

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

42nd Report of Session 2017–19

**Correspondence:
Delegated legislation
under the European
Union (Withdrawal)
Act 2018**

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Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as amended on 11 July 2018, are set out on the website but are, broadly:

To report on draft instruments and memoranda laid before Parliament under sections 8, 9 and 23(1) of the European Withdrawal Act 2018.

And, to scrutinise –

- (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
- (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in the terms of reference.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

Rt Hon. Lord Chartres	Lord Goddard of Stockport	Baroness O'Loan
Rt Hon. Lord Cunningham of Felling	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	

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 <http://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>

Committee Staff

The staff of the Committee are Christine Salmon Percival (Clerk), Paul Bristow (Adviser), Nadine McNally (Adviser), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant) and Ben Dunleavy (Committee Assistant).

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 hlseclegscrutiny@parliament.uk.

Forty Second Report

CORRESPONDENCE

1. In our Report entitled ‘Sifting “proposed negative instruments” laid under the European Union (Withdrawal) Act 2018: criteria and working arrangements’,¹ we stated that we have “pressed the Government to ensure that the flow of instruments laid under the withdrawal Act should be properly managed, without surges which could place an unacceptable pressure on the Committee’s capacity.” We therefore asked the Government for clarification about anticipated flow and volume of instruments. We have received correspondence from Mr Chris Heaton-Harris MP, Parliamentary Under Secretary of State at the Department for Exiting the European Union, on the expected flow of instruments, which we are publishing at Appendix 1. We are grateful to the Minister for his reply.

1 [37th Report](#), Session 2017–19 (HL Paper 174) paras 59–62.

APPENDIX 1: DELEGATED LEGISLATION UNDER THE EUROPEAN UNION (WITHDRAWAL) ACT 2018

Letter from Mr Chris Heaton-Harris MP, Parliamentary Under Secretary of State for Exiting the European Union

Delegated legislation under the European Union (Withdrawal) Act 2018

Following our recent meetings, and the Leader of the House of Commons' private meeting with the European Statutory Instrument Committee on 17 October, I am writing to provide more detail on the flow of proposed negative statutory instruments (SIs) to be laid under the European Union (Withdrawal) Act 2018. Robin Walker also made a commitment to write to the Procedure Committee during the discussion on the forthcoming EU (Withdrawal Agreement) Bill on 10 October regarding the flow of SIs, and this letter serves that purpose.

As you know, the Government has stated there will be between 800–1,000 EU exit-related SIs laid (not all of which will be under the EU (Withdrawal) Act) ahead of exit day to ensure a functioning statute book, and the Leader of the House of Commons has stated the final volume will be closer towards the lower end of that range.

The Government expects to see a steady increase in the number of EU exit SIs being laid through the autumn, and we are working hard to ensure a manageable flow over each sitting week. As is usual and largely unavoidable for secondary legislation, the precise volume to be laid each month will fluctuate, and we must be careful not to mislead Parliament and stakeholders.

That said, it is possible to give the range of the remaining EU exit SIs we are currently expecting to lay:

- 50–100 SIs, of which 55% are likely to be negative under the EUWA in October;
- 150–200 SIs, of which 55% are likely to be negative under the EUWA in November;
- 100–150 SIs, of which 35% are likely to be negative under the EUWA in December;
- 100–150 SIs, of which 25% are likely to be negative under the EUWA in January;
- 10–50 SIs, of which 20% are likely to be negative under the EUWA in February;
- 10–50 SIs, of which 30% are likely to be negative under the EUWA in March.

As mentioned by the Leader, this programme of secondary legislation is necessarily flexible, enabling individual SIs to be moved around in the general flow to ensure it is manageable. While it is not possible to confirm the volume for each department each month as this is liable to change, I can confirm the majority of SIs will be from Defra [Department for Environment, Food and Rural Affairs], HMRC [HM Revenue and Customs], HMT [HM Treasury], BEIS [Department for Business, Energy and Industrial Strategy] and DfT [Department for Transport], and we are continuing to work collectively to ensure a manageable flow.

More widely, we have been doing a great deal of work to improve our management of SIs, and as part of this we work closely with departments to ensure they prioritise only the essential non-exit secondary legislation to be laid in Parliament. This will ensure that Parliament focuses on the critical SIs we need between now and exit day.

25 October 2018

APPENDIX 2: MEMBERS INTERESTS

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.