published the findings of this consultation in December 2016. See: https://www.dorsetforyou.gov.uk/media/218499/Full-report-final-2016/pdf/2016_12_05b_Full_Report_FINAL.compressed.pdf [accessed 25 April 2018].

2 See: https://www.dorsetforyou.gov.uk/media/224179/Declaration-of-result-of-local-poll/pdf/Declaration_of_result_of_local_poll.pdf [accessed 25 April 2018].

3 Dorset for you, *Christchurch Borough Council makes representation to the Secretary of State*, 5 January 2018: <https://news.dorsetforyou.gov.uk/2018/01/05/christchurch-council-makes-representation/> [accessed 25 April 2018].

4 Commons Written Statement, 7 November 2017, [HCWS232](#).

5 See paragraph 4.9 of the report laid by the Secretary of State under Section 15 (subsections (12) and (13)) of the Cities and Local Government Devolution Act 2016: https://www.legislation.gov.uk/ukdsi/2018/9780111168141/pdfs/ukdsiod_9780111168141_en.pdf [accessed 25 April 2018].

Conclusions

8. We put several questions to MHCLG about the proposal and local reaction to it, and we are publishing the Ministry's answers at Appendix 1.
9. As already noted, three of the nine councils affected by the proposal did not support the proposal originally submitted in February 2017. MHCLG has told us that, of these, East Dorset DC has stated that "the council now accepts the [Secretary of State's] decision, and works towards getting the best deal for the residents of East Dorset"; and Purbeck DC has stated that "the Council decided to withdraw its opposition to the proposed reorganisation of local government in Dorset".
10. The third council, Christchurch BC, continues to oppose the changes. MHCLG has told us that Christchurch BC has two key concerns about the proposal. The first relates to the impact on residents, their quality of life and the services they receive if the proposal goes ahead. The second relates to the credibility of the evidence on which the "Future Dorset" submission is based, and on which Government have been asked to make a decision. As noted above, in a poll held in December 2017, 17,676 Christchurch residents voted against the proposal for a single Council covering Christchurch, Bournemouth and Poole. The Ministry has also told us that Christchurch BC put forward an alternative proposal for a single unitary council for Bournemouth and Poole, with the retention of a two-tier structure in most of Dorset. MHCLG says that one of the reasons to reject this was the Secretary of State's view that any proposed merger of district councils should be proposed by all the councils which are to be merged, and that the merger in Christchurch BC's proposal would have been proposed by neither of the councils concerned.
11. **MHCLG has told us that Ministers have made clear that they will apply the criteria for local government restructuring "in the round" for the area subject to reorganisation, rather than considering whether the criteria would be met in relation to each individual council area. However, given the scale of opposition to the proposal expressed both by Christchurch BC and by its residents, we consider that these instruments give rise to issues of public policy likely to be of interest to the House.**

Draft Somerset West and Taunton (Local Government Changes) Order 2018

Draft Somerset West and Taunton (Modification of Boundary Change Enactments) Regulations 2018

Summary: These instruments provide for the abolition of West Somerset and Taunton Deane councils, to be replaced by a single Somerset West and Taunton District Council which covers the same geographic area as the existing two councils.

During the period for representations on the proposal, 251 representations were received: 114 were supportive, 14 were neutral and 123 were opposed. The majority of negative representations received were from members of the public (99 representations) with a further 15 negative representations coming from local councillors. A recurring theme of the negative representations was an unwillingness among Taunton Deane residents to take on West Somerset as a financially unsustainable council.

It is clear from the findings of the independent auditor that West Somerset DC faces major financial difficulties, and that the concerns on this score expressed by Taunton Deane residents are not unjustified. Projections of the financial benefits to both councils of the proposed merger are “jam tomorrow”, and to undermine the significantly negative outcome of the period for representations by talk of “misconceptions” risks alienating those local residents who will be directly affected by the change. If a consultation exercise is to carry credibility, those who organise it must be open-minded about its results.

We draw these instruments to the special attention of the House on the ground that there appear to be inadequacies in the consultation process which relates to the instruments.

12. These two instruments, laid by the Ministry of Housing, Communities and Local Government (MHCLG), provide for the abolition of West Somerset and Taunton Deane districts and their district and borough councils respectively, and for the creation of a new Somerset West and Taunton district and Somerset West and Taunton District Council which covers the same contiguous geographic area.
13. In the Explanatory Memorandum (EM) to the instruments, MHCLG says that West Somerset District Council (“West Somerset DC”) and Taunton Deane Borough Council (“Taunton Dean BC”) developed and consulted on a proposal, which they submitted to the Secretary of State on 27 March 2017. From 30 November 2017, when the Secretary of State announced that he was “minded to” implement the proposal, until 19 January 2018 there was a period for representations. After considering the representations received, the Secretary of State concluded that, subject to Parliamentary approval, the proposal should be implemented.
14. MHCLG also says in the EM that the councils consider that becoming a single council will secure ongoing savings of £3.1 million per annum, including an additional £0.5 million of ongoing savings per annum from the current shared working partnership. It adds that the establishment of a single district council would improve the sustainability of the services that are currently carried out by the two councils individually, providing the opportunity to bring savings which would allow them to invest in services.

Consultation

15. In section 8 of the EM, MHCLG outlines the programme of engagement undertaken in late 2016 and early 2017, to gather the views of a broad range of people, bodies and organisations within both councils' areas. In describing the results of an open public consultation which was held by the councils between 12 December 2016 and 28 February 2017, MHCLG says that the most commonly expressed concern about the proposal related to the relative financial positions of the two councils, and the belief that residents of Taunton Deane would be subsidising West Somerset and that, as a consequence, Taunton Deane residents would be disadvantaged in a variety of ways, including having to pay higher Council Tax or receiving a reduced level of service.
16. MHCLG also explains that, during the period for representations in 2017-18, 251 representations were received, and that 114 of these were supportive of the proposal, 14 were neutral and 123 were opposed. The majority of negative representations received were from members of the public (99 representations) with a further 15 negative representations coming from local councillors. A recurring theme of the negative representations was an unwillingness among Taunton Deane residents to take on West Somerset as a financially unsustainable council.

Conclusions

17. We put questions to MHCLG about the proposal, and we are publishing the answers received at Appendix 2.
18. Given the concerns expressed by Taunton Deane residents, we asked about the financial position of the councils. MHCLG has told us that the independent auditor considers that West Somerset DC is financially unsustainable, and that the proposed merger would significantly improve this, stating that West Somerset DC has a "cumulative £0.8 million budget shortfall in the years 2018-2021 and although this represented a much improved position into the medium term, full financial balance was predicated on the 'One Council' proposal being realised". Conversely, Taunton Deane BC is currently considered by the auditor to be sustainable.
19. MHCLG has told us that it considers that Taunton Deane residents are also likely to benefit from the proposal. Savings of over £1.8 million per annum have already been generated through the current partnership, whereby the two councils already have shared services, a senior management team and staff team. MHCLG believes that, if the merger does not go ahead, the financial unsustainability of West Somerset DC makes it likely that Taunton Deane BC would remove itself from the partnership agreement, which for both councils would risk the savings already generated.
20. The Government have made it clear that one of the criteria against which any proposal to merge local authorities is to be considered is that it commands local support. We asked MHCLG how this proposal could be seen as meeting that criterion, when the largest number of representations to the Secretary of State opposed the merger. MHCLG has said that the most common reasons cited for such opposition were the "perceived reduction in democratic representation for West Somerset following the merger, and the misconception that Taunton Deane would be detrimentally affected by the merger". Since the first concern is to be met by an expected full electoral

review by the Local Government Boundary Commission, and the second is seen as a “misconception”, MHCLG has said that “these concerns were therefore considered to be addressed ... More significantly, a substantial majority of the democratically elected representatives of the population are in favour of the proposal.”

21. **It is clear from the findings of the independent auditor that West Somerset DC faces major financial difficulties, and that the concerns on this score expressed by Taunton Deane residents are not unjustified. Projections of the financial benefits to both councils of the proposed merger are “jam tomorrow”, and to undermine the significantly negative outcome of the period for representations by talk of “misconceptions” risks alienating those local residents who will be directly affected by the change. If a consultation exercise is to carry credibility, those who organise it must be open-minded about its results.**

CORRESPONDENCE

Education (Student Support) (Revocation, Amendment and Saving Provision) Regulations 2018 (SI 2018/434)

Education (Student Support) (Amendment) (No. 2) Regulations 2018 (SI 2018/443)

22. In our 21st Report of this Session,⁶ we drew to the House's attention the Education (Student Support) (Amendment) Regulations 2018 (SI 2018/136), which provided that eligible full-time students starting postgraduate pre-registration courses in nursing, midwifery, and the allied health professions from 1 August 2018 onwards would be funded through the standard student support system, rather than through an NHS Bursary.
23. In our 25th Report of this Session⁷ we commented adversely when the original instrument was revoked by the Education (Student Support) (Revocation, Amendment and Saving Provision) Regulations 2018 (SI 2018/434) and restated by Education (Student Support) (Amendment) (No. 2) Regulations 2018 (SI 2018/443) in exactly the same terms, as a device to enable a debate in the Commons to take place. Our particular concern was the effect that this extended period of uncertainty would have on Universities and on potential applicants, who may well have been dissuaded from applying for such courses. We therefore wrote to Lord O'Shaughnessy at the Department for Health and Social Care outlining those concerns.
24. The reply from Mr Steve Barclay, MP, Minister of State for Health, says that his Department has liaised with the Student Loans Company and with other key stakeholders to ensure that students are provided with the necessary clarity: because the policy intention has not changed, he anticipates the impact on students to be minimal. His letter also states that the Government are using the additional time to engage with colleagues and key stakeholders and he hopes to be able to update the House on this when the debate is eventually scheduled.
25. We have published this correspondence at Appendix 3 of this report.

6 [21st Report](#), Session 2017-19 (HL Paper 88).

7 [25th Report](#), Session 2017-19 (HL Paper 120).

INSTRUMENTS OF INTEREST

Draft European Organization for Astronomical Research in the Southern Hemisphere and the European Space Agency (Immunities and Privileges) (Amendment) Order 2018

1. This Order is the Foreign and Commonwealth Office's (FCO) fourth attempt to amend an instrument⁸ which confers the usual limited privileges and immunities accorded to the staff of an international organisation, on the staff of the European Organization for Astronomical Research in the Southern Hemisphere ("the ESO"). The Order additionally extends certain privileges to officers of the European Space Agency and their families.
2. Three previous versions of the amendments relating to the ESO have been published and withdrawn: the 27 January 2017 version incorrectly gave certain officers immunity from motor traffic offences; the 22 February 2017 version corrected that error but failed to include the required head note to show it was a correction; a further version including the head note was laid on 28 February 2017. Since that third version was prepared, the FCO came to the view that an exemption from social security contributions originally conferred only on high officers, could in fact be applied to all officers. As a result, this latest version now includes that additional change. One instrument was replaced because of procedural error and three because of policy errors that should have been resolved before the instrument was laid before Parliament. This sorry tale represents a considerable waste of the time of both the House of Lords, which has already debated the previous version, and its scrutiny committees. **We urge the FCO to review their clearance process to ensure that future instruments are more thoroughly checked before they are laid before Parliament.**

Agreement Extending the Framework Agreement for International Collaboration on Research and Development of Generation IV Nuclear Energy Systems (Cm 9597)

26. As part of the preparation for withdrawal from the European Union, the UK is ratifying a number of international treaties in its own right, where previously it had relied on access through a European institution. This particular instrument will allow the UK to retain access to Research and Development information from the Generation IV International Forum. This international organisation was established to further the development of advanced nuclear fission reactors, which, until now, has been accessed as part of the UK's membership of Euratom. Ratification allows the UK "active membership" of the Forum and to participate in projects, including those in which Euratom has not been involved. Continued access would be particularly valuable for the UK's research and development work on Small Modular Reactors and Advanced Modular Reactors in the near to medium term, and would allow the UK to make a significant contribution to the Clean Growth Strategy.

8 European Organization for Astronomical Research in the Southern Hemisphere (Immunities and Privileges) Order 2009 ([SI 2009/1748](#)).

Short-term Holding Facility Rules 2018 (SI 2018/409)**Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2018 (SI 2018/ 410)****Detention Centre (Amendment) Rules 2018 (SI 2018/411)**

27. These three instruments address concerns over the treatment of people held in immigration detention while their case is assessed. Amendments respond to a recent judgment in the High Court⁹ concerning the definition to be used when deciding how victims of torture ought to be protected within immigration detention, or whether they should be dealt with in some other way. SI 2018/411 gives effect to the Court’s judgment by amending the definition of torture in statutory guidance and Rules. SI 2018/410 additionally updates the statutory guidance¹⁰ on the matters to be taken into account when determining the detention of vulnerable persons, to fully reflect the original intent that there should be a “sweeping-up” provision within the guidance that can capture those who may be particularly vulnerable to harm in detention, but who are not covered by the specific “indicators of risk” listed.¹¹ SI 409/2018 also incorporates the revised definition of torture but, for the first time, puts on a statutory footing the arrangements under which the short-term holding facilities at or near air, sea and rail ports in the UK are operated and managed. Although there is no requirement in law to do so, this approach is in line with the arrangements for immigration removal centres, set out in the Detention Centre Rules 2001, and complies with recommendations made by Stephen Shaw CBE, following his review of the welfare of vulnerable people in immigration detention.¹²

Electronic Communications (Universal Service) (Broadband) Order 2018 (SI 2018/445)

28. According to Ofcom, 10 megabits per second (Mbps) is the minimum level of broadband performance required for a typical household’s use of internet access to services such as web-browsing, email and certain video services. The Order sets out the broadband connections and services which must be provided by any designated universal service provider throughout the United Kingdom; this includes a download sync speed of at least 10 Mbps. The Department for Digital, Culture, Media and Sport (DCMS) says that Ofcom data shows that the number of premises without 10Mbps broadband download and 1Mbps upload speeds is 1.1 million, or 4% of premises, compared with 1.6 million or 6% of premises in 2016. The Government want to address this market failure by introducing this broadband universal service order to ensure that, where superfast broadband remains unavailable, a good quality broadband service is nonetheless available.

9 [R \(Medical Justice et al.\) v SSHD \[2017\] EWHC 2461 \(Admin\)](#), 10 October 2017 [accessed 25 April 2018]

10 HM Government, *Draft revised guidance on adults at risk in immigration detention*, 21 March 2018: <https://www.gov.uk/government/publications/draft-revised-guidance-on-adults-at-risk-in-immigration-detention> [accessed 25 April 2018].

11 The list includes those suffering from mental or physical impairment, those who are ill, those over 70, women who are pregnant, those who have been subject to sexual or gender-based violence and those who have been trafficked.

12 HM Government, *Review into the welfare in detention of vulnerable persons*, 14 January 2016: <https://www.gov.uk/government/publications/review-into-the-welfare-in-detention-of-vulnerable-persons> [accessed 25 April 2018].

School Information (England) (Amendment) Regulations 2018 (SI 2018/466)

29. Under section 42A of the Education Act 1997, maintained schools are required to deliver independent careers guidance for all year 8 to year 13 pupils. These Regulations introduce a further requirement on maintained schools to publish information about their careers programme on their website from 1 September 2018. The Department for Education (DfE) says that the Regulations support the delivery of a commitment set out in the Government's careers strategy from December 2017, to provide high quality careers programmes in every school.¹³ The Regulations also require the published information to explain how the school measures and assesses the impact of their careers programme on pupils. DfE anticipates that publishing information about careers programmes online will make the support that schools offer more visible to young people, parents, teachers and employers; and that this will both help to improve the standard of careers programmes and inform decisions by parents and young people about which school to attend.

¹³ HM Government, *Careers strategy: making the most of everyone's skills and talents*, 4 December 2017: <https://www.gov.uk/government/publications/careers-strategy-making-the-most-of-everyones-skills-and-talents> [accessed 25 April 2018].

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft European Organization for Astronomical Research in the Southern Hemisphere and the European Space Agency (Immunities and Privileges) (Amendment) Order 2018

Draft Immigration (Alcohol Licensing and Late Hours Catering) (Scotland) Regulations 2018

Draft Offshore Environmental Civil Sanctions Regulations 2018

Draft Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2018

Draft Welsh Ministers (Transfer of Functions) Order 2018

Instruments subject to annulment

Draft Modifications to the Smart Energy Code (Smart Meters No.2 of 2018) (PM)

Draft Modifications to the Standard Conditions of Electricity and Gas Supply Licences, the Smart Meter Communication Licences and the Smart Energy Code (Smart Meters No.1 of 2018)

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| Cm 9597 | Agreement Extending the Framework Agreement for International Collaboration on Research and Development of Generation IV Nuclear Energy Systems |
| Cm 9602 | Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse |
| SI 2018/406 | Public Service Vehicles (Registration of Local Services) (Franchising Schemes Transitional Provisions and Amendments) (England) Regulations 2018 |
| SI 2018/408 | Nuclear Security (Secretary of State Security Directions) Regulations 2018 |
| SI 2018/409 | Short-term Holding Facility Rules 2018 |
| SI 2018/410 | Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2018 |
| SI 2018/411 | Detention Centre (Amendment) Rules 2018 |
| SI 2018/412 | Police Super-complaints (Criteria for the Making and Revocation of Designations) Regulations 2018 |
| SI 2018/423 | Franchising Schemes (Service Permits) (England) Regulations 2018 |
| SI 2018/425 | Non-Domestic Rating (Telecommunications Infrastructure Relief) (England) Regulations 2018 |
| SI 2018/428 | Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2018 |

- SI 2018/429 Radioactive Contaminated Land (Enabling Powers and Modification of Enactments) (England) (Amendment) Regulations 2018
- SI 2018/430 Justification of Practices Involving Ionising Radiation (Amendment) Regulations 2018
- SI 2018/437 Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018
- SI 2018/439 Public Service Vehicles (Registration of Local Services) (Amendment) Regulations 2018
- SI 2018/440 Family Procedure (Amendment) Rules 2018
- SI 2018/445 Electronic Communications (Universal Service) (Broadband) Order 2018
- SI 2018/447 Sexual Offences Act 2003 (Prescribed Police Stations) (England and Wales) Regulations 2018
- SI 2018/451 Poisons Act 1972 (Explosives Precursors) (Amendment) Regulations 2018
- SI 2018/465 Higher Education (Basic Amount and Higher Amount) (England) (Amendment) Regulations 2018
- SI 2018/466 School Information (England) (Amendment) Regulations 2018
- SI 2018/472 Education (Student Support) (Amendment) (No. 3) Regulations 2018

INTERIM REPORT ON THE WORK OF THE COMMITTEE IN SESSION 2017-19

Number of instruments received

30. This Committee routinely publishes a report on trends in its activity at the end of each session. As this is a two-year session, and the Committee's scrutiny tasks are likely to be added to once the European Union (Withdrawal) Bill has received Royal Assent, we thought it helpful to publish an interim analysis of the statutory instruments (SIs) received in the 12 months since our last end of session report as an interim statement.
31. The reduction in the number of SIs¹⁴ laid before Parliament which we have observed since 2015 has continued, with 663 instruments laid for scrutiny over the last 12 months (compared with 659 in 2016-7 and 712 in 2015-16). This may be attributable to the impact of the 2016 referendum and the 2017 General Election on the work of Government. The session got off to a very slow start with only 54 SIs being laid in Q2 2017 (8%), but the number of instruments laid increased steeply at the end of 2017 with over 50% of the year's SIs laid between 1 December 2017 and 13 April 2018 (of which 37% (246) were laid in Q1 2018). The proportion of affirmative instruments within that total, 20%, has returned to the average, the number of correcting instruments has also fallen to 4.1%, below the 5% benchmark figure, but the number of Explanatory Memoranda (EMs) needing revision, 44, still remains too high (6.6%).
32. The Home Office laid the largest proportion of SIs in the first 12 months of the current session (11.6%), followed by the Department for Business, Energy and Industrial Strategy (BEIS) (10.3%), the Department for Transport (DfT) (9.5%), and then the Treasury (9%); between them, these four departments laid over 40% of all the instruments considered (see Chart 3). Students' fees, legal aid, and environmental matters attracted most correspondence from the public and these submissions have been published beside the reports on our webpage.¹⁵ As ever, the Committee is grateful to all those who have made contributions that have provided added insight into how an instrument would operate in practice.

Analysis of grounds for report

33. On average, the Committee draws about 7% of instruments considered to the special attention of the House. So far, in Session 2017–19, we have reported 51 instruments (7.7%). Of those:
- 42 were on the ground of “interest”, two of which were jointly reported on the ground of “insufficient explanation”.
 - 7 were reported on the ground of “inadequate consultation”. One of which was a particularly egregious example where a consultation on school teachers' pay lasted only three weeks and took place in July at the end of the school year when teachers are particularly busy. Not surprisingly, it drew numerous complaints from the profession.¹⁶

14 As well as SIs the Committee considers almost all instruments subject to procedure: for example, statutory Codes, Treaties and Immigration Rules but the term SIs is used in this report as short hand for all the instruments within our remit.

15 <http://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/publications/> [accessed 23 April 2018].

16 School Teachers' Pay and Conditions Order 2017 (SI 2017/811) [5th Report, Session 2017-19](#) (HL Paper 20).

- Two instruments were reported on the especially critical ground that “they may imperfectly achieve their policy objective”. In our 1st Report of the session, we commented on regulations setting out exceptions to the two child limit for social security in Northern Ireland;¹⁷ and, in our 17th Report, we commented on an apparent policy disconnect between the Ministry of Housing, Communities and Local Government selling off NHS land and the Department of Health and Social Care intending to build homes for nurses.¹⁸ In each case we felt that the policy had been ill thought-through and that key operational issues had not been resolved before the instrument was laid.

Consultation

34. Since the introduction of the Government’s *Consultation Principles* in 2012, the Committee has been observing the Government’s more flexible approach to consultation, to ensure that it remained fit for purpose. When the Rt Hon. Sir Oliver Letwin, MP, was Minister at the Cabinet Office, we found that he listened carefully to our concerns. There have been frequent changes in post-holders over the last year or so which have disrupted our dialogue with the Cabinet Office. We are not the only Committee to have noted Whitehall’s trend towards fewer and shorter consultations. The Lords’ Constitution Committee published a report in October 2017 based on new evidence but expressing similar concerns and endorsing our view that six weeks should be the minimum period for a public consultation.¹⁹ **We were therefore very disappointed to see that the latest revision of the Consultation Principles²⁰ makes no reference to a minimum acceptable duration for a consultation.**
35. The current post holder, Oliver Dowden MP, gave evidence to the Committee on 20 March 2018. We were disappointed that he, like several of his predecessors, stepped back from Sir Oliver Letwin’s commitment that the Cabinet Office should have an active monitoring role, and also that Mr Dowden was content that decisions about the duration of consultations should be left to the discretion of the individual Whitehall department. There is a more detailed description of this event on page 11 our 25th Report,²¹ and the corrected transcript is published on our website.²²
36. During the oral evidence session, Mr Dowden made much of the fact that, at that stage in this session, our Reports had drawn to the special attention of the House only one instrument on the specific ground of “inadequate consultation” (see paragraph 33 above). This fails to acknowledge, however, that the Committee has raised concerns about the consultation process in a number of cases as part of a wider critique. For example, three separate groups of instruments were mentioned in our 1st Report of this session for poor consultation practice, including one from the Department for Environment, Food and Rural Affairs where the consultation was limited to two weeks on the ground of urgency, but the instrument was not then laid for a further six

17 Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) (Amendment) Regulations (Northern Ireland) 2017 (SR 2017/79) [1st Report](#), Session 2017-19 (HL Paper 4).

18 Homes and Communities Agency (Transfer of Property etc.) Regulations 2018 (SI 2018/8) [17th Report](#), Session 2017-19 (HL Paper 71). We published subsequent, related correspondence with the Parliamentary Under-Secretary of Health in our [19th Report](#) (HL Paper 78).

19 The Legislative Process: Preparing Legislation for Parliament, Lords Constitution Committee [4th Report](#), Session 2017-19 (HL Paper 27).

20 [Consultation Principles](#) (v 4), Published 19 March 2018.

21 [25th Report](#), Session 2017-19 (HL Paper 120).

22 <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/publications/> [accessed 23 April 2018].

months.²³ **We do not see it as our role to relieve the Cabinet Office of the responsibility for monitoring consultation practice, but we have exemplified our concern on numerous occasions, not only in drawing individual SIs to the attention of the House.**

“Purdah”

37. One of the reasons frequently given by Departments for curtailing public consultation or for long delays between the consultation and the instrument actually being laid is the intervention of a “purdah period” prior to an election. While fully cognisant of the reasons why controversial legislation should not be promoted or discussed during a general election period, we felt that this excuse was being used excessively. We drew our concerns to the attention of the Government and the response, published in our 23rd Report,²⁴ undertakes to consider the examples we gave when next revising the guidance. Mr Dowden also stated that he expected “the vast majority of SIs to proceed as normal during the local election campaign”. We will monitor the position and report back at the end of the session.

Guidance

38. In our last end of term report,²⁵ we were strongly critical of the increased use of guidance to set out how legislation would operate in practice. Two linked problems were identified: first that the guidance was usually not available at the time we were considering an instrument; and, second, that Departments were leaving to guidance key definitions, statements about who was in scope of the legislation and the basis for decisions affecting a person’s career, benefits or eligibility to stay in this country. We wrote to the then Minister for the Cabinet Office on the matter who replied that this deficiency would be addressed in training given to civil servants. **We are pleased to note that this trend has decreased markedly,²⁶ but we continue to be vigilant. We remain strongly of the view that definitions and criteria on which decisions will be made should be set out clearly on the face of the instrument.** Legislation is subject to Parliamentary scrutiny, whereas guidance is not and could subsequently be changed without reference to Parliament.

Impact assessment

39. Another area where there have been welcome signs of improvement is in the assessment of the impact of legislation. We regard this as an essential part of every EM and see it as having two stages:
- every EM should have an explanation of the costs and benefits of the legislative change proposed; and,
 - for more significant instruments, whether in terms of either cost or policy significance, a formal Impact Assessment (IA) document should be made available.

23 Single Common Market Organisation (Emergency Aid) (England and Northern Ireland) Regulations 2017 (SI 2017/599), [1st Report](#), Session 2017-19 (HL Paper 4).

24 [23rd Report](#), Session 2017-19 (HL Paper 105).

25 [32nd Report](#), Session 2016-17 (HL Paper 161).

26 Examples of good practice were [SI 2017/835](#) Co-ordination of Regulatory Enforcement Regulations 2017 mentioned in our [5th Report](#) Session 2017-19 (HL Paper 20) and [SI 2017/876](#) Facilitation of Tax Evasion Offences (Guidance About Prevention) Regulations 2017 mentioned in our [6th Report](#) (HL Paper 23).

40. We have repeatedly made the point that competent policy formulation includes due consideration of the anticipated impact of the legislation in the real world: not just the cost to business but how many individuals are likely to be affected and whether the effects will represent a net gain or loss to the individual (and this is not purely a financial assessment). We are pleased to note that the majority of the EMs that we see now have an adequate summary of the effects of the legislation. Some, like the Department of Transport, have taken to attaching the Regulatory Triage Assessment that they prepare to demonstrate why they do not need to produce a full IA.²⁷ Even where there are no financial effects, those preparing the EMs are getting better at explaining their reasoning rather than hiding behind the bald statement “no Impact Assessment is necessary”.
41. The Government’s policy approach to the production of formal IAs during this session has evolved. In summer 2017 there was a backlog of IAs, which led to several IAs being laid weeks after the instrument to which they related.²⁸ As we are obliged to report promptly, such delays can significantly compromise our ability to scrutinise an instrument. The Government attributed these delays to the election campaign. This surprised us. Whilst we could understand that legislation cannot be published during the purdah period, we could not see why the preparation of an IA might be delayed. Nor could we see any valid reason why provisional or indicative figures could not have been included in the EM, particularly as these instruments clearly met the criterion of imposing significant costs on business.
42. As a response to our concerns and the challenge of processing the forthcoming Brexit-related SIs, the Government have amended the triage process and IAs will now only be mandatory for instruments with a net annual impact of more than £5 million on business. For other instruments, the provision of an IA will be at the discretion of the relevant Department. We note however that Lord Henley’s letter to us²⁹ reiterates the commitment that Departments, when exercising that discretion, must take into account the needs of Parliament: for this Committee that means that Departments making major changes to public policies should also “show their workings”. **We welcome the supportive statement from Lord Henley that Departments must ensure that an Explanatory Memorandum provides sufficient information on the impact of a statutory instrument, even if a formal Impact Assessment has not been prepared.**

Corrections

43. Room for improvement remains in the number of corrections that we are asked to consider. Although the overall percentage of errors in SIs has decreased to 4.1%, we have now seen the Foreign and Commonwealth

27 See for example [the Triage Assessment](#) attached to the Merchant Shipping (Maritime Labour Convention)(Miscellaneous Amendments) Regulations 2018 ([SI 2018/242](#)).

28 See for example Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692) [2nd Report](#), Session 2017-19 (HL Paper 8) and Government response [3rd Report](#) (HL Paper 14). No figures were included in the EM laid with the instrument and HM Treasury only published the final IA more than two weeks after the Regulations were laid. The IA showed that implementing the Regulations would give rise to a net cost to business of £5.2 million per year.

29 See [letter from Rt Hon. Lord Henley](#), Parliamentary Under Secretary of State for BEIS published in our 15th Report, Session 2017-19 (HL Paper 59).

Office's fourth attempt at the same instrument³⁰ and the Department for Education has issued two further instruments to revoke and then replace the original instrument without change because of a timetabling difficulty in the Commons.³¹ **Such errors are a waste of both time and resources.**

44. A further source of frustration remains the number of EMs that we have asked to be corrected or revised, often for simple mistakes such as inaccurately stating the title of the instrument or leaving in dates from an original draft that no longer match the instrument when laid. Although our impression is that there has been a general improvement in the content of EMs overall, the numbers that have needed to be replaced still remain too high at 44 (6.6% of the total, and for affirmative instruments the replacement rate was even higher 12.9%). There have been some exceptionally good examples,³² there have equally been some very poor ones.³³ **We acknowledge much training is being done within Departments and by Civil Service Learning to improve the content of Explanatory Memoranda but there still appear to be problems with the clearance process in some Departments if they allow seriously defective EMs to be laid.**

Oral Evidence

45. Our concerns about how effectively SI matters are handled within Departments were highlighted by the Criminal Justice (European Investigation Order) Regulations 2017 (SI 2017/730) on which we took oral evidence from the Minister, Nick Hurd MP, because the Home Office had failed to respond to a letter seeking supplementary information after the six weeks of the summer recess.³⁴ In the oral evidence session, the Committee pointed out that the reason that we had had so many questions was that the EM presented with the instrument assumed the reader had an extensive knowledge of both Directive 2014/41/EU and of the current UK system. For example, without further elucidation it said: "The transposition... broadly aligns with existing procedures under the Crime (International Cooperation) Act 2003" (EM para 4). Although the Minister described the failure to respond to our letter as an isolated incident, the Committee commented that this case raised questions not only about the Home Office's mechanisms for dealing with Parliamentary requests and the priority that they are given, but also about the quality of the original EM and the clearance process.
46. This theme also came up in our oral evidence session with the three Civil Service heads of profession about the overarching initiative to improve the quality of the information provided in support of legislation across Whitehall.

30 Draft European Organization for Astronomical Research in the Southern Hemisphere and the European Space Agency (Immunities and Privileges) (Amendment) Order 2018, [see explanation in section 3 of the Explanatory Memorandum](#).

31 See [SI 2018/136](#), [SI 2018/434](#) and [SI 2018/443](#) on Education (Student Support) 25th Report, Session 2017-19 (HL Paper 120).

32 See EMs to [Pharmacy \(Preparation and Dispensing Errors – Registered Pharmacies\) Order 2018](#) (SI 2018/181) or [Motor Cars \(Driving Instruction\) \(Amendment\) Regulations 2017](#) (SI 2017/1156).

33 See the original EMs to the [Draft Investigatory Powers \(Codes of Practice\) Regulations 2018](#) which in our [16th Report](#) of this session we regarded as being dismissive, the Immigration and Nationality (Fees) (Amendment) Regulations 2017 ([SI 2017/885](#)) which we regarded as being incomprehensible, or the Jobseeker's Allowance (Schemes for Assisting Persons to Obtain Employment) (Amendment) Regulations 2017 ([SI 2017/1020](#)) which assumed too much knowledge in the reader [10th Report, Session 2017-19](#) (HL Paper 37).

34 See [5th Report](#), Session 2017-19 (HL Paper 20).

This session, in September 2017,³⁵ was a follow up to see what progress had been made in the year since we had first asked them to address the deficiencies we had identified.³⁶

47. Sir Chris Wormald, as Head of the Civil Service Policy Profession, said that the seven future actions set out in their letter following the July 2016 session could be grouped under three main headings: awareness, and whether senior civil servants took this issue as seriously as they should; capacity, particularly training, development and guidance; and process, both at departmental level and centrally, for checking the material that eventually came to Parliament. He said that although there had been considerable progress towards these three main objectives, much more remained to be done before these initiatives resulted in the consistent improvement to the quality of information supporting statutory instruments which both the Committee and the leaders of the Civil Service wished to see.
48. The Committee's concern at that stage was that although many structures had been put in place by September 2017, some 15 months after our initial evidence session, very few had actually started delivering. Since September we have noted, and indeed our staff have contributed to, the large amount of training being done,³⁷ but there are concerns that this will not keep pace with some Departments' rapid recruitment of staff to deal with the challenge of Brexit. **We therefore place even more stress on the need for individual Departments to have an effective clearance mechanism through senior staff, so that errors made through inexperience are caught before the legislation is formally laid before Parliament.**

The SIs to implement Brexit

49. In the course of our oral evidence session with Mr Hurd, we also made clear that **although an increased volume of SIs is to be expected from all Government Departments during the Brexit period, that pressure would not be an acceptable excuse for any decrease in the quality of the material presented to the House for scrutiny.**³⁸ We therefore welcome the appointment of a Senior Responsible Official and a Responsible Minister in each Department to ensure that necessary standards are maintained. This also provides us with a conduit where a need for improvement is identified and, in particular, may ensure that the question raised by Sir Chris Wormald about whether senior civil servants are taking this issue as seriously as they should, is directly addressed within each Department.
50. Another measure that the Government have introduced in anticipation of the additional 800 to 1,000 instruments to be generated by Brexit-related legislation is a sub-committee of the Cabinet's Parliamentary Business and Legislation (PBL) Committee to manage the flow of SIs being laid before the House. From our perspective, on the receiving end, the weekly numbers of SIs laid have been extremely erratic, to the extent that we have cancelled meetings due to insufficient material. **We hope that in future, especially once the Brexit-related instruments begin to be laid, the PBL Committee will ensure a more consistent flow.**

35 Described in our [6th Report, Session 2017-19](#) (HL Paper 23) and in the [transcript on our publications page](#).

36 [7th Report](#), Session 2016-17 (HL Paper 32) and in the [transcript on our publications page](#).

37 Letter of 14 March 2018 from Mr David Lidington CBE MP, published in Appendix 4 of this Report.

38 See [5th Report, Session 2017-19](#) (HL Paper 20).

51. Less fluctuation in the numbers of SIs received each week would help us to fulfil the additional duties that the Secondary Legislation Scrutiny Committee may acquire once the European Union (Withdrawal) Bill is passed. The Leader of the House of Lords has announced that it is the Government's intention that the sifting function to be undertaken by the European Statutory Instruments Committee in the House of Commons should be carried out by this Committee in the Lords.³⁹ As currently framed, this would involve the Committee having 10 sitting days to consider "negative in draft" instruments laid under the Act and to decide whether to recommend an upgrade to the affirmative procedure. All the instruments so considered, would then be subject to scrutiny under our normal terms of reference once formally laid. We have launched a short inquiry into the criteria which should be applied in deciding whether to recommend an upgrade⁴⁰.

Statistical Analysis

52. We met 26 times between the start of this Session and 24 April 2018 and published 26 reports on a total of 663 instruments (132 affirmatives and 531 negatives). We drew 24 affirmatives and 27 negatives (51 in total) to the special attention of the House: an overall reporting rate of 7.7% (18.2% for affirmatives and 5.1% for negative instruments). We held three oral evidence sessions, and have published a number of written submissions from members of the public and organisations alongside our reports on our publications page.
53. The grounds on which we drew the 51 instruments to the special attention of the House in this session were (see also Chart 3):
- 42 instruments (79.2% of those reported) on the ground of political importance or public policy interest;
 - 2 (3.8%) on the ground of imperfectly achieving its policy objective;
 - 2 (3.8%) on the ground that the explanatory material laid in support provides insufficient information;⁴¹
 - 7 (13.2%) on the ground that there appear to be inadequacies in the consultation process.
54. In line with our previous practice we have limited the instruments we draw to the special attention of the House to those which, in our view, raise issues that may be of particular concern to the House. We alert the House to other instruments which appear to be of interest, are topical or follow an unusual process, by means of short information paragraphs that act as a kind of "news service". Since the start of the Session, we included 120 such paragraphs covering (21.7%) of the total number of instruments, a 5% rise on the previous two years (see Chart 5.)

39 HL Official Report, [19 March 2018](#), cols 152-3.

40 See: <https://www.parliament.uk/secondary-legislation-cu-withdrawal-criteria> [accessed 25 April 2018]

41 Two instruments were reported jointly on the grounds of interest and insufficient information. [19th Report](#), Session 2017-19 (HL Paper 78).

Chart 1: The total number of instruments laid each calendar year since 2007

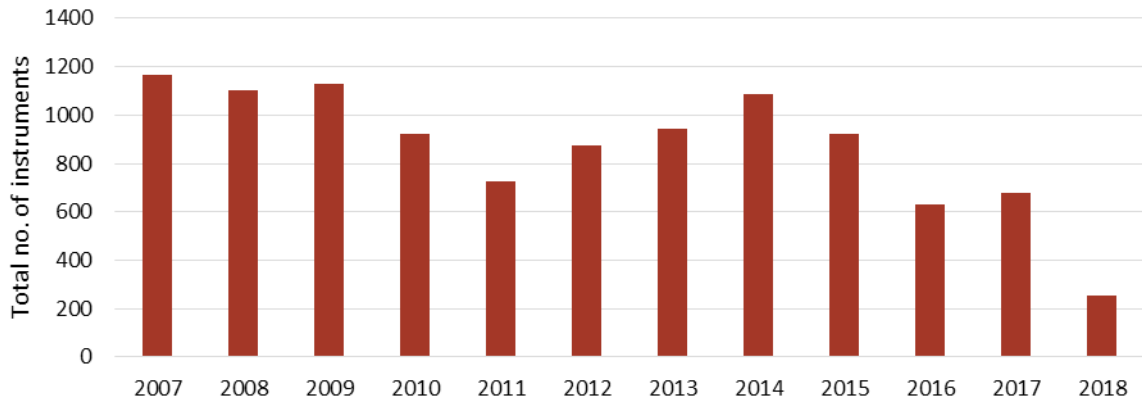


Chart 2: The number of SIs laid in Session 2017-19

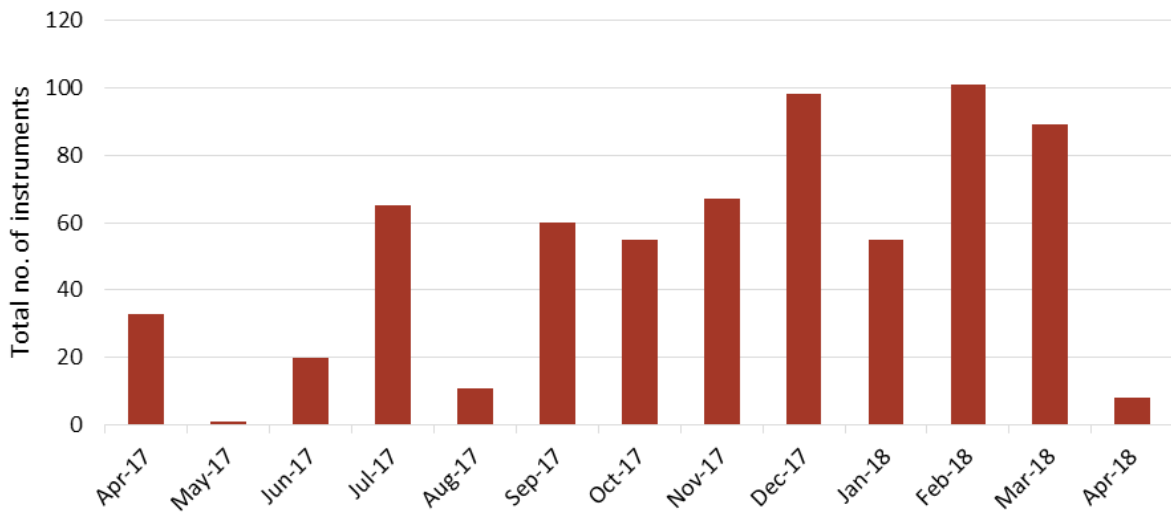


Chart 3: Breakdown of instruments laid by department and grounds for report

Department	Total	Percentage of Total	Reported negative	Reported affirmative	Ground for Report ⁴²					
					a	b	c	d	e	f
Cabinet office	10	1.5	0	0	0	0	0	0	0	0
BEIS	68	10.3	5	2	7	0	0	0	1	0
DCLG*	52	7.8	1	10	4	0	0	1	0	6
DCMS	22	3.3	0	0	0	0	0	0	0	0
DEFRA	48	7.2	5	2	7	0	0	0	0	0
DIT	5	0.8	0	0	0	0	0	0	0	0
LGBC**	31	4.7	0	0	0	0	0	0	0	0
DExEU	0	0.0	0	0	0	0	0	0	0	0
DWP***	58	8.7	2	0	1	0	0	1	0	0
Education	38	5.7	9	1	9	0	0	0	0	1
FCO (of which Treaties 11)	21	3.2	0	0	0	0	0	0	0	0
Health****	35	5.3	0	1	1	0	0	0	0	0
Home Office	77	11.6	1	5	6	0	0	0	0	0
H of Commons	0	0.0	0	0	0	0	0	0	0	0
Defence	7	1.1	0	0	0	0	0	0	0	0
Justice	56	8.4	1	1	2	0	0	0	0	0
NI Office	1	0.2	0	0	0	0	0	0	0	0
Privy Council	0	0.0	0	0	0	0	0	0	0	0
Scotland	5	0.8	0	0	0	0	0	0	0	0
Transport	63	9.5	2	2	4	0	0	0	0	0
HMRC	3	0.5	0	0	0	0	0	0	0	0
Treasury	60	9.0	1	0	1	0	0	0	0	0
Wales	2	0.3	0	0	0	0	0	0	0	0
Attorney General	2	0.3	0	0	0	0	0	0	0	0
TOTAL	663		27	24	42	0	0	2	2	7

* "MHCLG" from 08/01/18

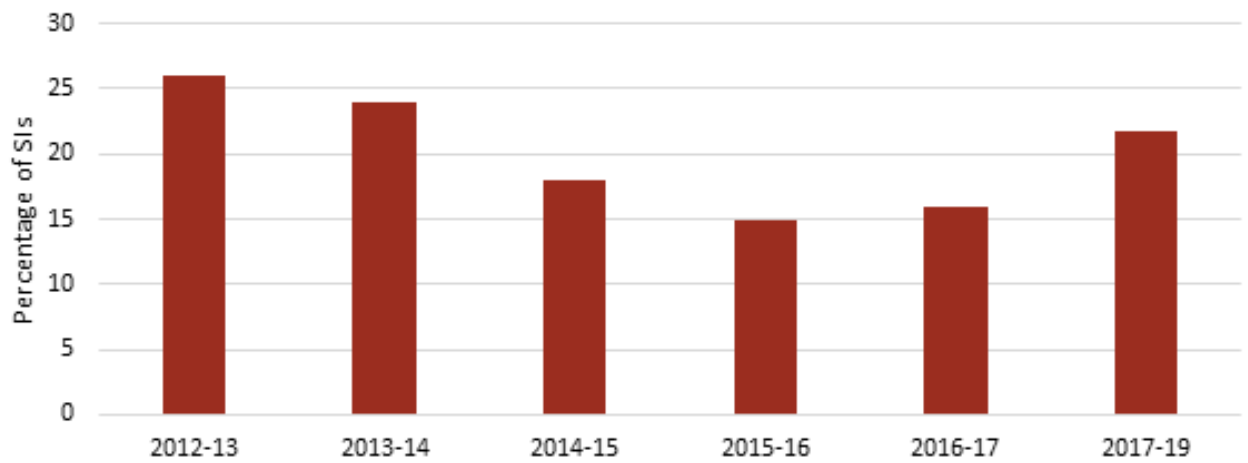
** Local Government Boundary Commission for England

*** Includes Health and Safety Executive

**** Includes Food Standards Agency. "DHSC" from 12/01/18

Chart 4: Corrections

SI	No. laid	No. SIs replaced by correction	Percentage	No. EMs replaced by correction	Percentage
Affirmative	132	6	4.5	17	12.9
Negative	531	21	3.9	27	5.1
Total	663	27	4.1	44	6.6

Chart 5: The percentage of SIs that were the subject of short paragraph compared with the last five sessions

**APPENDIX 1: DRAFT DORSET (STRUCTURAL CHANGES)
(MODIFICATION OF THE LOCAL GOVERNMENT AND PUBLIC
INVOLVEMENT IN HEALTH ACT 2007) REGULATIONS 2018; DRAFT
BOURNEMOUTH, DORSET AND POOLE (STRUCTURAL CHANGES)
ORDER 2018**

**Additional information from the Ministry of Housing, Communities and
Local Government**

Q1: In the EM (4.8), you say: “These Regulations made under section 15 of the 2016 Act would provide that Part 1 of the 2007 Act is to be varied in its application to the case of the Dorset councils so that those councils can make proposals for structural change in their area to the Secretary of State without an invitation having been received and allowing the Secretary of State to implement those proposals by order under section 7 of the 2007 Act. As such a proposal would not be made in response to an invitation and the discretion to request the advice of the Commission or the requirement to consult all affected authorities does not apply.” Why has the S of S not issued an invitation to these councils? Is this a mechanism to avoid the need for the S of S to consult all affected authorities?

A1: Government policy on establishing unitary councils as set out in the Department’s Single Departmental Plan published on 14 December 2017 is “to consider unitarisation and mergers between councils where requested”. Accordingly, the Government’s approach for Dorset is that proposals for unitarisation should be locally led at the initiative of councils in the local area, rather than in response to a Government invitation.

The Cities and Local Government Devolution Act 2016 (the 2016 Act) provides the statutory mechanism for taking forward such an approach. During this Act’s Parliamentary passage, Baroness Williams stated “The Bill allows, by more straightforward processes, the local governance of a place to be simplified”.

The purpose of this 2016 Act mechanism is not to avoid consultation. Indeed, wide ranging public consultation is an essential element of the approach the Secretary of State and the Dorset Councils have taken. When deciding whether it would be appropriate to implement the Dorset proposal an important consideration for the Secretary of State was the extent, quality and results of the consultation which the councils had undertaken. Moreover, the Secretary of State provided that after announcing his minded-to decision there was a period for representations and received 210 representations during this time, including substantive representations from all the councils concerned.

Had the Secretary of State been following the processes of the Local Government and Public Involvement in Health Act 2007 (the 2007 Act), unmodified by regulations under the 2016 Act, the affected authorities which he would have been obliged to consult would have been only Christchurch Borough Council, Purbeck District Council and East Dorset District Council (the only affected authorities that did not submit the proposal). In the event, all of the nine councils plus local businesses, other public sector partners, voluntary organisations and many members of the public made representations.

Of the three affected authorities that the Secretary of State would have been obliged to consult, East Dorset District Council stated in their representation that “the council now accepts the [Secretary of State’s] decision, and works towards getting the best deal for the residents of East Dorset” and Purbeck District Council stated that “the Council decided to withdraw its opposition to the proposed reorganisation of local government in Dorset”. Christchurch Borough Council made a substantive representation, totalling some 29 pages, plus supporting annexes, setting out their opposition to the proposal and putting forward an alternative.

Q2: In the EM (8.6), you also say: “When the proposal was submitted in February 2017 it was supported by six of the nine councils in the Dorset area. Christchurch Borough Council, East Dorset District Council and Purbeck District Council were not supportive of the proposal. Following the Secretary of State’s “minded to” decision, East Dorset and Purbeck made representations to the Secretary of State - East Dorset District Council now support the proposal, and Purbeck District Council have withdrawn their opposition to the proposal. Christchurch Borough Council remains in opposition to the proposal.” What is the latest statement by Purbeck DC in relation to the proposal? What grounds has Christchurch BC given for opposing the proposal? What is the S of S’s justification for proceeding with a proposal which is opposed by one of the councils affected?

A2: In a letter to the Secretary of State of 5th January 2018, Purbeck District Council stated that “the Council decided to withdraw its opposition to the proposed reorganisation of local government in Dorset”. At their meeting of 20 March 2018, it was “Resolved that Council agrees to the making of the Dorset (Structural Changes) (Modification of the Local Government and Public Involvement in Health Act 2007) Regulations 2018”.

Christchurch Borough Council state, in their representation of 4 January 2018 that they have two key concerns about the proposal. The first relates to the impact on residents, their quality of life and the services they receive if the proposal goes ahead. The second relates to the credibility of the evidence on which the “Future Dorset” submission is based, and on which Government has been asked to make a decision.

The Secretary of State concluded that there is a compelling case for implementing the proposal, being satisfied that that the proposal fully meets the publicly stated criteria for unitarisation – namely that if implemented, the proposal is likely to improve local government in the area, has credible geography and commands local support. His assessments of the Dorset proposal against these criteria were made in the round across the whole area subject to the proposed restructuring. This was the approach made clear to Parliament when Marcus Jones stated on 28 February 2017 “I will carefully consider any proposal made by one or more councils in an area for reorganising that area’s local government, and reach a judgement in the round as to whether the proposal, if implemented, is likely to improve the area’s local government, commands a good deal of local support in the area, and whether the area itself is a credible geography for the proposed new structures”.

The provisions in the 2016 Act provide for regulations to be made even if not every council in a two tier area consents. Whilst the Bill was being taken through Parliament, it was made clear in debates in the Lords that it should not be possible for one council to act as a veto for an entire area. Baroness Williams’s comments during the debate about provisions on unitarisation included “councils not being able to veto the wider wish” and she explained how the Act’s provisions were underpinned by the consideration that “where there is a sensible structural change to be made.....it should not be possible for any one council in an area to effectively veto the consideration of such a proposal”.

Q3: In the EM (8.8), you also say: “During the period of representations, Christchurch Borough Council held a local advisory poll to inform the Council’s representation to the Secretary of State, declaring the result on 14 December 2017. The poll had a 54% turnout, of which 84% voted No to the question “Do you support the current proposal for a single Council covering Christchurch, Bournemouth and Poole?” Following the results of this poll, Christchurch Borough Council made a representation to the Secretary of State containing an alternative proposal which the Secretary of State did not consider to be implementable.” What was the alternative proposal? Why did the S of S consider this not implementable? Given that one of the criteria for such proposals is that it should command “a good deal of local support in the area”, and a local poll found 84% opposition, how can the S of S deem that the proposed change to Christchurch BC meets this criterion?

A3: Christchurch Borough Council proposed an alternative option in their representation of 4 January 2018. The essential elements were:

- A single unitary for Bournemouth and Poole;
- An extension of the Tricuro approach for all adult services (and similar approach for Children’s Services). Bournemouth, Poole and Dorset County Council have set up an adult social care company called Tricuro, which undertakes day and residential care as well as mental health support;
- A comprehensive Combined Authority for Dorset;
- Shared service collaborations for all other services:
 - Dorset County Council to share services with other County Councils
 - Extending the existing Christchurch and East Dorset Partnership
 - Other service based partnerships.

The Secretary of State considered that this was not an implementable option. First, a key element of Christchurch’s preferred approach involved the retention of a two-tier structure in most of Dorset. That would be likely to undermine the very purpose of, and support for, the proposed reforms. There seemed to be no realistic basis, on the information available, for thinking that any such alternative proposal would improve local government across the area, or command a good deal of local support, as demonstrated by the original consultation all the councils, including Christchurch, undertook. Secondly, the other key element of Christchurch’s preferred approach involved a merger of two unitary councils wholly out with the area of Christchurch. The Secretary of State has previously been clear that one of the criteria he intended to apply to any proposed merger of district councils was that the merger is proposed by all the councils which are to be merged. This merger would have been proposed by neither of the councils concerned; and indeed both councils had positively stated that they did not support it on efficiency grounds.

The Secretary of State concluded that there is a compelling case for implementing the proposal, being satisfied that that the proposal fully meets the publicly stated criteria for unitarisation – namely that if implemented, the proposal is likely to improve local government in the area, has credible geography and commands local support. Ministers have made clear that they will apply the criteria for local government restructuring “in the round” for the area subject to reorganisation, rather than considering whether the criteria would be met in relation to each individual council area. The Secretary of State was strongly of the view that there is a good deal of local support in the round – as evidenced by the consultation that Dorset carried out and the numerous representations from Dorset MPs, political groups, local businesses, town and parish councils, councillors, voluntary

organisations, public sector bodies and members of the public. The Secretary of State concluded that he was satisfied that not only the majority of the public across the area of Dorset support the proposal, but that the poll, involving only some 6% of that area's population, does not undermine his judgment that the local support criterion is met.

17 April 2018

APPENDIX 2: DRAFT SOMERSET WEST AND TAUNTON (LOCAL GOVERNMENT CHANGES) ORDER 2018; DRAFT SOMERSET WEST AND TAUNTON (MODIFICATION OF BOUNDARY CHANGE ENACTMENTS) REGULATIONS 2018

Additional information from the Ministry of Housing, Communities and Local Government

Q1: In the EM, you say: “After the Secretary of State announced his initial decision that he was minded to implement the proposal, there was a period for representations lasting from 30 November 2017 until 19 January 2018. 251 representations were received. Of these 114 were supportive of the proposal, 14 were neutral and 123 were opposed... The majority of negative representations received were from members of the public (99 representations) with a further 15 negative representations coming from local councillors. A recurring theme of the negative representations was an unwillingness among Taunton Deane residents to take on West Somerset as a financially unsustainable council. However the proposal put forward by both councils outlines that the merger would result in increased financial sustainability across the area, for both extant councils.” The final sentence quoted, and its vague reference to “increased financial sustainability”, does not deal with the concern reported from Taunton Deane residents that West Somerset is a “financially unsustainable council”. What are the relative financial positions of both councils?

A1: The councils’ business case submitted as part of their proposal in March 2017 stated that “The medium term financial challenge continues to shift as forecasts are updated to reflect the latest information. Since the statement of the financial position in July 2016, information on pension fund deficits, business rates revaluations, and appeals risks has shifted the budget challenge and the latest forecast shows by 2021 TDBC needs to reduce its annual budget by £2.3m and WSC by £0.8m (previously £2.5m for TDBC and £1.2m for WSC).”

We received further information on the councils’ financial positions during the Secretary of State’s consideration of the proposal.

The independent auditor considers West Somerset District Council to be unsustainable in the medium to long term unless action is taken to address its finances and enable it to set a balanced budget. In an email to the Department in November 2017 the independent auditor summarised the findings on the financial situation of West Somerset District Council (WSDC) as follows:

“In 2015/16 we qualified WSDC’s Value For Money (VFM) conclusion on the grounds that it did not have a balanced medium term financial plan and as at the date of our opinion did not have robust plans in place to address the shortfall. This matter was evidence of weaknesses in proper arrangements for planning finances effectively to support the sustainable delivery of strategic priorities and maintain statutory functions.

In August 2017 WSDC updated their Medium Term Financial Plan to reflect a revised rateable value for Hinckley B. This resulted in an unqualified VFM conclusion for 2016/17. Our reports did, however, highlight that WSDC was still reporting a cumulative £0.8 million budget shortfall in the years 2018-2021 and although this represented a much improved position into the medium term, full financial balance was predicated on the ‘One Council’ proposal being realised.”

Taunton Deane Borough Council is currently considered by the auditor to be sustainable; however it too will need to make savings from 2020 to enable it to continue to set a balanced budget.

Q2: What hard evidence has been offered that the merger will address any financial difficulties in West Somerset, without burdening Taunton Deane residents?

A2: The business case, submitted jointly by both councils, details that becoming a single council will secure on-going savings of £3.1 million per annum; this will include an additional £0.5 million of on-going savings per annum from the current shared working partnership. The proposal submitted by the councils highlights the joint benefits that the proposed merger would bring in terms of improved service delivery across the whole area, agglomerations of scale and the ability to commission as a single entity.

The independent auditor considers that West Somerset District Council is financially unsustainable, and that the proposed merger would significantly improve this, stating to the Department that West Somerset District Council has “cumulative £0.8 million budget shortfall in the years 2018-2021 and although this represented a much improved position into the medium term, full financial balance was predicated on the ‘One Council’ proposal being realised”.

We consider that the Taunton Deane residents are also likely to benefit. The two councils already benefit from shared services, a senior management team and staff team; and considerable savings of over £1.8 million per annum have already been generated through the current partnership. However, we understand that should the merger not be implemented, the financial unsustainability of West Somerset District Council is considered to jeopardise the financial benefits of the current partnership, thus making it likely that Taunton Deane Borough Council would remove itself from the partnership agreement, which for both councils would risk the savings already generated. The independent auditor notes that “if the ‘One Council’ was not to go ahead and TDBC sought to unwind the collaboration the financial gap would be exacerbated”.

The councils’ business case also details the benefits expected for Taunton Deane Borough Council: “Both councils continue to face challenging financial futures but for very different reasons. Taunton Deane has committed to continue to invest its new homes bonus funding towards a programme of local growth. This means that the Council will need to reduce its net budget position (by reducing costs and/or increasing income). The latest Medium Term Financial Plan predicts a budget gap of around £2.5m by 2021/22 should no action be taken.”

Q3: How does the S of S see the proposal as consistent with the criteria for such mergers - specifically, “a good deal of local support” - when the largest number of representations to the S of S opposed the merger?

A3: The Secretary of State has reached his conclusion that there is a good deal of local support for the proposed merger of West Somerset and Taunton Deane from the evidence presented in the councils’ proposal and the information he received directly.

He concluded that there is support from the councils and their members who are the democratically elected representatives of the local people. West Somerset reiterated this position at their full council meeting on 13 December 2017 (voting 20 in favour, 3 against, 1 abstention). Taunton Deane voted in support of progressing the merger at its full council meeting on 26 July 2016 (voting 32 in favour, 16

against, 2 abstaining). The Leader of West Somerset, Councillor Anthony Trollope-Bellew, recently reaffirmed his support for the merger, confirming his belief that his council's financial position in the absence of a merger is unsustainable beyond the next couple of years.

Somerset County Council equally supports the merger, and all public bodies are either supportive (15 representations) or raised no objections (4 representations). A strong majority of businesses and voluntary sector organisations were supportive (18 representations) or raised no objections (4 representations). The majority of parishes were supportive (10 representations) or neutral (1 representation).

As to representations from members of the public, 53 were supportive of the proposed merger. 99 did not support the proposed merger and the most common reasons cited were the perceived reduction in democratic representation for West Somerset following the merger, and the misconception that Taunton Deane would be detrimentally affected by the merger. The first of these concerns is addressed by the expectation that the Local Government Boundary Commission will carry out a full electoral review of the whole area of the proposed new district, which will ensure all wards are equally represented on the proposed new council. The second is addressed (as above) by the fact that Taunton Deane also stands to benefit from savings generated by the merger. These concerns were therefore considered to be addressed.

Having considered all the information available to him, the Secretary of State has concluded that the proposed merger has a good deal of local support; from the County Council, the District and Borough councils, and a majority of public authorities, town and parish councils, and voluntary and business organisations. Whilst a majority of the very small proportion of the population who made representations were opposed to the merger, their principal concerns are being addressed. More significantly, a substantial majority of the democratically elected representatives of the population are in favour of the proposal.

17 April 2018

APPENDIX 3: CORRESPONDENCE ON THE EDUCATION (STUDENT SUPPORT) REGULATIONS 2018

Letter from Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to Lord O'Shaughnessy, Parliamentary Under Secretary of State at the Department of Health and Social Care

As you know, SI 2018/434 revokes SI 2018/136, the Education (Student Support) (Amendment) Regulations 2018, which we drew to the special attention of the House in our 21st Report of this Session. SI 2018/443 reinstates the original policy intention of SI 2018/136.

At our meeting this week, the Committee agreed to bring SI 2018/434 and SI 2018/443 to the special attention of the House, and we are doing so in our latest Report. We have two main concerns.

The first relates to what, in the experience of this Committee, is an unprecedented decision by the Government, to revoke one set of Regulations and replace them with a second set, with unchanged policy content, solely in order to facilitate a Parliamentary debate. We look to the Government to act in a timely and effective manner to enable Parliamentary scrutiny of secondary legislation: the handling of these Regulations does not meet that expectation.

Our second, no less strongly felt concern is with the wider impact on recruitment to post-graduate nursing courses which may result from the switch from bursary to loan support, and from the uncertainty caused in recent weeks by the controversy surrounding the Regulations. Universities generally deal in January with recruitment to courses starting in the following September: significant numbers of potential students may well have been dissuaded from applying for such courses by the effect of these Regulations, and the way in which they have been handled by the Government. This cannot have been the intention.

The Committee is keen to hear from you in relation to this second concern. I would be grateful if you could reply to this letter by Monday 23 April, to address the issue of recruitment to 2018-19 courses

18 April 2018

Letter from Mr Steve Barclay, MP, Minister of State for Health, to Lord Trefgarne

Thank you for your letter of 18 April to Lord O'Shaughnessy, I have agreed with him that I will reply on behalf of the Department as NHS Education and Training falls within my Ministerial portfolio.

May I firstly take this opportunity to apologise that the Regulations were withdrawn. However, in response to a request from the Opposition and guidance from the Speaker, we wanted to take the opportunity to listen to the issues raised.

The revocation and relaying of Education (Student Support) (Amendment) (No. 2) Regulations 2018 [S.I., 2018, No. 443] was felt by the Government to be the right thing to do, not least given the Speaker's comments on 26 March indicating such measures are open to governments:

“I say to her [Angela Rayner MP] that of course it is always open to a Government to withdraw a particular statutory instrument while wishing to preserve the intention to give effect to the policy contained therein, and to table another statutory instrument. That is absolutely not beyond the wit of humankind or the capacity of parliamentary drafts people.

[...] It is not desirable for the Chair to be constantly brought into exchanges of this kind, but I very much hope that people of good will on both sides in important positions in the House will reflect on this and, in a very finely balanced House, do what is procedurally right and what they would want, if roles were reversed, to be done to or by them. I hope that is fair and clear.”

I appreciate that, in the experience of the Committee, this has been frustrating. I can assure colleagues on the Committee that we are using this time to engage with colleagues and key stakeholders and we hope to be able to update the House on this when the Debate is scheduled in due course.

Your letter also raises the effect of the Regulations on student numbers. As the majority of postgraduate students do not apply through the UCAS system, it is not possible to make an accurate assessment at this time. However, the Government has published clear guidance on ‘gov.uk’ and liaised closely with the Student Loans Company, and other key stakeholders, to ensure students are provided with the necessary clarity. As the policy intention has not changed, we would anticipate the impact on students to be minimal.

I hope this provides clarity on both the reasons for extending time for parliamentary scrutiny and the steps the Government has taken to ensure students are given clarity on arrangements.

23 April 2018

APPENDIX 4: LETTER FROM MR DAVID LIDINGTON CBE MP

Quality of Information Provided in Support of Secondary Legislation - training update

On 12 September 2017 Elizabeth Gardiner (First Parliamentary Counsel), Jonathan Jones (Treasury Solicitor) and Sir Chris Wormald (Head of Policy Profession), appeared before you to explain what the Civil Service was doing to improve the 'Quality of Information Provided in Support of Secondary Legislation'. A commitment to improve had been given after a similar evidence session in June 2016.

As Minister for the Cabinet Office I would like to take the opportunity to update you about the progress that has been made since the Permanent Secretaries' September 2017 evidence session.

A commitment was given to train 300 people over the next year in both the knowledge and practical skills needed to prepare effective Explanatory Memorandum. This training is codesigned and co-delivered by a secondee from Parliament to the Civil Service, a Policy Professional and one of your own committee advisors. The detail of number of attendees, grade and department that have been trained to date are in the annex to this letter.

With thanks to your colleagues in Parliament we have been rapidly implementing our intended improvements which we believe will lead to the required consistency, clarity and effectiveness of Explanatory Memoranda at this critical time.

In addition to this, the Parliamentary Business and Legislation Committee Secretariat regularly meet Senior Responsible Owners (SROs) to share best practice and lessons learnt with teams across Whitehall. You may remember from the evidence session that the SROs are senior officials, appointed in each department to improve oversight and accountability for secondary legislation laid before Parliament.

This improvement package is a key part of increasing the capability and skills for civil servants when working with Parliament.

Annex: Attendees at training

CSL training - Contented Committees: Effective EMs is focused on training policy professionals to increase understanding of the importance of getting an EM right first time and takes place every two months.

From 1 September 2017 to 31 January 2018:

168 attendees at Contented Committees: Effective EMs events.

As we ran bespoke sessions for Defra (one of the priority departments in terms of secondary legislation) and they did not provide the grades of attendees, we are missing 28 people from the grade sample.

Grade	Number of attendees
AO	1
E0/10/EA	13
HEO	47
SEO	23
Faststream (Band T)	19
Grade 7	29
Grade 6	8

Department	Number of attendees
Cabinet Office (CO)	7
Department for Business, Energy & Industrial Strategy (BEIS)	31
Department for Digital, Culture, Media & Sport (DCMS)	10
Department for Education (DfE)	2
Department for Environment, Food & Rural Affairs (DEFRA)	50
Department for Exiting the European Union (DExEU)	6
Department for International Development (DFID)	1
Department for International Trade (DIT) 6	6
Department for Transport (DfT)	9
Department for Work and Pensions (DWP)	14
Department of Health (DH)	5
Food Standards Agency	3
Government Legal Department	1
HM Revenue & Customs (HMRC)	11
HM Treasury (HMT)	3
Home Office (HO)	3
Intellectual Property Office	1
Ministry of Defence (MOD)	2
Ministry of Justice (MoJ)	2
Ofgem	1

Feedback is averaging 8.5/10 with 17 people giving 10/10 out of the 80 responses we have had for feedback.

Future training planned for CSL

We will hold contented committees: Effective EMs every two months with an expectation of 50 attendees per event.

We are currently setting up bespoke events for both the Home Office and Defra. We are actively planning the training for the Senior Civil Service who sign off EMs within their departments.

14 March 2018

APPENDIX 5: 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 24 April 2018, Members declared no interests.

Attendance:

The meeting was attended by Baroness Blackstone, Lord Faulkner of Worcester, Baroness Finn, Lord Goddard of Stockport, Lord Haskel, Lord Janvrin, Lord Kirkwood of Kirkhope, Lord Sherbourne of Didsbury, Lord Trefgarne and Baroness Watkins of Tavistock.