

Engaging in the scrutiny of statutory instruments

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Statutory instruments (SIs) are the most frequently used type of secondary legislation. Secondary legislation is used to add information or make changes to an existing Act of Parliament and often contains the 'nuts and bolts' of environmental law. Now that we have left the EU, we can expect a more expansive and active secondary legislative programme.

Most SIs must be considered by both Houses of Parliament before becoming law. They generally follow one of two procedures: affirmative or negative. The procedure an SI follows is determined by its parent Act.

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.

There are four main ways to engage in the scrutiny process.

1. Build links with policy officials

If the policy development process is working effectively policy officials should already have engaged interested organisations at early stages as part of [good policy making](#). Early engagement can produce higher-quality outcomes and should be done well before SIs are laid in Parliament. Once an SI is laid in Parliament the only way in which it can be changed is if it is withdrawn and re-laid or by using correction slips to rectify technical errors. In practice SIs are rarely changed substantively after they have been laid.

2. Engage with the Lords Secondary Legislation Scrutiny Committee

In our experience, the House of Lords [Secondary Legislation Scrutiny Committee](#) is the most accessible part of the scrutiny process. The Committee currently has two stages of scrutiny. The first stage looks at SIs the government proposes should be laid as negatives under the European Union (Withdrawal) Act 2018 and makes recommendations about whether these should remain as negatives or be 'upgraded' to the affirmative resolution procedure. If you consider that an SI would benefit from parliamentary debate it is worth making the case to the Committee. Debates can enhance the scrutiny process and is a chance for parliamentarians to put questions to the minister and for important points to be registered in Hansard.

The Committee's second stage entails it looking at all SIs and issuing a report of its findings. The Committee's criteria for reporting can be found in its [terms of reference](#). These set out the grounds on which an instrument 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 on in submissions are whether an SI is politically or legally important, gives rise to issues of public policy likely to be of interest to the House of Lords or there are inadequacies in the consultation process.

If you want to write to the Committee this [guidance](#) explains what it would find most useful and the appropriate format. Evidence needs to be submitted within a week of the SI being laid before Parliament. To make sure that there is time to follow up its recommendations, the Committee generally considers SIs within 9-15 working days of laying.

The Committee sends any points raised to the relevant department and 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.

Submissions can be sent to hlseclegscrutiny@parliament.uk (committee meetings are held in private so it is more effective to engage with the committee staff rather than the 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. You can find the members of the committees [here](#) every sitting Wednesday in the Votes and Proceedings paper under 'General Committees: Appointments'. In practice it is often only the opposition front bench who raise points in committee discussions. For debates in the main Chamber, briefings should set out concerns with the SI and related points which you would like MPs to 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 key concerns any briefing should, where relevant, reference the report of the Secondary Legislation Scrutiny Committee and any response from the government, as well as questions for Peers to 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. The more common form is a motion to express regret over 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.

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