Secondary Legislation Scrutiny Committee

Uncorrected oral evidence: Quality of information provided in support of secondary legislation

Wednesday 21 November 2018
3.40 pm

Watch the meeting

Members present: Lord Trefgarne (The Chairman); Baroness Bowles of Berkhamsted; Lord Chartres; Lord Cunningham of Felling; Lord Faulkner of Worcester; Baroness Finn; Lord Haskel; Lord Hogan-Howe; Lord Janvrin; Lord Kirkwood of Kirkhope; Baroness Redfern; Lord Rooker; Lord Sherbourne of Didsbury.

Heard in Public Questions 1 - 10

Witnesses

I: Elizabeth Gardiner, First Parliamentary Counsel (and Permanent Secretary in Cabinet Office); Jonathan Jones, HM Procurator General, Treasury Solicitor and Head of the Government Legal Service, HM Treasury; Sir Chris Wormald, Head of Government policy profession (and Permanent Secretary in Department of Health).

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Examination of witnesses

Elizabeth Gardiner, Jonathan Jones and Sir Chris Wormald.

Q1 \textbf{The Chairman:} Good afternoon to you all. Thank you very much for coming. This is a fairly hectic time for this Committee, as you will imagine, but I think that working in co-operation with you and with departments we will manage it. I am quietly confident that in the end all will be well, but we shall see.

We have seen a considerable reduction in the number of what we call business-as-usual statutory instruments. Is that likely to continue throughout this Parliament or is it a short-term result of the concentration of government effort on Brexit?

\textit{Elizabeth Gardiner:} It is true that we have seen a tail-off of business-as-usual SIs, but departments are continuing to bring forward the SIs that they require and they are going through the PBL process. They are being tested and, if they are required, they are proceeding. Historically numbers have fluctuated quite a lot from time to time and we are in a relatively low period at the moment, but I do not think there is any suggestion that we are not doing things that we need to be doing.

\textbf{The Chairman:} Thank you. Before I asked the question, I omitted to remind everybody that this is a formal evidence-taking session. It is on the record and is being webcast live, audio only. A verbatim transcript is being taken, which we will put on the public record in printed form and on the parliamentary website. We will of course send you a copy for amendment of any errors. I apologise for not mentioning all that earlier.

Do you think there is any detrimental impact of the slowdown in standard business-as-usual statutory instruments? What priorities are you determining and what should or should not be done?

\textit{Elizabeth Gardiner:} It is still for departments to determine their own priorities for legislation. They then bring those priorities through the new process to PBL and make their case for their SI to get a spot in the programme. I do not think we are in any place to judge whether there is a detrimental impact of that. Each department will have to decide which SIs are its priority at any time, given the resources it has, and to bring those forward. The process for PBL is to challenge the department’s assumptions and to work with it to achieve the results it wants. It is not to sit in judgment on that. It is to work with the department to test its assumptions about when it needs SIs and then to programme them in to make them work.

\textbf{The Chairman:} The Parliamentary Business and Legislation Committee is controlling the flow of SIs to Parliament. How have departments reacted to that control and how successful have they been in managing to produce their instruments to the deadlines set by the PBL?

\textit{Elizabeth Gardiner:} It is a new process, so it has been a cultural shift for everybody in Whitehall. People sitting in departments have been used to
being able to bring forward their own SIs to their own timetable. We have been doing a great deal of work to improve our management across Whitehall and I think that has been fairly successful. Having SI Ministers in place in each department and the SI SRO as a senior official has helped to embed the process, to explain it to officials in the department and to make sure that people are up to speed with what the new process requires. Actually, it has bedded down surprisingly well and surprisingly quickly. Everybody is focused on it because we know that we have a lot to achieve in the next six to eight months and so people are focused on making sure that they comply with the new processes and provide PBL with the information that it requires. Obviously it has required a bit of adjustment, but that adjustment has taken place.

PBL’s approach is to help departments to achieve their legislation, so it is asking departments to come forward with a three-month forward look at what instruments they want to bring forward and the timings they want to bring them forward to. It is looking at those and testing those. Then in individual cases there may be a discussion with the department about bringing those instruments forward or delaying them slightly in order to smooth out the peaks and troughs for Parliament. We are very conscious that we need to try to smooth the process of the instruments coming in.

Sir Chris Wormald: To add to that from a departmental perspective—although I am here mainly as head of the policy profession—the effect of these changes in the Department of Health and Social Care, although they were brought in mainly because of the exiting the Union questions, is entirely beneficial to departmental management. It makes you focus much more on what is coming before Parliament and it makes you ask the question: is a new set of regulations actually the best answer? There is pressure on you to justify much more clearly why this set of regulations now is an entirely beneficial thing to the policy-making process and you want to keep it regardless. A lot of the changes that we have introduced because of the exiting the Union questions we would want to keep permanently. I certainly would.

The Chairman: Lord Cunningham will ask you about the Brexit-related statutory instruments.

Q2 Lord Cunningham of Felling: Good afternoon. We have had various estimates of the number of SIs that are likely to descend on the two sub-committees of this main Committee. Most recently we received a letter from the Leader of the House of Commons, Andrea Leadsom, and one of the Ministers in the Department for Exiting the EU, Chris Heaton-Harris. They told us that their earlier estimate of 800 to 1,000 SIs has now been revised down to 700—still a sizeable amount of work to do. Are you confident that given the time between now and the exit date the departments have the resources and the time to produce another 500 or so statutory instruments?

Elizabeth Gardiner: Yes, we are confident that we have. It is not that none of these have been started and we are looking at 500 from here. These are all in progress.
Lord Cunningham of Felling: Every one?

Elizabeth Gardiner: I think pretty much every one is now in progress. They are at different stages of readiness, reflecting the fact that they will come forward at different times to Parliament to try to smooth out that flow. So, yes, we are confident and we are focused on prioritisation and ensuring that we have a functioning statute book on 29 March, and looking at exactly what we need to do to achieve that. Some of the difference in number is down to the fact that we have now passed some primary legislation—for example, on road haulage—so some of the SIs that we thought we might have to make are probably superseded by some of those pieces of legislation. The figures will fluctuate a little over time but around 700 is our current estimate.

Jonathan Jones: It has also been possible to combine some statutory instruments into a single instrument. That is a perfectly sensible approach to drafting and has reduced the number in some cases as well.

Lord Cunningham of Felling: We will come back to that in a moment. Are we right to conclude that something like 150—that is a ballpark figure—have been dealt with so far, so that will leave 450 still to be dealt with? Do those numbers ring true?

Elizabeth Gardiner: If it is 700 and we have 150 so far, yes, there are 550 still to come.

Lord Cunningham of Felling: Okay. Does the PBL, in its oversight of all this, take any account of Parliament’s ability to give proper scrutiny to this number of statutory instruments?

Elizabeth Gardiner: Absolutely. That is one of the primary reasons why the new process has been put in place. It is to help ensure that we are not waiting until the 11th hour and deluging Parliament with instruments. We are trying to smooth out those peaks and troughs as far as possible and to feed them through to Parliament so that Parliament can give them proper scrutiny. Certainly the Leader and the PBL Committee are very aware of the need to ensure that Parliament gets time to do its job of scrutinising.

Lord Cunningham of Felling: The Public Accounts Committee in the House of Commons was not altogether convinced by that, was it? It drew attention to this as a problem in its report on Defra’s progress towards Brexit.

Elizabeth Gardiner: As far as the SI programme is concerned, we are confident that we are going to bring them forward in a measured way over the months to allow Parliament to give them sufficient scrutiny.

Lord Cunningham of Felling: Just yesterday, the Constitution Committee in this House produced its report on secondary legislation and delegated powers. I want to quote from it, although perhaps you have not had time to look at it.

Elizabeth Gardiner: I have seen it.
**Lord Cunningham of Felling:** At paragraph 48, the Select Committee concluded: “Delegated powers should be sought only when their use can be clearly anticipated and defined. Broad or vague powers, or those sought for the convenience of flexibility for the Government, are inappropriate. There must be a compelling justification for delegated powers and it is for Parliament to decide if that justification is acceptable”. Do you concur with that?

**Elizabeth Gardiner:** I do. All the powers we are now making instruments under are powers that have gone through the parliamentary process. Therefore, we must conclude that Parliament considered them an acceptable use of delegated powers, because it granted the Government those powers in primary legislation. It is obviously for the Government, on every occasion when putting primary legislation before the House, to justify those powers. In their memo to the DPRRC, they will always make the case for the powers. Sometimes there is disagreement between the Committee and the Government. The Government will consider those recommendations and quite often bring forward changes as a result. But, at the end of the day, it is for Parliament to approve the powers that it grants the Executive and, in this case, the Executive are using powers that have been granted by Parliament.

**Lord Cunningham of Felling:** Just yesterday, a sub-committee that I chair considered a statutory instrument. There were so many fundamental questions about the flaws and missing evidence in the statutory instrument that the sub-committee unanimously decided to refer the thing back to the appropriate Secretary of State. In my 48 years in Parliament, I have rarely seen a statutory instrument that was so badly drawn up.

**Elizabeth Gardiner:** I am not aware of that.

**Lord Cunningham of Felling:** I am not holding you responsible for it, but it is in contradistinction to what you have just said about the quality of, and the time and effort going into, all this.

**Elizabeth Gardiner:** Leaving aside Brexit and looking back, we see that, from time to time, there will always be instruments you could say that about. It is obviously regrettable. I do not know anything about the detail of the one you are talking about.

**Lord Cunningham of Felling:** This was an instrument that was going to affect 3 million British citizens. It was not a small matter, but anyway.

**Lord Faulkner of Worcester:** We were ready, and the House of Commons was ready, to deal with a substantially increased number of SIs from July onwards, but very few came forward, and almost nothing during the recess. It is only now, in November, that the number has begun to pick up a bit. Why was it that the instruments were not ready rather earlier than this?

**Elizabeth Gardiner:** The instruments started to be laid as soon as the Bill received Royal Assent, but it has ramped up. It was always estimated that they would ramp up, even in the earlier letter from the DExEU Minister.
setting out the expected programme. From the Government’s point of view, and as the Leader mentions in her letter, being able to test the process with a few at the beginning was no bad thing. Quite a lot of guidance is in place at our end to make sure that we have a consistent approach to those instruments. In getting the first instruments up and ready to go, we always anticipated that the bulk of those instruments would come forward in the autumn. As set out in the letter, we are trying to smooth those instruments now over the remaining months.

**Lord Faulkner of Worcester:** Can I pick up something that Mr Jones said a moment ago about what we might call the supersized SIs—the combining of several SIs into a large one? Does that account for the reduction in the number of SIs? Is this process working?

**Jonathan Jones:** The answer is yes. It is part of the reason for the numbers being slightly lower than was predicted. As I said, it is perfectly sensible. If you have a number of SIs on a common theme, using similar concepts, it may be easier for the reader and the drafter, or may simply make for a smoother process, to combine them. That is a judgment that departments and drafters will make on a case-by-case basis. It is perfectly sensible, I think.

**The Chairman:** Thank you very much. Are there any more questions on the number of instruments and the way we have been receiving them?

**Lord Haskel:** Many of the SIs we get are in anticipation of a no-deal exit. If it looks as though we are going to get a deal, will things slow down, or will all these SIs flow through anyway?

**Elizabeth Gardiner:** We are currently in a process of ensuring that we have a workable statute book on 29 March. So long as there is a possibility that we will need those instruments on 29 March, my understanding is that we will proceed with them. Our plans at the moment are to ensure that we have a workable statute book on 29 March in that scenario.

**Lord Haskel:** Whatever the prospects for a deal look like.

**Elizabeth Gardiner:** That is what I am proceeding on at the moment.

**Sir Chris Wormald:** This clearly goes wider than statutory instruments. It is a government decision to put in place arrangements to prepare for all eventualities. Were the Government to change that position, we would change what we brought to Parliament, but at the moment our approach to SIs is exactly the same as our approach across the board. As is well known, my department is doing a whole series of things that we would not do were there no prospect of no deal. That started with us creating buffer stocks of drugs. We would treat SIs in exactly the same way as the rest of our preparation. As long as the Government’s position remains that we should be preparing for that eventuality, we will do that on the parliamentary side as well as on the practical side.

**Lord Kirkwood of Kirkhope:** Before we move off numbers and on to other parts of the evidence, do I understand you to be saying that you can
give us an assurance that there will be no tsunami of business-as-usual SIs in any circumstances that you can foresee? That is to say, the machinery you are setting up seems to be working and can be applied to smooth the flow, if you find suddenly that the departments are all very productive after we get out of the European nightmare we are in, so that the work of the Committee will not be overwhelmed after we get loose of the EU.

Elizabeth Gardiner: The general view is that the new process is working well. As Chris said, it works well whether we are dealing with Brexit SIs or business-as-usual SIs. I have no impression that there is a huge backlog of business-as-usual SIs that will pour in come 30 March.

Lord Kirkwood of Kirkhope: But if there were, you would control it.

Elizabeth Gardiner: If there were, it would be controlled through this process. Now that the process is in place, and the testing of SIs is happening routinely, that should enable us to ensure that there is a consistent flow.

Sir Chris Wormald: As I was saying, one advantage of the new process is that there is much greater visibility at departmental level about the forward look. Not only at a cross-government level but at each individual department level there is now senior ministerial and senior official sight of the forward plan, so if we have bottlenecks we should be able to predict them a long time in advance. We ought also to be able to smooth them. That is why I think we should keep these systems, regardless of what happens with Europe

Lord Janvrin: On the same point, I would like to follow up on numbers. Given the numbers that are coming through as affirmative and the proportion—you have various percentages—has there been a lot of discussion about where the pinch point is in parliamentary scrutiny? It is not at the committee level; it will be in finding parliamentary time on the Floor of the House to get these affirmative instruments debated. Has that been a large part of the discussion in the PBL?

Elizabeth Gardiner: It is a large part of the discussion. Obviously, the business managers sit on the PBL Committee and they manage the process. So it is absolutely part and parcel of the process.

Lord Sherbourne of Didsbury: On that point, are you saying that in deciding whether or not an SI should be affirmative, that is the consideration you take into account?

Elizabeth Gardiner: No, I am not. I am just saying that it is taken into account—the fact that we are going to have to have these debates is one of the factors that we are aware of. It is not about which procedure applies.

Baroness Finn: Good afternoon. The one point in the response to the letter that I do not understand is whether you actually know what all the SIs are at the moment. You say it would be misleading to provide a reliable department-by-department, month-by-month snapshot, but is there a list?
Rather than giving percentage details in the annexe, you could say, “These are the SIs that are coming up”. The letter does not say anywhere whether or not you actually know what they are.

Elizabeth Gardiner: The departments give us a three-month forward look of what they are intending to bring forward. That is what the committee looks at. I do not have a complete list. The information has been provided by DExEU and I do not have any further information than that for what is coming through. Each department is managing its own instruments—if they are Brexit instruments, in discussion with DExEU.

Lord Faulkner of Worcester: I have one supplementary. I understand why the SIs are necessary in the event of a no-deal Brexit. If an agreement, perhaps based on what the Prime Minister has been negotiating with Brussels, were to be approved, what proportion of the SIs that are being considered would not be needed?

Elizabeth Gardiner: Now you are asking! Honestly, I do not know the answer to that question. Quite a large number would not be needed until the end of any implementation period. In the event of a deal, we will need to pass the withdrawal agreement Bill and that will deal with the SIs that we have already passed—whether they need to be revoked or postponed or whatever needs to be done with them in the light of the withdrawal agreement. But I do not know offhand what proportion would continue. I imagine a small number but I do not know offhand.

Lord Faulkner of Worcester: And if we did not leave at all?

Elizabeth Gardiner: It is a different scenario, is it not?

Lord Faulkner of Worcester: That is why I am asking.

Elizabeth Gardiner: Yes. The powers that we are using under this Bill are not relevant if we are not leaving at all.

The Chairman: In annexe B of the letter that I got from Chris Heaton-Harris and Andrea Leadsom the other day, there was reference to the projected flow of SIs: “50 to 100 SIs, of which 55% are likely to be negative under the EUWA, in October”. Is that proposed negatives or just ordinary negatives?

Elizabeth Gardiner: I presume that that is proposed negatives.

The Chairman: October is now over—did we have that many? I do not recall. Anyway, they are likely to be proposed negatives.

Elizabeth Gardiner: Yes.

The Chairman: Thank you very much. Let us move to Explanatory Memoranda, in particular the new template.

Lord Janvrin: I want to ask about the new template for Explanatory Memoranda, which we have discussed with you previously. They remain extremely important, certainly as far as the Committees are concerned.
The Explanatory Memoranda produced for SIs under the withdrawal Act include additional statements by Ministers and new sections, so they are more complex. Is it a problem in getting the flow of SIs through the system that the EMs are a bit more complex?

Sir Chris Wormald: I do not think it gives us a problem on flow but it does give us a challenge on maintaining quality. It is more complicated, you are absolutely right. This was done for the best possible reasons in that the withdrawal Act adds a number of things where it is very important that we explain the consequences properly, which involved my colleagues at DExEU asking for a number of changes to the template. That is undoubtedly a challenge to policymakers and it has affected how well we have done the Explanatory Memoranda. Because it is more complicated, it takes some time to get your head round how you do the new versions. I have not seen any evidence that it has affected the flow, however. You are right that it has a big impact, but I do not think it has played out. I do not think we have seen any evidence of that affecting flow, Elizabeth, have we?

Elizabeth Gardiner: I have not.

Lord Janvrin: Have you had to introduce additional training to take account of that?

Sir Chris Wormald: Yes. My colleagues at DExEU have done a range of training with people on the new requirements. But, as with anything new, it takes time for people to get their heads around it. As I say, it is a very complicated area. There has been a series of mitigations, but it is undoubtedly a challenge to departments to provide the quality of information that we want first time in this area.

The Chairman: Senior responsible owners is a topic that we have discussed with you before. Lady Finn, would you like to proceed?

Q6 Baroness Finn: Thank you. When you gave evidence last year in September, you said that senior responsible officers had been appointed in every department and they would be responsible for the quality of the SI process within the department. We raised questions at the time about whether the SRO had the relevant capacity and how the accountability would work. I am trying to understand how effective the role is and how it is understood within the department. Is the SRO named publicly anywhere so that people in the department know who the SRO in charge of the statutory instrument is? Is there a central list of the SROs so that you would know who is responsible in that department? In terms of accountability, that would be a key point.

Sir Chris Wormald: It is certainly known within departments, and we know. I do not know whether we ever produced a public list of them. I will have a look.

Baroness Finn: But does the department have one? How would people in the department know who was responsible?
**Sir Chris Wormald:** Speaking for the Department of Health, we publicise it within the department. I suspect the senior Minister who is responsible for SIs probably has a greater prominence than the SRO. It is important to see the changes as a package. We put in a Minister responsible for SIs, the senior responsible officer, the cross-departmental board that looks at good practice in SIs, and then the PBL checks. Between them, those four things have raised the profile of all this within departments. It is quite difficult to pick out exactly how much the SRO bit has been beneficial in raising the profile, but certainly we feel that that package across the board undoubtedly has, for the reasons that I gave earlier. Speaking for my own department, the SRO plays a very prominent role and everybody knows who it is.

**Baroness Finn:** Do you feel that they have the capacity to be able to check? Obviously a Minister is not going to check the quality of the process.

**Sir Chris Wormald:** To be clear about what they do, in health and social care, they are not personally checking line by line. They are ensuring that the right processes are done by the individual teams that do them. For the process in my department, there will be a relevant member of the SCS who owns that individual SI. It is their job to make sure that that SI is right. They will work with a senior member of the Government Legal Department on that SI and the associated documents. The SRO’s job is to ensure that that process is happening properly. They do not take ownership of the policy. It is a question of departmental management as to whether people are given the capacity. Personally I think it is an important role and should be a long way up the priority list. As this Committee has mentioned before, not putting the capacity in is an entirely false saving, because you end up having to redo lots of SIs and lots of EMs, which causes an enormous amount of work, as well as delays to policy. I could not give you a cast-iron guarantee that every SRO has the capacity they need, but all the incentives are there to do this properly. The final thing I would say is that going to PBL and being turned down because your SI is not good enough is not a nice experience.

**Baroness Finn:** I can appreciate that.

**Sir Chris Wormald:** You will remember that from your time in government, as will others. We have tried to create a system where people are incentivised to take this seriously, not just because it is a good thing to do, which it is, but because there are checks and balances in the system that make it in your interest to do so.

**Baroness Finn:** So the SROs have been effective.

**Sir Chris Wormald:** Looking across the piece at what we have done with EMs, we think we have made a lot of progress. There were some areas in which we have not gone as fast as we wanted to, so we would not say, “Job done”. We have a lot still to do. The pressures that have come from exiting the Union, as I was discussing with Lord Janvrin, have given us extra challenges around quality. We have seen that some of those numbers, having been going firmly in the right direction, have turned the
other way, which you commented on. We need to deal with that. Overall, we have done the things we said we were going to do when we came to the Committee last year. We have been through the seven things and done what we said we would do. In a number of areas, we are beginning to see the benefits of that, but we still have quite a lot to do, particularly given the pressures on the system that you have all commented on. That is our assessment of the overall effect of what we have done.

**Jonathan Jones:** Can I add a word to that as the person responsible for the people who draft the instruments? The changes we have put in place, including the role of SROs and SI Ministers, have made a huge difference to us. When we first came to you in this form a couple of years ago, we admitted frankly that SIs were a slightly unloved bit of the process. Quite often, it was difficult for the drafting lawyer to find anybody in the department who really cared.

**Sir Chris Wormald:** We care.

**Jonathan Jones:** You care. Now we have people whose job it is to care, and at a suitably senior level. It has made a lot of difference to have that sort of senior ownership of the process. Of course the lawyers remain responsible for the drafting and, as Chris said, aside from the role of the SRO, there is a process for checking the technical drafting—that is not to say that sometimes there are not mistakes. The point is that that is part of a departmental process that owns the overall SI programme and is responsible for the policy. For me, that has made a huge difference.

**The Chairman:** To be the departmental Minister for SIs must be the most exciting job in Whitehall, I suspect.

**Jonathan Jones:** You would have thought so, wouldn’t you?

**Baroness Finn:** I am sure they are queueing up.

**The Chairman:** From time to time, we have had cause to ask for an Explanatory Memorandum to be changed or replaced. Lord Sherbourne has a question on that.

**Q7 Lord Sherbourne of Didsbury:** In our report of April this year, the figures are that 44 EMs had been replaced, which is 6.6% of the total, and since then 8.5% have been replaced. I have two questions. First, should this be a cause for worry? Secondly, if it is, what action should be taken?

**Sir Chris Wormald:** Yes, it is a cause for worry. It goes to the answer I have just given. I am not sure we have exactly the same numbers but I expect they are reconcilable. Last Session, the replacement rate was, I think, 7.1%, and this Session it is 6.8%. As far as I understand the numbers, that 6.8% is made up by a bigger drop in the first half and then, as you say, a spike. That spike coincides with the issue we were discussing of changes to EMs and the level of complication.

I cannot promise you that those two things are causal. I very much suspect that they are and it is something we want to dig into further. I am going
to go away and do some work on that. If it is the cause of the spike you have seen, that issue should rectify itself, both through our actions and because people get used to it. We would then see a return to the downward trend we saw before that. If it is not related to that but is because people have taken their foot off the gas or similar, we have a different problem to deal with. I suspect it is the former, but I could not prove it right now. That is something that we want to look at.

Your question was whether we should be worried. Yes, we should, but we need to do a bit more on the cause and whether it is a temporary blip in an otherwise good story, or a sign of going backwards. I am trying to be frank with you, and that is where we are.

**Lord Sherbourne of Didsbury:** That is very helpful. As is the theme of this session, time is of the essence. Therefore, if there is a problem that is causing EMs to be replaced and slowing up the process, it needs to be identified and dealt with as quickly as possible.

**Sir Chris Wormald:** Yes. We recognise that we have made the EM process more complicated. We think we have done it for good reason, in that we are providing necessary information for scrutiny, but I agree that it puts more pressure on the system.

**The Chairman:** We would now like to ask you about the Secondary Legislation Monitoring Board.

**Lord Chartres:** Good afternoon. As part of the improvement in procedures that you have described, the Secondary Legislation Monitoring Board was set up. We got its first report from its quarterly meetings in, I think, March. How useful have you found this innovation? How effective has the board been? Does it really have much influence over departments’ handling of these matters?

**Sir Chris Wormald:** It is important to be specific about its exact role. We think it is useful. But to be completely honest, I could not prove a causal relationship yet between it and actual improvements in individual EMs. It is a committee that retrospectively looks at Explanatory Memoranda, with the intention of identifying areas that departments need to improve on. It is not a gateway. It is not a process of that committee checking EMs before they come to the House—that is what PBL does. It is a learning and development thing, where the members get together and review about 10% of all EMs—double what we were originally intending—seeking to pick out the themes of problem. We feed back to individual drafting departments about issues with individual EMs, but, more importantly, the committee’s job is to pick out the themes of problem that we should be telling everybody about and building back into training. For example, the ongoing problem of very convoluted language is something that it comments on and we then feed back to the system. We think that is an incredibly useful process. Of course, the proof of its usefulness or otherwise is whether that turns into better practice going forward. As I say, that bit I cannot prove yet, but so far we have found the feedback that it has identified extremely useful. It is now the process of making that a reality.
Lord Chartres: We had sight of the report in the March. Were there any subsequent reports?

Sir Chris Wormald: We would be happy to send you summaries of the other things it found.

Lord Chartres: Who has seen them?

Sir Chris Wormald: Almost every department is represented on the committee, so departments get instantaneous feedback, but basically it goes back to the SROs.

Jonathan Jones: And us.

Elizabeth Gardiner: And round to various networks and cross-Whitehall groups of SI practitioners.

The Chairman: To the hapless Ministers as well, I hope.

Sir Chris Wormald: I do not know whether we share it with the Ministers—who are not hapless. Ministers take their responsibilities to Parliament very seriously.

Lord Janvrin: Does the board automatically look at complaints about EMs that we have sent back or commented on adversely as part of its remit?

Sir Chris Wormald: No, it does not. That is an interesting idea. The things you send back are dealt with by individual departments.

Lord Janvrin: But there may be learning practices and wider issues.

Sir Chris Wormald: I do not think it does at the moment. That would be an enhancement.

Jonathan Jones: You may come on to ask about the SI Hub. The SI Hub forms that function of monitoring reports to this Committee and generating feedback.

Lord Janvrin: But, Jonathan, that is more on legislation than the EMs.

Jonathan Jones: Actually, it does both.

Sir Chris Wormald: We certainly take account of the feedback of the Committee in the various types of training that we do for civil servants. Indeed, your advisers are involved in both designing and delivering that training. We certainly take it into account. I will go and check whether the committee does as well. The kinds of issues you raise, unsurprisingly, are quite similar to the ones that the committee looks at, or I expect there would be quite a big crossover. I will go and check.

Lord Janvrin: It might be reassuring to us to know that it does pick up our comments.

The Chairman: Lady Redfern will ask about government monitoring mechanisms.
Baroness Redfern: The Committee continues to identify problems with SIs and EMs, while recognising good practice. How far do the Government rely on our reports for quality control of secondary legislation?

Jonathan Jones: I had started to answer that, in part. The SI Hub, as its name suggests, performs a kind of central role, mainly in the drafting—Lord Janvrin is right: this is basically a hub of drafting lawyers—and its primary responsibility is the production of the instruments. It also performs a wider guidance and monitoring role. It will certainly look at the reports of this Committee and of the JCSI, and part of its job is to distil the cross-cutting themes and lessons, both on the quality of the drafting of the instruments and the quality of the Explanatory Memoranda and the other surrounding material. The answer is: this is all looked at very closely and the lessons to be learned are disseminated in a variety of ways to the drafting community and the policy community via the various networks that Elizabeth mentioned.

Sir Chris Wormald: The only thing to add is that, of course, what you do should not be the first line of quality control. All the things I have been describing ought to be the first line of quality control. The findings of this Committee ought to play a part, but we in government should not see them as our primary mechanism of ensuring that we are producing quality products. We should be doing that before stuff gets to you. This should be to check what we are doing as opposed to the first line.

Baroness Redfern: You told Lord Janvrin that you were learning from the practices that you have gone through already. Is anyone in government taking an overview of the experience from last year and coming up with any conclusions?

Sir Chris Wormald: We discuss what we have learned, particularly on the Policy Profession Board, which I chair and Elizabeth comes to periodically, and we feed back what we have learned. We have not gone further than that, which is an interesting point that we can take away. Is there anything we can learn from the experience more widely? We are clear that we discuss the learning carefully within what we are doing on SIs. But you are right that the approach we have taken here may well have wider applicability, which we ought to think about. Do you agree, Elizabeth?

Elizabeth Gardiner: Yes, from my point of view, one of the things with the whole process—the SRO, the SI Minister and the PBL process—is a bit, “Why did we not do this before?” We need to ensure that we do not lose that going forward because that has brought some rigour and raised the profile, as Jonathan says. You will not find people in departments now who do not know what SIs are. They are high on people’s agenda, which is heartening from a legislative drafter’s point of view.

The Chairman: Thank you all very much indeed. Before we end, I wonder if you would mind if I asked the people sitting behind you if they had anything to ask or say. We have a couple of our co-opted Members there. No? There are no questions.
Q10  **Lord Kirkwood of Kirkhope:** Could I have a last assurance from you about emergency powers procedures? From everything you have said and your earlier evidence that you are not anticipating using emergency powers, just for the record, can you give the Committee some comfort that there is no expectation? We have had some reassurance from the Leader of the Commons and the Minister. Is there anything you can see from the inside of government that would suggest there is any need for the use of emergency powers?

**Elizabeth Gardiner:** None of the planning is being done on the basis of using the emergency powers. The planning is being done on this smoothing-out of the process in order to be ready on 29 March.

**Lord Haskel:** The letter from the Leader of the House of Commons says: “The number of treaties to be laid under the Constitutional Reform and Governance Act will be determined by the wider EU exit scenario”. Have you taken a view on this yet? These treaties may well come to our Committee.

**The Chairman:** Has it been decided yet?

**Jonathan Jones:** This is all still being worked through, so it is difficult at this stage to add anything to what the letter says. It is apparent that provision will have to be made for the continuity of treaties—deal or no deal—so that work is all still ongoing. There is probably not much I can usefully add.

**The Chairman:** Here in this House at least, consideration is being given to which Committee should deal with the treaties. I think a decision has not yet been reached. Again, thank you all very much indeed. We are most grateful to you. That was very encouraging and helpful.