

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

56th Report of Session 2022–23

Work of the Committee in Session 2022–23

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Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as agreed on 17 July 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)

[Lord Hutton of Furness](#)

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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 Christine Salmon Percival (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/ukxi>

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.

EXECUTIVE SUMMARY

This report provides an overview of our scrutiny work for the whole of session 2022–23, building on an Interim Report, published in May 2023, which covered the first 12 months. Our work in session 2022–23 focused on three main areas:

- considering the “business as usual” (BAU) secondary legislation that forms the majority of our scrutiny work;
- encouraging departments and working with the Government to improve the quality of explanatory material; and
- preparing and dealing with secondary legislation laid under the Retained EU Law (Revocation and Reform) Act 2023, albeit at a significantly lower volume than initially expected.

While almost two-thirds of secondary legislation that we scrutinise does not receive any published comment, **our overall impression of this session remains that we have too frequently had to ask basic questions about the policy, its intended effects or expected impact.** We regret that the quality of explanatory material has not improved since our Interim Report.

Drawing on our scrutiny of more than 900 pieces of secondary legislation this session, this report identifies several areas of improvement for departments. Most of these have been areas of concern for some time:

- Poor explanatory material and lack of policy evidence
- Inadequate provision of impact information, including Impact Assessments
- Inadequate consultation and failure to take into account feedback
- Potential overuse of urgent procedures
- Corrections and replacements of Explanatory Memoranda (EMs).

We were pleased to note that several departments, including the Ministry of Defence and the Northern Ireland Office, did not have to replace any EMs in the session. Of the departments which laid large numbers of statutory instruments, the Department for Work and Pensions (15.3% of all its EMs replaced), the Department for Transport (14.1%), and the Home Office (11.2%) stood out with EM replacement rates of more than double the 5% error rate that the Committee has traditionally regarded as acceptable to allow for “human error”.

The high rate of corrections and replaced explanatory material, which has increased since the last session, indicates that senior officials and ministers are signing-off explanatory material that is simply not “fit for purpose”. We welcome therefore that in their Response to our Interim Report the Government have launched several initiatives, including training, to encourage senior officials and ministers to ensure that departments’ performance on secondary legislation improves.

Engagement by senior leadership is important: however, it must focus not only on the timely delivery of a department’s programme of legislation through Parliament, as appears to be the case at present, but also on the quality of that

legislation. While we recognise that each minister should be responsible for the quality of any secondary legislation they sign into law, **we consider that the SI Minister in each department should be accountable for the overall quality of its instruments and the supporting explanatory material.** In response to our Interim Report the Government held a forum for departmental SI Ministers to “discuss the need for continuous improvement in the delivery of secondary legislation”. **We welcome this initiative and hope that such a forum could become a recurring event that could also be open to officials who are the Senior Responsible Owners of secondary legislation in their departments.**

These initiatives will need time to embed, but we urge departments to take immediate action to strengthen their quality assurance and approval processes, and ministers to consider carefully before signing to say that an Explanatory Memorandum meets the required standard. Basing a policy on evidence and clearly explaining its anticipated effects are key to the ability of Parliament and the public to hold government to account.

We will continue to monitor departmental performance, and we intend to take evidence from ministers and senior officials in the first part of 2024 to understand how our concerns about the current quality of explanatory material are being addressed in practice. We are minded to publish an update report then to assess the progress made.

Fifty Sixth Report

END OF SESSION REPORT 2022–23

Introduction

1. The Secondary Legislation Scrutiny Committee (SLSC) considers all statutory instruments (SIs) and other secondary legislation that is subject to a parliamentary procedure 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 always 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. In longer sessions we also publish annual ‘Interim Reports’ so that any recommendations remain timely.
2. Session 2022–23 lasted for more than 17 months from State Opening on 10 May 2022 until Prorogation on 26 October 2023. We therefore published an Interim Report which covered the first 12 months.¹ This report sums up our work for the whole session but with a particular focus on the period after the Interim Report from 10 May 2023 to our final meeting of the session on 24 October 2023.
3. Part 1 of this report highlights the key themes and concerns that arose during the session (paragraphs 4–45). Part 2 provides a statistical overview (paragraphs 46–64).

¹ *Interim Report on the Work of the Committee in Session 2022–23*, (42nd Report, Session 2022–23, HL Paper 205).

PART 1: KEY THEMES AND CONCERNS DURING SESSION

2022–23

Government response to our Interim Report

4. In session 2022–23 we cleared almost two-thirds (64%) of the secondary legislation we considered without publishing any comment, compared to 71% in the 2021–22 session. Where we did offer comment in our weekly reports, the most persistent concerns were: the poor quality of departments’ Explanatory Memoranda (EMs); a failure to provide evidence to support the policy; and a lack of information on the expected financial impact of instruments (including a failure to provide a formal Impact Assessment (IA) where required). In our Interim Report we had concluded that:

“An EM is the key means by which Parliament and the public can gain an understanding of a Government proposal and, as a result, challenge it effectively. It is, therefore, vital that the explanation it provides is fit for that purpose.”²

5. In their response to our Interim Report, the Government acknowledged that timely and good quality supporting documents “are vital in facilitating parliamentary scrutiny” and committed to using “every opportunity to reinforce their importance”. The Government also committed to strengthen training, including for Senior Responsible Owners (SROs) of secondary legislation and other senior officials, and to a new workshop “to help policy officials more effectively plan their statutory instrument projects from conception”. In addition, the Government said that they would establish a short-term “Steering Group” of officials to identify ways to “drive the best culture across Government and champion best practice” on secondary legislation and would also convene a meeting of ministers with responsibility for secondary legislation in September to discuss “the need for continuous improvement in the delivery of secondary legislation”, followed by ministerial training from the autumn onwards.
6. We welcome these commitments and initiatives. To support these efforts, we have updated our guidance for departments on laying secondary legislation³ and have produced a new document with our top ten tips for a good EM.⁴
7. We note that there continue to be positive examples of well explained instruments (see below) but **remain concerned that there are still too many instances where poor explanatory material or missing or incorrect information is not detected during the departmental approval and quality assurance processes.**

Poor explanatory material and lack of policy evidence

8. One of our terms of reference specifically obliges us to draw an instrument to the special attention of the House where we find that the explanatory material provides insufficient information to gain a clear understanding of an instrument’s policy objective and intended implementation. In this session,

2 *Interim Report on the Work of the Committee in Session 2022–23*, (42nd Report, Session 2022–23, HL Paper 205).

3 SLSC, *Guidance for departments laying instruments* (5 September 2023): <https://committees.parliament.uk/publications/28455/documents/202651/default/>.

4 SLSC, *Top ten tips for good Explanatory Memorandum* (5 September 2023): <https://committees.parliament.uk/publications/41208/documents/205467/default/>.

we brought 19 instruments to the special attention of the House on this ground, compared to ten in the shorter session 2021-22. Even where we do not formally report an instrument on the ground of insufficient explanation, we may still raise concerns about the quality of the EM and ask for it to be revised. This is so any additional information is permanently available on the public record.

9. Several examples of poor EMs from the later part of this session included:
- The draft *Postal Packets (Miscellaneous Amendments) Regulations 2023*⁵ sought to implement part of the Windsor Framework by applying certain customs requirements to parcel movements from Great Britain to Northern Ireland. The original EM failed to explain the absence of a public consultation and impact information, omitted some of the changes that were being proposed and gave no reason why HM Revenue and Customs (HMRC) had asked us to consider the SI “at the earliest opportunity”.
 - The *Criminal Justice (Specified Class A Drugs) Order 2023 (SI 2023/784)* expanded the scope of drug testing in police detention.⁶ The EM lacked fundamental data including on the number of people affected, the additional costs and whether treatment services had the capacity to cope with the added demand. We also noted that the Home Office had not fully addressed concerns raised by the consultation about the potential effects of the policy on ethnic minorities.
 - The *Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 (SI 2023/909)*.⁷ Instead of setting out the policy, the original EM’s 69 pages contained a highly detailed description of each regulation. When we questioned the Department for Levelling Up, Housing and Communities (DLUHC), it stated that the industry could use the EM as interim implementation guidance. This shows a worrying misunderstanding about the purpose of an EM.
 - The draft *Food (Promotion and Placement) (England) (Amendment) Regulations 2023* provide a particularly egregious example.⁸ We had criticised the 2022 Regulations of the same name because the only policy reason given for delaying a ban on ‘buy one get one free’ offers for high fat, high sugar foods was the “unprecedented global economic situation”. We were therefore disappointed when the Department of Health and Social Care (DHSC) laid the 2023 Regulations to extend the delay with an equally vague EM. In neither case did the EM reassess the impact this delay would have on the policy objective of halving childhood obesity by 2030. Consequently, we asked the DHSC Minister, Neil O’Brien MP, to give evidence in person to explain the policy rationale.⁹ He agreed that the EM contained some statements that had not been fully justified and had possibly been “overstated”.¹⁰

5 [46th Report](#) (Session 2022–23, HL Paper 231).

6 [49th Report](#) (Session 2022–23, HL Paper 244).

7 [52nd Report](#) (Session 2022–23, HL Paper 256).

8 [SI 2023/949](#).

9 [55th Report](#) (Session 2022–23, HL Paper 263).

10 Oral evidence transcripts, Food (Promotion and Placement) (England) (Amendment) Regulations 2023, (17 October 2023) [Q10](#).

10. In other cases the limited explanation provided in the EM prompted us to ask questions which departments then seemed unable to answer, casting doubt on the efficacy of the policy:
- The *Administration of Estates Act 1925 (Fixed Net Sum) Order 2023 (SI 2023/758)*¹¹ increased the amount that a surviving spouse or civil partner receives if a person dies intestate. The EM failed to acknowledge that the instrument breached requirements set out in the parent Act with the result that some beneficiaries would receive lower amounts than intended. The Ministry of Justice (MoJ) was unable to tell us how it would resolve this situation.¹²
 - The *Immigration (Passenger Transit Visa) (Amendment) (No. 2) Order 2023 (SI 2023/980)* required Russian and Georgian nationals to obtain a visa to be able to transit through the UK. The EM said that nationals of these countries were high on the list of those “abusing” the transit system to claim asylum, but the Home Office was unable to provide data to substantiate this claim.¹³
 - We received a submission on the *Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2023 (SI 2023/713)* which claimed that, as drafted, the SI would prevent law firms from conducting any international business. The Foreign, Commonwealth and Development Office (FCDO) confirmed this interpretation of the ban, stating that it would “urgently” consider mitigating measures.¹⁴
 - We raised concerns over the *Agriculture (Removal of Cross-Compliance and Miscellaneous Revocations and Amendments, etc.) (England) Regulations 2023 (SI 2023/816)* because they removed EU compliance requirements for recipients of certain agricultural payments before the new compliance regime had been fully established, which could lead to regulatory gaps. The Department for Environment, Food and Rural Affairs (Defra) was unable to allay those concerns.¹⁵
11. It is important that departments are transparent about the potential consequences of their policy choices and decisions and make these clear in the EM, including where there may be adverse effects on certain groups or potential regulatory gaps. **Such information should form a key part of any EM and should not have to be extracted through our questions.**
12. We considered other instruments where simple avoidable errors or omissions in the explanatory material meant that we asked the department to replace the EM:
- The *Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) (Amendment) Regulations 2023 (SI 2023/787)*¹⁶ postponed the implementation of an electronic safety system by two years, without mentioning that there was an existing manual system, and therefore no safety risk from the delay.

11 [47th Report](#) (Session 2022–23, HL Paper 236).

12 [48th Report](#) (Session 2022–23, HL Paper 240).

13 [52nd Report](#) (Session 2022–23, HL Paper 256).

14 [46th Report](#) (Session 2022–23, HL Paper 231).

15 [52nd Report](#) (Session 2022–23, HL Paper 256).

16 [49th Report](#) (Session 2022–23, HL Paper 244).

- The original EM to the *Universal Credit (Childcare) (Amendment) Regulations 2023 (SI 2023/593)*¹⁷ incorrectly stated that the new rule applied only when a claimant “significantly” increased their hours, when in fact the provision applied to any increase in their working hours.
- The draft *Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023*¹⁸ proposed a significant increase in planning application fees to reduce the annual funding shortfall in local planning application services, but the EM used an incorrect annual shortfall figure.
- The EM to the draft *Building Safety (Leaseholder Protections etc.) (England) (Amendment) Regulations 2023* failed to mention that the instrument sought to address issues raised in two Judicial Review applications,¹⁹ information that was needed to understand fully the legal context and policy rationale of the instrument.
- The *Aviation Safety (Amendment) Regulations 2023 (SI 2023/588)* implemented revised aviation standards and also delayed changes in balloon and glider licensing. The EM simply stated what the Regulations did without providing any context or background to the policy choices made or setting out why there were no safety risks from the delays.²⁰ Our criticism of the EM was reflected in a debate in the House.²¹

13. **It is disappointing that despite the work that the Government have undertaken to improve the quality of secondary legislation and its supporting material over the last few months, there are still too many instances where ministers are signing-off explanatory material that is not “fit for purpose”.**

The role of ministers and senior officials

14. This range of recent examples of flawed EMs has further fuelled the concerns set out in our Interim Report that the quality assurance and approval processes of some departments are inadequate. That is why we have been pressing for more senior leadership and oversight in these processes, including by SROs and ministers with responsibility for secondary legislation. We have also been concerned that senior officials and ministers have been focusing more on progressing a department’s legislative programme than on quality issues.
15. When taking oral evidence from Lord Murray of Blidworth, Parliamentary Under Secretary of State for Migration and Borders at the Home Office and the Minister with responsibility for SIs at that department, we asked him about his role.²² Lord Murray’s response confirmed our concerns:

“My role is to oversee the secondary legislation programme. I receive weekly written updates from the legislative strategy team, which highlight emerging issues that may impact on the timely delivery of the programme. In particular, these updates note statutory instruments that

17 [43rd Report](#) (Session 2022–23, HL Paper 207).

18 [51st Report](#) (Session 2022–23, HL Paper 250).

19 [45th Report](#) (Session 2022–23, HL Paper 223).

20 [43rd Report](#) (Session 2022–23, HL Paper 207).

21 HL Deb, 4 July 2023, [cols 1207–1214](#).

22 [40th Report](#) (Session 2022–23, HL Paper 197).

are awaiting parliamentary debate, such as the one we have just discussed, drawing out prayer Motions that have been tabled by Members as well as a list of statutory instruments that are expected to be laid in the next three months. I meet with the SRO on a monthly basis to discuss the programme.”²³

16. We understand that, in line with the commitments given in the Government Response to our Interim Report, training for both departmental SI Ministers and senior officials, including SROs, is being developed, and that quality assurance guides and checklists will be published.²⁴ **The Government’s improvement initiatives will need time to embed, but we trust that we will not have such a long list of poor examples to illustrate our next overview report.**

Examples of good practice

17. As part of our own commitment to assisting in improving the quality of explanation, we also circulate good examples of EMs to departments and now to the Steering Group to encourage the sharing of best practice. Recent examples of effective EMs include:
- The *School Teachers’ Incentive Payments (England) (Amendment) Order 2023 (SI 2023/822)*,²⁵ which ensured that certain incentive payments to teachers in England were not treated as pay, was accompanied by a good EM that clearly set out the policy context and provided useful links to further external information and guidance.
 - The *Financial Services and Markets Act 2000 (Exemptions from Financial Promotion General Requirement) Regulations 2023 (SI 2023/966)*, which specified exemptions from a new regulatory ‘gateway’ for the approval of financial promotions, was supported by a well-drafted and comprehensive EM.²⁶
 - The EM to the *Judicial Discipline (Prescribed Procedures) Regulations 2023 (SI 2023/1005)*,²⁷ which improved the process for dealing with complaints about the judiciary, set out the full policy context, illustrating how the instrument fitted in with wider changes, and a good summary of the consultation exercise.
18. In pursuing its mission to “drive the best culture across Government and champion best practice”, the Steering Group may find such examples helpful in determining whether individual departments are using specific quality assurance or approval processes, for example peer reviews, when producing high-quality EMs, and whether these mechanisms could be replicated easily across government. **It is our intention to take evidence from the Government in the first part of 2024 to hear what recommendations the Steering Group have made and how they are being put into practice.**

23 *Ibid.*, QQ10–12.

24 *50th Report* (Session 2022–23, HL Paper 245).

25 See *School Teachers’ Incentive Payments (England) (Amendment) Order 2023 (SI 2023/822)*.

26 See *Financial Services and Markets Act 2000 (Exemptions from Financial Promotion General Requirement) Regulations 2023 (SI 2023/966)*, *52nd Report* (Session 2022–23, HL Paper 256).

27 See *Judicial Discipline (Prescribed Procedures) Regulations 2023 (SI 2023/1005)*, *53rd Report* (Session 2022–23, HL Paper 260).

Inadequate provision of impact information and Impact Assessments

19. A formal Impact Assessment (IA) has been required if the expected equivalent annual net direct cost to business or the charity sector of an instrument is at least £5 million.²⁸ Where this threshold is not met, we still expect useful information in the EM about the costs and benefits of the instrument or an explanation of why there are no costs.
20. Our October 2022 special report, *Losing Impact: why the Government's impact assessment system is failing Parliament and the public*,²⁹ examined in depth the appropriate provision of impact information in support of secondary legislation. It reminded departments that such information should be an integral part of the policy formulation process, helping to guide the policy maker towards the most efficient and cost-effective solution to the problem identified. Our Report also reiterated the importance of providing IAs at the same time an instrument is laid before Parliament because without the right information at the right time, Parliament cannot perform its critical function of holding the Government to account.
21. We acknowledged in our Interim Report a degree of improvement in this area. For example, more departments are providing useful impact information in EMs or a de minimis IA or an Economic Note, even though the net costs were below the IA threshold.³⁰ We have continued to see such examples; for example, the *Sea Fisheries (Amendment) (England) Regulations 2023 (SI 2023/1054)*³¹ were supported by a de minimis IA explaining the financial implications of increasing the mesh size for certain fishing nets.
22. Regrettably, we still see too many instruments where departments have failed to provide a formal IA on time, despite the Government's repeated assurances that they recognise that these are vital in facilitating parliamentary scrutiny, and that they will use every opportunity to reinforce their importance.³² For example:
 - A package of five instruments laid in August and September 2023 to implement the Retail Movement Scheme and trade in plants between Great Britain and Northern Ireland under the Windsor Framework lacked an IA or even basic impact information. Even though one of the EMs suggested that an IA would be published "in due course",³³ to date, no IA for this legislative package has been provided by Defra.
 - Regulations which implemented another aspect of the Windsor Framework, in relation to parcel movements from Great Britain to Northern Ireland, lacked any information on either impact or resourcing. The changes being made to customs procedures were quite

28 Department for Business, Energy & Industrial Strategy, 'Better Regulation Framework Interim guidance' (March 2022): <https://assets.publishing.service.gov.uk/media/5f5b2b1ee90e0718dff749d/better-regulation-guidance.pdf>, p 30.

29 *Losing Impact: why the Government's impact assessment system is failing Parliament and the public*, 12th Report (Session 2022–23, HL Paper 62).

30 See *Interim Report on the Work of the Committee in Session 2022–23*, (42nd Report, Session 2022–23, HL Paper 205) para 26.

31 *Explanatory Memorandum to The Sea Fisheries (Amendment) (England) Regulations 2023* (2023 No. 1054).

32 *50th Report* (Session 2022–23, HL Paper 245), p 7.

33 *51st Report* (Session 2022–23, HL Paper 250).

specific, so that HMRC should have been able to provide an analysis of the expected effects.³⁴

- A *Statement of Changes in Immigration Rules (HC 1496)*,³⁵ which increased restrictions on those who can come to the UK under the student visa route, was laid without an IA even though the Home Office had acknowledged that the measures would have a “significant” impact on universities and the public sector. The Home Office initially refused to publish the IA, which it said had been prepared, but later said the IA was still to be finalised.³⁶ It has not yet been published.

23. **We remind the Government of their undertaking to improve performance in this area. Because impact information is vital to proper scrutiny, an instrument should not be laid where an IA is missing, except in a genuine emergency, in which case a full explanation of the omission should be provided in the EM, alongside the headline financial impact information. In future, in cases where an instrument has been laid without the required IA, we may recommend to the House that it should defer consideration of an instrument until a meaningful impact assessment has been provided.**

Better Regulation Framework

24. Departments produce IAs in compliance with the Better Regulation Framework, which is overseen by the Better Regulation Executive (BRE) within the Department for Business and Trade (DBT). DBT launched a revised Framework and supporting guidance in September 2023.³⁷ This seeks to ensure that any new regulations have gone through a process “to check that the proposed regulation is the best solution to the policy issue in question” and that “regulation is only introduced where justified, and doing so in a way that keeps the necessary burdens to a minimum”. During consultation on the new Framework, we wrote to the BRE with some simple suggestions of how the existing Framework and approach to IAs could be improved.³⁸
25. According to DBT, the new Framework encourages the assessment of a wider range of impacts, such as on trade, innovation and net zero, and retains independent scrutiny by the Regulatory Policy Committee (RPC) of the most impactful regulations but moves this to an earlier stage in the policy development process. We note, however, that the new Framework also doubles the threshold at which regulations require a full IA from net costs of £5 million per year to £10 million. During a 12-month transition period, departments will be able to apply either the current or the new Framework.
26. **We welcome the assessment of a wider range of impacts under the new Framework. We will be considering further the implications of the increased IA threshold and would be concerned if it reduced the**

34 *46th Report* (Session 2022–23, HL Paper 231).

35 Home Office, ‘Statement of changes to the immigration rules: HC 1496’ (17 July 2023): <https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-1496-17-july-2023> [accessed 26 October 2023].

36 *51st Report* (Session 2022–23, HL Paper 250).

37 Department for Business and Trade, ‘Better Regulation Framework: Guide for government officials covering all aspects of the Better Regulation Framework’ (19 September 2023): <https://www.gov.uk/government/publications/better-regulation-framework>.

38 See *Losing Impact: why the Government’s impact assessment system is failing Parliament and the public*, (12th Report, Session 2022–23, HL Paper 62), Appendix 3.

amount, or quality, of impact information that is made available to Parliament and the general public.

Inadequate consultation and failure to take feedback into account

27. A full analysis of the consultation preceding a policy change should be available at the time the instrument is laid before Parliament, and a direct weblink included in the EM. Departments should always acknowledge significant concerns about a policy that were expressed during consultation and should set out in the EM whether and how such concerns have been addressed.
28. While we have seen some examples of good consultation practice, such as the *Early Years Foundation Stage (Learning and Development and Welfare Requirements) (Amendment) Regulations 2023 (SI 2023/780)*, the EM to which included a comprehensive summary of the public consultation exercise,³⁹ we are disappointed that since our Interim Report⁴⁰ we have seen further examples of poor consultation practice:
- The lack of public consultation was a key concern raised in submissions the Committee received from teachers, parents and school governors in relation to the Relationships and Sexuality Education (Northern Ireland) (Amendment) Regulations 2023.⁴¹ While the Northern Ireland Office (NIO) argued that there was no legal requirement to consult and that it had engaged with a range of stakeholders and statutory organisations, we noted that full public consultations had been carried out when comparable regulations were introduced in England. We found this to be an example of where consultation, even if not required by law, could have helped to improve confidence in a policy.
 - The draft Misuse of Drugs Act 1971 (Amendment) Order 2023 which reclassified nitrous oxide as a Class C drug.⁴² Our Report highlighted that the Home Office had not conducted a public consultation on the reclassification because it was already “minded to introduce a ban”. We reminded the Home Office of the value of public consultation in identifying unintended consequences or unforeseen difficulties, by drawing on the expertise of those operating in the field. The Home Office also stated that police forces, which had been consulted, had expressed “a range of views” on the reclassification, without providing any information on the objections the police had (presumably) raised.
 - We criticised the EM to the Policing Protocol Order 2023 (*SI 2023/649*) for failing to make clear how the final version had responded to the large number of negative consultation responses on the initial draft.⁴³
29. While we recognise that public consultation should always be proportionate to the policy change proposed and may not always be necessary, we take the view that it can be an important element of policy development. The feedback it provides may not only identify unforeseen consequences but can also improve the policy design and practical implementation. Additionally,

39 *48th Report* (Session 2022–23, HL Paper 240).

40 See *Interim Report on the Work of the Committee in Session 2022–23*, (42nd Report, Session 2022–23, HL Paper 205), paras 24–25.

41 *44th Report* (Session 2022–23, HL Paper 217).

42 See *51st Report* (Session 2022–23, HL Paper 250), paras 9–11.

43 *45th Report* (Session 2022–23, HL Paper 223).

consultation may improve confidence in a policy where there may be concerns. **We therefore consider proportionate consultation, and a thorough review of the responses before the instrument is laid, as a key part of robust policy development.**

Potential overuse of urgent procedures

30. Our Interim Report made the point that urgent procedures, such as the made affirmative procedure (which enables an affirmative instrument to come into effect before having been approved by Parliament), or breaches of the 21-day convention (which requires 21 days to elapse from the date of laying before a negative instrument is brought into effect) impact Parliament's scrutiny of legislation. They should therefore only be used in cases where there is genuine urgency.
31. We considered 48 made affirmative instruments in session 2022–23 (5.1% of the total number of SIs considered and 16.2% of all affirmative SIs considered), of which one came into effect prior to being laid before Parliament. Examples of where use of this procedure appeared justified include the imposition of sanctions on Russia or Belarus⁴⁴ which accounted for 14 (29.2%) of the made affirmative SIs in session 2022–23, or the introduction of energy bill support schemes, which accounted for 19 (39.6%) of all made affirmatives laid during the session.
32. Recent examples of where we questioned the use of urgent procedures include:
 - The *Statement of Changes in Immigration Rules (HC 1496)* which increased restrictions on those who can come to the UK under the student visa route with the aim of reducing net migration. We concluded that the EM failed to provide a convincing explanation of why the Home Office had brought the measures into effect immediately, restricting the time for parliamentary scrutiny.⁴⁵
 - Parts of the *Relationships and Sexuality Education (Northern Ireland) (Amendment) Regulations 2023 (SI 2023/602)* were brought into effect on the same day they were laid without adequate justification.⁴⁶
 - The *National Health Service Pension Scheme (Member Contributions) (Amendment) Regulations 2023 (SI 2023/576)* were brought into effect after seven days on the grounds that without the legislation some members might pay a higher contribution rate. We did not find this reasoning persuasive, as the Department of Health and Social Care (DHSC) was already making payroll adjustments to implement the scheme, so could have coordinated its process better without breaching the 21-day convention.⁴⁷
 - Conversely, we were concerned that the draft *Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order (2023/56)* which proscribed the Wagner Group took more than nine days between the

44 See, for example, *Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2023 (SI 2023/665)* and *45th Report* (Session 2022–23, HL Paper 223).

45 *51st Report* (Session 2022–23, HL Paper 250).

46 *44th Report* (Session 2022–23, HL Paper 217).

47 *43rd Report* (Session 2022–23, HL Paper 207).

policy being announced in the media and its becoming law, potentially undermining the effectiveness of the Order.⁴⁸

33. **We remain concerned that urgent procedures, which curtail parliamentary scrutiny, should be used appropriately and only where absolutely necessary, not just for administrative convenience. We will monitor the appropriate use of urgent procedures in session 2023–24.**

Preparing for a dealing with Retained EU Law

34. The Retained EU Law (Revocation and Reform) Act 2023 (“the REUL Act”) received Royal Assent on 29 June 2023. It revokes, or ‘sunsets’, certain retained EU law (REUL), as set out in Schedule 2, at the end of 2023. The REUL Act also gives ministers powers to exempt some REUL from the sunset and to restate, reproduce, replace or update REUL by statutory instrument. As a result of the inclusion of Schedule 2 in the REUL Act, during the passage of the Bill through Parliament, we expect far fewer SIs dealing with REUL than when the original REUL Bill was introduced.
35. While some instruments under the REUL Act require the affirmative procedure, the Act also contains a provision under which a minister may choose the procedure to which certain instruments should be subject. Where the negative resolution procedure is proposed, the instrument is referred to as a ‘proposed negative’ instrument and is subject to a sifting procedure. The sifting procedure involves committees in both Houses taking a view on whether the proposed negative procedure is appropriate or recommending that the affirmative procedure should apply instead, with the minister making the final decision. In the House of Lords, the SLSC performs this sifting function and in the House of Commons it is undertaken by the European Statutory Instruments Committee. This mirrors arrangements under the European Union (Withdrawal) Act 2018 (EUWA 2018) under which we sifted more than 300 proposed negative instruments.
36. We have so far seen only three proposed negative instruments under the REUL Act in session 2022–23. We recommended one for an upgrade to the affirmative procedure,⁴⁹ because it replaced references to, and definitions of, fundamental rights and freedoms in relation to data protection, and the Government could not rule out that there might be potential differences in those rights and freedoms as a result.
37. In our Interim Report we highlighted the need for every instrument under the REUL Act “to be accompanied by a clear, accessible and comprehensive Explanatory Memorandum [...] and relevant impact information to enable the House to scrutinise these instruments effectively”.⁵⁰ When we set out our approach to sifting proposed negative instruments under the REUL Act,⁵¹ we similarly emphasised that “it will be critically important that the explanatory material accompanying the proposed negative instrument should state clearly the context of the policy to be implemented by the instrument, including the legislative context”, and that where REUL is restated for example “the explanation should include what is being restated, whether there are any

48 *51st Report* (Session 2022–23, HL Paper 250).

49 *53rd Report* (Session 2022–23, HL Paper 260).

50 *Interim Report on the Work of the Committee in Session 2022–23*, (42nd Report, Session 2022–23, HL Paper 205), para 11.

51 *47th Report* (Session 2022–23, HL Paper 236).

differences between the restatement and what is being restated, and whether there is a broader context”.⁵²

38. We were therefore disappointed by the limited information provided in the EM to the draft Retained EU Law (Revocation and Reform) Act 2023 (Revocation and Sunset Disapplication) Regulations 2023.⁵³ The instrument proposed to reinstate seven items of legislation which would otherwise be sunsetted by the REUL Act at the end of 2023, and to revoke 93 pieces of redundant REUL. While the EM provided a helpful explanation in relation to the reinstated legislation, it failed to offer any explanation of the revocation of 93 pieces of REUL. Subsequent correspondence with DBT on this instrument showed that the revocations simply tidied up the statute book, and that a thorough “explainer” document had been published separately. The EM, however, should have been free-standing.
39. **We remind departments that where future instruments revoke retained EU law, the EM must provide a broad explanation of the legislation being revoked and whether this may have any adverse impacts on those affected by the legislation or leave any gaps in standards, rights or protections.**
40. In our commentary on the Government’s response to our Interim Report, we also recommended that, to support transparency and traceability, all instruments laid under the REUL Act should be identified as such by their title, in line with, for example, the practice of identifying Brexit related secondary legislation by including “EU Exit” in the title or using “Coronavirus” in the title of SIs dealing with the pandemic.⁵⁴
41. In session 2022–23, we considered nine instruments laid under the REUL Act of which only one, the draft *Retained EU Law (Revocation and Reform) Act 2023 (Revocation and Sunset Disapplication) Regulations 2023*, included a reference to the REUL Act in its title. As not referencing the REUL Act in the title will mean that these instruments will not be easily identifiable in the future, we asked the Government to explain its approach. In their response, published in full at Appendix 1, the Government agree “that it is important that SIs are readily identifiable, including those proposed or made under the REUL Act” but explain that it is not necessary to include the term in the title routinely:

“The Government is of the view that now that the UK has left the EU, these SIs should be forward looking in their titles and focus on the reforms and changes they will deliver rather than looking backwards to the origins of the REUL they are amending. The importance attached to this is demonstrated by the fact that “REUL” as a category of law will itself disappear at the end of the year when it becomes “assimilated law”. It would therefore not be appropriate for the titles of SIs to be referring to “retained EU law” when that concept will no longer exist. [...]

The only exception to this view is for SIs which are centrally coordinated or those covering multiple pieces of REUL from different departments and policy areas. [...] For these SIs, the Government accepts that

52 *47th Report* (Session 2022–23, HL Paper 236), para 9.

53 *52nd Report* (Session 2022–23, HL Paper 256).

54 See *50th Report* (Session 2022–23, HL Paper 245), para 7.

REUL is the critical descriptor linking the different elements of the SI together”.

42. We welcome this clarification and note that all SIs laid under the REUL Act will use “Retained EU Law reform” as their main subject heading (located on the face of the SI just above the title) and will be identified clearly as such in the EM. In addition, to aid traceability, the Government are publishing all SIs laid under the REUL Act on a dedicated webpage on GOV.UK.⁵⁵ **We consider this a reasonable compromise.**

Legacy of COVID-19 SIs

43. The number of SIs dealing with the consequences of the pandemic has continued to fall. Since our Interim Report, we have only considered four such instruments (0.4% of the SIs considered in that period). This compares to 21 pandemic related SIs in the first 12 months of session 2022–23 (3% of all SIs considered), 126 (19%) in the 12-month session 2021–22 and 379 (31%) in the 16-month session 2019–21. The four most recent instruments addressed legacy issues, such as a phased return to the normal process for the allocation of airport slots or enabling operators to apply for review of allowances under the UK Emission Trading Scheme.
44. Throughout the pandemic and its aftermath, we published at least an information paragraph about every COVID-19 related instrument, even those making purely technical changes. The objective was to provide the House and the wider public with an overview of all the measures being taken in response to the pandemic. Given that we now only deal with occasional instruments addressing legacy issues, we believe that it is no longer necessary to comment on every COVID-19 instrument. In the 2023-24 session we will therefore treat pandemic-related SIs in the same way as any other instrument and comment only when we consider that the instrument gives rise to questions or concerns.
45. We will still, however, list all COVID-19 related instruments on our website⁵⁶ to ensure that there is a complete record of all secondary legislation laid before the House in relation to the pandemic. Our website currently lists 541 such instruments.

55 Department for Business and Trade, ‘REUL (Revocation and Reform) Act 2023 statutory instruments’ (25 October 2023): <https://www.gov.uk/government/collections/reul-revocation-and-reform-act-2023-statutory-instruments> [accessed 25 October 2023].

56 SLSC, ‘Scrutiny of secondary legislation laid to tackle coronavirus pandemic’ (12 June 2023): <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/news/115532/scrutiny-of-secondary-legislation-laid-to-tackle-coronavirus-pandemic/>.

PART 2: ACTIVITY DURING SESSION 2022–23

46. During the 2022–23 session, we met 49 times and published 56 reports. During that period, we considered 937 statutory instruments (SIs), of which 296 were affirmative (31.6%) and 641 negative (68.4%). This compares to a total of 666 SIs received in session 2021–22, which was a shorter 12-month session. At 31.6% the proportion of affirmative instruments continues to remain well above the 20% average for the years before 2018, raising the question whether this may be a permanent shift.
47. Our Terms of Reference cover not just statutory instruments but all secondary legislation laid before the House that is subject to parliamentary procedure. This includes statutory Codes and Immigration Rules. In session 2022–23, we scrutinised 17 statutory Codes, including on political campaigning, school admissions and telecommunications security, and seven Statements of Changes in Immigration Rules.
48. During session 2022–23 we also considered 30 pieces of legislation under EU withdrawal legislation and legislation dealing with Retained EU law (REUL). This included:
- nine published draft affirmatives and 12 proposed negative instruments laid under the EUWA 2018, and
 - six draft affirmative instruments and three proposed negative instruments laid under the REUL Act.
49. Of the 15 proposed negative instruments that we sifted in session 2022–23, we recommended one for an upgrade to the affirmative procedure.⁵⁷

Instruments drawn to the special attention of the House

50. Of the 937 instruments we considered in session 2022–23, we drew 84 (9.0%) to the special attention of the House (“reported”). This is above the typical average of 7% a year, but largely due to groups of instruments on energy bill support measures and on the implementation of the Windsor Framework for trade between Great Britain and Northern Ireland being reported to the House. Just three departments, Defra, DHSC and the Home Office, were responsible for almost half of the instruments reported (see Table 1).
51. As in previous sessions, the majority of the 84 instruments we formally reported to the House were on the ground of policy interest (76.1%), 3.6% were on the ground of inadequate consultation, while 22.6% were reported to the House on the ground of inadequate explanation (see above). These poorly explained instruments were laid before Parliament by a range of departments. The data reflects the concerns we expressed throughout session 2022–23 and in our special report on IAs about a decline in the quality of supporting material.

Table 1: Instruments considered and reported by Department in Session 2022–23

Department	Total laid	%	Reported Affirmative	Reported Negative	Grounds for reporting*				
					a	b	c	d	e
BEIS**	67	7.2	4	1	5	0	0	0	0
Business & Trade**	12	1.3	1	0	1	0	0	0	0
Cabinet Office	15	1.6	0	0	0	0	0	0	0
Culture, Media & Sport**	25	2.7	0	0	0	0	0	0	0
Defence	20	2.1	0	0	0	0	0	0	0
Education	47	5.0	0	4	4	0	0	0	0
Energy Security & Net Zero**	20	2.1	5	0	5	0	0	0	0
Environment, Food & Rural Affairs	90	9.6	10	7	17	0	0	0	0
Foreign, Commonwealth & development Office	23	2.5	2	0	2	0	0	0	0
Health & Social Care (with Food Standards Agency)	91	9.7	3	4	4	0	0	3	0
HM Treasury & HMRC	56	6.0	1	1	1	0	0	1	0
Home Office***	98	10.5	8	8	9	0	0	7	2
International Trade**	12	1.3	0	0	0	0	0	0	0
Justice	73	7.8	3	3	4	0	0	2	0
Levelling Up, Housing & Communities	86	9.2	2	3	5	0	0	0	0
Local Government Boundary Commission for England	55	5.9	0	0	0	0	0	0	0
Northern Ireland Office	17	1.8	3	0	1	0	0	1	1

Science, Innovation & Technology**	3	0.3	0	1	0	0	0	1	0
Scotland Office	3	0.3	0	1	1	0	0	0	0
Transport	64	6.8	0	4	4	0	0	0	0
Wales Office	1	0.1	0	0	0	0	0	0	0
Work & Pensions (with Health & Safety Executive)	59	6.3	2	3	1	0	0	4	0
Total	937	100	44	40	64	0	0	19	3

* 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.

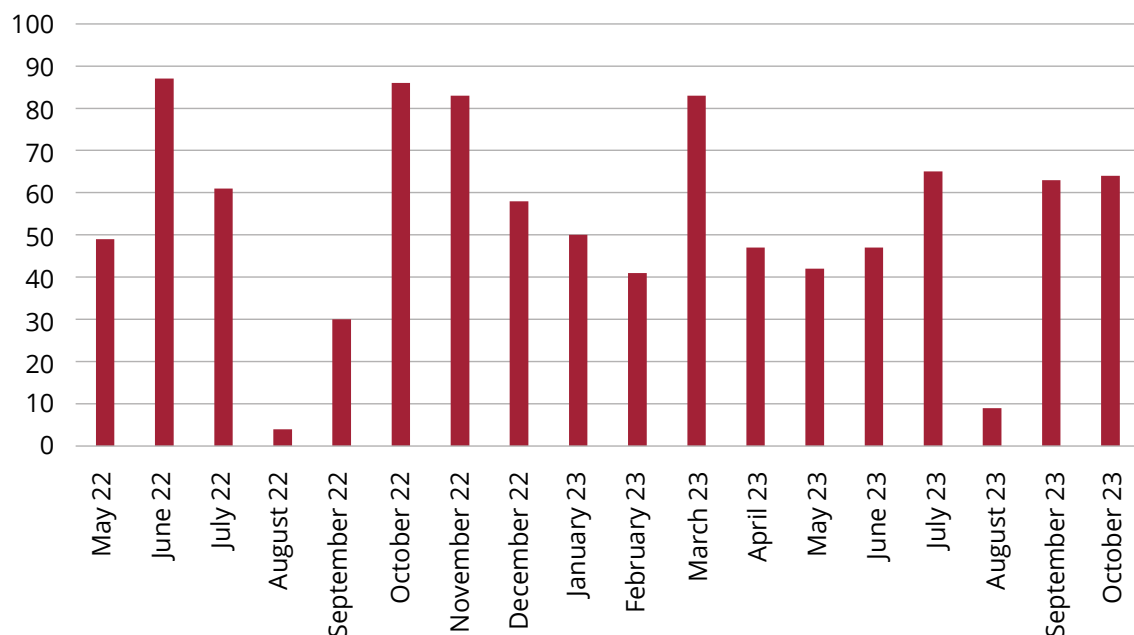
**In February 2023, the Department for Business, Energy & Industrial Strategy (BEIS) was replaced by three new departments: the Department for Energy Security & Net Zero (DESNZ), the Department for Science, Innovation & Technology (DSIT) and the Department for Business & Trade (DBT). DBT also replaced the Department for International Trade, and responsibility for "Digital" moved from the Department for Digital, Culture, Media & Sport to DSIT.

***Two instruments were reported on two grounds.

Volume and flow

52. The departments which laid the largest numbers of instruments considered in session 2022–23 were the Home Office with 98 SIs (10.5%), DHSC with 91 SIs (9.7%) and Defra with 90 SIs (9.6%). Between them, these three departments accounted for almost a third of all SIs laid (see Table 1).

Chart 1: Monthly flow of SIs by date laid in Session 2022–23



53. The Government seek to regulate the flow of instrument by requiring departments to obtain approval from the Parliamentary Business and

Legislation (PBL) Committee of the Cabinet before laying an instrument. Chart 1, however, shows significant fluctuation in the flow of instruments during session 2022–23. Even accounting for times of parliamentary recess, the data suggests that **the flow of instruments could be regulated more effectively to allow a more even distribution and the current PBL Committee approval process strengthened.**

Information paragraphs

54. 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 draw attention to minor defects in the explanatory material, to submissions that we have received from external parties or to useful additional information that we have obtained from departments. In session 2022–23, we published 221 information paragraphs on 254 instruments (27.1% of all instruments), with some paragraphs covering more than one instrument. This compares to 245 information paragraphs on 280 instruments in session 2021–22. This higher number in the shorter session 2021–22 was due to our policy of publishing at least an information paragraph on all SIs dealing with the COVID-19 pandemic.

Media

55. We issued 28 press releases in session 2022–23 which generated over 340 pieces of coverage – made up of print and online pieces and limited broadcast coverage including seven mentions on TV news bulletins and one radio interview. The coverage was viewed by over 600,000 people and had an estimated potential reach of 391.1 million people.
56. The press release on an instrument under the Public Order Act 1986 which redefined “serious disruption” by protesters⁵⁸ remains the item that received the most social media coverage with over 840,000 views on X (formerly Twitter) and 854 reposts. Updated coverage which had not been identified at the time of the Interim Report shows that the Committee’s report and the House’s subsequent motion to regret regarding the Manston immigration facility⁵⁹ also generated significant coverage with articles highlighting both the motion and report syndicated across 171 regional titles.

Corrections and replacements of Explanatory Memoranda

57. It is clear from the observations in Part 1 of this report that departments need to strengthen their approval and quality assurance processes to address the poor quality of some EMs. The number of SIs that were laid in session 2022–23 to correct drafting errors in earlier legislation suggests that these processes also need to be improved to prevent drafting errors in the regulations themselves. There were 100 correcting SIs in session 2022–23 (10.7%), more than double the 5% error rate that we regard as acceptable to allow for “human error” (see Table 2).
58. Corrections may be minor, for example, in the case of the draft *Fluorinated Greenhouse Gases Amendment Regulations 2023* which simply corrected the

58 Parliament Committee news, ‘Lords Committee questions Government bringing forward previously rejected public order proposals’ (11 May 2023): <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/news/195200/lords-committee-questions-government-bringing-forward-previously-rejected-public-order-proposals/>.

59 *25th Report* (Session 2022–23, HL Paper 131).

reference year, 2015 rather than 2021, that is used in the calculation and allocation of quotas for fluorinated greenhouse gases. Similarly, the *M621 Motorway (offside lane prohibition disapplication) (No. 2) Regulations 2023 (SI 2023/840)* revoked and replaced an earlier instrument whose coming into force provision had stated the year (2023) but had not included the day and month (1 December). While such minor drafting errors may not have any adverse practical effect, they nevertheless create unnecessary work for both departments and Parliament.

59. Other corrections are more concerning:

- Two instruments, the *Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2023 (SI 2023/869)*⁶⁰ and *Armed Forces (Service Supervision and Punishment Orders) Regulations 2023 (SI 2023/870)*⁶¹ were required when the Ministry of Defence (MoD) discovered, after 14 years, that the original SIs from 2009 had not been made properly, lacking the required signatures of two members of the Defence Council.
- Similarly, the *Exotic Equine Diseases (Compensation) (England) (No. 2) Order 2023 (SI 2023/656)*⁶² was laid to replace an earlier instrument which lacked the required Treasury co-signatures.
- The *Cosmetic Products (Restriction of Chemical Substances) (No. 2) Regulations 2023 (SI 2023/836)*⁶³ revoked and replaced an earlier instrument which did not contain an intended restriction on one of the substances which may lead to exposure of a consumer's lungs.

60. These examples highlight the importance of effective quality assurance processes which can identify avoidable errors before instruments are approved.

Table 2: Corrections in Session 2022–23

SIs	No. of SIs laid	SIs replaced by correction	EMs replaced by correction
Affirmative	296	34 (11.5%)	38 (12.8%)
Negative	641	66 (10.3%)	43 (6.7%)
Total	937	100 (10.7%)	81 (8.6%)

61. The correction and replacement rate for EMs rose from 5.6% of all SIs in session 2021-22, to 7.4% in the first 12 months of session 2022–23 and to 11% in the period May to October 2023. While this gives an average EM replacement rate of 8.6% for the whole session 2022-23, it shows a worrying decline in the quality of EMs. Furthermore, in some cases, departments had to replace an EM more than once before they met the right standard.

62. Prompted by concerns about the poor quality of EMs, we have started to monitor departmental performance in this area. Table 3 shows the number of

60 SI [2023/869](#).

61 SI [2023/870](#).

62 SI [2023/565](#).

63 SI [2023/836](#).

instruments laid by department and the number of EMs that had to be replaced in session 2022–23. This includes both replacements that we requested as well as EMs which were replaced on a department’s own initiative.

Table 3: EM replacement by Department in Session 2022–23

Department	No. of SIs laid	No. of SIs that required new EM	In % of all SIs
Business & Trade*	12	3	25.0%
Business, Energy & Industrial Strategy*	67	6	9%
Cabinet Office	15	1	6.7%
Culture, Media & Sport*	25	1	4.0%
Defence	20	0	0%
Education	47	1	2.1%
Energy Security & Net Zero*	20	2	10.0%
Environment, Food & Rural Affairs	90	9	10.0%
Foreign, Commonwealth & Development Office	23	4	17.4%
Health & Social Care (with Food Standards Agency)	91	5	5.5%
HM Treasury & HMRC	56	2	3.6%
Home Office	98	11	11.2%
International Trade*	12	1	8.3%
Justice	73	6	8.3%
Levelling Up, Housing & Communities	86	8	9.3%
Local Government Boundary Commission for England	55	2	3.6%
Northern Ireland Office	17	0	0%
Science, Innovation & Technology*	3	1	33.3%
Scotland Office	3	0	0%
Transport	64	9	14.1%
Wales Office	1	0	0%
Work & Pensions (with Health & Safety Executive)	59	9	15.3%
Total	937	81	8.6%

*In February 2023, the Department for Business, Energy & Industrial Strategy (BEIS) was replaced by three new departments: the Department for Energy Security & Net Zero (DESNZ), the Department for Science, Innovation & Technology (DSIT) and the Department for Business and Trade (DBT). DBT also replaced the Department for International Trade, and responsibility for “Digital” moved from the Department for Digital, Culture, Media & Sport to DSIT.

63. While we are pleased to note that several departments, including the MoD and the NIO, did not have to replace any EMs, we regret that of the departments which laid large numbers of SIs in the session, DWP (15.3% of all its EMs replaced), DfT (14.1%), and the Home Office (11.2%) stood out as having exceptionally poor error rates.
64. **These figures confirm our concerns about the quality of explanatory material and our observation that departments need to take immediate action to strengthen their quality assurance and approval processes, including by examining the lessons that can be learnt from our findings in this report and our regular weekly reports.**

CONCLUSION

65. Although almost two-thirds of the secondary legislation that we have considered during the session has been cleared without published comment, this is a lower proportion than in previous years. We have stated that our overall impression of this session is that there have been too many examples where we had to ask basic questions about the rationale for a policy or its intended effects and expected impact. This view is illustrated by the increased number and increased length of special reports to the House. **This has been a concern for some time and, as this Report shows, this has got worse since our Interim Report in May.**
66. We therefore welcome that the Government have committed to promoting and sharing best practice across departments and in September launched several initiatives, including training, to encourage ownership by senior officials and ministers of the work needed to improve departments' performance on secondary legislation.
67. Our impression from this session is that senior leadership is important: however, it must focus not only on the flow of legislation and the timely delivery of a department's programme of legislation through Parliament, as appears to be the case at present, but also on quality. The high rate of corrections and replaced explanatory material we have seen in this session suggests that senior officials and ministers are still signing-off explanatory material that is simply not "fit for purpose".
68. **We will continue to monitor departmental performance, and we intend to take evidence from ministers and senior officials in the first part of 2024 to understand how our concerns about the current quality of explanatory material are being addressed in practice. We are minded to publish an update report then to assess the progress made.**

APPENDIX 1: CORRESPONDENCE ON THE TITLES OF STATUTORY INSTRUMENTS MADE UNDER THE RETAINED EU LAW (REVOCATION AND REFORM) ACT 2023

Letter from Nusrat Ghani MP, Minister of State for Industry and Economic Security at the Department for Business and Trade and Minister of State for the Investment Security Unit at the Cabinet Office, to the Rt Hon. Lord Hunt of Wirral MBE, Chair of the Secondary Legislation Scrutiny Committee

I am writing in response to a point raised in the Secondary Legislation Scrutiny Committee's 50th Report of Session 2022–23 (HL Paper 245),⁶⁴ published on 7 September, about the titling of SIs made under the Retained EU Law (Revocation and Reform) Act 2023 (REUL Act). The Committee set out their view that such SIs should be identified as REUL to aid their traceability. This is an important point, and I am responding to set out the Government's position on the matter.

The Government agrees that it is important that SIs are readily identifiable, including those proposed or made under the REUL Act. However, we do not think it is necessary to include the term "REUL" or "REUL Act" in the titles of these SIs as a matter of routine. The Government is of the view that now that the UK has left the EU, these SIs should be forward looking in their titles and focus on the reforms and changes they will deliver rather than looking backwards to the origins of the REUL they are amending. The importance attached to this is demonstrated by the fact that "REUL" as a category of law will itself disappear at the end of the year when it becomes "assimilated law". It would therefore not be appropriate for the titles of SIs to be referring to "retained EU law" when that concept will no longer exist. We have left the EU, and so it is our firm view that these regulations ought to look like they belong in the UK statute book without perpetuating outdated references to EU law.

The only exception to this view is for SIs which are centrally coordinated or those covering multiple pieces of REUL from different departments and policy areas, such as The Retained EU Law (Revocation and Reform) Act 2023 (Revocation and Sunset Disapplication) Regulations 2023. For these SIs, the Government accepts that REUL is the critical descriptor linking the different elements of the SI together and so we will use this term for central SIs only.

However, as the Government fully recognises that REUL Act SIs should be easily identifiable, we are taking three important steps to facilitate this so that the work of the scrutiny committees can continue unimpeded.

First, all REUL Act SIs will have "Retained EU Law Reform" as their main subject heading (which is located in the actual statutory instrument, just below the title). Second, all REUL Act SIs will be identified as such clearly in the Explanatory Memorandum. Third, all REUL Act SIs will be published on a dedicated gov.uk page once laid or sent to sift, and the information provided will be updated as they are made and come into effect. This is an additional step to what was published during the EU Exit SI process, and has been undertaken primarily to aid parliamentary committees, MPs and Peers in identifying and scrutinising these SIs.

I thank the Committee for their consideration of REUL Act SIs so far, and I hope you will agree that the steps outlined above will ensure the easy identification of REUL Act SIs.

19 September 2023

64 *50th Report* (Session 2022–23, HL Paper 245).

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 taken at the meeting on 24 October 2023 and included in this report, Members declared no interests.

Attendance:

The meeting was attended by Baroness Harris of Richmond, Lord Hunt of Wirral, Lord Hutton of Furness, Baroness Lea of Lymm, Lord de Mauley, Lord Powell of Bayswater, Baroness Randerson, Baroness Ritchie of Downpatrick, Lord Rowlands, Lord Russell of Liverpool and Lord Thomas of Cwmgiedd.