

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

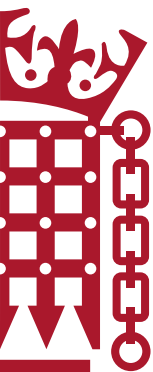
27th Report of Session 2023–24

Work of the Committee in Session 2023–24

Ordered to be printed 24 May 2024 and published 28 May 2024

Published by the Authority of the House of Lords

HL Paper 125



Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as agreed on 8 November 2023, are set out on the website but are, in summary:

To report on draft instruments and memoranda laid before Parliament under section 23(1) of the European Union (Withdrawal) Act 2018 and sections 11, 12 and 14 of the Retained EU Law (Revocation and Reform) Act 2023.

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

[Lord De Mauley](#)

[Baroness Harris of Richmond](#)

[Lord Hunt of Wirral](#) (Chair)

[Baroness Lea of Lymm](#)

[Lord Powell of Bayswater](#)

[Baroness Randerson](#)

[Baroness Ritchie of Downpatrick](#)

[Lord Rowlands](#)

[Lord Russell of Liverpool](#)

[Lord Thomas of Cwmgiedd](#)

[Lord Watson of Wyre Forest](#)

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 <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/>

Committee Staff

The staff of the Committee are Jen Mills (Clerk), Philipp Mende (Adviser), Chris Smith (Adviser), Jane White (Adviser) and Riona Millar (Committee Operations Officer).

Further Information

Further information about the Committee is available at <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/>

The progress of statutory instruments can be followed at <https://statutoryinstruments.parliament.uk/>

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 hlseclegscrutiny@parliament.uk.

Twenty Seventh Report

END OF SESSION REPORT 2023–24

Introduction

1. The Secondary Legislation Scrutiny Committee (SLSC) considers all statutory instruments (SIs) and other secondary legislation that is laid before, and is subject to parliamentary procedure in, the House of Lords, and advises the House of any concerns through weekly reports and occasional special reports on areas of particular interest or concern. At the end of a parliamentary session, we typically publish a report which provides observations and statistics on our activity during the session and highlights any concerns that may have arisen during our scrutiny.
2. Session 2023–24 ran from State Opening on 7 November 2023 until Prorogation on 24 May 2024. Given the relatively short period available to produce this report between the announcement of Prorogation and Prorogation itself, this report summarises our work for the session from a statistical perspective only.

Activity during session 2023–24

3. During the 2023–24 session, we met 22 times and published 26 reports. During that period, we considered 486 SIs, of which 177 were affirmative (36%) and 309 negative (64%). This compares to a total of 937 SIs received in the longer (over 17 months) session 2022–23, of which 296 were affirmative (31.6%) and 641 negative (68.4%). The percentage of affirmative instruments continues to show an increasing trend; for example, in sessions since 2017–19, affirmatives made up an average of 33% of instruments considered, compared to 21% for sessions 2010–12 to 2016–17. The figure of 36% for 2023–24 is higher than for any other session in the period since 2010–12.
4. Our Terms of Reference cover not just SIs but all secondary legislation laid before the House that is subject to parliamentary procedure. This includes statutory Codes and Immigration Rules. In session 2023–24, we scrutinised 16 pieces of legislation that were not SIs, including: a statutory code on minimum service levels during strike action; a strategy statement for energy policy; and three Statements of Changes in Immigration Rules. For simplicity, references in this report to “instruments” include all legislation that we consider.
5. During session 2023–24 we also considered six proposed negative instruments laid under the Retained EU Law (Revocation and Reform) Act 2023. In none of these six cases did we recommend an upgrade to the affirmative procedure. Proposed negatives are not included in the statistics in this report that refer to instruments considered by the Committee.

Volume

6. The departments which laid the largest numbers of instruments considered in session 2023–24 were: the Home Office (60 SIs, 12.3% of the total); DLUHC (58 SIs, 11.9%); and HMT/HMRC (49 SIs, 10.1%). Between them, these three departments accounted for over a third of all SIs laid (see Table 1). (See Glossary below for a full list of departmental abbreviations used in this report.)

Table 1: Instruments considered and reported by department in session 2023–24

Department	Total laid	%	Total reported	Grounds for reporting*				
				a	b	c	d	e
Attorney General	0	0.0%	0	0	0	0	0	0
Cabinet Office	8	1.6%	1	1	0	0	0	0
DBT	48	9.9%	6	6	0	0	0	0
DCMS	5	1.0%	0	0	0	0	0	0
MOD	10	2.1%	0	0	0	0	0	0
Defra	46	9.5%	8	8	0	0	0	0
DESNZ	21	4.3%	0	0	0	0	0	0
DIT	0	0.0%	0	0	0	0	0	0
DLUHC	58	11.9%	3	2	0	0	1	0
DSIT	10	2.1%	0	0	0	0	0	0
DWP (with HSE)	31	6.4%	3	1	0	0	2	0
DfE	19	3.9%	2	1	0	0	1	0
FCDO	8	1.6%	0	0	0	0	0	0
Government Equalities Office	0	0.0%	0	0	0	0	0	0
DHSC (with FSA)	30	6.2%	2	2	0	0	0	0
Home Office	60	12.3%	10	5	0	1	4	0
MOJ	36	7.4%	1	0	0	0	1	0
LGBCE	13	2.7%	0	0	0	0	0	0
NIO	8	1.6%	4	3	0	0	1	0
Privy Council	0	0.0%	0	0	0	0	0	0
Scotland Office	0	0.0%	0	0	0	0	0	0
DfT	24	4.9%	2	2	0	0	0	0
HMT/HMRC	49	10.1%	2	2	0	0	0	0
Wales Office	2	0.4%	0	0	0	0	0	0
Total	486	100%	44	33	0	1	10	0

* The grounds for reporting under the SLSC's Terms of Reference are:

- a) policy interest;
- b) changed circumstances since the parent Act;
- c) may imperfectly achieve its policy objectives;
- d) insufficient information; and
- e) inadequate consultation.

Instruments drawn to the special attention of the House

7. Table 1 shows that, of the 486 instruments we considered in session 2023–24, we drew 44 (9%) to the special attention of the House (“reported”). This is consistent with the figure for session 2022–23, but above the long-run average of 7.5% a year for all sessions since 2010–12.
8. Just three departments, the Home Office, Defra and DBT, were responsible for over half (24) of the instruments reported.
9. As in previous sessions, the majority (33, equivalent to 75%) of the 44 instruments we formally reported to the House were on the ground of policy interest. Ten (23%) were on the ground of inadequate explanatory information, while one was on the ground that it may imperfectly achieve its policy objectives. The number reported on the ground of inadequate information shows that our concerns about the quality of supporting material, expressed in previous End of Session Reports and elsewhere, have not been resolved.¹
10. The ten instruments reported on the ground of inadequate information were laid before Parliament by six different departments, but only two departments had more than one instrument reported in this way: the Home Office (4) and DWP (2).

Information paragraphs

11. As well as reporting instruments to the House, we publish shorter “information paragraphs” to alert the House to instruments which appear to be of general interest, are topical or follow an unusual procedure. We also use such paragraphs to indicate minor defects in the explanatory material, or to draw attention to additional material such as submissions that we have received from external parties or useful additional information obtained from departments. In session 2023–24, we published information paragraphs on 76 instruments (16% of all instruments), with some instruments being combined into a single paragraph. This compares to information paragraphs covering 254 instruments (27% of the total) in the longer session 2022–23.

Corrections and replacements of SIs and Explanatory Memorandums

12. Our concerns about the quality of explanatory material and the standard of departments’ quality assurance and sign-off procedures are also reflected in the unacceptably high number of SIs that correct drafting errors in earlier legislation, or have Explanatory Memorandums (EMs) that have to be replaced because they were of inadequate quality. EMs may need to be corrected and replaced for a number of reasons, including simple drafting errors, ambiguities or omitting significant information. Such replacements may either be requested by us or on a department’s own initiative.
13. Table 2 shows the overall rate of corrections of SIs and EMs. The 53 corrected SIs represent 10.9% of the total, more than double the 5% error rate that we regard as acceptable to allow for “human error”. This was also a slight increase on the figure of 10.7% for session 2022–23, suggesting that departmental performance is not improving in this regard.

¹ See, for example, *Work of the Committee in Session 2022–23* (Session 2022–23, HL Paper 264).

Table 2: Corrections in session 2022–23

Total no. of SIs laid	SIs replaced by correction	EMs replaced by correction
486	53 (10.9%)	35 (7.2%) Plus two pending replacement at the time of publication

14. The 35 SIs with corrected EMs represent 7.2% of the total (or, including those pending, 37 SIs representing 7.6%), a fall from 8.6% in session 2022–23. While this is encouraging, it is still too high (and some EMs had to be corrected more than once). It remains to be seen whether the fall is temporary or is the start of a reversal of a longer-term decline in the quality of EMs. We note that the Government recently introduced a new version of the EM template and supporting guidance, and this may have played a part: the new template is intended to “ensure the right information, in the right depth, is provided to Parliament” and the revised guidance sets out more clearly the purpose, expected content, and depth of each section of an EM.²
15. Prompted by concerns about the poor quality of EMs, from 2022–23 we began to monitor departmental performance in this area. Table 3 shows the number of instruments laid by department and the number of EMs that were replaced in session 2023–24.
16. Several departments, including HMT/HMRC, DSIT and MOD, did not have to replace any EMs. However, of the departments that laid more than 20 SIs in the session, DfT (16.7% of its EMs replaced), the Home Office (13.3%) and DHSC and DWP (10% each) stood out as having exceptionally poor error rates. FCDO replaced EMs for half of its eight EMs.
17. In the previous session, the worst performing departments were DWP (15.3%), DfT (14.1%) and the Home Office (11.2%). A comparison between the data for the two sessions suggests a high degree of consistency of poorly performing departments, but that DWP may be taking some steps to improve the quality of their EMs. We encourage all departments to examine the examples (good and bad) highlighted in our weekly reports, and in our previous End of Session Report, and to engage with the Committee and its staff to help improve explanatory material.

² *Government Response: Work of the Committee in Session 2022–23* (Session 2023–24, HL Paper 42), pages 4–5.

Table 3: EM replacement by department in session 2023–24

Department	No. of SIs laid	No. of SIs that required a new EM	As % of SIs laid
Cabinet Office	8	1	12.5%
DBT	48	4	8.3%
DCMS	5	0	0%
MOD	10	0	0%
Defra	46	2	4.3%
DESNZ	21	1	4.8%
DLUHC	58	2	3.4%
DSIT	10	0	0%
DWP (with HSE)	31	3	9.7%
DfE	19	2 (plus 1 pending)	10.5%
FCDO	8	4	50.0%
DHSC (with FSA)	30	3	10.0%
Home Office	60	8	13.3%
MOJ	36	1	2.8%
LGBCE	13	0	0%
NIO	8	0 (plus 1 pending)	0%
DfT	24	4	16.7%
HMT/HMRC	49	0	0%
Wales Office	2	0	0%
Total	486	35	7.2%

Media

18. We issued nine press releases in session 2023–24, which generated 57 pieces of coverage—made up of print and online pieces—and limited broadcast coverage, including four mentions on TV news bulletins. The coverage was viewed by over 850,000 people and had an estimated potential reach of 224.5 million people.

APPENDIX 1: GLOSSARY OF DEPARTMENTAL ABBREVIATIONS

DBT	Department for Business and Trade
DCMS	Department for Culture, Media and Sport
MOD	Ministry of Defence
Defra	Department for Environment, Food and Rural Affairs
DESNZ	Department for Energy Security and Net Zero
DIT	Department for International Trade
DLUHC	Department for Levelling Up, Housing and Communities
DSIT	Department for Science, Innovation and Technology
DWP	Department for Work and Pensions
DfE	Department for Education
FCDO	Foreign, Commonwealth and Development Office
FSA	Food Standards Agency
DHSC	Department of Health and Social Care
HMRC	His Majesty's Revenue and Customs
HSE	Health and Safety Executive
MOJ	Ministry of Justice
LGBCE	Local Government Boundary Commission for England
NIO	Northern Ireland Office
DfT	Department for Transport
HMT	His Majesty's Treasury

APPENDIX 2: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://members.parliament.uk/members/lords/interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business included in this report, Members declared no interests.