

Statutory Instrument Practice

**A guide to help you prepare and publish
Statutory Instruments and understand the
Parliamentary procedures relating to them**

- 5th edition (November 2017)

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Any enquiries regarding this publication should be sent to:
siregistrar@nationalarchives.gsi.gov.uk.

Preface

This is the fifth edition of Statutory Instrument Practice (SIP) and replaces the edition published in November 2006.

This edition has been prepared by the Legislation Services team at The National Archives. We will contact you regularly to make sure that this guide continues to meet your needs, and remains accurate. If you would like to suggest additional changes to us, please email them to the SI Registrar.

Thank you to all of the contributors who helped us to update this edition.

You can download SIP from: <https://publishing.legislation.gov.uk/tools/uksi/si-drafting/si-practice>.

November 2017

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PART 1: INTRODUCTION

1. ABOUT SIP AND STATUTORY INSTRUMENTS

1.1 How to use the Statutory Instrument Practice (SIP) Guide

The National Archives, the Queen's Printer and HMSO

- 1.1.1 SIP is produced by the Legislation Services team at The National Archives. The National Archives is a non-ministerial department and the Government's official archive for England, Wales and the United Kingdom.
- 1.1.2 Formally, the functions of Her Majesty's Stationery Office (HMSO) are operated from within The National Archives, including official publishing and the management of Crown rights, for copyright and database rights. The Queen's Printer of Acts of Parliament (Controller of HMSO and an official in The National Archives) is therefore responsible, on behalf of the Crown, for registering, numbering and printing UK Statutory Instruments as they are first enacted or made.
- 1.1.3 The National Archives is responsible for revising legislation and delivering the legislation.gov.uk website. Day-to-day these responsibilities are carried out either in-house or by a Publishing Contractor. The National Archives manages and maintains legislation.gov.uk, which provides public access to legislation both as it is first enacted or made and, for primary legislation, in a revised form showing changes to the legislation over time. We are also the custodians of the official legislation database, which stores and manages legislation for all parts of the UK.

The purpose of SIP

- 1.1.4 The purpose of SIP is to provide:
- a general introduction to the different Classes of Statutory Instruments (SIs) you might need to produce;
 - guidance about Parliamentary process and the different Classes of SI;
 - instruction on their required form and content;
 - instruction on how to validate and submit your SIs so that they can be registered, laid and published; and
 - an overview of the Parliamentary scrutiny processes for SIs.

1.1.5 SIP is a practice guide for those involved in preparing and making SIs. It is not a textbook of the law. However, it does set out good practice and proper procedure.

1.1.6 SIP does not provide guidance on Scottish SIs, Welsh SIs and Northern Ireland Statutory Rules:

- There is a separate manual for Scottish Statutory Instruments (the Scottish Statutory Instrument Drafting Manual, maintained by the Scottish Government).
- The Welsh Government has a manual, dealing with matters specific to Wales Statutory Instruments.
- There is a separate manual for Statutory Rules of Northern Ireland (the Handbook on Subordinate Legislation, maintained by the Office of the First Minister and Deputy First Minister in Northern Ireland).

1.1.7 We will review SIP annually (or more regularly if required) and update it accordingly. The most up-to-date version will always be the online version that is on legislation.gov.uk Publishing. In between this formal review process, we welcome ad hoc feedback and updates from SIP users. Email your suggestions and comments to the [SI Registrar](mailto:siregistrar@nationalarchives.gsi.gov.uk)¹.

1.1.8 Though SIP sometimes refers to drafting practices, it is not a guide to drafting. The Government Legal Service (GLS) provides Statutory Instrument Drafting Guidance.

1.1.9 SIP includes links to useful sites and provides full URLs for these links in Appendix A.

1.1.10 SIP also has a subject related index.

1.2 An overview of the Statutory Instrument (SI) process

1.2.1 The process you need to follow will vary according to the Class of SI you are producing. Generally though:

- SIs are secondary legislation, created as a consequence of provisions in an Act of Parliament, called the parent or 'enabling' Act.

¹ siregistrar@nationalarchives.gsi.gov.uk

- The parent Act sets out what type of SI should be produced and the Parliamentary process it should follow.
- SIs are drafted using an electronic template created specifically to make sure that they can be validated for publishing in different formats online and in print (where printing is required).
- Most SIs are then made (i.e. signed) by the Secretary of State or an authorised official.
- Once they have been made, they are submitted for registration. We carry out registration checks, and allocate the SI number as appropriate. After registration the SI is sent to our Publishing Contractor for pre-publication checks.
- Most SIs are then laid before Parliament, and notification that this has happened triggers publishing on legislation.gov.uk and in print, where printing is required.
- Published SIs are then subject to scrutiny by a number of Parliamentary committees. They carry out checks, for example that the SI has been made according to the powers set out in the parent Act, and has been set out in accordance with the instructions in SIP.

1.3 Some background to subordinate legislation

Subordinate legislation

- 1.3.1 Statutory Instruments (SIs) contain subordinate legislation. Subordinate legislation is also called delegated or secondary legislation.
- 1.3.2 The term ‘Statutory Instrument’ contains most subordinate legislation made by central Government since January 1948, though sometimes the term ‘Statutory Instruments’ is used to include earlier instruments that are more correctly called Statutory Rules and Orders.

Note: The [Statutory Instruments Act 1946](#)¹ came into force on 1 January 1948.

- 1.3.3 Subordinate legislation is made under powers conferred:

¹ <http://www.legislation.gov.uk/ukpga/Geo6/9-10/36>

- by an Act on the Secretary of State or a Minister;
- by an Act on Her Majesty in Council, or by and with the advice of Her Majesty's Privy Council;
- on a Department such as HM Revenue and Customs, the Welsh Ministers, Scottish Ministers or Northern Ireland Ministers;
- on some other body or person.

Subordinate legislation is distinct from primary legislation in the form of statutes, and distinct from primary legislation made by the Sovereign under Royal prerogative (such as Orders in Council, proclamations, Royal warrants, Royal instructions, regulations and letters patent).

- 1.3.4 Sometimes a parent Act states that an SI made under it can itself confer power to make further instruments, usually in the form of Rules or regulations. The exercise of this power is known as sub-delegated legislation.

Making and coming into force of subordinate legislation

- 1.3.5 There is no general rule of law about how subordinate legislation is made.

- Most subordinate legislation is made when it is signed by the person authorised by the parent Act, or by someone properly authorised to sign on behalf of that person.
- Sometimes, however, the Act provides that the SIs must also have the approval, consent or agreement of some other authority, such as the Treasury, the Welsh Ministers or the Scottish Ministers. Such SIs will not acquire the force of law until this condition has been fulfilled.
- Some SIs come into force when made, but most contain express provision bringing them into force at a later date (if no later date is given, the default assumption is that an SI comes into force at the moment of making). The time when an SI comes into force is known as its 'commencement' (the Interpretation Act 1978, [schedule 1](http://www.legislation.gov.uk/ukpga/1978/30/schedule/1)¹).
- Orders in Council are also a form of subordinate legislation and are made by the oral assent of the Sovereign in Council.

¹ <http://www.legislation.gov.uk/ukpga/1978/30/schedule/1>

Limits of delegated powers

- 1.3.6 Provisions in subordinate legislation must be *intra vires*. This means they must be within the scope of the enabling power. To the extent that they are *ultra vires* (outside the scope) they are invalid, even if the remainder of the instrument is valid. A drafter may, for example, need to consider whether there is power to impose or increase taxation; to sub-delegate; to give the SI retrospective effect; to repeal or amend provisions in statutes; or to bind the Crown. The *ultra vires* doctrine is more fully discussed in works on constitutional and administrative law and in the GLS Statutory Instrument Drafting Guidance.

Combined exercise of powers

- 1.3.7 Various powers, contained in a number of parent Acts, can sometimes be exercised in a single SI, if there are no procedural difficulties. The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 ([SI 2013/1908](http://www.legislation.gov.uk/uksi/2013/1908/made)¹) is an example of this. Two or more Ministers may make an instrument in exercise of powers given to them jointly or individually. There are, however, constraints upon the combined exercise of powers if they are subject to different forms of Parliamentary control.
- 1.3.8 If an SI is made jointly by two Ministers, it is only made when both signatures are obtained. The last date signed is considered to be the date the SI is made.
- 1.3.9 Section 105 of the [Deregulation Act 2015](http://www.legislation.gov.uk/ukpga/2015/20/section/105)² gives the power to combine different types of subordinate legislation.

EU legislation

- 1.3.10 Since the decision was taken for the United Kingdom to leave the European Union, and during the period of preparations for exit, guidance on legislation that relates to the EU will be subject to change. The most up-to-date guidance on implementing EU law should be sought by contacting legal advisers at the Department for Exiting the European Union (DExEU) at dexeula-eu-business-and-contingencies-team@dexeu.gov.uk

¹ <http://www.legislation.gov.uk/uksi/2013/1908/made>

² <http://www.legislation.gov.uk/ukpga/2015/20/section/105>

1.3.11 Guiding Principles for transposing EU legislation are aimed at ensuring the UK systematically transposes EU Law so that burdens are minimised and UK businesses are not put at a disadvantage relative to their European competitors. The Principles state that, when transposing EU law, the Government will:

- ensure that (save in exceptional circumstances) the UK does not go beyond the minimum requirements of the measure which is being transposed;
- wherever possible, seek to implement EU policy and legal obligations through the use of alternatives to regulation;
- endeavour to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts;
- always use copy-out for transposition where it is available, except where doing so would adversely impact clarity or would adversely affect UK interests e.g. by putting UK businesses at a competitive disadvantage compared with their European counterparts or going beyond the minimum requirements of the measure that is being transposed. If Departments do not use copy-out, they will need to explain to the Reducing Regulation Committee (RRC) the reasons for their choice;
- ensure the necessary implementing measures come into force on (rather than before) the transposition deadline specified in a Directive, unless there are compelling reasons for earlier implementation; and
- include a statutory duty for ministerial review every five years.

The Technical Standards Directive: notifying the European Commission

1.3.12 The [Technical Standards Directive](#)¹ only applies to some Departments and relevant categories of SIs. Under this directive Departments must notify the European Commission (in draft) about Rules (referred to in the directive as “Technical Regulations”) if they apply in the UK, or a major part of it, and regulate:

¹ <https://www.gov.uk/government/publications/technical-standards-and-regulations-directive-9834ec-guidance-for-officials>

- industrially manufactured or agricultural products (including bans on products, rules about their composition, packaging or testing and rules that relate to their subsequent use, etc.); or
- electronic services provided on a commercial basis (e.g. services provided over the internet).

1.3.13 After notification of the draft SI, there is a minimum standstill period of three months when the draft SI cannot be made. Failure to observe these requirements renders the SI unenforceable. UK SIs are notified via the Central Unit at the Department for Business, Energy and Industrial Strategy (BEIS). There are limited exceptions. The Explanatory Note to the finalised SI must include a statement that a draft was notified for the purposes of the Technical Standards Directive and include the relevant notification number. [Guidance](#)¹ on implementing the Technical Standards Directive is available on www.gov.uk.

1.4 Types of Statutory Instrument

1.4.1 SIs contain subordinate legislation in a variety of forms. The type of SI required is set out in the parent Act and the related Parliamentary procedures are set out in Part 2: Parliamentary Control and SI Classes. Common types of SIs are:

- Regulations
- Orders
- Rules
- Orders in Council
- Orders of Council

Regulations, Rules and Orders

1.4.2 Please note that from 20 March 2014 the Government recommended that powers to make delegated legislation conferred by Government Bills should generally take the form of regulation-making powers and not Order-making powers. This applies to powers to commence an Act as well as to other powers. This is set out

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/490271/BIS-16-15-directive-2015-1535-guidance.pdf

in the Office of the Parliamentary Counsel's [Drafting Guidance for Government Bills](#)¹. This recommendation will not affect Rules or Orders in Council.

1.4.3 The recommendation in the revised drafting guidance does not alter the current practice of using Rules; Orders in Council; or Orders subject to special procedure under the [Statutory Orders \(Special Procedure\) Act 1945](#)².

1.4.4 In some cases it may still be appropriate to create a new Order-making power, for example when amending an old Act that contains Order-making powers, or when creating a new power that needs to be exercised with existing Order-making powers.

1.4.5 In these cases the following options should be considered:

- expressing the new power as a power to make an Order;
- expressing the new power as a power to make an Order or regulations.

1.4.6 However it should be noted that section 105 of the Deregulation Act 2015 provides authority for a statutory instrument to be in the form of an Order, regulations or rules despite what is said in primary legislation conferring power to make the instrument. This would also enable provisions that would otherwise have had to be included in separate instruments in different forms (for example as a single set of regulations).

1.4.7 Where reliance is placed on section 105 of the Deregulation Act 2015, this should not be cited in the preamble of the instrument, nor should a footnote be included by way of explanation.

Orders in Council

1.4.8 Some Orders in Council are primary legislation made under the Royal prerogative. Most are secondary legislation, made under statutory powers.

1.4.9 Secondary legislation Orders in Council are used for a wide variety of purposes, where an SI made by a Minister would be inappropriate. An example might be an Order which transfers ministerial functions, or sub-delegates power to a Minister to make subordinate legislation. Another might be where the Order is, in effect, a constitutional document, for example extending legislation to the Channel Islands or the Isle of Man, or legislating for United Kingdom dependencies. Orders in

¹ <https://www.gov.uk/government/speeches/drafting-guidance-for-government-bills>

² <http://www.legislation.gov.uk/ukpga/Geo6/9-10/18/contents>

Council are prepared by the responsible Minister's Department (the 'responsible authority' as defined in the Statutory Instruments Regulations 1947, [regulation 1\(2\) \(b\)](#)¹).

1.4.10 For more information on Orders in Council, see the [Privy Council](#)² website.

Orders of Council

1.4.11 Orders of Council are made by the Privy Council in exercise of powers conferred on them alone i.e. without the Sovereign. Such powers usually relate to the regulation of professions or professional bodies: see for example the Opticians Act 1989, section 34 (2) and (4)³.

1.4.12 For more information on Orders of Council, see the [Privy Council](#)⁴ website.

Commencement Instruments

1.4.13 A Commencement Instrument (Order/regulation/Appointed Day Order) exercises a power to appoint a day on which an Act, or part of an Act, comes into force. Such powers should be exercised in a separate Commencement Instrument, or series of Commencement Instruments, and not by a provision in an SI dealing with other matters. Transitional and/or savings provisions are sometimes included in Commencement Instruments if authorised by the parent Act.

1.4.14 A Commencement Instrument can include provision under [section 104](#) of the Deregulation Act 2015⁵.

Public Bodies Orders

1.4.15 A Public Bodies Order (PBO) is made under powers conferred to Ministers under the [Public Bodies Act 2011](#)⁶ (see [drafting Public Bodies Orders guidance](#)⁷).

1.4.16 Public Bodies Orders are used to abolish, merge or modify constitutional or funding arrangements, or to modify or transfer functions of public bodies that are listed in the appropriate Schedule to the Act. The Public Bodies Act 2011 sets out tests that must be satisfied and the enhanced scrutiny procedure for the Orders, if the Scrutiny Committee believes it is appropriate. The Act also sets out the time

¹ <http://www.legislation.gov.uk/uksi/1948/1/regulation/1/made>

² <http://privycouncil.independent.gov.uk/privy-council/orders/>

³ <http://www.legislation.gov.uk/ukpga/1989/44/section/34>

⁴ <http://privycouncil.independent.gov.uk/privy-council/orders/>

⁵ <http://www.legislation.gov.uk/ukpga/2015/20/section/104>

⁶ <http://www.legislation.gov.uk/ukpga/2011/24/contents>

⁷ <https://www.gov.uk/government/publications/legislative-reform-orders-guide-for-policy-officials>

limits for making Public Bodies Orders (5 years from commencement of the Act on 14 December 2011).

- 1.4.17 The Parliamentary Control required for Public Bodies Orders is set out in Part 2: Parliamentary Control and SI Classes.

Legislative Reform Orders

- 1.4.18 A Legislative Reform Order (LRO) can amend primary legislation without requiring a Parliamentary Bill, and is made under the powers of the [Legislative and Regulatory Reform Act 2006](#)¹.
- 1.4.19 The purpose of LROs is to remove or reduce burdens resulting from legislation and to improve the way regulatory functions are carried out. The Legislative and Regulatory Reform Act 2006 sets out tests that must be satisfied. For more information there is detailed guidance on [drafting Legislative Reform Orders](#)² and you can find past examples of LROs on the [Delegated Powers Committee](#)³ page on the UK Parliament website.
- 1.4.20 The Parliamentary Control required for Legislative Reform Orders is set out in Part 2: Parliamentary Control and SI Classes.

Special Procedure Orders

- 1.4.21 Special Procedure Orders are those that are subject to the special Parliamentary procedure set out in the [Statutory Orders \(Special Procedure\) Act 1945](#)⁴ (as amended by the [Statutory Orders \(Special Procedure\) Act 1965](#)⁵). They usually relate to the acquisition of land, or rights over land, by a Government Department or public authority; or they establish or extend the powers of a water or harbour authority.
- 1.4.22 These Orders follow a procedure that allows people or bodies that are especially affected by the Order to petition against it, to either House of Parliament. Some Special Procedure Orders have to be made as SIs, but are excepted from some of the requirements that normally apply to SIs. They cannot be laid before Parliament before the outcomes of any consultation or inquiries have been

¹ <http://www.legislation.gov.uk/ukpga/2006/51/contents>

² <https://www.gov.uk/government/publications/legislative-reform-orders-guide-for-policy-officials>

³ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/delegated-powers-and-regulatory-reform-committee/lros/>

⁴ <http://www.legislation.gov.uk/ukpga/Geo6/9-10/18/contents>

⁵ <http://www.legislation.gov.uk/ukpga/1965/43/contents>

considered (these requirements are set out in The Statutory Orders (Special Procedure) Act 1945).

- 1.4.23 Special Procedure Orders also require a notice in the London Gazette (now known as [The Gazette](#)¹) three days before laying, to evidence compliance. The SI also needs to be laid with a certificate that sets out how you have complied with the 1945 Act.

Localism Orders

- 1.4.24 Localism Orders arise from the [Localism Act 2011](#)². The aim of the Act is to devolve more decision making powers from central government back into the hands of individuals, communities and councils. It covers a wide range of issues related to local public services, with a focus on the general power of competence, community rights, neighbourhood planning and housing.
- 1.4.25 Sections 5, 6 and 7 of the Act deal with Localism Orders. Section 5 of the Localism Act 2011 sets out the powers of the Secretary of State to use a Localism Order to amend, repeal, revoke or disapply provisions that the Secretary of State thinks are preventing or restricting local authorities, or where the Secretary of State thinks that provisions overlap. It also sets out the need for consultation with local authorities, local Government representatives or other appropriate persons. Before making an Order that has effect in relation to Wales, the Secretary of State must consult the Welsh Ministers.
- 1.4.26 The Parliamentary Control for Localism Orders is set out in Part 2: Parliamentary Control and SI Classes.

Other forms of secondary legislation

- 1.4.27 Other forms of secondary legislation that are sometimes made as an SI include schemes, approval instruments, directions, warrants, codes of practice and byelaws.
- 1.4.28 Resolutions under the House of Commons Members' Fund Act 1948, [section 3](#)³, are also numbered and published as SIs.
- 1.4.29 Where a document, that is not an SI, requires an SI to confirm or approve it, the usual practice is to include the document as a Schedule to the SI.

¹ <http://www.thegazette.co.uk/>

² <http://www.legislation.gov.uk/ukpga/2011/20/contents>

³ <http://www.legislation.gov.uk/ukpga/Geo6/11-12/36/section/3>

Divisions and sub-divisions of legislative instruments

1.4.30 Table A (which includes primary as well as secondary legislation) shows the names commonly used for the divisions and sub-divisions of legislative instruments. In addition to its use in connection with bills, 'clause' is often used as a general term for the divisions of subordinate legislation, as in 'commencement clause' or 'interpretation clause'.

Table A – Legislative instruments: divisions and sub-divisions

Instrument	First division (numbered 1, 2, 3 etc)	Second division (numbered (1), (2), (3) etc)	Third division (lettered (a), (b), (c) etc)
Act	section	subsection	paragraph
Bill	Clause*	subsection	paragraph
Order in Council, Order of Council or Order	article	paragraph	sub-paragraph
Regulations	regulation	paragraph	sub-paragraph
Rules	rule	paragraph	sub-paragraph
Schedule	paragraph	sub-paragraph	paragraph

*"section" within Bills of the Scottish Parliament.

Local and general SIs

1.4.31 SIs are classified, according to their subject matter, as local or general. Subject to exceptions, general instruments must be printed and put on sale. Local instruments are not always printed. All SIs and associated documents are published online at legislation.gov.uk.

1.5 Parliament and Statutory Instruments

1.5.1 The type of Parliamentary control needed for the SI is set out in the parent Act. It may be exercisable by both Houses or, if the SI relates to financial matters, by the House of Commons alone. An SI is laid before Parliament by sending copies to the proper officer(s) of Parliament.

1.5.2 According to the procedure applied to them, SIs fall into one of the nine Classes shown in Part 2: Parliamentary Control and SI Classes.

1.5.3 SIs can be negative or affirmative. Affirmative procedures mean that each House has to approve the SI. If an SI requires affirmative procedure, this is set out in the parent Act. It normally means that it is seen as more significant or sensitive, therefore requiring a higher level of scrutiny. Negative procedures mean that the SI will remain in force, or may be made following the laying of the instrument in draft, unless a Member introduces a negative resolution (known as a ‘prayer’) and the resolution is agreed to by means of a vote. There is a flowchart explaining the difference between affirmative and negative procedure on the [Hansard](#)¹ website.

1.5.4 For some SIs, no Parliamentary control is required.

Parliamentary committees

1.5.5 A number of Parliamentary committees are specifically concerned with SIs. They are described in more detail in Part 5: Scrutiny Committees. The following is an overview of what they do:

- The Joint Committee (of both Houses) on Statutory Instruments: The JCSI scrutinises general SIs, and instruments subject to affirmative procedure, in accordance with criteria set out in their Orders of Reference concerning legal drafting. JCSI scrutiny also covers local instruments with any parliamentary procedure.
- The House of Commons Select Committee on Statutory Instruments: The SCSi considers SIs made in exercise of powers granted by Act of Parliament which are subject to scrutiny in the House of Commons but not the House of Lords, concerning legal drafting i.e. they consider instruments subject to negative or affirmative procedure.
- The Secondary Legislation Scrutiny Committee: is the successor to the House of Lords Select Committee on the Merits of Statutory Instruments and examines the policy merits of SIs subject to Parliamentary procedure. The Committee also scrutinises Public Bodies Orders to consider whether they meet the tests set out in [section 8](#)² of the Public Bodies Act 2011.
- Two other Committees, the House of Commons Regulatory Reform Committee and the House of Lords Select Committee on Delegated

¹ <http://www.hansardsociety.org.uk/negative-vs-affirmative-procedures-flowchart>

² <http://www.legislation.gov.uk/ukpga/2011/24/section/8>

Powers and Regulatory Reform examine Legislative Reform Orders (LROs). They examine whether the tests set out in the [Legislative and Regulatory Reform Act 2006](#)¹ have been met (these include, for example, a requirement for thorough consultation), and whether the proposal is appropriate to be delivered by an LRO. The Delegated Powers and Regulatory Reform Committee (DPRCC) also examines Localism Orders.

- The Statutory Instruments Reference Committee was established by [regulation 11](#)² of The Statutory Instruments Regulations 1947 (SI 1948/1). It is composed of officers as well as Members of each House. The Committee's role is to arbitrate on questions about numbering, printing and publishing, classifying SIs as general or local, and whether instruments made under pre-1948 Acts come within the definition of Statutory Instruments.

1.6 What is published and by what authority

Statutory Instruments Act 1946

1.6.1 [The Statutory Instruments Act 1946](#)³ came into force on 1 January 1948 and sets out publishing arrangements for SIs. It was supplemented by the Statutory Instruments Regulations 1947 ([SI 1948/1](#)⁴), made under section 8(1) of the 1946 Act. This legislation remains in force without extensive amendment. Key points are that it:

- defines the term 'Statutory Instrument';
- contains provisions for numbering, printing, publication, citation, classification (as local or general) and sale;
- introduced provisions relating to Parliamentary procedure and control.

1.6.2 The Statutory Instruments Act 1946 was amended by the [Statutory Instruments \(Production and Sale\) Act 1996](#)⁵. This meant SIs were now published and sold under the authority of the Queen's Printer, and issued under the authority of HMSO.

¹ <http://www.legislation.gov.uk/ukpga/2006/51/contents>

² <http://www.legislation.gov.uk/uksi/1948/1/regulation/11/made>

³ <http://www.legislation.gov.uk/ukpga/Geo6/9-10/36>

⁴ <http://www.legislation.gov.uk/uksi/1948/1/contents/made>

⁵ <http://www.legislation.gov.uk/ukpga/1996/54/contents>

- 1.6.3 From 2006 the responsibilities of HMSO operate from within The National Archives, which is a Government Department in its own right, and a non-ministerial Department of the Department for Culture, Media and Sport.

Her Majesty's Stationery Office (HMSO)

- 1.6.4 The functions of Her Majesty's Stationery Office (HMSO) are operated from within The National Archives, including official publishing and the management of Crown rights, for copyright and database rights.
- 1.6.5 HMSO prepares various publications relating to enacted law which are published by a Publishing Contractor under the authority of the Queen's Printer. These publications include the tables in the annual volume of Public General Acts and Measures and annual editions of Statutory Instruments, the Chronological Table of the Statutes, the Chronological Tables of Local Acts, and the Chronological Tables of Private Acts. The current Publishing Contractor is The Stationery Office Ltd (TSO).
- 1.6.6 Copies of SIs and other documents printed under the superintendence or authority of HMSO, including those published on legislation.gov.uk, are admissible in evidence in the same circumstances as copies printed by the Queen's Printer (See [section 2¹](#) of the Documentary Evidence Act 1868 and [section 2²](#) of the Documentary Evidence Act 1882). They are commonly called 'Queen's Printer copies'.

Notice in The Gazette

- 1.6.7 Sometimes the provisions of the parent Act require an SI to be published or notified in the London, Belfast or Edinburgh Gazettes (now known as [The Gazette³](#)). If this is the case you need to place a notice stating that the SI has been made and where copies can be found. The Gazette provides a way to ensure that information is placed permanently on the public record.

¹ <http://www.legislation.gov.uk/ukpga/Vict/31-32/37/section/2>

² <http://www.legislation.gov.uk/ukpga/Vict/45-46/9/section/2>

³ <http://www.thegazette.co.uk/>

1.7 Useful contacts

The National Archives	
The registration team at The National Archives	020 8392 5361 siregistrar@nationalarchives.gsi.gov.uk
The publishing team at The National Archives	publishing.legislation@nationalarchives.gsi.gov.uk
Tools and guidance on legislation.gov.uk Publishing	https://publishing.legislation.gov.uk/tools
SI Support Desk	sisupport@tso.co.uk

General	
SI Hub (Government Legal Department)	sihub@cabinetoffice.gov.uk
Better Regulation Executive	betterregulation@bis.gsi.gov.uk
Government Legal Service (GLS)	secretariat@gls.gov.uk One Kemble Street, London WC2B 4TS, email:
Office of Parliamentary Counsel (OPC)	020 7276 6586 good.law@cabinetoffice.gov.uk
Privy Council Office	meeting.business@pco.gov.uk pcosecretariat@pco.gov.uk

Parliament	
The House of Commons Journal Office	020 7219 3317/3310 journaloffice@parliament.uk
The House of Lords Printed Paper Office	020 7219 1246 printedpaperoffice@parliament.uk
The Government Whips' Office in the House of Lords	0207 219 3131 holgovernmentwhips@parliament.uk
The House of Lords Private Bill Office	020 7219 3231 (tel) 020 7219 2571 (fax) hprivatebills@parliament.uk
The House of Commons Private Bill Office	020 7219 3520 (tel) 020 7219 3690 (fax) prbohoc@parliament.uk
The Parliamentary Archives	020 7219 3074 archives@parliament.uk

Committees	
The House of Commons Regulatory Reform Committee	regrefcom@parliament.uk
The Hybrid Instruments Committee	020 7219 3231
The House of Lords Select Committee on Delegated Powers and Regulatory Reform	020 7219 3103 (tel) 020 7219 2571 (fax) hdelegatedpowers@parliament.uk
The Joint Committee on Statutory Instruments	020 7219 2026 jcsi@parliament.uk
The Secondary Legislation Scrutiny Committee (note: Your first point of contact should be your Departmental Parliamentary Clerk).	020 7219 8821 hlseclegscrutiny@parliament.uk
The Select Committee on Statutory Instruments (SCSI)	For the most up-to-date contacts see the website: http://www.parliament.uk/business/committees/committees-a-z/commons-select/statutory-instruments-committee/contact-us/

PART 2: PARLIAMENTARY CONTROL AND SI CLASSES

2. PARLIAMENTARY CONTROL AND PROCEDURES, AND SI CLASSES

2.1 What this part of the guide covers

2.1.1 This part of SIP deals with the Parliamentary control of SIs. For negative SIs, the Parliamentary control and procedure required is set out in the [Statutory Instruments Act 1946](#)¹, and for other SIs the procedure is set out in the parent Act.

2.1.2 In order to choose the correct required content for your SI you will need to identify the Class of SI you are producing. Classes of SI relate to the Parliamentary control and procedures required. These are detailed below.

2.2 Affirmative procedure

Use of affirmative procedure

2.2.1 Affirmative procedure and the super-affirmative procedure provide the more stringent form of Parliamentary control, since the SI or draft SI must receive positive approval.

2.2.2 The parent Act sets out the procedure you need to follow for affirmative SIs and draft affirmative SIs. Some made affirmatives also have time limits within which the affirmative resolution must be passed by Parliament or the House of Commons. If this is the case, the time limits will also be set out in the parent Act. Time limits do not apply to draft affirmatives.

2.2.3 If an SI relates to financial matters, it will usually only require the approval of the House of Commons, depending on the parent Act.

2.2.4 There are three Classes of affirmative procedure SIs:

- Class i) SIs are laid in draft and cannot come into force unless the draft is approved.
- Class ii) SIs are laid after being made and cannot come into force unless the instrument is approved.

¹ <http://www.legislation.gov.uk/ukpga/Geo6/9-10/36>

- Class iii) SIs are laid after being made and cannot remain in force unless the instrument is approved within a specific period.

Preparing a motion to approve affirmative SIs or draft affirmatives

- 2.2.5 The motion to approve an SI or draft SI is prepared by your Department, or occasionally by Parliamentary Counsel on behalf of your Department. The wording must comply with the requirements of the parent Act. If the Act requires that an SI is approved in draft before it is made, the motion should ask for approval of the draft, not of the SI.
- 2.2.6 You should provide the letter requesting the motion when the SI is laid. Motions to approve SIs go through the Government Whips' Office.
- 2.2.7 Other motions relating to SIs are tabled with the House of Lords' Table Office (for example where a Member tables a motion praying against). The Government Whips' Office decides when that business is scheduled.
- 2.2.8 There are minor differences between the practice of the Lords and the Commons. If (only in exceptional cases) you have to vary from the standard terms of a motion you must notify the Government Whips' Office at the House of Lords (if appropriate), and the Clerk of the Journal Office at the House of Commons, and explain the reason for the variation.
- 2.2.9 In the House of Commons, motions for approval are checked by the Journal Office to ensure that they are worded correctly. Minor changes can be made in the motion before it appears on the Order Paper to ensure that the correct wording is used.

Proceedings in Parliament for affirmative SIs

- 2.2.10 When an affirmative SI or draft affirmative SI has been laid, the responsible Department must arrange for the affirmative motion to appear on the Order Paper of the House of Commons. This involves talking to the Government Whips' Office and, unless laying is before the Commons only, making similar arrangements in the House of Lords.
- 2.2.11 In the Commons, provide a draft motion to the Journal Office when laying the instrument referred to in the motion.
- 2.2.12 Give the Whips' Offices five copies of the affirmative SI or affirmative draft SI. Give them the name of the responsible Minister and details of relevant time limits

and procedure. The Whips' Offices also need five copies of a short, non-confidential note explaining the SI or draft SI. The note is then given to the Leader of the House and the Government and Opposition Chief Whips. It helps them to determine whether the SI is likely to give rise to debate and whether, in the Commons, it should be referred to a Delegated Legislation Committee or considered on the floor of the House.

- 2.2.13 In the House of Lords a resolution to approve an SI or draft SI may not be moved until the Joint Committee of Statutory Instruments (JCSI) has issued a report on it. By convention the debate does not generally take place until after the Secondary Legislation Scrutiny Committee (SLSC) has also considered the SI.
- 2.2.14 A debate on an affirmative SI or draft affirmative SI on the floor of the House of Commons is 'exempted business'. This means that proceedings are not interrupted at the 'moment of interruption' at which much Commons business finishes. The Speaker puts the question to the House no later than 1½ hours after the commencement of proceedings.
- 2.2.15 Sometimes the Government tables a 'Business of the House' motion varying this provision for a debate on a particular SI or group of SIs. For more information on standing orders go to the [UK Parliament](http://www.parliament.uk)¹ website.
- 2.2.16 In the House of Lords, debates are taken in Chamber or Grand Committee according to how controversial the SI is. If the debate is taken in the Grand Committee it needs to be endorsed in the Chamber. In the course of the debate, the Minister should respond to, or at least acknowledge, any recommendations made by a Scrutiny Committee.
- 2.2.17 The Government Whips manage arrangements for proceedings relating to affirmative SIs or draft affirmative SIs on the floor of either House, or in a Delegated Legislation Committee of the Commons. The responsible Department should help where needed, and:
- send the Librarian of each House a list of relevant papers;
 - provide the Minister with the necessary briefing in the event of a debate;
- and

¹ <http://www.parliament.uk/business/publications/house-of-lords-publications/rules-and-guides-for-business/the-standing-orders-of-the-house-of-lords-relating-to-public-business/>

- make a note of any undertaking given by the Minister during the debate or other matter(s) requiring further action.

2.3 Negative procedure

Use of negative procedure

- 2.3.1 The negative procedure provides a less stringent form of Parliamentary control than the affirmative procedure. The SI will remain in force, or may be made, unless a Member introduces an annulment resolution (commonly known as a ‘prayer’) within 40 days, and the resolution is passed.
- 2.3.2 There are two Classes of negative procedure SIs. Class iv) are laid in draft and cannot be made if the draft is disapproved within 40 days. Class v) are laid after being made and are subject to revocation if a resolution for annulment is passed within 40 days.
- 2.3.3 The procedure for negative instruments (Class v)) is the most common form of Parliamentary control. The procedure for negative drafts (Class iv)) is relatively uncommon.

Negative procedure: made instruments

- 2.3.4 Where the [Statutory Instruments Act 1946](#)¹, or any Act passed after 1947, says that any SI is subject to annulment following a resolution of either House of Parliament, the instrument is laid before Parliament after being made.
- 2.3.5 If either House resolves that the instrument should be annulled, no further proceedings can be taken under the instrument after the date of the resolution and Her Majesty may, by Order in Council, revoke it. This resolution must happen within 40 days, and this period begins on the day on which the instrument is laid before the House. The resolution or revocation does not prejudice the validity of anything previously done under the SI, or the making of a new SI.
- 2.3.6 There are some negative procedure instruments whose ‘negative’ character arises from legislation that pre-dates the Statutory Instruments Act 1946. These instruments follow the same negative procedure described in the preceding paragraph – though this procedure may be excluded or modified by Order in Council.

¹ <http://www.legislation.gov.uk/ukpga/Geo6/9-10/36>

Negative procedure: draft instruments

- 2.3.7 The [Statutory Instruments Act 1946](#)¹ sets out the procedure for draft negative SIs.
- 2.3.8 If a draft SI is to be laid before Parliament, but does not require the approval of Parliament before it is made, then a 40 day period must expire before the SI is made, or an Order in Council is submitted to Her Majesty in Council.
- 2.3.9 Within that 40-day period, if either House resolves that the draft should not be submitted to Her Majesty or that the draft SI should not be made, no further proceedings may be taken on that draft. This does not prejudice the laying of a new draft.
- 2.3.10 There are some draft negative instruments whose 'negative' character pre-dates the Statutory Instruments Act 1946. These instruments follow the same negative procedure described in the preceding paragraph – though this procedure may be excluded or modified by Order in Council.

Calculating the 40-day period

- 2.3.11 The 'praying period' or 'praying time' (i.e. the 40 days within which a negative resolution may be moved), is calculated as follows:
- (a) In the case of a negative made instrument (Class v)), the period begins on the day on which the SI is laid before either the House of Lords or the House of Commons.
 - (b) In the case of a draft negative SI (Class iv)), the period begins with the day on which the draft is laid before each House, or, if the laying takes place on different days, it begins with the later day.
 - (c) When Parliament is either dissolved or prorogued or both Houses are adjourned for more than four days, this time does not count as part of the 40 day praying period. Prorogation is the term for the formal end of a parliamentary session. Dissolution is the official term for the end of a Parliament.
- 2.3.12 The above rules also apply to a negative SI or draft negative SI that is only laid before the House of Commons.

¹ <http://www.legislation.gov.uk/ukpga/Geo6/9-10/36>

- 2.3.13 Time continues to run when the House of Lords is sitting, even when the Commons is adjourned for more than four days.
- 2.3.14 Please be aware that there are different rules for Special Procedure Orders, Public Bodies Orders, Legislative Reform Orders and Localism Orders.
- 2.3.15 Contact the Secondary Legislation Scrutiny Committee office for questions about the 40 day period.

Negative resolutions

- 2.3.16 A negative resolution, or 'prayer', is directed against subordinate legislation made or drafted by the Government. It will therefore usually either be moved by the official Opposition or by a private Member.
- 2.3.17 Debate on the floor of the House on a prayer is very rare. In the House of Commons, debate on a 'prayer' is 'exempted business'. This is because debate on a prayer counts as proceedings under an Act for the purposes of Standing Order No. 16. It means proceedings are not interrupted at the 'moment of interruption' at which much Commons business finishes, but the Speaker puts the question to the House 1½ hours after the start of proceedings.
- 2.3.18 The proceedings may not continue for more than 1½ hours after the moment of interruption. If they are still under discussion the Speaker must either put the question, or interrupt the business. The Speaker may interrupt business because there has not been adequate time for the debate, either because it was late when the proceedings started, or because of the importance of the subject matter. The debate then stands adjourned to the next sitting (other than a Friday).
- 2.3.19 Debates on 'prayers' in the House of Commons take place in Government time and can take place on Opposition Days. In recent years the pressure of other business has made it increasingly difficult to provide for these debates within the 40-day period. The most common solution is to refer the SI or draft SI to a Delegated Legislation Committee on Statutory Instruments. Such a referral can only be made by a Government Minister, and is therefore a matter for the Government Whips' Office. The House can also debate an out-of-time prayer but the instrument cannot be annulled after the 40 day period has expired.

Consequences of an annulment resolution

2.3.20 An annulment resolution does not itself revoke the SI, but precludes further 'proceedings' being taken under it. The resulting state of the law, between the passing of the resolution and the revocation and replacement (if any) of the SI, may need careful assessment, particularly if the SI revoked or amended an earlier SI.

2.3.21 An address praying that an SI is annulled is presented to the Sovereign, normally by one of the Government Whips, before the revoking Order in Council is made. The Department should keep the Clerk of the Privy Council informed.

2.4 Exceptional procedures

2.4.1 A few Acts prescribe enhanced Parliamentary procedures or a choice between procedures. These include the [Legislative and Regulatory Reform Act 2006](#)¹, the [Localism Act 2011](#)², Orders made under the [Fire and Rescue Services Act 2004](#)³, and the [Public Bodies Act 2011](#)⁴. Procedures under these Acts are set out in this section. Where the procedure refers to a specified number of days, only days where both Houses are sitting count.

2.4.2 Other examples where exceptional procedures apply are:

- (a) The Civil Contingencies Act 2004, [section 27 \(1\)](#)⁵: this states that regulations shall lapse after 7 days beginning with the date of laying, unless each House of Parliament passes a resolution approving them.
- (b) The European Communities Act 1972, Schedule 2, [paragraph 2\(2\)](#)⁶: this provides that the SI is either to be approved in draft, or to be subject to annulment.
- (c) The Northern Ireland (St. Andrews Agreement) Act 2006, [section 24](#)⁷: this states that the SI is to be approved in draft or, if the Secretary of State makes a declaration that she or he considers it expedient for an Order to be made without approval by resolution of each House of Parliament, the

¹ <http://www.legislation.gov.uk/ukpga/2006/51/contents>

² <http://www.legislation.gov.uk/ukpga/2011/20/contents>

³ <http://www.legislation.gov.uk/ukpga/2004/21/contents>

⁴ <http://www.legislation.gov.uk/ukpga/2011/24/contents>

⁵ <http://www.legislation.gov.uk/ukpga/2004/36/section/27>

⁶ <http://www.legislation.gov.uk/ukpga/1972/68/schedule/2/paragraph/2>

⁷ <http://www.legislation.gov.uk/ukpga/2006/53/section/24>

Order ceases to have effect if it is not approved by a resolution of each House of Parliament before the end of the period of 40 days.

Exceptional Procedure: Public Bodies Orders

- 2.4.3 The [Public Bodies Act 2011](#)¹ confers a series of Order-making powers on Ministers. These powers are limited to public bodies that are listed in the Schedules to the Act. Guidance on Public Bodies Orders is available on the [Parliament](#)² website and on the [gov.uk](#)³ website.
- 2.4.4 Public Bodies Orders will either use the affirmative or enhanced affirmative procedure. [The Secondary Legislation Scrutiny Committee](#)⁴ provides further guidance on this and lists recent Public Bodies Orders.
- 2.4.5 Public Bodies Orders are Class viii). They are laid in draft and are subject to special enhanced Parliamentary procedures for approval or disapproval. The applicable procedure is ultimately determined by the House of Lords or the Committee charged with reporting on the draft order. Class viii) SIs are laid in draft and are subject to special enhanced Parliamentary procedures for approval or disapproval.
- 2.4.6 The Minister lays a draft affirmative Order and an Explanatory Document. Within a 30-day period, either House, or the SLSC (subject to overrule by the House of Lords) may recommend that the enhanced affirmative procedure should apply. If no such recommendation is made, the normal 40-day affirmative procedure applies.
- 2.4.7 If the Order is made as an enhanced affirmative, a 60-day period applies, and the Minister must have regard to representations/House resolutions/SLSC recommendations made within the 60-day period. After 60 days, the Minister is expected to explain to the House how she or he has had regard to these representations/resolutions/recommendations.
- 2.4.8 If the Minister lays a revised draft with material changes, she or he has to lay a statement summarising changes. Material changes are subject to scrutiny by the

¹ <http://www.legislation.gov.uk/ukpga/2011/24/contents>

² <http://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/public-bodies-orders/>

³

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243891/Laying_an_order_under_the_Public_Bodies_Act_2011.pdf

⁴ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/public-bodies-orders/>

Joint Committee on Statutory Instruments (JCSI) and the Secondary Legislation Scrutiny Committee (SLSC).

Exceptional Procedure: Legislative Reform Orders

- 2.4.9 A Legislative Reform Order (LRO) is an SI that is made under the powers of the [Legislative and Regulatory Reform Act 2006](#)¹. They are useful for deregulatory changes when other legislative vehicles are not available. LROs can repeal, replace or amend legislation that imposes burdens on any business, individual, voluntary organisation or charity. LROs can only impose new burdens if it is the result of the removal or reduction of an existing burden. There is [comprehensive guidance on LROs](#)². The following paragraphs set out the Parliamentary Control required.
- 2.4.10 The Minister lays the draft Order and Explanatory Document. The Explanatory Document must recommend whether the negative, affirmative or super-affirmative procedure should apply. An Explanatory Memorandum is not required for Legislative Reform Orders – the Explanatory Document is the requisite equivalent.
- 2.4.11 If the recommendation is either for a negative or affirmative procedure, there is a 30-day period during which the House or the Delegated Powers and Regulatory Reform Committee (DPRRC) (subject to overrule by each House) can decide whether to change the procedure (in the case of a negative, either to affirmative or super-affirmative; in the case of an affirmative, to a super-affirmative).
- 2.4.12 Where the negative procedure applies, the Minister may make the Order at the end of a 40 day period unless either House resolves that the Order should not be made or the relevant scrutiny Committee of either House recommends that the Order is not made (and that recommendation is not rejected by the House concerned).
- 2.4.13 If it is affirmative, the affirmative procedure applies, with the addition that DPRRC can recommend that the LRO does not proceed.
- 2.4.14 If it is super-affirmative, the DPRRC can recommend, at any time before the draft LRO is approved by both Houses, that the LRO does not proceed. The relevant scrutiny of each House can also recommend that any revised LRO with material

¹ <http://www.legislation.gov.uk/ukpga/2006/51/contents>

² <https://www.gov.uk/government/publications/legislative-reform-orders-guide-for-policy-officials>

changes is not made. If the LRO proceeds, the Minister must have regard to the representations/House resolutions/DPRRC recommendations and lay a statement of representations received.

Exceptional Procedure: Section 5 Orders under the Localism Act 2011 and Section 5C Orders under the Fire and Rescue Services Act 2004

- 2.4.15 Localism Orders arise from the [Localism Act 2011](http://www.legislation.gov.uk/ukpga/2011/20/contents)¹, whose purpose is to devolve more decision making powers from central Government back into the hands of individuals, communities and councils. It covers a wide range of issues related to local public services, with a focus on the general power of competence, community rights, neighbourhood planning and housing.
- 2.4.16 Section 5 Orders under the Localism Act 2011 and section 5C Orders under the [Fire and Rescue Services Act 2004](http://www.legislation.gov.uk/ukpga/2004/21/contents)² follow the parliamentary procedure set out for LROs.
- 2.4.17 The first Localism Order was laid in March 2014 (the Draft Harrogate Stray Act 1985 (Amendment) Order 2014 ([SI 2014/1190](http://www.legislation.gov.uk/uksi/2014/1190/contents/made))³).

Exceptional Procedure: Section 15 Orders under the Localism Act 2011

- 2.4.18 Section 15 Orders under the [Localism Act 2011](http://www.legislation.gov.uk/ukpga/2011/20/contents)⁴ follow a slightly different procedure. The Minister lays a draft Order and a 60-day scrutiny period applies. The Minister must have regard to representations/House resolutions/Committee (JCSI or SLSC) recommendations made within the 60-days.
- 2.4.19 If a Minister intends to make the Order in a revised form, the draft Order must be laid with an explanation of representations received.
- 2.4.20 Between laying the revised Order and the explanation of representations received, and the House approving, the Committee (JCSI or SLSC) can recommend the instrument does not proceed (subject to overrule by the House).
- 2.4.21 If the Minister lays a revised draft with material changes, she or he has to lay a statement summarising those changes. At this point the DPRCC can recommend that the instrument does not proceed (subject to overrule by the House).

¹ <http://www.legislation.gov.uk/ukpga/2011/20/contents>

² <http://www.legislation.gov.uk/ukpga/2004/21/contents>

³ <http://www.legislation.gov.uk/uksi/2014/1190/contents/made>

⁴ <http://www.legislation.gov.uk/ukpga/2011/20/contents>

2.4.22 If the Minister lays a revised draft with material changes, she or he has to lay a statement summarising the changes. These changes are subject to scrutiny by the JCSI and the SLSC.

Exceptional Procedure: Special Procedure Orders

2.4.23 Special Procedure Orders are those that are subject to the special Parliamentary procedure set out in the [Statutory Orders \(Special Procedure\) Act 1945](#)¹ (as amended by the [Statutory Orders \(Special Procedure\) Act 1965](#)². They usually relate to the acquisition of land, or rights over land, by a Government Department or public authority; or they establish or extend the powers of a water or harbour authority. Some Special Procedure Orders (but not all of them) are required by the parent Act to be made as Statutory Instruments. These are local and Class ix) SIs.

2.4.24 The special procedure is intended to safeguard the interests of objectors – Special Procedure Orders follow a procedure that allows people or bodies that are especially affected by the Order to petition against it, to either House of Parliament. Some Special Procedure Orders have to be made as SIs, but are excepted from some of the requirements that normally apply to SIs. They cannot be laid before Parliament before the outcomes of any consultation or inquiries have been considered (these requirements are set out in The Statutory Orders (Special Procedure) Act 1945).

2.4.25 Special Procedure Orders also require a notice in the London Gazette (now called [The Gazette](#)³) three days before laying, to evidence compliance. The SI also needs to be laid with a certificate that sets out how you have complied with the 1945 Act.

2.5 Other varieties of procedure

Laying without further proceedings

2.5.1 Some SIs have to be laid before Parliament after being made, but there is no provision in the parent Act for further Parliamentary proceedings. These are Class vi) SIs and are not very common.

¹ <http://www.legislation.gov.uk/ukpga/Geo6/9-10/18/contents>

² <http://www.legislation.gov.uk/ukpga/1965/43/contents>

³ <http://www.thegazette.co.uk/>

- 2.5.2 Under the National Savings Bank Act 1971, [section 26\(4\)](#)¹, certain SIs have to be laid before Parliament in draft for at least 40 days before being made, but [section 6](#)² of the Statutory Instruments Act 1946 is not applied (section 6 refers to Statutory Instruments of which drafts are to be laid before Parliament).
- 2.5.3 In some cases, the JCSI and the SLSC need to see Codes where an understanding of the instrument is dependent on it. For example a Combination Code is not subject to Parliamentary procedure, but it is brought into force by an SI, which is. So they can understand the effect of the SI, the scrutiny Committees would expect to see the Code - they would not consider the SI in isolation.

Instruments not subject to Parliamentary control

- 2.5.4 Some SIs do not have to be laid before Parliament at all and [section 4](#)³ of the Statutory Instruments Act 1946 does not apply to them (section 4 relates to Statutory Instruments that are required to be laid before Parliament). These are Class vii) SIs.
- 2.5.5 Parts of combined instruments, for example the provisions made by the Welsh Ministers in an SI made by the National Assembly for Wales and the Secretary of State under an enabling Act that post-dates the [Government of Wales Act 2006](#)⁴ do not require Parliamentary control.

2.6 Other aspects of Parliamentary control

Incompatible procedure

- 2.6.1 A Minister may be given a number of different powers to make SIs, and the SIs may be subject to different forms of Parliamentary Control according to the enabling power under which they are made.
- 2.6.2 For example, those made under one power may be subject to negative procedure, while those made under another may be subject to affirmative procedure. In such a case the exercise of both powers in one SI is likely to give rise to procedural difficulties and should be avoided unless clearly contemplated by the parent Act.

¹ <http://www.legislation.gov.uk/ukpga/1971/29/section/26>

² <http://www.legislation.gov.uk/ukpga/Geo6/9-10/36/section/6>

³ <http://www.legislation.gov.uk/ukpga/Geo6/9-10/36/section/4>

⁴ <http://www.legislation.gov.uk/ukpga/2006/32/contents>

Scope of debate

- 2.6.3 In a debate on an SI that consolidates earlier instruments, discussion of the merits of provisions that appear in the earlier instruments is not permitted, unless the consolidating SI modifies any such provision.

2.7 Parliamentary Control for Orders in Council

Orders in Council laid after being made

- 2.7.1 Parliamentary control for Orders in Council is substantially the same as for other SIs. However, they are laid before Parliament by the Privy Council Office. This means that the procedure Departments have to follow has some distinctive features.
- 2.7.2 Departments are sent notice of a forthcoming Council. This notice includes the laying date for Orders in Council - normally five days after the Council, excluding weekends and bank holidays. If there are compelling reasons for an Order to be laid sooner, talk to the [Privy Council Office](mailto:meeting.business@pco.gov.uk)¹ and the [SI Registrar](mailto:siregistrar@nationalarchives.gsi.gov.uk)².
- 2.7.3 If the Order has to be brought into force before it is laid, the Department should also notify the Speakers of both Houses of Parliament. The Order should be complete except for the date and signature and it will be signed by the Clerk of the Privy Council.

Orders in Council laid in draft

- 2.7.4 If an Order in Council is to be laid before Parliament in draft, the Department is responsible for laying it. Provide a copy of the draft to the Privy Council Office at least seven days before it is laid.
- 2.7.5 When the Parliamentary procedure that applies to the draft has been completed the Department should use the [legislation.gov.uk](https://www.legislation.gov.uk) Publishing service to send the Order in Council and any other required papers to the Privy Council Office for approval.

¹ meeting.business@pco.gov.uk

² siregistrar@nationalarchives.gsi.gov.uk

2.8 Classes of SI

2.8.1 When submitting your SI for registration and publishing, using legislation.gov.uk Publishing, you will be asked to specify the Class of SI you are submitting. The Classes of SI relate to the Parliamentary Control required.

Three Classes of affirmative instruments

2.8.2 The three standard Classes of affirmative instruments are Class i), Class ii) and Class iii). Class i) SIs are affirmative drafts, and Class ii) or iii) are affirmative instruments.

Table B – Affirmative Procedure SIs by Class

Class	Affirmative Procedure
i)	Laid in draft. Cannot come into force unless the draft is approved. These are affirmative drafts (sometimes called draft affirmatives).
ii)	Laid after being made (generally called a made affirmative). Cannot come into force unless the instrument is approved. These are called affirmative instruments.
iii)	Laid after being made (generally called a made affirmative). Cannot remain in force unless approved within a specified period. These are called affirmative instruments.

28 day Orders

2.8.3 Some Class iii) SIs are also referred to as '28 day Orders' since that is most frequently the period within which they must be approved (although some parent Acts prescribe a month or 40 days).

2.8.4 This approval time normally runs in the period that begins with the meeting of a new Parliament and precedes the State Opening (the 'swearing-in days'). If you have any questions about this, please contact the Clerk of the Printed Paper Office at the House of Lords, or the Clerk of the Papers at the House of Commons.

Negative procedure

2.8.5 Many SIs are subject to negative procedure, which normally means the SI is laid before Parliament after being made (signed). To allow time for Parliamentary

scrutiny, the SI should not normally come into force for 21 days from the date of being laid. This convention is called the '21 day rule'.

Two Classes of negative instruments

2.8.6 There are two standard Classes of negative procedure. Class iv) SIs are called negative drafts and class v) SIs are called negative instruments. Class iv) SIs can only be laid on sitting days.

Table C – Negative Procedure SIs by Class

Class	Negative Procedure
iv)	Laid in draft (generally called a draft negative). Cannot be made if the draft is disapproved within 40 days
v)	Laid after being made. Subject to revocation if a resolution for annulment is passed within 40 days

Other procedures

2.8.7 Instruments that are laid before Parliament after being made but which are not subject to further Parliamentary procedures do not often arise.

2.8.8 Some SIs are not required to be laid at all.

Table D – Other Procedure SIs by Class

Class	Other Procedure
vi)	Laid after being made. No provision for further Parliamentary proceedings
vii)	The instrument is not required to be laid

Exceptional procedures

2.8.9 A few Acts prescribe enhanced Parliamentary procedures or a choice between procedures, alongside recommendations from the House/Committee. See, for example, the [Legislative Reform Act 2006](http://www.legislation.gov.uk/ukpga/2006/51/contents)¹, the [Localism Act 2011](http://www.legislation.gov.uk/ukpga/2011/20/contents)², Orders under the [Fire and Rescue Services Act 2004](http://www.legislation.gov.uk/ukpga/2004/21/contents)³, and the [Public Bodies Act 2011](http://www.legislation.gov.uk/ukpga/2011/24/contents)⁴.

¹ <http://www.legislation.gov.uk/ukpga/2006/51/contents>

² <http://www.legislation.gov.uk/ukpga/2011/20/contents>

³ <http://www.legislation.gov.uk/ukpga/2004/21/contents>

⁴ <http://www.legislation.gov.uk/ukpga/2011/24/contents>

Table E – Exceptional Procedure SIs by Class

Class	Exceptional Procedure
viii)	Laid in draft. Subject to special enhanced Parliamentary procedures for approval or disapproval. The procedure is ultimately recommended by the House and approving committee. For example Public Bodies Orders laid under section 11 of the Public Bodies Act 2011, laid after being made using an enhanced Parliamentary procedure.
ix)	Subject to special Parliamentary procedure as prescribed in the Statutory Orders (Special Procedure) Act 1945 ¹ as amended by the Statutory Orders (Special Procedure) Act 1965 ² .

2.8.10 A few enabling Acts set out procedures that are different from those shown in the tables above. In some cases SIs are subject to procedure in the Scottish Parliament, the National Assembly for Wales and/or the Northern Ireland Assembly. The procedure in those Parliaments/Assemblies is not dealt with in this guide.

2.9 Requirement for Explanatory Memoranda for SIs laid before Parliament

General requirements for an Explanatory Memorandum

2.9.1 You must produce an Explanatory Memorandum (EM) for all instruments that are subject to Parliamentary procedure, including those which are only subject to procedure in the House of Commons, with two exceptions. You do not need an EM for Legislative Reform Orders or Public Bodies Orders, as the Explanatory Document fulfils this requirement.

2.9.2 The purpose of an EM is to provide the public with an easy-to-understand explanation of the legislation's intent and purpose – why the legislation is necessary. Avoid repeating content you have included in the Explanatory Note. Your explanation should be concise but comprehensive, and should not generally exceed four to six pages. Use plain English and avoid (or explain) jargon.

¹ <http://www.legislation.gov.uk/ukpga/Geo6/9-10/18/contents>

² <http://www.legislation.gov.uk/ukpga/1965/43/contents>

- 2.9.3 The Secondary Legislation Scrutiny Committee (SLSC) has provided [guidance](#)¹ on what they expect to see in an EM.
- 2.9.4 If the SLSC do not feel that your EM complies with their guidance, they will require you to produce a revised EM at your Department's expense. This will be published alongside the originally published EM. You will need to upload the revised EM using the Associated Document bundle type on the legislation.gov.uk Publishing service. This is described in more detail in Part 4: Registration and Publishing.
- 2.9.5 The EM template and guidance is in the Tools and Guidance section on legislation.gov.uk Publishing:
- <https://publishing.legislation.gov.uk/tools>
- 2.9.6 You can provide a single EM for a group of linked SIs that are subject to the same Parliamentary procedure and laid on the same day. You must submit a copy of that EM with every linked SI, using legislation.gov.uk Publishing. English Votes for English Laws may impact on whether or not a single EM can be used.
- 2.9.7 If you are submitting SIs with a shared EM, you should use the legislation.gov.uk Publishing service to request numbers in advance to ensure that the SIs are numbered sequentially. You should enter the numbers issued into the SI(s) and EM before you upload the documents for registration.
- 2.9.8 If an EM has minor typographical errors then you can issue a replacement EM (this will replace the EM published on legislation.gov.uk). You will need to upload the replacement EM as an Associated Document bundle, using the legislation.gov.uk Publishing service. The SLSC should be advised if any substantive changes of content are made to the original EM.

English Votes for English Laws

- 2.9.9 On 22 October 2015, the House of Commons agreed changes to its standing orders. As a result of these changes, MPs with constituencies in England (or, where relevant, England or Wales) are asked to give their consent to certain legislation which meets certain tests set out in standing orders. The rules only apply to Statutory Instruments that are scheduled for debate. This means that

¹ <http://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/departamental-Guidance-Statutory-Instruments-Secondary-Legislation-Scrutiny-Committee.pdf>

they apply to all affirmative instruments (including 'super-affirmative' instruments) and the (rare) negative instruments which are not only prayed against but are then scheduled for debate.

- 2.9.10 Both an Order in Council and an Order of Council are an 'instrument' for the purposes of the standing orders.
- 2.9.11 The territorial extent of legislation is the legal jurisdiction (legal system) it affects i.e. it is the body of law of which it forms a part. There are three legal jurisdictions in the UK: England and Wales; Scotland; Northern Ireland. Legislation may extend to one or more of these legal jurisdictions.
- 2.9.12 Territorial application concerns the geographical area within which legislation has practical effect. The extent of a piece of legislation may therefore be different from its territorial application. For example, a provision may well only apply in relation to England, or in relation to Wales. It is wrong to say that it only extends to England, or only extends to Wales.
- 2.9.13 The Cabinet Office provide guidance on English Votes for English Laws for secondary legislation, which you can obtain by emailing englishvotes@cabinetoffice.gov.uk.
- 2.9.14 Explanatory Memoranda (EMs) are published on legislation.gov.uk.

Explanatory Memoranda for Orders in Council

- 2.9.15 The Privy Council Office arranges for the EM to be laid with the SI.
- 2.9.16 However, the originating Department is responsible for providing copies of the EM and the SI to both the SLSC and the JCSI/SCSI.

2.10 Delivering Documents to Parliament

Delivering Explanatory Memoranda and other Related Documents

- 2.10.1 You should send three copies of the EM, collated with three copies of the instrument it describes, to the Joint Committee on Statutory Instruments, Delegated Legislation Office, House of Commons, Room 617A, 7 Millbank, London SW1P 3JA.
- 2.10.2 Where the instrument is to be laid before the House of Commons only, the same number of copies should be supplied, and the package directed to the Select Committee on Statutory Instruments (at the same address as above).

- 2.10.3 Additional copies may be requested by the Committee. In these circumstances 20 copies of the instrument should be supplied as above to the Joint Committee on Statutory Instruments. Where the instrument is to be laid before the House of Commons only, 12 copies should be supplied, and the package directed to the Select Committee on Statutory Instruments (at the same address).
- 2.10.4 You should send 15 copies of the EM, collated with 15 copies of the instrument it describes, to the Secondary Legislation Scrutiny Committee, Room 25 West Front, Palace of Westminster, London SW1A 0PW.
- 2.10.5 Include the same number of any Codes or guidance necessary to the understanding of the instrument. Where maps or other reference documents are part of the bundle, the Committee will usually accept two copies. If in doubt you can contact the SLSC.
- 2.10.6 The SLSC does not need to see the following:
- SIs not subject to Parliamentary procedure;
 - Commencement Orders/regulations;
 - SIs that are laid before the Commons only;
 - a remedial Order, or draft remedial Order, under [section 10](#)¹ of the Human Rights Act 1998 (which should be sent to the Joint Committee on Human Rights);
 - a Measure under the [Church of England Assembly \(Powers\) Act 1919](#)² (which should be sent to the Ecclesiastical Committee) and instruments made under such a Measure;
 - Correction slips.
- 2.10.7 However, the SLSC does consider all other instruments subject to Parliamentary procedure. This includes statutory Codes of Practice, statutory guidance, Rules, Orders in Council and Orders of Council.

¹ <http://www.legislation.gov.uk/ukpga/1998/42/section/10>

² <http://www.legislation.gov.uk/ukpga/Geo5/9-10/76/contents>

Laying Explanatory Memoranda

- 2.10.8 You should lay the Explanatory Memorandum on the same day as the SI. The covering note to the SI should indicate that the EM is laid by Command. In addition to the laid copies, you should supply 100 copies of all affirmative SIs and 8 copies of negative SIs to the House of Commons Vote Office.

Laying other associated documents

- 2.10.9 You should lay any other associated documents at the same time as the SI and provide copies to the House of Commons Vote Office and the Printed Paper Office at the House of Lords.
- 2.10.10 You should re-lay revised associated documents, accompanied by a withdrawal letter, as Members need to see the revised papers.

2.11 The '21 day rule'

Complying with the '21 day rule'

- 2.11.1 If an SI is subject to negative procedure, the Department should lay it, and provide copies to the Joint (or Commons) Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee at least 21 calendar days (irrespective of whether Parliament is sitting or not) before it is due to come into force (i.e. it should lie for 21 days, including the date of laying, and only be brought into force on the twenty-second day at the earliest).
- 2.11.2 '21 days' means 21 calendar days including days on which Parliament, or either House, is not sitting. The purpose of this rule of practice is to enable the House to consider the instrument before it comes into force.
- 2.11.3 You should treat the 21-day period as a minimum period and aim to lay an instrument as far in advance as possible.
- 2.11.4 If the 21-day period is reduced, you are reducing the time Parliament has to scrutinise the SI. This should not be done simply for Departmental convenience. If observing the '21 day rule' is impossible, you must explain in the EM why the SI could not have been made and laid sooner, and why it had to come into effect on the day specified. If the reasons are matters of policy, explain why the policy requires such urgent action. The explanation in the EM should also include what the financial or other impact of delaying the legislation to meet the rule would be.

2.11.5 The scrutiny Committees are unlikely to accept reasons claiming pressure of work, poor planning or a Minister not being available to sign the instrument.

2.12 Compatibility with the European Convention on Human Rights

2.12.1 Although section 19¹ of the Human Rights Act 1998 does not apply to secondary legislation, it is good practice that a Minister, inviting Parliament to approve a draft Statutory Instrument or Statutory Instrument subject to affirmative resolution, should volunteer his or her view regarding its compatibility with the Convention rights.

2.12.2 Such a statement should always be made regarding secondary legislation which amends primary legislation. All such Ministerial statements (and corresponding statements from other Authorities) should be included within the Explanatory Memorandum at section 6 of the EM and include the name of the Minister giving approval.

2.13 Procedures for EU legislation

2.13.1 Procedures for EU legislation are something you will need to discuss with DExEU legal advisers. Current guidance and documentation documents can be obtained by e-mailing DExEU at dexeula-eu-business-and-contingencies-team@dexeu.gov.uk

2.14 Procedures following the dissolution of Parliament

Background to dissolution procedures

2.14.1 During a General Election the Government retains its responsibility to govern and Ministers remain in charge of their Departments and carry on essential business. However, Ministers should aim to keep to a minimum, decisions that would initiate new action of a continuing or long-term character.

2.14.2 Decisions on matters of policy, where a new Government might want the opportunity to take a different view, should be postponed until after the Election, provided such postponement would not be detrimental to the national interest or wasteful of public money.

¹ <http://www.legislation.gov.uk/ukpga/1998/42/section/19>

Laying of SIs and draft SIs during dissolution

- 2.14.3 Once Parliament is dissolved, and until the meeting of its successor, Parliament does not exist and no SIs can be laid before either House. The House of Commons Journal Office and the Printed Paper Office at the House of Lords provide detailed guidance. The governing legislation is the [Statutory Instrument Act 1946](#)¹, sections 5 to 7(1) and (2).
- 2.14.4 If an SI has been laid before a dissolution takes place the provisions of the relevant Act(s) and the practice or Standing Orders of the two Houses will determine whether or not it must be re-laid when the new Parliament meets.
- 2.14.5 You do not need to re-lay the following:
- (a) Class i) SIs (affirmative drafts requiring approval) or (Class ii) SIs (affirmative instruments laid after being made but requiring approval before coming into force).
 - (b) Class iii) SIs (affirmative instruments laid after being made but requiring approval within a specified period to remain in force). In all known cases, the time during which Parliament is dissolved is excluded from the specified period by the parent Act and therefore re-laying is not required. (If there were no such exclusion the SI would have to be re-laid.)
 - (c) Class iv) SIs (negative drafts) and Class v) SIs (negative instruments). Under [section 7\(1\)](#)² of the Statutory Instruments Act 1946 the time during which Parliament is dissolved is excluded from the 40-day period prescribed by sections 5 and 6 and therefore re-laying is not required.
 - (d) Special Procedure Orders. It is the practice of the House of Lords that these are not re-laid. In the House of Commons, they are exempted because of Private Business Standing Order No 247. Proceedings begun in the last Parliament may be resumed in the new Parliament. The time during which Parliament is dissolved is excluded from the 21 day petitioning period of 21 days (see Private Business Standing Orders, House of Lords No

¹ <http://www.legislation.gov.uk/ukpga/Geo6/9-10/36/contents>

² <http://www.legislation.gov.uk/ukpga/Geo6/9-10/36/section/7>

201A, House of Commons No 247) and from the 21 day resolution period (see the Statutory Orders (Special Procedure) Act 1945, [section 4\(1\)](#)¹).

- 2.14.6 If possible, though, made SIs and draft SIs in the above categories should be laid before a dissolution takes place, to avoid delay in completing the Parliamentary procedure.
- 2.14.7 For negative instruments, the 21 day rule still applies. Unlike the 40 day praying period, the 21 days are not ‘suspended’ on dissolution, so the 21 day rule can be complied with whenever the SI is laid. But, if you don’t allow 21 days when Parliament is sitting between laying and the commencement date, you risk criticism from Parliament for not complying with the ‘spirit’ of the rule. To avoid that criticism you should ensure you lay your SI more than 21 days before the likely last sitting date of Parliament, or bring the SI into force on a date well after the new Parliament meets. Note though that the circumstances of each SI are different and these may drive particular timing issues. Always keep in touch with your Parliamentary team, particularly on anything controversial or with strict deadlines.
- 2.14.8 Swearing-in days count as praying days.

Draft Orders in Council following a General Election

- 2.14.9 If a draft Order in Council has been approved by both Houses at the end of one Parliament, the Order can be made in the new Parliament without the draft Order being approved again.

Date of laying during dissolution: the italic date information

- 2.14.10 An SI should be published as soon as possible after it has been registered, and printed, where printing is required. If publishing takes place when Parliament is dissolved, replace the normal italic date information ‘Laid before Parliament’ with ‘To be laid before Parliament’ (you do not need to specify a date). If the SI will come into force before it can be laid before the new Parliament, this information should be below the ‘Coming into force’ information. Any SIs printed under this provision should be laid on the first swearing-in day with the actual date of laying added in manuscript.

¹ <http://www.legislation.gov.uk/ukpga/Geo6/9-10/18/section/4>

Notifying the Speaker

- 2.14.11 If an instrument cannot be laid because Parliament is dissolved, and it has to come into force before the new Parliament has met, notify the Speaker of the House of Lords and the Speaker of the House of Commons. This should be done in accordance with the procedures which apply when any instrument is laid after it has come into force.
- 2.14.12 The Speaker of the House of Lords remains in office despite dissolution. Send notification on the day the instrument comes into force.
- 2.14.13 The Speaker of the House of Commons vacates his or her office upon dissolution. You cannot send notification until the new House of Commons has assembled and elected a Speaker.

2.15 Procedure for Statutory Instruments made under pre-1948 Acts

Introduction to the procedure for SIs made under pre-1948 Acts

- 2.15.1 This is a rarely required procedure but it has been retained in this document in case you need to understand it.
- 2.15.2 To determine whether a document made after 1947 under an Act passed before 1948 is a Statutory Instrument, you must consider the following enactments:
- (a) the [Statutory Instruments Act 1946](#)¹ ('the 1946 Act'), sections 1(2), 8(1)(d) and 9(1);
 - (b) the Statutory Instruments Regulations 1947 (SI 1948/1) ('the 1947 Regulations'), [regulation 2](#)²;
 - (c) the Statutory Instruments (Confirmatory Powers) Order 1947 ([SI 1948/2](#)³) ('the 1947 Order');
 - (d) the Rules Publication Act 1893 ('the 1893 Act'), sections 3 and 4:

Documents which are Statutory Instruments

- 2.15.3 By virtue of section 1(2) of the 1946 Act and regulation 2(1)(a) of the 1947 Regulations a document is a Statutory Instrument if:

¹ <http://www.legislation.gov.uk/ukpga/Geo6/9-10/36/contents>

² <http://www.legislation.gov.uk/uksi/1948/1/regulation/2/made>

³ <http://www.legislation.gov.uk/uksi/1948/2/contents/made>

- (a) it is made after 1947 under a statutory power conferred before 1948, and
- (b) it is made by a 'Rule-making authority', and
- (c) it is legislative, as opposed to executive, in character.

2.15.4 'Rule-making authority' is defined in section 4 of the 1893 Act. It means an authority who may make 'Statutory Rules' (also defined), and includes Her Majesty in Council, a Secretary of State, a Government Department (that is, a Minister in charge of a Department) and an authority empowered to make Rules of Court. It does not include a local authority or professional body. Legislative Orders made by Rule-making authorities are deemed to be Statutory Instruments by virtue of the extended definition of 'Statutory Rule' in regulation 2(1) of the 1947 Regulations, despite the fact that the definition in section 4 of the 1893 Act does not refer to Orders.

2.15.5 The distinction between legislative and executive documents was carried into regulation 2(1)(a) from the regulations made under the 1893 Act.

2.15.6 A further class of documents is brought within the Statutory Instruments series by regulation 2(1)(b) of the 1947 Regulations. This class comprises instruments made after 1947 which would, by virtue of an enabling Act passed before 1948, have been subject to the provisions of section 3 (printing, numbering and sale) of the 1893 Act if that section had not been repealed.

Documents which are excluded

2.15.7 The following are not Statutory Instruments, as they are excluded by regulation 2(3) of the 1947 Regulations:

- (a) any document which, although of a legislative character, applies only to a named person or premises and does not have to be laid before Parliament or the House of Commons, or is not subject to confirmation or approval by them (regulation 2(3)(a). 'person' includes a body of persons corporate or unincorporate: the Interpretation Act 1978, [Schedule 1](#)¹);
- (b) any document made under any of the enactments (which relate to the armed forces) set out in Part 1A of the Schedule to the 1947 Regulations (regulation 2(3)(c)).

¹ <http://www.legislation.gov.uk/ukpga/1978/30/schedule/1>

Confirmatory documents which are Statutory Instruments

- 2.15.8 The application of the 1893 Act to subordinate legislation which was confirmed or approved, but not made, by a Rule-making authority, is uncertain. Where the confirmation or approval is effected by an instrument made after 1947 under an Act passed before 1948, the question of whether that instrument is a Statutory Instrument is governed by the 1947 Regulations, regulation 2(2) and 2(3)(a) and (b), and the 1947 Order.
- 2.15.9 Under the provisions of regulation 2(2) a confirming or approving instrument is not deemed to be a Statutory Instrument unless the confirmation or approval is required by the enabling Act to be given by Order in Council or by order of a Rule-making authority. But regulation 2(2) is without prejudice to the 1947 Order. This Order makes a further class of confirming or approving instruments as Statutory Instruments - those which exercise a power conferred on a Minister of the Crown to confirm or approve subordinate legislation which, 'being of a legislative and not an executive character', is required to be laid before Parliament or the House of Commons.

Confirmatory documents which are excluded

- 2.15.10 A confirming or approving document will not be a Statutory Instrument if:
- (a) it is excluded by regulation 2(3)(a) of the 1947 Regulations;
 - (b) it is excluded by regulation 2(3)(b) of the 1947 Regulations, being an Order in Council for which the Lord President is the responsible authority (see regulation 1(2)(b)) and which confirms or approves subordinate legislation that is a local and personal or private Act (for example, the statutes of a university);
 - (c) the document confirmed or approved is executive not legislative, since both regulation 2(2) of the 1947 Regulations and the 1947 Order relate to the confirmation or approval of subordinate legislation.

The Statutory Instruments Reference Committee

- 2.15.11 If there is doubt whether a document is a Statutory Rule for the purposes of section 1(2) of the 1946 Act, the Reference Committee may be asked to determine the question, pursuant to regulation 11(4)(c) of the 1947 Regulations.

Definitions in the Rules Publication Act 1893 Section 4

2.15.12 The Rules Publication Act 1893 contains the following definitions:

- 'Statutory Rules' means Rules, regulations, or byelaws made under any Act of Parliament which:
 - (a) relate to any court in the United Kingdom, or to the procedure, practice, costs or fees therein, or to any fees or matters applying generally throughout England, Scotland, or Ireland; or
 - (b) are made by Her Majesty in Council, the Judicial Committee, the Treasury, the Lord Chancellor of Great Britain, or the Lord Lieutenant or the Lord Chancellor of Ireland, or a Secretary of State, the Admiralty, the Board of Trade, the Local Government Board for England or Ireland, the Chief Secretary for Ireland, or any other Government Department.
- 'Rule making authority' includes every authority authorised to make any Statutory Rules.

PART 3: REQUIRED CONTENT

3. REQUIRED CONTENT OF SIs AND ASSOCIATED DOCUMENTS

3.1 What this part of the guide covers

3.1.1 This part of SIP focuses on the form and required content of SIs and associated documents such as Explanatory Memoranda and Impact Assessments. It sets out how different headnotes, headings and banners need to be used according to the Class of SI you are producing. It gives sample wording to use in headnotes and covers what must go in a preamble. It provides detail on how to use footnotes, the correct forms of citation, and the form required for commencement dates.

3.1.2 Before you start, you might find it useful to read section 4.3 in Part 4: Registration and Publishing (which tells you about using the SI template).

3.1.3 Throughout this part, we refer you to examples on legislation.gov.uk that show you the correct layout and required content.

3.2 Different Classes of SI and required content

3.2.1 There are nine Classes of SI (see Part 2: Parliamentary Control and SI Classes) which relate to the Parliamentary procedure they are subject to. You must specify the Class of SI when you submit it through the legislation.gov.uk Publishing service. In an SI, the required content depends on the Class of SI you are producing. Where relevant, the different Classes of SI are referred to in the text that follows.

3.3 Local and General SIs

Is your SI local or general?

3.3.1 The classification as either local or general determines whether an SI must be printed and put on sale. Local SIs are not usually printed but they are made available on legislation.gov.uk.

3.3.2 An SI will be general or local according to its subject matter. An SI will usually be local if its nature is personal, local or private and general if its nature is public and general, unless there are special reasons to the contrary. This is set out in the Statutory Instruments Regulations 1947 (SI 1948/1), [regulation 4](#)¹.

¹ <http://www.legislation.gov.uk/uksi/1948/1/regulation/4/made>

- 3.3.3 The classification of the SI as local or general does not depend on the classification of the parent Act. Many instruments made under public general Acts are classified as local. Some instruments made under local Acts are classified as general.
- 3.3.4 The fact that an SI amends an Act or SI of general application does not mean it should be classified as general. If the amendment relates to a local area it should be classed as local. Nor does the fact that a local SI is likely to be of general interest or attract wider publicity mean that it should be classified as general.
- 3.3.5 If in doubt about classification as local or general, consult the SI Registrar.

3.4 Illustrating different SI elements

- 3.4.1 We have produced a document that illustrates different SI elements. It is a compendium of all the elements you might include in an SI (but would never be seen together – for example you would not normally include dates in a Commencement Order. It reflects some of the possible components that can be included in an SI but does not reflect correct drafting or content.

Document Header
There should not be any text in the document header.

Corrected Reprint Headnote { Where a headnote is required for a Corrected Reprint instrument, it appears above the SI Banner (and any previous Parliamentary Procedure and/or Corrected Reprint Headnotes) and not in the document header. This headnote is inserted using the SI Template option "Correction".

Parliamentary Procedure Headnote { Where a headnote is required to detail the Parliamentary procedure the instrument is subject to (normally for draft or made affirmative instruments) it appears above the SI Banner and not in the document header. This headnote is inserted using the SI Template option "Draft".

STATUTORY INSTRUMENTS **SI Banner**

Year Placeholder SI Number Subsidiary Number
2016 No. 1234 (C. 1)

CRIMINAL LAW, ENGLAND AND WALES

Main Subject Heading Territorial Suffix

EARLY RELEASE

Sub-heading

The Domestic Violence, Crime and Victims (Amendment) Act 2012 (Commencement No. 2) Order 2016

SI Title

Approved by Parliament } **Italic Approval Cross Heading**

Italic Date Information {
Made - - - - 28th January 2016 } **Made Date**
Laid before Parliament 3rd February 2016 } **Laid Date**
Coming into force - - 15th April 2016 } **Coming Into Force Date**

Preamble { The Secretary of State makes the following Order in exercise of the powers conferred by section 4(2) of the Domestic Violence, Crime and Victims (Amendment) Act 2012(a):

Citation **Enabling Power(s)** **Footnote Reference**

Citation Article { 1. This Order may be cited as the Domestic Violence, Crime and Victims (Amendment) Act 2012 (Commencement No. 2) Order 2016.

Commencement

Commencement Article { 2. The Domestic Violence, Crime and Victims (Amendment) Act 2012 comes into force on 15th April 2016.
3. This schedule has effect.

Signed by the authority of the Secretary of State **Signature Block**

28th January 2016 } **Signed Date**

Crispin Blunt } **Italic Signature**
Parliamentary Under Secretary of State
Ministry of Justice

(a) 2012 c. 4.
Footnote

Document Footer
The document footer should contain page numbers only, and only from page 2 onwards. No page number should appear on page 1.

Schedule Header

Where an instrument contains more than one schedule, the headers are numbered Schedule 1, Schedule 2, etc. Paragraph numbering should restart at 1 within each Schedule.

SCHEDULE

Article 3
Shouldernote

This is an example schedule.

Explanatory Note

Should always appear at the end of the instrument, but before any Earlier Commencement Note.

EXPLANATORY NOTE

(This note is not part of the Order/Regulations/Scheme/Rules) } Amend to reflect Instrument type

This Order brings into force on 15th April 2016 the Domestic Violence, Crime and Victims (Amendment) Act 2012 (c. 4).

Earlier Commencement Note

Where an Act is brought into force by more than one commencement order or regulation, the second and subsequent Commencement Instruments should include this note after the Explanatory Note.

NOTE AS TO EARLIER COMMENCEMENT ORDERS/REGULATIONS

(This note is not part of the Order/Regulations)

} Amend to reflect Instrument type

The following provisions of the Act were brought into force by Commencement Order made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Parts 1 to 4	1 January 2013	2013/1234

3.5 Headnotes

Different types of headnotes

- 3.5.1 There are two types of headnote. One is used to indicate Parliamentary procedure. The other is only used when a new SI is issued to correct a defective SI (called a 'corrected reprint SI') or when an existing SI is re-published in its entirety to correct minor errors.
- 3.5.2 You do not need a headnote if the SI is not dependent on Parliamentary approval or being disapproved, and is not being issued free of charge. SIs can be subject to Parliamentary procedure but not bear a headnote, for example Class v) negative instruments. This type of SI will only bear a headnote if it is being corrected free of charge. Similarly, Class vi) SIs which are being laid but are not subject to any further Parliamentary proceedings, and Class vii) SIs which are not required to be laid at all, will only bear a headnote if they are being issued free of charge.

Position of headnotes

- 3.5.3 Both a Parliamentary procedure headnote and a corrected reprint headnote appear in italic at the top of the first page, above the banner. They should never be put in the document header. The headnotes differ in formatting, so therefore please use the SI Template styles to ensure your headnotes are in the correct style, rather than formatting the text yourself. The corrected reprint headnote should always appear above any Parliamentary procedure headnote.

Form of procedural headnotes

- 3.5.4 The specific type of headnote used, and how it should appear when published, depends on the Class of SI you are producing. This section tells you what headnotes to use in each Class of SI, and details the changes you need to make to headnotes, banners, and headings during the laying and registration processes.
- 3.5.5 Where one is required, the headnote should state:
- the nature of the SI (for example draft regulations);
 - the statutory provision prescribing the procedure that it must follow;

- the form of that procedure; and
- in the case of the draft of a Class iv) negative procedure SI, the date of laying.

Headnotes for Class i) affirmative drafts

3.5.6 Class i) affirmative drafts are laid in draft and cannot be made unless the draft is approved by Parliament (or, in some cases, just the House of Commons). Here are the headnotes you can use, or adapt. Headnote style 1) is the most commonly used. Headnote style 2) is for Orders in Council.

Example

Headnote 1 – for affirmative drafts (Style 1)

Draft [insert type of SI here for example Regulations, Rules, Order, Order in Council] laid before Parliament under section of the Act 20....., for approval by resolution of each House of Parliament.

Example

Headnote 2 – for affirmative drafts (Style 2)

Draft Order in Council laid before the House of Commons under section.... of the Act 20....., for an address to Her Majesty from that House praying that the Order be made.

3.5.7 Class i) affirmative drafts are submitted for registration but are not given an SI number until they are approved and made. They are initially published in draft without an SI number, but with their italic headnote.

Headnotes for Class ii) affirmative instruments

3.5.8 Class ii) affirmative instruments are laid after making, but cannot come into force unless they are approved. Here is a sample headnote you can use, or adapt:

Example

Headnote 3 – for Class ii) affirmative instruments

Scheme made by the Secretary of State for and the Secretary of State for, laid before Parliament under section ... of the Act 20....., for approval by resolution of each House of Parliament.

3.5.9 Class ii) affirmative instruments are submitted for registration but are not given an SI number until they are approved. They are published with their italic headnote

but without an SI number. They are re-published when approved, with an SI number and with the headnote removed.

Headnotes for Class iii) affirmative instruments

3.5.10 Class iii) affirmative instruments are laid after making and registration. They can be brought into force, but cannot remain in force unless they are approved within a specified period. The procedure is set out in the parent Act, for example see [paragraph 26¹](#) of Schedule 2 to the Financial Services and Markets Act 2000.

Here is a sample headnote you can use, or adapt:

Example

Headnote 4 – for Class iii) affirmative instruments (Style 1)

Order made by the Secretary of State, laid before Parliament under section of the Act 20...., for approval by resolution of each House of Parliament within [insert number of days here – it is generally twenty-eight or forty] days beginning with the day on which the Order was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

3.5.11 Class iii) affirmative instruments are published as soon as possible after they have been made, registered and laid. This published copy includes the SI number and the italic headnote.

Headnotes for Class iv) negative drafts

3.5.12 Class iv) negative drafts are laid in draft, and cannot be made if the draft is disapproved within 40 days. Here are the headnotes you can use, or adapt.

Note: The headnote for a Class iv) negative drafts must include the date of laying. Example headnote 6 is useful if the SI is being made under an Act passed before 1948 that sets out a procedure that has subsequently been replaced by that set out in [section 6²](#) of the Statutory Instruments Act 1946.

¹ <http://www.legislation.gov.uk/ukpga/2000/8/schedule/2/paragraph/26>

² <http://www.legislation.gov.uk/ukpga/Geo6/9-10/36/section/6>

Example

Headnote 5 – for Class iv) negative drafts (Style 1)

Draft Rules laid before Parliament under section of the Act 20....; draft to lie for forty days, pursuant to section 6(1) of the Statutory Instruments Act 1946, during which period either House of Parliament may resolve that the Rules be not made.

Example

Headnote 6 – for Class iv) negative drafts (Style 2)

Draft Order in Council laid before Parliament under section 6(2) of the Statutory Instruments Act 1946 (superseding section of the Act 18....) on.... 20....; draft to lie for forty days pursuant to section 6(1) of that Act of 1946, during which period either House of Parliament may resolve that the draft be not submitted to Her Majesty.

- 3.5.13 Class iv) negative drafts are submitted for registration but are not given an SI number until they are approved and made. They are initially published in draft with their italic headnote but without an SI number.

Headnotes for Classes v) (negative instruments) and, vi) and vii) (Other Procedure) SIs

- 3.5.14 Class v) negative instruments are laid after being made and are subject to a resolution if an annulment is passed within 40 days. Class vi) other procedure SIs are laid after being made and there is no further provision for Parliamentary procedure. Class vii) other procedure SIs are not required to be laid.
- 3.5.15 None of these Classes of SI requires a headnote.

Headnotes for Class viii) Exceptional Procedure SIs

- 3.5.16 Class viii) SIs are exceptional procedure SIs. They are laid in draft and are subject to special enhanced Parliamentary procedures for approval or disapproval. Class viii) exceptional procedure SIs include Legislative Reform Orders (whether negative, affirmative, super-affirmative); Localism Orders (whether negative, affirmative, super-affirmative); and Public Bodies Orders (whether affirmative or enhanced affirmative). Here are some headnotes you can use, or adapt:

Example

Headnote 7 – for Legislative Reform Orders using the affirmative process

Draft Order laid before Parliament under section 14(1) of the Legislative and Regulatory Reform Act 2006 for approval by resolution of each House of Parliament.

Example

Headnote 8 – for Legislative Reform Orders revised after the first scrutiny, using the super affirmative process

Revised draft Order laid before Parliament under section 18(7) of the Legislative and Regulatory Reform Act 2006 [for approval by resolution of each House of Parliament].

Note: If the LRO is using a super-affirmative procedure and is revised after the first scrutiny stage, the headnote reference must change from section 14(1) to section 18(7). If the reference to section 14(1) remains, then formally you will be starting the initial scrutiny again.

Example

Headnote 9 – for Localism Orders

Draft Order laid before Parliament under section 7(2) of the Localism Act 2011 to which the Secretary of State has recommended that the negative resolution procedure under section 16 of the Legislative and Regulatory Reform Act 2006 should apply.

Example

Headnote 10 – for Public Bodies Orders

Draft Order laid before Parliament under section 11 of the Public Bodies Act 2011, for approval by resolution of each House of Parliament after the expiry of the 40-day period referred to in section 11(4) of that Act.

3.5.17 Class viii) exceptional procedure SIs are not given an SI number until they are approved and made. They are initially published in draft without an SI number, but with their italic headnote.

Headnotes for Class ix) Exceptional Procedure SIs (Special Procedure Orders)

3.5.18 Class ix) exceptional procedure SIs are subject to special Parliamentary procedure as prescribed in the [Statutory Orders \(Special Procedure\) Act 1945](#)¹ as amended by the [Statutory Orders \(Special Procedure\) Act 1965](#)². For more information see the [UK Parliament](#)³ website. Not all Special Procedure Orders are made as SIs. They usually relate to the acquisition of land, or rights over land, by a Government Department or public authority, or they establish or extend the powers of a water or harbour authority.

3.5.19 Here is a headnote for Special Procedure Orders that you can use, or adapt:

Example

Headnote 11 – for Special Procedure Orders

Order made (or, confirmed) by the Secretary of State for, subject to special Parliamentary procedure, and laid before Parliament under section 1 of the Statutory Orders (Special Procedure) Act 1945 on.... 20...., together with the certificate or statement required by section 2 of that Act (or, the statement required by sections 2(5) and 10(2) of that Act).

Note: A headnote in this form should also appear on Special Procedure Orders even if they are not made as SIs.

Headnotes on a correcting made SI

3.5.20 If an SI is found to be defective, or contains typographical errors, you may need to produce a new SI and make it available, free of charge, to everyone who received the original SI. Part 4: Registration and Publishing covers this process in more detail.

3.5.21 If you do produce a new SI in these circumstances, you must include a headnote to explain what has happened. Here are some headnotes you can use or adapt. The corrected reprint headnote should appear before the Parliamentary procedure headnote, in italics.

¹ <http://www.legislation.gov.uk/ukpga/Geo6/9-10/18/contents>

² <http://www.legislation.gov.uk/ukpga/1965/43/contents>

³ <http://www.parliament.uk/business/bills-and-legislation/secondary-legislation/special-procedure-orders/>

Example

Headnote 12 – for new SIs that correct errors in an earlier SI

This Statutory Instrument has been printed to correct errors in [SI 2016/0000] and is being issued free of charge to all known recipients of that Statutory Instrument.

Example

Headnote 13 – for new SIs that correct a defective SI

This Statutory Instrument has been made in consequence of a defect in [SI 2016/0000] and is being issued free of charge to all known recipients of that Statutory Instrument.

Example

Headnote 14 – for a substitution of the same SI (with the same number)

This Statutory Instrument has been printed in substitution of the SI of the same number and is being issued free of charge to all known recipients of that Statutory Instrument.

Headnotes on a superseding draft SI

- 3.5.22 If a draft SI is found to be defective or contains typographical errors, you need to produce and publish a new draft SI and make it available, free of charge, to anyone who received the original SI. For the headnote of a superseding draft SI, the original draft SI is identified by its ISBN number. You can find the ISBN of the draft SI being superseded by looking on legislation.gov.uk.
- 3.5.23 The corrected reprint headnote should appear before the Parliamentary procedure headnote, in italics. Here are headnotes you can use, or adapt:

Example

Headnote 15 – for when the draft SI had different laying/publication dates

This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament/the House of Commons [delete as applicable] on [insert date] and published on [insert date] (ISBN [Insert ISBN Number]). It is being issued free of charge to all known recipients of that draft Statutory Instrument.

Example

Headnote 16 – for when the draft SI was laid/published on same date (Style 1)

This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament/the House of Commons [delete as applicable] and published on [insert date] (ISBN [Insert ISBN Number]). It is being issued free of charge to all known recipients of that draft Statutory Instrument.

Example

Headnote 17 – for when the draft SI was laid/published on same date (Style 2)

This draft Statutory Instrument supersedes the draft laid before Parliament/the House of Commons [delete as applicable] on [insert date] and published on [insert date] (ISBN [Insert ISBN Number]). It is being issued free of charge to all known recipients of that draft Statutory Instrument.

3.6 Banners

The use of a banner in SIs

3.6.1 All SIs have a banner. Banners are used to differentiate between the different types of SI. The banner shows whether an SI is made or draft. It comes after the headnote (if there is one) and before the SI number.

3.6.2 Made SIs require the following banner:

Example

STATUTORY INSTRUMENTS ¶

3.6.3 Draft SIs require the following banner:

Example

DRAFT STATUTORY INSTRUMENTS ¶

The changes you need to make to headnotes, banners, and headings when an SI is approved

3.6.4 When an SI is approved you need to make changes to headnotes, banner and headings. Use the SI template functionality to change the banner type to Statutory Instruments. You must not make changes to the content of the SI document.

3.6.5 When a Class i) affirmative draft is approved:

- remove the italic headnote;
- remove the word 'DRAFT' in the banner 'DRAFT STATUTORY INSTRUMENTS'. Use the correct SI template functionality to do this;
- insert the dates into the 'made' and 'coming into force' italic date information (if this does not already appear in the draft);
- insert Minister's signature and date of signature;
- submit your approved and made SI through the [legislation.gov.uk](https://www.legislation.gov.uk) Publishing service, using the general UKSI bundle.

3.6.6 When a Class ii) affirmative instrument is approved:

- remove the italic headnote;
- insert an italic cross-heading: 'Approved by both Houses of Parliament' or 'Approved by the House of Commons'. This cross-heading is inserted between the title of the SI and the italic date information;
- insert the date into the 'coming into force' italic date information;
- submit your approved SI through the [legislation.gov.uk](https://www.legislation.gov.uk) Publishing service for registration, numbering and publishing, using the general UKSI bundle.

3.6.7 When a Class iii) affirmative instrument is approved:

- remove the italic headnote;

- insert an italic cross-heading: ‘Approved by both Houses of Parliament’ or ‘Approved by the House of Commons’. Insert this between the title of the SI and the italic date information;
- submit your approved SI through the legislation.gov.uk Publishing service (please note it will keep its existing SI number. Use the ‘Update an Instrument that has been published’ tool).

3.6.8 When a Class iv) negative draft is approved:

- remove the italic headnote;
- remove the word ‘DRAFT’ in the banner ‘DRAFT STATUTORY INSTRUMENTS’ using the appropriate SI template functionality;
- insert the dates into the ‘made’ and ‘coming into force’ italic date information, if this does not already appear in the draft;
- insert Minister’s signature and date of signature;
- submit your approved and made SI through legislation.gov.uk Publishing, using the general UKSI bundle.

3.6.9 When Class viii) exceptional procedure Orders are approved, make the amendments for the procedure that is prescribed (these Orders can be negative, affirmative, super affirmative or enhanced affirmative).

3.7 Numbers

The SI number

- 3.7.1 The numbers for the UK SI series and the subsidiary numbers are issued by the SI Registrar when an SI is registered. The number series run from the beginning of the calendar year.
- 3.7.2 Below the banner comes the year and SI number(s). This takes the form: ‘20[...] No. [...]’.
- 3.7.3 The number is issued and inserted into a made SI as part of registration, except where the SI is subject to approval (Class ii)). The year in the SI number must match the year in the SI title. The year used for the number is the year in which

the SI was made and not the year the SI was submitted for registration (if different).

Subsidiary numbers

3.7.4 Some types of SI have subsidiary numbers. These appear in parentheses with a distinguishing letter as follows:

(C): Commencement Instruments series: instruments which bring into force an Act or part of an Act.

Note: Most Appointed Day or Commencement Instruments that commence sections of an Act of Parliament require a commencement subsidiary number. In certain circumstances an SI that commences a piece of legislation does not require commencement in the SI title but such SIs should still carry a Commencement subsidiary number. As an example see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Alcohol Abstinence and Monitoring Requirements) Piloting (Amendment) Order 2015 ([SI 2015/1480](http://www.legislation.gov.uk/uksi/2015/1480)¹), made under [section 77](http://www.legislation.gov.uk/ukpga/2012/10/section/77)² of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Exceptions:

- Church of England (Appointed Day) Orders do not require a commencement subsidiary number.
- Instruments that commence a Code of Practice do not require a commencement subsidiary number.
- When amending Appointed Day or Commencement Instruments, you will require a commencement subsidiary number if the provisions of an Act that are being commenced are being altered, or the dates on which they come into force are being changed. Where this is not the case then a commencement subsidiary number is not required.

(L): Legal series: instruments relating to fees or procedures in courts in England and Wales.

¹ <http://www.legislation.gov.uk/uksi/2015/1480/contents/made>

² <http://www.legislation.gov.uk/ukpga/2012/10/section/77>

(S): Scottish series: instruments covering reserved matters applying to Scotland only. These should not be confused with Scottish Statutory Instruments (SSIs) made under powers devolved under the [Scotland Act 1998](#)¹.

(NI): Northern Ireland series: Orders in Council making legislation for Northern Ireland, mainly in relation to reserved matters under [section 85](#) of the Northern Ireland Act 1998².

(W): Welsh series: SIs made by the Welsh Ministers and applying to Wales only. Such SIs are generally made in both the English and Welsh languages where the subsidiary number will be shown as (W.) in English and (Cy.) in Welsh.

3.7.5 These subsidiary numbers are not the same as the numbers included in the title of an SI to distinguish it within a sequence of SIs bearing similar titles.

Formatting requirements for SI and subsidiary numbers

3.7.6 SI and subsidiary numbers in the SI are set out as follows:

- The SI number, then the subsidiary number (if used).
- A commencement Order/Regulation number precedes any other subsidiary number; for example: '1999 No. 1432 (C. 39) (S. 2)'.
- The one exception to this is where the SI is made by the Welsh Ministers, in which case the "W. / Cy." number will always follow the SI number; for example '2005 No. 71 (W. 9) (C. 3)'.

3.7.7 Departments must ensure that the correct order is followed and that the correct letters in parentheses ((W.) or (C.) for example) are included. The SI and subsidiary numbers will be automatically added for you at registration, except when an advanced number(s) has been approved. In this case you need to insert the allocated number(s) in the SI and any accompanying Explanatory Memorandum.

3.7.8 Subsidiary numbers in SIs must be formatted correctly. Here is how you should format subsidiary numbers:

- open parenthesis;
- then put the distinguishing letter (C., Cy. etc.);

¹ <http://www.legislation.gov.uk/ukpga/1998/46/contents>

² <http://www.legislation.gov.uk/ukpga/1998/47/section/85>

- add a space;
- then include the subsidiary number;
- close parenthesis.

Domestic serial numbers and other internal reference numbers

3.7.9 Some Departments allocate a domestic serial number or other internal reference number during the drafting process. You must remove these references from the SI before you send it for registration through [legislation.gov.uk](https://www.legislation.gov.uk) Publishing.

3.8 Subject headings

Position of subject headings and sub-headings

3.8.1 Subject headings and sub-headings appear between the SI number and the SI title.

Subject headings and territorial references

3.8.2 Below the SI number comes a main subject heading, which indicates the area of law or of administration the SI belongs to.

3.8.3 You should use a subject heading that is appropriate to your SI and that is on the valid subject heading list that you can find in the Tools and Guidance section of [legislation.gov.uk](https://www.legislation.gov.uk) Publishing:

- <https://publishing.legislation.gov.uk/tools/uksi/drafting/si-subject-headings>

3.8.4 If the proposed heading has not been used before, please email a copy of your SI, your suggested subject heading and any relevant background information (including your reason for not using an existing subject heading) to the SI Registrar.

3.8.5 In the case of SIs made under [section 2](#)¹ of the European Communities Act 1972, the SI should carry a heading that is relevant to its subject matter, rather than: “European Union”. You should only use the heading “European Union” when the SI deals specifically with that subject.

3.8.6 If more than one subject headings is used, they can be listed in order of relevance or importance, but should be listed in alphabetical order where no

¹ <http://www.legislation.gov.uk/ukpga/1972/68/section/2>

particular order of priority applies. Please use the SI Template styles to ensure your subject headings are in the correct style. The SI template heading style will put your heading into the correct font and size as in the following example:

Example

DEFENCE

INCOME TAX

- 3.8.7 Using a correct subject heading is important because it enables the SI to be classified and indexed correctly.

Subject headings for Legislative Reform Orders and Public Bodies Orders

- 3.8.8 To ensure consistency, in addition to any specific subject heading, subject headings for Legislative Reform Orders should include:

Example

REGULATORY REFORM

- 3.8.9 To ensure consistency, in addition for any specific subject heading, subject headings for a Public Bodies Order should include:

Example

PUBLIC BODIES

Inclusion of territorial suffixes in subject headings

- 3.8.10 Following the devolution of powers to the Scottish Parliament, the Northern Ireland Assembly, and the National Assembly for Wales, all SIs that contain law for only part of the UK should include a territorial suffix. The territorial suffix indicates the coverage of the SI.
- 3.8.11 The suffixes may differ in a single SI, for example some headings may deal with subjects of a UK or Great Britain extent (requiring no suffix) as well as subjects that apply to England only (therefore requiring an England suffix).
- 3.8.12 Table F below provides guidance on the suffixes you should use.

Example

HOUSING, ENGLAND
INSOLVENCY, ENGLAND AND WALES
LOCAL GOVERNMENT, WALES
POLICE, NORTHERN IRELAND

Table F– Use of territorial suffixes in SI headings

Contains law for	Suffix to be used
United Kingdom	No suffix required
Great Britain (England, Wales and Scotland)	No suffix required
England	England
Wales	Wales
Scotland	Scotland
Northern Ireland	Northern Ireland
England and Wales	England and Wales
England and Scotland	Two headings = England
	Scotland
England and Northern Ireland	Two headings = England
	Northern Ireland
England and Wales, and Northern Ireland	Two headings = England and Wales
	Northern Ireland

3.8.13 The territorial suffix tells you where in the UK the law applies. Legislation.gov.uk Publishing now includes a Subject Heading Guide. This is available as follows:

- <https://publishing.legislation.gov.uk/sites/default/files/SI%20Reg%20Guide-%20Subject%20Heading.pdf>

Omission of territorial suffixes in subject headings

3.8.14 Some subject headings should not carry a territorial suffix. These include:

Example

EUROPEAN UNION

DEFENCE

CONSTITUTIONAL LAW

Note: Some older SIs with the subject heading EUROPEAN UNION or EUROPEAN COMMUNITIES include a suffix in the subject heading. This is an erroneous precedent, and you should not follow it.

Sub-headings under subject headings

3.8.15 You can, if necessary, include a sub-heading below the subject heading. Select the sub-heading style in the SI template.

3.8.16 Do not use a sub-heading if its subject matter is already included in the title of the SI.

3.8.17 In general, avoid using too many sub-headings and only use those clearly relevant to the particular SI.

3.8.18 You should aim to use existing sub-headings. If you need further advice please contact the SI Registrar.

Note: You should not use territorial suffixes in a sub-heading.

3.9 Titles of Statutory Instruments

SI titles generally

3.9.1 The title of the SI appears below the subject heading (or sub-heading if any). The title should always end with the calendar year in which the SI is made. If a draft SI includes a year in its title and has been approved but not made in that year, you must change the date in the title to the year in which the SI was made. No further Parliamentary approval is required.

3.9.2 There are several considerations for titles:

- The title should give an accurate indication of the nature of the SI, and distinguish it from all others.

- You must take care to ensure that no two SIs have the same title in one year.
- When different Departments make SIs under the same Act, they must jointly ensure that the titles are not duplicated.
- The title should match exactly that which has been used in the citation clause.
- The title should begin with ‘The...’ and end with the year in which it is made. The only exception to using ‘The’ in SI titles is when they start with ‘Her Majesty’s...’: For example see: Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (Fees and Frequency of Inspections) (Children’s Homes etc.) (Amendment) Regulations 2013 ([SI 2013/523](#)¹).

Titles in a series of SIs

3.9.3 The titles of the SIs in the series should include a number, reflecting the sequence in which the SIs were made, if there is:

- a series of commencement Orders/Regulations bringing different parts of an Act into force;
- a series of SIs amending a principal instrument; or
- a series of other SIs that have a common subject matter:

Example

The Protection of Children Act 1999 (Commencement No. 3) Order 2002

The Police Pensions (Amendment) (No. 3) Regulations 2004

The Import Duties (Temporary Reductions and Exemptions) (No. 24) Order 1976

3.9.4 If there is a series of commencement Orders/Regulations for an Act, the title should include a number in a single sequence, irrespective of the year in which the SIs are made.

¹ <http://www.legislation.gov.uk/ukxi/2013/523/made>

Example

**The Constitutional Reform and Governance Act
2010 (Commencement No. 7) Order 2012**
**The Constitutional Reform and Governance Act 2010
(Commencement No. 8 and Saving Provision) Order 2013**

Titles for different jurisdictions

- 3.9.5 Where a series of Commencement Instruments is made for an Act that extends to the whole of the UK, but is being commenced in only one jurisdiction, the titles should include a number in a separate sequence for each jurisdiction. This means an Act may have several sequences of Commencement Instruments. Each sequence will relate to a separate jurisdiction (e.g. England, Wales or Scotland). Include the relevant jurisdiction in parentheses (for example, '(Wales)') between the words '(Commencement No)' and 'Regulation'.

Example

**The Small Business, Enterprise and Employment Act 2015
(Commencement No. 1) Regulations 2015**
**The Small Business, Enterprise and Employment Act 2015
(Commencement No. 1) (Wales) Regulations 2015**

- 3.9.6 Where different Departments make Commencement Instruments under the same Act, relating to the same jurisdiction, they must jointly ensure that the numbers used in the titles follow in sequence.
- 3.9.7 You can use a Commencement Instrument to commence a mix of provisions with varying territorial applications. The subject headings in the instrument should reflect the different provisions and territorial applications. The instrument can still be titled as part of the main series of Commencement Instruments for an Act without any reference to territorial application. For an example of this see: the Infrastructure Act 2015 (Commencement No.1) Regulations 2015 ([SI 2015/481](http://www.legislation.gov.uk/uksi/2015/481/introduction/made)¹).
- 3.9.8 Except for Commencement Instruments, the sequence of numbers included in the titles usually start from the beginning of each year. In the case of amending SIs, the numbering will start from the second SI of the series, as in the example below:

¹ <http://www.legislation.gov.uk/uksi/2015/481/introduction/made>

Example

The Regulation of Consultant Lobbyists Regulations 2015
The Regulation of Consultant Lobbyists (Amendment)
Regulations 2015
The Registration of Consultant Lobbyists (Amendment)
(No. 2) Regulations 2015

Note: Be consistent in your use of parenthesis around numbers. If the first Regulation number was in parenthesis, ensure all ensuing Regulations also have their numbers in parenthesis for example (No. 3) Regulations, (No. 4) Regulations.

Titles where there are important substantive provisions

3.9.9 Where a Commencement Instrument contains important substantive provisions, the title should reflect this, so that it does not mislead anyone into thinking that it deals only with dates of commencement.

3.9.10 The substantive provisions usually relate to transitional arrangements. The titles of such instruments should include this information as below:

Example

The National Lottery Act 2006 (Commencement No. 2
and Transitional Provisions) Order 2006
The Anti-social Behaviour, Crime and Policing Act 2014
(Commencement No. 2 and Transitional Provisions)
(Wales) Order 2014

Note: The Commencement series number should always appear before the additional wording, to preserve the integrity of numbering.

Titles of European Union instruments

3.9.11 Only include a reference to the 'European Union' in the title if:

- the SI is linked with some activity of a European Union institution;
- it concerns the European Union as a geographical or economic unit;
- it confers rights or imposes obligations on nationals of other member states in pursuance of a European Union instrument; or
- it relates generally to a class of European Union provisions.

In other cases the title should refer to the subject matter to which the SI relates. If you are not sure what titles to use, email the SI Registrar. Include a copy of your SI, your suggested title and any relevant background information.

Titles of Public Bodies Orders

- 3.9.12 For consistency, and to aid Parliamentary committees, we recommend that the title of Public Bodies Orders should be in the following format: The Public Bodies ([insert details of title]) Order [year].

Example

The Public Bodies (Abolition of Her Majesty's
Inspectorate of Courts Administration and the Public
Guardian Board) Order 2012

- 3.9.13 You may find it useful to consult the SLSC's list of [past examples](#)¹.

Titles of Legislative Reform Orders

- 3.9.14 For consistency, and to aid Parliamentary committees, we recommend that the title of Legislative Reform Orders should be in the following format: The Legislative Reform ([insert title]) Order [year].

Example

The Legislative Reform (Payments by Parish Councils,
Community Councils and Charter Trustees) Order 2014

- 3.9.15 You may find it useful to consult the Delegated Powers Committee's [list of LROs](#)².

3.10 Italic date information: made, laid and coming into force dates

- 3.10.1 The italic date information comes below the SI Title, in a typical SI laid before Parliament. It includes the following information:

- (a) the date on which it was made;
- (b) where applicable, the date on which it was laid before UK Parliament or the House of Commons and laid dates for other Parliaments and Assemblies (where the instrument is required to be laid); and

¹ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/public-bodies-orders/>

² <http://www.parliament.uk/business/committees/committees-a-z/lords-select/delegated-powers-and-regulatory-reform-committee/lros/>

(c) the date on which it came or will come into force.

3.10.2 If laying before the two Houses of the UK Parliament is on different dates, enter the later date in b). If the SI comes into force before it is laid, the coming into force italic date should be given immediately after the made italic date, with the laid italic date last.

3.10.3 Where an SI is made, laid and comes into force on the same day, Departments should insert the times of making/signing, laying and coming into force immediately before the relevant dates. For examples of this practice see:

- The Ukraine (European Union Financial Sanctions) (No. 3) (Amendment No. 2) Regulations 2014 ([SI 2013/3230](#)¹);
- The Registered Pension Schemes (Provision of Information) (Amendment) Regulations 2014 ([SI 2014/1843](#)²); and
- The Prison and Young Offender Institution (Amendment) Rules 2014 ([SI 2014/2169](#)³).

Note: Any italic dates made, laid or coming into force should have the time inserted before the date.

Example

The correct formatting is:

Coming into force - - - *at 9.15 a.m. on 8th October 2018*

The following formatting **is not** correct:

Coming into force at 9.15 a.m. *on 8th October 2018*

3.10.4 The wording used for made, laid and coming into force italic dates varies according to the procedure followed, as follows:

3.10.4.1 SIs that are laid before the House of Commons and the House of Lords:

Example

Made - - - - *[NNth Month Year]*

Laid before Parliament *[NNth Month Year]*

Coming into force - - - *[NNth Month Year]*

¹ <http://www.legislation.gov.uk/ukxi/2014/3230/contents/made>

² <http://www.legislation.gov.uk/ukxi/2014/1843/contents/made>

³ <http://www.legislation.gov.uk/ukxi/2014/2169/contents/made>

Coming into force - - -

Note: In the examples above, where the Coming in Force date is known it can be entered in the format of NNth Month Year, or just the Year.

3.10.4.7 SIs that have more than one coming into force date:

Example

Made - - - - - [3rd March 2015]
Coming into force
Articles 1 and 2 [25th March 2015]
Remainder [1st July 2015]

or

Made - - - - - [3rd March 2015]
Coming into force
For the purposes of Articles 7 and 9 [25th March 2015]
For all other purposes [1st July 2015]

Note: For commencement clauses corresponding to the above headings, see paragraph 3.12.12.

3.10.4.8 SIs that will come into force on dates to be determined:

Example

Made [3rd March 2015]
Coming into force in accordance with [article 1(2)]

Note: You can use this formula if the commencement is to be determined later under the article, Regulation or Rule specified, but try to use a calendar date whenever possible.

3.10.5 Orders in Council: Before an Order in Council is sent to the Privy Council Office for submission to Her Majesty in Council, the responsible department must complete the italic date information, including the date on which the Order is to be laid before Parliament. You should also include the Privy Council meeting date, which comes below the italic date information, as in the example below.

Example

Made - - - - - [NNth Month Year]
Laid before Parliament [NNth Month Year]

Coming into force - - - *[NNth Month Year]*

At the Court at Buckingham Palace, the [NNth] day of [Month Year]

Present,

The Queen's Most Excellent Majesty in Council

3.10.6 General Synod instruments also contain italic date information.

Example

Made - - - - *[NNth Month Year]*

Laid before Parliament *[NNth Month Year]*

Coming into force - - *[NNth Month Year]*

or

Made (sealed by the Archbishop's Council) *[NNth Month Year]*

Laid before Parliament *[NNth Month Year]*

Coming into force - - *[NNth Month Year]*

or

Made (approved by the General Synod) - *[NNth Month Year]*

Laid before Parliament *[NNth Month Year]*

Coming into force - - *[NNth Month Year]*

or

Made (sealed by the Church Commissioners) *[NNth Month Year]*

Laid before Parliament *[NNth Month Year]*

Coming into force - - *[NNth Month Year]*

3.10.7 Special Procedure Orders do not require italic date information giving the dates of laying and commencement (although most have them). When used, complete the italic date information (made, laid, coming into force) with as much information as is available. You may not be able to specify the date on which a Special Procedure Order will come into force if it is (or could become) subject to special Parliamentary procedure (for example, following consultation). In this case, you can include a recital in the preamble that states that the Order will not come into force until the relevant statutory provisions have been complied with.

Table of contents in SIs

- 3.10.8 A table of contents, if needed, comes after the made, laid and coming into force italic date information. A table of contents are usually needed for lengthy SIs. The version of the table of contents used in the printed version is generated automatically by the SI template.
- 3.10.9 Information used for the table of contents tab on the legislation.gov.uk website is automatically generated from the content of the instrument.

3.11 Preamble and words of enactment

General form of preamble

- 3.11.1 Below the made, laid and coming into force dates and the table of contents (if used) comes the preamble. The preamble is:
- the recitals of the enabling powers;
 - the recital of any other matters upon which its validity depends; and
 - the words of enactment.
- 3.11.2 Best practice is to combine the recitals and words of enactment in one sentence, but in some cases this would produce a sentence of undue length and complexity. For example see: The Legislative Reform (Community Governance Reviews) Order 2015 ([SI 2015/998](#)¹). If that is the case, you can have separate recitals before the words of enactment. In order to make it clear who is exercising the power, start the wording with (in the case of the Secretary of State): “The [Secretary of State] in exercise of powers”. Note that where the power to make the instrument is conferred on ‘the Secretary of State’ the preamble does not need to specify the department (for example ‘The Secretary of State for Education in exercise of ...’) unless the power is conferred specifically on that departmental Secretary of State.

¹ <http://www.legislation.gov.uk/ukSI/2015/998/introduction/made>

Example

The Secretary of State in exercise of powers conferred by section ... of the Act 20... and with the consent of the Treasury makes the following Regulations.
In accordance with section ...of that Act, a draft of the instrument was laid before Parliament and approved by a resolution of each House of Parliament.

- 3.11.3 The preambles and words of enactment for Orders in Council have a distinctive form. For example see the Trial of the Pyx (Amendment) Order 2012 ([SI 2012/2746¹](#)).

Example

Her Majesty, in exercise of the powers conferred on Her by section 8(2) and (3) of the Coinage Act 1971(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

- 3.11.4 GLS Statutory Instrument Drafting Guidance gives more information on drafting the preamble.

Preamble for EU instruments

- 3.11.5 For detailed and up to date guidance on Implementing European Law, including what to include in preambles when implementing EU legislation, you should talk to DExEU legal advisers.
- 3.11.6 If you are drafting an SI under [section 2\(2\)²](#) of the European Communities Act 1972 you need to be satisfied that the power provides the necessary vires for the instrument, but you do not need to specify any further detail in the preamble. A reference to “section 2(2) of the European Communities Act 1972” is sufficient.
- 3.11.7 The preamble to an instrument made under section 2(2) of the European Communities Act should recite the subject matter of the designation (if any) upon which the maker of the instrument relies. If more than one designation is relied on, all the relevant designations must be cited.
- 3.11.8 If the instrument extends to the European Economic Area (EAA), a footnote to the reference in the preamble to section 2(2) should note the effect of the [European Economic Area Act 1993³](#). Similarly, if the exercise of powers in section 2(2) of the European Communities Act is dependent on the fact that an international agreement has been specified as one of the EU Treaties, this should be explained in a footnote to the preamble.

¹ <http://www.legislation.gov.uk/ukxi/2012/2746/contents/made>

² <http://www.legislation.gov.uk/ukpga/1972/68/section/2>

³ <http://www.legislation.gov.uk/ukpga/1993/51>

- 3.11.9 Where the measure being implemented extends to the EEA through a decision of the EEA Joint Committee under Article 98 of the EEA Agreement, a footnote to the reference to the relevant EC instrument should give the number and OJ reference of that Decision.
- 3.11.10 Wording such as “and of all other powers enabling him on that behalf” should generally only be used in limited circumstances, such as where reliance is placed on prerogative powers. If in doubt, you should contact DExEU legal advisers.

Enabling powers

- 3.11.11 The preamble should recite every enabling provision that the SI derives its validity from or through, whether they are in primary or secondary legislation. It should specify the relevant section, subsection and paragraph.
- 3.11.12 Words such as: ‘and of all other powers enabling him [or her] to do so’ should only be used in very limited circumstances (for example, where reliance is placed on prerogative powers).
- 3.11.13 Where the enabling power and prerogative action are inter-dependent you can use these words to cover the prerogative action. This should not be included just because the SI exercises the general power to revoke, amend or re-enact conferred by section 14¹ of the Interpretation Act 1978. If, however, the SI exercises a specific power (for example, a power to revoke Orders conferred by an Act passed before 1979), you should cite that enabling provision in the preamble.
- 3.11.14 The enabling provisions include all of those that make clear:
- what may, or must, be done;
 - by what means something is to be done; and
 - who is empowered to do it.
- 3.11.15 For example, citing a provision that empowers ‘the Minister’ or ‘the Authority’ to ‘prescribe’ certain matters also requires a reference to:
- (a) the provision which defines the expression ‘the Minister’ or ‘the Authority’, or which specifies which Minister or Authority is to exercise the power;

¹ <http://www.legislation.gov.uk/ukpga/1978/30/section/14>

(b) the provision which defines ‘prescribed’, which might define it as meaning specified in Regulations; and

(c) the provision (if any) which defines ‘Regulations’.

3.11.16 Cite the defining provision by using a footnote showing where the definition can be found.

3.11.17 Where the defining provision sets out numerous definitions that are not identifiable by letter or number, it is good practice to indicate the relevant definition in a footnote. For example where the provision is cited in the preamble, the footnote might read:

Example

(x) ‘See the definitions of “prescribed” and “Regulations” in section X’

Where the provision is mentioned only in a footnote, the footnote might read:

Example

(x) ‘See section X for the definitions of ‘prescribed’ and “Regulations”’

3.11.18 You can find more information about preambles in the GLS Statutory Instrument Drafting Guidance.

3.11.19 You do not need to explain:

- terms defined in the [Interpretation Act 1978](#)¹ (such as “Secretary of State”);
- other long-established terms defined outside the Act that confer the power to make the SI; or
- terms that form a general part of the law.

3.11.20 For example you do not need to cite the authority, contained in the Treasury Instruments (Signature) Act 1849, by which two of the Commissioners of Her Majesty’s Treasury may sign SIs.

3.11.21 You should cite a provision that specifies whether the power is to be exercised by the making of Rules, Regulations, an Order or some other kind of subordinate legislation.

¹ <http://www.legislation.gov.uk/ukpga/1978/30/contents>

- 3.11.22 You should not cite provisions that merely specify the relevant Parliamentary procedure, or merely provide that the relevant powers are to be exercisable by SI.
- 3.11.23 You can find an example in The Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2015 ([SI 2015/1452](http://www.legislation.gov.uk/uksi/2015/1452)¹).

Transfer of functions

- 3.11.24 If a power in the enabling Act is expressed as exercisable by one Minister, but has been transferred to another Minister (for example following a Transfer of Functions Order), state the full basis of the Minister's powers by using or adapting the wording in the following example:

Example

The Secretary of State for makes the following Order in exercise of powers conferred by section..... of the.... Act 20... and now vested in the Secretary of State.

- 3.11.25 You should include in a footnote the citation of the enabling Act, and the Transfer of Functions Order or Orders or other instruments that have vested the enabling power to the Minister. For an example, see: the Office of the Renewable Fuels Agency (Dissolution and Transfer of Functions) Order 2011 ([SI 2011/493](http://www.legislation.gov.uk/uksi/2011/493)²).
- 3.11.26 If the power has been transferred to Ministers in Scotland, Wales or Northern Ireland as part of devolution, you do not need to include this in a footnote, unless the devolution arrangements are directly relevant to the SI you are drafting.
- 3.11.27 Please note that although previous practice has been to include the full titles of the SIs in the footnotes, you should now simply reference the SI by year and number.

Fulfilment of conditions

- 3.11.28 The preamble should also set out the fulfilment of any condition that the enabling Act requires before the SI can be made. Examples include:
- that both Houses of Parliament, or the House of Commons have approved a draft of the SI;
 - that a draft of the SI has been laid before Parliament;

¹ <http://www.legislation.gov.uk/uksi/2015/1452/contents/made>

² <http://www.legislation.gov.uk/uksi/2011/493/contents/made>

- that a specified period has expired, and that neither House has resolved that the SI should not be made;
- that the Minister is satisfied as to certain matters;
- that necessary consultations have taken place;
- that the approval of Treasury has been given;
- that necessary notices have been published, for example in *The Gazette*¹;
or
- that the Minister has complied with a requirement to receive objections and to hold an inquiry.

Preamble for Legislative Reform Orders

3.11.29 The Department for Business Innovation and Skills has set out a model preamble for Legislative Reform Orders - see [Appendix G](#)² of their guidance. LROs are Class viii) SIs, regardless of the Parliamentary process they follow.

Preamble for Public Bodies Orders

3.11.30 The Cabinet Office has set out a model preamble for Public Bodies Orders - see [Annex D](#)³ of their guidance. PBOs are Class viii) SIs, regardless of the Parliamentary process they follow.

Preambles for Orders in Council

3.11.31 In general the rules set out in this part of SIP apply to Orders in Council, but the formal parts and preambles of such Orders are distinctive. For most preambles concerning Orders in Council, the wording usually is:

Example

Her Majesty, in pursuance of [relevant section of primary legislation], is pleased, by and with the advice of Her Privy Council, to order as follows:

3.11.32 However, the wording can vary depending on the geographical origin, the powers of enactment, and the Parliamentary procedure and you should refer to previous SIs under the same powers for relevant preamble examples.

¹ <https://www.thegazette.co.uk/>

² <http://www.parliament.uk/business/committees/committees-a-z/lords-select/delegated-powers-and-regulatory-reform-committee/lros/>

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243888/Using_the_Public_Bodies_Act_2011.pdf

3.11.33 If Her Majesty is absent abroad or ill, Counsellors of State (see the [Regency Act 1937](#)¹, the [Regency Act 1943](#)² and the [Regency Act 1953](#)³) hold a Council. The Privy Council Office (PCO) issue special instructions concerning the formal parts of Orders to be made at that Council.

3.12 Interpretation, citation and commencement provisions

Interpretation provisions

- 3.12.1 It may be convenient to include an interpretation provision. By convention, this follows the provisions relating to citation, commencement and extent (or application). For detailed guidance on the appropriate use of the interpretation provision, see the GLS SI Drafting Guidance (December 2015, para 4.3).
- 3.12.2 Section 11 of the Interpretation Act 1978 provides the general proposition that where an Act confers power to make subordinate legislation, expressions used in that legislation have, unless the contrary intention appears, the meaning which they bear in the Act. There is no need, therefore, to repeat definitions used in the enabling Act.
- 3.12.3 There may be circumstances where it would assist the reader of a statutory instrument to point out that a particular expression is defined in the enabling Act. This should be done by way of a footnote.

Citation

- 3.12.4 Every SI has a citation clause, which enacts the title, and in most SIs there is a commencement clause to bring the SI into effect.
- 3.12.5 Citation and commencement are often covered in the same clause.

Commencement dates general information

- 3.12.6 The 'commencement' of an SI is the date when it comes into force (Interpretation Act 1978, [Schedule 1](#)⁴). A commencement provision is one which prescribes that date. You can find more information about commencement in the GLS Statutory Instrument Drafting Guidance.

¹ <http://www.legislation.gov.uk/ukpga/Edw8and1Geo6/1/16/contents>

² <http://www.legislation.gov.uk/ukpga/Geo6/6-7/42/contents>

³ <http://www.legislation.gov.uk/ukpga/Eliz2/2-3/1/contents>

⁴ <http://www.legislation.gov.uk/ukpga/1978/30/schedule/1>

- 3.12.7 The [Statutory Instruments Act 1946](#)¹, sections 4(1) and 7(2) says that an SI that has to be laid before Parliament or the House of Commons should be laid before it 'comes into operation' i.e. comes into force. This should not be later than the day before the date specified in the commencement clause. This is because the SI will come into force at the beginning of the day of the stated date in the commencement clause.
- 3.12.8 If it is essential that the SI is brought into force before it can be laid you must notify the Speaker of the House of Commons (if laying before both Houses) and the Speaker of the House of Lords and explain why.
- 3.12.9 SIs considered by the Joint Committee (or House of Commons Select Committee) on Statutory Instruments are subject to certain rules of practice. The Committees scrutinise the coming into force date with particular care.
- 3.12.10 With affirmatives, if the new law imposes duties on people that are significantly more onerous than before, and requires them to adopt different patterns of behaviour, then the instrument should not be brought into force on a date earlier than appears to give those affected reasonable chance to adapt to the changes required. In the JCSI's 1st report of the 2014/15 Session on draft Openness of Local Government Bodies Regulations 2014, the committee stated that a date earlier than 21 days after the instrument is made is unlikely to be reasonable.
- 3.12.11 You should aim to lay SIs that are subject to annulment (Class v)) at least 21 days before they are due to come into force. This is known as the '21 day rule'. You must also provide copies to the Committee at this time.
- 3.12.12 Good planning and management are key to the successful making and commencement of SIs:
- If your SI is potentially controversial, try and avoid laying in circumstances where it is likely to come into force before Members of Parliament have the opportunity to comment.
 - Where your SI includes significant new policy, try to avoid laying just before the 21 day minimum period before commencement.
- Note:** The 21 day minimum is just that – a minimum. A good project plan will allow more than the minimum time available.

¹ <http://www.legislation.gov.uk/ukpga/Geo6/9-10/36/contents>

- Wherever possible, try to avoid laying negative SIs in the summer recess, as this can limit Members' opportunities to comment.
- Remember that in the Lords, a motion cannot be moved for the approval of an affirmative SI before it has been reported on by the JCSI. This will vary according to the type of SI; you should be particularly careful with Legislative Reform Orders, Public Bodies Orders and Localism Orders, which follow special procedures, as set out elsewhere in this guidance.
- Debates for affirmative SIs can only take place when Parliament is sitting. It is important to allow time for recesses when planning the timings for affirmative SIs.
- Wherever possible, try and lay negative SIs, as well as affirmatives, well in advance of commencement. A good project plan will allow for more time than the minimum required.

3.12.13 Departments should also check with Parliamentary Business Managers before inserting a specific date in an affirmative SI to make sure that there is enough time for required scrutiny and debate before the SI needs to come into effect. Often it is better to leave the commencement date as "X days after making".

Commencement clauses in SIs

3.12.14 With the exceptions listed below, you should always include a commencement clause in an SI. For negative SIs you should specify the calendar date or dates on which it is to come into force. Make sure that the dates you give are realistic and allow enough time for all of the processes required. For affirmative SIs, you can specify that the SI will come into force 'xx' days after making.' The time required will vary according to the type of SI and is usually set out in the parent Act.

3.12.15 If the clause provides that the SI, or part of it, is to come into force on a particular day, it will come into force at the beginning of that day ([Interpretation Act 1978](#)¹, section 4(a) and 23(a)) – unless the contrary intention appears ([see section 23\(1\)](#) of the Interpretation Act²). This means that an SI expressed to come into force on the day on which it is made will have retrospective effect.

¹ <http://www.legislation.gov.uk/ukpga/1978/30/contents>

² <http://www.legislation.gov.uk/ukpga/1978/30/section/23>

- 3.12.16 If the SI comes into force when it is made, you do not need a Commencement clause.
- 3.12.17 Such clauses are also inappropriate for certain types of SI that do not need to be laid before Parliament or the House of Commons, such as Commencement Orders/Regulations, Appointed Day Orders and Declaratory Orders. Commencement clauses are omitted from some Orders/Regulations that are (or may be) subject to special Parliamentary procedure.
- 3.12.18 Section 13¹ of the Interpretation Act 1978 is relevant and you should be aware of it. Subordinate legislation may be made and brought into force after the enabling Act is passed but before it is commenced. Such subordinate legislation can bring that Act (or any provision of it) into force, or give full effect to the Act (or any provision of it) at or after its commencement.

Common commencement dates (CCDs)

- 3.12.19 When deciding when an SI is to be brought into force, you should follow Government policy on Common Commencement Dates (CCDs) where it applies. CCDs apply to domestic measures that regulate or deregulate business. EU-derived measures, air navigation orders, road closure orders and measures that are outside of the scope of clearance by the Reducing Regulation sub-committee are exempt. For more information see the Better Regulation Framework [manual](#)².
- 3.12.20 Common Commencement Dates are 6 April or 1 October each year.

Choice of commencement date if not using a CCD

- 3.12.21 If you are not required to choose a common commencement date (CCD), other factors may affect the choice of coming into force date. For example:
- the need to ensure that the SI is issued in good time if it creates an offence (see [section 3\(2\)](#)³ of the Statutory Instruments Act 1946), or for communicating its purpose to those concerned;
 - the need for members of the public, or some section of them, to study the SI before it comes into force; or

¹ <http://www.legislation.gov.uk/ukpga/1978/30/section/13>

² <https://www.gov.uk/government/publications/better-regulation-framework-manual>

³ <http://www.legislation.gov.uk/ukpga/Geo6/9-10/36/section/3>

- the need to prepare and print forms, notices or the like for use in conjunction with the SI.

3.12.22 Where an SI requires approval by Parliament before it is brought into force (Class ii) affirmative instruments); has to be laid in draft for approval (Class i) affirmative drafts); or is subject to negative procedure before it is made (Class iv) negative drafts), include a calendar date of coming into force where possible and where you are confident that the relevant Parliamentary procedure will be completed before that date. If you cannot specify a date on which affirmative SIs come into force, then it is common drafting practice to use wording that states that the SI comes into force on the day after, or on a specified number of days after, the day on which it is made.

Use of Commencement Orders/Regulations

3.12.23 Where provisions of an Act are to be brought into force by Commencement Orders/Regulations, try to minimise the number of Commencement Instruments made, and the number of commencement dates.

3.12.24 You should avoid, where possible, bringing different sections of the Act into force within short intervals of each other and avoid a large number of different commencement dates. This may involve negotiation with policy officials in your Department, or across Departments.

Commencement clauses

3.12.25 Commencement clauses are made in many different forms, but the following examples may be useful:

3.12.25.1 Standard citation and commencement clause:

Example

This Order [Regulation] may be cited as the Order [Regulation] 20.... and comes into force on 20.... .

3.12.25.2 SIs requiring approval by Parliament or the House of Commons before coming into force (Class i) affirmative drafts and Class ii) affirmative instruments where you are not able to specify a calendar date of coming into force):

Example

... comes into force on the day (or the [fourteenth] day) after the day on which it is approved by resolution of each House of Parliament (or, of the House of Commons).

Note: If the two Houses of Parliament pass affirmative resolutions on different days, the approval of Parliament is taken to be given on the second of those days.

3.12.25.3 SIs laid before Parliament or the House of Commons in draft

Note: In Class iv) negative drafts, specify a calendar date of coming into force in the draft if you are able to. If not, you can use one of the following forms:

Example

... comes into force on the day (or, the [tenth] day) after the day on which it is made.

or

... comes into force forthwith.

3.12.25.4 SIs that have more than one commencement date:

Example

Articles 1 and 2 of this Order come into force on 25th March 2006 and all other articles come into force on 1st July 2006.

or

... comes into force for the purposes of articles 7 and 9 on 25th March 2006 and for all other purposes on 1st July 2006.

3.12.25.5 SIs that are commenced at a particular time of day

All instruments are presumed to commence at the start of the day on which they come into force unless otherwise stated. Where an instrument is to be commenced at a particular time of day then the commencement clause should read as follows:

Example

This Order [These Regulation] may be cited as the Order [Regulations] 20.. and comes [come] into force at [time] on20..... .

with the time specified in the following form: e.g. 10.30 a.m., 4.00 p.m. or noon.

3.12.25.6 SIs having effect before the date of making

Example

... comes into force on 20.... but [Order/Regulation 5] shall have effect from 20... .

3.12.25.7 SIs having effect for a limited period

Example

.... comes into force on 20.... and shall cease to have effect on 20... .

3.12.25.8 Commencement Orders/Regulations, Appointed Day Orders and Declaratory Orders

A Commencement Order/Regulation or Appointed Day Order that has to be laid before Parliament should normally be brought into force on the date fixed by the Order for the commencement of the Act - on the appointed day, or on the first date if more than one.

If no such date is appropriate (for example a Declaratory Order required to be laid) you can use the formula 'immediately after being laid before Parliament'.

3.13 Extent and application provisions

3.13.1 The 'extent' of any piece of legislation refers to the jurisdiction (or jurisdictions) in which it forms part of the law. In the case of the UK that may be the whole of the UK, one (or more) of England and Wales, Scotland, or Northern Ireland. England on its own does not have a separate jurisdiction and nor does Wales. There is a single jurisdiction encompassing both.

3.13.2 Where an instrument has a more limited territorial extent than its enabling power, a provision will be needed to limit the extent of the instrument. Extent should only be used where differentiating between England and Wales (combined), or Scotland, or Northern Ireland i.e. between territories that have their own legal systems.

3.13.3 However, it may also be necessary, for example, when differentiating between the geographical territories of England and Wales, to provide that the instrument has a more limited application than its enabling powers.

3.13.4 Where an instrument is to apply only in relation to England, or only in relation to Wales, it is not correct to provide that the instrument extends only to England or only to Wales. This is because such instruments will form part of the law of England and Wales; their extent in law will be the whole of the jurisdiction of England and Wales, even though their application will be limited to England or Wales, as the case may be. The limitation is one of 'application'.

3.13.5 If the application is obvious from the operative provisions in your instrument, there is no need to add an application provision making the same point (for example if your regulations are (in terms) about schools in England). An

application provision may also be unnecessary as a result of the nature of the power being exercised. Where the enabling power is expressed to apply only in relation to England, or only in relation to Wales, there is no need include an application provision as that work is already done by the governing Act.

- 3.13.6 An application provision is also unnecessary if made in relation to regulations that contain only amendments. The territorial application of amendments will be governed by the instrument being amended. If it is intended that the amendments should have the same application as the instrument being amended, nothing further need or should be said. Sometimes (for example if you are amending a UK-wide regime to insert a rule requiring consultation only in “English” cases) something further will need to be said, but in the interests of clarity this should appear in the amended instrument (i.e. as part of the provisions being inserted), not the amending instrument.
- 3.13.7 Where an application provision is used, a proposition as general as “these regulations apply to England” may not be sufficient. For example you may need to specify that they apply to persons resident in England or to premises situated in England. Particular care should be taken as to the desired result in cross-border cases.
- 3.13.8 It may be appropriate to include both an extent provision and an application provision. An example would be where the enabling power extends to the whole of the UK and the instrument has some provisions which are to have effect in relation to England and Wales and the remainder in relation to England only.

3.14 Revocations and amendments

Amendment, revocation, lapse and expiry

- 3.14.1 Subordinate legislation can be amended or revoked by statute. Where an Act confers the power to make instruments it implies a power (exercisable in the same manner and subject to the same conditions or limitations), to revoke, amend or re-enact any instrument under the power – unless the contrary intention appears. For more information see the Interpretation Act 1978, [section 14](#)¹.
- 3.14.2 If a parent Act, or the enabling section of it, is repealed, SIs made under it will lapse unless they are saved i.e. re-enacted. You can often find such savings in

¹ <http://www.legislation.gov.uk/ukpga/1978/30/section/14>

repealing Acts. The Interpretation Act 1978, [section 17\(2\)\(b\)](#)¹ contains a general saving for SIs made under provisions that are repealed but re-enacted.

- 3.14.3 Subordinate legislation may also become spent because it was expressed to have effect only for a limited period, or because it has ceased to have any effect. Many SIs become spent but are not specifically revoked.
- 3.14.4 Where you are revoking a principal SI, you should explicitly revoke all other SIs that would be spent on its revocation.
- 3.14.5 If you are revoking several SIs, good practice is to set them out in a Schedule to the revoking SI.
- 3.14.6 Information that you should give in the Explanatory Note to revoking SIs is set out in section 3.23.6.

3.15 References to legislation and Command Papers

- 3.15.1 In the main body of an SI you should refer to an Act by its short title, with a footnote giving the year and chapter number. Similarly, refer to another SI, EU legislation, or a Command Paper by its title, with a footnote giving the year and serial number, the Official Journal (OJ) reference, or the Command Paper number respectively.
- 3.15.2 Until 1962 it was usual to put a comma after the last word, and before the year, in the title of an Act or subordinate SI. You should always omit this comma even though it appears in the original citation provision.
- 3.15.3 References should be as follows:
- References to divisions and sub-divisions of Acts and other SIs should normally be in the form ‘section 1(1)(a)’, ‘article 2(2)(b)’. You may need to use such forms as ‘subsections (2) to (5) of section 8’ or ‘sub-paragraphs (b) to (e) of regulation 1(2)’.
 - References in an SI to its own Schedules should be in the form ‘Schedule 2’, ‘paragraphs 4 and 5 of Schedule 3’.
 - References to a Schedule to an Act, or another SI should be in the form ‘Schedule 4 to ...’.

¹ <http://www.legislation.gov.uk/ukpga/1978/30/section/17>

- All references to numbers of Parts and Schedules should use ordinary numerals (1,4,11) rather than Roman numerals (I, IV, XI) and all references to Parts or Schedules of an Act should be made by reference to the Arabic number. You should do this even if the Part or Schedule referred to uses Roman numerals.
- For EU legislation, be clear what you are cross referencing to. Wherever possible follow the approach taken in the EU instrument itself. Section 3.18 explains this in more detail.

3.16 References to amended enactments in SIs

- 3.16.1 When referring to amended enactments you do not need to include words such as ‘as amended’, or include particulars of amendments in the preamble or text of an SI.
- 3.16.2 In an instrument made after 1978 (see the [Interpretation Act 1978](#)¹, sections 20(2), 23(1) and (2)) a reference to an enactment is a reference to that enactment as amended, and includes a reference to it as extended or applied by or under any other enactment (including any other provision of that instrument). ‘Enactment’ includes, for this purpose, an enactment in subordinate legislation whenever made. Do not include words such as ‘as amended’, or particulars of amendments, in the preamble or text of an instrument.
- 3.16.3 Instead provide information in the footnotes about relevant amendments, extensions to, or applications of enactments mentioned in the SI. To help you compile a list of amendments, you can use the [changes to legislation function](#)² on [legislation.gov.uk](#).

3.17 References to publications, documents, maps and plans

References to external publications

- 3.17.1 SIs sometimes refer to external publications such as British Standards, which do not form part of the general body of the law. Unless there is specific statutory authority to the contrary (which should be cited among the enabling powers in the SI) these references must make it clear that the item is a fixed one i.e. a

¹ <http://www.legislation.gov.uk/ukpga/1978/30/contents>

² <http://www.legislation.gov.uk/changes>

document with a date or version number or similar, to avoid it becoming an ambulatory reference.

- 3.17.2 For printed publications give the publisher's name, the place and year of publication and the edition, and any other particulars that may help to identify the publication (including the ISBN if known). If you do not do this, any subsequent changes to the external publication may change the effect of the SI. This may constitute unauthorised sub-delegation. Say where hard copies can be obtained or inspected, where possible. Where a printed publication has also been published on Gov.uk, you should also include the web address of the document.

Note: The scrutiny or Parliamentary committees require 2 hard copies of the referenced printed documents.

- 3.17.3 When referring to a digital document you must also quote a date or version number to fix it at a given moment and avoid creating an ambulatory reference. If you do not do this, and the authors of the digital document alter it, the effect of the SI may be altered. This may constitute unauthorised sub-delegation. It is good practice if readers of the legislation can access the referred document freely on the web, rather than linking to a paid for site. You should reference documents that are open and available wherever possible.

- 3.17.4 The Explanatory Note, or a footnote, should give particulars of the place where the printed publication may be obtained or inspected. Where a documents has been produced in digital form only, the Explanatory Note or footnote should state this and should set out any arrangements that are in place for an informally printed version of the document to be made available on request where the subject matter of the instrument means that it is unlikely that there will be significant users of the SI who do not have internet access.

- 3.17.5 There are exceptions. Examples of specific statutory exceptions are the Medicines Act 1968, [section 103\(3\)](http://www.legislation.gov.uk/ukpga/1968/67/section/103)¹, which authorises references to future editions of specified publications, including the British Pharmacopoeia, and in the Health and Safety at Work etc. Act 1974, [section 15\(4\)\(b\)](http://www.legislation.gov.uk/ukpga/1974/37/section/15)², which authorises references to any specified document as revised or re-issued from time to time.

¹ <http://www.legislation.gov.uk/ukpga/1968/67/section/103>

² <http://www.legislation.gov.uk/ukpga/1974/37/section/15>

References to documents, maps and plans

- 3.17.6 An SI can be made to confirm or approve byelaws, a scheme, or some other document. This document should be included in the SI (which will usually be classified as local) as a Schedule to the SI. Alternatively, the additional document can be annexed to the SI. Any such document must be submitted alongside the SI for publication on legislation.gov.uk.
- 3.17.7 Images larger than A4 size need to be published as fold-outs and separate image files (TIFF) will need to be submitted, as well as being included as a reduced size image embedded in the SI Template Word file. Please note that the imprinted copies for laying will only contain the placeholder image and not the fold out version image. Where the image is very small, consider providing a separate print of the image to the scrutiny committees. Print copies will contain the full size image and will be published as a fold out. If you have any concerns or questions please contact the SI support desk: sisupport@tso.co.uk.
- 3.17.8 You can also refer to the document, for example by reference to its date, signature, distinguishing marks, place of deposit or similar, without formally making it part of the SI.
- 3.17.9 Either the Explanatory Note or the footnote should state the place and times at which the map or plan may be inspected, as well as providing a website reference if it is also available online.

Dates and ordinals

- 3.17.10 At registration we check date ordinals in the made, laid and coming into force dates in the italic date information, as well as the signature dates. These dates should be in the form '1st January 2016' and the ordinal should not be in superscript.
- 3.17.11 We do not check date ordinals in the main body of the SI or in the Explanatory Notes but these should similarly not be in superscript.

3.18 References to EU instruments

- 3.18.1 For guidance on references to EU instruments, where [section 20A¹](#) of the Interpretation Act 1978 applies, please talk to the DExEU legal advisers.

¹ <http://www.legislation.gov.uk/ukpga/1978/30/section/20A>

3.18.2 Section 20A (as applied to SIs by section 23) provides an easy way of describing EU instruments in domestic legislation to make it clear that the cross-reference is to the amended version of that legislation. It avoids having to add devices such as “... as amended at the date of these Regulations” or “as last amended by...”. The provision has the effect that a reference in an Act (or StaSI) to an EU instrument is a reference to that EU instrument as amended, extended or applied at the time when the Act (or Statutory Instrument) containing the reference is passed.

3.19 Explanatory parentheses for references

3.19.1 If you refer to a provision in an Act it is often helpful to add, in parentheses, a short description of the purpose of that provision. For example:

Example

... section 2(1) of the Conservation of Seals Act 1970 (which establishes an annual close season for grey seals)

3.19.2 It is good practice to reserve parentheses for material that has no legislative effect and is included merely to assist the reader. You should use commas in the case of a qualifying proposition that needs to be distinguished from surrounding text, but which still retains legislative effect.

3.20 Signatures (including multiple signatures and date of making)

3.20.1 In most Departments any instrument that comes before the Joint Committee on Statutory Instruments (JCSI) is signed by a Minister.

3.20.2 Instruments are sometimes required to be made by more than one Minister or Department, or require the confirmation, approval or consent of some further Minister or Department.

3.20.3 Where an SI requires only the agreement of the National Assembly for Wales this approval does not need to be indicated by a signature. Approval should be recited in the preamble, in the same way as the approval of Parliament on affirmative resolution instruments.

3.20.4 You should add the date of signing against each signature, even though it repeats a date already inserted. Where there is more than one signature, and the dates of signing vary, the instrument is taken to be made on the last date of signing. This should be entered as the ‘made’ date in the italic date information below the title of the instrument.

3.20.5 Best practice is to include the signature block of text on the right hand side of the page, in the following order:

Name of official

Title (for example, Secretary of State)

Department

The date of signing should appear in the signature block on the left hand side of the page, opposite the Department as shown below.

Example

	<i>Dan Rogerson</i>
	Parliamentary Under Secretary of State
26th March 2015	Department for Environment, Food and Rural Affairs

Signature of Orders in Council

3.20.6 After an Order in Council has been made, it is signed by the Clerk of the Privy Council. Common practice is to insert the words 'Clerk of the Privy Council' below the signature.

Form of signature

3.20.7 The signature should always appear in italic type.

3.20.8 Unless an instrument is signed by a Peer, then the established form is first name followed by surname, for example '*George Osborne*'.

3.20.9 When an instrument is signed by a Peer, convention is that the signature does not contain the Peer's full title. For example the signature should read '*Altmann*' not '*Baroness Altmann*'. For Peers with the same, or similar, name then their title suffix should be included to distinguish which Peer has signed the instrument. For example, the signature on the Road Traffic Offenders Act 1988 and Motor Vehicles (Driving Licences) (Amendment) Regulations 2015 ([SI 2015/2004](http://www.legislation.gov.uk/uksi/2015/2004)¹), the signature reads '*Ahmad of Wimbledon*' to avoid any possible confusion with Lord Ahmed, who is a different Peer.

3.20.10 The signature should omit prefix or suffix details such as 'Sir', 'Rt. Hon.', 'Esq.' or 'MP'.

¹ <http://www.legislation.gov.uk/uksi/2015/2004/signature/made>

- 3.20.11 The signature should be followed by the correct title of the signatory's official role in which capacity they are signing the SI. The correct formula will depend on who is signing. For example:
- "Secretary of State for Environment, Food and Rural Affairs"
 - "Minister of State, Department for Environment, Food and Rural Affairs"
 - "Parliamentary Under Secretary of State, Department for Environment, Food and Rural Affairs"
 - "Deputy Director, Department for Education"
 - "Divisional Director in the Department for Transport"
- 3.20.12 For instruments signed by Government Ministers or Officials, their Department's full title should be included in the signature block, though it does not necessarily need to appear on the same line as the title of the signatory's official role.
- 3.20.13 Where an instrument is classified as local and not laid before Parliament, it is often signed by an official. If an official is signing the preferred formula is: title of post followed by "for and on behalf of the Secretary of State for [...]". You should use the signatory's full title to clarify who they are.

3.21 Footnotes

Introduction to footnotes

- 3.21.1 Footnotes are there to help the reader, for example by referring to definitions in the parent Act, or by telling people where they can find useful external information. The information in the footnotes helps contextualise the legislation. This is useful for readers, and also for those writing commentaries about the legislation such as legal writers and publishers.
- 3.21.2 A reference in an SI to an Act, another SI, legislation of the European Union or a Command Paper should have a footnote giving the year and chapter number, year and serial number, Official Journal reference, or Command Paper number.
- 3.21.3 If you are adding a footnote to a definition, it should reference where the definition may be found.
- 3.21.4 Footnote the amendment history of the legislation you have referenced where this is relevant and helpful to the reader. This amendment history may be specific to the legislation you have referenced and only included if relevant to the SI. So, for

example, if you have made a cross reference to a section, then you may footnote amendments to that section, and if you have made a cross reference to a subsection, you may footnote amendments to that subsection.

- 3.21.5 To help you compile a list of amendments, you can use the [changes to legislation feature](#)¹ on legislation.gov.uk. In the longer term, The National Archives is developing functionality that will enable you to make better use of the amendments data it holds for generating the content of footnotes. If a table contains a reference to legislation it should be lettered and appear in the footnotes at the bottom of the page in the normal way.

Footnotes versus table notes

- 3.21.6 If you need to insert a reference for a term that is in a table, you should use a table note and not a footnote. Table notes appear at the bottom to the table rather than at the foot of the page and are numbered rather than lettered. The SI template has a feature you can use to ensure table notes are inserted correctly.

Form of footnotes

- 3.21.7 The SI template will make sure that footnotes are correctly lettered (a), (b) and so on, starting at (a) on each page. An exception is WSIs made by the Welsh Ministers where footnotes are numbered (1), (2) and so on, starting at (1) on each page. (This is necessary because of the dual language nature of these SIs).
- 3.21.8 Where an Act or SI is referred to more than once in the same instrument you only need to footnote it the first time it is referenced.

Table G – Footnotes relating to legislative instruments

Legislation Type	Citation Example
Public General Acts and Measures	
Acts of the United Kingdom Parliament	1955 c. 28 1955 c. 5 (4 & 5 Eliz 2)
Acts of the Parliaments of Scotland (to 1707)	1706 c. 7 (S.)
Acts of the Scottish Parliament	2001 asp 10
Acts of the Irish Parliament	1789 c. 42 (Ir.)

¹ <http://www.legislation.gov.uk/changes>

Acts of the Northern Ireland Parliament	1961 c. 14 (N.I.)
Measures of the Northern Ireland Assembly	1974 c. 4 (N.I.)
Acts of the Northern Ireland Assembly	2000 c. 4 (N.I.)
Measures of the National Assembly for Wales	2011 nawm/mccc 7
Acts of the National Assembly for Wales	2014 anaw/dccc 1
Church Assembly Measures	1968 No. 2
General Synod Measures	1972 No. 5
Local and Personal Acts	
Acts of the United Kingdom Parliament	1960 c. xli
Acts of the Northern Ireland Parliament	1970 c. ii (N.I.)
Subordinate legislation	
Statutory Instruments	S.I. 2002/1080
Statutory Rules and Orders	S.R. & O. 1919/1000
Statutory Instruments made by the Welsh Ministers or the National Assembly for Wales	S.I. 1999/3469 (W.55).
Scottish Statutory Instruments	S.S.I. 2002/205
Orders in Council making legislation for Northern Ireland	S.I. 1973/2161 (N.I. 24)
Statutory Rules (Northern Ireland)	S.R. 2003 No. 474
Statutory Rules and Orders (Northern Ireland)	S.R. & O. (NI) 1952 No. 77

Footnotes relating to enabling powers

3.21.9 You must ensure that the Act or SI that contains the enabling powers set out in the preamble has its own footnote. Start these footnotes with the year and number of the enabling power being cited (additional information may be required). Follow this format even where a previous footnote on the same page contains a cross-reference to one of the enabling powers being used. Cross-references of this nature are incidental – they do not count as a proper footnote reference to an Act or SI being used as the enabling power.

Footnotes relating to Acts and Measures

- 3.21.10 Before 1963 Acts were cited by regnal year and chapter number; for example '52 and 53 Vict c.63' (the Interpretation Act 1889). Those passed in and after 1963 are cited by calendar year and chapter number. If a calendar year before 1963 includes Acts of more than one session of Parliament, you should include the regnal year(s) when you cite any Act of the second session. For an example of this, see the second example in Table G. Measures made under the [Church of England Assembly \(Powers\) Act 1919](#)¹ are numbered serially in each calendar year.
- 3.21.11 Where an SI refers to a provisional Order confirmed by Parliament, the form of the footnote should be as follows:
- (a) if the Order was the only one scheduled to the confirming Act:

Example

(a) See 1959 c. viii.

(b) if the Order was one of a number scheduled to the confirming Act:

Example

(a) Confirmed by 1920 c. ciii'

- 3.21.12 If an SI refers to a provision of an Act that has been amended, extended or applied, you may reference it in footnotes. If the footnote relates to the first mention of the amended provision, give the details after the citation, as in the following examples:

Example

(a) 1968 c. 77; section 8(4) was amended by the Fishery Limits Act 1976 (c. 86), section 9(1) and Schedule 2, paragraph 17(1).

(b) 1964 c. 48; section 34 was extended by sections 12 and 15(5) of the Superannuation Act 1972 (c. 11).

Note: In example a) above, omit the reference to the amending section if the section does no more than introduce the Schedule without qualification or interpretation.

Footnotes relating to subordinate SIs

- 3.21.13 Footnotes should give the year and serial number of an SI but omit references to official editions. If a footnote relates to more than one SI please follow the following standard of citation:

¹ <http://www.legislation.gov.uk/ukpga/Geo5/9-10/76/contents>

Example

(x) S.R. & O. 1944/42; S.I 1949/691, S.I 1955/163, S.I 1962/12, S.I 1962/987, S.I 1967/999.

- 3.21.14 No reference should be given to the subsidiary serial numbers except for those in the NI and W series (see Table G – Footnotes relating to legislative instruments above).
- 3.21.15 Where the year and serial number are known, you can find an SI by searching for it at www.legislation.gov.uk.
- 3.21.16 For older legislation you currently need to find the legislation by looking in the printed volumes of the Statutory Rules and Orders, SI series, or in the official editions. You should reference them as follows:
- (a) if it is in The Statutory Rules and Orders and Statutory Instruments Revised to December 31, 1948, by means of the numerical table in Volume XXV;
 - (b) if it is an annual edition of the period 1936-60, by means of the numerical list in that edition;
 - (c) if it was made before 1961, by means of the Table of Government Orders;
 - (d) if it is in an annual edition after 1960, by going direct to the appropriate Part and (after 1963) section, which may be identified (after 1961) by the serial numbers printed on the spine.
- 3.21.17 The annual editions arrange SIs in straightforward numerical sequence and the large majority of references are now to SIs in these editions.
- 3.21.18 The National Archives has created a new ‘core reference’ data set, which we will publish on legislation.gov.uk, which lists every piece of general legislation that has been made and published. In the future, you will be able to use references from this dataset for citation information.
- 3.21.19 In the very exceptional case of a footnote relating to a Statutory Rule made before 1936 and not included in The Statutory Rules and Orders and Statutory Instruments Revised to December 31, 1948, you should include a reference to the appropriate annual edition. This is because annual editions before 1936, and the earlier collected editions, did not have numerical tables or lists.
- 3.21.20 If an SI refers to an amended SI, any footnote should be written in one of the following forms:

Example

- (a) S.I. 1967/172, amended by S.I. 1967/1093, 1972/656, 722, 1975/594.
 - (b) S.I. 1985/2345, amended by S.I. 2002/1234; there are other amending instruments but none is relevant.
 - (c) S.I. 1973/428; relevant amending instruments are S.I. 1974/1673, 1976/306.
 - (d) S.I. 1975/1046, to which there are amendments not relevant to these Regulations.
-

Note: Example a) is appropriate where all the amendments are relevant to the SI where the reference occurs. Example b) is appropriate where there is only one relevant amending SI. Use c) where not all are relevant and example d) where none is relevant.

Footnotes in Explanatory Notes

3.21.21 In Explanatory Notes, footnotes are rarely used. Instead, use parentheses in the main text.

Footnotes to collective titles

3.21.22 If you are referring to a series of Acts or referring to SIs by a collective title (see paragraph 3.21.23), we suggest that you give the citations of the individual Acts or SIs in a footnote if there five or less. If there are more than five, you do not need a footnote but can include one if you want to. Where the Regency Acts 1937 to 1953 are cited collectively in Orders in Council made by Counsellors of State you do not need a footnote.

Footnotes in Northern Ireland Orders in Council

3.21.23 Footnotes are not required in draft and made Northern Ireland Orders in Council – even though they are part of the UK Statutory Instruments series, they are deemed as primary legislation for Northern Ireland. For example see: the Criminal Damage (Compensation) (Amendment) (Northern Ireland) Order 2009 and the Sexual Offences (Northern Ireland) Order 2008.

Footnotes relating to prerogative instruments

3.21.24 Some prerogative instruments are printed at the end of the annual edition of Statutory Instruments, but they do not have SI numbers. If you refer to such an SI in your SI, include a footnote that references the year, Part and page of the annual edition containing it: e.g. '1977 III, p.6223'.

Footnotes relating to EU Legislation

- 3.21.25 Each citation of an EU instrument in the text of an SI should be accompanied by a footnote reference to the Official Journal of the European Union (OJEU) in which the instrument/directive was originally published - number, date and page.
- 3.21.26 For instruments in force at the end of 1972 the Special Edition reference is also required. Volumes of the Special Edition should be described by the words following 'Special Edition' in the heading. The same practice applies to amendments to European Legislation as applies to amended domestic Statutory Instruments.
- 3.21.27 Please note that the legislative ('L') series of the OJ began only in 1968. From 1 July 2013 the electronic version of the OJEU is the official version (until then, the print version is the official version). Here is an example of an OJEU reference:

Example

(a) OJ No. L 345, 19.12.2002, p. 1.

- 3.21.28 Sometimes a Statutory Instrument which refers to an EU instrument may have to be made and printed before the EU instrument has appeared in the OJEU. In such cases, the footnote should be in the form '(a) OJ No L', sufficient space being left to complete the reference. The responsible department must notify the SI Registrar of the full reference as soon as it is known, so that the footnote can be completed in the annual edition of Statutory Instruments.
- 3.21.29 To note, from 1 January 2015 the numbering of EU legal acts changed as follows: (domain i.e. EU, Euratom, CFSP) YYYY/N. So for example, they will be as follows:
- Regulation (EU) 2015/1 of the European Parliament and of the Council...
 - Council Decision (CFSP) 2015/4...
 - Decision (EU, Euratom) 2015/8 of the European Parliament...
- 3.21.30 Where there is a reference to an EU instrument in an SI to which [section 20A](#)¹ of the Interpretation Act 1978 applies, the relevant amendments to the EU instrument should be set out in a footnote. Where it is appropriate and would not be misleading to do so, the latest amendment will suffice. This is a matter of best

¹ <http://www.legislation.gov.uk/ukpga/1978/30/section/20A>

drafting practice rather than law. For more information you should talk to DExEU legal advisers.

3.21.31 The footnote should:

- cite all the amendments to the EU instrument, if all of them are relevant;
- cite only the most recent amendment where it is appropriate and not misleading to do so;
- where only one amendment is relevant, cite it;
- where some of the amendments are relevant, cite them;
- where none of the amendments are relevant, say so.

3.21.32 For example, a footnote listing all the amendments:

Example

... Commission Regulation (EU) No. xxx/yyyy on the eradication of salmonella
(a)
...

(a) OJ No. L 123, 29.02.2009, p. 1; relevant amending instruments are ...

3.22 Schedules and shoulder notes

3.22.1 Schedules to SIs take many different forms and serve many different purposes. Where practicable, you should follow the form that Schedules take in the parent Act.

3.22.2 The shoulder note at the head of a Schedule states the operative provision which introduces the Schedule. Include all provisions that reference the Schedule. For example, where Regulation 3 says 'Part 1 of Schedule 1 has effect' and Regulation 4 says 'Part 2 of Schedule 1 has effect', the shoulder note should include Regulation 3 and 4.

3.22.3 The shoulder note should appear on the right-hand side of the Schedule, whether the Schedule is on a left-hand printed page or on a right-hand printed page.

3.23 Explanatory Notes

3.23.1 It is standard practice to provide an Explanatory Note for all SIs. Put this at the end of the SI, under the heading 'EXPLANATORY NOTE' and the following statement in italics (the SI Template puts this in italics for you):

Example

(This note is not part of the [Order/Regulations/Rules/Scheme].)

Scope of Explanatory Notes

3.23.2 You can find drafting guidance on Explanatory Notes in the GLS Statutory Instrument Drafting Guidance.

3.23.3 The Explanatory Note should give a short, clear and comprehensive statement of what the SI does. It must not be argumentative, must not seek to explain or justify policy or offer a debateable construction of the law. It should help readers decide whether they need to refer to the SI, and should make sense to anyone who is not familiar with the relevant area of law or administration. It should generally be suitable for use in professional and other journals.

3.23.4 It is sometimes appropriate to include additional information. For example:

- mention any international or EU obligation to which an instrument gives effect;
- cite the authority in the enabling Act if an instrument has retrospective effect;
- explain any other point relevant to the validity of the instrument, but not covered in the preamble; and
- give additional details of any ‘external’ publication referred to in the instrument, or of the place and time at which a relevant document, map or plan may be inspected.

3.23.5 Often the text of an SI cannot be understood unless it is read in conjunction with other legislation. If this is the case the Explanatory Note should help the reader to understand the SI’s effect without looking up other provisions. You should make the point and substance of the amendment clear in the note to an amending SI.

3.23.6 If you are revoking and replacing an earlier SI, mention this in the Explanatory Note to the new SI.

Note: In paragraph 4 of the special report from the Joint Committee on Statutory Instruments, 1985 – 86 (HL216, HC31-xxxvii), the Committee criticised the inadequacy of information in Explanatory Notes. In particular, the committee expects that Explanatory Notes to SIs that revoke other SIs (wholly or in part)

should indicate the content of the provisions revoked. The committee's primary concern is to ensure clarity. If, for example, the revocation is a Schedule, there is no need to repeat this information in the Explanatory Note.

- 3.23.7 You should check that any Command Paper referred to in an SI or its Explanatory Note is available from www.gov.uk.
- 3.23.8 If it is out of print, and a reprint is not possible, state in the footnote or Explanatory Note where readers can obtain photocopies of the out of date document.

Explanatory Notes for SIs increasing fees or charges

- 3.23.9 Where an SI increases fees or charges, the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee need to know the extent of the increase. Where you can, give the previous fee or charge in the Explanatory Note of the new SI.
- 3.23.10 If this is difficult (for example where an SI is long and complex) indicate the amount or order of magnitude of the increase (for example +15% or -12%). Include this in either the Explanatory Note or in the Explanatory Memorandum. You may not need to provide a full list of the increases. It might be more efficient to say: "All fees increased by 4% (based on RPI for the 12 months to June) except for fee x and fee y which went up by x % because ...".
- 3.23.11 The Explanatory Note is where you should give the facts of the increase. The Explanatory Memorandum is where you should explain the policy behind the increase.

Explanatory Notes for commencement Orders/Regulations

- 3.23.12 If a commencement Order/Regulation brings only part of an Act into force, state which part in the Explanatory Note. For example:

Example

This Order/Regulation brings into force on..... 20... all the provisions of the..... Act 20... excepting section 3 (which relates to ...) and section 7 (which relates to).

or

This Order/Regulation brings into force on..... 20... those provisions of the..... Act 20... which are not already in force.

Drafting Explanatory Notes

3.23.13 There is no set rule about the length of an Explanatory Note. Three lines may be enough. A short amending SI may require a longer note (to explain the amendments) than a long free-standing instrument.

3.23.14 Avoid complex details. Instead, summarise the provisions and refer to the relevant regulation, article or other sub-division where the details may be found. Avoid replicating text contained within the SI itself. Where you can, avoid technical terms and do not use Latin words and phrases. If you have to use complex terms and phrases, explain clearly what they mean so that they are accessible to a non-specialist reader.

3.23.15 An Explanatory Note should generally use the same terms used in the SI, or in the enabling Act. Subject to that, try and use the standard vocabulary used in the tables of effect when you are referring to the effect of an SI on other legislation. It is usual to say that:

- an Act repeals another Act,
- an Act revokes an SI;
- an SI repeals an Act, and revokes another SI.

This is also the case for partial repeals and revocations.

3.23.16 You should avoid vague or indefinite expressions such as ‘substantially’, ‘with certain additions’, ‘with certain modifications’ in Explanatory Notes, or at least couple them with references to the provisions in which details may be found.

3.23.17 You should avoid introductory phrases such as ‘The purpose (or object) of this Order is’ Instead use the following:

Example

This Order amends....

or

This Order re-enacts (or consolidates) the..... with only drafting (or minor and drafting) amendments.

or

This Order re-enacts (or consolidates) the..... with amendments (or modifications). In addition to drafting (or minor and drafting) amendments, it makes the

following changes of substance....

- 3.23.18 You do not generally need to refer to the power under which the SI is made as this is in the preamble. It may, however, be appropriate to mention legislation not referred to in the SI. Give the year and chapter number or other citation of the legislation either in parentheses after its title.

Scope of Impact Assessments

- 3.23.19 Impact Assessment guidance is available from the Better Regulation Executive (BRE). What follows is a summary, indicating key points you need to consider when producing an SI.
- 3.23.20 IAs 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 IA should be produced) is delegated to departments. Where departments have delegated responsibility they are expected to consider the needs of Parliament as well as other factors such as proportionality.
- 3.23.21 IAs are also required for all public sector initiatives that cost more than £5m. These include additional controls on burdensome regulation, but a lighter touch fast track for small or deregulatory interventions. For further information on IAs for public bodies see the [Green Book](#)¹.
- 3.23.22 The BRE guidance should be consulted at an early stage, as IAs may require scrutiny from the Independent Regulatory Policy Committee before Cabinet clearance is sought.
- 3.23.23 There is separate guidance for Tax Information and Impact Notes ([TIINS](#)²). TIINS provide further information on tax policy changes – explaining the policy objective together with details of the tax impact on the Exchequer, the economy, individuals, business, civil society organisations, as well as any equality or other specific area of impact.
- 3.23.24 Government operates a ‘One in, Three out’ [rule](#)³. The Regulatory Policy Committee (RPC) reviews the evidence and analysis supporting all IAs for all significant regulatory proposals and provides an opinion in advance of

¹ <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

² <http://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>

³ <https://www.gov.uk/government/news/government-going-further-to-cut-red-tape-by-10-billion>

Departments presenting proposals to the Regulatory Reform Committee (RRC) for clearance. The RPC also validates the 'IN' or 'OUT' claimed by Departments for a measure.

- 3.23.25 All published IAs are available on www.legislation.gov.uk/ukia.
- 3.23.26 The Secondary Legislation Scrutiny Committee expects the version of the IA that is laid to be the final version, and to be signed by a Minister. This is required to demonstrate that this is the official assessment of the costs that can, for example, later be used as a baseline for evaluation.
- 3.23.27 The Minister's name should be inserted by typing in their name using the same format as you use in SIs. You do not need to insert an electronic signature or to scan a signed copy of the IA for the purpose of publishing.
- 3.23.28 Where there is an impact assessment (IA) the Explanatory Note to the SI should say at the end:

Example

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from...

- 3.23.29 Where an impact assessment (IA) is not required, the Explanatory Note to the SI should say at the end:

Example

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

- 3.23.30 There are occasions where the use of these exact formulations will not be accurate, in which case they should be adapted accordingly (for example, where the instrument is one of a group of instruments covered by a single IA).

3.24 Notes as to earlier Commencement Orders/Regulations

- 3.24.1 Where an Act is brought into force by more than one commencement Order/Regulation, the note to second and subsequent Orders should list the provisions brought into force by earlier commencement Orders/Regulations. This should go after the Explanatory Note and may be presented as a table, for example:

Example

NOTE AS TO EARLIER COMMENCEMENT [ORDERS / REGULATIONS]

(This note is not part of the [Order / Regulations])

The following provisions of the [XXXX Act 20xx] have been brought into force by

commencement [order / regulation] made before the date of this Order.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No</i>
section 1	1.4.2015	2015/993
section 2(3) and (4) (partially)	1.10.2014	2014/2473
section 2 (remainder)	1.4.2015	2015/993
section 3 to 11	1.4.2015	2015/993
section 12(1) and (2) (partially)	1.10.2014	2014/2473

3.24.2 The word ‘(partially)’ is used where the provision has been brought into force in part, or for a limited area, or for a limited purpose. Use the tabular arrangement in all cases.

3.24.3 If you are making a series of commencement orders or regulations relating only to a particular jurisdiction within the wider extent of the Act, the note as to earlier Commencement Orders/Regulations need only contain details of earlier commencements relating to that jurisdiction. Where, for example, in the case of an Act extending to the whole of the UK, a series of Commencement Orders or Regulations commence the Act only for England and Wales, the note might read as follows:

Example

The following provisions of the Act have been brought into force in England and Wales by.....

3.24.4 When you are preparing the note, find out if all the dates listed for earlier commencement Orders/Regulations will have been reached by the date when your Order is to be made. If they will not be reached, make this clear in the note.

3.24.5 Where the Order brings the last remaining provisions of the Act into force, state this in the Explanatory Note.

3.25 SIs resulting from membership of the European Union

3.25.1 Some SIs are made in consequence of the United Kingdom’s membership of the European Union. Departments should discuss this with DExEU legal advisers.

3.25.2 The SLSC considers if an SI imperfectly implements EU legislation. Any specific issues with transposing EU legislation to domestic law should be explained in the Explanatory Memorandum.

Scope of Section 2 of the European Communities Act 1972

3.25.3 [Section 2\(2\)](#)¹ of the European Communities Act 1972 sets out the powers to implement EU obligations, and includes the restrictions of powers too (some are expressly set out in [Schedule 2](#)² and some of which are implicit in the European Communities Act 1972). For guidance on the scope of section 2(2) you should consult with DExEU advisors.

Titles of SIs resulting from EU membership

3.25.4 You should include a reference to the ‘European Union’ or a particular Member State in the title only if:

- the SI is linked with some activity of an EU institution;
- it concerns the European Union as a geographical or economic unit;
- it confers rights or imposes obligations on nationals of other member states in pursuance of an EU instrument;
- it relates generally to a class of EU provisions.

In other cases the title should normally refer to the subject matter to which the SI relates. If you are not sure what titles to use, email the SI Registrar. Send a copy of your SI, your suggested title and any relevant background information.

Ambulatory references

3.25.5 The EN should make it clear if an ambulatory reference is being introduced. For example, see *The Syria (European Union Financial Sanctions) Regulations 2012* ([SI 2012/129](#)³).

3.25.6 If you need more information on ambulatory references please contact the DExEU legal advisers. More information about ambulatory references is also available in the *GLS Statutory Instrument Drafting Guidance*.

Identifying EU obligations in the Explanatory Note

3.25.7 The Explanatory Note should identify relevant EU obligations as follows:

¹ <http://www.legislation.gov.uk/ukpga/1972/68/section/2>

² <http://www.legislation.gov.uk/ukpga/1972/68/schedule/2>

³ <http://www.legislation.gov.uk/uksi/2012/129/note/made>

- (a) where either the whole or any part of an SI implements EU obligations, cite any relevant EU instrument and identify the part of the SI that implements it;
- (b) where implementation is being staged (i.e. where part only of a EU obligation is being implemented), identify that part of the SI;
- (c) where there is an amendment to an SI implementing a EU obligation, the obligation should be highlighted in the Explanatory Note.

Where a series of EU instruments is involved, you only need to cite those which are necessary to an understanding of the SI.

SIs partly implementing EU obligations

- 3.25.8 Where an SI contains both material implementing EU measures and material not implementing any EU measures, you should identify which provisions fall under [section 2\(2\)](#)¹ of the European Communities Act 1972 and which provisions fall under any other power. Say which parts of the SI, if any, are not transposing EU law, in the Explanatory Note.

Notifying transposition of EU legislation

- 3.25.9 Most directives have a provision towards the end requiring Member States to notify the Commission of the measures they have adopted to comply with the directive. While such a provision does not need to be transposed into national law, it is a breach of EU law to fail to notify the Commission within the time required, either of the existing national laws which implement a directive or the laws adopted for the purpose of implementing a directive.
- 3.25.10 This legal obligation can be met by using the electronic notification system. For more information please see the Cabinet Office guidance on the Electronic Notification of Transposition Measures and talk to the DExEU legal advisers.

¹ <http://www.legislation.gov.uk/ukpga/1972/68/section/2>

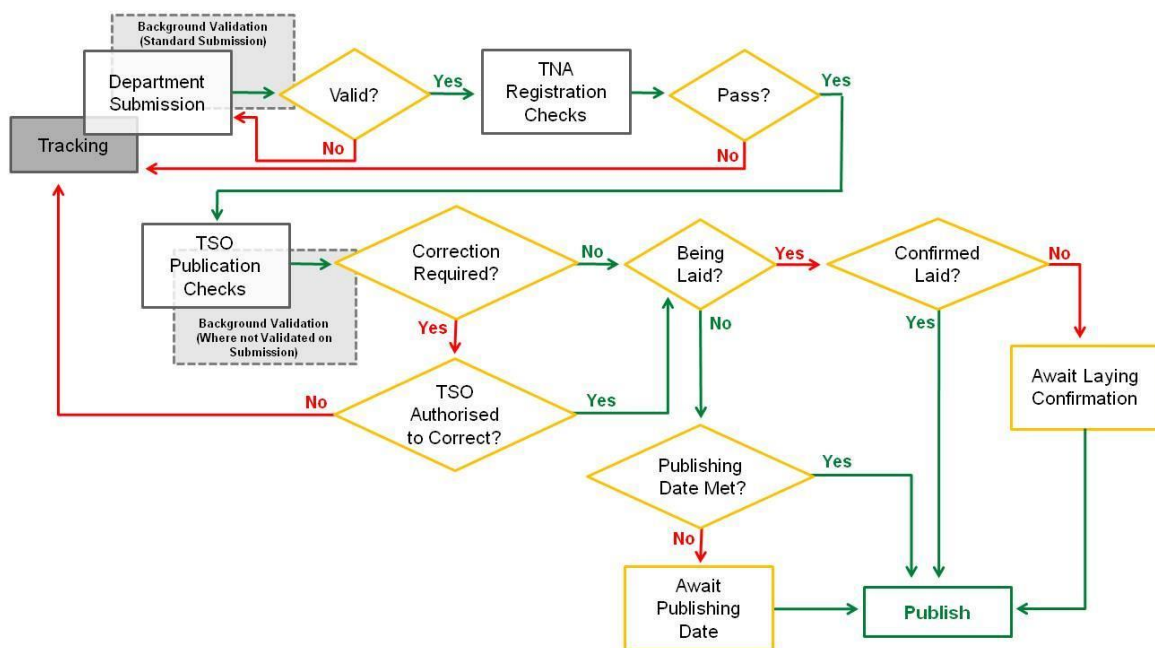
PART 4: REGISTRATION, LAYING AND PUBLISHING

4. VALIDATION, REGISTRATION, PUBLISHING

4.1 What this part of the guide covers

4.1.1 This part of SIP tells you about the drafting tools available for preparing SIs, Explanatory Memorandum and Impact Assessments, and the legislation.gov.uk Publishing service. The service was developed by The National Archives and its Publishing Contractor to make sure your documents are correctly formatted for publishing, and can be registered and numbered quickly and efficiently

4.1.2 The following diagram provides a high-level overview of the process for submitting instruments and any Associated Document(s) for registration, laying (where applicable) and publishing.



4.2 Legislation.gov.uk Publishing

The legislation.gov.uk Publishing service

4.2.1 The Legislation.gov.uk Publishing service enables you to:

- download the template for SIs, Explanatory Memoranda and Impact Assessments;
- request advanced numbers;
- validate your SI so that it can be published correctly;
- submit your SI for registration and numbering;
- obtain the certified version of your SI for laying. This version contains a 'certified true copy' banner inserted by the system and is the version the Journal Office in the House of Commons and the Printed Paper Office in the House of Lords now expect to see laid (they notify us when legislation has been laid and this triggers online publication);
- track your (and your Department's) documents throughout registration and publishing; and
- update an instrument that has been published.

4.2.2 Legislation.gov.uk Publishing has been verified, in consultation with CESG, to handle all types of OFFICIAL documents. All documents are treated as OFFICIAL-SENSITIVE by default prior to publishing. Publishable copies are not released from the secure system until Parliament confirms the SI has been laid or the publication date is reached. This triggers online publishing to legislation.gov.uk.

4.2.3 Legislation.gov.uk Publishing is how The National Archives (working with its Publishing Contractor) delivers the statutory responsibility for legislation publishing.

Requesting a user account for legislation.gov.uk Publishing or requesting a password reset

4.2.4 To access any of the services on legislation.gov.uk Publishing you need a user account. If you do not have one, use the online account request form to tell us which service(s) you require.

- <https://publishing.legislation.gov.uk>

4.2.5 If you need to reset your user password, use the online password reset form.

Personalising Legislation.gov.uk Publishing

4.2.6 Once you have a user account, Legislation.gov.uk Publishing is configured with the service(s) that you need. For example, if you validate SIs, but are not responsible for sending the SI to the SI Registrar, you will see the Validation service tab. All users have access to the Tools and Guidance tab. If you require access to additional services, email the publishing team at The National Archives.

4.2.7 You can save personal details, and invoice and delivery addresses (where applicable) within your profile. This means you do not have to enter this information every time you use the system. Simply update your profile page.

Ensuring the certified copy of the SI is the version that is registered, laid and published

4.2.8 The collection of documents you are sending for registration and publication is called a 'bundle'. For example, a UKSI bundle refers to the group of documents related to a UK SI.

4.2.9 Legislation.gov.uk Publishing creates an audit trail for each bundle submitted for registration and publication. The audit trail records each event in the process. It captures the date and time the SI bundle is submitted for registration; the SI number allocated at registration; when registration is completed; when notification is received from Parliament to confirm the SI has been laid; and when documents are subsequently published, as well as the person who performed these actions. The audit trail also captures all events in the publishing process, including any changes made by the publisher.

4.2.10 The audit trail provides the assurance that the certified version of the legislation to be published is the one that is registered, laid and printed (if required) and published on legislation.gov.uk.

4.2.11 No content changes (including numbering), or visually noticeable changes (for example formatting or layout) are permitted once an SI has been registered.

Legislation.gov.uk Publishing developments

4.2.12 Legislation.gov.uk Publishing continues to be improved. We will email registered users with service updates when we make changes or introduce new services.

4.3 Templates for SIs and associated documents

4.3.1 The use of templates helps to ensure that your documents are correctly formatted. The Tools and Guidance section in Legislation.gov.uk Publishing contains the templates that you should use.

4.3.2 The following templates are currently available:

- SI template
- Explanatory Memorandum template
- Impact Assessment template (to be used for all IAs other than Post Implementation Review IAs)

The SI template

4.3.3 The SI template helps the drafter to correctly format the legislation. It helps the publisher to produce the various outputs needed to make the legislation accessible. The correct use of the templates is important as it guarantees accurate and timely publication. It also supports the provision of data for re-use by third parties (such as other legal publishers).

4.3.4 The SI template needs to be installed on the PC or a network drive of everyone who interacts with the instrument. This includes drafting lawyers, validation teams, anyone who fixes validation errors in SIs, and members of Parliamentary teams who insert ministerial signature and italic date information. Installing the SI template on all users' machines will ensure that the SI template styles are not lost through the process. Simply opening an SI template file on a machine that does not have the SI template installed can invalidate a previously valid file.

4.3.5 Registered users of the legislation.gov.uk Publishing service can download the template and guidance from:

- <https://publishing.legislation.gov.uk/tools/uksi/drafting/si-template/template-download>

Using the SI template to include forms, maps, drawings and other images

- 4.3.6 The JCSI may report Departments for producing legislation with illegible forms or other images. The SI template includes functionality that enables you to create forms properly, rather than just inserting an image into the document. You can also pay our Publishing Contractor to typeset forms for you.
- 4.3.7 If you need to insert a form as an image, landscape images will require a landscape section and there is guidance in the SI template manual on how to do this. Alternatively, you can use the full width of an A4 portrait page margin to reproduce images, making them as large as is possible. You should use images in the TIFF file format for a good quality result.
- 4.3.8 Images larger than A4 size need to be published as fold-outs and separate image files (TIFF) need to be supplied for publication. These images should also be included as a reduced size image embedded in the SI Word file. If you have any questions please contact the SI support desk: sisupport@tso.co.uk.
- 4.3.9 Please note that the imprinted copies for laying will only contain the placeholder image and not the fold out version for print. Where the image is very small, consider providing a separate print of the image to the scrutiny committees. Printed copies will contain the full size image and will be published as a fold out.

SI template guidance and training

- 4.3.10 If you have not used the SI template before, we recommend that you attend one of the training courses provided by our Publishing Contractor. There is also an SI template user manual - a step-by-step guide to using the template - which will help you to trouble-shoot a range of common problems.
- 4.3.11 Registered users can find information about training courses, and a copy of the user manual at: <https://publishing.legislation.gov.uk/tools/uksi/>
- 4.3.12 The SI template user guide and FAQs aim to answer most of the technical questions you might have when using the SI template. If you require additional support, you can email the SI support desk between 8:30 am and 5.30 pm on weekdays. When contacting the SI support desk, please forward the validation email received from the legislation.gov.uk Publishing service and provide a description of the issue you need help with. There is no need to email the document to the SI support Desk. Email: sisupport@tso.co.uk.

Publishing SIs that have not been created using the SI template

4.3.13 If an SI has a non-standard structure that means it cannot be drafted using the SI template, ask our Publishing Contractor to typeset the SI for you. They will issue you with proofs, and you should make sure the document is correctly formatted before it is made. You should organise this typesetting in advance, so that the SI can be published promptly. You can find more information about non-templated SIs at:

- <https://publishing.legislation.gov.uk/tools/uksi/drafting/si-template/non-templated-sis>

4.3.14 The timescales for typesetting depend on the number of pages in the instrument, and the time needed for proofs and revisions. Typically you should allow four working days for an instrument of less than 16 pages, five working days for 17 – 64 pages, and seven working days for 65 – 96 pages.

4.3.15 Once you have agreed the final proof, our Publishing Contractor will provide you with a Word file that you can submit for registration using the legislation.gov.uk Publishing service. This will enable the SI to be registered, laid (where applicable) and published.

The Explanatory Memorandum template

4.3.16 Registered users can download the Explanatory Memorandum (EM) template from:

- <https://publishing.legislation.gov.uk/tools/uksiem/drafting>

4.3.17 The EM template is a Microsoft Word template that uses the .dot file extension. You should save new EMs based on the EM template as Word documents, using the .doc or .docx file extension. We are not able to support the open document format at the moment. Users are advised not to change the format, structure or styles of the EM template.

4.3.18 The EM template sets out the 13 sections that are required in an EM. It includes the correct section headings and sub-headings and some of the associated content (some of which is mandatory). You will also find notes on how to prepare an EM, including guidance on the information that should appear in each section.

4.3.19 We recommend that users download a fresh version of the EM template each time they create a new EM. This will help to ensure that your EM complies with

the most recent requirements and incorporates any minor changes that may have been made to the template and/or to the guidance.

Note: Unlike the SI template, there is no validation service for EMs.

4.3.20 If you require further help with the EM template, please contact the SI Registrar.

The Impact Assessment template

4.3.21 Registered users can download the most up-to-date Impact Assessment (IA) template, and information on how to install and use the template from:

- <https://publishing.legislation.gov.uk/tools/ukia/drafting>

4.3.22 The IA template was developed by our Publishing Contractor on behalf of the Better Regulation Executive (BRE), who are part of the Department for Innovation Business and Skills. BRE are responsible for the policy for Impact Assessments.

Note: The IA template is not validated through the legislation.gov.uk Publishing service.

4.3.23 If you require further help on the IA template please contact betterregulation@bis.gsi.gov.uk.

4.4 SI template and validation service

Using the Validation service

4.4.1 Validation checks the style, formatting and typographical layout of your SI to ensure it will be published correctly on legislation.gov.uk and in print (if required). It can be used for all SIs created using the SI template. Validation ensures that an SI can produce valid XML.

4.4.2 The Validation service is part of legislation.gov.uk Publishing. Registered users can access the Validation service at:

- <https://publishing.legislation.gov.uk/validation>

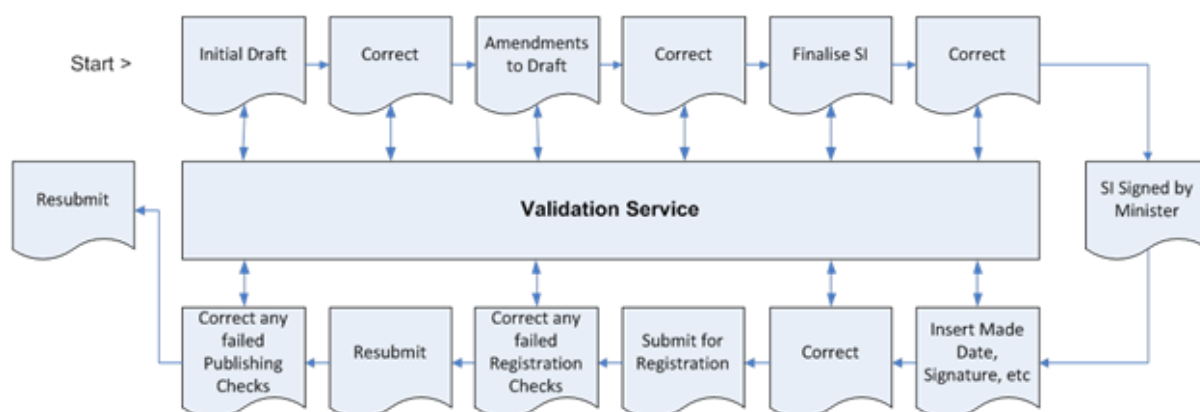
4.4.3 The Legislation.gov.uk Publishing service allows you to upload your templated SI document for validation. You will receive notification of your validation results by email, with links where you can access the validation report. The validation report details where there are issues requiring attention, and what type of issue it is.

Validation during the drafting process

4.4.4 We recommend that you use the Validation service to check your SI throughout the drafting process. This will save you time later. When an SI has been validated

once, the Validation service will recognise it and only validate the parts of the document that have changed on subsequent validations. This speeds the Validation process, particularly for large SIs that contain only minor modifications.

4.4.5 The following diagram illustrates where (at a minimum) in the SI process we recommend you validate your SI.



4.4.6 SIs must be validated once Ministerial signature details and italic date information have been added. You must address any high impact validation errors before you submit your SI for registration.

Validation during submission

4.4.7 The legislation.gov.uk Publishing service automatically validates documents as part of the submission process. If it identifies any low impact errors, you can opt to continue by agreeing to pay our Publishing Contractor to resolve these issues for you, or you can resolve them in your Department. The system will not allow you to submit an SI that contains high impact errors, as these are issues that only the Department is permitted to fix. You can find more information on what constitutes high or low impact errors in the Validation Error Message guide, which is available on legislation.gov.uk Publishing.

4.4.8 You cannot make any changes to the SI after registration that alter the content or visual presentation of the instrument. This ensures that the document that is registered is the same as the certified copy for laying and the copy published online and in print. Validation errors need to be corrected before the SI is submitted for registration and publishing.

Invalid documents and error reports

4.4.9 Once validation of your SI is complete, the Validation service will send you an email, advising whether your document has passed validation or if contains any errors or warnings (and how many).

4.4.10 This email from the Validation service contains a link to the validation report that details any issues requiring attention. The report will state the type or error or warning. You can then use this information, alongside the Validation Error Message Guide, to help you to correct the issue(s). You can find the Validation Error Message Guide as follows:

- <https://publishing.legislation.gov.uk/uksi/validation/validation-reports>

Note: An SI can pass validation but may still contain warnings which you should review and correct where applicable.

4.4.11 If your SI contains validation errors and is under 25 pages, you can access an interactive web report that explains the errors and provides help where the error occurs. This will help you to identify and resolve errors within the content of the SI.

4.4.12 You can also access a PDF report, which you can use to check any page-specific or global errors, for example in document headers or footers. Information about these types of errors is not available in the interactive version of the validation report.

4.4.13 For longer SIs (those over 25 pages) you can access a PDF version of the validation report.

4.4.14 Your validation report may contain some warning messages. Warnings highlight areas you need to double check and verify before you submit the SI for registration. It is best practice, and recommended, to address these but it is not compulsory. Some warning messages stem from the nature of the SI – such as the missing SI number warning for draft SIs.

4.4.15 You can obtain help from the SI support team to resolve validation errors and warnings and with other aspects of the SI template. Email sisupport@tso.co.uk. Please forward the validation email you receive from the legislation.gov.uk Publishing service to SI support, and briefly describe the issue you need help with. You do not need to email the document to the SI support team.

4.5 Registration service

Requesting advanced numbers

- 4.5.1 In some cases an SI may need to cross-reference another SI that has yet to be made, registered and numbered. To deal with this situation, we can issue an advanced number. You can request an advanced numbers through the [legislation.gov.uk](https://www.legislation.gov.uk) Publishing service, normally no more than 48 hours before you intend to submit the SI(s) for registration.
- 4.5.2 If you need advanced numbers for a sequence of SIs, include information for all of the SIs in your advanced number request. Input all advanced numbers into the SI document(s) and EM(s) before you upload the documents for registration.
- 4.5.3 If you are submitting SIs with a shared EM, you should also request numbers in advance. It is best practice to ensure that SIs with a shared EM receive sequential numbering wherever possible. Input all numbers into the SI document and EM before you upload the documents for registration. In the shared EM, present the SI Titles and their associated SI number in numerical order, with the lowest number first. If the shared EM contains any draft SIs, list these below any numbered SIs. Upload a copy of the shared EM with each SI submitted for registration.

About SI registration

- 4.5.4 The Registration service is part of [legislation.gov.uk](https://www.legislation.gov.uk) Publishing. Once you have validated your SI and corrected all validation errors (and it has been signed, if it is a made SI), you will need to submit it for registration.
- 4.5.5 Once made (signed) you should immediately send the SI for registration, and numbering as set out in the [Statutory Instruments Act 1946](#)¹.
- 4.5.6 There is a five step process to submit an instrument for registration:
- Step 1: Bundle selection
 - Step 2: Upload documents
 - Step 3: Registration information
 - Step 4: Publishing information

¹ <http://www.legislation.gov.uk/ukpga/Geo6/9-10/36/contents>

- Step 5: Review documents and information

4.5.7 Legislation.gov.uk Publishing guides you through each step of the submission process.

4.5.8 This is described below:

Step 1: Bundle selection

4.5.9 The first step is to choose the right type of the collection of documents (called a bundle) you need to submit. For example, a 'UKSI bundle' refers to the group of documents related to a UK SI – usually an associated Explanatory Memorandum if the SI is laid, and perhaps an IA. There are the following bundle:

- UK Statutory Instrument Bundle –to submit a general SI, which is a made instrument and requires an SI number(s), and any Associated Documents (for example EMs or IAs). You should also use this bundle to submit Class ii) SIs.
- UK Draft Statutory Instrument Bundle – select this to submit a draft SI with the appropriate draft banner and headnote, and any Associated Documents.
- UK Local Statutory Instrument Bundle – to submit a local SI, and any Associated Documents, and say whether the SI is print or non-print.
- UK Order in Council bundle – to submit an Order in Council SI and any Associated Documents, as well as other documents required by the Privy Council Office.
- Associated Document bundle – to submit an Associated Document to an SI that has already been published on legislation.gov.uk.

Note: You can abandon a bundle at any point in the submission process, by clicking on the Registration tab. You will then receive a message asking you to confirm that you wish to continue.

Step 2: Upload documents

4.5.10 The next step is to upload your validated/templated SI and any Associated Documents. The SI is always required and must be uploaded as a .doc file. It should be unnumbered unless it contains an approved advanced number.

- 4.5.11 You can upload your SI document from the desktop or a shared folder. If you use a content management system you may have to save a copy to your desktop first before uploading your SI.
- 4.5.12 You can also upload any Associated Documents, for example an EM and/or an IA. These should be uploaded as Word (.doc) documents (with any approved advanced number(s) inserted into your EM prior to uploading).
- 4.5.13 If you need to upload further associated documents, select the document type from the 'Add Another Document' drop down menu. If the document type you need to upload is not included in the drop down list, simply select 'Other Document' and specify the type of document that you are uploading, making sure that it accurately reflects the content of the document.

Submitting shared EMs

- 4.5.14 You will need to request SI numbers in advance for SIs that have a shared EM. Add these numbers into the documents before you submit them for registration. You must upload and submit a copy of a shared EM with every SI bundle that it is associated with.

Requesting urgent registration or expedited publication

- 4.5.15 If your SI is being laid in the next 24 hours, and/or will come into force in the next 48 hours, you can specify urgent registration and/or expedited publication. You will need to contact SI Registrar to obtain an authorisation code, on the day of submission and input this authorisation code at Step 2.

Step 3: Registration information

- 4.5.16 Once you have uploaded your document(s), you need to provide the information required for registration.
- 4.5.17 Most of the information required will be automatically extracted from your templated SI document, if you have used the correct SI template styles. Where the information cannot be automatically extracted, you will need to enter it manually, making sure it reflects the content of your SI. You also need to check the information automatically extracted from your document. For example you may need to check that the system has identified any subsidiary or advanced numbers. If the extracted information is not what you expected, you can change the SI document and re-upload it.

- 4.5.18 The Class of SI is required by the system but cannot be extracted from your SI document. You must identify the relevant Class at Step 3. The different Classes of SI are described in Part 2: Parliamentary Control and SI Classes.
- 4.5.19 If you are submitting a draft SI, then you will need to provide an estimated date for when you intend to lay the draft.

Step 4: Publishing information

- 4.5.20 You need to provide publishing information we require for our Publishing Contractor to publish the instrument. For example you can specify print publication image preferences, enter delivery and quantity details for printed copies, and enter invoicing details. If your user profile page is up-to-date, the system will automatically pre-populate this information for you.
- 4.5.21 The system will provide you with suggested/estimated web and print publication dates. You can change these to a later date, but you must contact the SI Registrar if you need an earlier date, to request the authorisation code. The web publication date will either be the document's laid date (or estimated laid date) or, in all other cases, will be 48 hours after the date of submission.
- 4.5.22 Lead times for registration, publishing online and publishing in print are detailed in Table H. Please note that these are the minimum times required. You should allow more time, if possible.
- 4.5.23 If your SI (this doesn't apply to any Associated Documents) contains a colour section, map, image or diagram, that needs to be published in colour, then you should specify your requirements by selecting the appropriate options at Step 4 of the publishing process. Step 4 gives you the option to include instructions to our Publishing Contractor to reflect any specialised print, or other, requirements.
- 4.5.24 If your SI contains a headnote stating that it is to be issued free of charge to all known recipients, you will need to indicate this at Step 4.

Times required for registration, producing documents for laying, and publishing online and in print (if required)

Table H – Lead times required for registration, publishing and print

	Registration	Publishing online	Print	Total time required
Valid SI template file	1 working day ie by the same time on the next working day as the time submitted.	1 working day from registration.	3 working days from registration.	4 working days.
Invalid SI template file	1 working day ie by the same time on the next working day as the time submitted.	May take more than 1 working day from registration if Publishing Contractor is fixing errors or high impact errors need to be fixed by Department.	3 working days from when Publishing Contractor receives a valid file.	4 working days plus the time taken to resolve validation issues.
Local print (i.e. published on legislation.gov.uk and in print)	Our aim is for 3 working days or as soon as is practical.	1 working day if valid SI template document. If invalid see above.	3 working days from registration.	6 working days.
Local non print (i.e. only published on legislation.gov.uk)	Our aim is for 3 working days or as soon as is practical.	1 working day (because it is published in PDF only).	n/a.	4 working days.

Step 5: Review documents and information

4.5.25 Step 5 is where you complete your final review before submitting your bundle for registration and publishing. For example, you should check that the correct documents have been uploaded and that all of the registration and publishing information is correct. If you notice a problem, click the 'Edit' button. This will allow you to re-upload a document or change any of the information previously

entered. Departments are accountable for checking that all information and documentation provided is accurate at this stage of the process.

- 4.5.26 Finally in Step 5, you must check and certify the SI you have uploaded as a true copy of the instrument as signed/approved by the Minister. You do this by checking the tick box at Step 5. Your certification is the authority by which we proceed to register and publish the Queen's Printer version of the SI. The system records the fact of the certification, and the name of the person who certified the SI, as part of the bundle audit trail.

Intervention policy post-registration

- 4.5.27 The Publishing Contractor can intervene on behalf of Departments during the publishing process to change publication dates, print quantities, delivery addresses and invoice details. For these minor interventions the Publishing Contractor does not need to consult with The National Archives.
- 4.5.28 The Publishing Contractor can also intervene by changing the SI Word documents to resolve low impact validation errors, if you request this during the submission journey, and are prepared to pay for the corrections. The Publishing Contractor is not authorised to correct high impact validation errors. Any intervention by the Publishing Contractor relating to a high impact error needs to be approved by the SI Registrar. Such intervention will only be authorised in exceptional circumstances.
- 4.5.29 The SI Registrar will not approve any intervention, post registration, that alters the content, including paragraph numbering, or the visual appearance, layout or format of the SI. Once an SI has been registered, such changes need to be made by correction slip or corrected reprint.
- 4.5.30 The Publishing Contractor can also intervene to improve the XML data created during the publishing process. These changes do not change the content or the visual appearance of the document that has been made, registered and published.

Tracking progress of your bundles in legislation.gov.uk Publishing

- 4.5.31 Legislation.gov.uk Publishing enables you to easily track the progress of your SI bundles, view information about your bundles, and view documents. 'My Bundles' allows you to track your own Bundles. 'All Bundles' allows you to track any Bundles submitted by your Department.

4.6 Checks carried out at registration

4.6.1 When your SI is submitted for registration, the SI Registrar carries out a number of checks, including those listed below. The SI Registrar will advise you of any anomalies or inaccuracies noticed during the review of the SI and/or Associated Documents. These are not the same as the Validation checks. If your SI fails the registration checks, it will be returned to you.

Table I – Automated SI Registration Checks

Automated registration checks	
✓	Does the bundle type used to submit the SI correspond to the SI Banner?
✓	If the SI is a Draft, does it contain a headnote?
✓	Does the SI title start with “The” or “Her Majesty’s”?
✓	Does the SI title end with the year?
✓	Does the year in the SI tile match the SI number year?
✓	Do the main SI and citation titles agree?
✓	Is the signature present and in italic type?
✓	Do italic made, laid and Coming in Force (CIF) dates recorded in the system match those in the SI?
✓	Are dates made and signed present and agree?
✓	Note: if more than one signatory then the date made equals the latest signature date.
✓	Do italic and citation Coming into Force dates agree?
✓	Are date references in the italic made, laid and coming into force dates, dates within the commencement and citation provision and signature dates shown as ordinal numbers (i.e. 1st January not 1 January) and are these in normal text and not superscript? Please note: Where there is a valid reason for a date not having an ordinal number, for example when it is a date being inserted into primary legislation or is the proper title of an EU Directive, users should state this in their "Message to the SI Registrar" on Step 5 of the submission process.

Table J – Manual SI Registration Checks

Manual checks carried out by SI Registrar	
SI & Bundle Checks	
✓	Are all expected associated documents present in the bundle?
✓	Has the full title been extracted / input and recorded on the system?
✓	Has correct date information been recorded on the system?
✓	(e.g. a laid date has not been input for a draft SI)
✓	Does the SI title end with the correct calendar year?
✓	Has the same SI title been used within same calendar year?
✓	Does signature contain incorrect title use?
✓	Are dates laid and coming into force (CIF) present if required?
✓	Has the type of SI (e.g. Regulations, Order, Rules, Scheme, etc.) been used consistently in the SI? Particularly in the citation (This/These XXX may be cited as....) and the Explanatory Note / Note as to Earlier Commencement Orders/Regulations (This note is not part of the XXX).
Subject Heading Checks	
✓	Is the main subject heading(s) valid?
✓	Is the main subject heading(s) in Times New Roman font 16?
✓	(Equates to template style "Subject" having been applied.)
✓	Has any territorial suffix been used correctly?
✓	Is any sub-heading(s) valid?
✓	Is the sub-heading(s) in Times New Roman font 12? (Equates to template style "SubSub" having been applied.) Note: Sub-headings are not allowed if the same text occurs in the SI title. Sub-headings do not carry territorial suffixes.
Enabling Power Checks	
✓	Are enabling powers correctly cited and footnoted with a footnote for each Act/SI?
✓	Is the enabling Act year and chapter or SI number at beginning of the footnote?
Footnote Checks	
✓	Does the footnote numbering restart on each page?

✓	Are any footnote references misplaced?
✓	(i.e. Footnote should appear on the same page as the text reference to the footnote.)
✓	Are the footnote references within the SI text in bold?
✓	Are Act chapter numbers correctly presented? (i.e. Where the year and chapter of an Act are cited at the start of any footnote, the chapter number should not be enclosed within brackets. Conversely, if an Act is cited anywhere else within the footnote then the chapter number should appear within brackets. Footnote (a) provides an example: (a) 1979 c. 41. Section 1 was amended by section 24 of the Social Security Act 1985 (c. 53) and section 7(3) was amended by section 58 of the Welfare Reform Act 2007 (c. 5).
Schedule Checks	
✓	Does paragraph numbering re-start at 1 for each Schedule?
✓	Are Schedules numbered in sequence?
✓	Are shoulder notes present and correct? (i.e. Where a Schedule is referenced in the main body of an SI the Schedule has the correct corresponding shoulder note to the right of the Schedule Title referring to the provision containing the reference.)

Table K – Additional SI Registration Checks for draft SIs

For draft SIs there are some additional checks

✓	Is the draft SI banner in place?
✓	Does the draft SI have the correct headnote in place?

4.7 Correcting errors after submission through legislation.gov.uk Publishing

What can be corrected, and how

- 4.7.1 As Craies on Legislation tenth edition (Sweet and Maxwell 2012) pages 681 – 689 makes clear, it sometimes happens that legislation is enacted or made in a form that incorporates errors of form or substance. Where the error is substantive legislation is used to correct faults in earlier legislation and also to make the corrective purpose of the later legislation clear. We call this the ‘amending’

legislation. Substantive errors, no matter how small, can only be corrected by amending legislation.

4.7.2 Where errors are not substantive, but ought to be corrected, there are a number of procedures that may be followed, depending on the error. These are set out in the following pages.

4.7.3 Non-Textual Corrections

- Used for very minor non-textual errors to ensure the legislation is presented correctly online (without impact on the print version).
- The errors that can be rectified using a non-textual correction will not be typographical or affect the textual content in any way. For example, a non-textual correction may be used to correct spacing issues in a table; within the text of a provision where two words have been run together; or to rectify misaligned paragraphs.
- In the case of a non-textual correction, only the online HTML version of the legislation is updated, as is the file that is used to publish the instrument in the Annual Edition of SIs. TNA do not correct the original print PDF on legislation.gov.uk or publish a correction slip that describes the correction and users are not notified that any correction has been made.

4.7.4 Correction slips

- Used for typographical errors, such as a wrong cross-reference, that does not change the meaning of the legislation, but ought to be corrected to avoid misleading readers. The correction slip cannot be used to correct substantive errors, however small, or to correct an SI that fails to secure its intended effect because circumstances have changed. For more information on correction slips, see Craies on Legislation, tenth edition (Sweet and Maxwell 2012) pages 681 and 682.
- To use a correction slip, notify the SI Registrar stating what corrections are required. Provide a marked-up copy of the SI that clearly shows those corrections. The SI Registrar will then prepare a correction slip and arrange for it to be published.

- The online version will then be corrected, and so will any file that is used to publish the instrument in the Annual Edition of SIs. For transparency purposes, the print PDF will not be updated, however the correction slip will be published alongside it on legislation.gov.uk
- The correction slip is also circulated with new sales of the SI and to those who are known to have already purchased it, drawing attention to the error and the correction.

4.7.5 Corrected reprints

- Used to correct the type of error that could be corrected using a correction slip (i.e. an error that does not obscure the sense of legislative intent but ought to be corrected to avoid misleading readers), but where the needs of the reader are best served by reprinting the SI, for example where there are issues with layout or the legibility of the text (in a form, for example).
- To use a corrected reprint, notify the SI Registrar stating what corrections are required. Provide a marked-up copy of the SI that clearly shows the corrections.
- Insert the original SI number(s) and an italic corrected reprint headnote in the SI document. The corrected reprint headnote should appear above any existing Parliamentary procedure headnote. If you are unsure what the content of the corrected reprint headnote should be, contact the SI Registrar.
- To submit a corrected reprint SI, you simply need to use the 'update an SI already published' button on the Registration service landing page on legislation.gov.uk Publishing.

Using SIs to introduce new provisions when correcting a defective SI

- 4.7.6 If your Department wants to introduce new amending provisions at the same time as it is correcting a defective instrument, it should include both the new and correcting provisions within the one instrument. You should then agree with the SI Registrar whether or not to provide free replacement copies. The Explanatory Memorandum for the amending SI needs to state whether or not the procedure for free issue has been applied and give the reasons for the decision.

What to do if you believe you have submitted the wrong SI document

- 4.7.7 If you have submitted the wrong document (i.e. you have not submitted the certified true and correct document that the Minister signed), contact the SI Registrar immediately. The Registrar will advise what action is appropriate – and possible – depending on what stage your document has reached in the publishing process.
- 4.7.8 If the SI document has not been registered:
- The SI Registrar can withdraw the bundle from the system and you can resubmit it. However, registration happens very quickly after submission so this is only possible if you spot your mistake immediately.
- 4.7.9 If the SI document has been registered but not laid or published:
- The SI Registrar can withdraw the bundle and cancel the SI number. You will need to resubmit the correct document as a new bundle using legislation.gov.uk Publishing. It will be registered and given a new SI number.
- 4.7.10 If the SI document has been registered and laid but not published:
- The SI Registrar can withdraw the bundle and cancel the SI number. You will need to notify the Journal Office and the Printed Paper Office at the House of Lords to withdraw physical copies, and you will need to resubmit the correct documents as a new bundle using legislation.gov.uk Publishing. It will be registered and given a new SI number.
- 4.7.11 If the SI document has been registered, laid and published online:
- The SI Registrar will arrange for it to be removed from legislation.gov.uk and will cancel the SI number. You will need to inform the Journal Office and the Printed Paper Office at the House of Lords, and you will need to resubmit the correct document as a new bundle using legislation.gov.uk Publishing. It will be registered and given a new SI number.
- 4.7.12 If the SI document has been registered, laid, published online and printed:
- The SI Registrar will ensure it is removed from legislation.gov.uk and removed from sale, and cancel the SI number(s). If printed copies have been distributed the SI Registrar will ensure our Publishing Contractor

notifies all known recipients. You will need to inform the Journal Office and the Printed Paper Office at the House of Lords, and you will need to resubmit the correct document using legislation.gov.uk Publishing. It will be registered and given a new SI number.

What to do if you have submitted an SI document that the Minister signed but it contains a mistake

4.7.13 If the SI document has not been registered:

- If it is in the nature of something that could be covered by a correction slip, for example if you have put 'Regulation' not 'Regulations' in the title, this can be remedied. You will need to notify the SI Registrar immediately, who will then advise whether the bundle needs to be sent back for correction, or withdrawn, dependent on the nature of the mistake(s). If the bundle is withdrawn, you will need to resubmit the corrected document as a new bundle, using legislation.gov.uk Publishing. If there is a more significant error, for example the mistake would change the meaning of the SI or its legal effect, then the document cannot be changed and will have to be registered, laid (if applicable) and published. You will then need to make an amending SI.

4.7.14 If the SI document has been registered but not published:

- It needs to be laid and published as a made SI, as it is, and you will need to correct mistake(s) after publishing. The options available to you are set out previously and will depend on the nature of the mistake(s).

4.7.15 If the document been published online or printed:

- You will need to correct the mistake(s) according to the options set out previously.

4.8 Laying

4.8.1 The first step in Parliamentary control is laying the SI or draft SI, and any Associated Documents, before Parliament. the Statutory Instruments Act 1946, [section 4](#)¹, contains general provisions about SIs that have to be laid.

¹ <http://www.legislation.gov.uk/ukpga/Geo6/9-10/36/section/4>

- 4.8.2 Detailed [guidance on the procedure for laying SIs](#)¹ is available from the House of Commons Journal Office.
- 4.8.3 Some SIs, for example Special Procedure Orders, Public Bodies Orders and Legislative Reform Orders, have different laying requirements.
- 4.8.4 If you are laying an affirmative instrument you will also need to write to the Principal Clerk of the Table Office to ask that a motion for the instrument's approval is added to the Order Paper. This letter should accompany the laying copies of the instrument and should be delivered to the Journal Office.

What constitutes laying

- 4.8.5 If any Act or subordinate legislation refers to the laying of an SI or document before either House of Parliament, this means they have to be laid according to the [Standing](#)² or [Sessional](#)³ Orders, other directions, or practice of that House.
- 4.8.6 A reference to laying 'before Parliament' means laying the document before each House of Parliament, unless otherwise stated. Before laying your SI document you should check whether it needs to be laid before Parliament (i.e. both the House of Commons and the House of Lords) or only before the House of Commons.
- 4.8.7 SIs and documents should be laid 'during the existence of a Parliament'. A Parliament continues to exist during an adjournment or a recess, but does not exist between the dissolution of a Parliament and the meeting of its successor Parliament.
- 4.8.8 A document is considered to be formally laid before the House when a copy of it is accepted by the Journal Office. Copies of the document(s) should also be made available in the Vote Office shortly after laying so that copies can be made available to Members.
- 4.8.9 It is generally helpful to lay as early in the day as possible, to allow Parliamentary officials to complete the necessary post-laying processes well before the House rises.

¹ <http://www.parliament.uk/documents/upload/laying-papers.pdf>

² <http://www.parliament.uk/about/how/role/customs/>

³ <http://www.parliament.uk/briefing-papers/SN05593/sessional-orders>

Laying before the House of Lords

4.8.10 An SI is laid before the House of Lords by depositing copies addressed to the Clerk of the Parliaments in the Printed Paper Office. SIs are accepted for laying during the following hours:

Days when papers may be laid	Time at which papers may be deposited in Printed Paper Office	
	Earliest	Latest
House sitting for public business	9:30 am (or start of business if earlier)	5:00 pm (or rising of the House if later)
Non-sitting day (Monday to Friday)	11:00 am	3:00 pm
Prorogation	11:00 am	3:00 pm
Dissolution	Papers may not be laid	

4.8.11 If you have any questions on laying before the House of Lords, contact the House of Lords Printed Paper Office on 020 7219 1246. If your Department needs to lay SIs outside standard hours, you must make special arrangements with the Printed Paper Office or, in recess, with the duty clerk.

Laying before the House of Commons

4.8.12 The Journal Office can receive papers during the following hours:

Days when papers may be laid:	Time when papers may be laid:
Mondays and Tuesdays	10:00 am until the rise of the House
Wednesdays and Thursdays, and sitting Fridays	9:30 am until the rise of the House
Non-sitting days	11:00 am-3:00 pm

Note: Neither House Office can accept draft SIs (including Public Bodies Orders and Legislative Reform Orders), Special Procedure Orders, or made SIs that require approval before coming into force, on non-sitting days.

4.8.13 If at all possible, lay papers before 4:00pm. If papers need to be laid after 4:00 pm, let the Journal Office know (020 7219 3320) as soon as you can. The Journal Office will not accept papers after the rise of the House in any circumstance – so

monitor progress (and if necessary consult the Journal Office) if you expect to lay an SI towards the end of the day. SIs cannot be laid on Saturdays, Sundays, bank holidays, Good Friday or Christmas Day.

Documents laid only on sitting days

4.8.14 Affirmative drafts (Class i)), affirmative instruments (Class ii), negative drafts (Class iv)) and exceptional procedure SIs (Class viii)), Special Procedure Orders (Class ix)), and any other SI that either requires an affirmative resolution or has to be laid before Parliament/House of Commons before it comes into force can only be laid on sitting days. They cannot be laid after the rise of either House.

Documents that can be laid on non-sitting days

4.8.15 All made SIs can be laid on non-sitting days.

Copies for laying

4.8.16 Standard practice is to deliver two copies of the SI to each House, or just to the House of Commons if only laying before that House. Include two copies of the Explanatory Memorandum and any related maps, plans, Schedules or other documents, and one copy of any exempt Schedule or document.

4.8.17 You must lay the imprinted pdf produced by the legislation.gov.uk Publishing, which includes the wording: 'certified copy from legislation.gov.uk Publishing'.

Laying procedure

4.8.18 The laying procedure for documents is set out in the Journal Office Guide to Laying Papers.

Notice of laying

4.8.19 Members are notified daily, in the House of Lords Business and in the Votes and Proceedings of the House of Commons, about the laying of an SI or draft SI, and the form of Parliamentary Control required.

4.9 Date of laying

The relevant rules for date of laying

4.9.1 In general, you should lay an SI before Parliament or the House of Commons as soon as possible after registration. There are certain rules of practice or rules of law which affect the date of laying. These are set out below.

- 4.9.2 You must supply copies of the SI or draft SI to each House on the date of laying, in accordance with the Speaker's ruling of 25 March 2009 ([HC Deb c307](#)¹).

Laying before commencement

- 4.9.3 Wherever possible SIs should be laid before they come into force and need a Commencement clause that enables this. An SI will come into force at the beginning of the day specified in the Commencement clause so it must be laid no later than the preceding day of the commencement.

Laying after commencement

- 4.9.4 If essential, an SI can come into force before it is laid. You must notify the Lord Speaker of the House of Lords and the Speaker of the House of Commons as appropriate, explaining why copies of the SI were not laid before it came into force. You must send this notification as soon as the SI comes into force.
- 4.9.5 Also send copies to the Chairs of the Joint Committee on Statutory Instruments (JCSI and SCSI) and Secondary Legislation Scrutiny Committee (SLSC). The only exception is if there is a vacancy for the office of Speaker of either House of Parliament, whether occurring by death, resignation, dissolution of Parliament or otherwise. In this case, you must send notification immediately after the vacancy is filled (See Laying of Documents before Parliament (Interpretation) Act 1948, [section 2](#)²).
- 4.9.6 If laying after commencement, there is no set rule about the laying date, other than that the SI should be laid as soon as possible. Generally, Scrutiny Committees may comment if there is a delay of more than a few days between making and/or coming into force and laying.
- 4.9.7 In SIs laid after commencement, the laying date in the italic date information goes below the coming into force date. Laying SIs on the date in which they come into force is sometimes required, but only where there is extreme time pressure, for example where there are sanctions relating to foot and mouth disease. In such circumstances, the laid date and coming into force date (and the made date and signature, if made on the same day) must contain the time that each of these events occur.

¹ <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090325/debtext/90325-0003.htm#09032538000004>

² <http://www.legislation.gov.uk/ukpga/Geo6/11-12/59/section/2>

Exceptions

- 4.9.8 These provisions do not apply to Special Procedure Orders or to any other instrument which is required to be laid before Parliament, or the House of Commons, for any period before it comes into operation (see Part 2: Parliamentary Control and SI Classes).

4.10 Laying and the printing programme

- 4.10.1 If an SI is to be printed and has not been drafted using the SI template, arrange typesetting and obtain proofs from our Publishing Contractor before it is made. This enables the SI to be registered, laid (if applicable), printed and issued promptly after making.
- 4.10.2 Where an SI is required to be laid, laying must be confirmed by the Laying Offices before it can be published. The Journal Office and the Printed Paper Office use a dashboard on [legislation.gov.uk Publishing](https://legislation.gov.uk/Publishing) to record when an SI has been laid. Confirmation of laying triggers the publishing process. The delivery of printed copies to the Vote Office and the Printed Paper Office will be on the print date specified when submitting the SI (which should be the date of laying).

4.11 Laying SIs and associated documents

- 4.11.1 Please note that SIs that have to be laid are never published before the laid date. We aim to register the SI and have the numbered version available to you for laying by the same time on the next working day as the time submitted. The version for laying has a 'certified copy from [legislation.gov.uk Publishing](https://legislation.gov.uk/Publishing)' imprint included – this is the version that the Journal Office at the House of Commons and the Printed Paper Office at the House of Lords expect to receive from you for laying.
- 4.11.2 You must lay the same versions of the documents that have been registered. To ensure this, the [legislation.gov.uk Publishing](https://legislation.gov.uk/Publishing) service generates and sends you pdf files for the documents that have been registered and numbered (where applicable). You can then print out copies as required, and complete the relevant laying letters. Please make sure that you have the latest version of the laying pdf if bundles have been returned to you to correct low or high impact errors.

Copies for Parliament

- 4.11.3 As soon as an SI is laid before Parliament, copies must be available to the Vote Office for Members. Any embargo will cease to apply as soon as the document

has been confirmed as laid and published to legislation.gov.uk as once published, the SI is in the public domain.

- 4.11.4 Copies of all print published SIs and draft SIs published and issued by our Publishing Contractor are supplied to the Vote Office for the use of Members of both Houses of Parliament. They are delivered by our Publishing Contractor direct to each House in the quantities shown in Table L on the print publication date.
- 4.11.5 Where an SI or draft SI is laid but print copies are not yet available for Members from the Vote Office (for example where the specified print publication date has not been reached), it is the Department’s responsibility to supply Parliament with the correct number of SIs shown in Table L. Use the version containing the imprint: ‘certified copy from legislation.gov.uk Publishing’ for this purpose.

Table L – Copies of instruments and drafts for Members of Parliament

	House of Commons Vote Office
SIs laid	
for affirmative resolution, or	8 copies
for negative resolution, or	
without further proceedings	
Draft SIs laid	
for affirmative resolution, or	100 copies
for negative resolution	
Instruments not laid	8 copies

- 4.11.6 If the number of required copies is changed at the request of the Vote Office, our Publishing Contractor will ensure that the correct, updated, amounts are produced and dispatched.

4.12 Publishing of SIs and Associated Documents

Publishing on legislation.gov.uk

- 4.12.1 SIs and any Associated Documents are published on legislation.gov.uk (and in print if required) on the publishing dates entered into the legislation.gov.uk Publishing service.

- 4.12.2 However, if the SI and any Associated Documents are required to be laid, they will only be published on legislation.gov.uk (and in print, if print is required) once we have received confirmation of laying from the Parliamentary authorities.

The daily Statutory Instrument Issue List

- 4.12.3 SIs (local and general, and draft SIs) and associated documents are published on legislation.gov.uk and printed SIs are produced by our Publishing Contractor. Our Publishing Contractor publishes a [Daily List](#)¹ of Statutory Instruments issued, which includes details of the legislation published on each day.

4.13 Withdrawing SIs

Withdrawing an SI after laying

- 4.13.1 You can withdraw and re-lay a draft SI but you cannot withdraw a made SI.
- 4.13.2 If you need to withdraw an SI that has been laid before the House of Commons you must notify by letter the Clerk in Charge at the Journal Office in the House of Commons.
- 4.13.3 You should also contact the Table Office so that they can withdraw any motion on the Order Paper that relates to the SI.
- 4.13.4 If the motion is on the day on which withdrawal is to take place, you must inform the Government Chief Whips' Office immediately and email the SI Registrar.
- 4.13.5 If you need to withdraw an SI that has been laid before the House of Lords you must provide notification of this by letter addressed to the Clerk in the Parliaments at the House of Lords. Two copies of the letter should be hand-delivered to the duty staff in the Printed Paper Office who will receipt it in the same way as for a paper being laid.
- 4.13.6 You should also contact the Lords Table Office so that they can withdraw any motion on the Order Paper that relates to the SI.
- 4.13.7 If the motion is on the day on which the withdrawal is to take place, you must inform the Government Whips' Office in the Lords immediately and email the SI Registrar.

¹ <https://www.tsoshop.co.uk/bookstore.asp?FO=38797>

Withdrawing an SI after publishing

- 4.13.8 We will only withdraw an SI from legislation.gov.uk if requested by a Government Department because, for example, the instrument is held to be *ultra vires* and quashed by virtue of a legal judgement in the courts. In other circumstances, for example if an SI has been withdrawn from Parliament because of an error flagged by a Committee or it transpires that it is not the version signed by the relevant signing authority, you will need to re-submit the SI with a corrected reprint headnote. For record purposes, the original legislation will be retained on legislation.gov.uk.

The Impact Assessment Manager Tool for Better Regulation Units

- 4.13.9 Legislation.gov.uk Publishing provides a specific service (the Impact Assessment Manager Tool) that Better Regulation Units (BRUs) can use to publish and manage Impact Assessments (IAs). BRUs are responsible for making sure that, where it is appropriate to publish an IA, it is submitted for publication on legislation.gov.uk.
- 4.13.10 You can find more information about the IA template and BRE IA requirements on the Tools and Guidance pages on legislation.gov.uk Publishing as follows:
- <https://publishing.legislation.gov.uk/tools/ukia/drafting>
- 4.13.11 The final IA is generally published at the same time as the SI, using the standard SI submission and registration process. The Impact Assessment Manager tool can be used by Parliamentary Clerks to publish an IA separately from an SI bundle at the following stages:
- Final (and validation fast track) IAs.
 - Consultation stage IA (which exist before legislation is made).
 - Enactment/final stage IA that accompany a UK Act.
 - Post implementation review stage IA (created after the legislation is made).

4.14 Exemptions from the requirement to print

- 4.14.1 The Statutory Instruments Regulations 1947 ([SI 1948/1](http://www.legislation.gov.uk/ukSI/1948/1)¹) provide some exemptions from the requirement to print. The relevant regulations are 5, 6, 7, and 8.
- 4.14.2 The most common exemption from printing is for non-print local SIs. Often a local SI will only apply to a very small designated area, or is temporary in nature, so printing is not required. Some local SIs are printed though, particularly when a wider local area is covered or where the subject is more general.

¹ <http://www.legislation.gov.uk/ukSI/1948/1/made>

PART 5: SCRUTINY COMMITTEES

5. SCRUTINY VIA PARLIAMENTARY COMMITTEES

5.1 What this part of the guide covers

5.1.1 This part of SIP gives a brief overview of the role of Parliament and the work of the Parliamentary scrutiny Committees. We recommend that you use the www.parliament.uk website to find out more about each committee, including their contact details, terms of reference, and reports.

5.1.2 The Committees involved in the scrutiny of SIs are:

- The Joint Committee (of both Houses) on Statutory Instruments (JCSI)
- The Select Committee on Statutory Instruments (SCSI)
- The Secondary Legislation Scrutiny Committee (SLSC)
- The Hybrid Instruments Committee
- The House of Lords Delegated Powers and Regulatory Reform Committee
- The House of Commons Regulatory Reform Committee
- The Statutory Instruments Reference Committee

5.2 The Joint Committee on Statutory Instruments (JCSI) and the Select Committee on Statutory Instruments (SCSI)

Introduction to the JCSI

5.2.1 The JCSI is concerned with ‘technical scrutiny’. The JCSI does not report upon the merits of instruments or the policies behind them.

The role of the JCSI

5.2.2 You can find information about the role of the JCSI, including current membership and minutes, on the [parliament.uk website](http://www.parliament.uk)¹. The JCSI’s terms of reference are set out in its Standing Orders (House of Commons Standing Order no. 151 and House of Lords Standing Order No.73).

¹ <http://www.parliament.uk/business/committees/committees-a-z/joint-select/statutory-instruments/role/>

- 5.2.3 Briefly, the JCSI is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments are not considered by the JCSI unless they are subject to parliamentary procedure. Instruments made by devolved administrations are not considered by the JCSI unless they are required to be laid before Parliament.
- 5.2.4 The JCSI can draw the special attention of both Houses to an instrument on grounds specified in its Standing Orders; or on any other grounds which do not impinge upon the merits of the instrument or the policy behind it (other Parliamentary Committees are responsible for scrutinising the merits and underlying policy of instruments).
- 5.2.5 If the JCSI intends to draw the special attention of both Houses to any SI, Departments first have the opportunity to provide any oral or written explanation that it wants to. This can add up to two weeks to the scrutiny process.
- 5.2.6 The JCSI considers, on average, 1,500 instruments per session and in a typical session draws between 50 and 100 of these to the special attention of both the House of Lords and the House of Commons, on a variety of grounds.
- 5.2.7 GLS Statutory Instrument Drafting Guidance section 4.6 sets out key drafting points raised by the JCSI.

Contacting the JCSI

- 5.2.8 The most up-to-date contacts for the JCSI can be found on the [parliament.uk](http://www.parliament.uk) website.

The Select Committee on Statutory Instruments (SCSI)

- 5.2.9 In general, the powers and functions of the SCSI Committee are similar to those of the JCSI. Details of their role are available on the [parliament.uk](http://www.parliament.uk) website¹.
- 5.2.10 The SCSI is appointed to consider SIs made in exercise of powers granted by Act of Parliament which are subject to the House of Commons scrutiny but not the House of Lords. Instruments subject to the authority of both Houses are considered by the JCSI.

¹ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/statutory-instruments-committee/role/>

5.2.11 The SCSI is empowered to draw the special attention of the House of Commons to an instrument on any one of a number of grounds specified in the Standing Orders under which it works; or on any other ground which does not impinge upon the merits of the instrument or the policy behind it. The SCSI does not assess the merits of any instrument or the underlying policy.

Contacting the SCSI

5.2.12 Contact details for SCSI staff are available on the [parliament.uk website](http://www.parliament.uk)¹.

Papers for the JCSI and SCSI

5.2.13 Provide the JCSI or SCSI with:

- (a) copies of any SI or draft SI that fall within their respective Orders of Reference, together with an accompanying Explanatory Memorandum (EM). Where you have them, you should also supply copies of any IA and any transposition note.
- (b) two copies of all European documents cited in the instrument where the SI gives effect to EU obligations; and
- (c) a copy of any relevant map, plan, Schedule or other document not included as part of the SI or draft SI, including any 'external' publications, and any relevant local SI.

5.2.14 The committees do not accept email copies of documents.

What the JCSI and SCSI want to see in an Explanatory Memorandum

5.2.15 Departments must provide an Explanatory Memorandum (EM) with each SI considered by the JCSI or SCSI. Both Committees expect this to include information that will help them to understand the purpose and effect of the SI or the meaning of the terms used in it.

5.2.16 Specifically, the EM should include information where:

- (a) new powers are being exercised;
- (b) the SI is making substantial changes to the previous legislation;

¹ <http://www.parliament.uk/business/committees/committees-a-z/joint-select/statutory-instruments/contact-us/>

- (c) the powers exercised are linked with some other legislation which is not referred to in the SI or Explanatory Note, especially where the other legislation is recent;
- (d) the enabling powers, though recited in the preamble, are difficult to follow without further explanation;
- (e) the SI that is to be amended has been subject to previous amendment, so that it is difficult to follow what is proposed; or
- (f) generally where the SI is difficult to follow without more background information than is included in the Explanatory Note.

5.2.17 You must let the Committee know who provided the EM and the date on which it was provided.

5.2.18 Where there is more than one version of the EM make it clear to the Committee which EM they are looking at. The initial EM laid with SI will always be the first memorandum, so subsequent EMs will be the second, third etc.

Witnesses before the JCSI and the SCSI

5.2.19 If the JCSI/ SCSI require oral evidence, this will usually be given by officials from the Department responsible for the SI and their legal team. The Committees have no power to require a particular person or holder of a particular office to give written or oral evidence.

5.2.20 The Department should not give the JCSI or SCSI Departmental files and other official papers. When preparing evidence, bear in mind that it may be published and ask the Committee to withhold from publication anything where disclosure would be contrary to the public interest.

Reports and minutes from the JCSI or SCSI

5.2.21 Routine reports are normally made after each meeting, and lists the SIs or draft SIs that were scrutinised. If special attention is drawn to any of them, the Committee give their reasons, and may comment upon the Department's explanations or evidence.

5.2.22 Written evidence may be appended to a report, or it may be printed, with a transcript of any oral evidence, in separate minutes of evidence.

5.2.23 When special attention is drawn to an SI or draft SI, this does not necessarily result in further proceedings in either House.

5.2.24 Reports are available from the [Parliament website](#)¹.

Reports and the moving of resolutions

5.2.25 Under the Standing Orders of the House of Lords, a resolution to approve an affirmative SI or draft SI may not be moved until the JCSI report has been laid before the House. The Commons generally follows the same convention. You should plan to allow enough time for this, and consult the Clerk of the JCSI or the SCSi if you anticipate any difficulties.

Informal review of SIs by the JCSI or SCSi, prior to clearance of affirmatives

5.2.26 You can send an SI to the Committee for informal review before it is laid. The [parliament.uk website](#)² contains guidance on the informal prelaying scrutiny of affirmative instruments to be laid before the House of Commons only.

5.2.27 The JCSI also offer informal advance scrutiny of provisions in drafts of non-affirmative SIs – see their guidance on the [parliament.uk website](#)³.

5.3 The Secondary Legislation Scrutiny Committee

The role of the Secondary Legislation Scrutiny Committee (SLSC)

5.3.1 [The SLSC](#)⁴ is the successor to the House of Lords Select Committee on the Merits of Statutory Instruments. The SLSC is advisory and does not have power of veto or a scrutiny reserve. By convention, any debate on an SI does not take place until the SLSC has considered it and published its report.

5.3.2 The full terms of reference for the SLSC are available from the [Parliament website](#)⁵. Current membership is also available from the [Parliament website](#)⁶.

5.3.3 Briefly, the SLSC examines the policy merits of SIs and other instruments that are subject to Parliamentary procedure. IT draws attention to any that it regards as

¹ <http://www.parliament.uk/business/committees/committees-a-z/joint-select/statutory-instruments/contact-us/>

² <http://www.parliament.uk/documents/joint-committees/statutory-instruments/SCSI%20Scrutiny%20affirm%20-%20updated%2011%20August%202016.pdf>

³ <http://www.parliament.uk/documents/joint-committees/statutory-instruments/JCSI%20Scrutiny%20Non-Affirm%20-%20updated%20at%2011%20August%202016.pdf>

⁴ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/role>

⁵ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/role/tofref/>

⁶ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/membership/>

either interesting or flawed. It normally considers SIs within 12-16 days of their being laid before Parliament. This allows time for any Member of the House to pursue any issues raised in the report by asking a question or tabling a motion for debate within the 40-day 'prayer' period for rejecting negative instruments.

5.3.4 The Committee also [scrutinises Public Bodies Orders](#)¹ to consider whether they meet the tests set out in [section 8 of the Public Bodies Act 2011](#)². Its [guidance on Public Bodies Orders](#)³ gives information about how the committee scrutinises PBOs and what it is looking for in an effective Explanatory Document.

5.3.5 The Committee's [guidance on Statutory Instruments](#)⁴ gives information about how it scrutinises SIs and what it is looking for in an effective Explanatory Memorandum.

SLSC reports

5.3.6 The Committee generally meets every Tuesday whilst the House is sitting and its [reports](#)⁵ are usually published the following Thursday.

5.3.7 All SIs laid during the recess are considered at the first meeting after that recess. However, Departments should avoid laying significant legislation when Parliament is not in session.

Contacting the Secondary Legislation Scrutiny Committee

5.3.8 As a first port of call you should contact your Parliamentary Clerk.

5.3.9 You can contact the SLSC at the House of Lords. The most up-to-date contact details are available on the [Parliament website](#)⁶.

5.4 The Hybrid Instruments Committee

The role and membership of the Hybrid Instruments Committee

5.4.1 The hybrid instruments procedure is rare, and is peculiar to the House of Lords. There is no equivalent in the Commons.

¹ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/public-bodies-orders/>

² <http://www.legislation.gov.uk/ukpga/2011/24/Section/8>

³ <http://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/Departmental-Guidance-Public-Bodies-Orders-Secondary-Legislation-Scrutiny-Committee.pdf>

⁴ <http://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/Departmental-Guidance-Statutory-Instruments-Secondary-Legislation-Scrutiny-Committee.pdf>

⁵ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/publications>

⁶ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/contact-us/>

5.4.2 The Hybrid Instruments Committee¹ decides whether an opposed hybrid instrument should have its merits inquired into by a Select Committee set up for that purpose.

5.4.3 Current membership is available on the Parliament website².

What is a hybrid SI?

5.4.4 When an SI affects some members of a group more than others in the same group, and also needs to be approved by both Houses, it will be ruled a hybrid instrument.

5.4.5 [Hybrid Instruments](#)³ are subject to a special procedure in the House of Lords which gives those who are specially and directly affected by them the opportunity to present their arguments against the SI to the House of Lords Hybrid Instruments Committee and then, possibly, to a select Committee charged with reporting on its merits and recommending whether or not the SI should be approved by both Houses of Parliament.

5.4.6 The hybrid instrument procedure is unique to the House of Lords and the process must be completed before the SI can be approved by both Houses.

Contacting the Hybrid Instruments Committee

5.4.7 You can contact the Hybrid Instruments Committee for more information. The most up-to-date contact details are on the [Parliament website](#)⁴.

5.5 The House of Lords Delegated Powers and Regulatory Reform Committee and the House of Commons Regulatory Reform Committee

5.5.1 These Committees are responsible for scrutinising Legislative Reform Orders (LROs) introduced under the [Legislative and Regulatory Reform Act 2006](#)⁵ and other types of subordinate legislation. Their functions are similar: considering the proposed LRO against the tests set out in the Act. The two Committees operate independently and in parallel.

¹ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/hybrid-instruments-committee>

² <http://www.parliament.uk/business/committees/committees-a-z/lords-select/hybrid-instruments-committee/membership/>

³ <http://www.parliament.uk/business/bills-and-legislation/secondary-legislation/hybrid-instruments/>

⁴ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/hybrid-instruments-committee/contact-us/>

⁵ <http://www.legislation.gov.uk/ukpga/2006/51/contents>

- 5.5.2 For more information on the House of Lords Delegated Powers and Regulatory Reform Committee see the [Parliament website](#)¹.
- 5.5.3 For more information on the House of Commons Regulatory Reform Committee see the [Parliament website](#)².
- 5.5.4 Briefly, the work of the Committees starts when a Minister lays a proposal before both Houses. Depending on the type of LRO, the two Committees then have between 30 and 60 sitting days to report on whether the proposal is in the appropriate form (i.e. negative/affirmative/super-affirmative) and whether it meets the tests set out in the Act. The Committees report on whether they believe the proposal should proceed/should proceed as amended/should not proceed.
- 5.5.5 The Minister must consider representations from Parliament, and in particular, the reports from the Committees. If the Minister decides to proceed, the proposal is laid as a draft Order (either in its original form or with amendments). The Committees then have a further opportunity to report on the proposal and once that process is complete the Order proceeds as a normal SI.
- 5.5.6 You can find current membership of the Delegated Powers and Regulatory Reform Committee on the [Parliament website](#)³.
- 5.5.7 You can find current membership of the House of Commons Regulatory Reform Committee on the [Parliament website](#)⁴.

Contacting the Delegated Powers and Regulatory Reform Committee and the House of Commons Regulatory Reform Committee

- 5.5.8 You can email the Delegated Powers and Regulatory Reform Committee at: hldelegatedpowers@parliament.uk.
- 5.5.9 Contact details for Regulatory Reform Committee staff are available on the [Parliament website](#)⁵.

¹ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/delegated-powers-and-regulatory-reform-committee>

² <http://www.parliament.uk/business/committees/committees-a-z/commons-select/regulatory-reform-committee/>

³ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/delegated-powers-and-regulatory-reform-committee/membership/>

⁴ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/regulatory-reform-committee/membership/>

⁵ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/regulatory-reform-committee/contact-us/>

5.6 The Statutory Instruments Reference Committee

- 5.6.1 The Statutory Instruments Reference Committee was established by the [regulation 11](#)¹ of The Statutory Instruments Regulations 1947 (SI 1948/1). The Committee's role is to resolve questions about numbering, printing and publishing, classifying SIs as general or local, and whether instruments made under pre-1948 Acts come within the definition of Statutory Instruments.
- 5.6.2 The Committee rarely meets. Members are nominated by the Speaker of the House of Lords and the Speaker of the House of Commons. In practice it consists of the Lord Chairman of Committees, the Chairman of Ways and Means, and six senior Officers of Parliament.

Constitution of the Statutory Instruments Reference Committee

- 5.6.3 The Statutory Instruments Reference Committee is constituted under The Statutory Instruments Regulations 1947 ([SI 1948/1](#)²).

¹ <http://www.legislation.gov.uk/uksi/1948/1/Regulation/11/made>

² <http://www.legislation.gov.uk/uksi/1948/1/made>

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