

# GUIDANCE FOR DEPARTMENTS SUBMITTING STATUTORY INSTRUMENTS TO THE SECONDARY LEGISLATION SCRUTINY COMMITTEE

## INTRODUCTION

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The Secondary Legislation Scrutiny Committee (SLSC) scrutinises the policy aspects of all legislative instruments laid before the House of Lords that are subject to negative or affirmative resolution.

**The term “SI” is used throughout this guidance for convenience, but the SLSC examines almost every instrument subject to parliamentary procedure, whether or not a Statutory Instrument.** This includes most statutory codes of practice, orders, regulations, rules and some statutory guidance. There are some minor exceptions set out in the Committee’s terms of reference, where another, more specialised, Committee considers the instrument, for example ecclesiastical measures. Originally established in 2003 as the Merits of Statutory Instruments Committee, the Committee’s name and terms of reference were changed in 2012 to reflect a wider remit which included Public Bodies Orders. Part 1 of this note covers:

- [How the SLSC works](#)
- [SLSC reports](#)
- [Delivering the paperwork](#)
- [Timetabling](#)

A separate committee, the [Joint Committee on Statutory Instruments \(JCSI\)](#), looks at the legal text of Statutory Instruments, for example whether the drafting follows correct legal practice and whether the powers in the Act under which the instrument is made have been interpreted correctly. The Committees work in parallel and there is no overlap between them.

The Explanatory Memorandum (EM) provided with each instrument is a key tool to help Members of Parliament and the public to understand how and why the instrument is intended to operate. Full information on how to complete an EM is given in the SI Registrar’s electronic proforma which appears on most departmental intranets.

Having read thousands, the Committee has found that EMs are generally good at explaining what an instrument does but weaker when it comes to explaining why the legislation is required or what its effects are expected to be. If the explanation in the EM is inadequate, the Committee may delay the instrument for a week to seek further detail or to ask for the EM to be replaced. Where there are significant concerns the Committee may draw the EM to the special attention of the House or ask the Minister to give oral evidence instead. **A good EM can prevent this, so Part 2 of this guidance sets out the Committee’s regular concerns and some examples of good practice.**

- [Explanatory Memoranda – general issues](#)
- [Common faults](#)
- [Implementing EU legislation](#)
- [Policy Background](#)

- [Consultation Outcome](#)
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- [Impact Assessment](#)
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- [Other sections of the EM](#)
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## **PART I: HOW THE SECONDARY LEGISLATION SCRUTINY COMMITTEE WORKS**

The Secondary Legislation Scrutiny Committee (SLSC) is a Lords-only Committee with eleven members. It is supported by a Clerk, a Committee Assistant and two Advisers. Contact details for them are provided, but **Departmental officials should initially raise any queries with their own Department's Parliamentary Unit** as the staff there are very familiar with the SLSC's requirements.

The Committee meets weekly while the House is in session, on Tuesday afternoons, to consider the policy aspects of the instruments on that week's agenda. Instruments laid on any day of week 1 will usually be considered by the Committee on the Tuesday of week 3, i.e. within 12 to 16 days of laying. If the Committee has further questions the instrument may be held over while further information is obtained. **During the scrutiny process officials can expect questions by phone or e-mail with a short deadline.**

### **Grounds for reporting**

The SLSC sees about 1,000 SIs a year and its task is to draw any significant or flawed item to the attention of the House if it falls within its [terms of reference](#). In summary these are that the instrument:

- (a) is politically or legally important or contains policy likely to be of interest to the House;
- (b) is inappropriate in view of changed circumstances since the parent Act;
- (c) may inappropriately implement European Union legislation;
- (d) may imperfectly achieve its policy objectives;

And in addition from the start of session 2014-15

- (e) has supporting material that is inadequate in explaining the policy intention
- (f) has been subject to an inadequate consultation process.

When the Committee draws an instrument to the attention of the House it may be in neutral terms and simply because the policy is topical but, particularly when reporting an instrument on grounds (b) to (f), the report may suggest that it is deficient in some aspect and propose questions which the House may wish to pursue.

### **Special Reports**

The SLSC also issues occasional special reports arising from its observation of how SIs are generally handled. The two new terms of reference were agreed by the House because, over the previous sessions, there had been a noticeable drop in the quality of Explanatory Memoranda and the consultation exercises conducted. The Committee makes a clear distinction between instruments where they consider the policy is flawed (grounds (c) and (d)) and instruments where they have insufficient information to form a clear view (new grounds (e) and (f)).

## SECONDARY LEGISLATION SCRUTINY COMMITTEE REPORTS

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The SLSC's reports are usually published on Thursday in hard copy and on our publications webpage. A summary is also available by email on Wednesday evening. Anyone regularly dealing with secondary legislation may subscribe by emailing to [hlseclegscrutiny@parliament.uk](mailto:hlseclegscrutiny@parliament.uk)

### What is the purpose of the Report?

- When the Committee formally reports an instrument the title will appear on the front cover and there will be a commentary highlighting the key issues and sometimes suggesting questions the House may wish to pursue. Where criticism is made, it is anticipated that a member of the House will follow it up, by a motion for debate, or an oral or written question.
- The SLSC's reports also act as a news service to the House. The "Other instruments of interest" section contains paragraphs that flag up instruments that are significant for some reason without implying that the House needs to take action.
- Although there may be extensive discussion in Committee, the reports clear 90% of SIs without formal comment - the titles of these instruments are simply listed at the back of the report.

Unlike the JCSI, the SLSC does not have a formal scrutiny reserve, however, by convention, the Government seeks to avoid scheduling a debate to approve an instrument before the SLSC has reported.

### Government Responses

There is no need for the Government to respond to reports on an individual SI **unless the Committee explicitly requests such a response by separate letter**. Such letters may be either at official or ministerial level and will indicate a deadline (usually less than a week because of the need to publish the information before a debate takes place).

**Where there is a debate, however, the House will expect the Minister to address any points made in the Report during his opening speech.**

## DELIVERING THE PAPERWORK

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**15 double-sided hard copies** of the instrument collated with the Explanatory Memorandum (and, where applicable, any other supporting documents such as the Transposition Note or Impact Assessment) should be delivered to the SLSC Committee secretariat **on the day of laying**.

Please also include copies of any codes or guidance necessary to the understanding of the instrument: for example when a short SI simply brings a code or set of construction standards into force but the code itself is not subject to parliamentary scrutiny.

Please do **not** send the SLSC:

- instruments that are laid before the House of Commons only;

- instruments not subject to parliamentary procedure
- commencement orders
- correction slips

And these are dealt with by different Committees:

- a remedial order, or draft remedial order, under section 10 of the Human Rights Act 1998 (which should be sent to the Joint Committee on Human Rights);
- a draft order under the Legislative and Regulatory Reform Act 2006 (which should be sent to the Delegated Powers Committee);
- a Measure under the Church of England Assembly (Powers) Act 1919 or instrument made under a Measure;

### TIMETABLING: MANAGING THE FLOW

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Departments should be aware that there are times of peak activity for Statutory Instruments, for example, just before the end of the calendar or financial year, a common commencement date (CCD) or recess. Plan ahead to avoid these periods if you can, or allow extra time for the instrument to pass through the scrutiny process.

#### Negative Instruments

A negative instrument may be laid at any time of year (subject to the practical considerations set out in [paragraphs 3.62-3.63 in the \*Companion to the Standing Orders of the House of Lords\*](#)).

No debate is required but it is a convention that negative instruments should not come into effect until **a minimum of 21 calendar days** after they have been laid. It can be helpful to industry or enforcement agencies to lay instruments well in advance of the date that they are intended to come into force. The SLSC will be critical if the period allowed for implementation appears too short.

A negative instrument laid during recess will be considered by the SLSC at the start of the next term **and the department may be criticised if significant regulations come into force when the House is not sitting.**

#### Affirmative Instruments

An affirmative instrument can only be laid when both Houses are sitting. It can only progress when the Houses are sitting.

When calculating how much time to allow for the parliamentary process, you are advised to find out when the SLSC and the Joint Committee on Statutory Instruments would be likely to consider the instrument, and then allow a further 3 – 4 sitting weeks after that.

Government business managers (The Whips) recommend you **allow a minimum of 6 sitting weeks** for the instrument to pass through all its Parliamentary stages. However more time may be required if the instrument is not cleared on first consideration by one of the Committees; and/or if there is a high volume of affirmative instruments waiting for approval by the House (for example in the run-up to recesses). You are therefore strongly encouraged to liaise with your Department's Parliamentary unit which will be aware of the timetables of the Committees and of the Whips Office in each House.

In the last session the Committee commented adversely on a number of affirmative instruments which had a specific implementation date included on the face of the instrument but were laid too close to that date to allow for normal scrutiny. In its end of session report the SLSC made clear that if a Minister wishes legislation to come into force on a particular date **it is the responsibility of the Department to lay the instrument sufficiently in advance of that date to be sure of completing the parliamentary process in time.**

While the Committee will always seek to assist with genuine emergency legislation (for example to deal with terrorism or flooding), poor planning by a Department does not qualify for special treatment.

## **PART 2: EXPLANATORY MEMORANDA – GENERAL ISSUES**

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The Explanatory Memorandum (EM) should follow the format set out in Appendix H to Statutory Instrument Practice: the electronic EM template provided by the SI Registrar (which appears on most Departmental intranets) meets those requirements. But that is just the framework – this guidance adds some examples of good practice to illustrate how the relevant sections of the framework should be completed to meet the SLSC’s needs.

In addition, the SLSC’s officials tell Departments about EMs which the Committee commend and so your Parliamentary Clerk’s office should be able to provide examples of good practice that relate more closely to your subject area.

### **Purpose of an EM**

The purpose of the EM is to provide members of Parliament and the public with a plain English, free-standing, explanation of the effect of the instrument and why it is necessary.

**It is not meant for lawyers, but to help people who may know nothing about the subject quickly to gain an understanding of the SI’s intent and purpose.** Legal explanations of the changes are already given in the Explanatory Note which form part of the actual instrument.

You need to explain the basics: for example, **never simply refer the reader to a weblink without stating the key points of the document in question:**

- don’t say the policy was all explained in the White Paper – without summarising the relevant aspects in the EM and highlighting which pages of the document refer;
- don’t say the consultation was broadly positive without providing a summary of the percentages broadly for and against the policy proposal and any particular points of support or disagreement.

### **Single memorandum for linked instruments**

It can be helpful to produce a single memorandum for a group of SIs with a common theme. This prevents unnecessary duplication of common background and makes sure that the reader is aware of the links between instruments. In the policy section, after explaining the background to the policy, you should explain the special features of each SI and how it contributes to the overall policy objective.

For laying purposes a copy of the group EM should be attached to each of the individual SIs to which it relates; but for scrutiny purposes we only need one copy of the EM attached to the whole batch of linked SIs. **Linked SIs should be laid on the same day and, ideally, numbered sequentially.**

Where a series of SIs is to be spread over several weeks or months each item or group will need its own EM. Each EM should explain under heading 4 *Legislative Content* how it is linked to an earlier SI or the later SIs that will follow, for example to set fees or the enforcement procedures that support an earlier instrument.

### Correcting Instruments

Particularly for revised drafts of affirmatives, if the instrument is being re-laid because of drafting or other errors then the EM needs to set out, usually in section 3, the differences between this text and the previous one. Departments often just attach the original EM but the Committee should not be expected to proof-read the two texts to “spot the difference.”

## COMMON FAULTS WITH THE EXPLANATORY MEMORANDA (EMs)

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**Writing it like a Press Notice** – a Press Notice is to announce key elements of the policy, an Explanatory Memorandum (EM) has to provide the reasons why the legislation is necessary and make the case for it, using evidence. A Press Notice will say “this policy will reduce crime by 10%”, an EM needs to set out the evidence for that statement, for example why 5% or 12% is not a more reasonable assumption, and why the cost of the legislation is proportionate to the outcome.

**Gaps in the logic** – When you have been working on a policy area for a long time and are very familiar with its technicalities it is sometimes difficult to remember to explain the basics. This comes out in Explanatory Memoranda as missing background information or skipping a step in the logic of the explanation (often why it is being done or why it is being done this way).

Familiarity with the topic also leads to overuse of **acronyms and jargon** (eg *SIPP*, *NO<sub>x</sub>*, *credit repair*) such terms should be explained or, better, avoided.

**Out of date drafting** – the EM has been in draft for some time while some other part of the process is completed and is then submitted in a hurry. We often find dates in the draft referred to as XXXX or inconsistent with what is in the instrument. We even find that the title of the instrument has changed and is different in the EM to the title on the face of the SI.

**Time warp** – the draft says the guidance on consultation analysis will be published (future tense) prompting a question from the SLSC about when that will happen, to which the answer is usually that it has already been published. The laying requirement is that **any supporting information such as Impact Assessments, analysis of consultation responses or public guidance should be published on the day the instrument is laid** so it is available for scrutiny. To avoid follow up questions make sure the actual position is stated clearly in the EM.

**Just weblinks** – the guidance requires the headline outcomes of the Impact Assessment and the Consultation analysis to be set out in the EM. Often that section of the EM just says “see weblink xxx”. Similarly in the policy section of the EM we will see “this follows up the White Paper see weblink xxx”. That is not an explanation, that is telling the reader to go away and work it out for themselves. A few short sentences should be enough to explain the relevance of the source document. Also given that many are lengthy documents covering a wide range of policy proposals it is helpful to include the specific page or paragraph numbers in the reference to the weblink.

**Don’t use “not applicable” under any heading.** Your opinion may be correct but the Committee has no way of knowing that unless you explain the position briefly:

**For example:**

No separate consultation exercise was conducted as this instrument corrects minor drafting errors in the original regulations and does not change the policy. A consultation exercise conducted when preparing the original regulations found that 63% of respondents supported the proposal, that analysis can be found at [www.departmentof](http://www.departmentof)

*or*

This instrument sets the fees for the licensing provisions described in the main regulations, SI 2012/1234. The impact of the fee regime will be included in the overall evaluation of the effect of those regulations in December 2016.

*or*

No guidance is needed as the instrument imposes no new obligations on external bodies

**Don’t leave loose ends**

Sometimes it is helpful to try and put yourself in the reader’s position. A simple statement of what the instrument does may still leave some questions in the reader’s mind. If you provide answers to predictable questions in the EM, you may save yourself the work that might otherwise arise from follow-up letters or Parliamentary questions.

Such questions often arise when an instrument is one of a series – for example if this SI sets up a licensing system but a later one will set the fee: it would be helpful to let the reader know that the level of fee is currently subject to consultation and a further SI will follow in 3 months.

**For example: Draft Code 10: Modification of Subsisting Rights (Pensions Regulator, laid June 2006) EM para 4.3**

It is intended to bring the Code of Practice into effect as soon as possible, as sections 67 to 67(l) of the Pensions Act 1995 came into force on 6th April 2006. The Code will be published by the Pensions Regulator in draft form whilst Parliamentary approval for it is awaited. The Provisions of sections 67 to 67(l) are permissive, and the Code itself does not impose any legal obligations. There are, therefore, no adverse consequences arising from the different dates for coming into force.

## IMPLEMENTING EU LEGISLATION

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**Until the UK formally secedes from the European Union these requirements still apply.**

The terms of reference of the Secondary Legislation Scrutiny Committee specifically require it to consider the way an instrument implements EU legislation.

SIs relating to European Union obligations should include a brief summary of the scrutiny history and a Transposition Note. Please explain if there have been any problems in interpreting the EU legislation and transposing it into British law.

You should provide an explanation if your instrument comes into effect significantly before or after the implementation date set out in the instrument.

Some legislation, particularly if it may impact on international trade, has to be notified to the EU for a “stand still period” of three months. You need to include this in your planning timetable – the Committee will not be sympathetic to a request for expedited consideration to avoid infraction proceedings where it is simply a matter of poor planning.

### Ambulatory References

The Legislative and Regulatory Reform Act 2006 enabled SIs to make “**ambulatory references**” to EU legislation, which allow updates to an underlying EC Directive to have automatic effect in the UK. This mechanism has been of concern to the Lords because it takes future changes to legislation out of the normal legislative scrutiny process.<sup>1</sup>

This mechanism should only be used for technical updates, which usually appear in an Annex to the Directive, such as adding items to a list of banned chemicals. The agreed Whitehall position on the use of the power is set out in [Appendix I of the Merits Committee’s 25<sup>th</sup> Report of session 2008-09](#). The Explanatory Memorandum should make it clear if an ambulatory reference is being introduced. **If the power is applied to anything other than simple technical updates the Committee expects to see a full explanation of why this is proposed, including how any risks or unintended consequences are to be managed in the absence of further Parliamentary scrutiny.**

## POLICY BACKGROUND – EM Heading 7

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### What is being done and **why**

The Committee looks at about 30 SIs a week so **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.**

The policy section should explain:

- **Purpose:** how this instrument aims to fulfil the policy objectives of the parent Act/Directive;
- **Context:** what is the current position, the size and nature of the problem it is addressing;

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<sup>1</sup> See for example HL debate 28 October 2009 cols 1231-43

- Effects: what will be the effect on the target group, numbers affected, how affected?:
- Evidence: to illustrate why this solution is likely to achieve the policy objective, or the degree to which it will eg it will reduce car crime by 15%
- Significance: whether the change is politically or legally important.

Where the changes are being made following a review or White Paper, refer to its title and include a web link to the report that led to law being changed, but remember to give the gist of the White Paper proposal and the outcome in couple of sentences. (Specific page or paragraph references are also helpful when it is a wide-ranging document.)

Similarly the explanation of the policy and its background should be addressed to the ordinary reader, who should not be expected to have any previous experience of the subject. For example, do not say “*this order extends the XYZ scheme*” without explaining briefly what the XYZ scheme does. Please avoid jargon and explain acronyms.

Simple assertions that all will go according to plan may be challenged, so support them with evidence wherever possible. Particularly where the new regulations amend existing ones, the SLSC will expect to see evidence from the review of how the previous regulations have performed.

#### Insufficient information

The Committee has found that EMs are generally good at explaining what the instrument does but often forget to explain **why it is necessary**, so they read more like an announcement than an explanation.

Recently the number of EMs missing out key items of information or evidence has risen and, in consequence, the Committee has been given a new [term of reference](#) requiring it to draw to the special attention of the House any instruments that have insufficient supporting information. The Committee’s job is examine whether it is persuaded that the instrument before it will fulfil the stated policy objective, it uses this new term of reference when it has insufficient information to form an opinion.

Where there are lesser flaws, or the Committee’s questions have identified additional information that the House or public need to know, the Committee may also ask the department to revise and replace the EM. This costs the department money and is best avoided.

Although your proposal may have had departmental approval, you need to remember that the EM is for Parliament which is composed of the Government and the Opposition. So **your EM needs to present a persuasive argument** as to why it is necessary to legislate at all and why the solution proposed will be effective in addressing the problem identified.

#### Miscellaneous amendments

For “Miscellaneous amendments” SIs, the memorandum should briefly address each of the broad areas covered. If there is no obvious structure offered by the format of the instrument itself, one way of doing this is to break the regulations down into associated groups e.g. “regulations 4(a), 5(b) and 6(c) amend the definition of “incapacity”

because...” **Such wide-ranging instruments should only be used for tidying up the statute book and not include any major new policy developments.**

### Consolidation

Where an instrument amends another instrument, particularly if it is not for the first time, the memorandum should indicate the department’s intentions and timescale for consolidation. Although there may be good reasons for it happening at a later date, the Committee will expect to see a statement. Providing an informal consolidated text online to the public free of charge is regarded as good practice, if one is available that should be stated in the memorandum.<sup>2</sup>

For example: **National Health Service (Pension Scheme and Compensation for Premature Retirement) Amendment Regulations SI 2006 EM para 7.9**

The on-going review of the NHS pension scheme is expected to lead to a completely new scheme and regulations within two years. In the same timeframe there will also be a significant set of corresponding amendments to the current pension scheme regulations. We will only realistically be in a position to consider consolidation at that stage.

## CONSULTATION OUTCOME – EM Heading 8

The Committee considers that proper consultation is a crucial part of the process of getting an instrument right before it is laid. As the House cannot amend secondary legislation, it is important that each instrument should have been exposed to those who will be affected by its provisions and its suitability reviewed in the light of their reactions before it is laid before Parliament.

The Committee has issued a number of special reports on this matter and so great was the concern that, from session 2014-15, the House gave the Committee a new term of reference to draw attention to instruments that have been subject to inadequate consultation.

### Summary of key issues raised

The section in the EM should set out who was consulted, over what period and how many people responded. There should be some analysis of the key points raised in responses and a short justification of why the department did or did not make changes to its policy in the light of the opinions expressed. Include a link to the **full analysis which should be available on a website at the time the instrument is laid before Parliament.**

Where an instrument has implications for members of the public, particularly if the legislation imposes fines or other penalties, the Committee looks closely for evidence of how they or organisations that might reasonably be considered to represent them were involved in the formulation of the policy. The Committee will expect the consultation to have included a wide range of interest groups, not just those that the legislation will benefit, but also those expected to enforce the proposed system or advise users, for example the Citizens’ Advice Bureau.

<sup>2</sup> As, for example, with the Home Office Immigration Rules website <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/>

**For example: Dairy (Specific Market Support Measure) Regulations 2010 (SI 2010/1085)**

Across the UK we sought views on the mechanism for distributing payments from the EU dairy fund through public consultations in January and February 2010. The UK decision, Defra consultation letter and a summary of responses to Defra's consultation (relating to England) can be found at – <http://defraweb/corporate/consult/dairy-fund/index.htm>. Roughly three-quarters of respondents (including all bar one representative organisation) favoured the same option (which is the option to be implemented).

**The Smoke-free (Premises and Enforcement) Regulations SI 2006/3368**

A three-month consultation on the draft regulations ran from July to October 2006. Around 550 responses were received {*from what groups? what percentage supported the initiative?*}, many of them very detailed, from a range of stakeholders. The Department of Health has made a number of changes to draft regulations based on consultation responses. The most notable changes to this instrument are that:

- enforcement responsibilities for smokefree legislation will be with the lower tier local authorities;
- Port Health Authorities have been included as enforcement authorities;

A full analysis of consultation responses is available on the Department's website at: <http://www.dh.gov.uk/Consultations/ResponsesToConsultations/smoke>

**Proportionate Consultation**

The [Consultation Principles](#) allow for a period of public consultation lasting from 2-12 weeks, with the expectation that the more significant policy initiatives will have a longer consultation period. The SLSC takes a close interest in the degree and appropriateness of consultation; where there is no consultation, it is for less than 6 weeks, or is limited to a target group, an explanation should be given that illustrates why this alternative approach allowed sufficient opportunity for all affected to comment.

The Committee supports the view that consultation should be proportionate to the policy change being made but has in recent months felt that several Departments have miscalculated. In particular they have mistimed the exercise, for example publishing consultations for short periods over Christmas or consulting on Teachers' Pensions over the school holidays. It is with that in mind that the Committee has adopted a new term of reference which specifically targets inappropriate consultation.

**GUIDANCE –EM Heading 9**

Where the guidance is important to understanding how the instrument will operate, even if it is not itself subject to Parliamentary scrutiny, **please send at least 2 copies to the SLSC Committee at the same time as the SI is laid** (and consider sending a copy to the Libraries of each House). This is particularly important when guidance sets out the details of how decisions on individuals are to be made under the legislation eg what criteria will be used to give or deny someone benefits, permit entry to the country, determine fitness to practice.

The Explanatory Memorandum should set out what guidance or training the department or others<sup>3</sup> are providing to the civil servants who will have to operate the system as well as to the public or industry sector that will be required to meet the new obligation. It is generally regarded as best practice to publish such guidance in advance of the legislation coming into effect to allow time for familiarisation or training.

**For example: Beef and Pig Carcase Classification (England) Regulations 2010 (SI 2010/1090)**

A detailed guidance note for the industry explaining how the new EU provisions on the beef and pig carcase classification will operate is being provided by Defra. It will be placed on the Rural Payments Agency (RPA) website as the Agency is responsible for the implementation and enforcement of the carcase classification rules. It will be available to users, stakeholders and enforcement agencies.

### Sanctions

There may need to be different versions of the guidance, for example one for enforcers and one for the public. Particularly where the legislation imposes a penalty or sanction there needs to be a clear statement of what behaviour will result in the penalty or fine being imposed. While it is acceptable for the legal text of the SI to cross-refer to a long list of numbered European Directives, the EM and guidance need to make a plain English explanation available to the groups affected so that they will know that if they do x the consequences will be y.

### IMPACT ASSESSMENT – EM heading 10

Even if the policy does not meet the formal threshold for an Impact Assessment (IA) **always include a short explanation of the net effects of the policy in the EM including broad brush figures for costs and benefits.**

**For example: End-of-Life Vehicles (Amendment) Regulations**

The impact on business, charities or voluntary bodies is estimated to be of minimal cost because the Regulations are principally concerned with making technical changes that are already common across Europe and simplifying certain reporting requirements.

The impact on the public sector is estimated to be a small annual saving of £7,000 because the Regulations now give effect to future changes to a technical annex of the Directive meaning that no time will need to be spent amending UK legislation when these changes are made.

Where an IA has been prepared then **a hardcopy should be attached as an Annex to the EM for the use of the Committee** (the weblink should also be included in the EM for the general reader). The IA provided should be the Final version and be signed by a Minister.

Recently departments have several times failed to provide an IA because the document has not yet been validated by the Regulatory Policy Committee – that is an internal

<sup>3</sup> E.g. trade organisations or professional bodies with which the Government liaises.

planning matter for government – it is not an acceptable excuse for failing to present all the necessary documentation at the time the instrument is laid before Parliament.

If you are recycling the IA prepared for an Act which this instrument helps to implement, please only include the relevant extracts and confirm in the EM that the figures are still accurate.

**Remember that an IA should be considered for public sector costs.** If the legislation will need more civil servants or infrastructure to make it work, if major savings or costs are involved they should be explained in the EM and an IA may be required.

We asked Cabinet Office for clarification of the Government’s policy on the production of formal IAs in October 2015, the response<sup>4</sup> said:

“The requirements regarding impact assessments remain as set out in the Better Regulation Framework Manual. In summary, the position is that:

- Impact assessments are mandatory for measures that have a significant regulatory impact on business and civil society organisations;
- For all other measures, responsibility for determining the appropriate level of appraisal (including whether an impact assessment should be produced) is delegated to departments;
- Where departments have delegated responsibility as described, **they are expected to consider the needs of Parliament**, as well as other factors such as proportionality etc.”

## MONITORING AND REVIEW – EM Heading 12

What are the success criteria for this instrument? This section is of particular interest to the SLSC Committee since its terms of reference require it to consider whether an instrument imperfectly achieves its policy objective. To do this they need a clear statement of the Government’s policy objective and the degree of change it expects to achieve. Where possible please define the intended outcome in measurable terms.

For example:

The changes in the fee structure aim to achieve full cost recovery of the process of issuing and administering this licence by April 2014 or

The changes set out in this instrument aim to reduce identity theft by 10% over the next 3 years.

You should also explain when and how the legislation will be reviewed to see whether these targets have been achieved or what factors have affected the intended outcome. Secondary legislation will normally be reviewed after 3-5 years, although, particularly with an innovative scheme, there may be reasons for reviewing it sooner. **Here or in the Impact Assessment there should be a clear statement of the current position so the change against that benchmark can be assessed in the future.**

For example:

<sup>4</sup> [11th Report](#), session 2015-16 (HL Paper 44)

- The income from crime statistics will be subject to internal review after 12 months and the legislation may be amended accordingly *or*
- The University of London has conducted a benchmark study and will review the position again in 3 years; a report will be published towards the end of 2015 *or*
- As the instrument makes only consequential amendments to the Railways Act 1993 no monitoring or review is felt to be necessary. However, at the end of the transitional period for Regulation EC/1370/2007 on 3 December 2019 the European Commission must present a report on the implementation and developments in the provision of public passenger transport in the Community. As a result there are ongoing reviews of existing measures and consideration whether to enhance or bring forward additional legislation particularly in the rail sector.

## OTHER SECTIONS OF THE EXPLANATORY MEMORANDA

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### EM heading 2 - *Description*

Plain English should be used to explain to the lay reader **in two or three sentences** what the instrument does and why. This is to help the reader to identify what the instrument is about and whether it is the item they are looking for. **Many readers will be using on-line search engines**, so it is helpful if the description uses the common key words that help identify the subject of the instrument.

#### **For example: *three sentences but not plain English***

This Order makes supplementary and transitional provision in respect of new provisions regarding police authority membership which are being commenced under the Police and Justice Act 2006 (“the 2006 Act”). The new regime will come into operation in the case of police authorities established under section 3 of the Police Act 1996 on 1 April 2008 and in the case of the Metropolitan Police Authority on 3 July 2008. This Order ensures that, until that new scheme comes into operation, existing lay justice members of police authorities in England and Wales whose appointments would otherwise expire on or after 15 January 2007 shall have their appointments extended until 31 March 2008 or, in the case of the Metropolitan Police Authority, 2 July 2008.

**Better:** This Order makes transitional provisions to extend existing lay justice appointments to police authorities until the new scheme under the Police and Justice Act 2006 takes effect in 2008.

### EM heading 3- *Matters of special interest to the JCSI*

Although this section is mainly for the technical, legal aspects that are of interest to the JCSI, the SLSC is also interested in SIs that breach **the 21-day rule** (the convention by which instruments are generally laid at least 21 calendar days before they need to come into effect to allow time for those affected to become aware of the change).

The EM should explain why the policy requires such urgent action, why it could not be avoided, and what the impact of delaying the legislation to satisfy the rule would be. **By reducing the 21 day period you are reducing the time Parliament has to scrutinise the instrument, and this should not be done for departmental convenience.** Most departments require Ministerial clearance to lay an instrument that breaches the rule.

Similarly, if the instrument came **into force before it was laid**, the EM should explain why. In this case Departments are also required to send a letter to the Speaker of each House, with a copy to the Chairman of the SLSC (and JCSI) to explain the circumstances (see section 4(1) of the Statutory Instruments Act 1946).

The SLSC’s main concern will be about practical consequences: for example, whether those on whom the obligation falls, or those who have to enforce the policy, have been given sufficient information to be able to react within the time allowed. There are circumstances, such as tax changes, or public health measures where bringing an SI in with little notice is justifiable – but the circumstances need to be explained.

**If the instrument makes corrections** in response to a JCSI report or revises a previous version of an affirmative SI, you should set out the key changes made in this section. For the SLSC’s benefit mention if the change amends the policy in any way.

**EM heading 4 - *Legislative background***

The legal power under which the instrument is made will be clear from the instrument itself and there is no need to mention that power in the EM unless it is being used for the first time or in an unusual way. Nor is it necessary to list the changes that the instrument makes – that normally features in the Explanatory Note at the end of the SI.

Use this section to set the instrument in its legislative context: for example, to explain if this instrument forms part of a group or a sequence of SIs that will appear over a few weeks or months, or implements provisions of a new Act. Sometimes a change to the legislation is required to clarify the law because a recent legal case has challenged the existing interpretation of it, remember to give the title, reference and a brief explanation of the judgment here (with a weblink).

If the instrument meets any specific undertakings that have been given to Parliament, whether in the course of a parliamentary debate, question or Committee appearance, please mention those here together with the relevant Hansard or report reference (including a weblink).

**For example:** Concerns were also raised during the Courts Bill’s passage through the House of Lords regarding the conditions to be met before a person was designated a court security officer. It was agreed during the debate that a criminal record check will be undertaken for all court security officers (HL Deb, 11 February 2003, col 592). These Regulations reflect this..

**DEPARTMENTAL CONTACT – EM heading 13**

This should be the name and direct telephone number of a person who can provide additional information on the instrument if required. **The Departmental switchboard is not sufficient.**

Some Departments have taken to using generic e-mails such as jobseekersallowance@dwp ... or immigrationpolicy@homeoffice ... this is acceptable as long as the email address is closely monitored.

Deadlines for responses to questions are often less than 48 hours. **If the deadline is missed the instrument may be held over to the next meeting or the**

**Committee will seek the information directly from the Minister who signed the regulations.**

### **COMMITTEE CONTACT DETAILS**

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**Departmental Officials should initially address their questions to their Department's Parliamentary Unit.** The staff there are familiar with the SLSC's requirements and can negotiate any particular difficulties on your behalf.

**Address:** Secondary Legislation Scrutiny Committee  
Room 25, First Floor, West Front  
House of Lords  
London SW1A 0PW

**Telephone:** 020 7219 8821      **Email:** [hlseclegscrutiny@parliament.uk](mailto:hlseclegscrutiny@parliament.uk)

**Webpage:** <http://www.parliament.uk/seclegscrutiny>

The Committee Assistants, to whom all paperwork should be sent, at the address given above, are **Louise Andrews** and **Ben Dunleavy**. The Committee's Clerk is **Christine Salmon Percival**.