

Briefing Statutory Instruments (Amendment) Bill second reading

Legislation and
Governance Unit

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Introduction

The Statutory Instruments (Amendment) Bill provides a welcome opportunity to discuss ways to improve the scrutiny of secondary legislation. The scrutiny of statutory instruments (SIs) has become increasingly important since the UK left the EU. This is particularly the case for environmental laws given the large proportion that originated from the EU.

SIs are also of significant public importance as they affect many aspects of everyday life such as carrier bag charges, rules on food hygiene and imports, the ban of certain materials (eg plastic cutlery), as well as implementing major policies like carbon budgets and the regulation of chemicals.

As such, monitoring and influencing SIs is very important, particularly in light of the significant amount of so-called ‘skeleton’ legislation considered in parliament in recent years. The House of Lords Secondary Legislation Scrutiny Committee (SLSC) and Delegated Powers and Regulatory Reform Committee (DPRRC) have ensured that the issues surrounding overuse of delegated powers and minimal scrutiny are well documented.

For example, the DPRRC’s report [Democracy Denied? The urgent need to rebalance power between Parliament and the Executive](#) highlighted the limitations of an “all or nothing” approach to secondary legislation; most obviously, that SIs are frequently passed into law even when there are concerns. And the SLSC’s end of session reports frequently point out the prevalence of poor quality explanatory materials or impact assessments (most starkly in its 2021-22 report [What next? The growing imbalance between Parliament and the Executive](#)). Its [most recent report](#) identifies an “unacceptably high number of SIs that correct drafting errors in earlier legislation” in Session 2023–24. This week the DPRRC has [recommended](#) that a number of powers in the Product Regulation and Metrology Bill are inappropriate and should be removed, while Green Alliance has [highlighted](#) concerns about the quality and lack of impact assessments.

Adding the option to amend or correct draft legislation would therefore make a significant difference to the parliamentary scrutiny process.

Commentary on the bill's provisions

Section 1 of the bill introduces the option for the House of Lords to withdraw approval of a draft SI and to communicate its concerns to the House of Commons. The House of Commons can then choose to either ignore those concerns or request that the minister amends the SI.

This would be a welcome additional step in the SIs scrutiny process, providing an alternative to the system currently in place in which annulling or approving an SI as it is drafted is the only option.

Historically, motions to annul SIs are rare. According to the [Hansard Society](#), only 16 SIs have been rejected since 1950 and there has not been a rejection in the House of Commons since 1979.

Better scrutiny of SIs and flexibility to amend them could help address concerns without blocking the intended policy effect of the instrument in question. These concerns include:

- how delegated powers are exercised in practice
- inadequate arrangements for oversight and enforcement of policy measures, once adopted
- unsatisfactory replication of EU laws, such as the differences and concerns [identified](#) in the UK's [cross compliance legislation](#) compared to the EU equivalent
- publication of unhelpful or misleading explanatory material, such as the [Official Controls \(Location of Border Control Posts\) \(England\) Regulations 2024](#)'s explanatory memorandum
- no consultation or an unsatisfactory response to consultation, such as the lack of consideration given to the [environmental impact of extending a 'growth duty'](#) to regulators including Ofwat
- lack of consideration of impacts on devolved nations
- missed opportunities, such as when the [Fair Dealing Obligations \(Milk\) Regulations 2024](#) failed to [consider food waste](#) in the supply chain

However, the bill does not preclude the House of Commons rejecting the Peers' concerns or to relay the SI unamended (after which the House of Lords cannot repeat the process). We therefore suggest the option to request amendment is strengthened or expanded to enable proper debate and more rigorous scrutiny.

Clause (4)(b) allows the minister to “withdraw the draft instrument and lay a further copy of the draft instrument, as amended or as unamended, before each House of Parliament in accordance with the provisions of section 6.”

Clause (5) adds “The House of Lords may consider a draft instrument as relaid under subsection (4)(b); however, the provisions in subsections (1) to (4) do not apply to the relaid instrument.”

Section 2 allows ministers to correct errors (within reason) in a draft SI within forty days of final approval. This is a welcome step that should help reduce the laying of additional SIs to correct errors, making the process more efficient for ministers, government departments and scrutineers.

For more information, contact:

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