



| November 2018

To all Ministers with departmental responsibility for secondary legislation

Flow and volume of secondary legislation

We are writing this joint letter in our capacity as Chairmen of the House of Lords Secondary Legislation Scrutiny Committee (SLSC) and its sub-committees, the House of Commons European Statutory Instruments Committee (ESIC) and the House of Commons Procedure Committee. As you know, the SLSC and ESIC are charged with considering all proposed negative instruments laid under the European Union (Withdrawal) Act 2018. In addition, the SLSC considers all negative and affirmative instruments whether laid under the Withdrawal Act or other Acts of Parliament, as well as treaties laid under the Constitutional Reform and Governance Act 2010.

The Government have said on a number of occasions that they anticipate that the decision to withdraw from Europe would give rise to 800 to 1,000 instruments. Of those Brexit-related instruments, a significant proportion would be “proposed negative instruments” laid under provisions of the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) which provide for a choice between the affirmative and negative resolution procedure.

From an early stage, when it became clear that the decision to leave the European Union would result in a large number of additional statutory instruments, committees in the Lords and the Commons have pressed the Government to ensure that the flow of instruments should be as even as possible and to keep Parliament informed about anticipated numbers. The SLSC, in evidence to the House of Commons Procedure Committee, for example, urged the Government to ensure “proper management of the flow of instruments ..., offering advance information about the planned flow”. The House of Commons Procedure Committee, in its report on the scrutiny of delegated legislation under the Withdrawal Act, said: “We expect the [PBL Committee] to take an active role in managing the flow of secondary legislation under the Act. The Government must ensure a steady even flow of instruments for scrutiny for the Parliamentary process to work effectively.”

Whilst both Houses have made every effort to ensure that they are well-placed to undertake the scrutiny work resulting from the decision to withdraw from the EU, we are disappointed to observe that, so far, the flow of both Brexit-related statutory instruments and of proposed negative instruments has been very slow to start. We note that the Hansard Society has recently suggested that only 9% of Brexit-related instruments have been laid before Parliament. Bearing in mind the deadline to which we are working, it is vital that our Committees and the Houses more generally are given more information about what we can expect in the coming months. To this end, we would be grateful if you would provide answers to the following questions. We are writing to all departments and would like responses from each department so that we can, ourselves, piece together the Whitehall-wide picture.

Questions

1. How many Brexit-related statutory instruments in total remain to be laid by your department, and under which Acts of Parliament?
2. With regard to your department, for each of the months from November 2018 to March 2019:
 - (a) how many statutory instruments subject to the negative procedure (excluding *proposed* negative instruments) and how many statutory instruments subject to the affirmative procedure will be laid before Parliament?
 - (b) what proportion of those instruments are Brexit-related instruments and are therefore included in the Government's estimate of 800 to 1,000 Brexit-related instruments?
 - (c) how many proposed negative instruments will be laid before Parliament?
 - (d) how many treaties under CRAG will be laid before Parliament?
3. Is the underlying assumption of those figures deal (with an implementation period) or "no deal"? How would they change if the assumption were reversed?
4. When does the department think it can lay the last proposed negative instruments before Parliament, allowing enough time to schedule a debate should the committees recommend upgrades to the affirmative procedure?
5. Does the department expect to use the "urgent cases" procedure under the Withdrawal Act?


In addition, please can you provide your departmental planning document setting out which statutory instruments – whether Brexit-related only or all statutory instruments – are to be laid and when.

The Committees are anxious to receive this information as soon as possible. We would be grateful if you could reply by **Friday 16 November**, to the email addresses provided below. We may decide to publish your response.


Yours sincerely



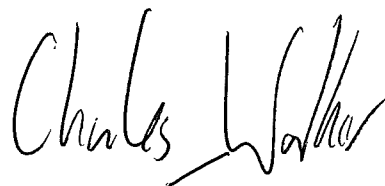
The Rt Hon. The Lord Trefgarne
Chairman
SLSC and of Sub-Committee A of
the SLSC
House of Lords
hlseclegscrutiny@parliament.uk



The Rt Hon. The Lord Cunningham of
Felling DL
Chairman
Sub-Committee B of the SLSC
House of Lords
hlseclegscrutiny@parliament.uk



Rt Hon. Sir Patrick McLoughlin MP
Chair
ESIC
House of Commons
esic@parliament.uk



Mr Charles Walker OBE MP
Chair
Procedure Committee
House of Commons
proccom@parliament.uk