

# Statutory Instrument Practice

## Circular No.2 (05)

Date of Issue: 30 June 2005

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### 1. EXPLANATORY MEMORANDA TO STATUTORY INSTRUMENTS

- 1.1 Departments are advised that the template for producing Explanatory Memoranda to Statutory Instruments is now available for download from the SI Template Download Site at [www.opsi.gov.uk/si/template](http://www.opsi.gov.uk/si/template). The User name and password remain unchanged as follows:

User name: sitemplate  
Password: carr3t

- 1.2 Revised notes on preparing the Explanatory Memoranda, a copy of which are appended to this Circular, are also available for downloading at the same address. It should be noted that the template includes revised text, particularly in relation to the statement regarding compliance with the European Convention on Human Rights. The guidance on the Policy Background in relation to the outcome of consultation has also been updated.

### 2. SI TEMPLATE (VERSION 4.0)

- 2.1 Departments are also advised that a new version of the SI template has also now been released and can be downloaded from the SI Template Download Site as above.
- 2.2 This release introduces a number of significant changes to the template, including 2 new paragraph styles, a new layout for Arrangements based on Acts, improved functionality for images, and new functionality to allow the inclusion of formulae. In addition, some code has been re-written to remove some bugs and improve performance. The User Guide and Reference Guide have now been incorporated into the updated SI/SR Training Manual, detailing how to use the new functionality, and providing one document to cover all user aspects.
- 2.3 It is recommended that users update to version 4.0 of the SI/SR template as soon as possible, and migrate existing SIs or SRs to the latest version. For instruction on how to do this, please read the FAQs 'Replacing your old Word template with the new release' and 'Transfer an SI-SR to a new document'.
- 2.4 From **1 August 2005**, any SIs or SRs containing Arrangements, images or formulae, must be migrated to version 4.0 of the template, and the

Arrangements, images or formulae re-inserted according to the new functionality. TSO will be accepting new style Arrangements, image insertions and formulae from **11 July 2005**.

2.5 The following Bug fixes and functionality improvements have been made within the new release:

### **Bug fixes**

- **Menus**  
All menu items are now active.
- **Expand and Normal mode**  
The 'Expand' mode, providing double spacing for proofing purposes, has been re-written, making it more stable, and ensuring all styles revert back to normal using 'Normal'.
- **Coming into force**  
The Coming into force has been corrected providing the following default settings:
  - Coming into force – for UK SIs
  - Coming into operation – for NI SRs
- **Royal Presence**  
The apostrophe has been corrected in the Autotext.
- **Banner, SI Number, Subject, SubSubject and Title**  
New code to provide consistent functionality.
- **Legal Seal**  
Dimensions increased by 20%.
- **Long Quote toolbar**  
Removal of unexpected messages prompting use of indent tool, and allows a user to place the opening LQ marker before setting the style.

### **Standard functionality improvements**

- **Arrangements**  
The Arrangement functionality has undergone a complete re-write resulting in 2 options "Insert Arrangement" and "Delete Arrangement".
  - **Insert Arrangement**  
When used outside a schedule will generate an Arrangement at the start of the SI/SR referencing H1 headings and Division headings. Division references are automatically removed in the Arrangement. The layout of the Arrangement is now consistent with that of an Act.  
  
Insert Arrangement can also be used within a Schedule to produce a Schedule Arrangement.

Once created, the Arrangement text can be edited, including the

numbering.

- Delete Arrangement  
Allows the user to remove an Arrangement by positioning the cursor within the Arrangement text.

- **Images**

The template allows a user to insert an image of any format and specification. The image is embedded within the template removing the need to submit the image as a separate file for printing. Scaling of an image within the template is now permissible (but cropping is not).

The quality of the image is the responsibility of the authoring Department.

The template includes a feature to insert images as:

- Display (standing alone); or
- Inline with text

- **Formulae**

The template allows a user to create formulae using Microsoft Equation Editor within the template, using the Formulae options:

- Display; or
- Inline with text

- **Combine styles**

New styles created for numbered paragraphs N2+N3 and N3+N4

- **Text Break**

Enables a user to force a line break within a line of text by selecting words to 'keep' together.

- **Split Ref**

Allows a user to force a line break within Division references.

- **Correction Headnote**

New feature automatically inserts a correction header note above the banner in style 'draft', if issuing a Correction for an SI or SR.

- **Laid before Commons**

'Laid' feature now includes an option to change the text to 'Laid before the House of Commons'.

### 3. Enquiries

- 3.1 Enquiries regarding use of the SI template should be addressed to the SI Template Help Desk at [sisupport@theso.gsisup.co.uk](mailto:sisupport@theso.gsisup.co.uk)
- 3.2 Enquiries regarding the Explanatory Memorandum template should be addressed to:

The SI Registrar at [SIRegistrar@cabinet-office.x.gsi.gov.uk](mailto:SIRegistrar@cabinet-office.x.gsi.gov.uk)



## Notes on preparing the Explanatory Memoranda to Statutory Instruments

**General** – Individual headings should be numbered whilst individual paragraphs following the individual headings should be numbered as sub-paragraphs. As an example the heading relating to matters of special interest to the JCSI/SCSI will always be numbered as “3” and sub-paragraphs should follow as “3.1”, “3.2” etc.

In preparing the Explanatory Memorandum departments should ensure that they do not repeat the content of the Explanatory Note. The value of the Explanatory Memorandum is to provide a Plain English explanation of the effect of the legislation and why it is necessary. It is not aimed at lawyers, but to help people who know nothing about the law or the subject, to gain an understanding quickly.

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**Headings** – The title of the instrument must be entered. The SI number must be entered for all negative instruments or left blank for affirmative resolution instruments.

1. The name of the department must be entered. The instrument will be laid before either “Parliament” or “the House of Commons” and depending on the choice made will decide the heading for Section 3.

**Note:** If the instrument does not contain information for either the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments then the second paragraph should be deleted.

### 2. **Description**

Paragraph(s) 2.1 onwards will be free text which should generally be limited to no more than 3 sentences. Plain English should be used explaining what the instrument does and why. Powers are generally irrelevant here.

### 3. **Matters of special interest to the [Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments]**

The heading will be dependent on whether the instrument has been laid before Parliament (JCSI) or the House of Commons (SCSI).

Paragraph(s) 3.1 onwards will be free text and should cover any information which the department wishes to bring to the attention of the JCSI/SCSI. This should include information which would formerly have been included in a voluntary memorandum to JCSI/SCSI, in particular:

- i) **fee increases:** if the instrument imposes fee increases above the rate of inflation, please explain the reason for the increase, whether any further such increases are planned, and, if so, when they are projected to cease;
- ii) **21-day rule:** if the instrument breaches the 21-day rule (see *Statutory Instrument Practice* paras 5.4.13-14) please explain why;
- iii) **if the instrument came into force before it was laid,** please explain the circumstances, and indicate the date on which the notification and explanation required by the proviso to section 4(1) of the Statutory Instruments Act 1946 were sent to the Speaker and Lord Chancellor;

- iv) **if the instrument uses novel or especially complex powers**, please explain the basis for these powers and indicate the reason for their use.

If the instrument corrects errors previously reported by the JCSI, please provide the reference of the instrument corrected and the relevant JCSI report.

**Note:** If there are no matters of special interest to the JCSI/SCSI then insert “None”.

#### 4. **Legislative Background**

Paragraph(s) 4.1 onwards will be free text.

In these paragraphs you should explain **why** the instrument is being made: for example, is it to effect an annual uprating in line with inflation; to introduce an amendment following a significant court case; or to implement an EU Directive?

Give a little relevant background information to set the instrument in context but explain this in a way that doesn't mean the reader has to refer to 25 other pieces of legislation to understand. Mention in particular:

- if this is the first use of a power under an existing Act.
- if in the course of debate, Parliamentary question or Committee appearance any specific undertakings were given to Parliament that relate to this instrument (including Hansard or report reference where relevant).
- if this instrument relates to any other instruments (i.e. it is one of a group), please cross reference.

If the instrument implements EU legislation, attach a Transposition Note as an Annex; explain in broad terms the approach to transposition highlighting any difficult areas; and include a brief scrutiny history of when it was considered by the EU Scrutiny Committees.

#### 5. **Extent**

Paragraph 5.1 – one of the options must be selected.

Paragraph 5.2 will be free text but should only be included if the instrument applies to Gibraltar, the Channel Isles or the Isle of Man when mention should be made as to whether their legislatures have been consulted and consented to the proposal.

#### 6. **European Convention on Human Rights**

Opening sentence – The name of the Minister must be inserted.

Second sentence – The first option, with the title of the instrument entered, will be selected in most cases though there may be exceptions when free text may be entered.

**Note: This section is only required to be completed in respect of instruments subject to affirmative resolution, and all instruments subject to negative resolution which amend primary legislation. In other instances enter "As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required."**

## 7. Policy Background

Paragraph(s) 7.1 onwards will be free text.

Departments should state in particular:

- the policy objectives of the parent Act/Directive and how this instrument fulfils them
- the size and nature of the problem it is addressing
- the level of public interest in the policy, (for example from the response to consultation if undertaken, or from media attention).
- whether the change is politically or legally important?

In completing this section departments should ensure that, although brief, explanation should start from the basic. Although the Members of the Merits Committee are experts in their own area, they do need a clear explanation for less familiar topics. The EM is aimed not just at the Scrutiny Committees but at Members of both Houses of Parliament, who need explanations to start from zero. Don't say "this amends the XYZ scheme to open it to the under 18s" without providing a sentence about what the XYZ scheme does.

The Merits Committee will routinely ask who has been consulted, what was the outcome and what did the Department do to accommodate concerns. It's not enough to say that "consultation has taken place". There should also be some analysis of the outcome (e.g. "60% supported the proposal, of the rest the main objections were on the proposed fee structure and the Department has responded to this by agreeing to phase in the increase over 3 years"). A brief analysis of consultation should be in the final RIA if one is provided, and you should cross refer to this, or refer to more detailed analysis on the Departmental website. Do ensure though that the brief analysis is accurate. The Merits Committee have already noted several examples where the summary has been misleading: saying "Industry fully supported proposal x" but when the Secretariat investigated they found 50% opposed the proposal.

## 8. Impact

Paragraph 8.1 – One of two options must be selected.

Paragraph 8.2 – The paragraph must be completed.

**Note:** Where a Regulatory Impact Assessment has been prepared then this should be attached as an Annex. There is no need to duplicate the information. If no RIA has been prepared please confirm that this is because no impact on the private or voluntary sector is foreseen and simply mention any public sector impacts.

## 9. Contact

All details must be completed on the copies provided for Parliament. Where, however, there are good reasons for this to be withheld from the version to be published by HMSO on the OPSI website (e.g. for security or other similar concerns) then this may be deleted. In such circumstances departments should request that the HMSO SI Registrar delete this information stating the reasons why.