

Briefing

How to engage on the scrutiny of statutory instruments



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Legislation and
Governance Unit

Statutory instruments (SIs) are the most frequently used type of secondary legislation. Secondary legislation is used to add information or, in some cases, to make changes to an existing act of parliament and often contains the ‘nuts and bolts’ of environmental law.

As UK governments are now responsible for making and revising all environmental law, we can expect a more active secondary legislative programme.

The parliamentary scrutiny of SIs generally follows one of two procedures: affirmative or negative. **Affirmative SIs** are debated and must be approved by both Houses of Parliament before becoming law. **Negative SIs** automatically become law after a number of days and are not automatically debated by both Houses of Parliament, unless a member of parliament requests this. The procedure an SI follows is determined by its parent act of parliament.

(See [here](#) for details of the parliamentary procedure for SIs in the House of Commons and [here](#) for the process in the House of Lords.)

1. Build links with policy officials

If the policy development process works effectively, government officials should already have engaged interested organisations as part of [good policy making](#). Early engagement can produce higher quality outcomes and should be done well in advance, before SIs are laid (introduced) in parliament.

Once an SI is laid in parliament the only way it can be changed is if it is withdrawn and relaid (for affirmative instruments), revoked and replaced by another SI (for negative instruments) or by using correction slips to rectify minor technical errors. It cannot be amended so, in practice, SIs are rarely changed substantively after they have been laid.

2. Engage with the House of Lords Secondary Legislation Scrutiny Committee

The House of Lords [Secondary Legislation Scrutiny Committee \(SLSC\)](#) is the most accessible and appropriate stage of the scrutiny process. There are two other relevant committees: the Joint Committee on Statutory Instruments (JCSI) which includes members of both houses and looks at legal grounds,

and the House of Lords Delegated Powers and Regulatory Reform Committee (DPRRC), which mainly examines the delegated powers sought by the government to make secondary legislation in bills. Neither committee has a formal process for interested parties to feed in external views.

The SLSC currently has two stages of scrutiny. The first stage [studies](#) SIs that the government proposes should be laid as negative under the European Union (Withdrawal) Act 2018 and the Retained EU Law (Revocation and Reform) Act 2023 and makes recommendations about whether these should remain as negative SIs or be 'upgraded' to the affirmative resolution procedure (other parent acts already set this out).

If it is considered that an SI would benefit from parliamentary debate (ie that it ought to be affirmative) interested parties should make the case to the committee.

Debates can enhance the scrutiny process and are a chance for parliamentarians to put questions to the minister and for important points to be registered on the record in Hansard. The [European Statutory Instruments Committee](#) carries out this 'sifting' function in the Commons .

The SLSC's second stage of scrutiny involves looking at the policy content of all SIs and issuing a weekly report on its findings. The committee's criteria for reporting can be found in its [terms of reference](#) (also listed below). These set out the grounds on which an SI may be drawn to the special attention of the House of Lords, which means that the committee's expert scrutineers have found issues worthy of closer examination. The most relevant grounds to focus submissions are whether an SI is politically or legally important or gives rise to public policy issues likely to be of interest to the House of Lords.

On negative SIs, a report by the SLSC does not automatically trigger a debate, but it raises awareness of it in the House of Lords and makes it more likely that a member will pray against (object to) the SI to secure a debate. The SLSC has five reporting grounds, that the SI:

1. is politically or legally important, or gives rise to issues of public policy likely to be of interest;
2. is accompanied by insufficient explanatory material;
3. was subject to inadequate consultation;
4. may be inappropriate in view of changed circumstances since the enactment of the parent act;
5. imperfectly achieves policy objectives.

The first point is the most common reporting ground the committee uses ([around 75 per cent](#)) and is usually fairly neutral, but may contain some concern or criticism. Points 2 to 5 are always critical, especially the last one which is used very rarely and suggests that the committee believes the policy is flawed and will not work. The committee may hold an evidence session with the relevant minister if the department's response to committee questions is inadequate.

If the committee reports a negative SI on grounds 2 to 5, then it is very likely a member will seek a debate.

The committee usually sends any points raised to the laying department and typically publishes evidence from stakeholders, along with any response from government, on its website, so this is a useful way to seek clarifications or explanations and for these to be published.

If an interested party wants to write to the committee, this [guidance](#) explains what it would find most useful and the appropriate format. Evidence needs to be submitted ideally the week of the SI being laid before parliament to make sure that there is time for a response from the department that introduced it. The committee generally considers SIs within nine to 15 working days of laying. This includes putting questions to departments, considering briefings and departmental responses by the committee, and the publication of a report. The aim should be to engage before the committee puts its questions to departments.

Submissions on environmental law can be sent to the committee's advisers and can be co-ordinated via Green Alliance's Legislation and Governance Unit (committee meetings are held in private so it is more effective to engage with committee staff rather than its members).

3. Brief MPs and peers for parliamentary debates

For affirmative SIs, there will be short parliamentary debates in both houses, which provide an opportunity for any concerns to be raised.

In the Commons, the SI is either considered by a small group of MPs in a delegated legislation committee or in the main chamber (see the members of the committees [here](#) every sitting Wednesday in the Votes and Proceedings paper under 'General Committees: Appointments'). Although it is possible for MPs who are not committee members to attend the meeting, contribute and vote, in practice it is often only the opposition front bench spokesperson and the minister who raise points in committee discussions.

For debates in the main chamber, any briefings submitted should set out concerns about the SI and related points which MPs could put to the government. Generally, debates on SIs do not attract many speakers so it is worth investing time in briefing MPs who are most likely to be interested in the subject matter.

Debates in the Lords are usually reasonably well attended and can reach greater depths given the technical expertise of peers (a list of peers taking part in debates on SIs is [published](#) in advance). As well as highlighting concerns, any briefing should, where relevant, reference the report of the SLSC and any response from the government, as well as suggested questions peers could put to the minister.

4. Brief on prayer motions

Occasionally, parliamentarians may decide to use a [prayer motion](#) to object to an SI. This can take two broad forms: a rarely used 'fatal motion', which

would stop the SI becoming law if the house approved it. The more common form is a 'regret motion', disputing a particular aspect of the SI, which would not stop the law taking effect. It is possible to provide briefings on regret motions, which can be an important opportunity to test and debate government policy more broadly, as well as to highlight issues with the wording of the SI.

For more information, contact:

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