

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

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51st Report of Session 2017–19

**Work of the Committee in Session  
2017–19: Second Interim Report**

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Ordered to be printed 11 June 2019 and published 11 June 2019

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Published by the Authority of the House of Lords

HL Paper 376

### *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), Helen Gahir (Adviser), Nadine McNally (Adviser), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant), Ben Dunleavy (Committee Assistant) and Paul Bristow (Specialist Adviser).

### *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](mailto:hlseclegscrutiny@parliament.uk).

# Fifty First Report

## WORK OF THE COMMITTEE IN SESSION 2017–19: SECOND INTERIM REPORT

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### The second year of the session

1. It is the practice of the Secondary Legislation Scrutiny Committee (SLSC) to publish a report on trends in its activity at the end of each session. Given the length of the current session, we published an Interim Report<sup>1</sup> (“the first Interim Report”) in April 2018, looking at Committee activity during the first 12 months of the session (up to 13 April 2018)<sup>2</sup>—for the purposes of this report, we call this period “Year 1”. This second Interim Report looks at Committee activity during the second 12 months of the session (up to 13 April 2019)—we call this period “Year 2”. It includes observations on both the Committee’s “business as usual” activities and also its work as sifting committee for proposed negative instruments laid under the European Union (Withdrawal) Act 2018 (“the withdrawal Act”).
2. Year 2 has been a demanding year, both in terms of the volume and uncertain flow of work because of Brexit and the consequent temporary changes in the Committee’s working arrangements. To meet these challenges, the Committee co-opted 11 new members and was supported by additional staff. We would like to take this opportunity to thank both the co-opted members and the SLSC team for their invaluable contribution to the scrutiny work of the Committee.

### Number of statutory instruments laid

3. In Year 1, 663 statutory instruments (SIs)<sup>3</sup> were laid for scrutiny (a number similar to the 659 laid in the 2016–17 session). In Year 2 this figure increased to 1,002 (see Chart 1 below). The majority of these, 686 (68%), were laid during October 2018 to March 2019 with 36% of the total for Year 2 being laid in Q1 2019. The reason for this increase, and the peak in late 2018 and early 2019, was the passage of the withdrawal Act, which received Royal Assent on 26 June 2018. It was not until the relevant provisions of the withdrawal Act came into force that government Departments, which may have been preparing Brexit-related SIs for some time, could begin laying them.

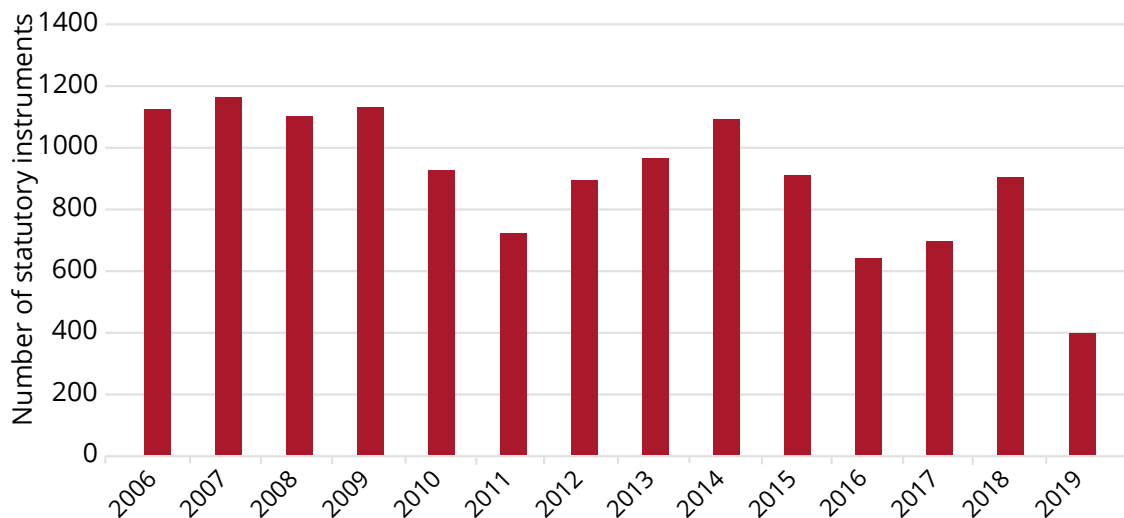
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1 *Interim Report on the Work of the Committee* (26th Report, Session 2017–19, HL Paper 125).

2 Because Statutory Instruments (SIs) are laid before Parliament almost continuously, our figures treat the current session as having started with the first instrument that was laid too late to be considered at the final meeting of the previous session. Although the current parliamentary session started on 21 June 2017, the SLSC’s first meeting of this session examined the backlog of SIs that had accumulated since 14 April 2018.

3 As well as SIs, the Committee considers almost all instruments subject to parliamentary 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.

**Chart 1: The total number of Statutory Instruments laid each calendar year since 2007**



4. The proportion of affirmative instruments laid in Year 1 was 20%, which matches the usual profile. This figure rose to 41% in Year 2 (an average of 33% over Years 1 and 2). The number of correcting instruments reduced to 4.1% in Year 1 below the 5% benchmark figure, but rose to 8.4% in Year 2. There was also an increase in the number of Explanatory Memoranda (EMs) which needed to be replaced, from 6.6% in Year 1, to 8.8% in Year 2. The background to these increases is examined in more detail below (see paragraphs 40 to 45).
5. The Departments which laid the largest numbers of instruments in Year 2 were the Department for Environment, Food and Rural Affairs (Defra) 167 (16.7%), the Department for Business Energy and Industrial Strategy (BEIS) 108 (10.8%), and the Department for Transport (DfT) 104 (10.4%). Between them, these Departments laid almost 40% of instruments considered in Year 2 (see Chart 6 below).
6. The school curriculum relating to sex and relationships education, Universal Credit and environmental matters attracted most correspondence from the public. We are grateful to those who made submissions and for the clearer understanding they provided about how an instrument might operate in practice. As we said in our report on the sifting process (see paragraphs 11 and 13 below), "... we welcome submissions offering constructive criticism about the way any instrument will operate".<sup>4</sup>

### Overview of grounds for reporting

7. On average, the Committee draws about 7% of all negative and affirmative instruments to the special attention of the House. In Year 1 we reported 51 instruments (7.7%). Year 2 was broadly the same at 7.9% (77 instruments reported of the 971 which completed scrutiny during Year 2). We were, however, surprised that the percentage in Year 2 remained at that level. We had anticipated that most instruments laid in Year 2 would be Brexit-related, with the limited purpose of adapting EU retained law to enable it to operate effectively and would not, therefore, involve any substantive change in policy.

<sup>4</sup> *Sifting "proposed negative instruments" laid under the European Union (Withdrawal) Act 2018: criteria and working arrangements* (37th Report, Session 2017–19 HL Paper 174), para 79.

8. Although most of our work in Year 2 was Brexit-related, some significant non-Brexit-related instruments were also laid. These included, for example, instruments which extended the period during which under 18s could be authorised to be used as a covert human intelligence sources,<sup>5</sup> increased probate fees,<sup>6</sup> reduced the maximum stake for fixed odds betting terminals,<sup>7</sup> contained new proposals for the teaching of sex and relationships education in schools,<sup>8</sup> and involved the migration to Universal Credit of about three million people on long-term benefits.<sup>9</sup>
9. Of the 77 SIs drawn to the special attention of the House in Year 2, as usual, most—74 (96%)—were reported on the grounds of “interest” (of these, five were jointly reported on the ground of “insufficient information” and one jointly on the ground of “may imperfectly achieve its policy objective”). Two SIs were reported on our especially critical ground that “they may imperfectly achieve their policy objective”: one was the Universal Credit (Managed Migration) Regulations 2018 (see paragraph 8 above), laid by the Department for Work and Pensions (DWP), and the other, from the DfT, was about the allocation of international haulage permits after Brexit.<sup>10</sup> One instrument, concerning teachers’ pay, was reported on the ground that there appeared to be “inadequacies in the consultation process”.<sup>11</sup> Seven instruments were reported on the ground that the accompanying explanatory material provided “insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation”. We find this last figure particularly disappointing, given that the House has had to consider so much, often complex, secondary legislation during Year 2 and has therefore been more than usually reliant on high quality explanatory material. Many more EMs were found to have minor defects or omissions.

### Government responses

10. The Government have undertaken to respond in writing to the reports of select committees, if possible, within two months of publication.<sup>12</sup> Given the timetable for parliamentary scrutiny of secondary legislation (for example, the prayer period for negative instruments is 40 days), this would not be appropriate for SLSC reports. The agreed practice is therefore that, where an instrument is debated, Ministers should respond to any comments made in an SLSC report in their opening remarks. **We are disappointed to report that this has not happened on several occasions and look to the Government to provide an assurance that these lapses will not**

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5 Regulation of Investigatory Powers (Juveniles) (Amendment) Order 2018 ([SI 2018/715](#)), [35th Report](#), Session 2017–19 (HL Paper 168).

6 Non-Contentious Probate (Amendment) Rules 2018 ([SI 2018/1137](#)), [6th Report](#) (Sub-Committee A), Session 2017–19 (HL Paper 235).

7 [Draft Gaming Machine \(Miscellaneous Amendments and Revocation\) Regulations 2018](#), [7th Report](#) (Sub-Committee B), Session 2017–19 (HL Paper 239).

8 [Draft Relationships Education, Relationships and Sex Education and Health Education \(England\) Regulations 2019](#), [22nd Report](#) (Sub-Committee B), Session 2017–19 (HL Paper 327).

9 [Draft Universal Credit \(Managed Migration\) Regulations 2018](#), [8th Report](#) (Sub-Committee B), Session 2017–19 (HL Paper 244).

10 [Draft International Road Transport Permits \(EU Exit\) Regulations 2018](#), [1st Report](#) (Sub-Committee A), Session 2017–19 (HL Paper 196).

11 School Teachers’ Pay and Conditions Order 2018 ([SI 2018/998](#)), [41st Report](#), Session 2017–19 (HL Paper 190)

12 Companion to the Standing Order and Guide to Proceedings of the House of Lords (2017), [para 11.39](#).

**continue.**<sup>13</sup> That said, we are pleased that members from across the House often refer to our reports in debate.

### Proposed negatives under the withdrawal Act

11. Whilst in the Commons, the withdrawal Bill was amended to introduce a sifting mechanism whereby instruments, for which the Minister had a choice of procedure (between affirmative or negative) and had opted for the negative, would first be laid as a “proposed negative instrument”. The Bill was also amended to include a mechanism by which proposed negative instruments would be scrutinised by a committee in each House which would have power to recommend that it should be upgraded to the affirmative procedure. In the Commons, a new committee was set up to carry out this “sifting function”, the European Statutory Instruments Committee (ESIC). In the Lords, following the agreement of the House on 11 July 2018,<sup>14</sup> the sifting function was added to the SLSC’s existing role. In our report on the sifting function (“the sifting report”),<sup>15</sup> we refer to exercising the sifting function as “Stage 1” scrutiny and the Committee’s usual policy scrutiny function of SIs as “Stage 2” scrutiny (at which stage, the Committee would also scrutinise the policy content of instruments which had been proposed negatives but subsequently laid as either affirmative or negative SIs).
12. In our sifting report, we anticipated an “approximate doubling of our workload”, taking into account an estimated 800 to 1,000 Brexit-related instruments but also a likely decrease in non-Brexit-related instruments.<sup>16</sup> With this in mind, the House agreed that the Committee should have power to appoint sub-committees and to co-opt members to serve on those sub-committees. The sub-committees were given power to report directly to the House. In October 2018, the Committee exercised these new powers and set up two sub-committees, each consisting of half the current membership supplemented by an equal number of co-opted members. Sub-Committee A was chaired by the Rt Hon. Lord Trefgarne, also Chairman of the SLSC, and Sub-Committee B was chaired by the Rt Hon. Lord Cunningham of Felling, a member of the SLSC. Appointing sub-committees, alongside an increase in SLSC staff, enabled the SLSC to double its output and to publish two reports a week, thereby keeping pace with the flow of Brexit-related instruments.<sup>17</sup>
13. Following a short inquiry, the main Committee published a report—the sifting report—in which it set out, amongst other things, sifting criteria.<sup>18</sup> These included an overarching test: namely, “is the subject matter of this instrument and the scope of any policy change effected by it of such

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13 For example, the [Draft Kimberley Process Certification Scheme \(Amendment\)\(EU Exit\) Regulations 2019](#), HL Deb, 13 February 2019, [cols 453-8](#) [Grand Committee]; the [Draft Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019](#), HL Deb, 12 March 2019, [cols 185-197](#) [Grand Committee]; the [Draft REACH etc. \(Amendment etc.\) EU Exit\) Regulations 2019](#), HL Deb, 26 March 2019, [cols 1727-1758](#) [Lords Chamber]; or the [Draft Nuclear Safeguards \(EU Exit\) Regulations 2018](#), HL Deb, 22 January 2019, [cols 654-662](#) [Lords Chamber].

14 HL Deb, 11 July 2018, [cols 916-919](#) [Lords Chamber].

15 [37th Report](#), Session 2017-19 (HL Paper 174), para 51.

16 [37th Report](#), Session 2017-19 (HL Paper 174), para 54. The figure of 800-1,000 was later revised down to “below 600”, see para 17 below.

17 Link to webpages of Sub-Committee A: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee-sub-committee-a/> and Sub-Committee B: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee-sub-committee-b/>.

18 [37th Report](#), Session 2017-19 (HL Paper 174).

significance that the House would expect to debate it?”<sup>19</sup> Of the 228 proposed negative instruments laid in Year 2, we recommended that 41 (or 18%) should be upgraded—a significant proportion of which concerned Northern Ireland. The Government accepted all recommendations, by the SLSC and ESIC—either singly or jointly, to upgrade. In one case, Defra addressed the SLSC’s concerns by removing certain provision from the instrument before re-laying as a proposed negative. We agreed that that was the appropriate procedure and did not recommend that the re-laid instrument should be upgraded.<sup>20</sup>

14. Although we acted independently of the Commons’ ESIC, the results were remarkably similar. One area of difference, however, concerned three instances where it appeared that a proposed negative met the statutory criteria set out in the withdrawal Act which required an instrument to be subject to the affirmative procedure.<sup>21</sup> In these cases, the SLSC simply reported its view, whereas ESIC recommended an upgrade: the end result was, however, the same.
15. Once the Sub-Committees had reported on a proposed negative (Stage 1 scrutiny), the next step was for the Government to lay the instrument as either a negative or affirmative SI (at which point the Committee would undertake Stage 2 scrutiny). The gap between the two stages was sometimes surprisingly long. In the case of the Flags (Northern Ireland) (Amendment) (EU Exit) Regulations 2018, for example, the proposed negative instrument was laid on 25 July 2018, the Government agreed with the recommendation by the SLSC and ESIC to upgrade on 19 September 2018 but the affirmative instrument was not laid until 25 February 2019 (215 days).<sup>22</sup> The average period between laying as a proposed negative and re-laying as an SI was 50 days. However, for 39 (or 17%) proposed negatives the period was over 70 days, and for 11 (or just under 5%) it was more than 100 days. **Whilst it is a matter for the Government to decide when to lay an instrument, it is regrettable that these delays contributed to a last-minute surge of affirmative instruments in early 2019.**

### Improved information

16. In her submission to the Committee’s inquiry into the sifting process, the Leader of the House, the Rt Hon. Baroness Evans of Bowes Park, said: “One additional area that we would like to add into your thinking is how, together, we make the process understandable to those outside of Parliament”.<sup>23</sup> In our sifting report, we referred to the then new “SI Service”,<sup>24</sup> located on the Parliament.uk beta website, which sets out the parliamentary stages and dates for each SI and links to key documents including our reports. We, and no doubt others, have found this new service of great assistance. We have also made alterations to the SLSC webpages to show which instruments

<sup>19</sup> [37th Report](#), Session 2017–19 (HL Paper 174), para 32.

<sup>20</sup> Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019 ([SI 2019/170](#)), [17th Report](#) (Sub-Committee B), Session 2017–19 (HL Paper 293).

<sup>21</sup> See, for example, [Cat and Dog Fur \(Control of Import, Export and Placing on the Market\) \(EU Exit\) Regulations 2018](#), [40th Report](#), Session 2017–19 (HL Paper 185).

<sup>22</sup> See also the [Draft Cat and Dog Fur \(Control of Import, Export and Placing on the Market\) \(EU Exit\) Regulations 2019](#). This was laid as a Proposed Negative on 20 August 2018, Government agreement to upgrade received on 25 September 2018, laid as an affirmative instrument 17 January 2019 and re-laid due to error on 4 March 2019.

<sup>23</sup> [37th Report](#), Session 2017–19 (HL Paper 174), para 74.

<sup>24</sup> UK Parliament Statutory Instrument Service: <https://beta.parliament.uk/find-a-statutory-instrument>.

will be on the Committee’s agenda in the forthcoming week, and changes have been made to the italicised tags in House of Lords Business indicating the instruments on which the Committee has commented. In March 2019, the Committee published a short report which provides a single source of guidance about accessing the work of the Committee and information relating to secondary legislation.<sup>25</sup>

### The volume and flow of Brexit-related instruments

17. At first, the Government anticipated that Brexit-related primary legislation would give rise to 800 to 1,000 instruments. Over time, that estimate fell. In his letter of 25 October 2018, Chris Heaton-Harris MP, then DExEU Minister, said that it would be “towards the lower end” of that range.<sup>26</sup> About a month later, in a letter dated 19 November 2018, from Mr Heaton-Harris and the Rt Hon. Andrea Leadsom MP, then Leader of the House of Commons, the number was further reduced to “up to 700”,<sup>27</sup> and by 24 December 2018 it was “below 600”. By 27 March 2019, the actual number of Brexit-related instrument laid was 512 (of which 406 had been made), and the Sub-Committees had considered 224 proposed negatives.
18. From the outset, the Committee pressed the Government to ensure that the flow of Brexit-related instruments should be properly managed, without surges which could place unacceptable pressure on the SLSC’s capacity. In the sifting report, we referred to the critical importance of instruments being laid “in as near a “steady flow” as possible” and noted the new role of the Parliamentary Business and Legislation (PBL) Cabinet committee in managing that flow.<sup>28</sup> We therefore welcomed the Leader’s comments in her speech to the House on 19 March 2018 which referred to “ensuring a steady flow of statutory instruments”,<sup>29</sup> and a letter from Mr Heaton-Harris, dated 16 August 2018,<sup>30</sup> which stated that “the Government is committed to ensuring a smooth flow of SIs”. It was disappointing, therefore, to be told some weeks later, in a letter dated 8 October 2018, that the Government had shifted their position from “ensuring a smooth flow” to “working with departments ... with a view to mitigating serious peaks”.<sup>31</sup>
19. In his letter of 25 October 2018, Mr Heaton-Harris indicated that, following high numbers being laid in November 2018 to January 2019, Brexit-related instruments would be largely dealt with by February 2019, with only an anticipated 10 to 50 instruments to be laid in each of February and March 2019. As it turned out, 150 instruments (120 SIs, of which 70 were affirmative and 50 negative, and 30 proposed negatives) were laid in February during which, in a single week (week beginning 11 February), an exceptionally high number of instruments—59 (47 SIs and 12 proposed negatives)—were laid, of which 32 were from Defra alone (28 SIs and four proposed negatives). Whilst the Committee had ensured that it had the resources to manage Brexit-related instruments, peaks of this magnitude were challenging, not

25 *Accessing the scrutiny work of the Committee and information resources relating to secondary legislation*, (45th Report, Session 2017–19, HL Paper 312).

26 *42nd Report*, Session 2017–19 (HL Paper 214).

27 *43rd Report*, Session 2017–19 (HL Paper 248)

28 *37th Report*, Session 2017–19 (HL Paper 174), paras 59–61.

29 HL Deb, 19 March 2018, [col 155](#) [Lords Chamber].

30 Published at Appendix 1 to this Report.

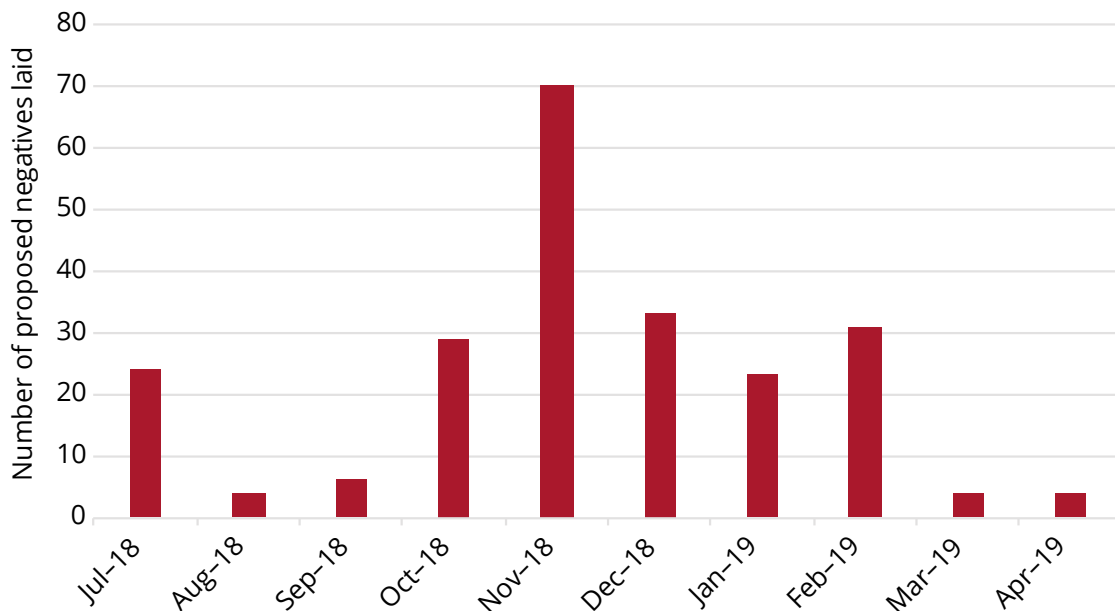
31 House of Commons Procedure Committee, *Further letter to the Chairman from the Parliamentary Under-Secretary of State, Department for Exiting the European Union, concerning the Committee’s report on Scrutiny of delegated legislation under the European Union (Withdrawal) Act 2018*.



least because, under the withdrawal Act, the scrutiny period for proposed negatives was limited to 10 sitting days. In addition, draft affirmative instruments had to be scrutinised by the SLSC and Joint Committee on Statutory Instruments (JCSI) with sufficient time left for them to be debated, approved, and brought into effect before the end of March 2019.

20. Chart 2 shows the pattern of laying for proposed negatives during Year 2. Immediately after ESIC was set up in late July 2018 a few were laid, but then almost none for about 10 weeks. The Chairman of the Commons Procedure Committee, Charles Walker OBE MP, in a letter to Mr Heaton-Harris dated 13 September 2018, expressed concern about this “very slow rate” of laying and warned that “should that pace be continued, only a fraction of the projected number of instruments could possibly be laid for scrutiny before exit day”.<sup>32</sup> We shared this concern. The dearth of proposed negatives in the summer of 2018 was subsequently offset by peaks in activity in November 2018 through to February 2019.

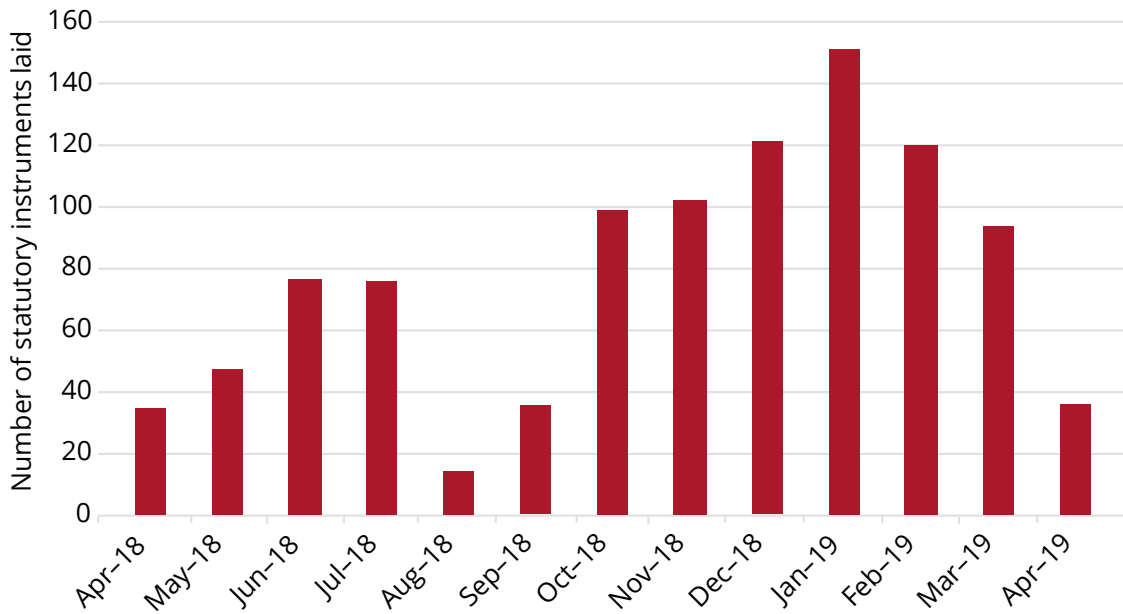
**Chart 2: Proposed negatives laid each month of Year 2**



21. Chart 3 shows a similar distribution pattern for SIs.

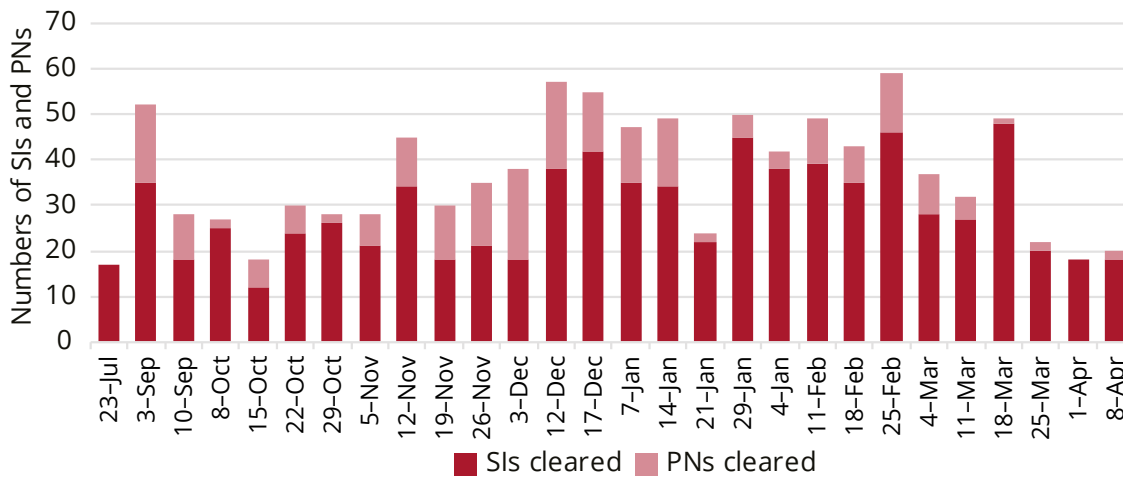
<sup>32</sup> House of Commons Procedure Committee, *Letter to the Chairman from the Parliamentary Under Secretary of State, Department for Exiting the European Union, concerning the Committee’s report on Scrutiny of delegated legislation under the European Union (Withdrawal) Act 2018* (13 September 2018).

**Chart 3: Statutory Instruments laid each month of Year 2**



22. Chart 4 combines SIs and proposed negatives. Where questions are raised by the Committee about an instrument, that instrument may be considered at more than one meeting. To avoid double-counting, the Chart below includes an instrument only at the point at which the Sub-Committee made its final decision (that is, “cleared” it).

**Chart 4: SIs and proposed negatives cleared at each meeting in Year 2**



23. We understand that the Government intend to continue the practice of requiring the approval from the PBL Committee before laying secondary legislation, even after the UK has left the EU. **We welcome this intention although anticipate that the Government will wish to review how the system has operated during the Brexit period to evaluate where it has worked well and where there may have been weaknesses. We look forward to receiving the findings of any review.**

*Bundling of SIs*

24. In the letter of 24 December 2018 (see paragraph 17 above), the Government attributed the decrease in the predicted overall number of Brexit-related instruments to prioritising and combining—or “bundling”—SIs. Whereas, in some cases, there was a clear association between the elements combined in an instrument, which was well explained in the accompanying explanatory material,<sup>33</sup> in others, the Sub-Committees took issue. Sub-Committee B, for example, found that a 620-page instrument on product safety,<sup>34</sup> laid by BEIS, whilst having an underlying policy coherence, pushed the concept of “bundling” too far:
- “... where the bundling of many different measures into a single statutory instrument leads to exceptional size and complexity, as with this instrument, it is a challenge to effective parliamentary scrutiny and risks compromising the accessibility of the law. **We would not like this instrument to set a precedent and urge the Government to avoid laying further large, combination instruments in the future.**”<sup>35</sup>
25. Sub-Committee A drew the special attention of the House to a Home Office instrument on law enforcement<sup>36</sup> which “bundled” together 24 disparate parts. The Sub-Committee concluded that it was “not persuaded that so wide-ranging an instrument, covering policy areas that are individually of significant concern to the House, can be justified”.<sup>37</sup> In debate, Lord Paddick described the Minister’s view that combining all these elements in a single instrument would assist scrutiny as “the legislative equivalent of an own goal”.<sup>38</sup>
26. Our Guidance for Departments<sup>39</sup> has for many years warned Departments against mixing low and high priority issues in the same “Miscellaneous Amendments” type of instrument. That remains our view: **significant policy developments should not be merged with a mass of minor adjustments to the extent that they risk being overlooked.** This risk is obvious with the “bundled instruments” described above but can also occur with non-Brexit-related instruments. The Universal Credit (Managed Migration) Regulations 2019 described above were an example of a Department tying urgent provisions to a complex change that needed more detailed examination. In its report Sub-Committee B was clear that the DWP should disaggregate the two items so that priorities could be met without undermining scrutiny standards.<sup>40</sup> Our recommendation that the

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33 For example, Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc) (EU Exit) Regulations 2019 ([SI 2019/720](#)), [15th Report](#) (Sub-Committee B), Session 2019–19 (HL Paper 281).

34 [Draft Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019](#), [17th Report](#) (Sub-Committee B), Session 2017–19 (HL Paper 293), especially paras 46–55.

35 [17th Report](#) (Sub-Committee B), Session 2017–19 para 55.

36 [17th Report](#) (Sub-Committee A), Session 2017–19 (HL Paper 292).

37 *Ibid.*, para 5.

38 HL Deb, 18 March 2019, [col 1311](#) [Lords Chamber].

39 Secondary Legislation Scrutiny Committee, ‘Guidance for Government Departments’ (May 2019): <https://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/SLSC-Guidance-for-Departments-May-2019.pdf>.

40 [Draft Universal Credit \(Managed Migration\) Regulations 2018](#), [8th Report](#) (SLSC Sub-Committee B), Session 2017–19 (HL Paper 244).

disability element be split off and dealt with in separate regulations was welcomed by Parliament.<sup>41</sup>

*The prompt transposition of international legislation*

27. Another issue which came to the fore during Year 2, also relating to the proper management of the statute book in the Brexit period, was a backlog of legislation implementing international legislation. Over the years, we have had a number of exchanges with Departments about this, particularly with DfT, where a study in 2017 identified that 43% of the amendments introduced in a sample of 10 international conventions had not been transposed into UK law, and that DfT had accumulated a backlog of about 40 such conventions.<sup>42</sup> We have continued to come across legislation that has not been transposed until well beyond its due date.<sup>43</sup>
28. To enable legislation to qualify as “retained EU legislation” under the withdrawal Act, these backlogs had to be addressed and outstanding EU transpositions implemented. This has led to a number of large “catch up” SIs and SIs dealing with matters that could have been dealt with in previous sessions.<sup>44</sup> Similarly a number of treaties have recently come forward for ratification that have been in informal operation for some years, in one case eight years.<sup>45</sup> **These delays in the implementation of international legislation are a cause for concern and we would welcome assurance from the Government that steps are being taken to prevent further backlogs and an explanation of what those steps entail.**
29. Because Brexit was expected to generate a large number of new treaties as well as additional SIs, in January 2019, it was agreed that the European Union Select Committee (EUC) should, until the end of the session, be responsible for scrutinising Brexit-related treaties and international agreements. We welcomed this change and are pleased to note that the House has been appreciative of the specialist knowledge that the EUC reports have contributed to the scrutiny process.

**Consultation**

30. We acknowledge that during the Brexit period, where many instruments were intended simply to adapt EU retained law, consultation was often not undertaken because no new policy was being introduced. That said, in a small number of cases omissions, unintended policy effects or technical changes to make the legal text operate correctly were identified by interested parties outside of government and Parliament after the instrument had been published.<sup>46</sup> This benefit of consultation is often overlooked.

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41 See, for example, the letter from Chairman of the Commons Work and Pensions Committee to Secretary of State: <https://www.parliament.uk/documents/commons-committees/work-and-pensions/Correspondence/181212%20FF%20HA%20to%20SoS%20re%20managed%20migration.pdf> (12 December 2018).

42 See correspondence in Appendix 1, [21st Report](#), Session 2017–19 (HL Paper 88).

43 See in particular paragraphs 9-10 and letter from the Department for Transport in Appendix 1, [34th Report](#), Session 2017–19 (HL Paper 157).

44 For example, Animal Feed (Composition Marketing and Use) (England) (Amendment) Regulations 2019 ([SI 2019/675](#)) which made enforcement provisions in 2019 for EU Regulations that came into effect in 2013.

45 For example, see correspondence with FCO in Appendix 1, [41st Report](#), Session 2017–19 (HL Paper 190).

46 See, for example, REACH etc (Amendment etc.)(EU Exit) (No 2) Regulations ([SI 2019/858](#)), the third item of interest in the [25th Report](#) (Sub-Committee A), Session 2017–19 (HL Paper 347); or the Occupational Pension Schemes (Master Trusts) Regulations 2018 ([SI 2018/1030](#)).

## Impact assessment

### *Quality of information*

31. In our first Interim Report, we stated that there had been “welcome signs of improvement” in the assessment by Departments of the impact of legislation.<sup>47</sup> This second Interim Report is less positive. We have been disappointed by the approach of some Departments to the assessment of the impact of some Brexit-related instruments in particular. The Home Office, in relation to the law enforcement instrument (see paragraph 25 above), argued that “... the EU arrangements in question would cease to be available to the UK on exit day in any event—by virtue of the UK having left the EU. Any associated costs (or benefits) to society or industry would therefore be incurred regardless of whether the Regulations are approved”.<sup>48</sup> We found this argument wholly unconvincing.<sup>49</sup>

### *Impacts assessments to be laid when the SI is laid*

32. In scrutinising an instrument, the SLSC considers its practical effect. We therefore expect every EM to include some contextual explanation, preferably with estimated numbers or some sort of indication of the degree of current usage, and an illustration of how the system will operate differently after the legislative change has happened. As we said in our report on the law enforcement instrument, “without such information we cannot assess the significance of a policy change and, therefore, advise the House accordingly”.<sup>50</sup> The Sub-Committee was particularly critical of the explanatory material provided in support of that instrument, not least because, as the Sub-Committee noted in its report, some of the impact information it had been looking for was included in an article published on the BBC News website but not in the EM.
33. The Committee’s Guidance for Departments<sup>51</sup> emphasises that any supporting information such as Impact Assessments (IA) or analysis of consultation responses should be published on the day the instrument is laid. During Year 2, HM Treasury (HMT, with HM Revenue and Customs (HMRC)) gave us particular cause for concern in this respect. We were grateful when, in June 2018, John Glen MP, Economic Secretary to the Treasury, drew our attention to the publication of a document entitled “HM Treasury’s approach to financial services legislation under the EU (Withdrawal) Act”.<sup>52</sup> It was also helpful that, in August 2018, Mr Glen was able to inform us that HMT planned to lay around 70 Brexit-related SIs. However, although the SIs proceeded to come forward steadily from September 2018 onwards, there was often a considerable delay between the date of laying of the SIs and the publication of the associated IA.

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47 *Interim Report on the Work of the Committee* (26th Report, Session 2017–19, HL Paper 125), para 39.

48 *17th Report, Session 2017–19* (HL Paper 292), paras 9–19.

49 See also our *14th Report*, Session 2017–19 (HL Paper 272) in relation to the *Draft Kimberley Process Certification Scheme (Amendment) (EU Exit) Regulations 2019* and the *Draft Motor Vehicles (International Circulation) (Amendment) (EU Exit) Order 2019*.

50 *17th Report*, Session 2017–19 (HL Paper 292).

51 SLSC, Guidance for Departments: <https://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/SLSC-Guidance-for-Departments-May-2019.pdf>.

52 HM Treasury, ‘HM Treasury’s approach to financial services legislation under the European Union (Withdrawal) Act’: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/720298/HM\\_Treasury\\_s\\_approach\\_to\\_financial\\_services\\_legislation\\_under\\_the\\_European\\_Union\\_Withdrawal\\_Act.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/720298/HM_Treasury_s_approach_to_financial_services_legislation_under_the_European_Union_Withdrawal_Act.pdf) [accessed 21 May 2019].

34. Sub-Committee A, in its report on the draft Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019, noted that although an IA accompanied the instrument, it also related to nine other Brexit-related instruments, all but one of which had been laid earlier and so had already been considered by the Sub-Committees and by the House, without the benefit of the IA. Mr Glen’s explanation of HMT’s approach in a letter dated 16 January 2019 included an acknowledgement that it has meant “unfortunately, ... for several debates the impact assessment was not available for reference”.<sup>53</sup>
35. In a joint letter dated 19 February 2019, the Chairmen of Sub-Committees A and B wrote to the Rt Hon. Philip Hammond MP, Chancellor of the Exchequer, reiterating the Sub-Committees’ concern that IAs should be laid at the same time as the instrument. The letter also referred to the same dissatisfaction being voiced in the House.<sup>54</sup> In reply, the Chancellor explained the circumstances that had resulted in the late laying of IAs but said that HMT and HMRC would work on IAs “at pace ... to enable Parliamentary scrutiny of the relevant SIs in good time.”<sup>55</sup>

#### *Proportionate impact information*

36. In a letter dated 21 December 2017, the Rt Hon. Lord Henley, Parliamentary Under Secretary of State at BEIS, explained that although the Government had increased the threshold for producing a formal IA to a net annual impact of more than £5 million a year on business or charity and voluntary bodies, Departments were “still required to carry out proportionate cost benefit analysis to inform policy development and decision-making, and to ensure that Parliament and stakeholders are informed of the impacts of the legislation”.<sup>56</sup> **We welcome this assurance and therefore expect a brief explanation of the costs to be set out in every EM.** Even where there are no additional costs, it is helpful to the Committee for Departments to explain briefly why not: for example, “these amendments adapt the existing administrative process and involve no additional costs to the licence payer” rather than the bald statement that “no IA is required”.

#### **Quality of Explanatory Memoranda in general**

37. In our first Interim Report, we said that “Brexit pressure” would not be an acceptable excuse for any decrease in the quality of the material presented to the House for scrutiny.<sup>57</sup> We therefore welcomed the appointment of a Senior Responsible Official (SRO) and a Responsible Minister in each Department to ensure that standards were maintained. We have found Departments’ performance variable: some of the SROs have been very engaged and effective, others have not. This is, in part, reflected in the level of corrections described below (see paragraphs 40 to 45).
38. During an oral evidence session in November 2018—the third in three years—with the three Civil Service heads of profession (Elizabeth Gardiner, First Parliamentary Counsel and Permanent Secretary for the Government in

53 [11th Report](#) (Sub-Committee A), Session 2017–19 (HL Paper 260) and [13th Report](#) (Sub-Committee A), Session 2017–19 (HL Paper 267).

54 Notably, in Grand Committee consideration of the draft Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019, HL Deb, 4 February 2019, [cols 356–364](#) [Grand Committee].

55 Both letters are published at Appendix 2 of this Report.

56 See [letter from Rt Hon. Lord Henley](#), Parliamentary Under Secretary of State for Business, Energy and Industrial Strategy, published in our [15th Report](#), Session 2017–19 (HL Paper 59).

57 [26th Report](#), Session 2017–19 (HL Paper 125) – see para 49 onwards.

Parliament Group in the Cabinet Office, Jonathan Jones, Treasury Solicitor, and Sir Chris Wormald, Permanent Secretary, Department of Health and Social Care and head of the Civil Service Policy Profession), we questioned how Departments planned to maintain standards of EMs.

39. At their first evidence session in July 2016, the Permanent Secretaries acknowledged that the Committee’s concerns about the presentation of secondary legislation to Parliament were justified. At a second session, in September 2017, they set out the framework of the improvement package they had devised. Whilst a welcome development, the Committee was at that time critical of the extent to which it had been delivered. The latest session focused on taking stock of departmental handling of secondary legislation in preparation for Brexit.<sup>58</sup> In addition, the Permanent Secretaries assured us that there was no significant backlog of “business-as-usual”—non-Brexit-related—instruments; and that, if numbers were to pick up, the flow of SIs laid before Parliament would be controlled by PBL Committee oversight. Finally, they undertook to consider whether there were wider lessons that the Government could learn from the experience, since 2016, of PBL Committee management of secondary legislation. We anticipate exploring these issues with the Permanent Secretaries later this year.

### Corrections

40. We acknowledge that Departments have been under pressure to prepare and lay Brexit-related legislation by March 2019. It appears, however, to have taken its toll on accuracy. The Permanent Secretaries told us that additional checks were being made to EMs, and DExEU assured us that Departments were prepared for the task. Unfortunately, the figures in Chart 5 below suggest that more may have needed to be done.

**Chart 5: Number of corrections in Year 2**

SIs	No. laid	No. SIs replaced by correction (%)	No. EMs replaced by correction (%)
Affirmative	409	44 (10.8)	68 (16.6)
Negative	593	40 (6.7)	20 (3.4)
Total	1002	84 (8.4)	88 (8.8)

41. The percentage of instruments requiring correction more than doubled from 3.7% in Year 1 to 8.4% in Year 2. Many of these due were drafting errors identified by the JCSI, but some were simply obvious mistakes.<sup>59</sup>
42. EMs also remain problematic. 6.2% had to be replaced in Year 1 and 8.8% in Year 2. A significant number were replaced at the Committee’s request where they were found to be deficient. The original EM to the law enforcement instrument (see paragraph 25 above) was replaced because at 78 pages it was longer than the SI it described and was found by the

58 See the [43rd Report](#), Session 2017–19 (HL Paper 248). A [transcript](#) of the evidence is available. Subsequent correspondence with Sir Chris Wormald was published in the [44th Report](#), Session 2017–19 (HL Paper 266).

59 For example, the [Draft Air Quality \(Taxis and Private Hire Vehicles Database\) \(England and Wales\) Regulations 2019](#) had to be re-laid because the commencement date was missing, and the Occupational Pension Schemes (Master Trusts) Regulations 2018 ([SI 2018/1030](#)) was the last in a series of corrections needed because of poor version control by the Department for Work and Pensions (see explanation in section 3 of the [Explanatory Memorandum](#)).

Sub-Committee to be “impenetrable”.<sup>60</sup> Some EMs had to be replaced due to poor version control. For example, the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 were debated in the Commons on 25 February 2019, during which debate Mr Glen, the Economic Secretary, made a commitment to re-lay the EM to correct an error which referred to transitional provisions that had been included in a different instrument.<sup>61</sup>

43. The Sub-Committees were particularly disappointed by the number of inaccuracies in the materials associated with proposed negatives, including basic errors such as mistakes in the title of the instruments. Because certain statements are required under the withdrawal Act, such inaccuracies could result in a proposed negative having to be re-laid and the 10-day scrutiny period being re-started. 38 (or 16.7%) proposed negatives were defective and had to be re-laid, several more than once.
44. Defra was a particular offender, having to re-lay over a quarter of its SIs as a result of errors in documentation, and on occasion failing to send SIs to the Committee for scrutiny at all.<sup>62</sup> In Year 2, out of 167 SIs laid by Defra, 46 documents were re-laid (25 EMs and 21 SIs). For proposed negatives, 10 of the 81 (or 12.3%) laid in Year 2 required replacement.
45. **Given the importance of EMs in assisting Parliament in understanding secondary legislation, it is essential that issues relating to their quality are addressed effectively. When we next see the Permanent Secretaries, we will once again raise with them the importance of an effective checking process: while some Departments have managed the production of their Brexit legislation effectively, others have not and have fallen well below the acceptable standard.**

### Statistical Analysis

46. In Year 2, the main Committee met 17 times and published 20 reports. The Sub-Committees were active from 15 October 2018 to 30 April 2019, and between them they published 49 reports (47 of which were published in Year 2). In total, therefore, in Year 2, the three committees (the main Committee and the two Sub-Committees) published 67 reports (following 64 meetings). Of a total of 1,002 instruments laid in Year 2, 971 were considered during that year (391 affirmatives and 580 negatives).<sup>63</sup> Of these, we drew 55 affirmatives and 22 negative SIs (77 in total) to the special attention of the House: an overall reporting rate of 7.9% (14.1 % for affirmatives and 3.8 % for negative instruments).
47. The grounds on which we drew the 77 instruments to the special attention of the House in Year 2 were (see also Chart 6 below):
  - 74 instruments (96 % of those reported) on the ground of political importance or public policy interest;<sup>64</sup>

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60 [Draft Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019, 17th Report](#) (Sub-Committee A), Session 2017–19 (HL Paper 292).

61 Para 2.55 of the original EM said that the SI makes transitional provision for prospectuses approved by an European Economic Area regulator before exit day but in fact this provision is made the [Draft Official Listing of Securities, Prospectus and Transparency \(Amendment etc.\) \(EU Exit\) Regulations 2019](#).

62 Letter of Lord Gardiner of Kimble, 12 March 2019. Published at Appendix 3 of this Report.

63 Because of the number of corrections, there was some duplication and 983 items appeared in our reports.

64 Of these 6 were reported on two grounds, which is why the total exceeds 100%.



- 2 (2.6%) on the ground of imperfectly achieving its policy objective;
- 7 (9%) on the ground that the explanatory material laid in support provides insufficient information;
- 1 (1.3%) on the ground that there appear to be inadequacies in the consultation process.

**Chart 6: Breakdown of instruments laid by department and by grounds for reporting in Year 2**

Department	Total	Reported negative	Reported affirmative	a	b	c	d	e	f
Cabinet Office	22	0	5	5	0	0	0	0	0
BEIS	108	2	10	12	0	0	0	0	0
MHCLG	50	1	2	3	0	0	0	0	0
DCMS	33	0	5	5	0	0	0	0	0
DEFRA	167	1	10	11	0	0	0	1	0
DIT	16	0	0	0	0	0	0	0	0
LGBCE	31	0	0	1	0	0	0	0	0
DExEU	11	1	0	1	0	0	0	0	0
DWP*	52	2	3	4	0	0	1	0	0
Education	43	0	2	1	0	0	0	0	1
FCO	62	1	1	1	0	0	0	1	0
Health**	59	3	1	4	0	0	0	0	0
Home Office	63	2	4	5	0	0	0	3	0
House of Commons	0	0	0	0	0	0	0	0	0
Defence	12	0	0	0	0	0	0	0	0
Justice	54	4	2	5	0	0	0	0	0
NI Office	2	0	0	0	0	0	0	0	0
Privy Council	2	0	0	0	0	0	0	0	0
Scotland	9	0	0	0	0	0	0	0	0
Transport	104	4	5	9	0	0	1	2	0
HMRC	15	0	0	0	0	0	0	0	0
Treasury	84	1	5	6	0	0	0	0	0
Wales	2	0	0	0	0	0	0	0	0
Attorney General	0	0	0	0	0	0	0	0	0
Government Equalities Office	1	0	0	0	0	0	0	0	0
<b>TOTALS</b>	<b>1002<sup>65</sup></b>	<b>22</b>	<b>55</b>	<b>74</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>7</b>	<b>1</b>

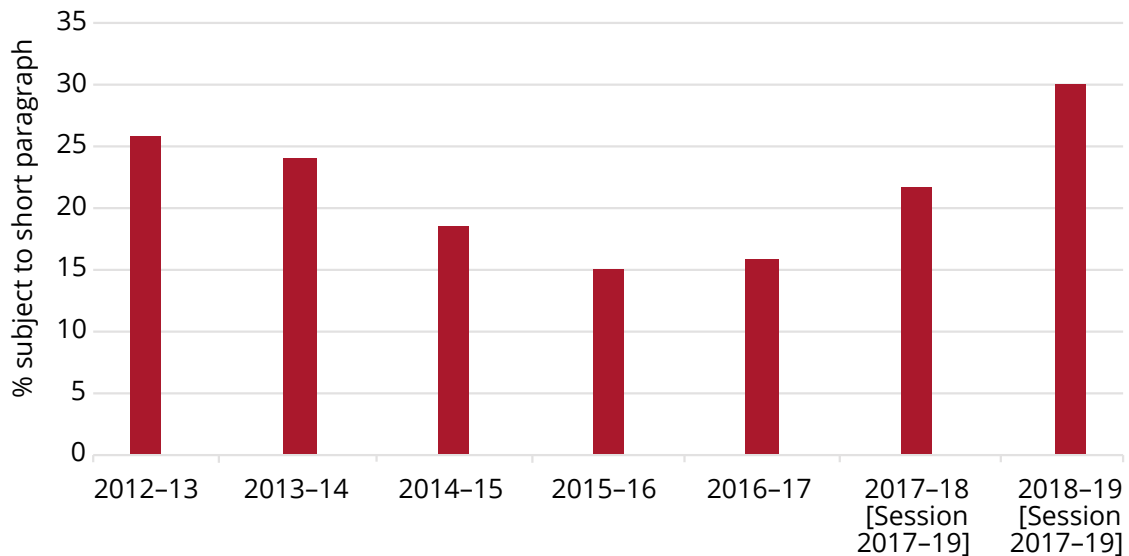
<sup>65</sup> Includes 31 SIs laid but not considered before 13 April.

\* Includes Health and Safety Executive

\*\* Includes Food Standards Agency

48. In addition to drawing instruments to the special attention of 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”. In Year 2, we published 245 information paragraphs on 294 (30%) instruments (see Chart 7).

**Chart 7: The percentage of SIs on which an information paragraph has been published in Year 2 compared with the last five sessions**



## **APPENDIX 1: CORRESPONDENCE ON SIFTING PROPOSED NEGATIVE INSTRUMENTS LAID UNDER THE EU (WITHDRAWAL) ACT 2018**

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### **Letter from Chris Heaton-Harris MP, Parliamentary Under Secretary of State for Exiting the European Union, to the Rt Hon. Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee**

Thank you to you and your committee for their consideration of how the new EU (Withdrawal) Act 2018 (EUWA) sifting mechanism for proposed negative SIs should work, and for the open and collaborative approach on the EUWA and the processes that flow from it.

Now the sifting role of your Committee has been agreed by the House, I would like to thank you for your 37th report of this session. It is important the SLSC and Government departments are clear on what to expect and what the process is, and this report very usefully highlights that matters which will be of most interest to the SLSC when carrying out its sifting function.

I note with interest that particular attention will be given to amendments to primary legislation or retained direct principal EU law where these amendments are deemed significant enough to warrant the affirmative procedure being applied. While amendments to primary legislation in themselves do not automatically trigger the affirmative procedure, it was always the Government's intention that such amendments could mean the affirmative procedure being applied when coupled with other triggers.

I am grateful to you for bringing clarity to this point, and we will expect departments to be very clear in the Explanatory Memorandum on why the negative procedure has been chosen. The Explanatory Memorandum accompanying EUWA SIs will also set out what the law did before, what the changes are and what the law does after the changes.

The Government is committed to ensuring a smooth flow of SIs and will continue to work closely and constructively at official level in order to assist the committee staff. As you may have seen from my letter to the Chair of the Commons Procedure Committee, I will be the point of contact for your committee, the Procedure Committee and the European Statutory Instruments Committee for any issues that you may have.

I am copying this letter to the Rt Hon Sir Patrick McLoughlin, chair of the Commons' European Statutory Instruments Committee, the Leader of the House of Commons, and the Leader of the House of Lords.

**16 August 2018**

## APPENDIX 2: CORRESPONDENCE ON IMPACT ASSESSMENTS

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**Letter from the Rt Hon. the Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee and of Sub-Committee A, and the Rt Hon. Lord Cunningham of Felling, Chairman of the Secondary Legislation Scrutiny Committee Sub-Committee B, to the Rt Hon. Philip Hammond MP, Chancellor of the Exchequer**

We are writing on behalf of the Secondary Legislation Scrutiny Committee (SLSC) and its Sub-Committees.

We have recently raised with the Economic Secretary to the Treasury, Mr John Glen MP, the issue of the availability of Impact Assessments (IAs) provided by HM Treasury in relation to statutory instruments laid in preparation for the UK's exit from the EU. The correspondence is enclosed with this letter [see footnote 51 of this Report].

In the 13th Report of Sub-Committee A of the SLSC, we reported on the draft Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019 ("the CRA Regulations"). We noted that the IA described the impact on financial services businesses not only of the CRA Regulations, but also of nine others, all but one of which had already been laid before Parliament. In his reply of 16 January, the Economic Secretary explained that the IA had received a "fit for purpose" rating from the Regulatory Policy Committee on 19 November 2018 and had then been published; but that unfortunately this had meant that the IA was not available for reference during debates on several of the instruments to which it related.

As you may be aware, during Grand Committee consideration in this House on 4 February of the draft Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 ("the OTC Regulations"), Members voiced concern that the IA relating to that instrument, and eight others, had been published only on 29 January, while the OTC Regulations themselves had been laid before Parliament on 5 December of last year.

Since our initial letter of concern of 8 January 2019, a number of further HM Treasury and HM Revenue and Customs instruments have been laid before Parliament. Many instruments which we have now considered were accompanied by an Explanatory Memorandum referring to an IA being prepared but they were not published alongside the instrument.

If instruments are to be scrutinised effectively, all relevant information, including the IA, must be submitted at the same time that the instrument is laid. It is therefore unacceptable that, at this critical time when Parliament is being asked to consider an exceptionally large volume of instruments concerning highly complex areas of law, your Department has failed to provide IAs in a timely manner.

We look forward to your early reply to this letter. We expect that you will be able to assure us that your Department will in future provide IAs in good time to support effective scrutiny of the instruments laid by your Department.

**19 February 2019**

## Letter from Philip Hammond MP, to Lord Trefgarne and Lord Cunningham of Felling

I am writing in response to your letter of 19 February, on behalf of the Secondary Legislation Scrutiny Committee (SLSC) and its Sub-Committees, regarding impact assessments.

Your letter refers in particular to impact assessments covering financial services EU Exit instruments, made under the European Union (Withdrawal) Act 2018 (EUWA), to ensure that the UK continues to have a functioning financial services regulatory regime in all scenarios, including if the UK leaves the EU without a deal on 29 March 2019.

I recognise the importance of making Impact Assessments available for Parliamentary scrutiny. HM Treasury has worked at pace to prepare this legislation and accompanying Impact Assessments, in line with the Better Regulation Framework. However, as your letter acknowledges, they have unfortunately not been available at the time these instruments have been laid, and in some cases, debated. I can confirm that all Impact Assessments covering financial services EU Exit instruments have now been published, have been available for many, and will be available for all future debates.

I would also stress that the situation for businesses would be much worse in the absence of this legislation. As a whole, these SIs will significantly reduce costs to business in a “no deal” scenario, as without them, firms would be left to deal with an unworkable and inconsistent regulatory framework that would substantially disrupt their businesses. The absence of published Impact Assessments should not detract from the necessity of the SIs.

Your letter also raises HM Revenue and Customs (HMRC) instruments that have recently been laid before Parliament. While there have been some unfortunate delays in impact assessments being published on customs, VAT and excise legislation, HMRC have now set out what the relevant SIs mean for businesses and individuals. I can confirm that a further Impact Assessment will be published on the 25 February, providing Parliament and stakeholders with more detailed information on what HMRC’s SIs mean for them. HMRC will publish an Impact Assessment, where required, for any further SIs they lay.

HM Treasury and HMRC will continue working at pace on Impact Assessments, to enable Parliamentary scrutiny of the relevant SIs in good time.

**22 February 2019**

### **APPENDIX 3: EXPEDITING DEFRA SIS WITHIN THE SLSC'S CONSIDERATIONS**

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#### **Letter from Lord Gardiner of Kimble, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department for Environment, Food & Rural Affairs, to the Rt. Hon the Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee**

Firstly, let me thank you for the ongoing work of both the Secondary Legislation Scrutiny Committee's Sub Committees. Our Departmental Statutory Instruments continue to benefit from the thorough scrutiny being applied.

I understand that due to a delay in the delivery of printed copies of SIs to the Palace of Westminster, a number were not available to your clerks when they should have been this week. For this I sincerely apologise. Steps are being taken to ensure that it does not happen again. I would also like to put on record my thanks for the efforts of your advisers in trying to rectify the situation with my officials.

Consequently, I would be extremely grateful for your assistance with expediting the urgent scrutiny of three of these instruments, as any further delay would risk our ability to pass these vital instruments before 29 March. This will protect the smooth passage of these vital instruments and allow pre-emptively scheduled debate slots to be maintained, minimising disruption to planned business.

The instruments I would ask for special consideration for are:

- (1) Draft AGF/01 Food and Farming (Amendment) (EU Exit) Regulations 2019 Affirmative
- (2) Draft AG/14 State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019
- (3) Draft AG-TF/02 Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019

In Sub-Committee A's 18th Report, original version of the State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019 was reported on without being drawn to special attention of the House. There are no significant changes to the version re-laid at the start of this week.

I would be deeply grateful for your assistance in ensuring the Committee can consider these statutory instruments next week.

Thank you once again for your consideration, and for the continued exemplary work of your Committee. I am of course available to discuss these matters further if you have any questions or concerns, and my officials are at your disposal. I am copying this letter to the Secretary of State and to the Government Chief Whip.

**15 March 2019**

## APPENDIX 4: INTERESTS AND ATTENDANCE

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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.