Those giving evidence on 12 September were asked to provide written answers to a number of questions not asked during the session, and also to respond in writing to points raised during the session. The Cabinet Office has provided the information below in response.

[Q7.] In the SLSC’s 2nd Report of this Session, commenting on the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules Order of Council 2017, it said that guidance published since it queried an earlier SI answered many questions raised previously. This demonstrated the point that guidance that interprets the legislation, or sets out how decisions should be made, needs to be laid at the same time as the SI to which it relates:

Part of the SLSC’s concern is that the practical aspects of how the policy will work have not been fully worked through before the legislation is laid. Do you agree that this is a growing trend?

We see no evidence that this is a growing trend. The necessity of laying guidance and accompanying documents at the same time as the SI and EM is an important part of training. We are taking this very seriously and believe that one instance of this is one too many.

We have a range of approaches to ensuring that this message is getting through to departments:

- We raised this issue with all permanent secretaries and asked them to address it within their departments;
- The SRO training highlights that guidance that interprets legislation must be laid at the same time as the SI; and
- It is a core part of the main training offered by Civil Service Learning in conjunction with Committee staff.
[Q8.] The SLSC’s end-of-session report identified two problems with guidance – timing and content. Because the legislation has been insufficiently clear, it has more frequently been asking to see the operational guidance which interprets how decisions under the legislation will be made, and it has not always been available:

*The SLSC believes that definitions and statements about who is within a target group should be set out clearly in secondary legislation to avoid the need for interpretative guidance.*

Do you agree that is what Departments should aim for?

If the legislation is not clear, how is consistency to be maintained?

*How can you make sure that two individuals in the same circumstances in different parts of the country will receive the same benefits decision or the same immigration decision?*

The Government agrees that Departments should aim to ensure that legislation is sufficiently clear for users and the courts to understand what it means, and to be able to apply it. In some instances, regulations need to be able to relate to a broad and varied array of circumstances, and a precise description of every possible circumstance in which they will have effect would be neither practically possible nor helpful. In such circumstances, guidance can play an important role in ensuring consistency of decision-making under the regulations.

In terms of timing, the Government has followed through on its commitment to highlight the need for operational guidance to be submitted at the time the statutory instrument is laid. This is included this as a key part of the training provided on improving the quality of explanatory material accompanying Sis, and delegates report increased understanding of the reason for this requirement. A success measure of the training, as we begin to see the practical effect of the increased skills and knowledge, is the reduction in the reporting on this particular aspect of the SI process. The Departmental Senior Reporting Officers also have this highlighted in their training. This senior oversight should also contribute towards reducing the number of occasions when operational guidance is unnecessarily unavailable when an SI is laid.
[Q10.] To a large extent, the problems that the SLSC has identified could be resolved if Departments planned and managed the preparation and presentation of secondary legislation more effectively – leaving enough time to complete impact assessments, check the material thoroughly, and still respect the 21-day rule:

In his letter, the Minister refers to a “huge amount” of Brexit-related secondary legislation. The SLSC understands that a centralised planning mechanism is being brought in to cope with that secondary legislation.

Can you describe it?

If it does result in improved quality for SIs, will it be retained in the longer term? Is the issue of civil service capability a factor?

Are Departments adequately resourced to prepare and present secondary legislation to the right standard?

Central planning mechanism

The Government expects between 800 and 1,000 statutory instruments to be needed to correct our statute book following the UK’s exit from the European Union. A number of steps have been taken to ensure we are able to manage this additional volume. DExEU has put in place governance structures to centrally coordinate Brexit SIs and leads the secondary legislation programme needed for Brexit including addressing cross-cutting issues.

More broadly, Government is aligning its approach to secondary legislation with its approach to primary legislation. As with primary legislation, the Parliamentary Business and Legislation (PBL) Committee will now maintain an overview of all secondary legislation. The PBL Committee is responsible for identifying peaks and troughs in the SI timetable, working with departments to smooth the flow of SIs, and making every effort to avoid spikes in laying dates.

The Senior Responsible Owner and Secondary Legislation Minister network and leadership from the Cabinet Office and DExEU have created a strong overview and co-ordination structure. This is in its early stage and we expect to see an impact in the coming months.

Oversight from the centre has enabled central oversight of the entire secondary legislation programme in an unprecedented way. We are already seeing early benefits of this approach in terms of departmental-level planning.

The challenge posed by Brexit contributed to the design of these new processes, but we fully expect this approach to continue after exit day.

Civil Service capacity and capability

We are confident that the Civil Service has the capacity and capability required to successfully manage the UK’s exit from the EU as well as making sure that all the priorities of the Prime Minister are being delivered.
The Civil Service responded rapidly to the UK’s vote to leave the EU by setting up two new departments. Some experienced policy professionals and Fast Streamers were immediately redeployed to resource both the Department for Exiting the European Union and the Department for International Trade.

Whilst the majority of recruitment campaigns have been run individually by departments there has been some central activity to support the resourcing need of the five priority departments: BEIS, DCMS, Defra, DExEU and DIT. Since December 2016, Civil Service Resourcing has conducted 81 recruitment campaigns to recruit for 735 EU exit policy roles. To date, 241 candidates have been matched to specific roles - 138 internal policy professionals and 103 external candidates.

In total, over 2,000 new roles have been created for negotiations and the period immediately following the UK’s exit from the EU. More than two-thirds of these new roles have already been filled.

At present, we expect to create a similar number of additional new roles over the coming year as negotiations progress and we begin to implement new policies.

We have described the training that has been designed, developed and delivered as a joint venture between Parliament and the Civil Service. We are confident that this is a high quality product and the benefits of this training will be fully realised. We already target this training at the priority Departments (those who lay the most secondary legislation) and expect that the senior oversight will, within Departments, encourage those who will benefit most to attend the training. It is also expected that peer-to-peer learning will take place. We will keep the training needs under review and alter delivery accordingly.

The Government Legal Department (GLD) has also increased legal and drafting resources to deal with the demands of Brexit. Since June 2016, GLD has recruited lawyers to fill more than 100 new legal posts created in response to Brexit (so far). Many of those (along with many existing lawyers) will be involved in SI drafting work, although the numbers fluctuate since SI drafting is normally combined with other legal work. As discussed at the Committee hearing, we are also introducing a new structured training programme in SI drafting, including a foundation course for new drafters.

As regards the review panel, mentioned by the Minister at point 7 of the annex to his letter:

- what are the Terms of Reference,
- will the names of panel members be published,
- will findings/recommendations be published?

Secondary Legislation Monitoring Board (SLMB) terms of reference

Purpose / role of the group

The Secondary Legislation Monitoring Board (SLMB) has been established as a consequence of the Secondary Legislation Scrutiny Committee’s (SLSC) evidence gathering on the quality of Explanatory Memoranda (EMs) and accompanying documents for Statutory Instruments (SIs).

The group aims to assess and monitor 5% EMs per quarter. Once the group has met to discuss their findings each SLMB member will provide feedback to their Senior Responsible Owners (SROs) to highlight any departmental errors.
Membership

Members of the group must be at least a Grade 7 and:

- have written an effective EM in the past;
- be a policy professional;
- have a keen eye for detail;
- have excellent written skills; and
- have the ability to take new information on quickly.

Each department with an SRO for secondary legislation has nominated a member from their department. Each member must undertake training from Civil Service Learning to ensure that the EMs are assessed to the same standards.

Accountability

Each member of the SLMB is responsible for reporting back activities to their SRO as well as the Parliamentary branch and SI processors within their department.

Assessment criteria

The guidelines for monitoring have been devised and agreed by the Permanent Secretaries (Elizabeth Gardiner, Jonathan Jones, Chris Wormald) Annex A. CSL will select the EMs which are to be monitored and share them with the monitoring board.

Working methods / ways of working

5% of all EMs across departments will be viewed by the panel. Each individual will have a selection of the 5%.

Each quarter, the monitoring board will reconvene in full to discuss the results and report back to departments.

Good examples of EMs will be shared as “best practice” through the SROs.

Permanent Secretaries will monitor these results and will have the option of monitoring themselves certain, individual EMs in conjunction with the Monitoring Board.

We expect the work of the SLMB to result in a reduction in the percentage of EMs having to be resubmitted or reported against by the SLSC.

Sharing of information

The SLMB will look at 9 EMs a month, 27 per quarter. Each member will receive a link to three EMs each month for them to assess against the criteria given.
The Secondary Legislation Monitoring Board (SLMB) will monitor EMs against given criteria by using a red/amber/green status.

**Readability:** The EM is written clearly and simply in plain English; avoids the use of obscure jargon and acronyms

**Policy:** the EM explains succinctly the policy and purpose of the SI

**Sufficient information:** the EM contains sufficient additional information and context to enable the lay reader to judge whether the legislative change is significant and/or appropriate

**Consultation:** the EM sets out the details of the consultation – who was consulted, over what period, how many people responded, a summary of the outcome and provides a link to the full government response; OR explains clearly and appropriately why no consultation was carried out

**Impact:** the EM contains sufficient basic information such as the number of people who might be affected, to what degree and what costs/savings will result. Where appropriate and proportionate there should also be more detailed information about the impact of the policy change

This covers:

- Imperfectly achieving their policy objective
- Guidance not being available when the SI and EM were submitted
- Insufficient explanation of consultation
- Insufficient consultation
- Insufficient explanation of obscure jargon that the intelligent reader would not understand
- The EM’s explanation of the policy and purpose of the SI is meant to be succinct, and able to be fully understood without having to look up other documents
- Why the SI is doing what it is doing
- Answering predictable questions before they are asked
- Is an impact assessment (IA) required?
- Is an Equality Analysis (EA) required?

As the members of the Secondary Legislation Monitoring Board (SLMB) will be below the level of Senior Civil Service it is thought inappropriate to publish their names. This is in line with the convention used for requests made under the Freedom of Information Act 2000.

Findings of the SLMB will be shared within the Civil Service as an indicator of improvement and where to focus efforts for training. Reports of the SLMB meetings will be reported to Elizabeth Gardiner, Jonathan Jones and Chris Wormald.
Information requested at the 12 September session: What is the grade breakdown of those attending the EM training; and what percentage are in senior grades that would sign off an Explanatory Memorandum?

Up to 15 September 2017 131 people attend the training for Explanatory Memoranda. The grade breakdowns are below:

<table>
<thead>
<tr>
<th>Grade</th>
<th>Attended</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Officer</td>
<td>14</td>
</tr>
<tr>
<td>Higher Executive Officer</td>
<td>47</td>
</tr>
<tr>
<td>Senior Executive Officer</td>
<td>30</td>
</tr>
<tr>
<td>Fast stream</td>
<td>6</td>
</tr>
<tr>
<td>Grade 7</td>
<td>21</td>
</tr>
<tr>
<td>Grade 6</td>
<td>9</td>
</tr>
<tr>
<td>SCS 1 – Deputy Director</td>
<td>4</td>
</tr>
</tbody>
</table>

There are 28 SROs in place, some departments have more than one and to date four of them have attended training (14%).

Information requested at the 12 September session: Can we see the quick guide (point 3 of annex to Minister’s letter) that is going to complement the SLSC’s guidance and be available in the autumn?

The answer to this was not made clear within the evidence session.

This is something which has changed since the letter in August. The guidance of the Committee was reviewed and it was decided that this was the best guidance available.

We will no longer be producing a complement to the SLSC Guidance.

The established guidance is being disseminated through training events, the SI processors network, the SROs and has been highlighted to all Permanent Secretaries. This is available through the Parliament website.

As stated by in the evidence session at question 9, “we do not want to create something separate that causes confusion”.