



# Secondary Legislation Scrutiny Committee

## Oral evidence: Air Navigation (Amendment) Order 2021

Tuesday 19 October 2021

4 pm

Watch the meeting

Members present: Lord Hodgson of Astley Abbotts (The Chair); Lord Chartres, Lord Cunningham of Felling; Lord German, Viscount Hanworth; Lord Hutton of Furness; The Earl of Lindsay; Lord Lisvane; Lord Sherbourne of Didsbury; Baroness Watkins of Tavistock.

Evidence Session No. 1

Heard in Public

Questions 1 - 14

### Witnesses

[I](#): Robert Courts MP, Parliamentary Under-Secretary of State for Aviation, Maritime, Security and Civil Contingencies; Louise Morgan, Director of Strategy, and Private Office at Department for Transport; Katy Ware, Director of Maritime Services, Maritime and Coastguard Agency; David Harding, Deputy Director, General Aviation, Safety, Skills and CAA.

## Examination of witnesses

Robert Courts, Louise Morgan, Katy Ware and David Harding.

Q1 **The Chair:** Thank you very much for coming in. You are an extraordinarily long way away from me and I cannot read the names of your officials, so if I get them wrong, I apologise in advance.

**Robert Courts:** Can I introduce them? David Harding, is Deputy Director, General Aviation, Safety, Skills and CAA; Louise Morgan is Director of Strategy and Private Office at the Department for Transport; Katy Ware is the Director of Maritime Services, Maritime and Coastguard Agency. And of course, I am Robert Courts, the Minister responsible.

**The Chair:** Thank you. I have the normal caution to read to you. This is a formal evidence session, on the record and being webcast live. A verbatim note is being taken, which will be put on the public record in printed form and on the parliamentary website. You will be sent a copy for any amendments that you wish to make.

I next have to ask members of the committee if they have any interests they wish to declare in relation to this matter. For some unknown reason, according to my notes, I have to advise you of the location of the fire exits—I think they are fairly self-evident. I have done my duty.

We have 60 minutes. We would like to get through as much as we can and we may wish to follow up with some further written evidence. You have already introduced your team, Minister. Thank you very much. Do you wish to make an opening statement or shall we crack on into questions?

**Robert Courts:** I am very happy to crack straight into the meat of the matter.

**The Chair:** Perhaps I can begin with the proximate reason for us asking you here today, which is about this aviation backlog and in particular the Air Navigation (Amendment) Order 2021, which was seven years late in implementing an AAIB recommendation and 11 years late in implementing a European directive, and appeared to have depended on some information from the MOD which would not have been accurate or sufficient. It would be helpful, when you come to reply, to say how many other AAIB recommendations are still outstanding and have not been brought into force.

**Robert Courts:** I will endeavour to answer all of those with detail. I will go through those issues one by one if I may.

Could I say at the outset that I approach this session with the spirit of explaining, not only partly what has happened but partly, and more importantly perhaps, what we are going to do in the future? There are a number of areas here where I can be quite straightforward with the committee. Some of the practice that has happened over the course of many years is not good enough. We have to do better and we will be doing better. I hope to allay your understandable and justifiable concerns

in the course of this session. I want to make that clear at the outset. I approach the session with that spirit in mind.

Turning to the Air Navigation (Amendment) 2021 order, which relied upon implementing a domestic safety regulation, there are two aspects. Could I start by dealing with the European directive? Quite rightly, you have asked why we took the time that we did to legislate on the directive. If I may, I will explain in terms of the timeline. There is a section in the middle that I think the committee will be particularly interested in.

First, the European directive, which was 11 years before the statutory instrument that we did later lay, requires a number of steps to be taken at certain times and not all at once. These steps come in over time and it is not possible for us to take action on them until later. The aspect relevant to this SI, which is obstructions in a flight path, did not become actionable until 2017. Although the European directive came from 2010, the relevant aspect did not become actionable until 2017. I accept that it is late. It is just not quite as late as it perhaps appears at the outset.

The domestic regulation was seven years late in any event and that of course came from September 2014. The department recognises that. The accident that gave rise to the AAIB recommendation took place on 16 January 2013. The air accident investigation board report was on 9 September 2014. The first step that the department had to take was to respond to and accept the AAIB recommendation. That was done within the recommended 90-day period. It took place on 5 December 2014. That initial step took place.

A number of other steps came after that. I will return to them in a minute, if I may, for a reason that I hope will become immediately apparent.

Later, in 2018, the CAA noted that a lack of progress in this area added this SI to its corporate risk register. At that point, a number of steps took place, in particular the fact that the state safety board refresh took place in 2019 with the effect that this ANO amendment was initially planned for submission at the October 2019 ANO session. Then there were a number of priorities that conflicted within the department. I by no means intend to blame Brexit or Covid but there was a slight prioritisation impact there, towards the end of it. None the less, what happened in the middle of that period, the four-year period between 2014, when we responded to that 90-day deadline, and the CAA adding this SI to its corporate risk register in 2018, is perhaps what I ought to concentrate on.

My understanding, having gone back through the records and spoken to officials because I was not there at the time, is that it is important to discuss a number of issues with a number of different departments. The issue is not so much about taking action but about what action is to be taken. A number of parties have an interest in this area: the Ministry of Housing, Communities and Local Government as it was at the time; the Ministry of Defence; the Defence Geographic Centre; Ordnance Survey.

The committee will be aware that each of these steps would take a number of months as officials go off for talks, which is what was taking place during that period.

The question for me, and this is perhaps the way the committee looks at it as well, is why was it not gripped during this time? Why was it not brought to the attention of a senior official? Why was a Minister not told about it at the time? Why was the process not hurried up? I entirely understand these concerns.

I would like to draw the committee's attention to the steps we have taken since then. I hope they are encouraging. We now have the State Safety Board. That was an ICAO requirement. The board is chaired by senior officials within the DfT. It was refreshed in 2019. There will be more done through that safety board. There is much more interaction now than there was between officials and the CAA. That will mean that such a matter would be more likely to be brought to the attention of Ministers and senior officials than happened previously. I accept that there was a delay and that there ought not to have been a delay. I am very keen to put that right through what we do going forward—to make sure that does not happen again.

There were some other logistical challenges for the CAA. There were things such as having to recruit the necessary people and so forth, but my overarching approach to this, as I started the session by saying, is that I am looking to identify what has gone wrong and to make sure we do it right in the future rather than to make excuses for the past. Someone should have gripped it then but the processes in place now will help with that. The Safety Strategy Board is a part of it, but we also have an overarching piece of work, which is an SI delivery reform programme. That will include a number of factors. Probably the most relevant factors for the committee's attention today are the legislation board meetings, which take place quarterly, and an SI programme report to Ministers and the DfT board. In future, I will have a quarterly report, as will the overall DfT board.

There is also a wider piece of education going on concerning making sure that officials understand the importance of SIs. The reason for that is more specific than everyone understanding what SIs are, critically important though they are. It is because we are conscious that officials move around. Ministers move around and so do officials. We would like to see officials currently in non-SI-facing roles understand the importance of SIs so that if they are suddenly moved into an SI department, they can hit the ground running—that they are not hitting the ground cold.

While I accept that there was that big gap during those four years between 2014 and 2018, after which action did start to be taken, albeit slowed up by Covid, I would hope that that could not happen again because there is greater oversight by officials and Ministers.

I hope that gives an idea of why that particular order was late. I am conscious that you asked me another question, which I will turn to in a

minute, but I also hope that was something of a microcosm example of the way that we are approaching SIs and how seriously we take them.

You also asked me about the military pilots' reports. I will also come to your question about outstanding recommendations in a moment.

On the military pilots' reports, and when we thought they were inadequate and were we intending to rely upon them at the outset, no, we were not. The informal military pilots' reporting system was seen to be inadequate anyway and was something that the DfT was going to put right. It was not the case that we decided we were going to rely on those reports and subsequently decided they were inadequate. It was something that we were going to do better in any event, not least because the EU directive had to be put in place. That is what was required by the 2017 date that I mentioned a moment ago.

That process took longer than it ought to have done but it was completed this year. It is also worth noting that there were a number of helpful steps taken under that process. For example, a number of obstacle notifications were taking place under that anyway. The CAA received approximately 4,000 in the year to July 2019. We were not relying upon that informal system. It was helpful, but it was not the whole requirement. We were going to do better than that in any event.

There are 19 outstanding AAIB recommendations for which I have responsibility. The AAIB can make recommendations to a number of bodies. I am not aware of any that are outstanding for the DfT. The 19 are outstanding for the CAA. They may be operational. In other words, they may not require legislation, but they are still outstanding. The committee is understandably concerned about whether there is a backlog of similar matters waiting to be dealt with. While there are 19 outstanding AAIB matters, they are not for the DfT, they are for the CAA, and I understand that some of them will be operational; ergo, they will not require legislation in any event.

When we come to talk about the MCA matters, I will refer to the word "backlog" in a bit more detail.

**The Chair:** You are saying that the first seven years were due to steps that were imposed by Brussels. Is that right? You said that there was a series of steps and we could not take any action between 2010 and 2017. So we had seven years during which we had to wait for the Brussels system to work before it hit the critical moment for us. Secondly, you said that we have now introduced a system whereby we are going to cut through some of that stuff where Ordnance Survey and other organisations were having to respond. It sounded to me as if some of the processes were not simultaneous.

**Robert Courts:** Not quite. I can deal with your last point first.

I would not say we cut through it; it will still have to happen. If we have to consult with those parties, we will do so. With the obvious caveat that

I was not there at the time so I do not know, I am looking at the records and wondering what happened and suspect that a letter went off and took a while for a response to be received. Now that would be chased up because senior officials and Ministers would be monitoring progress. If another agency was involved you would be able to say you wanted a response from that agency.

Concerning the European directive, yes we were waiting for steps to be taken but I mean nothing pejorative; it is not a criticism of Brussels not having done what was required. Requirements are laid down under the directive on the quality of aeronautical data and aeronautical information for the Single European Sky. Those requirements on data, and the quality of data, became applicable between 2013 and 2017 in stages. They did not all become applicable at the same time. The relevant requirement, as I understand it, about obstacles, which is what we are dealing with here, took place in 2017. It was a quite problematic application process for all European states, not just the UK.

**The Chair:** Do any other committee members want to come in on that before we move on?

Q2 **Viscount Hanworth:** It strikes me that there are two strands to this. One is a log that alerts pilots to obstacles. The question then is its integrity and the speed with which it is propagated and the other question is the slow-moving legislative process. We get the impression, or at least I do, that it was the slow-moving legislative process that is impacting upon the efficacy of the log. The log is not being maintained and instantly propagated because the legislative process is too slow. Is that correct? Have I understood it? Or can you assert that the dangers that exist are propagated and people are alerted to them in time?

**Robert Courts:** Under the old system, the dangers would be voluntarily updated. That is the military log that I referred to a moment ago in answer to the second part of the Chair's question. It was a voluntary notification of dangers. The legislation required notification to be mandatory, as I understand it, and that is where the slowness in the legislative process is; on this occasion.

I am keen to stress this, for a number of reasons. It was partly because we had to wait for the actionable aspect to come through from the European Union because it was relying on the data and partly because of what I accept was slow legislative progress in this case. That did mean that those regulations were not put in place as quickly as they should have been. I accept that. We are looking to make sure that would not happen again. I do not have the evidence to suggest that this is a systemic problem.

**Viscount Hanworth:** Can I put it to you again? We are interested, or at least I am, in the dangers that arise from an incomplete log that is not propagated; people are not informed. Am I correct in my supposition that this is where the major danger has lain? If you have been propagating the information effectively, we can be a little bit more relaxed about the

slowness of the legislative process but it seems to me that the slowness of that process has impeded the business of attending to the safety of aviation. Am I correct in this or can you allay my anxieties?

**Robert Courts:** I accept that there was slowness in putting the legislation in place in this case. As the Chair started by saying, it has been seven years since the AAIB—

**Viscount Hanworth:** I understand that the legislation has been very slow but what about the information getting out to people who are endangered?

**Robert Courts:** Some of that information will have gone out anyway through the voluntary system. That is my understanding.

**Viscount Hanworth:** It does not sound anything like good enough.

**Robert Courts:** I am not suggesting that it is good enough. More importantly, I am trying to explain what we would do next.

**The Chair:** Lord Hutton, do you want to come in?

Q3 **Lord Hutton of Furness:** Yes, very briefly, Lord Chair. First, I do very much appreciate the spirit in which the Minister is addressing the committee and his recognition that things have not been done very well. I appreciate that.

It seems to me, however, that the key moments here are the Air Accidents Investigation Branch's report in 2014 and when we had the SI in 2021. When was the decision made to proceed with an air navigation order as the solution to this problem? That seems to be the critical moment from which the clock is ticking. When was that decision made?

**Robert Courts:** April 2019 is when the decision was taken. That refers back to the answer I gave at the beginning, which was that the decision to be taken was not whether we do something; it is what we did that was the important point. You are right that the AAIB 2014 investigation was a significant moment, as you would expect. We then had to go through the process of consulting with all those departments that had an interest. Then, in April 2019, we took that decision to proceed with the air navigation order. That is the delay that I accept was slow. The point is that now, rather than waiting for a response from another department or agency, senior officials and the Minister will be getting progress reports and will be able to chase those up. There would have to be a period of consultation anyway before an ANO was made, but it should be truncated.

**Lord Hutton of Furness:** Five years does sound like a terribly long time to come to a decision about something like that. As you said at the beginning, it was quite clear that the MOD database was not going to be good enough because it was not complete. It is difficult to understand why it would have taken five years to come to that decision.

**Robert Courts:** I can only be as open as I can about this in the circumstances. I, and indeed officials, are labouring under the

disadvantage of not having been there at the time. I am looking back and looking at what I think might have happened. It clearly took a long time. It should not have taken such a long time. I am keen to make sure that does not happen again, which is why I am keen to stress the role of the State Safety Board and the ministerial and official oversight.

One point of clarification about obstacles and what happened under the military pilots' reports: the new rules that have been brought in mandate the reporting for new or changing obstacles as opposed to existing obstacles. In other words, existing obstacles may still be there.

**Q4** **Baroness Watkins of Tavistock:** Minister, I understand that you are developing a new system. Will that system be clear so that any handover in the future would ensure that alerts were highlighted if answers were not coming in, progressing decision-making?

**Robert Courts:** Do you mean within the department?

**Baroness Watkins of Tavistock:** Yes.

**Robert Courts:** Yes. That would be a standing procedure so that when Ministers or officials change, it would be something that would be ongoing.

**Baroness Watkins of Tavistock:** Thank you.

**Q5** **Lord Sherbourne of Didsbury:** Can I raise the question of the maritime backlog which has already been concerning the committee for some time. I am very grateful to the Minister for being as candid as he has been about the problems in the past but can I probe about the culture of the department? A very simple question: has the very conspicuous delay in bringing maritime legislation forward been caused by a shortage of resources; was it caused by the inefficiency of the system; or was it caused by a belief that it did not matter and was given low priority? Which of those was it?

**Robert Courts:** It certainly was not the latter. No one had decided that the matter is not important.

Regulation in the maritime sector is highly technical. It requires a very high level of expertise. The expertise of those working on it from a legal and economic standpoint is particularly significant.

The maritime sector also has the challenge that the IMO is legislating, and legislation is ongoing. Other sectors, that do not have organisations acting in that way, do not face that challenge.

I estimate that it takes approximately two years to bring an SI from the initial announcement to the statute book. SIs face a number of challenges. It certainly is not the case that somebody has decided that this is not important.

During the country's EU membership, there were of course also EU regulations. Infraction proceedings have been brought against the country so naturally there was some prioritisation there. We have

recently brought more resources on board, more individuals working on these matters, in order to address the backlog.

May I pause for a moment to address the use of the word "backlog" because the way we refer to it may be different from the committee's understanding? At the same time, I will deal with what is outstanding at the time.

A "backlog", as we refer to it, as in when I have written to the committee, and the way that I and other Ministers would refer to it, is where there is an international rule has been brought in that requires us to act—the IMO brought in a rule, we are required to legislate for it and we have not done so. That would be a backlog because it is something that we should have implemented by a certain date. It is different from domestic legislation that we want to bring in when we can. You will have a longer list of regulations that have not yet been put on the statute book, but not all of them are backlog. I hope that makes sense.

I hope I am not being too picky and without wishing to sound too obtuse, not everything that we have not done is a backlog.

**The Chair:** Sir Humphrey?

**Robert Courts:** Yes. I apologise but I am keen to differentiate: with the MCA there is a backlog, but that is not necessarily the case with other things in the department; it is just something that we have not done yet.

None of these are theoretical gaps in legislation. They require action. They are important. However, the absence of legislation does not mean that no steps can be taken. In many cases, it is possible to prosecute under existing legislation. For example, under the Merchant Shipping Act 1995, a ship can be detained under section 95 if it is considered to be dangerously unsafe, or under section 49 if it is undermanned. Non-compliance with a detention notice is an offence under section 284. There are a number of steps that can be taken in the absence of this specific regulation. While the legislation does need to happen, that does not mean we are powerless if it is not yet on the statute book.

Q6 **Lord Sherbourne of Didsbury:** Thank you for that. A follow-up question if I may?

You gave the committee assurance in your earlier answer about the changes you are making, the systems you are putting in place, in the department to make sure that the kinds of delays and mistakes that happened in the past do not happen in the future apply across the board. You can give the committee that assurance, can you?

**Robert Courts:** Yes. We have undertaken a review of the legislation that we still have to bring into place. I have listed that when I have written to the committee, as have my predecessors, I believe. It was part of an annex to a letter I wrote in July. That is the review that we have done of the legislation that we have yet to undertake. I am confident that the department understands what has not yet been done. We have also brought extra resources in, extra lawyers and economists.

Barring unforeseen events like Covid—I am not seeking to blame Covid for everything but none the less, there has been a prioritisation issue because of it—we are on target to clear the backlog by the end of 2023, which is what I said when I wrote to the committee. We are still in that position, barring unforeseen things happening.

I can, if it would be helpful, give an idea of the level of legislation that remains to be implemented. There are 33 outstanding pieces of maritime regulation.

**The Chair:** In your letter to us in July, you said there were 10 in progress—

**Robert Courts:** No. To a certain extent, some of those are crossed over. There are 33 maritime matters to be done, of which 20 are outstanding and 13 are backlog, and there are seven domestic matters. Of the ones that I wrote to you about on 5 July—

**The Chair:** You had a long list.

**Robert Courts:** There is a long list here. Some of these instruments were made in 2020 and early 2021. A further 10 are proposed. Some of those are a backlog; some of them are not. This letter does not specify.

If it would assist, and to prevent any confusion, I would be happy to write to you again to make clear what is what and what falls where.

**The Chair:** It would be helpful to have backlog and non-backlog; must-have and nice-to-have, if that is a phrase you would like to use.

**Robert Courts:** I will be very happy to do that. I will write to you and explain that so it is clear. I do not want to confuse anybody.

**The Chair:** Anything further on that point? No? In that case, Lord Lindsay.

Q7 **The Earl of Lindsay:** Minister, in an earlier letter the department said, "The port state control inspections, which international ships undergo when visiting foreign ports, ensure that standards are consistently applied across the globe, even if some nations have not fully kept pace in their domestic law with the latest amendments". Did the department choose to rely on enforcement by other countries rather than punctually implement legislation?

**Robert Courts:** I understand why you ask that question. No, we do not. There would never be a policy decision by the department to not legislate ourselves and to expect other countries to do it for us. Clearly, we need to bring this legislation into place but, as I have outlined, there are other routes to prosecution in the eventuality that an offence has been committed. I refer back to the point I made a moment ago. While these things need to be brought on to the statute book, the fact that they have not yet been brought on to the statute book does not make us powerless.

**The Earl of Lindsay:** What are the other routes for enforcement?

**Robert Courts:** Under the Merchant Shipping Act 1995, there are a number of routes, for example, section 95, if a ship is dangerously unsafe, and section 49, if it is undermanned. Under section 100, a prosecution can be brought where the owner of a ship fails to take all reasonable steps to operate a ship in a safe manner. Under the Merchant Shipping Act, some wider prosecutorial powers may well apply in the eventuality that you might also wish to use one of these regulations.

**The Earl of Lindsay:** Why have other nations found it easier to implement new legislation and requirement more quickly than your department?

**Robert Courts:** It is difficult for me to answer that, unfortunately. I would have to understand their governance arrangements. I do accept that there is a backlog with the MCA legislative programme. It does have to be addressed and we are addressing it, but it is there none the less. There have been a number of reasons for the delays. Resource is always a part. If we were to have double the number of people, we could do things twice as quickly, but sadly we are not in that ideal world. I cannot assist as to why other countries have succeeded. They may have different resourcing arrangements; they may have different burdens, lesser burdens.

Q8 **The Earl of Lindsay:** One more question. We know that a lot of international maritime requirements appear in merchant shipping notices. What is the legal status of a shipping notice?

**Robert Courts:** It depends upon the legislation appended to a notice. A merchant shipping notice is a technical requirement. It can be quickly updated and it can be updated through ambulatory provisions so we do not have to legislate for it. A regulation might refer to a merchant shipping notice and if it does, it might be mandatory. In such a case you would have a regulation that requires you to look at the merchant shipping notice and the merchant shipping notice will tell you what you have to do. An example from the top of my head: if a regulation were to tell you that you need to have the number of lifeboats stated in the merchant shipping notice and the number in the merchant shipping notice changes from two to four, you would have to comply and failure to do so would be an offence, but it would be an offence under the regulation, not under the merchant shipping notice, which is a technical notice that the regulation refers to. However— and this is where it can be confusing—a merchant shipping notice is not always something that is legally enforceable through a regulation; it might only be guidance. The key thing is not so much the status of the merchant shipping notice, it is whether or not a regulation points to it.

**The Earl of Lindsay:** So the shipping notice is not a statutory document, it is guidance that may or may not be referred to and mandated in a regulation.

**Robert Courts:** It is not a statutory notice. That is absolutely right. Whether or not it is guidance depends upon whether something points to it. If a regulation points to a merchant shipping notice and mandates you

to comply with it, it is not guidance; it is mandatory. What makes it mandatory is the regulation, not the MSN.

**The Earl of Lindsay:** Okay. Thank you.

**The Chair:** We are clear about that, are we? One of the worries of this committee is about the way guidance morphs into regulation and vice versa. Your note said, "Marine guidance notes set out important advice, guidance and strong recommendations". You have another whole category there.

**Robert Courts:** Yes, and perhaps I could have phrased that more clearly. What it means depends upon the status of that particular MSN. Perhaps it could have been better phrased that an MSN might provide guidance or a strong recommendation, or a mandatory step, depending upon whether a regulation requires it to be mandatory or not.

**The Chair:** Anything else? Otherwise, Lord Lisvane.

Q9 **Lord Lisvane:** Minister, you have been very frank indeed and clearly you have taken on board—no pun intended—the range of the committee's concerns in the aviation and maritime sectors. It occurs to me to wonder, are there other cupboards in your department from which the rattle of skeletons is emanating? For example, is this sort of thing duplicated? I realise that this is not directly a ministerial responsibility of yours, but it certainly does affect the SRO's responsibilities. How are things in the road sector and the rail sector?

**Robert Courts:** I can give you some figures as to where the department is more broadly—I have given the figures for the maritime sector—bearing in mind the distinction between what is outstanding, what just remains that will happen in the future if I could put it that way. DfT as a whole has 29 SIs outstanding, of which 20 are the maritime SIs I have already referred to, two of them are aviation, five are roads, two are rail. That is the overall figure. I have a table here that explains what they are. When I write to you, if it is of assistance, I am happy to lay out what that means, for clarity. The overall review process that I have referred to, which will happen each quarter, will keep an eye on progress.

As for cupboards with skeletons within, clearly, from the figures I have given you, the maritime backlog, to which we have referred and about which the committee has corresponded with me and my two predecessors, is there. I cannot hide the fact that the maritime backlog is there. It is a job of work for us to do but we are well on the way to resolving it as I laid out in the letter that I wrote in July. When I look across the rest of the department, there is still some work to do but I do not have any evidence of any similar backlog or outstanding pool of legislation in other areas.

**Lord Lisvane:** Thank you. Can I pick up on one thing that you said in answer to an earlier question? You gave two years as a go-to-whoa period of time to produce a SI. I think most of us have seen the primary and the secondary legislative process up close and I do not think anybody

would suggest that it is an easy process. You have to settle the policy, clear it in Whitehall, probably clear it with the devolved Administrations, you have to draft and quality control; there is an awful lot there. However, should we take that two-year period as being typical of the time that it takes? We know that all SIs are different, but is two years the mean of the time it takes to prepare a SI and have it through?

**Robert Courts:** It is a good question. It is my estimate of how long it takes, rather than a scientific piece of evidence. Clearly, in some circumstances, we can legislate more quickly. We have done that. Everybody has done it over the course of the last 18 months, as we know. However, it is not so much the legislative process itself that takes the time; it is the policy in advance.

**Lord Lisvane:** Indeed.

**Robert Courts:** I refer back to my earlier comment about how highly technical this is. The legal, policy and economic expertise—impact assessments and things of that kind—takes a lot of time before we even get to the stage of drafting and clearing and so forth. Approximately two years is how long it will take to legislate for one of these highly technical bits of regulation.

Q10 **Lord Lisvane:** I think colleagues will probably want to explore the role of the SRO in a moment, but if we were to take that two-year term simply as a hypothesis for these purposes, can you identify places where there are logjams? Where is the problem? Drafting resources are usually the pinch point and clearly, if it is a contentious SI, settling the policy may take quite a long time. If, however, you could ease up on the process somewhere in order to make faster progress, where would that be?

**Robert Courts:** It is a mixture; you get pinch points in a number of different areas. Policy analysts and lawyers have different areas and they are probably the areas where the most pressure is, the policy aspect and the analysis aspect. It is the detailed, technical work that takes place when we are deciding what we are going to do before we get to the lawyer stage of writing down how we are going to do it.

**Lord Lisvane:** So more resources there would show quicker returns?

**Robert Courts:** Yes, and we have been putting more resource into that area. That is part of the process that we have been undertaking. The progress that I have already written about to the committee has taken place because of the steps that we have taken to increase the resource across the department.

The department is quite a high, heavy legislative body within government. In 2021 to date, approximately 17% of government legislation has been done by DfT. It fluctuates over the years. In 2020, it was 11%, probably for Covid-related reasons. Before that, it was approximately, over the last five years, in the mid-teens of government legislation, so quite significant. As of 14 October, the department has laid 80 SIs in 2021, of which 79 have completed the parliamentary stages.

There is quite a high legislative burden on us and that is in part because, as far as maritime is concerned, there is an international body that is legislating all the time and which we have to keep up with—quite rightly; it is important work—but it does mean that there is a heavier burden on us.

**The Chair:** Does anyone else want to come in on this? Otherwise, Lord Cunningham.

Q11 **Lord Cunningham of Felling:** Thank you. Minister, I want to address my questions, if I may, to Ms Morgan. Is that agreeable?

**Robert Courts:** Certainly.

**Lord Cunningham of Felling:** Ms Morgan, you are described as the director of strategy and private office in the description we have been given. We understand, however, that you are also the senior responsible owner of the process of producing secondary legislation. Is that correct?

**Louise Morgan:** I am, yes.

**Lord Cunningham of Felling:** Thank you. What percentage of your time is spent in that role?

**Louise Morgan:** It is hard to quantify, to be completely honest, as it fluctuates throughout the year. I have a busy role that has oversight of a number of things in the department, but it is a relatively significant part of my time. As part of my role, I chair a quarterly legislation board, which helps me to work with colleagues from across the department, pulling together the work of modal teams—teams in roads and rail—who I also engage with informally outside of that structure.

Q12 **Lord Cunningham of Felling:** Tamara Finkelstein, a Permanent Secretary at Defra—or she was when she gave evidence to this committee some months ago—and head of Civil Service policy profession, said to us, and I am quoting her words, "Training is clearly very important. SROs need to take real responsibility for ensuring that people go on that". By "that" she meant training. Can you tell us how many people from the Department for Transport have been on training exercises in the last six months, say?

**Louise Morgan:** We run a series of training exercises, training programmes, for colleagues across the department, which give a breadth of understanding of SIs and depth for particular issues. It is hard to give a precise figure. If necessary, we can give some information to the Minister and clarify in writing afterwards.

To give you an example of the breadth, we ran a session recently that drew on Cabinet Office expertise and was attended by over 300 colleagues from the department. It was part of our wider capability-building programme within the department, which I can assure you is something that we take very seriously. I have a championing role within the department. It is my team who pull together a lot of the training and we run it with our legal colleagues.

**Lord Cunningham of Felling:** Why do you think it has not been working?

**Louise Morgan:** I think it is working but it takes time. Building the capability of a department and policy officials is not a quick fix. We are trying to build breadth of understanding, as well as depth. Some colleagues working on particular statutory instruments receive training on explanatory memoranda or how to draft an impact assessment, for example, and they get specialist and bespoke training.

**Lord Cunningham of Felling:** Who has oversight of the work on impact assessments?

**Louise Morgan:** We have a chief analyst in the department and can also pick that issue up through the legislation committee. To be frank, however, we have not done a deep dive to look at that particular work lately.

Where we have responded to the committee's feedback, if I may, is on the issues that you raised about explanatory memoranda, particularly in the last session. We took on board your feedback about the quality, which I recognise was not where we wanted it to be. We introduced a new system, as part of our quality assurance process, to provide some peer-to-peer coaching and checking. I am keen to pick up issues through my role and through the legislation board where we can take action.

**Lord Cunningham of Felling:** You can understand, I am sure, why members of this committee are very uneasy about the fact that we have been asked to approve a statutory instrument that has no impact assessment. The impact assessment will not be published until after the statutory instrument has become legislation. Why is that?

**Louise Morgan:** Am I correct in understanding that you are referring to the letter the committee Chair wrote to Baroness Vere about the HGV—

**Lord Cunningham of Felling:** Indeed I am.

**Louise Morgan:** I believe Baroness Vere has written back to the committee, providing the extra information. We are legislating here at pace. We are trying our best. I understand the concerns you might have. What we are trying to do through the letter is provide you with information so you can make your assessment.

**The Chair:** You might like to reread the letter, bearing in mind Lord Cunningham's point that this is a pretty serious defect. We are being asked to pass something ahead of an impact assessment due in November. The letter that has been sent to us does not, frankly, contain a word of regret. It is saying broadly, as my children would put it, "suck it up".

**Robert Courts:** I apologise about the drafting of the letter if it did not hit the right tone. I am happy to take it away to look at it.

Because this SI is dealing with an issue that is very much a matter of great public concern, we are seeking to take steps with all due expedition. The letter intends to give as much information as is helpful and practical to assist the committee who are deliberating in this House. As Lord Cunningham has quite rightly said, a full impact assessment will follow but I accept that will not come until later. The reason is that we are seeking to address a matter that is of great public concern at present.

**Q13 Lord Cunningham of Felling:** I could go on asking you questions for a long time but tell me what actions you have taken specifically to ensure that any new obligations that come before the department are dealt with far more expeditiously than you have dealt with them in the past.

**Robert Courts:** Does this question cover the gamut of everything we have been discussing today?

I refer you to the SI performance upgrades that I have already outlined. There are a number of aspects to it but I think the key thing is the oversight that I have referred to, the fact that there is to be a quarterly legislation board meeting, that the programme will be given scrutiny, and the board will report back to Ministers and the DfT board, obviously including the Permanent Secretary. We are taking a number of steps, including increasing resource in the appropriate places. In most cases, it is within my maritime portfolio that the concern arises. We have recruited additional resource, for example three extra maritime lawyers, and extra economists, in order to make sure that the work can be done more quickly and there is an upgrade in governance.

I will pause there because a helicopter is flying overhead. I anticipate that it is not a Maritime and Coastguard Agency helicopter; it will be military, I expect.

There are two aspects to the actions we have taken: an increase in the resource to ensure that we can do the work more quickly and ministerial and senior office oversight to make sure that it is done more quickly.

**Lord Cunningham of Felling:** Thank you.

**Q14 The Chair:** Ms Morgan, how long do you expect SROs to stay in post?

**Louise Morgan:** That is probably more a question for Cabinet Office colleagues than for me. I think the role has great value within the department, not only for grip and programme management aspects that we could build over some time but also for raising the profile of secondary legislation within the department. Particularly at a time when the Civil Service has seen an increase in its staff numbers, it is good to make sure that people understand the breadth of their role.

**The Chair:** How long have you been in your role?

**Louise Morgan:** I entered the department in March 2019 and took on my current role shortly afterwards, I think in the summer. I had a period of maternity leave during that time and have now returned.<sup>1</sup>

**The Chair:** One of the things we are concerned about here is to ensure there is some institutional memory. This goes back to a point that was made earlier. If you have very rapid turnover, institutional memory disappears with each person who leaves unless there is some way that people can pick it up, get stuck into it, learn it and pass it on.

**Louise Morgan:** Since the role was instituted in 2017, it has been held by colleagues within the department at either director or DG level. When I went on maternity leave, the post was held by the person who covered my maternity cover. But I agree with you, the principle is very important.

**The Chair:** Any other questions from my colleagues? No?

**Robert Courts:** May I make one clarification point arising out of the answer that I gave earlier? It is more a detail than clarification about the 4,000 occurrences that I referred to.

**David Harding:** The point was about the level of risk assessed. There is a degree of voluntary compliance before the new legislation comes into place. The analysis of the data suggested that 85% of obstacles, based on the existing data at the time, were wind turbines. The next largest sector was that of cranes. Guidance on both of those obstacles was updated by the CAA during the interim period and in terms of risk mitigation taken during that phase, there was voluntary compliance, as the Minister said— 4,000 notifications in the year to July 2019. Then there was guidance and discussion with the two biggest sectors where obstacles were being developed over time. There were some other mitigations. Airfields that have safeguarding are required to report new obstacles and some parts of planning policy require notification of large structures being built.

For clarification, there was some risk mitigation undertaken during that period. The new legislation covers notifications of new or changing-height obstacles, bringing it to the level of compliance required by the EU directive and ICAO international standards. I hope that is helpful.

**The Chair:** Thank you very much indeed. I thank you and your team, Minister. You have dealt with our questions briskly, efficiently and frankly and we are grateful to you for that. We will reflect and we may want to write to you. I think you are going to drop us a couple of extra bits of information in any case.

**Robert Courts:** Yes. I have said in a couple of cases that I will write and give you some further information that might be helpful, particularly if I spell out the differences between the outstanding and the backlog. I will lay that out and if the committee has any further questions, of course we will be delighted to assist.

**The Chair:** Thank you all very much.

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<sup>1</sup> Ms Morgan subsequently confirmed that she took on the role in April 2019.