

Co-Presidents

The Rt Hon Sir  
Lindsay Hoyle MP  
Speaker of the  
House of Commons

The Rt Hon the Lord  
McFall of Alcluith  
Lord Speaker

Office of the Prime Minister  
10 Downing Street  
Westminster  
London, SW1A 2AA

17 October 2023

Dear Prime Minister

## A new approach to politics and Net Zero

Following your recent speeches on 20 September (about Net Zero) and 4 October (Party Conference) in which you made clear your desire to “change the way our politics works” and see more debate and “fundamental scrutiny” of the big challenges facing the country, **I am writing to ensure that you are aware of the Hansard Society’s proposals for reform of the parliamentary procedures for Statutory Instruments.**

In your 20 September speech you noted the cursory consideration given to the Carbon Budget Order 2021 (SI No.750/2021). As in the case of the Carbon Budget Order, many of the major long-term issues facing the country are addressed, at least in part, through delegated rather than primary legislation.

The Hansard Society is shortly to publish proposals for wholesale reform of the delegated legislation scrutiny system at Westminster that, if implemented, would enable much more in-depth and better-informed debate and scrutiny of the most important Statutory Instruments (SIs) by MPs, whilst allowing the majority of SIs – those that are less politically salient and controversial – a simpler passage. Unless such reforms are implemented, the next Carbon Budget will be subject to the same unsatisfactory process as its 2021 predecessor, and the change that you want to see will not be realised.

This letter therefore seeks your support for our proposed reforms.

The table at the end of this letter summarises how the Hansard Society’s proposals, if they were implemented by then, would make the process for the next Carbon Budget fulfil your ambition that it be more responsible, accountable and sustainable.

## Hansard Society Delegated Legislation Review

The Hansard Society’s reform proposals arise out of our Delegated Legislation Review which we have been conducting with funding from The Legal Education Foundation and the support of a cross-party advisory panel. Steve Baker MP and subsequently the Rt Hon Mark Harper MP both served on the panel until they had to resign on their appointment as Government Ministers last year. The fact that our proposals enjoy the support of a panel which also included Dame Angela Eagle MP and Kirsty

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Blackman MP testifies to the fact that MPs from all sides of the House can agree on the unsatisfactory nature of the current system.

The Review published an interim proposals paper for consultation in February 2023; I enclose the Executive Summary to provide more information about our proposed reforms. We are now preparing our final report for publication before the end of 2023.

### Next steps

Some of our proposals could be trialled or implemented immediately, via changes to Standing Orders. Some will require legislation, in the form of a new Statutory Instruments Act, to replace the existing legislation which is now 77 years old. A new Bill would be likely to be a short one, perhaps particularly suitable for introduction in the final Session of a Parliament. However, like its 1946 predecessor, its effects could be felt for decades. I and members of our Advisory Panel would of course be happy to meet with you and your officials to discuss our proposals in more detail.

I am copying this letter to the Leader and Shadow Leaders in both Houses, and to the Chairs of the committees in both Houses that deal with scrutiny of Statutory Instruments, parliamentary procedure and the Carbon Budget Order. I will also be sharing it with the Hansard Society's members and supporters.

As you highlighted in your speech, the price of poorly-conceived and poorly-scrutinised legislation is paid by citizens across the country who are subject to its detrimental effects. Reform of the delegated legislation system is critical if your objective of ensuring better debate and scrutiny of policy proposals with significant implications for the nation's economy and society are to be achieved.

Thank you for your consideration of this matter. I look forward to your response.

Yours sincerely



Dr Ruth Fox  
Director

### Copied To:

- The Rt Hon Penny Mordaunt MP, Leader of the House of Commons
- Lucy Powell MP, Shadow Leader of the House of Commons
- Deidre Brock MP, SNP Spokesperson, House of Commons Business
- The Rt Hon the Lord True, Leader of the House of Lords
- The Rt Hon the Baroness Smith of Basildon, Shadow Leader of the House of Lords
- The Earl of Kinnoull, Convenor of the Crossbench Peers

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- The Rt Hon Karen Bradley MP, Chair, House of Commons Procedure Committee
- The Lord Gardiner of Kimble, Chair, House of Lords Procedure and Privileges Committee and Liaison Committee
- Sir Bernard Jenkin MP, Chair, House of Commons Liaison Committee
- Jessica Morden MP, Chair, Joint Committee on Statutory Instruments
- Andrew Jones MP, Chair, European Statutory Instruments Committee
- The Rt Hon the Lord Hunt of Wirral, Chair, Secondary Legislation Scrutiny Committee
- The Rt Hon Philip Dunne MP, Chair, House of Commons Environmental Audit Committee
- Craig Williams MP, Parliamentary Private Secretary to the Prime Minister
- Nicola Richards MP, Parliamentary Private Secretary to the Leader of the House of Commons
- Chris Clarkson MP, Parliamentary Private Secretary to the Leader of the House of Lords



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## How would the Hansard Society's proposed reforms make a difference?

Pre-reform	Post-reform
<p><i>(i) Delegated Legislation Committees: superficial scrutiny</i></p> <p>In your speech you were rightly critical that MPs debated the <i>Carbon Budget Order 2021</i>, in a Delegated Legislation Committee (DLC), for just 17 minutes. But our research shows that this is normal: the average length of a DLC meeting is 26 minutes, with some lasting under a minute. In a similar vein, only six of the 17 MPs appointed to the DLC attended the meeting; and only the Minister and Opposition spokesperson spoke.</p> <p>The superficiality of this scrutiny reflects the nature of DLC debates: because SIs cannot be amended, and DLC debates are held on 'take note' motions, these debates are without political incentive or consequence for MPs on the Committee. Procedurally, DLC debates are unconnected to the whole House's subsequent decision on the SI and typically take place too late before the House's decision for any concerns raised to be properly addressed.</p>	<p>Our proposed reforms would incentivise and facilitate more in-depth and better-targeted scrutiny by MPs of those SIs that merit it, by:</p> <ul style="list-style-type: none"> <li>• Replacing the current system of pre-determined scrutiny procedures with one in which MPs have a say in identifying the SIs that they wish to debate, through 'triage' of SIs by a new <b>Joint Secondary Legislation Sifting Committee (JSLSC)</b>. The JSLSC could swiftly identify most SIs as unimportant or issue-free, so preventing the unnecessary DLC debates that sometimes take place on uncontroversial measures at present and allowing the Government to make and bring these SIs into force quickly. This would leave parliamentarians – and Ministers – to focus their time and resources on SIs with significant economic and policy implications that merit further scrutiny and debate, such as a future <i>Carbon Budget Order</i>.</li> <li>• Replacing DLCs with <b>permanent, policy-area-based Regulatory Scrutiny Committees (RSCs)</b> that would scrutinise only the SIs sifted to them by the JSLSC, and that could do so in a tailored format depending on the SI. If an RSC wished to hold a debate on an SI, it could do so on an amendable motion, giving MPs more incentive to engage.</li> </ul>

<p><i>(ii) Scrutiny of policy: inadequate access to research support and expert analysis</i></p> <p>In your speech you indicated that, the next time the House of Commons debates a <i>Carbon Budget Order</i>, you want to furnish MPs with more information about how the Government plans to meet the Budget requirements. However, in the current unchanged system, there is no mechanism to enable MPs to analyse and make effective use of any such information when debating an SI.</p> <p>DLCs are temporary committees which are often appointed only days (at most) before a debate and which have no permanent staff support. The <i>Carbon Budget Order 2021</i> had a 76-page Impact Assessment, which represents a welcome (and sadly quite rare) level of Government information; but it is hard for MPs to analyse this type of often-dense financial, legal and technical documentation without expert support, especially in the short timescale required. The situation is not necessarily any better if an SI is debated in the Chamber.</p>	<p>A new <b>Parliamentary Office for Statutory Instruments (POSI)</b>, established as a joint department of the two Houses and headed by an Officer for Statutory Instruments, would provide official support to both the Joint Secondary Legislation Sifting Committee (JSLSC) and the permanent Regulatory Scrutiny Committees (RSCs). The POSI would produce reports on SIs that would be available to Members of both Houses. This would raise significantly the visibility, status and resourcing of SI scrutiny, as well as streamline the current system of SI scrutiny committees and their staff across the two Houses.</p>
<p><i>(iii) House of Commons scrutiny: a democratic deficit compared to the Lords</i></p> <p>More Peers participated in the House of Lords' debate on the <i>Carbon Budget Order 2021</i> than did MPs in the House of Commons' equivalent. The House of Lords also debated the SI for longer.</p> <p>Partly, this reflects the fact that the Upper House has a dedicated scrutiny committee to sift and scrutinise all SIs,</p>	<p>Our proposals would plug the House of Commons' democratic deficit on SIs by:</p> <ul style="list-style-type: none"> <li>• Giving the elected House the benefit of its own SI scrutiny committees, in the shape of the new permanent <b>Regulatory Scrutiny Committees (RSCs)</b>.</li> <li>• <b>Making motions to approve SIs in the House of Commons amendable</b>, so that MPs could propose changes to an SI before it is approved. This would</li> </ul>

<p>whereas the House of Commons does not. The work of the House of Lords Secondary Legislation Scrutiny Committee (SLSC) ensures that all Peers have access to reports exploring the policy merits of SIs. In the case of the <i>Carbon Budget Order 2021</i>, the SLSC had drawn the SI to the special attention of the House, on the grounds of its importance, and flagged in its report that there were “significant challenges” involved in meeting the sixth carbon budget, as identified in the Impact Assessment. During the Lords committee debate, several Peers expressed serious reservations about the implications of the Order, particularly the absence of policy detail about the way in which the Government proposed to achieve its objectives.</p> <p>The fact that the elected House has no such committee, and MPs have no access to analysis of their own of the policy merits of SIs, represents a significant democratic deficit.</p> <p>In contrast to their elected counterparts, Peers are also able to move amendments to approval motions for SIs.</p>	<p>avoid the difficulties that would arise if MPs were able to amend the text of SIs directly, while allowing MPs to express the concerns they have about an SI that would need to be addressed before it was made into law. This would incentivise scrutiny by MPs and provide an opportunity to rigorously test the Government’s proposals.</p>
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# Proposals for a New System for Delegated Legislation

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A Working Paper of the  
Hansard Society Delegated Legislation Review

Executive Summary

6 February 2023



## Acknowledgements

The Delegated Legislation Review (DLR) is an initiative of the Hansard Society and funded by The Legal Education Foundation.

## For further information please contact:

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## Foreword

This Working Paper presents the preliminary proposals arising from the Delegated Legislation Review (DLR) which the Hansard Society has been conducting since November 2021 with financial support from The Legal Education Foundation.

The DLR draws on the Hansard Society's unique record of research and data collection on delegated legislation at Westminster that now stretches back over a decade.

The Review has been supported by a cross-party Advisory Panel chaired by the Society's Chair, Baroness Taylor of Bolton.

The other members of the Panel are:

- Baroness Andrews (Labour);
- Steve Baker MP (Conservative) (until September 2022; resigned on appointment as a Minister of State in the Northern Ireland Office);
- Sir David Beamish (Hansard Society Trustee and former Clerk of the Parliaments, House of Lords (2011-17));
- Kirsty Blackman MP (SNP);
- Dame Angela Eagle MP (Labour);
- Paul Evans CBE (Hansard Society member and former Clerk of Committees, House of Commons (2016-20));
- Mark Harper MP (Conservative) (September-October 2022; resigned on appointment to the Cabinet as Secretary of State for Transport);
- Sir Jonathan Jones KC (former Treasury Solicitor and Permanent Secretary of the Government Legal Department (2014-20));
- Professor Jeff King (Professor of Law, University College London);
- The Lord Lisvane KCB DL (former Clerk of the House and Chief Executive of the House of Commons (2011-14)); and
- Professor the Lord Norton of Louth (Hansard Society member and Professor of Government and Director of the Centre for Legislative Studies, University of Hull).

The Panel has met quarterly to discuss the key issues and challenges involved in reforming the system of delegated legislation. Outside the regular meeting schedule, members of the Panel have offered further support in their areas of expertise through meetings and events. We are grateful for their support and advice in developing these preliminary proposals. Discussion between the Panel members was robust: there was much on which they all agreed, but there were also differences of view on the amount of weight to place on particular factors in the analysis of the problems, and Panel members do not all agree on every aspect of these proposals. This Working Paper is the Society's not the Panel's, and any omissions or errors are ours alone.

## Feedback

We welcome feedback from parliamentarians, parliamentary staff, civil servants, users of delegated legislation and other stakeholders as we prepare our recommendations and final report later this year.

A number of questions on which we would be particularly interested to hear views are identified through the paper and also presented as a single list in Appendix A. As well as responses to specific aspects of the proposals, we would welcome feedback about the proposals in general.

Please send any comments or suggestions **by 20 March 2023** to:  
[contact@hansardsociety.org.uk](mailto:contact@hansardsociety.org.uk).

## Executive Summary

Legislative scrutiny is one of Parliament's core functions, but the delegated legislation system is no longer fit for purpose. It is now a growing source of political frustration across the political spectrum.

The system undermines the constitutional balance between the executive and the legislature, damages the reputation of Parliament and squanders one of the most valuable commodities in politics: MPs' and Ministers' time, particularly that spent in pointless Delegated Legislation Committees (DLCs) in the Commons. Excellent scrutiny of Statutory Instruments (SIs) is conducted in the House of Lords, but parliamentarians' inability to amend an Instrument blunts the value and impact of this work. Civil servants also waste time and resources navigating what has become an increasingly complex system.

But ultimately the price of poorly-conceived, poorly-drafted and poorly-scrutinised legislation is paid by citizens across the country who are subject to its detrimental effects. Unless the problems with the system are addressed, public acceptance of the democratic legitimacy of delegated legislation will come under increasing strain. This Working Paper sets out our 13 draft proposals to reform the system.

### **Proposal 1: A Concordat on Legislative Delegation should be agreed between Parliament and Government to reset the boundary between primary and delegated legislation.**

The UK has no binding rules that govern what delegated legislation can be used for. In practice, the boundary between primary and delegated legislation has now shifted intolerably. To reset the boundary, Parliament and Government should negotiate and agree a Concordat comprising a set of 'Principles of Legislative Practice' for the preparation, production and scrutiny of delegated powers and Statutory Instruments, and a list of 'Criteria on the Use of Delegated Legislation', setting out matters that should not be included in delegated legislation. If a Bill was presented containing provisions that Parliament deemed incompatible with the Concordat, then these powers, and the subsequent regulations laid under them after Royal Assent, could be subjected to additional scrutiny. (Paragraphs 8-26)

### **Proposal 2: A new Statutory Instruments Act should remove the existing scrutiny procedures applied by parent Acts to the use of delegated powers. In their place, a new single scrutiny procedure should apply to all SIs, in which Parliament can calibrate the level of scrutiny to the content of the Instruments.**

A new SI Act is needed to break the link between an SI and the scrutiny procedure assigned in its parent Act. The current scrutiny procedures ('negative', 'affirmative' and the various 'strengthened' procedures) should be replaced by a single procedure, thereby simplifying the system. Under this procedure, Parliament should determine – through a triaging process – the degree of scrutiny to which an SI should be subject (see Proposal 5). This would prevent needless debates on uncontroversial measures, while ensuring that more controversial Instruments receive the scrutiny they deserve. (Paragraphs 34-38)

**Proposal 3: All SIs should be laid before Parliament in draft, other than in exceptional circumstances.**

Laying all SIs in draft would be more administratively efficient, facilitating the correction of errors before an SI is made into law, so obviating the need to make a subsequent correcting or substituting SI. The length of time between an SI being laid and it coming into force would not deviate significantly from existing practice: the majority of SIs would still come into force within weeks of being laid. Only when serious concerns about an SI were identified would progress slow. (Paragraphs 39-43)

**Proposal 4: A Parliamentary Office for Statutory Instruments (POSI) should be established as a joint department of both Houses of Parliament to analyse and produce briefings on SIs for MPs and Peers.**

The staff-led analysis currently undertaken by existing committees should be undertaken by a new joint Parliamentary Office for Statutory Instruments (POSI), headed by an 'Officer for Statutory Instruments'. This would raise the visibility, status and resourcing of SI scrutiny, and streamline a process that currently engages multiple committees across both Houses, so providing a central focal point for SI scrutiny. (Paragraphs 46-54)

**Proposal 5: A Joint Secondary Legislation Sifting Committee (JSLSC) should be established to determine which SIs require further scrutiny and approval by Parliament.**

A new joint committee of MPs and Peers should be established to triage SIs to determine what further parliamentary scrutiny is desirable. The majority of SIs would be sifted to 'Group A': SIs that raise no issues of legal, policy, drafting or procedural importance. The Government would be able to make these SIs into law immediately once the sifting process is complete. A smaller share of SIs would be sifted to 'Group B': these SIs would merit further scrutiny because they raise legal or political issues likely to be of interest to Members. Compared to the current system, the time spent by Ministers and parliamentarians debating SIs should therefore be better targeted. (Paragraphs 55-65)

**Proposal 6: In the House of Commons, a set of permanent Regulatory Scrutiny Committees (RSCs) should be established to scrutinise, debate – and in some circumstances – approve SIs placed into 'Group B' by the JSLSC.**

House of Commons Delegated Legislation Committees (DLCs) should be abolished. In their place, new permanent Regulatory Scrutiny Committees (RSCs) should undertake scrutiny of SIs that have been placed in Group B by the JSLSC. RSC scrutiny would not be limited to formal debates on SIs; they could tailor the nature of their scrutiny to the concerns raised by the content of the Instrument. For example, the Committees could hold Q&A sessions with the Minister, officials, or stakeholders. RSC debates would be held on an amendable substantive motion (not the toothless 'take note' motion used by DLCs). RSC members would be supported by a permanent staff drawn from the Parliamentary Office for Statutory Instruments (POSI). (Paragraphs 67-75)

**Proposal 7: In the House of Commons, motions to approve SIs should be amendable so that MPs can propose changes to an SI before it is approved.**

Rather than direct textual amendment of an SI (which would present a number of practical difficulties), MPs should be able to table amendments to SI approval motions debated in the Commons (including in RSCs). These amendments would outline in narrative form the Members' concerns with the SI that must be addressed before the SI is made into law. An amended motion would indicate conditional approval of the Instrument – that is, approval provided that the modifications identified in the amended motion were implemented. This would incentivise scrutiny by MPs and provide an opportunity to rigorously test the Government's proposals. (Paragraphs 76–83)

**Proposal 8: In the House of Lords, a new 'think again' procedure should be introduced so that Peers can ask the House of Commons to consider their concerns before an SI is approved.**

To properly perform its revising function, the House of Lords needs a power that is more effective than both a non-fatal motion merely expressing regret about an SI, and a fatal motion that rejects the Instrument entirely. Peers should be able to provisionally withhold their approval or disapproval of an Instrument while they ask the House of Commons to consider their concerns. 'Think again' motions would detail Peers' concerns about an SI and be conveyed to MPs by means of a 'message' between the two Houses. MPs would have to debate and respond to those concerns. (Paragraphs 84–90)

**Proposal 9: A 30-sitting-day 'safety window' should be introduced during which any parliamentarian could table a revocation motion against an SI after it had been made.**

The 'safety window' would protect the rights of parliamentarians who were not involved in the scrutiny process (for example, who were not Members of the sifting Committee or the relevant RSC). Parliamentarians with concerns about a made SI could seek a revocation debate on the Instrument (unless the SI had been approved following a debate in the Commons Chamber). If a revocation motion were passed, the SI would be automatically revoked after a set period. (Paragraphs 91–94)

**Proposal 10: A new urgent procedure should be introduced for use only in exceptional circumstances when the Government needs an SI to be made and come into force more quickly than is possible under the new standard scrutiny procedure.**

In cases of genuine emergency, SIs under any power could be made and if necessary come into force in advance of laying before Parliament, subject to a range of stringent conditions including: written and oral statements by Ministers; during a recess the Speaker in each House determining whether a recall is needed; and automatic expiry of the SI after a set period. These conditions should secure the accountability of Government to Parliament and discourage Ministers from abusing the procedure. The procedure could also be used in certain statutorily-defined circumstances in which an SI must come into force soon after being laid

(for example to impose sanctions or indirect taxes). In these cases, most emergency conditions would not apply: the SI would be placed in Group B for further detailed scrutiny. (Paragraphs 100-103)

**Proposal 11: The UK's legislatures should agree a hierarchy of conditions that must be met before a UK Minister can lay and / or make an SI that engages a devolved competence.**

An inter-parliamentary working group should be established comprising Members and officials of each of the five legislative chambers and four executives in the UK, to negotiate an agreement about the conditions relating to consultation, timing and consent under which a UK Minister can lay and / or make an SI in areas of devolved competence. (Paragraphs 107-110)

**Proposal 12: The Joint Secondary Legislation Sifting Committee (JSLSC) should be able to delay Parliament's approval of an SI where the Parliamentary Office for Statutory Instruments (POSI) finds that important information and / or supporting documentation has not been provided by Ministers. POSI and the National Audit Office should report regularly on the relative performance of Departments in relation to the preparation of SIs.**

Parliament's scrutiny of SIs is hindered when Ministers lay SIs with incomplete or inadequate supporting documentation. To incentivise better preparation of SIs, a time penalty should be incurred in the form of a delay in the approval of an SI if Ministers fail to provide the materials required for Parliament to conduct its scrutiny. Sessional reporting to Parliament by the POSI and annual reporting by the National Audit Office would also help drive improvements in departmental performance in the preparation of SIs. (Paragraphs 120-126)

**Proposal 13: Parliament should publish draft SIs together with related materials on its website, bringing the SI publication process in line with that for primary legislation.**

The National Archives publishes all SIs at legislation.gov.uk. This includes both SIs that have been made and are law, and draft SIs which are not law at the point they are published. This is an historic anomaly and can be confusing for non-experts. Under our proposals, all SIs – with exceptions only for matters of genuine urgency – would be laid in draft. To reflect this change, Parliament's website should become the primary repository for SIs and their supporting documentation until such time as the Instrument is made. (Paragraphs 127-132)