

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

62nd Report of Session 2017–19

**Work of the Committee in Session
2017–19: Revised statistics**

Ordered to be printed 7 October 2019 and published 7 October 2019

Published by the Authority of the House of Lords

HL Paper 426

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

<u>Baroness Bakewell of Hardington Mandeville</u>	<u>Viscount Hanworth</u>	<u>The Earl of Lindsay</u>
<u>Rt Hon. Lord Chartres</u>	<u>Lord Hodgson of Astley Abbotts</u>	<u>Lord Lisvane</u>
<u>Rt Hon. Lord Cunningham of Felling</u>	(Chairman)	<u>Lord Sherbourne of Didsbury</u>
<u>Lord Faulkner of Worcester</u>	<u>Lord Kirkwood of Kirkhope</u>	<u>Baroness Watkins of Tavistock</u>

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>

Committee Staff

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

Further Information

Further information about the Committee is available at <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/>

The progress of statutory instruments can be followed at <https://beta.parliament.uk/find-a-statutory-instrument>

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

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.

Sixty Second Report

WORK OF THE COMMITTEE IN SESSION 2017–19: REVISED STATISTICS

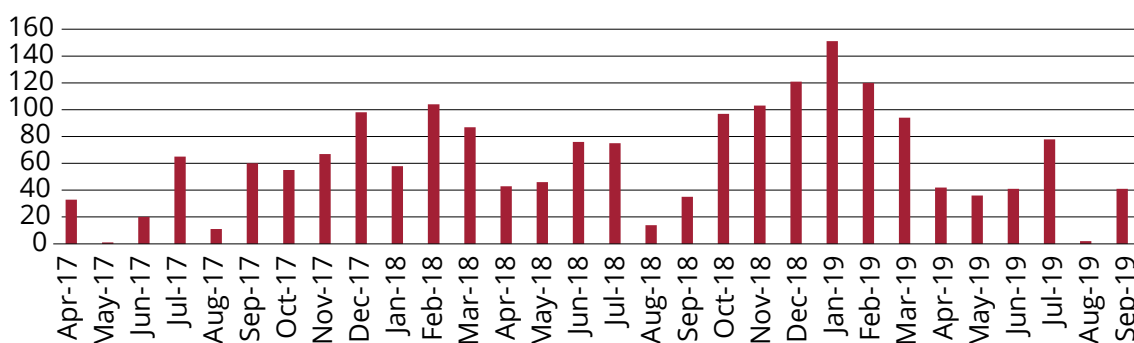
1. Since its inception, the Secondary Legislation Scrutiny Committee (SLSC) has published a series of sessional summaries setting out, amongst other things, statistical information about the instruments that it has examined. Because of the length of the 2017–19 Session, we have published a number of these summaries: an Interim Report in April 2018 (our Year 1 Report), a Second Interim Report in June 2019 (our Year 2 Report) and then a third report in September 2019 which we intended to be our final, end of session report. Following the recent judgment by the Supreme Court, it is now necessary to revise the statistics in that third report to take account of the instruments subsequently scrutinised.¹ The purpose of this report is to set out the revised statistics and updated charts. The observations and comments made in our earlier report remain valid.

Activity since the end of Year 2

2. In the period from the end of Year 2 (14 April 2019) to the end of the 2017–19 Session we scrutinised 211 statutory instruments (SIs) (55 affirmatives and 156 negatives). We also considered 19 proposed negatives laid under the European Union (Withdrawal) Act 2018 (“the withdrawal Act”) which mainly related to the change in Brexit date. We published 18 reports (one from each of the Sub-Committees and 16 from the main Committee), drawing 19 instruments to the special attention of the House (seven affirmative and 12 negative instruments): 18 on the ground of public policy interest and one on the ground of insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation.

Activity over the whole of Session 2017–19

Chart 1: Total number of statutory instruments laid each month during session 2017–19



3. During the 2017–19 session, a total of 1,876 instruments were laid, of which 596 (31.8%) were affirmative and 1,280 negative (68.2%). Of these, the Committee drew 86 affirmatives and 61 negative SIs (147 in total) to the

¹ [61st Report](#), Session 2017–19 (HL Paper 422).

special attention of the House, an overall reporting rate of 7.8% (14.4% for affirmatives and 4.8% for negative instruments). The Committee also published 416 information paragraphs on 490 SIs (26.1% of the total considered).

4. The Departments which laid the largest numbers of instruments were the Department for Environment, Food and Rural Affairs (Defra), which laid 250 instruments (13.3% of the total), the Department for Business Energy and Industrial Strategy (BEIS) with 202 (10.7%), and the Department for Transport (DfT) with 187(10%). Between them, these Departments laid over a third of all the instruments considered in the session.

Chart 2: SIs laid and instruments reported by originating Department

Department	Total	Reported negative	Reported affirmative	Ground for Report ²						
				a	b	c	d	e	f	g
Cabinet Office	34	0	5	5	0	0	0	0	0	0
BEIS	202	10	14	24	0	0	0	2	0	0
DCMS	60	0	5	5	0	0	0	0	0	0
Defra	250	7	12	19	0	0	0	1	0	0
DIT	25	0	0	0	0	0	0	0	0	0
LGBCE	69	0	0	0	0	0	0	0	0	0
DExEU	11	0	1	1	0	0	0	0	0	0
DWP*	123	5	3	6	0	0	2	0	0	0
Education	90	11	2	10	0	0	0	1	2	0
FCO	95	1	1	1	0	0	0	1	0	0
Health**	101	3	2	5	0	0	0	0	0	0
Home Office	157	3	11	13	0	0	0	3	0	0
House of Commons	0	0	0	0	0	0	0	0	0	0
Defence	22	0	0	0	0	0	0	0	0	0
Justice	130	6	3	9	0	0	0	0	0	0
MHCLG***	115	5	12	10	0	0	1	0	6	0
NI Office	3	0	0	0	0	0	0	0	0	0
Privy Council	2	0	0	0	0	0	0	0	0	0
Scotland	16	0	0	0	0	0	0	0	0	0
Transport	187	8	9	17	0	0	1	2	0	0

² See our terms of reference, published in full [online](#). The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are: (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; (g) that the instrument appears to deal inappropriately with deficiencies in retained EU law.

Department	Total	Reported negative	Reported affirmative	Ground for Report ²						
				a	b	c	d	e	f	g
HMRC	19	0	0	0	0	0	0	0	0	0
Treasury	157	2	6	8	0	0	0	0	0	0
Wales	5	0	0	0	0	0	0	0	0	0
Attorney General	2	0	0	0	0	0	0	0	0	0
Government Equalities Office	1	0	0	0	0	0	0	0	0	0
TOTAL	1876	61	86	133	0	0	4	10	8	0

* Includes Health and Safety Executive

** Includes Food Standards Agency

*** Formerly "DCLG"

Corrections

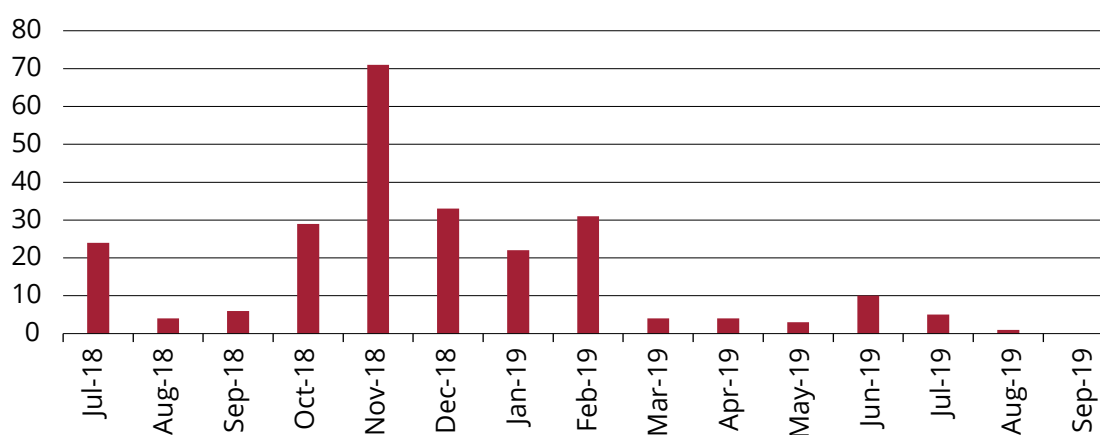
5. The number of corrections to both instruments and Explanatory Memoranda rose and was well above the established 5% benchmark.

Chart 3: Number of corrections

SIs	No. laid	No. SIs replaced by correction (%)	No. EMs replaced by correction (%)
Affirmative	596	53 (8.9)	89 (14.9)
Negative	1280	78 (6.0)	53 (4.1)
Total	1876	131 (7.0)	142 (7.6)

Proposed negatives

Chart 4: Proposed negatives laid by month



6. During Year 2, the Government began to lay proposed negative instruments under the withdrawal Act.³ By the end of the 2017–19 Session, 247 such instruments were laid. Of these, we recommended that 45 (18.2%) be upgraded to the affirmative procedure.

3 The procedure for proposed negative instruments is explained in *Sifting "proposed negative instruments" laid under the European Union (Withdrawal) Act 2018: criteria and working arrangements (37th Report, Session 2017–19, HL Paper 174)*.

7. On average, the Committee draws about 7% of instruments to the special attention of the House. In the 2017–19 Session 147 instruments (7.8%) were drawn to the special attention of the House on the following grounds:
- 133 instruments (90% of those reported) on the ground of political importance or public policy interest;
 - 4 (2.7%) on the ground of imperfectly achieving its policy objective;
 - 10 (6.8%) on the ground that the explanatory material laid in support provides insufficient information;
 - 8 (5.4%) on the ground that there appear to be inadequacies in the consultation process.

APPENDIX 1: 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.