

HOUSE OF LORDS

Merits of Statutory Instruments Committee

9th Report of Session 2008-09

**The cumulative impact of statutory
instruments on schools**

Report with evidence

Ordered to be printed 3 March and published 13 March 2009

London : The Stationery Office Limited
£price

HL Paper 45

The Select Committee on the Merits of Statutory Instruments

The Committee has the following terms of reference:

- (1) The Committee shall, subject to the exceptions in paragraph (2), consider—
 - (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
 - (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (3).
- (2) The exceptions are—
 - (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
 - (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
 - (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.
- (3) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
 - (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
 - (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
 - (c) that it may inappropriately implement European Union legislation;
 - (d) that it may imperfectly achieve its policy objectives.
- (4) The Committee shall also consider such other general matters relating to the effective scrutiny of the merits of statutory instruments and arising from the performance of its functions under paragraphs (1) to (3) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

The members of the Committee are:

Rt Hon. the Baroness Butler-Sloss GBE	The Lord James of Blackheath CBE
The Lord Crisp KCB	The Lord Lucas
The Baroness Deech DBE	The Baroness Maddock
The Viscount Eccles CBE	The Lord Rosser
The Lord Filkin CBE (<i>Chairman</i>)	The Baroness Thomas of Winchester
The Lord Hart of Chilton	

Registered interests

Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the House of Lords Record Office and is available for purchase from the Stationery Office.

Publications

The Committee's Reports are published by the Stationery Office by Order of the House in hard copy and on the internet at www.parliament.uk/parliamentary_committees/merits.cfm

Contacts

If you have a query about the Committee or its work, please contact the Clerk of the Merits of Statutory Instruments Committee, Delegated Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; fax 020-7219 2571; email merits@parliament.uk. The Committee's website, www.parliament.uk, has guidance for the public on how to contact the Committee if you have a concern or opinion about any new item of secondary legislation.

Statutory instruments

The Government's Office of Public Sector Information publishes statutory instruments on the internet at www.opsi.gov.uk/stat.htm, together with an explanatory memorandum (a short, plain-English explanation of what the instrument does) for each instrument.

CONTENTS

Report	<i>Paragraph</i>	<i>Page</i>
Summary of recommendations		3
Introduction	1	3
DCSF's use of secondary legislation	6	5
Planning of secondary legislation	12	6
Management of secondary legislation	16	8
Effective communication of new statutory instruments	25	10
Review of practical effects	29	10
A New Relationship with Schools?	35	12
Appendix 1: Membership of Committee		16
Appendix 2 : Call for evidence		17
Oral evidence		
<i>Dr Chris Nicholls, Chairman; and Mr Graeme Hornsby, Implementation Review Unit</i>		
Written evidence		1
Oral evidence, 25 November 2008		5
Supplementary written evidence		10
<i>Ms Clarissa Williams, President; Ms Kathryn James; and Mr Simon Decker, National Association of Head Teachers</i>		
Written evidence		11
Oral evidence, 25 November 2008		13
<i>Ms Deborah Ishihara; and Ms Ingrid Sutherland, Advisory Centre for Education</i>		
Written evidence		18
Oral evidence, 9 December 2008		22
Supplementary written evidence		28
<i>Mr Martin Ward, Association of School and College Leaders</i>		
Written evidence		29
Oral evidence, 9 December 2008		31
<i>Mr Jim Knight MP, Minister of State for Schools and Learners, Department for Children, Schools and Families</i>		
Written evidence		35
Oral evidence, 20 January 2009		40
Supplementary written evidence		50

Written evidence

Memorandum from the Association of Directors of Children's Services	57
Memorandum from the Association of Teachers and Lecturers	59
Memorandum from BSI British Standards	61
Memorandum from Chris Johnson	61
Memorandum from Lancashire County Council	63
Memorandum from Councillor Simon Windle, Deputy Leader, London Borough of Bexley Council	65
Letters from Mr T S Peryer, Director of Education, London Diocesan Board for Schools	67
Memorandum from the National Governors' Association	68
Memorandum from the National Union of Teachers	74

NOTE: References in the text of the report are as follows:

(Q) refers to a question in the oral evidence

(p) refers to a page of written evidence

The Cumulative Impact of Statutory Instruments on Schools

Summary of recommendations

1. *The Department for Children, Schools and Families should actively manage the planning and production of secondary legislation. The Department should also strengthen its gate-keeping activity, particularly to minimise the burdens imposed upon schools by Regulations from all Government Departments. (paragraph 15)*
2. *DCSF should adopt 1 September as the commencement date for all schools-related SIs (except in very exceptional circumstances). (paragraph 22)*
3. *Schools should be given at least one full term's lead-in time between the notification of a new requirement in a statutory instrument and the commencement of that requirement. (paragraph 24)*
4. *DCSF should intensify their work to improve communication to schools, which needs to be fully informed by advice provided by practitioners. (paragraph 28)*
5. *We recommend that the DCSF should ensure that all significant statutory instruments are subjected to post-implementation review, and that the review findings are made known to Parliament. (paragraph 34)*
6. *DCSF should seriously consider a less heavy-handed approach to maintained schools. Furthermore, if DCSF consider that the light-touch regulatory framework for academies is appropriate and successful, that lighter touch should be extended to all maintained schools. (paragraph 43)*
7. *DCSF should now look to shift its primary focus away from the regulation of processes through statutory instruments, towards establishing accountability for the delivery of key outcomes. (paragraph 46)*

Introduction

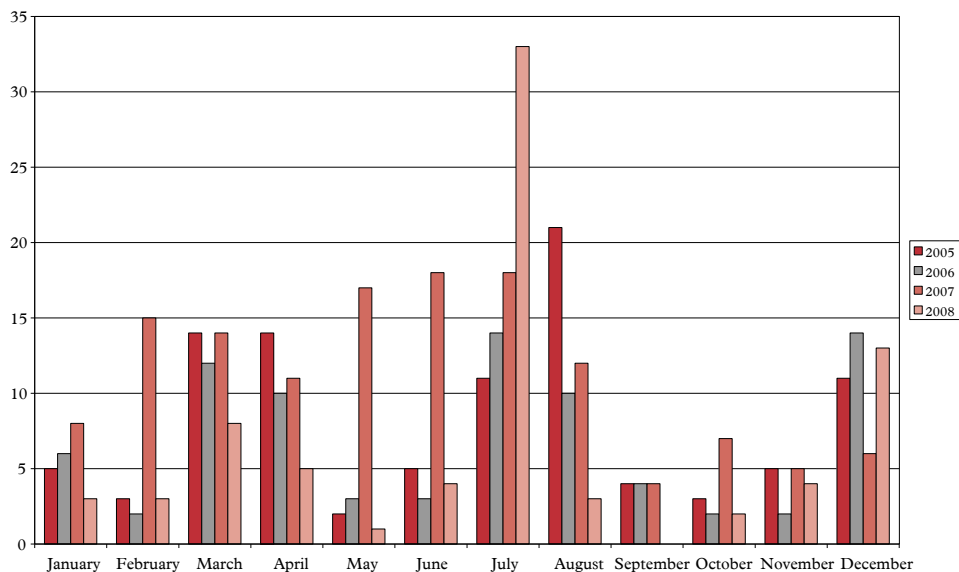
1. In our 2008 report on the management of secondary legislation, we noted that the main emphasis of Government action to minimise the burden of regulation (such as common commencement dates) had been on responding to the needs of business. However, much secondary legislation regulated the public sector: education, health, the police. In particular, we noted that “too many instruments made too quickly without clear strategy or guidance may not achieve what the Government hope to achieve by their making. When the opportunity arises, we intend to take an appropriate set of SIs as a case study to take evidence on these issues from stakeholders, especially those regulated.”¹

¹ “The Management of Secondary Legislation: follow-up”, 13th Report, Session 2007-08 (HL Paper 70)

2. We took the opportunity to review the cumulative impact of regulation in part of the public sector by launching this inquiry in autumn 2008. In the 2006-07 Parliamentary session, schools were the subject of around 100 new statutory instruments (SIs) made by the Department for Children, Schools and Families (DCSF). These had major implications for the whole range of schools' activities, from teachers' pay and conditions and school governance procedures to pupil admissions and school travel arrangements. And though around one-fifth of these came into force at the start of the school year, the rest took effect on a wide range of dates throughout the remainder of the school year.
3. While the 2006-07 session saw an exceptionally high number of schools-related statutory instruments, in every session the Department issue scores of Regulations affecting schools. The bar chart at Figure 1 shows the number of statutory instruments issued by DCSF and its predecessor Department in each month in the four years from 2005 to 2008. A large number of obligations imposed by other Government Departments also affect schools' operations.² We wanted to find out why so many instruments are thought to be necessary; how the flow of Regulations is managed; how new requirements are communicated to schools and other stakeholders; and, crucially, how those actually responsible for implementing all these new requirements view the system. We also wanted to know how these requirements were managed to avoid overload on schools. We therefore invited DCSF and a range of representative organisations to give us evidence about the cumulative impact of statutory instruments on schools.
4. Education in general, and the schools sector in particular, has been a priority policy area for the present Government. Nobody who has taken an interest in the schools sector in recent years can be unaware of the rate of development of educational policy, or of the concerns about overload, and about micro-management by central Government, that are at times expressed by schools practitioners. We were particularly struck by the following comment in evidence from the National Governors' Association:

“For the professionals in schools the endless piecemeal change has become one of the main reasons given for leaving the job. It is not unruly and undisciplined children that are forcing good teachers and governors out of our schools; it is unruly and undisciplined legislation.” (p69)
5. Our inquiry has in effect sought to test the validity of such complaints, by drawing out DCSF's intentions for such legislation, and by setting this information against what we learnt from those working day-to-day in the schools themselves.

² Examples include the Department for Work and Pensions' promotion of the disability equality duty, and the Department for Communities and Local Government's Regulations requiring display energy certificates for large public buildings.

Figure 1 – Statutory instruments laid by DCSF / DfES 2005 to 2008

Note: This chart shows SIs laid by DCSF/DfES and considered by the Merits Committee each month between 2005 and 2008. Not all DCSF/DfES SIs affected schools.

DCSF's use of secondary legislation

6. In his evidence to us, the Schools Minister, Jim Knight MP, set out the Government's view of the need to use statutory instruments to bring about changes in education where many responsibilities were allocated to different levels of the system. He argued that statutory instruments:

“are a tool for us to deliver government policy and we are elected to implement the policies in our manifesto, but to do so in an environment with a very high degree of delegation ... it is a relatively open system, a relatively delegated system and it therefore needs some regulation if we are going to get anything done.” (Q78)
7. The Minister claimed that his Department had been slowly reducing the volume of statutory instruments, and acknowledged the need to reduce it still further. However, he disagreed that further cutbacks in the number of statutory instruments could be a useful test of his Department's success in making its relationship with schools more output-orientated. (Q120)
8. Our witnesses did not seem to have noticed any reduction in the extent of regulation affecting schools. Among the bodies that we heard from was the Implementation Review Unit (IRU), a panel of schools practitioners set up by the Government in 2003-04 to offer advice on the relationship between the Department and schools. In written evidence, the IRU stated:

“Recent research commissioned by the IRU shows that in the 2006/7 academic year the Department and its national agencies produced over 760 documents aimed at schools. The research also found that no single part of the Department was aware of the totality of what was being offered.” (p2)

9. A similar point was made to us in the written evidence submitted by the Association of School and College Leaders (ASCL):

“The critical point for schools and colleges is not the use of SIs per se, but the very large number of government initiatives, and the excessive detail that often accompanies them. The real meaning and effect of some statutory instruments is a matter of debate among legal practitioners. This adds to the uncertainty that schools experience.” (p29)

10. During the period in which we conducted this inquiry, the Department introduced a School Admissions Code (with a number of related statutory instruments). In reporting the Code to the House, we quoted comments made to us by Mr T S Peryer, Director of Education of the London Diocesan Board for Schools, who pointed out that the Code contained 545 injunctions (e.g., uses of the phrases “you must” or “you shall”). We laid stress on concern about the need for clarity in such documents which had been expressed to us by Mr Peryer and by the ASCL and others:

“The Department have spoken of their intention to create a system which parents ‘find clear and straightforward to navigate’. We are not persuaded that this intention has yet been realised. The review of compliance with the predecessor code carried out by the School Adjudicator highlighted the extent to which widespread breaches by schools resulted from misunderstanding of that code.”³

11. This report looks at ways in which DCSF’s handling of statutory instruments could be improved. But there are also deeper issues underlying DCSF’s relationship with schools, and we return to these questions towards the end of this report.

Planning of secondary legislation

12. Government must carry out effective consultation before finalising policy proposals and their expression in legislation. DCSF have a good track record of consulting relevant interests before laying statutory instruments before Parliament. In our scrutiny of statutory instruments laid by DCSF, we generally find that the accompanying Explanatory Memoranda provide a good account of consultation processes.⁴ In their evidence to us, the National Association of Head Teachers (NAHT) referred to the social partnership between the Department and schools representatives as a means for exchanging information about policy development; although we noted with interest the NAHT’s comment that the Government should consider “widen[ing] consultation to heads and leaders of schools which are perhaps not so overtly successful.” (Q33)
13. However, while the Department’s use of consultation may improve the planning of individual Regulations, we are concerned that there is little or no attempt to achieve what the NAHT have termed a “holistic view of legislative impact”, nor to assess the cumulative effect of statutory instruments. DCSF have published a Simplification Plan, in December 2008, which states that “Good policy improves the lives and outcomes for the frontline. But good policy ... can be lost in the layers of additional administration which the

³ First Report, Session 2008-09 (HL Paper 5)

⁴ See, for example, the Explanatory Memorandum to SI 2008/2945 Education (Special Educational Needs Co-ordinators) (England) Regulations 2008.

frontline is forced to accommodate in already busy working lives ... Some bureaucracy is necessary, particularly in areas like safeguarding or health and safety. But the drive should always be towards the minimum.”⁵ Mr Knight’s letter of 3 February sets out steps taken by DCSF to reduce burdens, including the existence of a “Star Chamber” to challenge new data collection exercises. (pp50-53)

14. Much of the evidence received from witnesses shows, however, that they have not noticed the impact of these measures, and are not convinced of the effectiveness of DCSF’s co-ordination of the output of statutory instruments. In their written evidence, the NAHT said: “Many of the SIs impact on the same areas of school life and, often, not enough thought is given to the combined effects of the SIs on the one area they affect. Unintended consequences can complicate and indeed counteract the desired effects of the SIs, since their implementation is in conflict.” (p12) In oral evidence, the IRU said: “... just as we would urge the Department to try and get an overview of the cumulative effect of legislation and guidance on schools, we sometimes feel that the lead policy officer is just dealing with his or her particular area. The Department also needs to try and get an overview of other agencies’ impact on schools.” (Q12)
15. The widely felt wish among schools practitioners for the Department to act as an effective filter of requirements flowing out from across Government was well expressed by the Association of Teachers and Lecturers:

“Problems arise because of the number of government interventions, the number of different agencies and departments with a remit to intervene in school practice, the speed at which new policy developments seem to appear, and the difficulties for professionals in translating the government’s priorities into their day-to-day realities. Our concern therefore is not with the number of SIs, nor the short timescale between their being made and their coming into force, but with the impact of numerous and detailed changes to education policy on teachers, support staff, headteachers and pupils.” (p60)

We discussed the importance of gate-keeping with a number of witnesses (IRU Q14, NAHT Q35), and received information from Lancashire County Council which described their work in shielding schools from superfluous communications, reportedly saving over £1 million in a year (p63). We have no doubt that there are important lessons for DCSF’s own activity. **We recommend that the Department should actively manage the planning and production of secondary legislation. The Department should also strengthen its gate-keeping activity, particularly to minimise the burdens imposed upon schools by Regulations from all Government Departments.**

⁵ DCSF, “Simplification Plan” (December 2008), p. 36.

Management of secondary legislation: common commencement dates (CCDs) and lead times

16. DCSF bring some schools-related statutory instruments into effect at the start of the school year, but many others come into force on a variety of different dates. This is in contrast to statutory instruments that affect business, which the Government have made a commitment to bring into effect on two Common Commencement Dates (CCDs), of 6 April and 1 October. The Government's own guidance explains that those CCDs have been introduced "to help business plan for new regulation and to increase awareness of the introduction of new or changed requirements", to help "Ministers to take a strategic overview of [their] department's regulatory programme", and with the intention that "increased awareness by business of new or changed obligations will result in improved compliance levels".⁶
17. Because of the obvious relevance to schools, we asked interested parties to comment on the possibility of a CCD for schools-related SIs. In written evidence, the Advisory Centre for Education (ACE) said: "It would be enormously helpful if there were CCDs for ACE, and also we believe, for schools and LAs" (p20). This view was supported by several other witnesses (including pp12, 30, 58, 62 & 75).
18. The IRU also stressed the importance of schools receiving sufficient advance notice of new requirements:

"More important is the 'lead time' – the period of notice schools have in which to prepare and the quality of the communication they receive in that period about what Parliament actually requires ... To change what they do in any significant way schools need to appoint or train staff, change computer and data collection systems, amend working practices and find the money and time to do all this, all while at the same time maintaining their day to day focus on teaching and learning and keeping hundreds of children and young people safe. School resources are finite and already fully committed. Much new legislation requires schools to 'consult' or 'have regard to' – all this takes time." (pp3 & 4; see also QQ6 & 7)
19. The importance of schools having adequate lead times to implement new requirements was reinforced by a number of other witnesses (including pp12, 20, 68 & 75).
20. On CCDs, in oral evidence the Schools Minister indicated that his Department made efforts to bring statutory instruments into effect around the beginning of the academic year (Q87). In a follow-up letter of 3 February 2009, Mr Knight went further:

"... I am happy to commit to work towards a situation where annually we have 1 September as a schools Commencement Date for SIs, strengthening the approach we already take with most regulations directly affecting schools (particularly those related to curriculum changes). In future, I want there to be a stronger emphasis on this to ensure that relevant Departmental regulations come into force at the beginning of the school year."

⁶ Department for Business, Enterprise and Regulatory Reform, "Common Commencement Dates: Guidance for Policymakers" (October 2008), p. 2.

He added that “There will obviously be exceptions, such as finance and admissions regulations.” (p51)

21. In relation to lead times, Mr Knight stated in his letter that the DCSF “would always aspire to give enough lead time in order for schools to be able to implement regulations effectively”. However, to move to a situation in which schools always had a term’s notice of new requirements, as the Committee had suggested, would “need careful consideration”. He argued that “there are also likely to be some exceptions which always apply, such as the school finance regulations (where the primary impact is on local authorities rather than schools) and the orders relating to teachers’ pay and conditions (which are the subject of intensive negotiations with our social partners, usually to the very last possible minute in July)”. The Minister did however commit to undertake a review of lead time, with a view to ensuring that there is at least a term’s lead time for SIs directly affecting schools in 2010, and stated that he would write to the Committee before this summer’s recess outlining the findings of the review. (p51)
22. We welcome the Minister’s undertakings on a common commencement date for schools-related SIs. We have no doubt that schools practitioners will be as interested as we ourselves to see that the Department meet these commitments in the dates set for commencing future statutory instruments. We are also confident that adherence to a CCD of 1 September for the great majority of schools-related statutory instruments will significantly improve DCSF’s understanding of the cumulative impact of such instruments, by forcing the Department to take a holistic view. In turn, this will feed back beneficially into the Department’s overall approach to secondary legislation and its gate-keeping role. **We recommend that the Department should adopt 1 September as the commencement date for all schools-related SIs (except in very exceptional circumstances).**
23. Turning to lead times, it is of fundamental importance that schools should have enough time to prepare for any new requirements set out in Regulations. A policy is not implemented simply because a statutory instrument has been laid before Parliament. It is implemented only when schools have actually adjusted what they do, and this change in behaviour has helped to achieve the outcomes the Regulations are intended to support. Timetables for new instruments imposing new requirements should be mapped out accordingly.
24. We welcome the movement shown by the Department on this issue, but we are concerned that, without a strong and clear steer from Ministers and senior officials, DCSF will not adopt a term’s lead time as a matter of course: reasons will always be found for exceptions. There is no good reason why lead-times should continue to be so short; better forward planning by the Department could solve the problem. **The evidence already received by the Committee leads us to recommend that schools should be given at least one full term’s lead-in time between the notification of a new requirement in a statutory instrument and the commencement of that requirement.** With a CCD of 1 September for schools-related SIs, this would mean that new instruments should normally be made available no later than the previous 1 April.

Effective communication of new statutory instruments to support implementation

25. In our follow-up inquiry on the management of secondary legislation in the 2007-08 session, we took evidence from DCSF officials which made it clear that the Department recognised the importance of effective communication. We were told by Lesley Longstone, Director General, Young People, DCSF, that, if policy work was underway that would result in new Regulations, the work would have a communications strand.⁷
26. However, those from whom we received evidence for our latest inquiry saw scope for improvements. As already noted, the IRU quoted a research finding from 2006-07 that the Department and its national agencies produced over 760 documents aimed at schools. They commented that:
- “the move to summary email communication with the option to download full documents or order hard copies, instead of automatic postal delivery of everything, is a step forward. There is scope for the Department to make emails even clearer to distinguish between requirements and guidance, to improve its gate-keeping processes to limit the content of emails to fewer items – only those which will help schools have a significant and measurable outcome on pupils.” (p3)
27. The Schools Minister has responded to these concerns in his letter of 3 February, and accepted that more can and should be done. He referred to an assessment of the fitness for purpose of the materials sent to schools, contained in the 2007 “Out Tray” study report commissioned by the IRU:
- “We are making a great deal of progress implementing the recommendations of this report. Our new email and online service will bring together all content from Non-Departmental Public Bodies and DCSF, which will be quality assured to avoid duplication or contradiction of messages. Website rationalisation will mean that all workforce content will be presented in one place. In addition to this, we expect to launch a new single web portal for schools in autumn 2009, bringing together all key agencies working with schools. We have asked a member of the IRU to join the programme board for the new web/email channel, to advise us on how best we can continue improving the accessibility of our communications to schools.” (p52)
28. This is clearly work in progress, but **we recommend that DCSF should intensify their work to improve communication to schools, which needs to be fully informed by advice provided by practitioners.**

Review of practical effects

29. If a Department relies on statutory instruments as a means of delivering policy change, it must monitor the process of implementation and assess the practical effectiveness of those instruments. We asked DCSF for evidence of statutory instruments whose effects had been reviewed, and received a letter of 10 January from the Schools Minister which showed that post-implementation review which focused on individual instruments was the exception, rather than the rule (p36). We also asked interested parties to comment.

⁷ “The Management of Secondary Legislation: follow-up”, 13th Report, Session 2007-08 (HL Paper 70): evidence (Q32)

30. The Association of Teachers and Lecturers (ATL) said that “while government often carries out ‘pilots’ or ‘trials’ of policy before implementation, it is not always clear whether or how evaluations impact on development. Once a SI is in place, it is rare for government to invite feedback on its practical implementation. There is a ‘policy lag’ at a national level which means that, by the time a SI comes into force for schools, government has already moved on to announce, consult, develop or pilot the next policies. This leads to a perception by teachers that feedback will never change policy once implemented, as well as to a feeling that any change will be short-lived.” (p60)
31. Similarly, the IRU told us that DCSF “... is very poor in this area [of feedback]. To the practitioners in schools it feels as if the various policy teams introduce requirements for schools with varying degrees of success. Although most would undertake some form of consultation before implementation there is little evidence that a post implementation evaluation takes place nor that lessons learnt are applied to subsequent implementations.” (p4)
32. The Schools Minister conceded that “it is unusual for us to have specific post-evaluation review of a specific SI, but we do as a matter of course regularly review the implementation of policy.” (Q108) He stressed that his Department received information on the progress of educational policies from sources such as local authorities, the Schools’ Adjudicator and OFSTED. “It is through those sorts of mechanisms as well as bigger policy reviews that we see whether or not what we are taking through in terms of legislation and regulation is working, and if it is not then we will come back with some more.” (Q109)
33. We do not think that this is sufficient. We recognise that statutory instruments are made using powers granted by Parliament in primary legislation; that both types of legislation are formal expressions of broad policy; and that Government’s main interest is in checking that its broad policies are being implemented effectively. However, to reverse a popular saying, it would not be right that Government could not see the trees for the wood.
34. So much of the evidence that we have received suggests that new statutory instruments, or amendments to existing instruments, are introduced too frequently, and with insufficient understanding of their impact. An undertaking formally to review the implementation of all significant statutory instruments (that is, excluding instruments that have no substantive impact) would both enhance the Department’s ability to plan ahead, and improve its knowledge of the practical utility of secondary legislation. **We recommend that the Department ensure that all significant statutory instruments are subjected to post-implementation review, and that the review findings are made known to Parliament.**

A New Relationship with Schools?

35. Finally, we return to the issue of the relationship between the Department and schools, which are the vehicles through which improvements in education must be delivered. The Schools Minister left us in no doubt that the Government see regulation as only one of the mechanisms to be used to secure such improvements – but an important and indispensable mechanism, none the less. (Q78)
36. In 2004, the Department for Education and Skills (predecessor to DCSF) initiated a “New Relationship with Schools” (NRwS). The initiative was a response to schools’ concerns about bureaucratic burdens, and aimed to improve the relationship between the Department, local authorities and schools. DCSF have commissioned research from York Consulting LLP, which in 2008 presented the findings of a “comprehensive two year national evaluation of the New Relationship with Schools policy”.⁸ We note that the research report stated that “the impact from the NRwS on changing perceptions about the levels of bureaucracy for schools is minimal ... Areas where stakeholders feel there are still significant burdens include changes in policies/initiatives; duplicate requests for data/surveys; and issues associated with specific initiatives/activities including funding, IT, health and safety and assessments for teachers.” (p.74) In particular, the report offers the following diagnosis to DCSF:
- “Continued efforts at the national level are required to work towards more coherent policy development and delivery across all ECM services, including steps to:
- achieve greater consistency in and consider the appropriateness of some of the demands placed on schools (including those associated with volume, pace of change, requests for information and reporting requirements);
 - deliver more coherent responses to supporting schools in the delivery of current significant developments, such as reform of the secondary curriculum, Building Schools for the Future (BSF), integrated children’s services and any required response to the outcomes of the primary sector curriculum review;
 - improve the coherence of communication mechanisms, including developing more effective presentation and signposting of critical information.” (ibid)

⁸ See: <http://www.dcsf.gov.uk/research/data/uploadfiles/DCSF-RR050.pdf>

37. We found it useful to hear from the current chairman of the IRU about his view of this relationship. In oral evidence, Dr Chris Nicholls said:

“Our view is that if we lost this focus on process, constantly legislating to say schools have to carry out this action and this action but instead said: ‘What we would like to do is to close the attainment gap or enter into better dialogue with parents without defining what that meant and what actions you have to take. Then we stand accountable for the systems that are in place for what we have done’, you would remove the need for a great deal of legislation. In 2004 the government set about implementing something called ‘New Relationship with Schools’, which had the germ of that at its centre. We feel fundamentally that if they had driven that through at the time and stayed with it, we would have fewer problems now than we have.”
(Q1)

38. Similar sentiments were expressed to us by Mr Martin Ward, Deputy General Secretary of the ASCL, in his evidence:

“We need to unlock the creativity of the people at the local level, those who are closest to doing the actual job, rather than getting them into a compliance mode which is very largely the state of mind that prevails at the moment. That would be done by leading, by issuing things like the Children’s Plan, for example, saying, ‘This is the sort of picture that we want’, but not necessarily then turning that into, ‘And here are the exact rules which you must follow. You have got to do this, you must not do that’, but only to say, ‘These are the sorts of directions in which we would like you to be moving’.” (Q76)

39. We invited Dr Nicholls, as IRU Chairman, to offer any further comment to us in the light of our evidence session with the Schools Minister. His memorandum of 25 February 2009 stresses that the Department have made improvements to their relationship with schools in recent years, not least in aspects of communication. However, he has re-emphasised the need to ensure that, even as policies change and develop, the Government stand by their earlier commitment to focus on outcomes rather than processes:

“[The New Relationship with Schools] heralded a cultural change which stressed the importance of school autonomy in the proper context of national and local priorities – this to be supported by sharp, ‘end-loaded’ accountability for outcomes not processes. We believe the principles of ‘New Relationship’ to be understood and acted upon by most, but not all, within the Department, though we remain sceptical as to the extent to which these principles are applied by those delivering policy and by local authorities ... It is the IRU’s view that the New Relationship continues to offer the best opportunity for improving standards in schools whilst minimising burdens and we feel this to be particularly true as we face the necessary, but more complex, challenge that the Children’s Plan presents. In a world of partnership, community engagement, multi-disciplinary teams and Children’s Trusts, a re-examination of those principles might be necessary if we are to avoid a proliferation of meetings, bureaucracy and accountability streams, to the obvious benefit of our pupils. We would urge that this is done.” (p11)

40. The evidence which we received from practitioners was consistent and powerful. We pressed the Minister to respond to their view that his Department's relationship with maintained schools was excessively input-specified and insufficiently outcome-developed, differing significantly from the Government's approach to academies. In a letter of 10 January 2009, Mr Knight acknowledged that the Government was committed to a light-touch regulatory framework for academies, using individual funding agreements (rather than Regulations) as the basis for the requirements on them.
41. In the light of our exchange with him at the evidence session (QQ123-127), Mr. Knight returned to the issue in his letter of 3 February: "In some areas, we do not use the contractual route to reproduce the precise effect of education, and that is because the Department's direct relationship with Academies (through Education Advisors, School Improvement Partners and Academy Liaison Officers) enables us to ensure that a range of the policy outcomes we want can be delivered without recourse to regulation. At the moment, that relationship is a significant difference from the maintained sector and it is key to the lighter-touch regulatory framework. In the longer term, we may want to take a view about whether it would be possible or desirable to replicate certain aspects of the Academies model more widely in the system. However, we feel that judgment cannot be made until we have a longer and more detailed evaluation of the programme." (p53)
42. Mr. Knight has also said that his Department may carry out further research to compare aspects of the regulatory mechanisms of academies compared with maintained schools. The evidence that we have received makes the case for much earlier action. As regards academies, there is undoubtedly a need for their success (or otherwise) in delivering the objectives of Government education policy to be fully assessed, and for such an assessment to be available to inform current debate.
43. In the case of maintained schools, we conclude from our inquiry that there is doubt that the Government's current approach which relies heavily on input specification is effective in delivering policy objectives, and we have seen much to suggest that this approach imposes significant costs and burdens. **We recommend that DCSF should seriously consider a less heavy-handed approach. Furthermore, if the Department consider that the light-touch regulatory framework for academies is appropriate and successful, that lighter touch should be extended to all maintained schools.**
44. In our questioning of the Schools Minister about why practitioners appeared not to share his positive view of the improvements which his Department had introduced into the relationship with schools, we were struck by Mr. Knight's reply:
- "If I am frank with the Committee I think that is partly because we have let the genie out of the bottle. Now that we have given a lot of freedom and increased the professionalization and we have highly able, brilliant, skilled people leading their schools, they resent what is left in some ways more than in other school jurisdictions where the minister knows what is being taught in every school in the land on a Monday morning." (Q115)

45. Able, brilliant and skilled professionals do not thrive in an environment where much of their energies are absorbed by the need to comply with a raft of detailed requirements. Education professionals – schools practitioners – understand the objectives of education policy which are set by Government, and should be expected to deliver these objectives using their own skill and experience without the need for wide-ranging prescription. We do not suggest that the need for Government to use secondary legislation in the schools sector will disappear. But the evidence that we have seen during this inquiry has highlighted the problems that are caused to schools when too little thought is given to the systematic need to rely so heavily on regulation, and too little effort is put into managing the overall impact of statutory instruments issued, and monitoring whether the myriad requirements being imposed on schools are being taken seriously and implemented on the ground.
46. The Government should, in the Minister's own words, now let the genie out of the bottle. **We recommend that DCSF should now look to shift its primary focus away from the regulation of processes through statutory instruments, towards establishing accountability for the delivery of key outcomes.**

APPENDIX 1: MERITS OF STATUTORY INSTRUMENTS COMMITTEE

The members of the Committee that conducted this inquiry were—

Baroness Butler-Sloss

Lord Crisp

Baroness Deech

Viscount Eccles

Lord Filkin (*Chairman*)

Lord Hart of Chilton (from 13 January 2009)

Lord James of Blackheath

Baroness Kingsmill (until 26 November 2008)

Lord Lucas

Baroness Maddock

Lord Rosser

Baroness Thomas of Winchester

Declarations of interest relevant to this inquiry

Baroness Butler-Sloss: governor of Merchant Taylors' School (Northwood, London)

Lord Crisp: wife is an educational consultant

Lord Filkin: adviser to SERCO

Lord Lucas: controlling shareholding in the Good Schools Guide Ltd

Baroness Maddock: vice president, Local Government Association

A full list of Members' interests can be found in the Register of Lords interests:

<http://www.publications.parliament.uk/pa/ld/ldreg.htm>

APPENDIX 2: CALL FOR EVIDENCE

Call for Evidence (September 2008)

Inquiry into the cumulative impact of statutory instruments on schools

Origins of this inquiry

In our 13th Report of 2007-08, we said:

“We have the duty of drawing to the attention of the House instruments which may imperfectly achieve their policy objectives, and this includes their effective implementation. We have commented in this Report that the laying and coming into force of multiple instruments in the summer recess can impede both scrutiny and implementation, citing education as an example (paragraph 21). We also comment that the repeated amendment of instruments adds an undesirable layer of complexity for users (paragraph 27). Issues such as these give us concern about the cumulative effect of a number of instruments made in short order on the sector which they seek to regulate (be it, for example, an industry, schools, farmers or small businesses): whether the approach may adversely affect effective implementation. Too many instruments made too quickly without clear strategy or guidance may not achieve what the Government hope to achieve by their making. When the opportunity arises, we intend to take an appropriate set of SIs as a case study to take evidence on these issues from stakeholders, especially those regulated.”

We now seek evidence on this question. In this call for evidence, we specifically seek evidence on the cumulative impact of SIs on schools, but we also invite ideas for a further sector to study, for either good practice or bad.

Schools

We wish to find out whether the number of SIs affects the way in which the Government’s schools policy is implemented. In 2006-07, schools were the subject of around 100 new SIs (generally described as regulations) made by the Department for Children, Schools and Families. Just under half of these were brought into force in three clusters, with the largest number coming into force at the start of the school year. Schools are also subject to regulations from other Departments, dealing for example with matters such as employment law or health and safety. We wish to find out how local authorities and schools themselves cope with this legislation and whether the Government’s policy as set out in each SI is achieved.

The Committee invites written evidence on the following questions by Friday 31 October 2008. Those submitting evidence should only do so on the questions where they wish to contribute. Please feel free to forward this call for evidence if you are aware of any other individuals or organisations who might wish to submit evidence within the deadline.

Number of SIs

How do those affected by a large number of SIs keep up-to-date with the many new, or amended, requirements?

What steps do the Department take to ensure timely and accessible communication about new regulations? Is there evidence that such communication is effective?

Is it always clear what a new SI actually requires schools to do? (Examples of clear, and unclear, SIs would be very useful.)

Timing of coming into force

For business-related SIs, the Government have adopted two common commencement dates (CCDs), on 1 April and 1 October of each year.

Would it be helpful if there were CCDs for schools-related SIs; if so, how many, and on what dates?

Alternatively, would it be more helpful if the introduction of new or amended requirements were more evenly dispersed throughout the year?

Advance notification / consultation

Some SIs will have been publicised in draft form in parallel with the relevant Act and the Department will have carried out a consultation exercise on them before laying them before Parliament.

How aware are you of the development of legislation before it comes into force?

Is there adequate advance notice of schools-related SIs, and does this allow enough time for those affected to prepare for and comply with new requirements?

Feedback from implementation

What arrangements are in place to feed back practical experience of implementing SIs? Do those required to implement the requirements consider they have adequate channels of communication to the Department?

Do you have any suggestions on how the process of developing and communicating new regulations could be improved to make it a more effective means of delivering Government policy?

Do you have experience of an SI which, in your view, has been unworkable or has failed to achieve its policy objective?

A further sector for study?

Which other parts of the public sector are similarly affected by large numbers of SIs laid over a short period of time? Do such sectors have distinctive experience which could usefully be studied by the Committee?

Letter from the Chairman to the Rt Hon. Jim Knight MP, Minister for Schools and Learners

I am pleased that you have taken up the invitation to give evidence to the Merits Committee on 20 January 2009. This will be very useful to us as we move towards concluding our inquiry into the cumulative impact of statutory instruments on schools.

In January, we will give you an outline of the questions which we will expect to raise. But I am writing to you now to seek information about a couple of issues of particular concern to us in looking at schools-related SIs, in advance of your January session.

Post-implementation review of SIs

We would like information about your Department's practice in reviewing the effect of SIs *after* they have been implemented.

We have received evidence from a number of organisations representing schools practitioners (including the Implementation Review Unit) which voices concern that your Department does too little to receive feedback from schools once SIs have been brought

into force. Without such feedback, it is hard to see how your Department can carry out effective post-implementation review.

Could you provide the Committee with a note setting out what approach DCSF takes to ***post-implementation review of SIs***? In particular, we would like to know what percentage of the SIs produced in the last five years have been followed up to see if they are fulfilling their policy objective as intended.

It is useful to tie general principles into specific examples, and I would ask that the note should do so. Without necessarily wishing to prescribe examples, I would point out that the Committee has reported on a number of SIs laid by your Department, and DfES as its predecessor. In the 2005-06 session, these included the following:

- SI 2005/1508 School Governance (Contracts) (England) Regulations 2005, in our 3rd Report of that session
- SI 2005/1730 School Governance (Constitution, Federations and New Schools) (England) (Amendment) Regulations 2005; SI 2005/1731 Education (Change of Category of Maintained Schools) (Amendment) (England) Regulations 2005; and SI 2005/1801 Education (School Organisation Proposals) (England) (Amendment) Regulations 2005, all in our 7th Report
- SI 2005/3299 Schools Forums (England) (Amendment) Regulations 2005; and SI 2005/3342 Education (School Organisation Proposals) (Amendment) (No. 2) (England) Regulations 2005, both in our 19th Report
- SI 2006/468 School Finance (England) Regulations 2006

Given the time that has elapsed since these SIs came into force, their effectiveness in practice must by now be apparent. It may well be that your Department has brought forward later SIs in the same areas of policy in response to post-implementation review processes. If so, this is exactly what it would be helpful to set out in a note, which we would like to receive by 9 January 2009.

Application of Regulations as between maintained schools and academies

The first SI mentioned above is SI 2005/1508 School Governance (Contracts) (England) Regulations 2005. This prompts me to flag up another issue which has emerged from our current inquiry, namely ***the differing application of Regulations issued by your Department as between maintained schools and academies***.

In the comments which we offered on SI 2005/1508, we noted the view expressed by respondents to a DfES consultation process that the Code of Practice on Workforce Matters applied by the Regulations to maintained schools should also apply to Academies. We added that “the Code is intended to prevent the emergence of two-tier workforces. The fact that Academies are not to be subject to the Code gives rise to concern that two-tier workforces may emerge in their employment.”

The Committee’s secretariat has asked DCSF officials for more information about the differing treatment of maintained schools and academies in this respect, and I would be grateful if you could also ensure that we receive a response on this by 9 January.

16 December 2008

Minutes of Evidence

TAKEN BEFORE THE SELECT COMMITTEE ON MERITS OF STATUTORY
INSTRUMENTS

TUESDAY 25 NOVEMBER 2008

Present	Butler-Sloss, B.	Lucas, L.
	Deech, B.	Maddock, B.
	Filkin, L. (Chairman)	Thomas of Winchester, B.
	James of Blackheath, L.	

Memorandum submitted by the Implementation Review Unit

THE IMPLEMENTATION REVIEW UNIT AND THIS ENQUIRY

The Implementation Review Unit (IRU) is an independent panel of school practitioners appointed in 2003 by the then Secretary of State for Education and Skills. Our remit is about supporting and challenging the government and its agencies, including local authorities, in implementing government policy in schools in ways which minimize burdens and maximize the impact on outcomes for children and young people.

In submitting this evidence we think it may be useful to the Merits Committee if we summarise our position from the outset. If it would be helpful to the Committee members of the Unit would be very happy to provide oral evidence or to meet members of the committee individually to fill in the background.

THE GROWING EXPECTATIONS ON SCHOOLS AND HOW BEST TO EQUIP SCHOOLS TO MEET THEM

We fully support the outcomes government wants our 23,000 schools in England to pursue for our children and young people. With the *Every Child Matters* agenda those outcomes have extended to include stay safe, be healthy, enjoy & achieve, make a positive contribution and achieve economic well being.

We doubt that the excessive use of secondary legislation (and statutory guidance) concerned almost entirely with mandatory processes that schools must adopt rather than outcomes they should achieve is the most effective way of equipping schools to make the maximum contribution towards those outcomes. In many ways we think legislation, especially if impractical, unclear or introduced with insufficient time for schools to prepare, can hamper rather than enhance the work schools do for children.

Nor do we think it is right that the 350,000 volunteers who, as governors, provide schools with crucial support and communities with local lines of accountability for the work of their schools, put themselves at risk of penalty (albeit as a governing body rather than as individuals) for non-compliance with such an extensive and ever-growing raft of secondary legislation. Keeping governors abreast of change in schools is a major piece of work for school leaders and administrators. A major challenge facing school staff and governors is to identify what is actually required as legislation from what is offered as optional advice and guidance.

Often messages and initiatives launched by central government are embroidered by intermediaries such as local authorities and other agencies to the extent that an individual school is literally swamped with well intentioned advice around a particular topic. In large schools this burden is significant and diverts staff away from their focus on teaching and learning. In smaller schools the lack of staffing means that the burden falls on already overworked headteachers making the role unmanageable. In any system of delegation of responsibility, those delegating need to consider the capacity of the recipients to deliver. There is no evidence that the Department does this and our experience is that officials only consider their single policy area and fail to recognise the cumulative burden on schools.

The key to success is to focus expectations on outcomes not processes and to give the front line maximum freedom to choose for themselves how best they secure those outcomes—and to hold them to account for those outcomes, not activities and processes.

IRU RECOMMENDATIONS

Where, after thorough and self-disciplined consideration, government decides it must use secondary legislation, we think:

- Parliament should require proposals for secondary legislation put to it to include an impact assessment covering both the financial cost and the staff time of compliance. Primary legislation sets out the principles, it is the detail of how those principles are to be put into practice contained in regulations that creates work. Staff time is crucial to schools, particularly small schools where heads themselves spend a good part of their week teaching. The impact assessment should cover a range of typical schools (perhaps a small primary, a large primary, a comprehensive, an academy, a special school dealing with a wide range of children with complex special needs)—these impact assessments should be produced in consultation with practitioners currently working in schools. Their job should be to find the least burdensome way of making those principles a reality in schools.
- Parliament should require the inclusion of a date for introduction and an explanation of how that date provides schools with adequate time to find or divert resources in their budgets, recruit new staff or train existing ones, and adapt their procedures and working practices to ensure compliance.
- Parliament should be given a short, clear statement of the outcomes the legislation is designed to achieve and a commitment in time and money from the Secretary of State to evaluate the proposed legislation against those specific, measurable outcomes.
- Parliament should also be provided by the government department with an endorsement based on consultation with practitioners that the legislation is practicable and that what schools need to do to be assured of compliance is clear—with the current equality and disability legislation for example, school leaders and governing bodies can be fairly confident of what they need to do to avoid discrimination—what they need to do to demonstrate compliance with the requirements to “promote equality” or “take reasonable steps” is simply anyone’s guess—and it leaves schools where equality and inclusion are not problems diverted from other real issues they face by the pressure from the lobby groups, local authority equality co-ordinators, and national agencies regulating schools, to do more than is necessary to tackle a problem that in their particular school does not actually exist.
- Parliament should also be provided with an outline of how and when the Department plans to communicate its proposals to the 23,000 schools to be affected and an endorsement, again based on consultation with practitioners, that the communication strategy is likely to be effective for the 800,000 who work in schools, the third of a million governors, and the hundreds of thousands who work in local authorities and the national and regional agencies of government that seek to influence the work of schools—and who very often misinterpret and/or embroider and gold-plate what start out at the centre as relatively simple requirements.

We also think it worth letting the Merits Committee see some of the context in which schools operate. Recent research commissioned by the IRU shows that in the 2006–07 academic year the Department and its national agencies produced over 760 documents aimed at schools. The research also found that no single part of the Department was aware of the totality of what was being offered. Nor is this anything new. Andrew Marr, on page 541 of his book, “A History of Modern Britain” reports government sending 3,840 pages of instructions to schools in 2001 and one head teacher that year identifying 525 separate targets for his school to pursue and account for.

We move on now to answer the specific questions set out in the Call for Evidence.

NUMBER OF SIs

1. *How do those affected by a large number of SIs keep up-to-date with the many new, or amended, requirements?*

With difficulty and with varying degrees of success—schools have to rely on the Department, Local Authorities and other intermediaries to alert them to new obligations.

Given the volume of communication schools receive from the many local and national bodies with whom they interact identifying those which are statutory and those which are merely for information or guidance can be difficult. (IRU research identified over 760 communications to schools from the Department and its national agencies in the academic year 2006–07)

Intermediaries, in their communications to schools, often fail to distinguish between what is statutory and what is simply suggested, in some case they imply (inadvertently or otherwise) that what is actually optional is mandatory (“Ministers expect”, “schools must”). And they embroider and over or misinterpret what is actually required to comply with a statutory obligation.

Small schools, with headteachers who teach for half the week or more, have particular difficulties keeping up and knowing whether or not they are in compliance.

2. What steps do the Department take to ensure timely and accessible communication about new regulations? Is there evidence that such communication is effective?

The move to summary email communication with the option to download full documents or order hard copies, instead of automatic postal delivery of everything, is a step forward. There is scope for the Department to make emails even clearer to distinguish between requirements and guidance, to improve its gatekeeping processes to limit the content of emails to fewer items—only those which will help schools have a significant and measurable outcome on pupils.

3. Is it always clear what a new SI actually requires schools to do? (Examples of clear, and unclear, SIs would be very useful.)

No—the regulations on equality are a case in point—accompanying guidance is no more than someone’s guess as to what Parliament intended.

The introduction of data protection registration requirements was initially an example of a well implemented requirement whereby schools were provided with a model registration and assured that if they adopted this registration they would be compliant with requirements and only needed to consider exceptional circumstances beyond this.

TIMING OF COMING INTO FORCE

For business-related SIs, the Government have adopted two common commencement dates (CCDs), on 1 April and 1 October of each year.

4. Would it be helpful if there were CCDs for schools-related SIs; if so, how many, and on what dates?

On this and question 5 the IRU view is that the Department needs detailed discussion with people in and representing schools. Simple answers such as the beginning of the school year or the beginning of term or the start of the financial year would not take account of the pattern of work in schools over a year. More important is the “lead time”—the period of notice schools have in which to prepare and the quality of the communication they receive in that period about what Parliament actually requires. See Q 6.

5. Alternatively, would it be more helpful if the introduction of new or amended requirements were more evenly dispersed throughout the year?

See question 4.

ADVANCE NOTIFICATION / CONSULTATION

Some SIs will have been publicised in draft form in parallel with the relevant Act and the Department will have carried out a consultation exercise on them before laying them before Parliament.

6. How aware are you of the development of legislation before it comes into force?

Leaders and staff in the 23,000 schools in England may have some awareness of areas where legislation may be proposed, through, for example professional bodies or their local authorities. It is not practical for them to keep abreast of the details of secondary legislation which is what has the greatest impact on workload and working practice when it comes into force.

7. *Is there adequate advance notice of schools-related SIs, and does this allow enough time for those affected to prepare for and comply with new requirements?*

No and No. To change what they do in any significant way schools need to appoint or train staff, change computer and data collection systems, amend working practices and find the money and time to do all this, all while at the same time maintaining their day to day focus on teaching and learning and keeping hundreds of children and young people safe. School resources are finite and already fully committed. Much new legislation requires schools to “consult” or “have regard to”—all this takes time.

FEEDBACK FROM IMPLEMENTATION

8. *What arrangements are in place to feed back practical experience of implementing SIs? Do those required to implement the requirements consider they have adequate channels of communication to the Department?*

The Department is very poor in this area. To the practitioners in schools it feels as if the various policy teams introduce requirements for schools with varying degrees of success. Although most would undertake some form of consultation before implementation there is little evidence that a post implementation evaluation takes place nor that lessons learnt are applied to subsequent implementations.

9. *Do you have any suggestions on how the process of developing and communicating new regulations could be improved to make it a more effective means of delivering Government policy?*

Please see our recommendations above.

10. *Do you have experience of an SI which, in your view, has been unworkable or has failed to achieve its policy objective?*

The concerns mentioned earlier about the difficulties for practitioners in distinguishing between statutory requirements and guidance mean that some of the following examples may include either examples that are not SIs or where SIs have been subject to embroidery by intermediaries. Nevertheless, they do represent examples of the difficulties faced by practitioners. Examples cited by IRU members include:

- The requirement to have a daily act of collective worship—it is unworkable in many schools given physical space constraints and the facility for staff to opt out from participating in the activity.
- Nutritional standards for school food have in many cases failed to achieve the policy objective as schools cannot deliver catering to all students who vote with their feet and then go off site where they can access unhealthy food and are also not as safe.
- Disability Discrimination Act requirements relating to premises are an example of unreasonable and unmanageable expectations being placed on headteachers and volunteer governors without considerations of their ability or capacity to deliver. Whilst the specific legislation may not define specific duties for these people, implementation has often led to Local Authorities as employers and landlords passing on responsibilities.
- Many health and safety requirements uses terms like “employer” or “appropriate body” or “appropriate person” without clarification in a school setting as to whether this is the Local Authority, Governing Body or head teacher. Time is wasted trying to establish who exactly is responsible for the specific requirement and often this leads to requirements not being met.

- The requirement to publish a School Profile for parents when feedback from parents is that it is of little use and adds an unnecessary burden in duplicating information that is already available elsewhere.

A FURTHER SECTOR FOR STUDY?

11. *Which other parts of the public sector are similarly affected by large numbers of SIs laid over a short period of time? Do such sectors have distinctive experience which could usefully be studied by the Committee?*

Government policy is that schools and all the other public service engaging with children and young people—social services, health, mental health, housing, youth justice, police and so on—should work more closely and coherently to secure better outcomes across the five strands of the Every Child Matters agenda. The Committee might consider whether it could usefully look at how effectively government uses secondary legislation to further this ambition.

October 2008

Examination of Witnesses

Witnesses: DR CHRIS NICHOLLS, Chairman, and MR GRAEME HORNSBY, Implementation Review Unit, gave evidence.

Q1 Chairman: Welcome and thank you very much for both your written evidence and for coming to give us oral evidence as well. I am Geoffrey Filkin, Chairman of the Committee. The declared interests of Members are available for inspection. I do not think there are any to inspect. Can you give an overview of what you feel is wrong with the way in which the system is currently working? By “system” I mean the use of Statutory Instruments in their current format and volume.

Dr Nicholls: Individually, you can look at any policy strand and usually find sometimes a lot of merit in it. There is clearly a lot of policy and the cumulative effect of that is quite considerable and very difficult to manage. At the heart of the problem is a tendency to legislate around the process. Most of the information we now get which derives out of statute tells us actions that we have to complete. My view and the view of my committee is that what is interesting are the outcomes. It is what we want to see as a consequence of that legislation which is important. In fact, there is no need to legislate because you can deal with outcomes through accountability regimes. Our view is that if we lost this focus on process, constantly legislating to say schools have to carry out this action and this action but instead said: “What we would like to do is to close the attainment gap or enter into better dialogue with parents without defining what that meant and what actions you have to take. Then we stand accountable for the systems that are in place for what we have done”, you would remove the need for a great deal of legislation. In 2004 the government set about implementing something called “New Relationship with Schools”, which had the germ of that at its centre. We feel fundamentally that if they had driven that through at the time and stayed with it, we would have fewer problems now than we have.

Q2 Chairman: I can see some argument that some of it might be able to be done through outcomes, say, if you are looking at value added on school attainment. What schools have to do also as employers or as part of the public landscape—they have disability responsibilities; they have equal opportunities regulations—if government has had a view that these are things that should be done, do you not need something like a Statutory Instrument to draw it to the attention of those who are subject to the obligation?

Dr Nicholls: I am not arguing we do not need any. If you take disability as a good example, if schools are not about equality of opportunity, then they are not about anything really but, if you look at the way the disability equality scheme was introduced to us, it was a series of, “You will do this and you will do this. You will produce the action plan” and so on. We do not know what compliance with that even feels like. That kind of approach lacks proportionality. I head up a 1,600 comprehensive school with 200 staff. I have half a chance of delegating some of those actions to the people who work for me. If you are the head teacher of a four teacher primary school, all of that falls upon you. If you define what compliance looks like, if you define the standards which say, “If you are really interested in equality, this is what will be evident in your institution”, it is being measured against those standards that matters. Small schools have a smaller job because they have fewer people and fewer children to deal with in terms of that concept. Bigger schools have a bigger job. Vast organisations like police forces and so on have an even bigger job, but that is fine because they have the capacity to deal with it. What happens when you legislate the same set of actions for every institution is that it falls disproportionately upon those that cannot cope.

25 November 2008

Dr Chris Nicholls and Mr Graeme Hornsby

No, I do not think it is necessary to legislate for those actions, but it is necessary to have primary legislation which says that equality is something that you have to have regard to. From then on in, I think it is defining the standards and dealing with it through the accountability regimes.

Q3 Chairman: I have been on the other end of that with local authorities. Everybody then whinges, “We are not clear as to what you mean by that” and then they ask for detailed guidance and a toolkit as to what to do so they feel safe.

Dr Nicholls: I have no problem with a rich variety and strain of help, support, guidance, but I would like to feel that I am in charge of which of it I use. The system at the moment tends to turn what should be optional activity into compulsion. It might take a little while to unravel that but it does. The average primary school received around the disability equality scheme a box of information this large. My colleagues in the primary sector are in despair because they did not even have time to stop and read it, never mind to begin to implement what was there. Option around guidance is what I would say.

Mr Hornsby: In a large secondary school you may have people like business managers or facilities managers who have expertise—I think the example of the premises implications of disability discrimination is a good one—to whom the head teacher can turn to manage those things on behalf of the head teacher or indeed on behalf of the governing body. There is also a confusion that arises as to who in school is responsible for some of the legislation between governing bodies and head teachers. Our colleagues on the IRU frequently say to us that we are the victims of some legislation without any consideration of our capacity or indeed our capability to deliver that. In any system of delegation, be you a legislator indeed or an employer, you have to consider both capacity and capability of people you are delegating those responsibilities to. The head teacher in a small primary school is not only burdened by the large box file that Chris mentioned, but also by the question: do I have the subject knowledge myself to carry out a premises audit with regard to disability? I think that is where the support of people like local authorities needs to come in, to make sure that the head teachers are able to deliver on the expectations placed on them.

Q4 Chairman: These are slightly different points, are they not, because yours is saying if you have to do it be aware of the differential audiences? Your point is that much of this does not need to be done; you can do it through outcome accountability. Have you done work on this to take what all of us use as a slogan and to look specifically into how it would operate and how much it would operate?

Dr Nicholls: In “New Relationship with Schools” the accountability regime was defined through Ofsted and then through something called the School Improvement Partner. The School Improvement Partner concept was the idea of a quite strong, critical friend who would be looking at a school’s work with the school leaders, reporting to the governing body and, in a sense, would be asking questions about to what extent are you meeting these standards? Where is your evidence base for it? Has that worked? I think it needs further development. The wider agenda which has come with the children’s plan, which really opens up the kind of expectations of schools and the kind of standards to which they need to conform, raises questions about the capacity of that system to deal with it. Nevertheless, as a general principle, I think government should be asking itself: do we need to legislate precisely how something is to be carried out? Ought we not to be looking at what we want to see as an end and successful product?

Q5 Baroness Butler-Sloss: On the basis that we have to have Statutory Instruments, we suggested that it might be a good idea to have a limit of only two commencement dates in a year so that people would know when they are coming, rather than the scatter gun approach of them coming right the way through the year. Quite a lot of our witnesses have thought this was a good idea. I think the IRU do not think it is a good idea. Firstly, why not? Secondly, you were talking about the pattern of work in schools over a year. How would that relate to the dates of Statutory Instruments?

Dr Nicholls: I am not saying that we think it is a bad idea. Our experience—it is probably an uneducated experience—is that by and large most commencement dates are at the beginning of the academic year anyway for us. I might even be cheeky and say that, if we really think we have the need for two, it probably suggests there is too much legislation anyway in the system. If you are making a change in curriculum, which will often be dealt with through a Statutory Instrument in order to ensure that we all do it, the enactment date is not important to me because that is the point at which I am actually going to start teaching the children. That is obviously a key date for me but what really matters is when you are going to tell me what it is broadly you want to achieve. Even if you are given a year’s notice of that—I will give you the example of the introduction of the new form of double science. We were going to parents in January, two terms ahead of the implementation date, without any clear idea at all what the two phrases meant. The examining boards had not done their work. There were no syllabuses available. We are talking to parents about options two terms away and we do not know what we are doing. The detail around that began to come out towards the Easter/summer term.

25 November 2008

Dr Chris Nicholls and Mr Graeme Hornsby

My view, on my own planning cycle, is that most schools will plan in the autumn term when they have the outcome of the previous set of exam results. They will set their priorities for that year. It is helpful for me to know at the point that I am planning what is expected of me so that I can incorporate it into those plans. If you are going to think about serious curriculum change in school, two years' notice is what is required for everybody to do their work properly. The examining boards, the teachers, every work scheme and every lesson plan can be affected. The assessment strategy can be affected. It is a vast amount of work and, quite frankly, it is not the date that I have to start. It is giving me sufficient time before that date to get the work done.

Q6 Baroness Butler-Sloss: Really, the impetus should be towards asking the Department to be telling you at a reasonable time for you to have it implemented for whatever happens to be the date of the Statutory Instrument. You are nothing like as worried about whether it comes in in June or September. One of the things we have worried about is that they are coming in in July, August and September and you have the beginning of the school year. What you are saying is, "We do not really mind that. What we mind is that the government should have made its mind up and told us exactly what we are to do so we can talk to parents two or three terms ahead"?

Dr Nicholls: Yes.

Q7 Chairman: There is a need by implication for the Department which has made the legislation to be richly informed about the realities of how schools behave and operate, which presumably is the problem.

Dr Nicholls: Curriculum change has been extensive over the past few years. I really do not think that anybody understands that you can make one simple change that can affect every lesson plan in that scheme. That is not an exaggeration. It can be true. It is not always true of course, but if you make changes to the basic requirement everything needs to be re-ordered and that takes every teacher back to basic lesson planning. You have to have plenty of lead-in time for that.

Mr Hornsby: One of our concerns about the proposed two implementation dates was related to the volume of legislation. One of the difficulties we have in a school is picking out what is legislation and statutory and what is advisory and guidance. An exercise we did revealed that there were 765 such documents hitting a school in one academic year. That is nearly four a day for a hard-pressed teaching head teacher in a small primary school to cope with. If those were to be condensed onto two days, could the school deliver, compared to struggling to deliver if they are

spread throughout the academic year? We have examples of various situations where there have been unreasonable burdens because of two large initiatives coming at once without consideration again of the capacity of the schools to deliver.

Q8 Baroness Thomas of Winchester: I found your evidence very interesting and good to read. Congratulations on that. We are particularly interested in post-legislative scrutiny and I suppose in this context it is post-implementation review. Obviously to do this DCSF would need effective feedback from schools. Can you tell us more about your experience of this and why you say that the DCSF is very poor in this area?

Dr Nicholls: Did we say that? Yes, we did. I know that the Department is passionate about standards and it looks rigorously at the extent to which standards for all pupils are improving. I think it does that well. I also think it is better at stakeholder engagement than it has ever been. Having said that, if you ask me to pick out an example, I find no evidence at all of any real attempt to look at the impact of legislation after it has been implemented. Indeed, that is one of the reasons they set us up as a unit. I see no sense of trying to estimate the worth of what they have done in terms of balancing the outcomes against the cost. I think Graeme wants to illustrate with a particular example which is dear to his heart.

Mr Hornsby: One of the things that have proved a very severe burden on schools recently are the financial management standards. We in schools all feel—and professional associations endorse this view—that the standards themselves are sound and it is right they should be in place. We are custodians of public money and we should be accountable for how we spend that money and have proper checks and balances in the system. One of the criticisms that frequently comes through about the Department is their inability to manage the delivery chain of the implementation of these policies. With financial standards, schools were given a set of standards that they were required to meet and external assessors were engaged to judge how schools met the standards or not. In some cases, schools were required to assimilate and submit 3,000 pages of evidence to show they met the school standards. Other local authorities have very good schemes where they did what I would expect in any financial regime, a selective audit of evidence *in situ* within the school, so you go and look at governing body minutes to see if the governors are properly engaged in the financial management of the school. You sample any other information in the way any good auditor would do to judge if the financial standards are in place without expecting school staff to produce 3,000 pages of evidence. What that exposed was not only the failure to manage the delivery chain but a lack of any quality

25 November 2008

Dr Chris Nicholls and Mr Graeme Hornsby

assurance procedure as to how the assessors, who had been approved by the Department, were performing out there in the field. It was only because of the feedback from professional associations and the Implementation Review Unit that the Department has taken this on board and belatedly done something about it. Unfortunately, not without a lot of time wasted in schools, where our energies could have been better channelled towards pupils and families.

Dr Nicholls: This is an area where it is very disproportionate between the secondary and the primary sector. I have a business manager who can manage this for me; in the primary sector right now, a number of them are finding it incredibly difficult to service this particular demand.

Chairman: It is not a unique problem, in our view, to DCSF. We find lack of evidence that they know what is happening after they have legislated and of course there is no learning loop.

Q9 *Baroness Maddock:* We are wondering if there is any evidence that those in government who issue the schools-related SIs have a real sense of what actually happens in practice. Is there any evidence that they have been out there and they know what it is like?

Dr Nicholls: The Department that I have worked with for a long time now as a practitioner is much better at practitioner engagement and recognises that shortfall and does try to do something about it. It does not stop me saying the answer is still “no”, but at least the will to get a better feeling for what it is really like is there. You could explain our existence as being part of that. Let me quote an example. We wrote to the government recognising the vast amount of curriculum change that was planned for the beginning of 2008, changes to Key Stage three, changes to A-level provision and the introduction of diplomas to some schools that were going through the Gateway in the first year. You really do not have any understanding of what life in a school is like if you are seriously going to ask a school to tackle that lot in one go. It just is not reasonable. In a very big school, it is possible that you have a different Key Stage three, Key Stage four and Key Stage five coordinator who therefore will see it as separate strands of the job. In a medium-sized secondary school, it is the same head of English who faces that entire problem. You go back to the earlier point I made about trying to deal with work schemes, lesson plans, assessment strategies and all the training that staff have to undertake. To put all that in one place was, in my view, wrong.

Q10 *Baroness Maddock:* Your organisation is part of trying to do something about it. What else do you think might be done to expose the people in

government to the realities of the system that they are trying to impact on?

Dr Nicholls: That is an interesting question. The business about practitioner engagement is essential. The problem with practitioner engagement is that it is often around a single issue. The kinds of people who work in schools are often very interested. They do engage with that issue in quite a fulsome way and everybody goes away feeling very positive about it. What you do not get out of that is any kind of cumulative feel for everything that is going on. Practitioner engagement is really key. I know people in the Department visit schools. I think that is a good and worthwhile process. Sometimes I feel that the engagement tends to focus on those who are succeeding more than on those who are struggling. I am not sure that is a good thing. That is an opinion; I cannot evidence that. It is really important that those who are struggling in difficult circumstances are listened to first. We may want to say that might be due to the capacity of the leadership. This school could be improved significantly. You do need to talk to the people who are finding life difficult rather than those who have an outstanding at Ofsted and are increasing results because they will say, “All is possible.” For them it may well be; I do not know. I cannot see any way past practitioner engagement. Our own experience in IRU is, where we have been listened to, we have felt very positive about it. Where we have not been listened to, we have felt very frustrated about it.

Q11 *Chairman:* Have you not been listened to on areas that are germane to what we are probing?

Dr Nicholls: There have been many cases where we have argued cogently on particular things and they have been implemented nevertheless. We have often been successful in changing things. We are at our best when we get very early notification of what the broad ideas are because it is easier not to make mistakes at that end. If you are going to talk to practitioners, my view is you need to talk to them at the beginning, in the middle and at the end. By “the end” I mean after it has been implemented. Certainly from our point of view, the earlier we become engaged the easier it is for us to say, “Do not do it this way; do it that way.” Once you have got down to detailed guidance, it belongs to somebody in the Department. It belongs to a particular policy lead and we know that DCSF is still a little silo-organised. Their job is to deliver that policy strand and actually they do not want to listen to me at that stage because in some ways it is too late. Early engagement is very important.

Q12 *Baroness Maddock:* Do they ever involve you when people come into the Department in training them about what life is like in a real school?

25 November 2008

Dr Chris Nicholls and Mr Graeme Hornsby

Dr Nicholls: In the early days of the IRU, I did get the opportunity to talk to some but that seems to have diminished a little bit.

Mr Hornsby: It is also important to recognise that, just as we would urge the Department to try and get an overview of the cumulative effect of legislation and guidance on schools, we sometimes feel that the lead policy officer is just dealing with his or her particular area. The Department also needs to try and get an overview of other agencies' impact on schools. The Health and Safety Executive, for example. Those agencies quite rightly impact on schools as they do throughout society. The Department needs to recognise that they are not the only people impacting on us in schools.

Chairman: That has been one of our arguments previously, that there almost needs to be a champion in the Department to gate-keep the totality.

Q13 Baroness Deech: In your submission, Dr Nicholls, you gave us five IRU recommendations which look very useful. Can you explain to us how they would be practical, how they would work and whether they would have a real impact? It did strike me that there was no mention of the use of the internet. I envisaged that maybe things might be easier if there was shared information. I do not know whether you do or do not across the sector, but how do you think your recommendations would make things better?

Dr Nicholls: We do not imagine that it is practical that large numbers of practitioners are going to daily troop up to the Department. Even if they did, they would not want to sit down and talk about impact assessments because they are interested in educating children. That is probably a little bit far removed for them. If you are going to publish a consultation document, why not attach a simple impact assessment with it? When I looked at it on the internet, when I read the policy for the first time, instead of merely commenting on what I think the quality of the ideas and the policy are, I could see that somebody thinks that in my school these are the people who are going to do it. This is how long it is going to take. I think I would be more inclined to comment if I received it in that form because I can feel the adrenalin flowing, saying, "Goodness gracious me. It is going to take me twice as long as that." The publication of an impact assessment with a consultation document is something worthy of serious consideration. Electronic communication is interesting. Most of our communication is electronic these days. We get very little paper coming into schools. I might argue that we may have gone a step too far and that the occasional letter is quite helpful, particularly in sorting out the priorities, because you have a job to do right now. There is not a common portal yet so, apart from the DCSF website, you have

Ofsted's website, TDA and all the other national strategies that impact upon schools. Just keeping abreast of those is difficult. We have not mentioned local authorities either. The 760 documents that Graeme quoted earlier on communications did not include anything from local authorities because they were not investigated. That was simply from agencies and the DCSF. It is an uneducated guess but I would be surprised if you could not double that if you included local authority communication as well. Will those strategies work? Our hope is that the simple enactment of those strategies would make the Department aware of what they were asking. If they took all those impact assessments and somebody sat in a room and added them up, they might come to the conclusion that the capacity simply was not there. A single impact assessment on a single strand of policy often makes it feel like the policy is doable. If somebody was taking all of those, putting them together and saying, "On 1 September, we have just added this many man-hours to the average working life of a school" it might make them either make the demand less or put the resource in or take something out of the system or at least show us how we could be more efficient in implementation. Our strategies would have a better chance if the originators of the policy came together and came to those kinds of conclusions.

Q14 Chairman: That is back almost to this load assessor, is it not? Somebody has to add them all up.

Dr Nicholls: Gate-keeping has been effectively put in place in two or three local authorities who have been championing that, not with a great deal of success. This is not my figure and I cannot verify it but Lancashire, where they have gone into this in some detail, are claiming that they have saved—this is their figure, not mine, so I will not stand by it—over £1 million as a consequence of the effective implementation of gate-keeping systems within their local authority.

Q15 Chairman: Schools or more generally?

Dr Nicholls: Schools, by monitoring the flow of information and work demand into schools.

Q16 Chairman: Which would naturally include SIs?

Dr Nicholls: It would. It would certainly be sorting out which parts of that regulation or that statute had to be done and was a bottom-line requirement.

Q17 Chairman: Would you send us an email contact for that so that we can pursue evidence from them?

Dr Nicholls: Yes. They are not my numbers but I did ask my source to get them verified and I know they contacted Lancashire before I came here today. That is a considerable amount of money and suggests that

25 November 2008

Dr Chris Nicholls and Mr Graeme Hornsby

the gate-keeping process does have something to recommend it.

Q18 Chairman: I found that extremely interesting. Let me leave the door open for you if there is any further on reflection you want to say now or put back to us later. You have given evidence that, if we have to have SIs, this is a way that you can make them work better. That is clear. You have also given us

evidence that there ought to be far fewer SIs because the outcome framework ought to be used to generate them. I would be interested if you could put a bit more flesh around that because I think it is relevant to our inquiry and it is partly the prevention of the problem as well as the improvement of it. If Members have no further questions, can I thank you very much indeed for a very interesting evidence session?

Dr Nicholls: Thank you very much, my Lord Chairman. We appreciate the opportunity.

Supplementary memorandum submitted by the Implementation Review Unit

FOR THE ATTENTION OF THE MERITS COMMITTEE

May I begin by thanking the Merits Committee for the opportunity given to the IRU to present to it both written and oral evidence and, indeed, for the further invitation to respond to the recent written communication from the Rt. Hon. Jim Knight MP, Schools Minister (DCSF).

As stated in our evidence session, we do believe that the Department is better engaged with stakeholders than it has ever been. In itself, however, this does not guarantee that sufficient difference has been made to the burdens experienced by frontline practitioners for them to be able to recognise this increased involvement. We also acknowledge a highly-productive relationship between the DCSF and the IRU over the years since its inception in 2003, during which we have been given regular access to senior officials and Ministers. We think it fair to say, however, that that engagement (with the IRU specifically) has been less effective during the last 18 months. We understand that the Department is currently in the process of re-examining its relationship with, and need for, the IRU and other stakeholder groups to ensure continued commitment to, and effective use of, dialogue with practitioners. Whilst the Department consults with many groups on specific matters we believe it is vital that they continue to consult with a group of practitioners that has the overview of the cumulative demands placed on schools.

We also stand by our assertion, shared with others who gave evidence, that the cumulative impact of SIs and, in particular, the statutory guidance and ministerial expectations that accompany them is significant and not well understood, other than in anecdotal terms. As a consequence, there is always the risk of diversion from our shared fundamental aims for improving the life chances of all children in our schools.

There have, indeed, been significant successes over the past years, not least in the improvements made in the way that the Department communicates with schools. We are also pleased with the further positive developments anticipated following the recommendations made in the 2007 “Out Tray” study report referred to in our oral evidence and the Minister’s letter. Significant reductions in the number of funding streams and much tighter control of data demands could also be cited. We also recognise huge improvements in the examination entry and reporting systems, which have become electronic and harmonised between the various boards.

In fact, the annex to the Minister’s letter highlights a number of IRU recommendations, all of which are well-documented in our own annual reports and all of which identify correctly a response from the DCSF. We could, at this stage, enter into a lengthy debate as to the impact of that response, though I doubt that to be either useful or appropriate in this communication. Suffice to say that the extent of the very detailed engagement that we have had over a huge range of policy issues as they have been translated into guidance (before implementation) far exceeds that shown in the annex. Not surprisingly, we would have to report varied success and, for a variety of reasons, some outside of our control. We have always been grateful, however, when we have brought about change however modest.

The evidence given to the Committee and, indeed, the view that we hear often when talking to our colleagues in schools undoubtedly lead to the conclusion that there is little perception of a reduction in unnecessary burden or bureaucracy. Change remains endemic and it can be argued that it should if we are to bring about the desired improvements. The IRU’s contention, however, would be that not all of the statute, regulation and guidance which has flowed from the DCSF, its agencies and local authorities has been productive and that insufficient attempt is made to assess impact before and after policy implementation.

In developing its policy, consultation with stakeholders by the DCSF is at its most effective, but we are less convinced that implementation is well-managed. Elaboration of both the demand for action and data frequently emerges through the delivery chain as intermediaries seek to demonstrate the effectiveness of their own operation. The confusion between the optional and the mandatory arises during this process where those offering advice on implementation stress the need to comply, often using the accountability mechanisms to endorse this view. In our view it is this part of the process rather than SI's that adds the greatest burden to schools.

The New Relationship with Schools, introduced in 2004, has, indeed, had its successes, not least in the simplification of the inspection process and the introduction of School Improvement Partners. In its essence, however, it heralded a cultural change which stressed the importance of school autonomy in the proper context of national and local priorities—this to be supported by sharp, “end-loaded” accountability for outcomes not processes. We believe the principles of “New Relationship” to be understood and acted upon by most, but not all, within the Department, though we remain sceptical as to the extent to which these principles are applied by those delivering policy and by local authorities. The Committee has heard evidence as to the success of the Lancashire Gatekeeping Policy—we would urge all local authorities to consider such options.

It is the IRU's view that the New Relationship continues to offer the best opportunity for improving standards in schools whilst minimising burdens and we feel this to be particularly true as we face the necessary, but more complex, challenge that the Children's Plan presents. In a world of partnership, community engagement, multi-disciplinary teams and Children's Trusts, a re-examination of those principles might be necessary if we are to avoid a proliferation of meetings, bureaucracy and accountability streams, to the obvious benefit of our pupils. We would urge that this is done.

In its original written evidence to the Committee the IRU made a number of specific recommendations, particularly with regard to effective impact assessment and the need to incorporate such assessments (in plain language) at the point of consultation with practitioners. We also feel that there is a real need for an overview of the accumulative effect of these individual assessments as they emerge from detailed policy strands—this to ensure that capacity is available within the system. To do this would require identification of both what is being added and also what burdens are being reduced or removed. We believe this to be different from the current considerations of the impact of SIs occurring at Board level within the DCSF and also that it would offer a “best value” view identifying actions likely to have the maximum impact for pupils with the minimum increase in burden.

Finally, we welcome the comments made by The School's Minister in the final paragraph of his written response and we thank you once again for the opportunity to clarify our position.

February 2009

Memorandum submitted by the National Association of Head Teachers

INQUIRY INTO THE CUMULATIVE IMPACT OF STATUTORY INSTRUMENTS ON SCHOOLS

SUBMISSION TO THE SELECT COMMITTEE ON THE MERITS OF STATUTORY INSTRUMENTS

1. The National Association of Head Teachers (NAHT) welcomes the opportunity to submit evidence to the Committee, given the nature of this particular inquiry. As a professional association for leaders in education, it is well placed to give voice to the views of its members. These number 40K in total, of whom more than 28K are currently based in and leading educational establishments.

2. The number and extent of Statutory Instruments/regulations and their associated initiatives has long been of concern to our members. Schools find themselves suffering an onslaught of well-meant but often ineffective “instructions” at times which make well nigh impossible to implement even those that may be considered worthwhile.

NUMBER OF SIs

3. It is generally felt that there are too many SIs and associated initiatives. This is of particular relevance when looked at from the perspective of a less experienced school leader. An experienced school leader will consider a statutory instrument's regulations, its impact on the life of the school, the work required for full implementation, and prioritise accordingly. For an inexperienced school leader, this is not as straightforward and can create undue and unnecessary pressure on the leader concerned at an unacceptably early stage in their career.

4. Many of the SIs impact on the same areas of school life and, often, not enough thought is given to the combined effects of the SIs on the one area they affect. Unintended consequences can complicate and indeed counteract the desired effects of the SIs, since their implementation is in conflict. The holistic view of legislative impact is not always considered by the different parties concerned with instigating the legislation. One example of this is the interaction between the School Teachers' Pay & Conditions Document and the Performance Management Regulations.

5. Although guidance is often produced to assist schools in implementing regulations correctly, it is not always clear in its meaning. By their very nature, SIs are written in the formal language of legislation. Translating this into guidance can result in less clarity and more confusion. Such confusion came to light recently over the SI putting in place the requirement for Display Energy Certificates. Whilst the regulations made clear that the DEC must be displayed in a school and the "occupier" was the person responsible for ensuring that this was the case, it was not made clear for schools who constituted the occupier for the purposes of the legislation. Was it the head teacher, the governing body, the local authority or even the children?!

TIMING

6. The question of timing relating to Statutory Instruments is an interesting one. Currently, there is an excessive number of regulations impacting at different times throughout the school year, albeit that a number of these commence simultaneously. The ideal solution would be to reduce the number of regulations overall. Combined with the establishment of two Common Commencement Dates, this could simplify matters for schools. This would facilitate production of a programme for schools, detailing the changes that were necessary and the timing of such changes. This in turn would allow schools to plan properly to ensure that implementation was effected in a timely and efficient manner.

7. April and October would seem reasonable dates to adopt, thus avoiding (in the main) school holidays. It may be preferable to adopt a date towards the end of October, if this were to be feasible, thus allowing schools more time to plan from the beginning of an academic year.

ADVANCE NOTIFICATION/CONSULTATION

8. The issue of advance notification is more difficult to address. It is true, for example, that some draft regulations are published in parallel with the relevant Bill/Act. However, schools are not always aware of such publications and, even if they are aware of the drafts, the implications for schools may not be immediately apparent and therefore of little concern.

9. The Association is made aware of legislation through the normal channels and, wherever possible, passes on relevant information to its members. Schools would not necessarily receive information in any other way. This can lead to lack of information, and therefore lack of preparedness. The number of SIs with direct bearing on schools is also relevant here—where schools are faced with implementation of regulations already in place and also draft regulations out for consultation, the former will take priority. Schools will work on the basis of "sufficient unto the day is the evil thereof"!!

10. In general, schools are not made aware in advance of impending legislation in the form of SIs/regulations. It is rare for regulations to be known in schools in sufficient time for preparation and implementation.

FEEDBACK FROM IMPLEMENTATION

11. The opportunity for schools and school leaders to submit feedback from implementation is less than adequate. Often, it is neither requested nor seen as welcome. As a member of the Social Partnership, the Association has the opportunity to discuss forthcoming legislation. However, this is often part of a confidential consultation exercise and, as such, does not lend itself to formal feedback of views of leaders "on the ground".

12. On occasion, regulations are implemented in a phased way but it is never clear that the phasing is used to facilitate implementation. There are no clear ways made available to schools to communicate with the Department as to the effectiveness, ease of implementation, issues that have arisen etc.

13. Pilots can also be used but without adequate evaluation and quality assurance, these are, in effect, nothing more than phased implementation. It is also true that there is no obvious point of reference for any SIs that have actually changed as a result of feedback from a pilot phase. Schools therefore have no encouragement to submit comments in the expectation of effecting changes.

CONCLUSION

14. School leaders are dedicated professionals, determined to deliver the best opportunities for the pupils in their care. In doing so, they endeavour to ensure that they keep abreast of all necessary changes to legislation and prepare appropriately to implement these. The current range, number and timing of regulations does not, in general, assist with this.

15. The Association would welcome the opportunity to expand on this brief submission to the Committee.

October 2008

Examination of Witnesses

Witnesses: Ms CLARISSA WILLIAMS, President, Ms KATHRYN JAMES and Mr SIMON DECKER, National Association of Head Teachers, gave evidence.

Q19 Chairman: Welcome. Would you like to make any overview statement about how you perceive the problem?

Ms Williams: Thank you for allowing us to come along and inviting us. As an association, we recognise the necessity for Statutory Instruments to bring consistency, to protect our children and to raise standards and to avoid inconsistencies in a situation where perhaps in the past there were too many inconsistencies. Our concern is over the frequency, the scale, the scope and the extent of these regulations. We heard Chris Nichols speaking earlier. A lot of our members feel quite besieged by these. It is the thin end of a wedge where they thought they just about were on top of the job and then in comes another. As a head teacher of 23 years, I rarely read the things because I hoped, through the meetings I would attend and the National Association of Head Teachers, that I would be able to get what the bare bones were. I am really making a plea here for plain speak. If we could have plain speak where people say, "What is it I have to do to translate it into action?" then I think we could cope better. That of course would help the governors as well because of the meetings that we have. Governors, as you know, have huge responsibilities in our schools and are ultimately responsible with the head. It is about how we can make a system more transparent and more manageable. I think through the questions that you ask us later we will be able to elucidate further.

Q20 Baroness Butler-Sloss: You have said in your evidence that there is a distinction to be drawn between experienced and inexperienced school leaders, by which I assume you mean head teachers principally, who may react differently to the pressures of Statutory Instruments. Can you give us a bit more about that? Do you mean by "school leaders" head teachers or the chairmen of governors? Who do you actually mean?

Mr Decker: We were talking about head teachers. I can speak from experience here. The longer one is in post, the more you are aware of sources of support and information. Possibly also having gone through, in my case, three Ofsted inspections I am perhaps more comfortable in my role and more willing to seek

assistance. I realise, having been a member of the National Council for a few years, that every head teacher is in exactly the same situation. We are probably more prepared, as we get more experienced and confident in the role, and more aware about seeking support and less likely to suffer on our own. We are probably more likely to be able to prioritise effectively, to look at the significance of individual Statutory Instruments for our own school. In my case, I am very lucky. Being a fairly large school, a foundation school with lots of different sub-committees of governors, I have been able to harness the experience of governors. That has taken quite a number of years to build up. Probably the most important thing is, coming back to membership of the National Council, we build up those networks. We are more able to seek assistance from fellow head teachers. The pressure of suffering on your own and feeling that you have to produce excellent policies in every single area is somewhat diminished. I do worry about new heads, particularly those in small schools with perhaps fewer governors or less expertise on the governing body, having to cope with staff management, dealing with parents, the LEA, writing a school development plan, and how equipped and capable they are to deal with this raft of guidelines that seems to be increasing by the day.

Q21 Baroness Butler-Sloss: Clearly, your Association offers help to heads of schools. That is one of the things you are there for. What do you think, if anything, should be said to the government Department about what extra help, if any, should be given to new head teachers or inexperienced head teachers, or those perhaps in schools that are not doing so well, who are completely stressed out by trying to cope without all of this as well?

Ms Williams: I sit on the National Leaders' Advisory Body where we look at schools which are causing concern. We talk about the support that such schools might require to help them to be more successful. One of the things that is coming is mentoring for new heads. I must confess that was something I felt very strongly about as a member of that body, saying that we should not be waiting for people to fail. We should be building in support from day one when a person

25 November 2008 Ms Clarissa Williams, Ms Kathryn James and Mr Simon Decker

becomes a leader of a school. The National College for School Leadership could, through the NPQH qualification that all head teachers have to have before they can become heads, perhaps offer more legal knowledge. I was shocked when I gave a talk to a governors' group that the module on governance is not mandatory. It is an option. Every school has to work with its governing body. I think this is an example of a lack of coherence across the piece in our system. Good local authorities have a great part to play in looking at the regulations, interpreting them and giving them to governors and head teachers so that they know what to make of them and are less afraid of them. That is a bit patchy, I would suggest.

Q22 Baroness Thomas of Winchester: When you were a head teacher, did you look at the Statutory Instrument itself? You said you did not really look at them very much. Was it an interpretation you got or was it the Statutory Instrument itself?

Ms Williams: It was an interpretation. I just saw the heading and thought: "I have got this to read". All heads have a pile like this waiting to be read. That went onto that and I knew, if it was that important, it would come up, but we are fairly confident. Not all heads are.

Mr Decker: I am quite happy to go to a fellow head teacher and ask in certain areas if they have already written the policy and could I have a look at it.

Q23 Baroness Thomas of Winchester: In your evidence you refer to the need to take a holistic view of legislative impact. You say, "The holistic view . . . is not always considered by the different parties concerned with instigating the legislation. One example of this is the interaction between the School Teachers' Pay and Conditions Document and the Performance Management Regulations." Can you tell us a bit more about that?

Ms James: Certainly. A lot of this hinges around the issue of timing. People in the Department do not necessarily understand the interaction between the various routes. Particularly with the school teachers' pay and conditions document and performance management, there is an issue about the performance review, the time that that happens, and the time of the pay review. They are out of synch and continue to be out of synch, though it is slightly better than it was in that there is a little bit more flexibility built in. When the first performance management legislation came into place, it was significantly out of synch so that you were expected to do performance management reviews at a time when you needed to have done them a term before to get the pay reviews done. It really is quite often a lack of communication. I work at NAHT headquarters and do quite a lot of work with the Department. It sometimes surprises me, though it should not, that people on different floors are not

aware of the work that the next floor up is doing. They will collide—I use the word advisedly—and you will find that legislation collides and nobody seems to have that big picture. That is really what we were talking about there.

Q24 Baroness Thomas of Winchester: Have you passed that feedback to the Department?

Ms James: Yes. Interestingly, in the Department they now have an area called "the bridge" where people can hold sessions. They have been holding sessions internally to inform people of the work that is going on, but of course they are fairly infrequent. I do appreciate that it is very difficult. The DCSF is a large Department. If you add in the other Departments of government, there is immediately a lack of cohesion that is almost inevitable. My Lord Chairman, you talked about having a champion. That is absolutely key in terms of understanding how the legislation works. I did some work with the Department for Culture, Media and Sport on licensing in terms of the *de minimis* licensing arrangements within schools. That was another piece of legislation that was going to affect schools that the DCSF was not aware of and had no input into. It came from the professional associations putting work into that and yet it was going to have an effect on schools.

Q25 Chairman: I suppose the argument would be that if the government does not understand the systems it should not be trying to interact with them because it is self-defeating. You will not get the outcomes or the results. I am putting words in your mouth.

Mr Decker: In terms of a practical issue with those two specific Statutory Instruments, there was an initial absence of guidelines on criteria for upper pay spine progression which did cause quite a few concerns. While there were these toolkits that have previously been referred to, quite a few of them for performance management, the crucial detail in terms of how to operate the policy at the upper pay spine level was absent. It was left to schools to come initially to their own determination of the criteria for upper pay spine progression. It was only really last year that we had more definitive guidance on that issue. That did cause quite a few issues with the professional associations and put head teachers into conflict with their staff.

Q26 Chairman: You have said it is a problem. Is there anything else you want to say on the solution to that problem? You have talked about "the bridge" but what else could be done to stop this and change it?

Ms James: I think the Department is becoming aware. We are telling the story quite often. I know we are going to talk about the common commencement

25 November 2008 Ms Clarissa Williams, Ms Kathryn James and Mr Simon Decker

dates, but the notion of planning, the lead in time, the audit, the tracking of where legislation is coming from—that is all government Departments—impacts on schools. That is very important. If there were to be someone who was going to do that, that would be of great help to schools.

Q27 Chairman: Ideally, they would have the power to stop some of it happening.

Ms James: Yes. We would all say that there is a surfeit of legislation that is affecting schools and that is coming out constantly.

Q28 Chairman: It is a contradiction in terms to have a minister who is championing stopping doing it.

Ms James: Yes, I know.

Ms Williams: The interface between civil servants and ministers is quite an interesting one. Civil servants tend to change. You get used to one or two and then six months later it is a different group of civil servants, so there is not the continuity there. I am really concerned that there seems to be this awful cliché of the sledgehammer to crack a walnut, but that happens so often. We have something coming up now on compliance, for example, where I know that the Secretary of State wants to issue legislation for a tiny number of schools. Our evidence is that the number of non-compliant schools is fewer than half a dozen and yet, because it represents 16,000 people in one association, we are all going to be subject to the same legislation, which seems to me unnecessary.

Q29 Chairman: That is a very important point for us. Could we get a bit more detail sent to us on that, on the appropriate instrument or measure for the problem?

Ms Williams: Yes.

Q30 Baroness Deech: I wondered if you had views different from your colleagues in the earlier session about common commencement dates. They seemed quite relaxed about this but I gather that you are more inclined to have two dates a year for these Statutory Instruments commencing.

Ms James: It is an interesting question. We would go for, ideally, one commencement date throughout a year preferably. If it has to be two, then obviously April and later in October would be fine. The main issue is the planning and the lead-in. What Chris and Graeme were talking about we would also echo in terms of knowing what is coming up, knowing what is going to be fitted into the school planning process. That is what is essential. If you get into a school year and find that, despite all of your planning and your financial management and whatever, changes come into place that you were not aware of and come in

very quickly, it throws out the whole of the school planning process. It makes it far more difficult. We have an example in the Education and Skills Bill which is about to receive Royal Assent. There were some very late amendments, understandably. That happens, but schools will have to make changes very quickly because they will come into being throughout this school year. They will impact upon schools. To have one, preferably, or two commencement dates would mean that at least schools knew. If we know what is coming, we know that it is going to come either in April or in October.

Q31 Baroness Butler-Sloss: If there are late amendments accepted or indeed initiated by the government to a Bill that affects schools, you do not always have to have every clause of a Bill when it becomes a section in place at the same time. If something comes in late that schools do not know about, might one urge the Department to say that particular matter should not come in for, say, six or nine months? Would that be something that might help?

Ms James: I think that would be a huge help.

Q32 Baroness Butler-Sloss: Has anyone suggested that from your organisation?

Ms James: We have in fact talked about this with the Department for exactly that reason. Schools are large machines. Even the small primaries are complex and difficult to manage. If you get a change that comes in when you have your planning process, it is rather like turning the oil tanker round. You have to take time to build that into the process.

Q33 Baroness Maddock: In your evidence you talk about the opportunity for schools and school leaders to submit feedback when implementation is less than adequate. Could you say a bit more about that because we do have the social partnership. Has this not worked? Could it be better?

Ms Williams: The social partnership is made of many different constituent parts and of course the associations there are representing their members. Therefore, they are talking about many of the issues and the impact on their members and negotiating on that front. In terms of work I have done in the past and membership of groups that I have been in, the perception is that government listens to a favoured group. I think there are leaders in our schools who are very tightly networked who have the ear of government and are perceived to be an elite group. I have heard evidence of that group and wondered why I had not been invited to join. I joke. It is a bit like Groucho Marx, I think. Legislation on its own does not necessarily improve things, as we know. It is

25 November 2008 Ms Clarissa Williams, Ms Kathryn James and Mr Simon Decker

really the spirit behind what we decide. It is like any policy; it is worth nothing if it does not follow up with the real practice. I think we should widen consultation to heads and leaders of schools which are perhaps not so overtly successful. Our colleagues in schools which are deemed to be struggling are inundated with experts trying to help them get better. They spend most of their time talking about what they are doing. It would be really good if civil servants went and talked to that group and said, "What are the hindrances? What do you need? What could we be doing to make you more successful?" That is a group that feels really besieged. They really feel that they are up against it and they know that, if they do not meet their targets, they are out. I think there should be consultation with them and not just those who are high-flying heads. Some are heads of three or four schools. Personally, I do not know how one can do it. They are not the ones that are going to be helped, in a sense, because they have huge networks of support. We are heads of large schools and therefore we have more support and flexibility, whereas a small school or schools which are struggling financially, which do not have the manpower or the governors to support them, those heads are really up against it. Our responsibility is to those.

Ms James: In terms of providing feedback to the Department, we quite often find that what is deemed to be a pilot of an initiative turns out to be a first phase. There is never any real evaluation and policy assurance. Then the impact of that particular initiative becomes quite painful for schools and it could have been made a lot better if perhaps a little more time had been taken and the pilot had been treated as a pilot, so that the issues could have been ironed out before it hit all of the schools. Using a pilot as a pilot rather than using it as a first phase implementation would help.

Baroness Maddock: When we have had evidence when we look at the instruments about pilots, I have been quite critical of some of the statistical reports that the pilots give. They would not pass their GCSE in it, so I think it is interesting that you have said that.

Q34 Chairman: If you take an individual instrument, it is clear that good policy-making ought to involve consulting those whom it is going to affect. To some extent this happens, does it not? The issue we have really identified is the cumulative one. You have talked about a gate-keeper or champion or somebody who has the job of trying to assess the collective impact. Such a person presumably needs to be informed by a reference group of heads from small primaries, big primaries and secondaries so that they know what this is looking like for those who would have to manage it. Is that what should happen, or is that too simple?

Mr Decker: I represent head teachers in Kent and Medway and I learn most from the head teachers who are perhaps struggling a bit, who would not be the favoured few that are normally consulted, the outstanding head teachers with the great ideas. I am not sure about the capability of practitioners to be able to vet proposals because there is a lot of legal language involved in bringing legislation into schools in the first place; but I certainly think, in terms of the implementation review, there should be a wider forum there from head teachers of schools of all types and head teachers perhaps not right at the top of the tree but struggling along in the middle.

Q35 Baroness Thomas of Winchester: I am rather horrified that there is this elite group that you refer to. It seems to me quite wrong. I wonder whether you could pass down the line that you think it should be more inclusive.

Ms James: If I can use National Challenge as an example, we had 638 secondary schools that were deemed to be failing because they failed to meet a particular target. I am going to give you an example of one of our members in one of those schools, deemed by Ofsted to be an outstanding head. The school has been labelled by the parents now as a failing school. That school has 87 languages in it. It is not that English is a second language; English is quite often a fourth and fifth language. There is a lot of intake in terms of asylum-seekers because it happens to be close to the Home Office office where people go. There is an issue with white, working-class boys within the school. They do an amazing piece of work. Other schools deemed as good or even outstanding schools learn an awful lot from the head teacher of what has been deemed by the National Challenge to be a failing school because of the work that they do with disaffected and very disadvantaged youngsters. We need to recognise what is coming out of the schools that maybe are not getting the academic qualifications and the work that they do. They are delivering exemplary work in some situations and we need to learn from them. Sometimes, I think we almost bypass them to look at the top of the tree.

Ms Williams: We had the IRU here and I think that organisation is coming under review. There is a suggestion that there will be a reduction in the number of practitioners on that group. They have in a sense been seen as a champion of all the associations. If anything, the message we might like to take back from all of this is that people look at what the future of that group is and listen to what was said by those people. If they had more teeth and worked in some way with the social partnership, there could then be some constructive way forward, saying, "Let us ask some of the key questions first before you start to legislate".

25 November 2008 Ms Clarissa Williams, Ms Kathryn James and Mr Simon Decker

Chairman: We are well persuaded of that. It has almost made the case for fewer ministers and civil servants and more information from real life about what is happening out there.

Baroness Maddock: How involved are local authorities in trying to help you sift through this and feed back to government? In the days when I was a teacher, which is a long time ago, they had a much greater role than they have now. I think in our previous evidence Lancashire was set up as a rather good example of a local authority helping.

Q36 Chairman: Are they a solution or are they a problem?

Mr Decker: Neither really. They have so many targets. We spent the last head teachers' meeting yesterday morning on the implications of Baby P, and CAF¹ forms, and there are so many issues they are dealing with. They are under so much pressure themselves that I am not sure they have the capacity to help in the same ways that our professional associations can.

Chairman: Thank you very much indeed for a very interesting evidence session. Thank you for coming and helping us today.

¹ Common Assessment Framework for children and young people

TUESDAY 9 DECEMBER 2008

Present	Butler-Sloss, B.	Lucas, L.
	Eccles, V.	Rosser, L.
	Filkin, L. (Chairman)	Thomas of Winchester, B.
	James of Blackheath, L.	

Memorandum submitted by the Advisory Centre for Education

BACKGROUND

The Advisory Centre for Education (ACE) is a national charity which advises parents, carers, governors, local authorities and others on education law and practice in the state sector for children of compulsory school age. We run a free telephone advice service and a free texting service and are thus in daily contact with people experiencing a variety of educational issues.

ACE also delivers training on education law issues (eg school admissions, exclusions, special educational needs (SEN)/disability, attendance issues, etc) to local authority officers, school head teachers, governors and staff, voluntary sector advisers, admission and exclusion appeal panel members and clerks, and lawyers.

We regularly respond to Department for Children, Schools and Families (DCSF)'s consultations (both formal and informal), and have meetings with DCSF civil servants and ministers to discuss policy and legal issues. The statutory exclusions guidance (*Improving behaviour and attendance: Guidance on exclusion from schools and Pupil Referral Units, Sept 08 (00573-2008DOM-EN)*) states in para 89f that schools/PRUs should advise parents/carers of ACE's contact details when their child is excluded if they wish to receive independent advice.

In order to serve our client base, it is necessary for ACE as an organisation to keep abreast of all aspects of education law.

We have answered your questions primarily from our own point of view, but where we have knowledge of the practice or experience of others (eg schools), we have sometimes referred to it.

NUMBER OF SIs

1. *How do those affected by a large number of SIs keep up-to-date with the many new, or amended, requirements?*

ACE makes it its business to follow all new developments in the sector and to write its own summaries of changes in the law. However, even for an organisation whose "core business" is to keep up to date with developments, we find that the sheer number of SIs makes that a complex and time-consuming task.

Our impression is that schools and local authorities (LAs) have difficulty in keeping up to date and we come across instances on a daily basis where schools and LAs do not seem to know the law (this is often the case, for example, with exclusions, where we find that the above statutory guidance has not been followed). There may be a number of reasons why schools fail to follow the law, but the large number of new SIs and amendments to regulations is certainly one of them.

ACE refers to both the SIs and government guidance when we advise and train, but our experience shows that schools and LAs, which have less time to spend reading legislation, are unlikely to read SIs and might rely entirely on government guidance or guidance offered by LAs. Not only is there sometimes a discrepancy between the two, but there is often also a time-lag between SIs being issued and guidance about them becoming available.

For example, statutory guidance sometimes refers to the fact that a school "should" do something; whereas the SI states that it "shall" do it. The confusion between a mandatory requirement in law and a discretionary recommendation in guidance, which purports to explain the law, makes interpretation for lay staff extremely difficult and confusing.

An example of the latter point is the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, which came into force on 1 April 2008, details of which were not included in the statutory exclusions guidance until the September 2008 version came out. The law was changed by this SI to the effect that fixed period exclusions from a PRU were no longer to be reviewed by the LA, but by the management committee of the PRU. Between April and September 2008 schools and LAs would have been relying on the old, inaccurate guidance. If any representations about fixed period exclusions from PRUs were heard during this period by LAs, they will have acted *ultra vires* and their decisions will potentially be challengeable.

2. *What steps do the Department take to ensure timely and accessible communication about new regulations? Is there evidence that such communication is effective?*

As far as ACE is aware, the DCSF does not have a mechanism to alert schools and others (eg LAs) of new regulations. They do advise when new guidance (explaining the law) is published via e-mailouts through “Teachernet”, but as mentioned above, this is sometimes delayed and/or inaccurate. Generally, it would appear that the DCSF relies on LAs to keep their schools (heads and governors) up to date.

ACE is also concerned about the increase in the number of academies, ie independent state schools, not maintained by LAs, since it is unclear how they are notified of changes which apply to them (such as guidance on exclusions), as LAs do not have to keep them apprised of changes.

We believe that the Department should do two things:

- 1) produce an on-line working document for each subject area covered by education law which incorporates all changes and amendments to the law and is kept constantly updated; and
- 2) produce an alerter to point people to changes in the law and explain the significance of the changes. This should be sent out to LAs, schools and other interested parties free of charge whenever any changes occur (including dates when previously published SIs come into force etc), attaching the relevant document (as above), duly updated to incorporate the changes.

3. *Is it always clear what a new SI actually requires schools to do? (Examples of clear, and unclear, SIs would be very useful.)*

No. The legal language is often difficult for lay people to understand. One example is a recent call to our advice lines from a mother who was a qualified teacher. Her son had just started year 6 and she was concerned that although there would be SATs at the end of the year, the class was being taught every Friday by a Higher Level Teaching Assistant (HLTA), for the whole day. The mother decided that she would rather educate her son herself and kept him at home on Fridays, whereupon, the Head sent the attendance officer round, who threatened prosecution.

We tried to check the legality of this under the Education (Specified Work and Registration) Regulations 2003, made under the auspices of S.133 Education Act 2002. These regulations have been amended three times and there have been two pieces of guidance issued, one in 2003 and one recently, to take account of the most recent amendment. The regulations appear to conflate two issues—employing HLTAs and employing other types of nearly-qualified teachers. The amendments mostly relate to the latter.

The regulations do allow for persons employed who are deemed to be suitable by the head to teach a class “under the direction and control” of a teacher but nowhere could we find a specified time limit in either the regulations or guidance. The process of trying to find out the answer to this question took a fair amount of time.

We found the SI confusing (a) in the way it is laid out (much of the detail is contained in schedules); (b) in terms of the number of amendments it has and c) for the fact that it was vague and inconclusive on the point we were researching.

TIMING OF COMING INTO FORCE

For business-related SIs, the Government have adopted two common commencement dates (CCDs), on 1 April and 1 October of each year.

4. *Would it be helpful if there were CCDs for schools-related SIs; if so, how many, and on what dates?*

It would be enormously helpful if there were CCDs for ACE, and also we believe, for schools and LAs, and our informed guess is that schools and LAs would prefer certain times of year over others. For example, if new regulations are issued in September, this could cause problems for schools, as they are busy with the new school year and their new intake. The DCSF currently often publishes revised guidance in the summer, and this also causes schools problems, as they are away during the summer and return to the busy beginning of term, with little time to update themselves before the new regulations come into operation. If the government would like schools to take on board new regulation in a new academic year, it would be helpful if the regulations could be issued, for example, early in the previous July. In addition, it would make life easier for schools if all regulations could be made on one date per year. If that is not possible, then we would suggest that for practical reasons, no more than two dates per year should be chosen.

5. *Alternatively, would it be more helpful if the introduction of new or amended requirements were more evenly dispersed throughout the year?*

If new regulation is dispersed throughout the year (as it is now), this requires a “watching-brief” on the part of the whole of the sector, including ACE, and operating this takes up time and resources. There is also a significant risk that things might be missed. Our sense is that even if there were just one CCD per year for education and a great many new regulations needed to be issued at once, this would be preferable to dispersing them evenly, provided the date chosen gave schools and LAs a fair chance to assimilate them properly.

ADVANCE NOTIFICATION / CONSULTATION

Some SIs will have been publicised in draft form in parallel with the relevant Act and the Department will have carried out a consultation exercise on them before laying them before Parliament.

6. *How aware are you of the development of legislation before it comes into force?*

ACE makes it its business to be very aware, but we are unusual in the sector for being able to dedicate time to this task, although this places a burden on our limited and stretched resources. Our sense is that schools and LAs find it difficult to give much, if any, time to keeping up with developments. We believe that we assist in this regard by offering updating training, but school and LA resources are similarly stretched, and they cannot always afford to pay for this.

ACE uses a legal update subscription service and we subscribe to (free) alert services. However these are not always reliable (eg despite registering with the DCSF consultation site alert system, we do not appear to be notified of new consultations eg concerning new policies, law and/or guidance).

7. *Is there adequate advance notice of schools-related SIs, and does this allow enough time for those affected to prepare for and comply with new requirements?*

ACE does not believe this to be the case, for schools, LAs and organisations like ourselves. It is necessary to read and assimilate often complex law and then to disseminate this to others and for schools and LAs to then implement the changes, which sometimes involves time-consuming planning.

The DCSF sometimes (usefully) publishes draft SIs together with draft legislation to inform parliamentary debate. Sometimes law is then passed on the basis of the draft SIs, but subsequently changed, without any possibility of further debate or amendment.

For example, the DCSF amended the law via the *Education and Inspections Act 2006* and related regulations (SI 2007/1870) to require schools to provide suitable full time education to an excluded child from the sixth school day of any fixed period exclusion. During the Bill's debate, the draft regulations and answers to parliamentary questions confirmed that exclusions would be cumulative ie that if a child was excluded for three days and then subsequently a further five days, the so-called Day 6 duty would apply from the third school day of the second period of exclusion. Once the bill was passed, ACE believes as a result of lobbying on behalf of schools, this was amended to no longer being cumulative. This has resulted in many schools giving several less-than-five-school-day exclusions, so that the duty never applies to them. This then places an added burden on parents/carers who have to ensure that their excluded child is not found in a public place (which could include a doctor's surgery, their work place, etc) during the first five school days of any exclusion. Unless parents can reasonably justify this, they face the imposition of a penalty notice.

FEEDBACK FROM IMPLEMENTATION

8. *What arrangements are in place to feed back practical experience of implementing SIs? Do those required to implement the requirements consider they have adequate channels of communication to the Department?*

The DCSF does sometimes hold, for example, regional workshops for schools, LAs and others to discuss the implementation of some changes (eg for the above mentioned Day 6 provisions, in the summer before they had to be implemented). These were about the practical implications of the policy rather than the actual law, but they were useful.

Subject to individual sectional variations and changes of staff, it is sometimes possible to discuss practical problems with civil servants, which again can be useful.

ACE has relatively regular KIT (keeping in touch) meetings with various departments in the DCSF where we can feedback what we hear through our advice lines and training.

9. *Do you have any suggestions on how the process of developing and communicating new regulations could be improved to make it a more effective means of delivering Government policy?*

Our view is that it would be even more helpful if more detail could be contained in primary legislation. It used to be the case that if a question arose about a detail, the answer could often be found by looking at the Act. This is quite rare today, as much of the detail is to be found in disparate SIs and guidance notes.

Linked to this is an urgent need for a consolidating Education Act (along the lines of the Education Act 1996 (which currently stands as amended and supplemented by the *School Standards and Framework Act 1998*, the *Education Acts 2002* and *2005*, the *Learning and Skills Act 2000*, the *Education and Skills Act 2006*, etc, plus too many SIs to mention).

There are two main problems with the current reliance on secondary legislation. First, it makes finding the answer to questions much more time-consuming and difficult and second, it can be less democratic, if, as in some cases, a plethora of SIs has had the effect of changing the character of what appears to have been originally envisaged by parliament, and it has come into force without full parliamentary scrutiny, as would be afforded to a bill and its schedules.

One example of the latter is to be found in the way the collection of information on school children has increased pursuant to regulations issued under enabling provisions in the *School Standards and Framework Act 1998*. The regulations have broadened the scope of information collection quite significantly and that raises a question as to whether the implications of the enabling provisions were fully realised by those debating the Act when it was passed.

10. *Do you have experience of an SI which, in your view, has been unworkable or has failed to achieve its policy objective?*

In relation to a child with a statement of special educational needs who is looked after by a LA, but placed and educated in a different authority, reg 7 of the *Education (Areas to which Pupils and Students Belong) Regulations 1996* (SI 1996/615—the belonging regulations) were supposed to provide for the LA where the looked after child is residing being able to recoup the costs of any additional educational provision they make for the child under the statement from the originating LA who legally looks after the child. Reg 23 of the *Education (Special Educational Needs) (England) (Consolidation) Regulations 2001* (SI 2001/3455) covers the transfer of a child's statement from one authority to another, and who is responsible for making the provision under the statement on transfer.

As a result of *R (on the application of L) v (1) Waltham Forest London Borough Council (2) Staffordshire County Council* [2007] EWHC 2060 (Admin), there is now confusion over which LA is responsible for maintaining and making the provision for such a child's statement. This has resulted in extremely vulnerable children not having the requisite provision made for them whilst LAs argue about the interpretation of the law. The DCSF maintains that the judgement misinterprets the intention behind the regulations, but accepts that until such time as the regulations are clarified in new secondary or primary legislation, the judgement applies. The policy objective of protecting and making provision for vulnerable children in both these regulations is definitely not being achieved.

October 2008

MAIN STATUTORY INSTRUMENTS FOR SCHOOL ADMISSIONS (OCTOBER 2008)

What follows is a list (though not an exhaustive one) of SIs for school admissions, which might give a flavour of the difficulties created when regulations are continually amended.

In the October 2008 DCSF consultation on school admissions and appeals, there are five new draft SIs which will replace some of what follows.

- Education (Admission Forums) (England) Regulations 2002: SI 2002/2900 as amended by:
 - Education (Admission Forums) (England) (Amendment) Regs 07: SI 07/192
- School Admissions (Co-ordination of Admission Arrangements) (Engl) Regs 07: SI 07/194 (Consolidate, amend/revoke SIs 02/2903, 03/2751, 04/1515, 05/2 for primary schools and SIs 02/2904, 04/1516 for secondary schools)
- Education (Determination of Admission Arrangements) Regs 99: SI 99/126 as amended by:
 - Education (Determination of Admission Arrangements) (Amend) (Engl) Regs 02: SI 02/2896
 - Education (Determination of Admission Arrangements) (Amend) (Engl) Regs 07: SI 07/497
- School Admissions (Alteration and Variation of, and Objections to, Arrangements) (England) Regs 07: SI 07/496 (Consolidate, amend/revoke SIs 99/125, 02/2898, 02/2901 & 05/873)
- Education (School Information) (Engl) Regs 02: SI 02/2897 as amended by:
 - Education (Amendments to Regulations Requiring the Publication of Pupil Performance Information) (Engl) Regs 05: SI 05/845
 - Education (School Information) (Engl) (Amend) Regs 05: SI 05/2152
- Education (Infant Class Sizes) (England) Regs 98: SI98/1973 as amended by:
 - Education (Infant Class Sizes) (Engl) (Amend) Regs 06: SI06/3409
- Education (Aptitude for Particular Subjects) Regs 99: SI 99/258 as amended by:
 - Education (Aptitude for Particular Subjects) (Amend) (Engl) Regs 06: SI 06/3408
- Education (Admission of Looked After Children) (Engl) Regs 06: SI06/128:
 - School Admissions (Adjudicator Determinations Relating to Looked After and Certain Other Children) (Engl) Regs 07: SI07/105

Examination of Witnesses

Witnesses: Ms DEBORAH ISHIHARA, and Ms INGRID SUTHERLAND, Advisory Centre for Education, gave evidence.

Q37 Chairman: I am Geoffrey Filkin. I am the Chairman of the Committee and you can see the rest of the Committee members around the table so I will not read out their names for you. Thank you very much for coming to help us with our inquiry and for giving the evidence you have already put in. Perhaps I could invite you to start off by giving us in your own words how you perceive the problem, if there is a problem, with the volume of legislation and guidance and how you think it is perceived by schools.

Ms Ishihara: First of all thank you very much for inviting ACE to give oral evidence today. Just to summarise our points and expand on them a little and hopefully answer that question, as you know, ACE is a longstanding national charity which advises, trains and publishes on educational issues. As you will have noticed from our written evidence in terms of our advice role, ACE perhaps sees things, including SIs, from slightly further down the track than most of your other contributors. Many

of those who made written submissions are involved in implementing SIs made by government whereas we come in later on, either when something has gone wrong or is about to go wrong. In other words, we see things perhaps from the point of view of end users—who are children and families. Of course, we have great respect for all the challenges that schools face in implementing all this legislation but because we come into this from a slightly different angle we sometimes have a different point of view than perhaps some of your other contributors. So, in terms of summarising our views, there are just three points that I would like to make. Number one is a need for clear law set out in black and white in our view. Number two is a need for fairness and accountability, and they go together, and there is also a need for clear information from government. Those are the three points. To come back to the first one, the need for clear law, first, what we gather from parents on our telephone advice lines every day is that it is imperative for them that there should

9 December 2008

Ms Deborah Ishihara and Ms Ingrid Sutherland

be clear rules which are implemented consistently across the board for all children. That is what gives them confidence in the state education system. One or two of your witnesses have suggested that they might prefer it if, instead of issuing lists of rules for them to follow by the letter, government could instead explain its policy objectives and then allow schools a certain discretion as to how to implement them. We can see why schools might like to do things that way and we do acknowledge the burden placed on teachers and schools, but I am afraid to say that we strongly disagree with that position because it would almost certainly lead to less consistency and therefore more unfairness and, crucially, it would lead to a drop in parental confidence in the system. As we mention in our submission, we do come across quite a few instances where SIs are unclear and not particularly helpful, and we have talked about a few of those, but nevertheless we would like to clarify that we are in favour of clear law set out in black and white because we believe it is the best way to protect children and to serve the public interest. Without clear instructions and procedures there just cannot be proper accountability and there is no means by which to safeguard children in the system.

Q38 Chairman: Can I just press you a little bit on that because in a sense that is the traditional view, is it not, specifying inputs, guarantees, procedural justice and therefore all is well, but if it does not get decent outcomes at the end of it, or it inhibits getting decent outcomes, it is arguably nugatory as a process?

Ms Ishihara: That is if the SIs in effect do not work because they are not clear, for various reasons, but if it is done well and if, for example, you use the explanatory memoranda to explain the policy objectives behind it, you set them out clearly, then, if the system is working properly, having that clear law in black and white makes it much easier. For instance, on the telephone lines every morning when we advise, you might get a situation where you talk to a parent whose child is being bullied. It is very difficult to legislate against bullying, obviously. If you have a situation like that it is very difficult to help the parent in any meaningful way because there is nothing you can point to, or not very much. There is a duty on schools to prevent all forms of bullying but it is quite nebulous. If you contrast that with exclusions law where there is guidance and it sets out exactly the circumstances in which you can make an exclusion, then if there has been one you can sometimes satisfy a parent that the school was doing something that was right or you can say to a parent, "It does not look like this was the right thing to do and you can perhaps go back to the school and talk about this and maybe raise it with the

governors". If you have something set down in black and white it does tend to help.

Q39 Chairman: I am sure you are right if you have looked at it from that perspective, but the problem that we are picking up from a number of witnesses, a number of whom are headmasters, is that the consequence of specifying in more and more detail the inputs and processes that schools are meant to go through leads to an unbelievable volume of detailed regulations and instructions. There are two problems we hear from witnesses on that: first, nobody reads it because it is too much so they do know not what to do, and, secondly, it so handicaps the ability to apply creativity that they become almost compliance issues. I am paraphrasing.

Ms Sutherland: I think that is a completely valid complaint but the main problem is the pace of change, that everything is changing all the time and nothing is given the time to bed in properly, whereas some of the legislation is absolutely imperative. I do not think we are saying it all has to be there. Just listening to the radio this week as a lay person about the changes in terms of the national curriculum, there is new bullying guidance. It just goes on and on and that is the problem, that we are just having too much come up, and we do not want to throw the baby out with the bathwater because some of the stuff we have got is essential.

Q40 Chairman: You have set out three principles as to what would make for good SIs and good dissemination. I am sure that the Department will totally agree with you that they agree with those principles. Do you think that is happening or not? What is your stance?

Ms Ishihara: To a certain extent. My second point was about fairness and accountability. For instance, we raised the point about academies. Some law does apply to them but some does not and it may be that they are not automatically included in training or alerters that local authorities have to provide for them. Also, just the fact that the wider body of law does not apply to them generally is difficult, so if government wants to make it clearer it could make perhaps one sweeping change to simplify and strengthen the education system, which would be to make all academies subject to the same rules as maintained schools. Government does provide good information to some extent but you were looking at some of that, were you not, Ingrid, on TeacherNet?

Ms Sutherland: I am not quite sure which of the three principles you were referring to.

Q41 Chairman: The three that you quoted.

Ms Sutherland: You mean the three main principles?

9 December 2008

Ms Deborah Ishihara and Ms Ingrid Sutherland

Q42 Chairman: I was basically asking a simple question. You said those three principles. I am really asking do you think that is happening at present? Is there a problem?

Ms Sutherland: If we take each of those three principles to start off with, the need for clear law in black and white I think is happening but there is too much of it and we need to take a step back and let things bed in. In terms of fairness and accountability I think there are some very good changes that are coming in, for example, in school admissions, although they are not specifically Statutory Instruments and I know that is your brief, but what they are trying to do is bring in new codes for admissions and appeals, which have a greater authority, so instead of having to have regard to the codes you now have to act in accordance with them. I am sure we are all going to go to court at some point and find out exactly what “act in accordance with” means, but the codes themselves impose mandatory requirements. They do use lay persons’ language which is more likely to be understood. For example, we are worried that the exclusions statutory guidance does not have that same authority and those sorts of things cause problems. If we had the same for all areas of education law I think that would be helpful. With regard to clear information from government, as Deborah was saying, we have brought some examples if you want them from the websites that the DCSF use which are very useful. They send out updaters to schools. Every few weeks they send them out and again we come back to the problem that there is too much, but it is quite clear; there are useful summaries, and I think if that was used more often that could help solve the problem but it is just too much. That is the problem.

Chairman: That is very helpful. Not for answering now, but you might care if you had a minute just to send us a view in that you are basically arguing for more specification of what should be done because you think that better protects parents’ and children’s rights. I would be interested to know what you think, if that is the case, should be knocked off this volume of regulation that is coming. Do not answer now; it would take too long, but tell us what should be knocked off because I think that is not necessarily easy.

Q43 Baroness Butler-Sloss: If we go back to the question of schools admissions, and you have given us an annex with a large number of Statutory Instruments, we have also been told that last year the Schools Admissions Code was over 100 pages in length and it has got both “you must” and “you should” on a lot of occasions and they seem to be interchangeable or they do not exactly mean the same thing but it is difficult, I suspect, for schools to work out what they have absolutely got to do and what

they probably should do. I have two questions. How do you think the schools are coping and are you expecting the government Department to make some changes to improve things?

Ms Sutherland: First of all, possibly some of the English teachers or headteachers could help the DCSF understand the difference between “should” and “shall” and “must” and all the rest of it. I have been responding to consultations for far too long now and spend hours underlining when regulations say “shall” and then in the guidance they say “should”. We have picked up various examples over the years where they get it wrong and I think that is a real problem. In the training that we provide for schools and local authority staff we spend a great deal of time emphasising the difference between regulations and guidance and “shall” and “should”. I think they are trying and I think they are succeeding to an extent, so the example I gave earlier about the Schools Admissions Code I think is a move in the right direction to give that more authority, because people are more likely to read that than the regulations provided it is correct. There are problems and I do not think schools are coping at the moment. There were two examples that we thought of. The Local Government Ombudsman did a special report on admissions. It is a few years ago now but he pointed out very clearly that over half, so double the number of schools that are their own authority for admissions, were making errors in both their admission applications and appeals than local authority schools where I think they had more support from the local authority. That was one example which we felt showed how they were not actually doing it properly. The other example is that the Schools Adjudicator recently published his annual report¹ and also was instructed by the Department to investigate how applications were being dealt with, and we thought the results were deeply worrying. They looked in the end at about 3,000 voluntary aided and foundation schools which are their own admissions authority, so they dealt with their applications and appeals separate from the local authorities, and they said that over half of the 3,000-odd schools that they looked at breached admissions laws, so they were not following the code. If you do not mind, I will just say the numbers because I think they are horrifying. They said there were more than 800 substantial breaches of the codes and more than 2,000 were not properly defining terms which are incredibly important for parents. What does “home address” mean? What does “distance” mean? That was not clear and we spend our lives advising parents how to look at exactly what information is published. Then they said that over 800 asked questions that were not allowed by the law. I am not here as a

¹ Office of the Schools Adjudicator, Annual Report, September 2007 to August 2008:

9 December 2008

Ms Deborah Ishihara and Ms Ingrid Sutherland

spokesperson for the Department at all but we felt that this was a very good move, that they got the investigation, they got these responses and they are tightening up the law in the Education and Skills Act that has just come into force to try and stop this, so problems and trying to deal with them I think is the short answer.

Q44 Baroness Thomas of Winchester: You say in your evidence that you do not think the DCSF has a mechanism to alert schools and local authorities to new regulations, although they do advise when new guidance is published by email through TeacherNet, but this is sometimes delayed or inaccurate. Do you think it would be an improvement to have online documents from DCSF showing all relevant education legislation and online changes and sending out an “alerter” (is it called a pop-up?) when changes are made, or do you think schools would be more willing to use email or would they still rely on guidance from others?

Ms Ishihara: I think if it was properly implemented it could be very useful. Guidance could be included as well in this. The idea was to produce a document which people would think of as their reference point, so their bible, if you like. We produce something when we train on admissions, for example. We have a booklet that sets out the law as amended so it is all there clearly in front of you and the repealed parts have been taken out, so you can see exactly what the law says at that moment. That is useful. I think schools would look at it if it was good and it was clear.

Q45 Baroness Thomas of Winchester: And online?

Ms Ishihara: And it was online, yes. In our admissions booklet we also have background information and examples of letters and questions and answers and case studies and the like, and if government were to include explanatory material as well that might also help. We did make the point that it should include “all education law” but we would like to broaden that out and say it should include “all law that impacts on schools” because one of your other contributors did make the point that other law does impact on schools. I can think of an example of one area of law which splits neatly into two bits, one with education-specific SIs and another bit which has general law obligations, and schools do, just anecdotally from my experience talking to parents, seem to know the education law bit better than they know the general law, so there is a need for somewhere they can go for everything to be there in one place.

Q46 Baroness Thomas of Winchester: Have you got any research from schools that this is what they would like or is it just your feeling?

Ms Sutherland: It is mainly our point of view, as Deborah said at the beginning, from the end user’s point of view, but because of the training we deliver we do go into schools and train them on things like school admissions and exclusions and special educational needs, and that is the feedback we get. On the other hand it is really not up to us to tell you what schools would like. I know you are hearing from their own unions and I think we need to listen to what they say, but we do think that practically from the feedback we have had from our training that it is something that could help.

Q47 Lord Rosser: There are two questions I would like to ask, one the question I intend to ask and the other one which flows from something you said earlier. It is not a question that I wanted to ask originally in this context. We did when we asked for evidence say that for business-related Statutory Instruments government had adopted two common commencement dates, one in April and one in October. In your evidence you seemed very sympathetic to the idea, and indeed you said, “In addition, it would make life easier for schools if all regulations could be made on one date per year”, and you said, “If that is not possible no more than two dates should be chosen”. I wonder first of all if you would say a bit more about what you think would suit schools best as a date or dates when Statutory Instruments should come into force. The other question flows from something I believe you said earlier about the need for clear rules. You said there is not a problem on that if the Statutory Instruments are done well. I know you do not have a precise figure and I am not asking for that, but in general terms roughly what percentage of the Statutory Instruments at the moment then do you think are done well and meet your criteria? Are we talking about 10 per cent, 80 per cent or what?

Ms Ishihara: If I come to your first question first, first of all I have to say that it is not really a matter for us to answer what would suit schools best. We are not really in a position to say what would suit them best, but, just as a practical legal matter on this which perhaps we can comment on, if there were to be a date chosen we think it should be either at the beginning of a term, or preferably at the beginning of the school year, but not in the middle of the school year. I think one or two respondents suggested October or April or something along those lines but you can imagine a situation where supposing you have got a date of 1 October, for changes to be made and that year there are significant changes to the exclusions rules, and on 30 September a child does something for which he is not excluded. On 1 October a child in the same class does the same thing and is excluded. You can see how parents and children might find that unfair or difficult. For that sort of reason I think it would be

9 December 2008

Ms Deborah Ishihara and Ms Ingrid Sutherland

preferable to make the date at the beginning of the school year. In terms of lead time, again, we cannot really say what the schools would like but we would imagine that schools would like a minimum of a term to implement the changes so that they would become aware of changes, say, at the beginning of the summer term to begin at the beginning of the academic year in September. There are recent examples of good lead time and poor lead time. An example of poor lead time is in the new Admissions and Appeals Codes which were laid before Parliament last Thursday and are due to come into force on 10 February and apply immediately, not giving very much time. In contrast, there are the new SENCO regulations² which we would say are an example of good practice. They were laid before Parliament on 21 November this year to come into force on 1 September next year and they also have a very good accompanying explanatory memorandum, very detailed and clear, giving the legislative context and the policy background, referring to the consultation process, et cetera. We think that is particularly good.

Ms Sutherland: In terms of your second question, I do not know but I think it is a really interesting point to make. All I think we can say is that these recent special educational needs co-ordinator regulations do look as if they may be a move in the right direction. We are not sure if that is a definite policy decision by the Department to give longer lead-in times and better Statutory Instruments but we are hoping that it is a sign of more positive things to come in the future. Figure-wise I am afraid we just do not know.

Q48 Lord Lucas: When you tell government what your parents are telling you do they listen and, if they do listen, does it turn into useful changes at the end of the day, and, if not, where is the chain breaking?

Ms Sutherland: I think you will not be surprised to hear that we think they do not listen to us; they listen to teachers more, and I am sure teachers think that they listen to us far too much and do not listen to them enough, but probably, appropriately, schools are far greater stakeholders than we are, although if you see us as representing families then we are important. They definitely do listen to us but we are also aware that they have so many different stakeholders for the different points of view that they could not possibly change everything that we all ask them to do. What does not necessarily happen is that the law is changed, but an example where it did happen, and I think we gave this in our written submission, was when we looked at the standard of proof that is required in exclusions and there was a Court of Appeal judgment that said that where there

was a very serious offence the standard of proof about what the child did needed to be the criminal “beyond reasonable doubt” standard. Understandably, schools said, “We are not lawyers, we are not judges. We cannot apply this”, and pretty quickly the government issued a Statutory Instrument to amend it. We did not necessarily agree with that but that was a pretty quick response to bring about the change there. There was also an example where there were looked-after children who have statements of special educational needs, very vulnerable children with great need who are placed outside their own authority because there is not the provision for them in their own authority, and there was a case, I think in the first instance judgment, where they decided that the authority that had to make that provision was different. There was basically a conflict between what are known as the belonging regulations and the special educational needs regulations and we were extremely worried about that. In addition to my work at ACE, I work for an independent fostering agency which places the most needy children and so most of our children are placed out of authority, and we were getting a situation where all these authorities were ringing us up and saying, “Hold on, we no longer have to make this provision. It is the authority that has got the regulations”. That happened last year and we are still waiting for clarifying regulations to come in, so it is a complete disaster and I do not think the response time is good, although, to be fair, what the Department are saying is that they also have to consult their Welsh colleagues because there are children placed across the border and the wheels of government turn slowly. We can see the complicating issues there but that is an example where what they did was issue a letter explaining their point of view and disagreeing with the judgment but saying, “Obviously, the judgment stands at the moment and we are looking at how we can clarify this”, but that is an example where they did not. My final example is on exclusions. Again, it is not specifically Statutory Instruments but when we do respond to consultations we have pointed out issues where we think there is not enough protection for vulnerable children and they do seem to respond to that and change the guidance. So I think they are listening but there are competing points of view and they cannot satisfy all of us all of the time.

Q49 Chairman: When we look at the transcript we may come back to you for further detail on that specific issue so that we can identify the speed of rectification on that.

Ms Sutherland: We know you did not want presentations but, as you can no doubt tell from our nerves, we did prepare written answers and we have also got the specific references to cases and

² SI 2008/2945 Education (Special Educational Needs Co-ordinators) (England) Regulations 2008

9 December 2008

Ms Deborah Ishihara and Ms Ingrid Sutherland

regulations. If you like we could hand those in to you, which would help as well. We also have an example of the training pack where you can see the sort of detail that we are using as examples, which might be useful.

Chairman: Thank you. That would be very helpful.

Q50 Viscount Eccles: I wonder if we could move on to post-implementation review. How much does the Department do and how successful do you think it is?
Ms Sutherland: I think I can answer this very shortly. I do not think they do it a lot as far as we are aware but we think with the pace of change at the moment it is very difficult to do that. Our point of view is that what is more important is pre-implementation consultation so you get it right beforehand. I think they are trying to do that but, for example, with the exclusions guidance that was amended last year there was just a mini, very informal consultation with very few people and we felt not all stakeholders were given a voice. We were consulted but a lot of other people were not. We think it is before implementation that it is more important and we think yet again the pace of change must slow down a bit.

Q51 Viscount Eccles: I wonder if you could try filling the gap between your “too much” and the Chairman saying, “But what are you going to give up?”. We do not have a lot of control over the pace of change, arguably. What you are looking for, if I have listened carefully, is clarity and consistency and that gives a sort of certainty of input at stage one. Then you are looking for the interpretation of the process also to have certainty and consistency within it. Then when we come to the outcome is there not a problem about variables, because your clients in effect are parents and children? They vary quite a lot as to their attitudes to life and as to what they think is right and what they think is wrong, and what you think is certain, and it has been interpreted neatly and tidily, they may find difficult to agree with. Is post-implementation not tremendously important in order to be able to assess how accurate the outcomes were in relation to what was supposed to happen, given the clarity and certainty with which you began?
Ms Sutherland: I think I have to agree with you and say that I was probably wrong in my answer. I think that is a very valid point. I am just not sure how it can be done but I do think if it is done we have to be very careful that all stakeholders are involved in that, not just, say, schools, because our basic point was that we come from the end user’s point of view and so families, however different they are. We need some sort of voice from them about the outcomes as well as, very importantly, the schools’ perspective.

Q52 Viscount Eccles: Finally, and much shorter, do you think you could ever come to the point where you were trying to achieve the impossible?

Ms Sutherland: I assume I am not supposed to answer that.

Q53 Viscount Eccles: No, no. It is an absolutely serious question because if you have the certainty and the clarity — I will give you a bullying example. One person’s bullying is another person’s rough justice and it is another person saying, “We had an accident playing football in the yard”.

Ms Ishihara: That is right. It is difficult to legislate for bullying and we are not suggesting that you should necessarily legislate to the letter in all of the different subjects, but where you can it should be as clear as possible for consistency.

Q54 Viscount Eccles: I am looking for the line between where you can and where you cannot and I wondered if you had a view about that.

Ms Sutherland: I do not think I have a view on that, but I want to say that we do recognise the professionalism of teachers, and in terms of trying to work out where this line is you were quite right to point out that there is not a single parent’s voice; there are different parents, but there are also different schools and so when you are trying to find that line what you need to do is think of the different schools. We hear of some very poor practice that goes on in schools and, given the nature of our work, those are the people we hear about. We do not hear about the good stories; we hear about the bad stories, and so in drawing that line somehow somebody has to take account of all those different things and I must say I am not sure where the line can be drawn there.

Q55 Baroness Butler-Sloss: I wonder if you would forgive me asking you a question that you were not warned about. Coming back to the number and complexity of Statutory Instruments, I wonder whether from your perspective the use of a local authority as a gatekeeper, where there would be somebody specified to deal with and in particular filter the information from Statutory Instruments and feed it to schools in the area, would be something that might be helpful?

Ms Sutherland: I think it could be helpful but what is not helpful, of course, is the new schools that are growing up, the academies, which are not bound to the local authorities. We are not against academies *per se* but we are worried about the freedom they have in terms of poor practice, and some voluntary-aided or foundation schools as well, because, again, in all the reports that come out it is the schools that are freer where there are more problems with lack of consistency. I think it is a good idea provided they have the authority.

9 December 2008

Ms Deborah Ishihara and Ms Ingrid Sutherland

Ms Ishihara: I suppose you are possibly multiplying the possibility of error in transmission by multiplying the number of people who are going to transmit information in their own way. For instance, the statutory exclusions guidance recommends a locally prepared summary of the guidance that should be circulated with appeal documents. We are quite concerned about that because we think precisely that that may lead to inconsistencies of the sort that, for instance, we raised in our written submission, where sometimes you have an inconsistency between an SI which says “must” and guidance which says “should”, and you have to be very careful when you are preparing this kind of thing, and also I think it means that there have to be perhaps several hundred people doing the job that perhaps central government could do once. Those are possible difficulties.

Q56 Chairman: In a sense, if government took on board the responsibility for communicating clearly both with schools and with parents and owned that responsibility because it is making the processes, LEAs would not have to do it and you would not have to do a lot of your work, would you, if

government was thinking holistically and in an end-user way?

Ms Sutherland: If they paid us to do the work—

Q57 Chairman: You take my point?

Ms Ishihara: Yes, definitely.

Q58 Chairman: Should government not be expected to be doing these processes themselves?

Ms Ishihara: In a way that is what our suggestion of an online document is about, that if it is done centrally it is a lot clearer and it is done once.

Q59 Baroness Butler-Sloss: And that would be preferable therefore to individual gatekeepers in individual local authorities?

Ms Ishihara: Yes, possibly, although it is useful for people locally to have someone they can go to to interpret it but perhaps not produce the actual material because that allows for inconsistencies to develop across the country.

Q60 Chairman: A lot of people doing the same job.

Ms Ishihara: Exactly.

Chairman: Thank you very much indeed. You have been very helpful.

Supplementary memorandum submitted by the Advisory Centre for Education

The Committee asked us yesterday during our oral evidence to write to them to follow up on a point that was raised in discussions. We had said in our evidence that in many respects we were in favour of legislation, as opposed to broad brush policy in educational matters, as we believe that that is the best way to protect children. However, we were asked to think about whether there are any areas of activity that we would exclude from the need to legislate down to the finest details.

We see educational issues as dividing into three broad categories, as follows:

- 1) areas of activity where there needs to be an avenue of legal redress, such as exclusions, admissions, SEN, school attendance, and teachers’ pay and conditions;
- 2) areas where redress is needed by parents, but where there are inherent difficulties in legislating down to the letter—bullying is the best example of this; and
- 3) pedagogical issues, such as the operation of the national curriculum, the differentiation of children in class, evaluation of their progress etc.

In our view, matters falling into category 1) need to be subject to very clear law which offers either no discretion, or only minimal discretion as to implementation, with the opportunity to challenge.

The second category is potentially the trickiest, as it covers matters that are intrinsically difficult to legislate for in some respect, but where some redress is felt to be necessary to protect children and maintain parental confidence in the educational system. Such matters should be handled by the use of robust policies, guidance and training for teachers, but without legislative over-rigidity. In these areas government should explain its broad policy objectives and allow schools some discretion as to implementation within the ambit of those policy frameworks (such as “every child matters”), but with safeguards, including effective complaints procedures.

The third category comprises areas of activity which draw directly on the professional skills and experience of teachers. We believe that to legislate too fiercely in such matters removes the opportunity for teachers to make the most of their expertise and discourages the use of valuable professional creativity. For this reason we are of the view that these matters should be legislated for with the lightest touch possible and it is above all these that we would exclude from the general need for rules to be set down in minute detail.

I hope this is helpful in answering the Committee's question, but if you would like to ask us for clarification or further information about this or any other aspect of our evidence, please do not hesitate to contact us again.

Memorandum submitted by the Association of School and College Leaders

1. The Association of School and College Leaders (ASCL) represents 14,000 members of the leadership teams of maintained and independent schools and colleges throughout the UK. This places the association in a unique position to see this from the viewpoint of the leaders of secondary schools and colleges.
2. The association recognises the usefulness of the facility for secondary legislation. In particular, it recognises that errors, which might take years to amend if on the face of an act, can be amended relatively simply by a statutory instrument (SI).
3. ASCL also recognise that many statutory instruments are no more than commencement orders, where the provisions of the legislation are already known to those who will ultimately have to put them into practice.
4. There has to be a concern, however, that the speed with which statutory instruments are produced means that drafting is not as careful as it ought to be and that some SIs are introduced simply for the purpose of correcting errors, sometimes fundamental, that a previous SI has committed.
5. It is important to note (as the call for evidence does) that education legislation and SIs issued by the education department(s) are only part of regulation that bears on schools and colleges. As occupiers or owners of premises they have to meet all relevant legislative adjustments to laws covering the liabilities and duties of occupiers, including, for example, fire regulations. As employers in their own right, or exercising the powers of employers to appoint, discipline and dismiss staff, they have to take account of employment legislation. And as providers of services and public authorities, they have to take account of other public legislation, for example, discrimination regulations.
6. Moreover, statutory instruments have to be seen in the context of extensive guidance and codes of practice, much of it statutory, and the effect of what may be described as virtual legislation; for example, Ofsted frameworks on inspection, LSC funding methodologies, departmental data collections; which add to the requirements with which schools and colleges have to comply without any legislative action being required.
7. The determination of government that its legislation should lay down in detail how schools and colleges should be run, even how teachers should teach, greatly increases the amount of legislation and guidance. When the outcomes are not as expected, which is usually the case, the legislation, guidance or code is altered.
8. The critical point for schools and colleges is not the use of SIs per se, but the very large number of government initiatives, and the excessive detail that often accompanies them.
9. The real meaning and effect of some statutory instruments is a matter of debate among legal practitioners. This adds to the uncertainty that schools experience.
10. As legislation, statutory instruments are of necessity written in language that is likely to be difficult for lay people. The great majority of school and college leaders do not attempt to engage with statutory instruments or acts themselves but rely on a variety of sources to find out whether and how they should respond. This increases the effect of overload.
11. Few schools have staff who are legally trained, though some employ HR specialists. Colleges are only somewhat more likely to have legal expertise available. The sources of information and guidance used are therefore various and external to the institution.
12. These sources include: local authorities (LAs), legal advisers, legal update services, personnel advisers, trade journals, and professional associations.
13. Like other professional associations ASCL maintains a web-based information service which highlights developments and issues a magazine, *Leader*, which also highlights key issues. These translate SIs and other legislation into terms that members can more readily understand, and select from the barrage of legislation those items that most clearly require action on the part of school and college leaders. This service is paid for by individual members from personal funds as part of their subscription to the association.
14. Some schools and colleges subscribe to commercial organisations which provide digests of education and other legal developments or to commercial updating magazines. Some leaders attend legal update meetings provided by commercial organisations. These services are paid for from institutional funds.
15. Some local authorities provide information about new legislation as part of heads', governors' or clerks' briefings. Some LAs also issue newsletters which inform schools of those provisions which need to be met. Not all LAs provide these services, however, and it has to be remembered that colleges and an increasing proportion of schools do not belong to LAs, and will usually be charged for such services if they are available and if they are used.

16. Once legislation is in train, all these sources tend to begin warn of forthcoming requirements.
17. The Department for Children, Schools and Families (DCSF) and the Department for Industry, Universities and Skills (DIUS) do put information on their websites and provide lists of guidance which can be ordered or down-loaded. However, these departmental websites are not easy to navigate and schools and colleges do not have the resources to allow a member of staff continually to monitor web-sites to pick up possible changes.
18. Other departments whose SIs bear upon schools and colleges do not always consider this, and rarely make efforts to attract the attention of school and college leaders, or to issue summary guidance in forms and language that they would find most useful. (This no doubt also applies to other sections of the public service.)
19. Legislation is consulted on, and ASCL always responds to consultations where it feels the interests of the education service and of its members will be served by it. Where consultation is public ASCL will inform its members of what is coming. ASCL aims to reflect the views of its members on what is desirable (which may differ from the view of government) and also on what is practically possible in the light of its unique body of experience. While it accepts that as to the former it cannot expect its views to prevail, it is a matter for concern that its views are not taken sufficiently into account over the latter.
20. The reactions of school and college leaders to the quantity of requirements and demands that apply to them differ widely. However, studies have shown that the prevailing culture is one of protecting their staff from over-load as far as possible. The requirements of legislation are seen as an arbitrarily imposed burden to be borne, not as steps to creating a simple and coherent framework within which they can operate.
21. Heads and principals attempt to delegate the implementation of legislation, spreading it within their leadership team and more general leadership. However, this is not always possible.
22. Where there are not specific dates, times and provisions to observe, school and college leaders often proceed by acting according to their (generally high) principles and hoping that that will be good enough. Where policies are required they will often find a model policy and simply adopt it, hoping that once it is on the shelf that will be sufficient.
23. The flexibility of the SI is double-edged. On the one hand it allows errors or problems to be corrected relatively easily. For example, it was possible to move quickly to re-establish the standard of proof in exclusion cases when this became an issue in the courts. On the other hand, it is also too easy for a statutory instrument, or its equivalent, to be subject to constant alteration. The statutory *Code of Practice on Admissions* is a particular example.
24. The idea of common commencement dates would seem to offer significant advantages. It would give a predictable period of intense work for leaders and governors. If chosen correctly it would allow for development work to be done so that materials would be ready.
25. As noted earlier, education SIs are not the only ones that affect education, and at first glance the dates already established for other SIs seem to have little relationship to the academic year. Nevertheless, they could be accommodated. A date of 1 October would allow some training to be done at the start of the autumn term and 1 April would allow a summer term to be used to run in a new development. The SIs would have to be published well before commencement, however.
26. In conclusion, it is worth repeating the main points from the point of view of school and college leaders:
- The use of SIs as such is not the main problem, which is the overwhelming volume of government activity of all sorts (legislative and quasi-legislative).
 - There is a marked tendency to constantly revise SIs and statutory guidance, which is very hard to keep up with.
 - The cost to the education service of attempting to understand and comply with ever-changing legislation is considerable and growing. Monetary costs fall largely on school and college budgets, but also on individual leaders. Opportunity costs are at least as great in the use of the limited time and attention of leaders and governors.
 - Too little attention is paid by government departments to the dissemination of guidance which would be genuinely useful to school and college leaders.
27. I hope that this is of value to your inquiry, ASCL is willing to be further consulted and to assist in any way that it can.

31 October 2008

Examination of Witness

Witness: MR MARTIN WARD, Association of School and College Leaders, gave evidence.

Q61 Chairman: Welcome. You are on your own, are you not?

Mr Ward: I am afraid so.

Q62 Chairman: That means you get twice as many questions, plus. You have got the flavour of who we are and you have seen the process, so are you happy if we go straight off?

Mr Ward: Certainly, my Lord Chairman.

Q63 Chairman: Excellent. You talk about, and I think we understand this, the opportunity costs to schools of complying with ever changing legislation. Just paint that picture for us a little if you would.

Mr Ward: We have to remember that school leaders, like myself, are not lawyers, they are teachers who have to some degree moved on from doing that into leading and running their institution. They have relatively small leadership teams, many of whom are still actively engaged in teaching. An assistant head might be teaching for half the week, for example. Headteachers, who probably do not teach very much, nevertheless do have many other responsibilities. Their focus is on the service that they give to the young people in their care. What motivates them is a desire to do right by those young people. Their main focus is on setting a strategy for their school, setting an ethos, a moral purpose, inspiring their staff, inspiring their students, monitoring and improving the teaching and learning that goes on and raising its quality. Once they have done all that then they have got this sort of thing and they do not see these issues as being nearly as significant, therefore there is quite a lot of ignorance about what is in any particular set of legislation, what is in this year's Education Act, what Statutory Instruments have been issued. The time that they take to master those areas they tend to resent and they would really rather be doing the other thing and, as you can probably tell, I am inclined to agree with them. We have to remember as well the effect that this sort of activity has on governing bodies as well as professional school leaders, where a well-clerked governing body will be led to address all the issues that they need to address that have come up from legislation, but that can take an awfully large part of their time and energy. As you gather, I used to be a college principal and at one time I was the chair of governors of a secondary school and was always very struck by the contrast between the two sets of meetings. When I was being the chair of governors of a secondary school the clerk came in and we had a 27 point agenda before we started to put anything onto it at all and, of course, as a governing body we wanted to be talking about strategic matters but we actually spent a lot of our time dealing with whatever the issues of the day were. Running an incorporated college, the clerk there also was making

sure that we obeyed the law, but we spent much more of our time focusing on strategic matters and less time running around after specific detail.

Q64 Chairman: Putting words in your mouth, ministers and officials believe that the regulation-making process is helping to change the world but you are painting a picture of it being felt by users as actually stopping the process of making the changes that you think are important.

Mr Ward: It does not stop them but it can get in the way. There is probably much less effect from all the legislative activity than is believed in this building and in the Departments of State.

Q65 Chairman: You suspect so, but have you got any evidence to support that?

Mr Ward: Not statistical evidence, only anecdotal evidence based on my own experience and reports from colleagues. Clearly one of the things that I did before assembling the written evidence that we put in and coming here today was to talk to colleagues who are still serving school leaders, who are heads of schools around the country, and a number of them made that specific point. On the whole, the ones I am speaking to are people like the members of our National Council and they tend to be amongst the more alert and up to the moment, but they were in pointing in turn to many of their colleagues as being surprisingly unaware of recent changes in legislation. If they are unaware of it then they cannot really be taking action on it, can they?

Q66 Baroness Thomas of Winchester: You have said that the government do not pay enough attention to disseminating guidance about SIs. You say that although they do put information on the website to provide this guidance, these websites are not easy to navigate. Further, you say that schools and colleges do not have the resources, which you were saying just now, to allow a member of staff continually to monitor websites to pick up possible changes. Have you got any examples of policy areas where schools would have been assisted by such guidance?

Mr Ward: Yes. There is no harm in such documents being on a website, I do not disagree with that, and to be fair to DCSF, for example, they do have a newsletter which you can subscribe to and they will email you and say, "Here are the things that are new this week or this month".

Q67 Baroness Thomas of Winchester: It is free?

Mr Ward: Yes, it is perfectly free. What is not free is the time it takes to read it and it is actually quite long, so we are back to just the sheer volume of activity that is involved. It is not always clear even when it arrives. One point is in many areas, and I agree with the

9 December 2008

Mr Martin Ward

previous witnesses in this respect, it would be very useful if the Department would put together a consolidated statement of what applies in a particular area. If we take the example of admissions, there have been a number of changes to the admission regulations, there have been a number of changes to the law that governs those regulations and governs admissions. It can be quite difficult even for those who have a liking for such things to go through and find all the variations and what has amended what and come to the statement of what the law is now. As I said, my members are not interested by and large in doing such things, so they may well find that they are acting on out-of-date information. Consolidated guidance would be very useful. Another thing which I often find myself saying when consulted about such guidance is, "You must consider your audience". Again, this is so obvious, who writes without considering their audience, yet a lot of such guidance is written for everyone, sometimes not only across education but across all sorts of other sectors as well, but very often including writing for parents, children, teachers, school leaders and local authorities all in one go and that is not sensible. It would often be useful to say, "Find your topic, could we have a clear statement of what I as a school leader need to do in this particular area". That will apply to legislation that comes in from other Departments as well, where it will often be written in language which is more or less incomprehensible to school leaders and certainly does not use the sort of language which they understand. Recent examples there would include energy certificates, for example, which have caused a certain amount of aggravation to my members because they suddenly discovered that occupiers of buildings were obliged to put up an energy certificate, and in the case of a school it is not clear who is the occupier. Is it the governing body, is it the headteacher, is it the local authority if, indeed, the local authority owns the school, as it does some and not others? The United Kingdom Border Agency has just brought in a new points-based system for employing out of European Union staff. That applies to teachers, and certain teachers are on the list of shortage occupations, but no guidance was issued which made sense in the context of a school or that seemed to be aware of the fact that there is another set of regulations that apply if we are talking about teachers to do with overseas trained teachers and whether they are qualified to work in this country.

Q68 Baroness Butler-Sloss: We have been hearing from other people the suggestion that in dealing with schools the government Departments, and obviously more than one government Department, should be focusing expectations on outcomes and not on processes. Do you think that is a good idea and, if so, how on earth would it work in practice?

Mr Ward: I have to say yes, because clearly one of the things that you would expect an organisation like mine to say is that we would like to see as much as possible devolved to the lowest level, subsidiarity. It is our members close to the young people concerned who are in a better position to decide how to deal with them than it is for someone sitting in Whitehall to do so. The problem with saying yes to that is there is a great deal of focus on outcomes already, notably the league tables that bear upon schools very heavily. There are difficulties because educational outcomes are not very readily measurable. Some of them are, but many of the things that we value in education are not very easy to measure and some of them are not entirely uncontroversial. We have to be careful about saying, "Let us look only at outcomes". What it would mean in practice is probably only doing part of what the government now does because it does look very hard at outcomes, and rightly enough. In practice it would mean not saying, "You must spend at least so many hours a week doing this or that", whatever the topic of the moment is. It would involve not saying, "You must have a member of your leadership team or a member of your governing body or a member of your teaching staff responsible for the flavour of the month". It would mean not hypothecating funding, which by and large does not happen at the moment I am pleased to say. It would mean not saying, "This is very important, so it must be an overarching theme that runs right through the curriculum", of which there have already been a number offered to us. It would mean not saying, "You must put an annual report or annual plan together saying what you are doing about this particular thing". If we take some examples: special educational needs, children in care, there are plenty of output measures there which we can use to ask are we doing right by these children, and the answer is no we are not and we ought to do better. We should not go on from that to then say, "You must do it". That is one of the ones where there has been the temptation to say, "You must have somebody of this type in this place in the structure of the organisation responsible for it". That may or may not be right in any particular school's circumstances. There are plenty of other examples but I will not go on.

Chairman: That is very helpful. Thank you.

Q69 Lord Rosser: In our call for evidence we did note that as far as government was concerned there were common commencement dates for business-related Statutory Instruments of 1 April and 1 October and we invited a response, and in your evidence you appeared to be fairly keen on the idea of common commencement dates, but you did make the comment that perhaps common commencement dates for other areas of activity, namely business-related Statutory Instruments, might not necessarily

9 December 2008

Mr Martin Ward

be the appropriate ones for schools-related SIs. Let me ask, if we did have common commencement dates for schools-related SIs, and it was not going to be April and October, what date or dates would make the most sense in your view?

Mr Ward: Clearly what would be best from the point of view of educational institutions would be to have a common commencement date of 1 September or possibly 1 August, but certainly in step with the academic year so that rules do not change part way through a term and potentially, therefore, cause confusion for those who are applying them or those to whom they are applied. If there were to be more than one date then the natural second choice, as it were, for us would be 1 January, which is another start of term and another occasion when it would be relatively easy to explain the rules have changed after the Christmas vacation.

Q70 Lord Rosser: Typically, and I know it will depend upon the complexity of the SI, but anything in general terms about the period of notice that is needed before it actually comes in?

Mr Ward: As you say, it does depend very much on the complexity of the particular one. It probably needs more than a term's notice. What was said in the previous session was that if it was the beginning of the school year then notice typically should be at the beginning of the summer term. That may not be soon enough depending upon what changes are being made. Certainly if there is a need to appoint staff, for example, or even really a need to significantly train staff, and not if we are talking about a few hours' training but a significant training for staff, then that is not enough notice and, therefore, one would prefer there to be a longer notice period.

Q71 Lord Lucas: When your members come to you with experience of implementing SIs, are you able to feed that back to the Department successfully? Do they pay attention to you? Do they take action on what you are saying or do you find you are just talking to thin air most of the time?

Mr Ward: The Department do listen very well to what we have to say, I must give them credit for that. Clearly there is a reluctance if an instrument has just been issued to change it. It may also have been issued because the minister has spoken, or even in some cases the Prime Minister has spoken, and naturally civil servants will always try to implement what their ministers have indicated they should. In those circumstances it can be very difficult to get any significant change. In practice there is not as much post-evaluation of this sort of activity as there probably should be. Like the previous witnesses, I am much more interested in the pre-implementation consultation phase, but there probably is not enough time and energy spent after the event saying, "Did

that actually do anything and, if it did, did it do what we wanted?" Where things really, really do not work and all my members are up in arms saying, "This is complete nonsense" and their governing bodies are saying, "We can't do this", then they will certainly listen and usually will react reasonably quickly. Where it is merely irritating then there is not usually going to be any change. The other problem there, of course, is there is very little sense in central government of the total effect of these instruments and other types of legislation, regulation and guidance, which is what this Committee is trying to look at. In general there is very little sense of that because the Departments are organised into task-oriented teams, there is a group of civil servants who are working on their particular thing, they are very well-meaning, highly intelligent, committed people, they are trying to do it right and they usually do a reasonable job, but they have got very little notion of what the other 100 or 1,000 such teams are doing alongside them.

Q72 Lord Lucas: So are there areas of DCSF you would chop out if you could and just say, "They do not need to be doing anything"?

Mr Ward: I would not want to be the person who actually put the finger on saying, "This floor and that floor or that room are the ones which we do not need". I come back to the point that I made right at the beginning, that there is simply too much activity and if we could just do less and move less often that would be very helpful.

Q73 Viscount Eccles: I think much of the ground I wanted to ask about has already been covered. Can we come to this inevitable gap between the understanding of the officials in the Departments and the frontline troops, the teachers and the people administering schools, and, indeed, I suppose the parents and their children? Is this just something which we have to live with or is there some formula for making the whole thing work better?

Mr Ward: There are some things that could be done or that could be done more than they are in order to improve matters. One is part of the problem is a lot of the implementation is done by career civil servants who have no actual experience of running schools and colleges who may barely have been in a school or a college since they were students themselves. There are a number of schemes which enable them at least to visit schools and colleges and one would like to see those more used so that more of the civil servants have more recent experience of at least being in a building that is operating in that way and have spent time speaking directly to people who are trying to implement the sorts of regulations that they issue. Another one, to be fair to what was DfES which seemed to start this policy some years ago but it has

9 December 2008

Mr Martin Ward

carried on to an extent with DCSF and, indeed, DIUS to some degree, is to recruit people who are serving school and college leaders into middle rank posts in those Departments, perhaps as secondments, not necessarily in any sort of permanent way, so that in the team that is implementing a particular policy there may be at least one person who will be able to say, "Ah, but it won't work quite like that on the ground because I was on the ground last year and I know how I would have reacted to that". Clearly there are a number of other folk who work for the Departments who have a background in education who were recruited having been teachers, for example, and have worked their way up, but that is not nearly as useful from the point that we are now talking about because, whilst they have some knowledge of what it is like to be a teacher, they generally do not know what it is like to be running a school or a college because those career people were recruited at an earlier age.

Q74 Viscount Eccles: Do you think this is another of the things that everybody would agree we should be doing but in the end everybody would decide, "We have not got the time to do it"?

Mr Ward: That is the drawback, of course, it is a counsel of perfection one might say, but in practice a few days spent actually going and working in a school or a college would be time very well spent for many of those people because it might well stop them next month, next year from implementing something in a way which will not work and will become a dead letter or do more harm than good.

Q75 Chairman: How do we really stop the system trying to do too much? Because these people are not malign, they want to improve educational outcomes and other outcomes for children, they have got teams of civil servants, and yet you and other witnesses have painted a picture of a system which in some ways is almost out of control, each bit of it seeking to pursue their little agenda, all of which are well-intentioned, never really knowing whether it is having an impact and, therefore, writing largely blind about the collective impact of the system. You can get the flavour of the sort of report my Committee may wish

to write or not on this, which is to say that this requires some pause for thought. Would it be changed?

Mr Ward: We have touched upon a couple of potentially useful ideas. There was the one we were just on and the point about Government trying not to legislate for methodology but for outcome, which would certainly be helpful. I suppose the third one is what amounts to a self-denying ordinance on the part of Government ministers, who again are—

Q76 Chairman: Does that mean fewer ministers and fewer civil servants, is that what you are recommending?

Mr Ward: Not necessarily. In a sense, what I am recommending is for Government ministers to be slower to act and to think harder before they do. I am making no political point, I think this is something that has gone on for generations. It is probably inevitable because why are they there, they are there because they want to do good and, therefore, when there is something that does not seem to be working well obviously there is a very strong temptation to say, "Well, we will do something about it then". I think they should be a little slower to say, "We will do something about it" and a bit quicker to say, "Something needs to be done about it, how can we facilitate that" rather than, "How can we require it". Perhaps that is the final point in answer to your question. We need to unlock the creativity of the people at the local level, those who are closest to doing the actual job, rather than getting them into a compliance mode which is very largely the state of mind that prevails at the moment. That would be done by leading, by issuing things like the Children's Plan, for example, saying, "This is the sort of picture that we want", but not necessarily then turning that into, "And here are the exact rules which you must follow. You have got to do this, you must not do that", but only to say, "These are the sorts of directions in which we would like you to be moving".

Chairman: Thank you. A very good, clear point on which to end. I shall leave the two sets of witnesses to debate that point because you will note that your evidence was distinctly different on it. Thank you very much.

TUESDAY 20 JANUARY 2009

Present	Butler-Sloss, B Crisp, L Filkin, L (Chairman) Lucas, L	Maddock, B Rosser, L Thomas of Winchester, B
---------	---	--

Memorandum submitted by the Department for Children, Schools and Families

I am writing on behalf of the Department for Children, Schools and Families in response to the Committee's call for evidence to inform its inquiry into the cumulative impact of statutory instruments (SIs) on schools. The Department welcomes this inquiry.

The Committee will be aware of the importance that the Department has placed on the need to minimise and reduce burdens on schools—we recognise that we have a responsibility to think very hard about the delivery and implementation of our policies.

There are a range of mechanisms available to the Department to effect change at the school level, including:

- Primary legislation and the associated secondary legislation including SIs;
- Guidance—statutory and non-statutory; and
- Funding incentives.

In considering the impact on schools the Department considers all of these mechanisms, since it is only when they are taken together that they represent the total impact of our policies.

We have put in place several mechanisms to scrutinise the way we work, to help us in our thinking about the impact of our decisions and insert external scrutiny into the process of policy development. In 2003 the Government made a historic national agreement with the school workforce unions and employers to raise standards in schools and tackle teacher workload. A key part of that social partnership was the establishment of the Implementation Review Unit (IRU).

The Unit, which is independently-chaired by a serving secondary Head Teacher, was set up to provide scrutiny of the plans of government, agencies and local authorities in the interests of minimising burdens on schools. Although funded and supported by the Department, the Unit has a guaranteed independence which enables it to:

- Develop and implement its own work programme, commissioning reviews of the burdens and bureaucracy associated with particular areas of existing policy and procedures;
- Scrutinise and challenge the operation of the gatekeeper systems, and test whether assessments of workload/workforce implications associated with plans for the implementation of new policy proposals are robust and procedures have been kept as simple and streamlined as possible; and
- Consider representations about unnecessary burdens and bureaucracy from all parts of the education system, including unions and employers as well as individual headteachers, teachers and other members of the school workforce, and ensure these are followed up.

The Unit also has a right to make submissions directly to Ministers, and to call senior Officials to account. I have provided two examples of the Unit's input which I think are illustrative:

- Through 2006 the IRU engaged with the Department's proposal to increase the quantity and quality of schools' reports to pupils' parents about the pupils' progress. This engagement culminated in March 2008 in a letter from DCSF to both IRU and the Workforce Agreement Monitoring Group. In the letter, DCSF announced a change in the specific policy commitment. The original commitment had been that schools would have to report to parents every term. The new commitment is that the parents of every child who is a pupil at school will have online access to information on their child's attendance, behaviour and progress in learning, by September 2010 for pupils of secondary schools and by 2012 for pupils of primary schools.
- In 2006 the IRU successfully called for the Department to implement a delay in introducing important changes to the mathematics curriculum—the result being that the changes were postponed for a year giving schools a better lead-time to prepare for their introduction.

The IRU is, however, not the sole means that we have to ensure a practitioner-led check on and insight into the development of our policies. We also support and sponsor:

- The Primary and Secondary Headteacher Reference Groups (two groups of successful headteachers which consider policy principles and the impact of policies on schools);
- The New Relationship with Schools (NRwS) Consultative Group (nominees of most of the main constituencies in the school system, together with a number of school practitioners);
- The Network of Associates (a group of about 250 people who work in schools and children’s services in a variety of capacities; it conducts itself by email; and
- A “Star Chamber” process to scrutinise and challenge potentially burdensome bids to collect data and other information from schools to support policy development.

Of course, many changes in schools do not require the use of SIs. Take, for example, our capital programme (and in particular Building Schools for the Future) which in many areas is making use of an innovative investment and procurement process (the Local Educational Partnership) to bring about radical changes in secondary school provision, and will result in the rebuilding or remodelling of every state secondary school in England over its lifetime.

Another area where we can point to positive change without recourse to SIs is in the Curriculum. In response to an internal review of school science in 2006 an “entitlement” was established to enable higher attaining pupils to have the option of taking the separate science GCSEs of physics, chemistry and biology (triple science) rather than taking these subjects individually. As a consequence of undertaking a comprehensive communications strategy setting out the benefits in terms of improved results of triple science, and by providing new professional development around the teaching of the sciences we have been able to inspire a really positive set of outcomes: entries to triple science GCSEs have risen significantly (increasing by 31% between 2007 and 2008) and biology, physics and chemistry now have the highest A*-C grades of any GCSEs.

As I have set out, the Department takes this issue of minimising burdens on schools extremely seriously. However, there will always be room for improvement and lessons that we can learn. I am sure that the Inquiry’s findings will flag up those areas where we haven’t got it quite right, and we look forward to reading them.

Please let me know if I can be of any assistance.

Mela Watts

Director—School Performance and Reform

3 November 2008

Memorandum submitted by Rt Hon Jim Knight MP, Minister of State for Schools and Learners

Thank you for your letter of 16 December about your inquiry into the cumulative impact of statutory instruments on schools. I look forward to attending the evidence session on 20 January. I would welcome an indication of the questions you are likely to raise as early as possible next week, if that were at all possible.

Your letter raised two particular areas of concern to the Committee.

POST-IMPLEMENTATION REVIEW OF SIs

I appreciate the very valid point that the effect of SIs needs to be kept under review and can assure the Committee that this is the case. However, as Lesley Longstone pointed out in giving evidence in November 2007, our processes focus on the review of policy objectives, not simply on SIs. A policy initiative may involve new or amended SIs but, if so, it is likely to involve other non-statutory changes, for example to funding streams or guidance. Our policy teams and Departmental analysts conduct research and evaluation of the whole range of actions which have been taken to achieve a particular policy aim. Regulations are, therefore, subject to regular review, feedback and subsequent change. We do have to balance the need for post-implementation review with the need to reduce burdens on schools. Sending out surveys to schools (even representative sample surveys) for each amendment to secondary legislation would be likely to add to workload. As a result the Department uses a variety of methods to review the impact of policy changes (including those made by a statutory instrument) such as consultation with stakeholder and focus groups, workshops, collation of correspondence, and evidence reported by external bodies such as the Advisory Centre for Education and Ofsted. In many cases consultation on successor regulations gives significant feedback on the impact of the previous regulations. This eliminates the need for the duplication of work and the risk of overburdening schools by carrying out additional reviews.

Your letter asks about the percentage of SIs produced in the last five years which have been followed up to see if they are fulfilling their policy objective. I am afraid it has not been possible to arrive at an exact figure. Many SIs laid by the Department are not related directly to schools, and the 2007 machinery of government changes have meant that many SIs laid by the DFES (as was) will now be reviewed by DIUS rather than DCSF. Although we carry out and record extensive reviews of policy implementation, we do not currently have a centralised record of post-implementation review of specific SIs. The Department has been working on updating and formalising its systems for recording the policy-making process. This needs to cover SIs and impact assessments, but also the full range of methods available to us for policy development and improvement. There is a close link with the business planning process by which the Department as a whole identifies priorities and matches them with resources. In the Schools Directorate, in addition to the business planning process for each constituent division, the Director-General is keen to consider how we take a more strategic view of the application and effect of the full range of SIs affecting schools.

Annex A contains comments on the specific SIs listed in your letter. Annex B contains some further specific examples of the Department's use of post-implementation review.

MAINTAINED SCHOOLS AND ACADEMIES

Your letter also asked for information about the differing application of regulations as between maintained schools and Academies. You referred back to your concern about SI 2005/1 508 and the Code of Practice on Workforce Matters in Public Sector Service Contracts. The general point to make is that Academies are state-funded, but independently-managed schools. The Government has committed to a light-touch regulatory framework for these schools with very little education legislation applying directly—rather we use individual funding agreements as the basis for the requirements on Academies.

In relation to the “Code of Practice on Workforce Matters” specifically, the regulations were made under section 210 of and Schedule 1 to the Education Act 2002, which do not apply to Academies.

It was decided not to place a requirement to have regard to the Code within Academy Funding Agreements because the freedoms available to Academy Governing Bodies to innovate in relation to employee terms and conditions is a key plank of Academies policy, and one which is most frequently cited as contributing most to transformational change. Any staff who transfer to an Academy under TUPE would automatically have their terms and conditions of employment protected.

In conclusion, the Department strongly agrees that it is important to review policy and consult widely on the effectiveness of regulation in practice. We also need to consider the importance of balancing procedural burdens with policy benefit, and we appreciate the help of the Merits of Statutory Instruments Committee in enabling us to do this.

Rt Hon Jim Knight MP

10 January 2009

Annex A

SPECIFIC EXAMPLES OF POST-IMPLEMENTATION REVIEW OF SIS

SI 200511731—The Education (Change of Category of Maintained Schools) (Amendment) (England) Regulations 2005

SI 200511801—The Education (School Organisation Proposals) (England) (Amendment) Regulations 2005

SI 2005I3342—The Education (School Organisation Proposals) (Amendment) (No 2) (England) Regulations 2005

The Department launched a three month consultation on this package of school organisation regulations under the Education and Inspections Act 2006.

Each of these regulations were amendments of wider regulations, which were considered as part of a wider review, conducted in the subsequent autumn 2005 Schools White Paper and Education and Inspections Act 2006. In this case, consultation on the successor regulations achieved the same aim as a post-implementation review. That consultation showed that local authorities and others were broadly supportive of the Department's aims, but concerns were expressed about local democracy and the role of the local authority. The Department acknowledged these concerns, which is why in EIA 2006 we abolished School Organisation Committees and gave local authorities their school organisation decision-making functions. Also in response to such concerns, 2007 regulations made under the EIA 2006 give local authorities, in certain circumstances, a specific power to refer proposals for a school to become a Trust school to the schools adjudicator to decide, rather than the governing body. The 2006 Act gave local authorities greater freedoms and flexibilities to

manage the school estate, and respond to changing needs. The Department very much wishes to place local authorities at the centre of driving forward moves to reshape their schools, consistent with their role as commissioners of high quality school places.

The Department made several other changes to the draft regulations as a result of the responses received. For example: we removed the bar on head teachers and officers of the local authority acting as Trustee of a Trust school; we amended draft regulations so that a minority of governors could vote to trigger the removal of a Trust after five years (rather than seven); we reduced the representation period for proposals on special schools to match the period for maintained schools; and we made a number of changes to accompanying guidance on best practice, such as the guidance covering consultation on statutory proposals.

In 2007 the Department carried out a review of the two SIs related to school organisation proposals, focusing on barriers to school expansion. As a result of this consultation we amended the arrangements for targeted capital funding to support the expansion of successful and popular schools. As part of this, the Department strongly encourages such plans to be brought forward in conjunction with the maintaining local authority, and 83% of applications for targeted capital funding to support expansion in the last year have come via the LA. Local authorities are embracing the freedom to expand good schools to meet demand.

The Department always tries to ensure that sufficient time is given for consultation of statutory instruments, including Parliamentary consideration. For example, consultation on the school organisation regulations arising from the EIA 2006 ran from 13 November 2006 to 4 February 2007. However, there are regrettably occasions when legislation must be brought into effect and insufficient flexibilities exist in the timetable, and it is occasionally necessary for consultation periods to cross a Recess period. We can assure the Committee that every effort is made to avoid such timing issues.

SI 200513299 Schools Forums (England) (Amendment) Regulations 2005

The original regulations were laid in 2002 and amended in 2004, 2005 and 2008. Officials are in the process of consolidating all these into a more comprehensible set of regulations with policy changes that are to be made as a result of the 2008 Education and Skills Act. Therefore the 2008 regulations have already taken into account feedback from the 2005 regulations. An Explanatory Memorandum was published for the 2008 regulations explaining the changes and consultation process. Arising from feedback and general questions received by the department, a workshop explaining and discussing the most recent version of both sets of regulations was provided to local authority finance staff attending the May 2008 National Fair Funding Conference. A total of 45 delegates attended this workshop. Further workshops were held at the November 2008 Fair Funding Conference, when a similar number attended. Positive feedback was received about these workshops, which included asking attendees what issues they had with the regulations and whether there were changes which would make the operation of schools forums more effective.

SI 2006I468 School Finance (England) Regulations 2006

The School Finance Regulations are subject to regular review, feedback and subsequent change. They are revised for each funding period taking account of the experience of the previous one. In the case of the 2006 regulations, these applied to the financial years 2006–07 and 2007–08. We also issued amendment regulations in 2007. They have been replaced with the school finance regulations 2008 which apply to 2008–09, 2009–10, and 2010–11.

The SI 2006/468 School Finance (England) Regulations 2006 were a consolidation and update of the 2004 Financing of Maintained Schools regulations and the LEA budget, Schools Budget and Individual Schools Budget (England) Regulations 2005. Prior to these, financing regulations were brought in annually, with each set replacing that of the previous year. The new three-year period allows for a reduction in SIs laid, while still ensuring continuity of effective delivery.

The School Finance Regulations 2008 were brought in following a double consultation process (both policy and technical). This process by necessity gave us significant feedback on the operation of the 2006 regulations, which was then taken into account in the development of the regulations. For example, the EM for these regulations sets out the Department's decision not to proceed with a previously announced intention. This was recognised by the Merits Committee as evidence that the Department was prepared to alter its intentions in the light of a consultation process. The temporary measure to amend the operation of minimum funding guarantee to cover both pre- and post-16 funding for schools with sixth forms was also removed in the 2008 regulations.

The Department employs a seconded local authority member of staff who oversees these regulations, advises on and instructs on changes, and provides advice to local authorities regarding the regulations. They have first hand experience of their general use as well as being an expert in their content and understanding how they are managed locally.

FURTHER EXAMPLES OF SIS WHICH HAVE BEEN SUBJECT TO REVIEW

The Education (Independent School Standards) (England) Regulations 2003 SI 1910

The Education (Independent School Inspection Fees and Publication) Regulations 2003 SI 1926

The Fee regulations were revised with effect from 1 September 2008 in the Education (Independent School Inspection Fees and Publication) (England) Regulations 2008 SI 1801. The fee changes, among others, were consulted on from 27 July to 19 October 2007 by way of the Department's e-consultation website and the consultation was drawn to the attention of key stakeholders such as schools, inspectorates and associations.

The Standards regulations have been revised and the amending regulations (Education (Independent School Standards) (England) (Amendment) Regulations, SI 2008/3253) will come into effect on 9 February 2009. A consultation on the changes was held between 27 September and 7 November, again via the Department's e-consultation website, and schools, inspectorates and associations were notified. We plan to carry out a review of the major changes next year with the sector via the Independent School Bursars Association.

Associated changes will be made to the Provision of Information regulations. These will be minor changes which cross reference with the changes made to the Standards regulations.

The School Admissions (Admission Arrangements) (England) Regulations 2008

The School Admissions (Co-ordination of Admission Arrangements) (England) Regulations 2008

The School Admissions (Local Authority Reports and Admission Forums) (England) Regulations 2008

The Education (Admissions Appeals Arrangements) (England) (Amendment) Regulations 2008

The School Information (England) Regulations 2008

The Department committed in the Children's Plan published in 2007 to improve the admissions system and increase parental satisfaction. We consulted between 12 June and 2 October on a range of proposals aiming to:

- ensure fair admission arrangements are set in every school;
- improve the system through which parents apply for and are allocated places at schools;
- support the most vulnerable and disadvantaged;
- ensure that parents have the information they need to make realistic choices; and
- further engage parents in the process.

All the proposals within the School Admissions Consultation required subsequent amendments to the School Admissions Code ("the Code") and the Schools Admission Appeals Code (the "Appeals Code"), which have statutory force, as well as the package of related regulations listed above. Extensive Impact Assessments were carried out for each of these regulations.

The School Admissions Consultation proposals were supported by the majority of the respondents as a way of improving the application process for parents. In particular, respondents:

- agreed that greater standardisation across the country was beneficial;
- supported all year round coordination of admissions by local authorities;
- agreed that admission authorities should decide with whom to additionally consult;
- sought to retain the compulsory establishment of Admission Forums;
- welcomed local bodies administering appeals on behalf of grouped schools;
- agreed with the extended role for the Schools Adjudicator; and
- welcomed the right of certain children to express a preference in respect of their school sixth-form or similar continuing education.

Many local authorities favoured separate closing dates for admissions to help manage local workloads but supported standard closing dates for different phases. For example some local authorities called for a "primary national offer date" to assist local authorities with timetable collaboration. Because local authorities use considerably different timetables for coordinating primary applications and offers the Government decided not prescribe a single national offer date. However, changes to primary coordination for 2011 will require exchange of information between local authorities and admission authorities by the end of March each year. This will have the effect of bringing primary offer days closer together.

Most respondents including parents welcomed a three-yearly cycle of local consultation on admission arrangements. Respondents saw as beneficial the guidelines for the operation of Fair Access Protocols. They were also content with the proposed factual ethos statement to be included on application forms, and agreed that schools must not ask for financial contributions as part of the admissions process.

Respondents were more divided as to whether to appoint an adviser for parents in infant class size appeals, on whether appeal panels should consider the lawfulness of admission arrangements, and on removing the requirement on a school to publish statutory proposals where admitting above its published admission number.

Some local authorities expressed concerns over the cost of some of the proposals but those concerns should be alleviated by the cost reductions arising from other proposals—notably the three-yearly cycle of local consultation.

Examination of Witness

Witness: RT HON JIM KNIGHT, a Member of the House of Commons, Minister of State for Schools and Learners, gave evidence.

Q77 Chairman: Thank you very much for coming and for coming so promptly as well. Are you comfortable to start straight away?

Jim Knight: Absolutely; ready when you are.

Q78 Chairman: I am Geoff Filkin, the Chair of the Committee. I am sure you are aware of the Committee members from your briefing; they have their name badges, just like school, so I will not introduce them individually. Could I start with the first question you have had sight of, which is clearly that SIs are meant to achieve the objective of getting the change that government wishes to bring about in the schools and in the school system. Do you think the system is working well?

Jim Knight: Yes I do—you would expect me to say so, but I do. What I will say to the Committee is that I think the context is important in terms of how we use Statutory Instruments; in that they are a tool for us to deliver government policy and we are elected to implement the policies in our manifesto, but to do so in an environment with a very high degree of delegation—it is probably one of the most delegated school systems anywhere in the world. So unlike perhaps some of the other large public spending departments of state we do not have quite as much control through other means; although Lord Crisp will be familiar with a different system where, in my days in Health I remember, just as a PPS, there was a certain frustration from ministers that you could not easily get the system on the ground to do exactly what you wanted. I think ours is an even more delegated system; the employment, for example, is with 23,500 schools and in terms of my budget 90 per cent of it goes all the way down to schools without really touching the sides—but we also have local authorities in between. So our ability to deliver government policy is confined to a few things of which regulation is one. But it is a relatively open system, a relatively delegated system and it therefore needs some regulation if we are going to get anything done.

Q79 Chairman: You will have seen from the transcript of the written evidence that that is not what the evidence which has been put to us says at all. At a high level the criticism is that the volume of regulation and guidance is excessive; that those who make the regulations do so in an uncoordinated way, so that nobody in the department has a holistic understanding of how these things impact together or the cumulative impact on schools. And the schools or their representatives say to us that they are swamped by these things and as a result they often have to take chances. The final charge that is put by some of the evidence is that the government neither understands the impact of the process nor the effect of the Instrument in practice. So they are very, very critical of the system.

Jim Knight: I would not want the Committee to think that we are complacent about that. We have set up various structures in order to help inform government and the department about the impact of regulation and burdens as a whole on schools; because obviously SIs are one aspect of regulation and we have guidance and other things that we do as well, that all add to the burdens about which schools regularly feed back to us. The other bit of context, I suppose, is looking at outcomes. We do not make these regulations unless we think they are going to deliver and improve outcomes for children and for their education, and the statistics are good in terms of outcomes, in terms of improvements in education and in how things are for children. You just have to look, for example, at the recent international study and the trends internationally in maths and science in schools, where our English system is the best in Europe in terms of maths and science. So in outcome terms we have a system that is improving and is delivering. In terms of the structures that we have put in place to help guide us around the burdens beyond the more, to some extent, informal dialogue that we have through things like our Social Partnership, which is by and large there to help us deliver the remodelling of school workforce, quite a lot of that

20 January 2009

Rt Hon Jim Knight

agenda is about burdens and I meet with the leaders of the main teaching and head teacher unions, with one notable exception, on a regular basis. We have also more formally set up a Star Chamber which is made up of local authority and school representatives to look at the data collection that goes through schools. We have an Implementation Review Unit, again made up of primary and secondary heads and special schools and PRUs and so on who similarly give us advice on the overall burdens, and that was set up by David Miliband when he was Minister of State for School Standards as part of the new relationship with schools, as you will remember. Then we have reference groups of primary and secondary heads as well similarly giving us advice. Some would accuse us of being overburdened with structures in order to advise us on the burdens on schools, but I am confident that they each have an important place in giving us that feedback. Then more systematically, beyond these general reference groups, to give us advice on burdens as we legislate and as we make policy changes, we do have quite thorough and robust systems of consultation which might not necessarily consult on SIs in particular. In terms of some of these policy decisions and whether or not we are taking primary legislation and deciding to take powers that will then become secondary legislation, the consultation is extensive and is consultation about the policy. All the SIs in many ways are an implementation of policy that has been very well consulted on. Sometimes we completely go with that consultation, and sometimes we go some of the way, and occasionally we make a decision that is not wholly popular but we think is the right one in order to continue the improvement we are looking for.

Chairman: Thank you, we will come back to some of those points later. Lord Rosser.

Q80 Lord Rosser: I assume that when you have this consultation the comments that you get are similar to the comments that we have from those from whom we have taken evidence already, which have not been desperately complimentary about the department. So I assume that people have not come here and told us something that they do not say to your face when they meet you. Do you think that the volume of SIs and guidance should be reduced or are you telling us it is fine?

Jim Knight: We have slowly been reducing the volume and I am sure the Committee would want us to increase the pace, but the ones that I have signed off have reduced over the last couple of years; the ones that we as a department have taken through Parliament have reduced. But, as I said at the outset, this is a big improving school system with lots of different units and one of the main tools in our box in terms of driving forward the system and reforming

the system is to regulate, and I do not make any apology for that.

Q81 Lord Rosser: Do you have a view on how many Statutory Instruments there are that you have had to bring forward basically because you did not get it right the first time around?

Jim Knight: Certainly there are some.

Q82 Lord Rosser: What kind of percentage would you put it at? It is quite an important question if you are debating whether they can be reduced or whether they are excessive, is it not?

Jim Knight: It is. The difficulty I have in answering the question—and I do obviously want to be as helpful as I can—is this: if you took an example like the school admissions regulations, which I know the Committee has looked at, I think the changes that we made starting with the Education and Inspections Act and then in terms of the various improvements that we have been making, those substantive changes, in many ways the rationalisation that we have seen, have been a good thing. There have been some bits of detail where we have wanted to be able to make some adjustment, so just to say that we did not get it right does not mean that we got it wholly wrong—it means that there were one or two aspects that we did not get right. So I think that to come up with a percentage against that context is quite difficult. I have to be broadly happy with the situation that we have at the moment, which I am; but I am also keen that we as a department continue the work to reduce the burden of regulation where we can.

Q83 Lord Rosser: Do you think the SIs are clear in their language? Do you think they clearly distinguish between what is a statutory requirement and what the ministers might like people to do? Do you think one of the issues if they are not always very clear is that it is then left to other people lower down the line to interpret them, and perhaps they interpret them in different ways, or perhaps they interpret them in ways that have not been intended? But what it surely comes back to is that it was not very clear in the first place?

Jim Knight: I think, in general terms, the combination of the language in the Statutory Instrument, its explanatory notes and explanatory memorandum and then any guidance that might accompany it is clear. We have been trying to continue to improve that, and we have made some changes reflecting on some of the comments and findings of the Committee and reports of the Committee, and indeed reflecting on some of the thinking that we have done in preparation for appearing before the Committee as well. In that respect, as in others, we regard this as an extremely helpful Committee to us in improving the way we do business.

20 January 2009

Rt Hon Jim Knight

Q84 Lord Lucas: It strikes me that there are some changes in education that go very easily. If you look at the West Dunbartonshire Literacy Project that went extremely well, that when schools change to IB by and large there is no problem, and I hope that will be the same with Diplomas. This is because, although the direction has been set, there is no compulsion on timing and so schools can do things in their own good time. Is that not really the way that inward-facing regulation should be? I can see why you had to introduce a Schools Admission Code at one time, but is there not far too much regulation which is essentially inward-facing where it is merely done at a particular time and with particular force because that is the timescale of ministers rather than schools?

Jim Knight: Again I am reluctant to apologise for ministerial impatience to improve things and to get on. Undoubtedly if we see something that we think can improve things further, then we want to do it because we believe it is the right thing to do. We have a responsibility along with our senior officials to try and view things holistically, to try and appreciate the overall impact of things, and to weigh up the impact of an individual measure alongside a cumulative impact before new measures are introduced; and that is where the sorts of changes that we have made lately, for example with every three months the executive board reviewing the SIs that we have taken through and we are taking through, those are important. So we do have that more holistic take. In my experience over the last 31 months or however many it is that I have had the privilege of doing this job, teachers are hugely important and they are school leaders in improving things in education, second only to parents in terms of the outcomes for children. That does not mean that they are always right about what the decision should be because there are times when, like all of us, they need to be challenged in order to make progress. So, yes, we need to listen to them and there are examples where we did so and made changes. I can think of one in respect of performance management where we wanted to introduce it under quite a tight timeframe and where our social partners said to us, "If you do that it is simply not going to work; we do not have time to implement this properly; we do not have time to get the proper training done. Give us another year," I gave them another year in order to allow them to do that. So we do listen but not always.

Q85 Baroness Butler-Sloss: We have been told that in some of your government initiatives there is excessive detail accompanying them. Do you think that is a fair criticism?

Jim Knight: Again we are striking a balance between being clear, in respect of Lord Rosser's questions, and sometimes detail helps clarity. Sometimes it gets in the way of clarity, and that is an ongoing

discussion I have with civil servants just in respect of the briefing that I receive; sometimes I have trouble with the amount of detail that I am offered—you can see the array of papers that I have before me. So I would not say that we get it right 100 per cent of the time.

Q86 Baroness Butler-Sloss: Have you asked the teaching profession the extent to which they may think it is excessive, rather than your civil servants?

Jim Knight: Generally they feed back that "If we are going to publish documents this long then do not expect anyone to read them" and "Will this not make another good doorstep?"—I receive those sorts of comments fairly regularly, and we do take those seriously. So, for example, the One Year On document to the Children's Plan: the initial Children's Plan was a hugely important document in setting the framework for a new Department for Children and we have produced a number of different digests, if you like shorter versions for various audiences, and we furthered that with the One Year On document. In some ways we tried to position the main document as being the short one, with reference material for those that wanted to know more, because I am sure any one of us sat around this table in the various roles that we perform in public life will have experienced a desire to keep things short. But then as soon as you get into any kind of conversation where other people are contributing text everybody is wanting to get their bit of text in, and there is then the negotiation about getting in the sorts of detail that the specialists are after, whilst keeping a coherent tool for communication.

Q87 Lord Crisp: I want to ask a very simple related question, which is that people have talked to us about the dates of issuing and the commencement dates of Statutory Instruments. Should not there be one or two common commencement dates during the course of the year?

Jim Knight: I think we should seek where we can to commence around the beginning of the academic year, and that is what we try to do. There are one or two things that might apply financially where you might want to go with the beginning of the financial year, but I would not want to lose the flexibility, and ministers will always come back to you and say, "We do need a bit of flexibility." An example would be the decision made around the SATS for 14-year olds last year, where in that case we had to change primary legislation in a hurry, and it was far from ideal that we introduced amendments at report stage in the Lords, given that it had already been through the Commons, so very late with very little consultation. But I think everyone accepted that, having concluded that we did not want to continue and we should not continue with the SATS for 14-year olds, it would

20 January 2009

Rt Hon Jim Knight

have been fairly foolish to require another year to have to sit them when even the government that required them did not value them. So there are circumstances that crop up where you would want to be able to regulate outside of that normal cycle.

Q88 Chairman: It may be but, unless a very clear signal was given by you as minister, it is not going to happen.

Jim Knight: Yes and, as I say, we are trying to move much more to regulation from the beginning of the academic year and I see a lot more SIs to approve and scrutinise and eventually sign off during that summer session of Parliament so that we can get them going and properly scrutinised by Parliament during that summer period.

Q89 Lord Crisp: Is that an explicit policy? It is not what has come through to us from the evidence that your explicit policy is “We will try to do that but you must recognise that there are one or two or five or 10 exceptions a year.” Is that explicitly stated by you? If it is not, it would be useful if it was.

Jim Knight: I think we can take a stronger ministerial lead on it and that is something I am happy to take away from this, and that I am sure officials are aware of. In practice, the changes that we have made and the scrutiny that the management board of the Department has means that we have been trying to move in that direction as a Department generally, but ministerially we could do more, and I am happy to do that.

Q90 Lord Crisp: The picture we are getting is not that picture; that is not how people are reflecting it back to us. So there may be some point in making it clear so that those people think that is what you are doing, rather than the slight sense of randomness that we get in our evidence.

Jim Knight: The only other bit of mitigation I would plead is that we are a busy Department—some would say too busy but we are impatient and want to get things done—so we are consulting all the time on various different things and we are announcing things that ultimately might result in primary or secondary legislation. So, in terms of the perception of our stakeholders, even if we move to a pretty consistent commencement for the beginning of the academic year it still might appear that we are constantly announcing things and are constantly consulting on something else and it is all very tiresome.

Q91 Chairman: You will be aware that that is one of the fundamental criticisms in our evidence to date saying that it is not simply the volume of SIs; it is the volume of initiatives which never allows the system to settle down. That is not the first time you have heard

that and I will leave that with you; indeed you know it without me expanding on it.

Jim Knight: I do, and again I would argue that that is starting to streamline a lot more than it used to. We set out in the Children’s Plan a 10-year programme. I cannot remember whether you received evidence or not from the National Association of Schoolmasters and Union of Women Teachers, but the General Secretary of NASUWT tells us that she got a promise from the Secretary of State that they would not do anything that was not in the Children’s Plan, and she claims that she records everything that we dish out and checks and we are doing well on that.

Q92 Baroness Maddock: Can we pursue timing a little bit more, based on some of the evidence we have had. Notwithstanding the comments you have made already that you do not apologise for your impatience to get on and you want to have lots of flexibility, the Implementation Review Unit, which you yourselves set up, has given us evidence that they are really more concerned very often with the lead time, and you have recognised and you are trying to give them perhaps a better starting date in the summer. The witnesses have said to us that they want at least a term’s lead with many of these things and, for example, if they got them at the beginning of the summer term for implementation in September that would be useful. In evidence they cite the fact that much of the legislation requires them to consult and to have regard to various things. All these things take time for them to implement, let alone if some of the changes involve staff training, changes to equipment and so on and so forth. So the flexibility is not quite so easy for them. Do you think there are things you can do? Do you think they are justified in this criticism?

Jim Knight: I am sure there may be examples where they are justified. As I say, they perform a useful job. The secondary legislation obviously is taking forward what has been discussed in primary legislation so, in terms of the basic principles of what we are doing, it should not be a surprise to people and often has been quite extensively debated in both Houses. It has been consulted upon and so on and so forth, and obviously every piece of secondary legislation, as I said earlier, is consulted upon. The lead time is important for us to be able to embed new regulation. It varies slightly from the type of regulation according to what it is about—curriculum changes take an awful lot of time, and I have had some interesting discussions with members of this House recently who are concerned about maths and science, for example. There are some changes to the maths curriculum and examinations that they would like to see us implement far more quickly than we are able to if we are going to give proper lead times in

20 January 2009

Rt Hon Jim Knight

order to allow all the things that you have just talked about to happen.

Q93 Chairman: Can I push you a little bit on that because the reality is—and the evidence from our witnesses is very strong—that good officials, however good and well-meaning, are not usually very well sighted about the realities of implementation in a school—they see it from the other end of the tunnel. But if there is, as there usually is, an impatient minister wanting to get on with things, they are not actually going to behave in that way and set a minimum of a term unless you set that sort of standard. The argument we are putting to you is that you should set that sort of standard of at least a term's lead time, because otherwise the system would not behave accordingly, and by and large a term's lead time for most things is a reasonable default—in some cases it should be longer. So let me press you: we think a lead time of a term ought to be the minimum except in quite exceptional circumstances.

Jim Knight: I would agree with you that there are times when you would want much longer. The SEN Coordinator regulations that were taken through were given a very long lead time; the curriculum changes need a much longer lead time. There may be other things that need to be shorter but, by and large, I think yes, it is reasonable to ask us to give a term's lead time. We have to manage the work flow, but that is our problem in terms of the various people who have to draft these things and plan for it.

Q94 Chairman: You have to plan forward, though.

Jim Knight: So by and large I think that is reasonable. I would not want to say that we will be able to deliver it in absolutely every case because circumstances will arise where something just needs to happen.

Q95 Baroness Maddock: Can I just pick up on one point you said? You said that of course some of this is in primary legislation and people will have warning of it. Do you seriously think that the teachers in schools are looking at what we are saying here, and primary legislation, in a great deal of detail? I suggest they do not have time for that.

Jim Knight: I know that their representatives do. Some of the changes that we have seen recently, for example where legislation starts in the Commons and evidence sessions we have given to public Bill Committees have been very helpful in that regard, because we now have those representatives of teachers and head teachers coming and giving evidence as primary legislation begins its journey through both Houses. So they have that opportunity, and they also have the opportunity to consult their members about that, and certainly they would say that they are speaking for their members when recently the sorts of things we might have introduced:

the duty to community cohesion for example; there was some feedback that that was yet another burden and yet another duty. We had some discussion as to whether or not we should make school councils mandatory; we listened to some of our partners who said that.

Chairman: But that is the representative organisations, is it not? It does not mean that those who often have to put it into practice are focused.

Q96 Baroness Maddock: Coming from a rural area, I am thinking of a head teacher in a small rural school, and I just know that they are not likely to do that.

Jim Knight: But there will be some, undoubtedly, who will engage; those who are particularly interested in a particular area.

Chairman: But given we want compliance with most of them, it reinforces the point, I think, that Baroness Maddock was making about the lead time. Let us leave that with you and thank you for your willingness to be positive on that. Baroness Thomas.

Q97 Baroness Thomas of Winchester: I have two questions which are linked really, about the Department's role as gatekeeper for the regulations and communication in schools. First of all, the gatekeeper side of things: the IRU says that the move to summary email with the option to download full documents or the hard copies is a step forward, but they say that there is a scope for the Department to make emails even clearer to distinguish between requirements and guidance, and this is a common theme that we have had from other people too. They talk about how it would help the gate keeping process if you limited the content of emails to fewer items, to only those which will help schools have a significant and measureable outcome on pupils. I know from my own experience that, if you put more than one thing in an email, quite often people do not answer the second and third—in a message it is only the first question that gets answered and people will swear they have not seen the others. If that is the case with private emails, how much more would it apply to anything that is quite complicated? I do not know whether you would like to answer that question to start with, whether your department should operate as a more effective gatekeeper of regulations flowing out to schools from all parts of government as well as the DCSF. Do you think that is right?

Jim Knight: So two issues. One is the communications and the other is the gate keeping side.

Q98 Baroness Thomas of Winchester: We will come on to communications after this.

20 January 2009

Rt Hon Jim Knight

Jim Knight: On the gatekeeper side, by and large yes. The Whitehall clearance process means that we have sight of policy proposals as they are coming out of other Departments, and we have the opportunity to influence and to comment upon them as they are developed. Obviously, some of the detail that might be in some regulation would be much more limited and that is where we rely on officials from different departments knowing that there will be an interest from their colleagues elsewhere in Whitehall in talking through what they are proposing to do in regulation. So some go through that clearance process that I would see, and others do not. I suppose there would be some, such as perhaps some of the employment regulations, that might have an effect on schools or health and safety, where in many ways the 23,500 schools are regarded as another business and where we would want to represent schools, but we are 23,500 amongst millions of businesses. For some things, our ability to influence the outcome completely is limited just because of the context.

Q99 *Baroness Thomas of Winchester:* Let me get this clear. You are happy that you do get the difference between requirements and guidance straight from your Department to schools. They are being told the difference between requirements and guidance, perhaps in these emails from other Departments?

Jim Knight: In terms of emails from other departments, I would be interested if the Committee has evidence of other departments directly emailing schools. We would have other non-departmental public bodies talking to schools, and I talk to them on a regular basis about how much they might be mailing out, how much they can use our emailing service and so on, because I do want to make the communications more manageable for head teachers, especially the ones that Baroness Maddock is aware of in rural areas where the head teacher also has quite heavy teaching workloads. So that manageability is really important to us, but that gatekeeper role for schools across the whole of Whitehall is quite a complicated one.

Q100 *Chairman:* We cannot really see evidence that there is an effective gatekeeper function in the department itself for what it is doing for schools, that is what the evidence said to us—that nobody fits that function. It fits with one's recollection of how departments work. That a Bill may have lots and lots of individual policy units putting their bits into it, and each of them has that as their mission and they charge forward and they produce their SI as soon as they can and the minister signs it off at the bottom of the box—and the minister is no position, nor should they be, to undertake that collective gatekeeper function. So the argument put to us, which I think we are half persuaded of, is that there is a structural failure by the

department to manage the demands it is generating on to the system. You want somebody, so was the case put to us, to undertake that gatekeeper function on behalf of understanding what schools can cope with effectively—not being soft with them but recognising that any system can only cope with so much change at a time, and you need to take a holistic look at that and to govern it, reduce it and manage it. And it aligns of course to a common commencement date, Lord Crisp's point, because if you had to do that you would be more likely to do that sort of process, whereas at present it seems to us that the system is out of control.

Jim Knight: I would argue that we have been making some improvements to try and get better control. So, for example, the work that the department's board does in scrutinising regulation enables the senior officials in the department at Director General level to be able to have that oversight of what is going through the system. Ministers have a certain function to perform, obviously; as the Bill minister looking at a whole Bill I have to look at the through-put that is going on. I have just been looking at the Education and Skills Bill and we have another one in the stocks at the moment that you are all waiting for, I am sure, in the fullness of time. So I am acutely aware that one of my functions as a minister is to have a degree of oversight as to what is going on across the whole schools piece.

Q101 *Chairman:* We sense that the biggest oversight you could give would be to show very clear expectations that you want the change to happen so that schools move in the direction of policy, but you really expect the department to be coordinated and sensitive to the realities of implementation, rather than doing it on a central basis. That would be, I think, the most valuable contribution a minister could make.

Jim Knight: I think another area that things have improved is in the formation of a new department with its much broader remit for children across Whitehall. So that now through the dual key mechanism we have much more oversight of what the various departments that have any kind of remit for children are doing. I think that is assisting across children's services.

Q102 *Baroness Thomas of Winchester:* Moving to the second part of the question—communications are really the crux of the whole matter and we have touched on this earlier. What we really need to know is how far your department ensures that schools are aware of and understand all the new requirements imposed by regulations. The Advisory Centre for Education thought that you should do two things to improve communication. The first was that you should produce an online working document for each

20 January 2009

Rt Hon Jim Knight

subject area covered by education law incorporating all the changes and amendments and that it is kept updated. Secondly, produce an alerter to point people to changes in the law and explain the significance of the changes, and should be sent out. What do you think about that?

Jim Knight: It is certainly something I am happy to talk to the Implementation Review Unit about. It is their job to provide the oversight we have just been discussing.

Q103 Chairman: But is it their job or are they meant to give advice? They are not managing the system, are they?

Jim Knight: They are not managing it, but we set them up to give us that advice that we can then act upon and to give us that oversight. These are practitioners on the ground and it is our opportunity—we have set up a structure to be our eyes and ears on the ground. Because, as you have said, Chairman, the officials will do their best and we encourage them to get out and visit schools and we have more placements and various mechanisms and structures to get officials more acutely aware of what is going on, but we do try and use the IRU to inform what we do.

Chairman: I was making the distinction that they can inform, but you need somebody with senior weight to actually manage that coordination, that communication. Lord Rosser, you wanted to come in.

Q104 Lord Rosser: It is just on your response about the role of the IRU. In essence you have said, “We take note of what they say and we see if we can deliver” so presumably you could produce a document for us setting out what recommendations you have received from the IRU and which ones you have implemented?

Jim Knight: I am certainly happy to set it out for you.

Q105 Lord Rosser: Because in the evidence that they have sent us they suggest that not a lot of notice may have been taken of them; they put quite a lot of recommendations to us which seemed fairly fundamental—the kind of issues we are raising with you now.

Jim Knight: I think in terms of the specifics I am pretty happy with the relationship that we have with them. They are practitioners, and practitioners by and large would like us to take the foot off the gas a little bit, and that is a tension that will always exist.

Q106 Lord Rosser: They have said a bit more than just: “take the foot off the gas”. Some of the things they have said to us have been a bit more specific, and it will be very interesting to know whether they have made the same specific recommendations to you and

whether you consider that you have implemented them or not.

Jim Knight: I consider our relationship with the IRU to be a positive and constructive one that is very helpful—

Q107 Lord Rosser: It might be positive and constructive but that does not necessarily answer the question as to whether you have implemented what they have recommended.

Jim Knight: We are implementing some of the things that they suggest, but not necessarily all of them. I am happy to give you a note on how we get on.

Q108 Baroness Butler-Sloss: Could I take you to another area of communication, particularly straight back to the Implementation Review Unit, because they have said to us that post-implementation review and evaluation of your Statutory Instruments is actually rare—they said very rare. And if you do not know how and whether the schools are complying, is it not really likely that one could say that the legislation that you are producing is not effective and basically wishful thinking? Does this not concern you? This is coming from the very Unit that you set up to advise you, and they are telling us that you are very poor in feedback and you do not really know how effective your Statutory Instruments are.

Jim Knight: I would agree that it is unusual for us to have specific post-evaluation review of a specific SI, but we do as a matter of course regularly review the implementation of policy. I would be really cautious of setting up a standard post-implementation review procedure because of the burdens that that would place on schools in responding to all the surveys—they complain to me they are consulted to death already.

Q109 Baroness Butler-Sloss: I can see that, but how do you learn lessons for the purpose of subsequent legislation if you do not know how the earlier legislation has worked?

Jim Knight: In respect of the school system as it operates there are one or two aspects—admissions is the one that obviously immediately comes to mind—where the feedback that we get from the Schools’ Adjudicator or elsewhere has been that compliance has been an issue, so we have done compliance checks. By and large it is a very compliant system. We have things through our national strategies, through the local authorities, through the non-departmental public bodies: a delivery chain with which we work closely and that feeds information and intelligence back to us about how things are working. We have an inspection system that is one of the most robust systems anywhere in the world. And independent of us as a non-ministerial department Ofsted goes about its job, and we can charge them with inspecting how

20 January 2009

Rt Hon Jim Knight

community cohesion is working, for example. That would be something that we do that allows us to measure whether or not that particular duty has been properly complied with. It is through those sorts of mechanisms as well as bigger policy reviews that we see whether or not what we are taking through in terms of legislation and regulation is working, and if it is not then we will come back with some more.

Baroness Butler-Sloss: Chairman, I would have thought that answers question 8.

Chairman: It does indeed, yes.

Q110 Baroness Maddock: If that is the case why do we have the evidence we have? Somehow your communication is not getting through that maybe you are not doing a review in the standard way. You have given us examples of the way in which you think you are reviewing policy and so on, but it does not seem to be getting back to the teachers.

Jim Knight: There would be parts of that process which will not be that popular with teachers. The relationship with Ofsted is always an interesting one. They were very keen for the burden of inspection to be reduced, and now I get as many people telling me that they want inspectors to spend a bit more time in schools so that they have an opportunity to show off how great they are. It is a relationship that has its frictions, and they may not appreciate the value that that gives us at the centre in terms of being able to understand how well things are working.

Baroness Maddock: I suppose what I am suggesting is that, given the dissatisfaction we have seen, perhaps there is something you could take away and look at, and you could communicate what you have said to us rather better to those that are practising at the end.

Q111 Chairman: Let me add a touch to the point because, without being too crude, there is a naivety in politicians and officials at the centre of systems that their focus is to ask people to do something, and there is then an assumption that it will be done. That is how the system behaves. Unless one actually understands whether it is listened to and communicated effectively, it is largely a waste of time; and the experience of most of us who have managed something is that you have to say something about three times before it really takes and then have some mechanism to check it. If that is crudely true, it also has a bearing on volume. You have to reduce the volume to get better communication and compliance with what really matters, otherwise it just gets lost in the noise. That is what our witnesses are saying to us.

Jim Knight: Within that there are aspects of the system that are evolving that will make things easier. The extent to which the head is the pinch point through which everything has to go is something that is evolving in our school system, and you can see the rise of the school business manager; you can see the

rise of more distributed forms of leadership—and that is something that the National College for School Leadership is doing some really good work in developing—and that will expand the channel, if you like, through which we are communicating. We are doing a lot of work on Diplomas. That is a massive qualification reform, and if all of that was going through heads we would never be able to do it and to do anything else. But at the same time, in order to improve outcomes for children, we are trying to get more joined-up children's services, and there is a certain amount where we need to engage heads and school leaders with that and we also need to engage their governing bodies. Part of this is about having more people that we are talking to who are implementing things and having to understand the compliance rather than just a head teacher, and that is an evolving picture.

Q112 Lord Lucas: Would you not do rather well to pay much more attention to the progress of policies, like monitoring pupils as they go through school, rather than waiting to see what the results are like and then shrugging your shoulders and saying, "They did not do very well did they, but they are gone now"? You are taking rather that attitude to legislation saying that you only really look at it when you are replacing it, rather than monitoring its progress and its effectiveness as you go through. You do not need to send questionnaires to every individual school to know what is going on, you just need to monitor in a sampling sort of way. Has that not been one of the underlying problems, for instance with the Schools Admissions Code, that rather than keeping tabs on what was happening you waited until the abuses had become rife and then you suddenly need something massive and detailed to replace it and then you will not look at that for another five years until things are really going wrong? Is it not better to have a system of constant improvement as you have implemented in schools within the department, rather than these occasional bouts of chaos?

Jim Knight: With all due respect, I think we are doing that. I think we do have a system of continuous improvement. When you look at Schools Admissions, my recollection of the sequence of events was that we changed primary legislation and one or two things that we put into primary legislation, like the priority for looked-after children; that by and large it went into the Code; and in pretty short order we did some compliance checks that revealed that there was more of a problem than we thought in the implementation of the new Code. We then changed primary legislation again in order to give more powers to the Schools Adjudicator and more responsibilities on local authorities in respect of compliance, and at the same time we tried to improve the communication so that not just schools

20 January 2009

Rt Hon Jim Knight

themselves but also the diocese and some of the other organisations like FASNA that had a relationship with admissions authorities were better aware of what compliance looked like. I therefore have some confidence that we are getting a much more compliant school system in the space of two or three years. Again, in school terms, that is pretty fast.

Q113 Chairman: We have had evidence from both the IRU and from the Association of School and College Leaders to the effect of what we have put to you already—that essentially the model of change used by the department specifies the inputs and the directions in quite considerable detail, and that it would be much better to reduce that radically and to manage and motivate much more through outcomes. Can we hear your view on that?

Jim Knight: Again I am absolutely confident that, although it does not look like that from your perspective, from where I am sat it feels like we have moved a long way towards that and indeed we are currently—

Q114 Chairman: Why do they not recognise it then?

Jim Knight: I think it is possible for me to sit down with ASCL and the members of the IRU and say to them, “Come on, let us just look at all your schools that you might be involved in as members of the IRU; let us go and have a look at the variety of schools up and down the country and the different ways in which they do all sorts of things.” We now have a much more flexible secondary curriculum, and we are moving towards a more flexible primary curriculum, and there is a huge variety in the way they do that; there is a huge variety in the way they employ their staff, particularly as we have radically increased the amount of support staff we employ in schools; and they have different sorts of governance arrangements now. When I travel overseas and talk to people about the way our school system is, they do not understand why we have so many different types of schools. We have huge variety and diversity in our system; we have a huge flexibility and delegation, and the extent to which we trust our school leaders to get on with it is massive.

Q115 Chairman: They say that the system is wrong; they say it is excessively input-specified and insufficiently outcome-developed.

Jim Knight: If I am frank with the Committee I think that is partly because we have let the genie out of the bottle. Now that we have given a lot of freedom and increased the professionalization and we have highly able, brilliant, skilled people leading their schools, they resent what is left in some ways more than in other school jurisdictions where the minister knows what is being taught in every school in the land on a Monday morning.

Q116 Chairman: It is not really a debate about whether they like it or not, it is a debate about what philosophy of motivating change works. We should not get the impression that IRU are anything other than as ambitious as you are for good cognitive and social development; they were impressive in that. However, they were basically arguing that this is a flawed model.

Jim Knight: When I look at what really motivates head teachers and governors, what I look at and what parents look at, it is always outcomes. The things they complain most about to me are the tables and tests; it is the outcomes and tables. They complain to me about whether Ofsted’s judgments were right and how they relate to tests and tables. We are now looking at a new School Report Card system, which I think will provide a better, more rounded measure of the performance of a school; but it is all about outcomes. The discussions about high stakes in schools are about the extent to which outcomes are given high stakes and that they create too much pressure: more so than these burdens. These are significant complaints but it is not the big story. The big story is the complaint about the way we value outcomes.

Q117 Lord Rosser: The question I want to ask relates to the same thing. As the Chairman has said, we did have the view expressed by the IRU that there was too much focus on process, not enough on outcomes; it would be better if the Department set the policy. The examples they gave were to close the attainment gap, or to enter into better dialogue with the parents, without defining what that meant and without telling them specifically how they should do it but judging them on whether they had achieved that particular objective. They then referred to something called the New Relationship with Schools—that was in 2004—which they said had the germ of that at its centre. They said they felt that, if that had been driven through at the time and the Government had stayed with it, we would have what they described as “fewer problems than we have now”. Was that the germ at the centre of the New Relationship with Schools, i.e. rather more emphasis being placed on outputs and rather less on process, about telling people *how* they should be doing things rather than saying, “This is the objective. It is up to you how you achieve it, but we will be judging you on whether you have achieved it”? Was that part of the New Relationship with Schools and what has happened to it?

Jim Knight: It was, and I think that we have done it more in some areas than we have in others. There are aspects which we may not regulate on. We do not regulate, for example, on how we should have as systematic a way of teaching maths as teaching reading in the first years of primary school, but we

20 January 2009

Rt Hon Jim Knight

have national strategies people working with schools. I was meeting today with the Training Development Agency (TDA) for Schools about the initial teacher training of English teachers in reading, because we are clear—and it is very much an input—that, in order to get better results in reading, we should have the systematic teaching of synthetic phonics. There are circumstances when you do want to prescribe input, because you know it works.

Q118 Lord Rosser: Is the New Relationship with Schools' programme, if that is the correct way to describe it, still alive and running? How does it manifest itself?

Jim Knight: The IRU is a creature—although probably some people would say “creature” sounds like a pejorative word—of the New Relationship with Schools. The way in which we consult with them and with the others, the reference groups that I referred to earlier, is about a relationship that is trying steadily to reduce burdens, steadily to move towards more outcome-focused measures of performance and a less prescriptive way of doing things. We are carrying on down that road. I am not saying that we have got to the destination yet.

Q119 Lord Rosser: Is it the Department's view that, if the Department is to become more output-orientated rather than telling people precisely how they should do things—I know you have said that in some circumstances you have to continue to do that—one of the tests of whether that is being achieved is a reduction in SIs? A reduction in the length of them or frequency?

Jim Knight: Instinctively, I want to say yes.

Q120 Chairman: Go on then!

Jim Knight: I am reluctant to do that, because I know that there are certain circumstances where, in terms of the right to innovate, you might want to allow a school to innovate—which I think we would all agree is a good thing—to achieve an outcome and find a new input, a new way of doing it; but I might need to pass an SI in order to give them the ability to do that. If I had a straitjacket of saying, “The way I want Parliament to judge whether or not we are serious about the New Relationship with Schools is the trajectory on the numbers of SIs”, it might get in my way.

Q121 Chairman: I think you could pass one SI which gave them the general power of competence, like local authorities have, and that would be “job done”, would it not? Can I be really beastly? I asked my officials to dig about on the New Relationship with Schools. The Department helpfully commissioned research, a report from, I think, York Consulting on the perceptions about the New Relationship with

Schools. It said that the impact from the New Relationship with Schools on changing perceptions about the levels of bureaucracy for schools is minimal. Let me leave that with you, because it seeks to explain why we have such a strong view that there is something wrong with the system.

Jim Knight: I would just offer the Committee one other thought. The fortnightly email was mentioned. The fortnightly email was a genuine attempt to try to reduce the burden, if nothing else, of brown envelopes coming through the door. I have been the guardian of trying to prevent the Department from sending things in the post to schools. I am now starting to get feedback from the system that they want us to send them a few things in the post. They do not want to go back to the bad old days but they think that the rule is too rigidly applied, because just occasionally they want their attention drawn to something because they have received it in hard copy in the post.

Q122 Chairman: It is back to effective communications, is it not?

Jim Knight: Yes.

Q123 Baroness Maddock: I want to ask about Academies. The Chairman wrote to you in December, pointing out the differing applications of statutory instruments between maintained schools and academies. In your reply you say that you are committed to a “light-touch regulatory framework” for academies, using Funding Agreements rather than secondary legislation. Our question to you is, if this is a better model for promoting change, why do we not apply it to all schools?

Jim Knight: I thought that you might ask me that.

Q124 Chairman: Well, we wrote to you and told you, did we not?

Jim Knight: The problem with going down that road—which I know is tempting to some—is that much of the regulation of academies is done through the Funding Agreement. It is not without its burdens on us, as the Department, to maintain that relationship now with the 130 or so academies that we have, how they are complying with their Funding Agreement, how they are doing, and so on. If we moved to just all secondary schools having a Funding Agreement and being regulated through that route, it would be a huge centralisation. It would be a bit of a monster at the heart of the school system, certainly. It is the right thing to do where we particularly need to give the flexibilities to deal with intractable problems in a school, but I do not think it is something that we should do universally, for those reasons. We also only do it where we have really strong governance, partly through the sponsor and partly through the way in which the sponsor then

20 January 2009

Rt Hon Jim Knight

assembles the governing body. We have much stronger systems in place at a school-by-school level to oversee the work of the professionals in the leadership team, the staff, and so on, which allows us to have a slightly different approach to the regulation that we have with the other schools.

Q125 Baroness Maddock: Are you doing any sort of research, by looking at two or three of each type of school to see if there are any arguments for going rather more down the road of a lighter-touch regulation? Looking at some academies and looking at some ordinary schools and taking the evidence to try to back up what you are saying?

Jim Knight: I am not aware of a specific piece of research on that, and it is an interesting proposition. As I said earlier, we have this huge diversity of different sorts of things that are going on. It is quite difficult to compare like with like in any circumstance; so you would have to make sure that you are constructing a research project that will be able to do that; that will work and will be effective. I am sure that there will not be any shortage of takers if we were to commission it, and that is something I can reflect on.

Q126 Baroness Maddock: It occurs to me that, given the amount of evidence we have had about how people feel about what is going on, it might be really helpful if you could do that.

Jim Knight: I will think about that.

Q127 Chairman: Could I ask if your officials could write to us, no doubt via you, giving us a bit more detail about what regulations do apply to Academies? I will put it the other way: what does not apply to Academies, both in terms of policy and in volume and the decision-making process, so that we can get a clearer picture of it. Do not try it now. Just give us a letter, so that we can see that.

Jim Knight: In very simple terms, in a couple of sentences, there is very little legislation that applies to academies apart from the legislation to set them up, and then their Funding Agreement is the governing document for how they work, as independent schools funded by the taxpayer.

Q128 Chairman: I think you can sense where we are going to on that one. That is one form of an outcome accountability framework. We are leaving with you the question about what is the direction of travel in policy, because people are saying that where we are at present does not work, and we should be moving into a much more effective outcome accountability.

Jim Knight: I think the direction of travel, the road that we are going down, has a destination that is much more about outcomes and less about inputs; but we reserve the right in circumstances where we do need to help with the inputs.

Q129 Chairman: You can probably sense where the Committee's mood is.

Jim Knight: Absolutely.

Q130 Chairman: The Committee will write its report and you will see it. You can probably make a fair guess about where it is going. In a sense, I am inviting you, if you want to, to write further to us and to head us off at the pass by seizing some of the initiatives that we have suggested, to demonstrate that there is ownership at ministerial level and make some significant system changes that we believe will be in the interests of your objectives and schools' objectives, to get the results that they both want.

Jim Knight: I am extremely grateful for that helpful steer. I will obviously reflect on that with officials and with other ministers, and see whether or not we can do that. As I have said earlier, however, we find the work of the Committee extremely helpful in helping us improve the way we go about doing our business.

Chairman: Thank you very much for coming. We have enjoyed the session.

Supplementary memorandum submitted by Rt Hon Jim Knight MP, Minister of State for Schools and Learners

Thank you for inviting me to give evidence as part of your inquiry into the cumulative impact of Statutory Instruments (SIs) on schools. Thank you also for giving me the opportunity to write further to you on the areas we discussed during that session.

The Department welcomes this inquiry, and strongly agrees that it is important to review policy and consult widely on the effectiveness of regulation in practice. We appreciate the many valid points raised by the Merits Committee and key stakeholder groups in this and other evidence sessions, regarding the impact of the volume, timing and communication of regulations on schools.

The Department's 2008 Capability Review highlights the need to engage in a constructive dialogue with our partners in the delivery system to better understand both their capacity and capability issues, and how best to support them to meet existing and future priorities. The review makes a commitment to improve our communications so that there is a common understanding throughout the delivery system of roles and

responsibilities, and to ensure that our partners are equipped to make well-informed decisions about where they target resources to meet priorities, whilst listening carefully to concerns about their capacity to deliver the Government's ambitious goals. The Implementation Review Unit (IRU) in its evidence session said that the Department is better at stakeholder engagement than it has ever been, and looks rigorously at the extent to which standards for all pupils are improving.

TIMING

You raised the suggestion of imposing commencement dates for SIs impacting on schools, similar to the Common Commencement Dates applied by Government to SIs impacting on business. I am happy to commit to work towards a situation where annually we have 1 September as a schools Commencement Date for SIs, strengthening the approach we already take with most regulations directly affecting schools (particularly those related to curriculum changes). In future, I want there to be a stronger emphasis on this to ensure that relevant Departmental regulations come into force at the beginning of the school year. There will obviously be exceptions, such as finance and admissions regulations.

Finance regulations govern the way in which Local Authorities fund schools, and will usually come into force on 1 April to coincide with the beginning of the financial year. Admissions regulations need to fit the school admissions cycle and will usually need to be laid in preparation for January. There may be other exceptions as I outlined to you in the evidence session, but in general SIs impacting on schools will, wherever possible, come into force at the beginning of the academic year. We will also communicate this commitment to our stakeholders, as it is clear from the evidence submitted to the Committee by several groups that they feel the Department has not been systematic enough in its approach to commencement dates. However, as I pointed out to the Committee, Ministers will always require a degree of flexibility in order to respond to urgent issues and problems as they arise within the schools system.

In relation to the timing of SIs, you also recommended that the Department should give schools at least one term's lead time before new regulations apply. We agree that this is important, and would always aspire to give enough lead time in order for schools to be able to implement regulations effectively. While we recognise and agree with the point of principle you are making, the laying of all regulations which are to come into force in September by the preceding April would be a significant step. As you know, the Parliamentary convention is that there should be 21 days between the laying of an SI and its coming into force, a convention which we have an excellent record in observing. We are already striving to lay before the Committee departs for the summer recess, which gives a seven-week lead time to 1 September. To move to a four-month lead time as you suggest will need careful consideration. There are also likely to be some exceptions which always apply, such as the school finance regulations (where the primary impact is on local authorities rather than schools) and the orders relating to teachers' pay and conditions (which are the subject of intensive negotiations with our social partners, usually to the very last possible minute in July). I will ask my officials to undertake a review of lead time, with a view to ensuring that there is at least a term's lead time for SIs directly affecting schools in 2010. I will write to the Merits Committee before this summer's recess outlining the findings of the review.

GATEKEEPING

Gatekeeping was another of the key issues which you asked me to expand upon. The Department is committed to minimising and reducing burdens wherever possible. As we discussed, the work of the IRU is very important in ensuring that workload remains at the top of our agenda. The IRU was established as part of the 2003 National Agreement to raise standards and tackle teacher workload, between Government, employers and school workforce unions. Although funded and supported by the Department, the Unit sets its own agenda and is able to challenge the Department, Ministers and senior officials on workload issues. The Department listens carefully to the recommendations made by the IRU and wherever possible acts on them, as Annex 1 sets out (a summary of DCSF progress against IRU recommendations since 2003).

The Star Chamber is another vehicle in the Department's drive to reduce bureaucracy impacting on schools. The Star Chamber ensures that new data collection exercises do not create unnecessary burdens. We are committed to a 30 per cent reduction in the burden of frontline data stream requests made by the Department by 2010.

DCSF BOARD QUARTERLY REVIEW OF SIs

You requested more detail about the DCSF Board's review of SIs. In giving evidence to the Committee in November 2007, Lesley Longstone (Director General, Young People) and Claire Johnston (Legal Director) explained that they would be implementing a new process to enable the Departmental Board to take an overview of the volume and quality of statutory instruments being produced. The Legal Director now reports to the Board each quarter, setting out how many SIs were laid in the preceding quarter, how many were the subject of reports from the Joint Committee on Statutory Instruments or Merits Committee and noting any risks or recommendations. She also provides a "forward look" of the planned SIs for the next six-month period, again alerting the Board to any risks or recommendations. The first report was made in April 2008, looking back over January-March and forward to April-September. Subsequent reports have been made in July 2008, October 2008 and January 2009.

The aim is to provide the Board with a strategic overview of the overall volume and quality of the SIs being made and planned, and to keep the Board informed about the views of the two Parliamentary committees which monitor SIs. The report alerts the Board to any issues on which their intervention is needed. In relation to timing, for example, the 2008 reports notified the Board of progress towards the aspiration to avoid laying any SIs that would come into force during the summer recess without the Merits Committee having an opportunity to consider them. This enables Board members to cascade down to those in their line management the importance they attached to improving our record on this. The final outturn was that six SIs had to be laid in such circumstances (four relating to teachers' pay and conditions, the subject of detailed negotiation with teachers' representatives, and two relating to the early years foundation stage). This was a notable improvement on 16 SIs laid and coming into force during the 2007 summer recess. Given the strong Board lead on this matter, we hope to do even better this coming summer. We are clear that there has been a beneficial effect on SI practice across DCSF. The very fact that policy officials and drafting lawyers now have to contribute to the Legal Director's quarterly report has helped them to focus consistently on six month forward plans and to avoid unplanned or inadequately timetabled SIs wherever possible.

We are committed to develop our monitoring of the full range of SIs laid by the Department, the impact these have on particular sectors, and the appropriateness of the Explanatory Memoranda. The Department will establish a mechanism whereby we can monitor SIs with a specific and direct impact on schools. This will ensure a systematic examination of the flow, coherence and quality of SIs as they are being prepared and implemented, with a view to consolidating and ultimately reducing the amount of primary and secondary legislation affecting schools.

ACCESSIBLE COMMUNICATION ABOUT NEW REGULATIONS

The Department now issues a fortnightly email to all schools highlighting key information of importance. This has been welcomed by our stakeholders, including the IRU. The email contains short, concise summaries of the latest information, with web links pointing to the Online Ordering system where schools can choose whether to download electronic versions or order paper-based copies of the information they need. This service puts schools in control of what they receive, when they receive it and the number of paper-based copies they require. The DCSF website also contains up-to-date information. When giving evidence to you, a number of groups recommended that we should make the website easier to navigate, and that the bi-weekly email should be clearer and more subject-specific.

The Department is taking action to address these recommendations. We are currently working toward reorganising the information in the summary email via profiles to make it more specific. This will include sifting and categorising information. We are also carrying out research on the penetration of the email in schools, as we are very aware of the need to ensure that all schools have the resource to access and act on updates from the Department and other bodies.

The 2007 "Out Tray" study report commissioned by the IRU and carried out by CRG Research, is a study of the fitness for purpose of materials the Department and its agencies send to schools. We are making a great deal of progress implementing the recommendations of this report. Our new email and online service will bring together all content from Non-Departmental Public Bodies and DCSF, which will be quality assured to avoid duplication or contradiction of messages. Website rationalisation will mean that all workforce content will be presented in one place. In addition to this, we expect to launch a new single web portal for schools in autumn 2009, bringing together all key agencies working with schools. We have asked a member of the IRU to join the programme board for the new web/email channel, to advise us on how best we can continue improving the accessibility of our communications to schools.

ACADEMIES

You requested that we give you more detail about what regulations apply to Academies. As I outlined in my previous letter, much of the legislation governing maintained schools does not apply directly to Academies. It would be wrong to conclude, however, that Academies are free from legal obligations or “regulation” in the broader sense. Where the rights and entitlements of parents and pupils are concerned, there is no real difference between Academies and maintained schools. Academies are legally obliged to comply with the requirements that legislation imposes on maintained schools, not under that legislation itself, but because the Department obliges them contractually to do so. A whole raft of contractual obligations are imposed on Academies by the funding agreement that the Department enters into with each Academy. These funding agreements are detailed and lengthy legal contracts that regulate the way that Academies are run, and they impose on Academies those obligations that apply in the maintained sector and that are essential to delivering key strands of Ministers’ policies in relation to pupils and parents.

In some areas, we do not use the contractual route to reproduce the precise effect of education, and that is because the Department’s direct relationship with Academies (through Education Advisors, School Improvement Partners and Academy Liaison Officers) enables us to ensure that a range of the policy outcomes we want can be delivered without recourse to regulation. At the moment, that relationship is a significant difference from the maintained sector and it is key to the lighter-touch regulatory framework. In the longer term, we may want to take a view about whether it would be possible or desirable to replicate certain aspects of the Academies model more widely in the system. However, we feel that judgement cannot be made until we have a longer and more detailed evaluation of the programme.

You suggested a research project comparing the ways we regulate maintained schools and Academies. The PWC five-year evaluation of the Academies programme included some basic qualitative research comparing aspects of the regulatory mechanisms of Academies versus maintained schools. In the future, the Department is looking to carry out more focused evaluations of specific areas of Academies policy, and this could include a comparison of this type.

I hope these points answer your questions. I appreciate this opportunity to demonstrate that we are moving forward in these areas. We have a responsibility to understand and appreciate the overall impact of legislation on schools, and we are committed to improving our communications to ensure that our partners are able to deliver the Government’s ambitious vision.

February 2009

Annex 1

DCSF PROGRESS AGAINST IRU RECOMMENDATIONS SINCE 2003

<i>Area</i>	<i>Recommendation</i>	<i>DCSF Response</i>
New Relationship with Schools	1) Encompassing primary as well as secondary schools, and including post-16 arrangements for secondary schools	1) This was taken forward (eg SIPs in place for every secondary school from September 2006 and primary from April 2008).
	2) Using single school plan to replace separate bidding requirements	2) The multiple planning required by the schools was replaced by a single improvement plan looking three years ahead.
	3) More effective and simpler delivery chains needed, with intermediaries adding value, not bureaucracy.	3) DCSF provide guidance to LEAs and other intermediaries but IRU concerned that this is not always followed.
	4) Shorter school inspections focusing more on outcomes than activity.	4) This was developed and in place from September 2005.

<i>Area</i>	<i>Recommendation</i>	<i>DCSF Response</i>
Publications and Guidance	<p>1) Schools should not be overburdened with hard copies of guidance.</p> <p>2) Clearer distinction needed between what is compulsory and what is optional.</p>	<p>1) Online ordering system for publications and guidance was developed as a result of this, allowing schools to choose what they want to receive.</p> <p>2) Clear distinction now made in summary email to schools.</p>
Wide range of policy initiatives	Need for greater coherence and congruence in planning, timing and execution of the range of new policy initiatives under development.	Policy map of work in the Department, showing the timing of when impact was likely to occur.
Impact Assessments	IRU encouraged DfES to introduce system of impact assessments.	This was introduced, providing greater cohesion and alignment between initiatives, and reduction of number of initiatives.
SEN provision	<p>1) The IRU highlighted the continuing burdens on schools relating to SEN provision and pressed the case for change in the SEN statutory framework.</p> <p>2) Further concern expressed that the response falls short of a review of the SEN system.</p>	<p>The Secretary of State wrote to local authorities urging them to look critically at their own systems of planning, reviewing and making provisions for children with SEN to see how they can remove unnecessary paperwork and demands on schools, whilst maintaining the proper accountability.</p> <p>The Department has consolidated the process for planning, target setting and recording of progress for pupils with SEN as part of personalised learning and whole school record keeping, as opposed to having to create separate individual action plans.</p> <p>A fundamental review of SEN is to be carried out by the department in 2009. By delegating more resources for SEN directly to schools, there will be greater capacity in schools to promote earlier intervention, which should reduce the need for statements and associated bureaucracy and means less paperwork. The IRU continues to consult the Department on this area, and a meeting has been set up between IRU representatives and the SEN team in February.</p>
Foundation stage profile	Primary schools highlighted concerns about the implementation of the foundation stage profile. IRU commissioned an ex-primary head to investigate this and reported weaknesses in the implementation strategy.	Materials to support the training of practitioners in observation-based assessment have been developed. Since the implementation of the Foundation Stage profile changes have been made to the way in which projects are developed in the DCSF. Where responsibilities are divided between the DCSF and a delivery partner, it is standard practice in the DCSF that they are clearly defined and closely monitored.

<i>Area</i>	<i>Recommendation</i>	<i>DCSF Response</i>
Data Collection	1) IRU undertook a monitoring exercise with 30 schools to provide a full picture over a year-long period of what data schools are being asked to provide, who is asking them, and how much time it is taking up. Recommendation that data should be collected once and used many times.	Duplicate data collection has been removed and DCSF has declared an embargo on new data items for School Census in 2008–09. Same data items agreed for 2007 Census will be kept in for 2008–09. The Department has committed to a 30% reduction in the burden of front-line data stream requests made by the Department by 2010. However, IRU disappointed that DfES collecting data about Post-16 Learning Aims from schools before software in place to make it possible to do so. Through the Raise-on-line programme there has been an improvement in recording the Pupil Achievement tracker and performance and assessment reports.
Funding	1) Recommendation to simplify funding streams.	Department brought in new funding arrangements from 2006–07 with simplified funding streams.
Specialist School Status	1) Department should apply Single School plan approach to its policy that all secondary schools should become specialist schools.	The Department initially declined to accept the IRU's view that, under the new relationship, application for specialist school status should be via a school's single plan. However, changes introduced in May 2006 simplified the procedures for initial application and subsequent reapplication. Schools no longer have to submit information that is held centrally or submit duplicate copies of documents. Redesignation as a specialist is now via the school plan plus a short supplement.
	2) The IRU recommended that the decision on school re-designation should be based on a school's Section 5 Ofsted inspection.	2) For a significant number of schools re-designation is now agreed without the need to submit further plans. Consultation between IRU, Specialist Schools team and SSAT is ongoing (including plans for a meeting with the whole panel in March).
Pupil progress reports to parents	IRU engaged with the proposal to increase the quantity and quality of schools' reports to pupils' parents about the pupils' progress.	Letter from DCSF to both IRU and the Workforce Agreement Monitoring Group. In the letter, DCSF announced a change in the specific policy commitment. The original commitment had been that schools would have to report to parents every term. The new commitment is that the parents of every child who is a pupil at school will have online access to information on their child's attendance, behaviour and progress in learning, by September 2010 for pupils of secondary schools and by 2012 for pupils of primary schools.

<i>Area</i>	<i>Recommendation</i>	<i>DCSF Response</i>
14 to 19 Diplomas — Gateway process for consortia	The IRU expressed concern at the heavy workload for schools associated with the bidding involved in the 14–19 gateway procedures.	The Department is giving schools a range of support in the work they will need to do for the second Gateway cohort (eg learning visits, TDA workforce development, QCA curriculum models, funding).
Looked After Children	IRU alerted officials to the risk that the role of a “virtual headteacher” in every local authority might establish a set of accountabilities outside the NRwS.	DCSF pilot of role of virtual school head worked through School Improvement Partners, ensuring that accountability was through existing “new relationship” structures.
Major curriculum changes	1) IRU urged delay to changes in the 14–19 mathematics curriculum. 2) Concern that more time needed to make preparations for major changes in the curriculum in 2008.	Changes delayed for a year to give schools a better lead-time. An additional training day was allocated to allow for preparation. However, IRU still felt that significant workload and stress would result from the juxtaposition of curriculum change at KS3, 4 and 5.
Community Cohesion	Schools needed enough time to understand and implement initiative.	Ministers deferred inspection for a year, allowing schools time to understand the new duty and associated guidance.
Fair Processing Notices (Privacy Notices)	IRU recommended that DCSF change guidance to LEAs stipulating that schools should send out FPNs to all parents and students.	DCSF are changing the guidance to ensure that FPNs can be included on school websites / prospectuses and do not need to be sent out separately. Also rewriting sample FPNs to make them shorter and clearer.
Local Gatekeeping	IRU published Gatekeeping Handbook for LEAs and other organisations. Department should encourage LEAs to act on the handbook’s messages.	DCSF working with Jane Beckford (Lancashire Gatekeeping) and Andrew Fielder (IRU and Cornwall Gatekeeping conference organiser) to encourage the principles of LEA Gatekeeping.
Star Chamber	IRU have recommended that a school data manager should sit on the external scrutiny group of the Star Chamber.	DCSF IRU co-ordination team working with Data Development Unit in order to take action on this. Formal request to be made to Star Chamber which they will be discussing in next meeting on Feb 16.

Written Evidence

Memorandum submitted by the Association of Directors of Children's Services

The Association of Directors of Children's Services (ADCS) is pleased to submit this response. ADCS is the national leadership organisation in England for directors of children's services appointed under the provisions of the Children Act 2004 and for other children's services professionals in leadership roles. The Association provides a national voice as a champion for children, with local and central government, and with the public.

NUMBER OF SIs

1. *How do those affected by a large number of SIs keep up-to-date with the many new, or amended, requirements?*

Those affected in schools do not keep up to date. Statutory Instruments are rarely sent to schools by the DCSF; and the cost of commercially provided services, such as Butterworth's Law of Education, probably make access to the law, because of cost and complexity, beyond the scope of all schools. Schools, and to a large extent local authority officers working in children's services, rely on interpretations of the law provided by the DCSF.

The DCSF also provides a guide to the law for school governors; the most recent edition is 240 pages. The length shows the daunting nature of coming to grips with the law behind the governance and management of schools; however, even this document does not go into the depth required for the detailed management of admission arrangements for example in Voluntary Aided and Foundation Schools.

Schools also receive information from the teacher and head teacher professional associations, and for local authorities, the Local Government Information Unit provides briefings but these on the whole are based on guidance from the DCSF rather than on the original legislation.

There are of course many non-education regulated activities that schools have to manage covering employment, equalities, data protection, freedom of information, health and safety, transport (insurance and taxation of min-buses etc), development control, environmental protection, adventure activities etc. Rarely are schools sent information directly by the sponsoring Government department but have to rely on the DCSF and their local authority to help them through the minefield of modern educational management.

However, whether it is healthy for Parliamentary democracy that schools' main access to the law is via the executive and its agents is a moot point.

2. *What steps do the Department take to ensure timely and accessible communication about new regulations? Is there evidence that such communication is effective?*

The DCSF appears to take few steps to ensure schools and local authorities have access to new regulations. Very rarely are copies of relevant regulations included in DCSF guidance. Information about new provisions is available by way of statutory and non-statutory guidance from the DCSF and its partner bodies including OFSTED, the Qualifications and Curriculum Authority, the National Assessment Agency, National Strategies, Learning and Skills Council etc.

On the whole, these communications are effective, not least because when there are major changes to the law, for example new National Curriculum provisions or exclusion arrangements, the DCSF and its partners will arrange briefings for selected headteachers and local authority officers at various regional events. There is an expectation that local authorities will cascade information to schools, and electronic copies of guidance, and occasionally hard copies, are available from the DCSF.

3. *Is it always clear what a new SI actually requires schools to do? (Examples of clear, and unclear, SIs would be very useful.)*

Usually, it is clear what a new statutory instrument requires a school to do, although the complexity of some provisions, especially where they are amendments of earlier regulations make understanding difficult. Understanding is helped by the Explanatory Note at the end of every Statutory Instruments and the accompanying Explanatory Memorandum, although the quality can vary.

Quite a lot of regulations impinge only on some schools, eg the School Admissions Code and related SIs such as The Education (Admission of looked After Children) (England) Regulations 2006 impose requirements on Voluntary Aided and Foundation Schools but not community schools. However amongst that minority the recent compliances investigation carried out by the Chief School's Adjudicator found that some 50% were in breach of some aspect of the Code or regulations. The Chief Adjudicator also took the view that most of these breaches were inadvertent rather than wilful which suggests that schools lack a sufficient understanding of the duties imposed on them by the regulations.

A significant number of regulated activity, eg the necessary processes required to change status to become a Trust school or enter a federation with other schools is a one-off event undertaken by a minority of schools. Those contemplating such action have to rely on their local authority or employ consultants to advise them of the necessary procedures that must be followed. On occasions some institutions do not realise that certain actions are subject to regulation and risk acting ultra vires as a result.

TIMING OF COMING INTO FORCE

4. *Would it be helpful if there were CCDs for schools-related SIs; if so, how many, and on what dates?*

In terms of reducing the burden is on schools and local authorities, a single annual common commencement date of 1 August, with all changes to legislation in place by the previous 1 April, would help enormously. Whether the DCSF (and other Government departments) could achieve this objective is an interesting question.

5. *Alternatively, would it be more helpful if the introduction of new or amended requirements were more evenly dispersed throughout the year?*

Once a year changes to the law would be better than changes dispersed throughout the year.

ADVANCE NOTIFICATION / CONSULTATION

6. *How aware are you of the development of legislation before it comes into force?*

There are frequent meetings between senior members of ADCS Council and DCSF officials to look at broader developments in Government policies, many of which require changes to the law. Information from these meetings will be disseminated to Directors of Children's Services. However these meetings usually focus on the substance of the policies and often look at the wording of relevant guidance. Whilst DCSF do usually publish draft regulations for consultation they do not always loom large in conversations about the implementation of new legislation.

The DCSF does not always produce a timetable of consultations and when legislation will come into effect. OFSTED does publish a timetable of consultations.

7. *Is there adequate advance notice of schools-related SIs, and does this allow enough time for those affected to prepare for and comply with new requirements?*

On the whole, there is adequate time to implement changes to the law. Occasionally, final DCSF guidance can be very late.

FEEDBACK FROM IMPLEMENTATION

8. *What arrangements are in place to feed back practical experience of implementing SIs? Do those required to implement the requirements consider they have adequate channels of communication to the Department?*

As mentioned previously, there are frequent meetings between senior members of ADCS Council and DCSF officials at which feedback can be expressed about the experience of implementing new government policies. There are no formal feedback mechanisms, and once again these conversations tend to be undertaken at the level of policy as mediated through formal and informal guidance from officials as opposed to the actual regulations approved by Parliament.

9. *Do you have any suggestions on how the process of developing and communicating new regulations could be improved to make it a more effective means of delivering Government policy?*

As far as schools are concerned, requiring teachers by way of the National Professional Qualification for Headteachers to undergo training in the statutory arrangements for education and children's services (and the others areas of legislation which impinge on schools) would be an advantage.

10. *Do you have experience of an SI which, in your view, has been unworkable or has failed to achieve its policy objective?*

Following the passage of the School Standards and Framework Act 1998 a considerable amount of time was devoted to drafting and implementing regulations under s12(3). These provided the framework to allow school governing bodies to devolve powers to an Education Action Zone (EAZ) set up under s10 of the same Act. Whilst a number of EAZs were set up these regulations were never used as governing bodies were reluctant to relinquish any of their powers and preferred to rely on more informal arrangements.

Section 113 of SSFA 1988 allowed FE institutions to provide secondary education for 14 to 16 year-olds. Section 113(2) provided that "The governing body of the corporation or institution shall secure that, except in such circumstances as may be prescribed by regulations, no education is provided to a person who has attained the age of nineteen years in a room in which any such pupils are for the time being receiving secondary education." When the Act came to be implemented no one could work out what these particular regulations were meant to achieve—so none were drafted.

More recently the Education and Inspections Act 2006 made provision for schools to become "Trust Schools" by adopting a "Foundation". The Act, embellished by detailed regulations, provides for a foundation acquired in this way to appoint either a majority or a minority of the membership of the governing body concerned. Although a number of schools have taken Trust status none, so far, has granted their foundation majority nomination rights.

A FURTHER SECTOR FOR STUDY?

11. *Which other parts of the public sector are similarly affected by large numbers of SIs laid over a short period of time? Do such sectors have distinctive experience which could usefully be studied by the Committee?*

- Local government.
- Child care.

4 November 2008

Memorandum submitted by the Association of Teachers and Lecturers

ATL, as a leading education union, recognises the link between education policy and our members' conditions of employment. Our evidence-based policy making enables us to campaign and negotiate from a position of strength. We champion good practice and achieve better working lives for our members.

We help our members, as their careers develop, through first-rate research, advice, information and legal support. Our 160,000 members—teachers, lecturers, headteachers and support staff—are empowered to get active locally and nationally. We are affiliated to the TUC, and work with government and employers by lobbying and through social partnership.

ATL POLICY

ATL does not believe that, for schools, it is the issuing of Statutory Instruments (SIs) that is the problem per se, but the ways in which government develops and implements policy. In the recent past, too many professional judgements about curriculum, assessment and pedagogy have been removed from teachers and placed in the hands of ministers, government departments and agencies. While we welcome the government's continued belief in the importance of schools and teachers, we believe that its managerialist approach, demonstrated by the vast and detailed interventions laid out in the SIs, shows a lack of trust in the profession and a denial of complexity. This is ultimately damaging to the professionalism of teachers, meaning that system performance will suffer in the long run.

Problems arise because of the number of government interventions, the number of different agencies and departments with a remit to intervene in school practice, the speed at which new policy developments seem to appear, and the difficulties for professionals in translating the government's priorities into their day-to-day realities. Our concern therefore is not with the number of SIs, nor the short timescale between their being made and their coming into force, but with the impact of numerous and detailed changes to education policy on teachers, support staff, headteachers and pupils.

ATL believes that government should hold a much clearer picture of the cumulative impact of policy and legislation on schools, teachers and pupils across the board. As a signatory to the 2003 National Agreement, ATL is a social partner of the Government. We are grateful for the opportunities for early consultation on policy within the partnership, but regret the persistence of some instant policy initiatives which undermine aspirations towards evidence based policy.

ATL'S RESPONSE

Number of Statutory Instruments

It can be hard for schools to keep up-to-date with new or amended requirements. The DCSF has taken steps to limit the amount of paperwork that flows into schools, both from the Department and from other agencies. However, in practice this often means that the same information is available electronically, so that schools must spend time and money finding, downloading and printing it instead.

Awareness of policy change is often high because many new regulations come with long lead-in times and plenty of support and guidance, and often with much media coverage. For example, 13 of the SIs laid before Parliament in July 2008 legislated for changes to the secondary national curriculum to begin in September 2008. Schools have been aware of changes to come since the beginning of QCA consultation on the curriculum, and have known the detail since QCA published the new curriculum in 2007. Schools use this information, rather than the SIs, to ensure that they are complying with the law. ATL's concern, articulated since the consultation began, was the government's apparent lack of understanding of the cumulative effect of changes at key stage 3 alongside changes for 14–19 year olds.

Where schools have been involved in consultation and development, individually or through their unions, they are more likely to be aware of changes. Where professionals believe that their concerns have been considered, they are more likely to accept those changes.

Timing of coming into force, and advance notification/consultation

A large amount of new government policy is implemented in schools at the beginning of the academic year, whether through changes in practice, or through beginning a process of professional development or additional resourcing. We do not believe that changes to the dates for SIs would have any impact on schools. What is important is that government considers the views of stakeholders, particularly the unions, as they develop policy in order to minimise adverse impact on school staff and pupils. Consultation should also consider the cumulative effect of different strands of policy development as it impacts on the profession. As Social Partners, ATL believes that the Partnership is the best place for these discussions.

Feedback from implementation

While government often carries out "pilots" or "trials" of policy before implementation, it is not always clear whether or how evaluations impact on development. Once a SI is in place, it is rare for government to invite feedback on its practical implementation. There is a "policy lag" at a national level which means that, by the time a SI comes into force for schools, government has already moved on to announce, consult, develop or pilot the next policies. This leads to a perception by teachers that feedback will never change policy once implemented, as well as to a feeling that any change will be shortlived.

CONCLUSION

ATL believes that the problem is one of rapid and over-prescriptive policy development at national level. Education professionals feel no longer trusted with the education of children, learning instead to implement the decisions of others. This leads to a downward spiral which impacts negatively on staff, pupils and learning, and ultimately on the standards which government is attempting to improve through introducing the changes. Even the government's attempt to set out a vision in the Children's Plan has become more like a list of

interventions. ATL would like to see instead the continued development of professional partnership between government and education professionals, through social partnership, which enables honest discussion of how to translate the vision into policy that works.

October 2008

Memorandum submitted by BSI British Standards

RESPONSE BY BSI BRITISH STANDARDS

BSI British Standards would like to take this opportunity to respond to the Committee's call for written evidence. In particular we would encourage the Committee to consider the concept of using standards and standardization as a form of lighter touch regulation. The cumulative impact on schools of the volume and scheduling of Statutory Instruments may be significantly reduced if Government takes on board this principle and increases their use of standardization over legislative options.

Both the Hampton Report and the Better Regulation Task Force have strongly recommended the greater use of standards to assist with the implementation of this agenda. This view is reinforced by other key stakeholders who recognise a range of ways in which standards can play a central role in enabling regulators to conduct their work more efficiently and effectively.

Given that standards are produced by consensus and supported by a wide cross-section of society, including representatives of consumers, industry and regulators, they can provide reassurance to all stakeholders of conformity to best practice and play an important role in making sectors work more transparently. Conversely, non-compliance with standards can be used by regulators as a warning signal.

Although standards are voluntary and separate from legal and regulatory systems, they can be used to support or complement legislation. A useful example of this is BSI in collaboration with the (then) Disability Rights Commission creating PAS 78—*A Guide to good practice in commissioning accessible websites*. It provides guidance to organizations on how to go about commissioning an accessible website. It describes what is expected from websites to comply with the UK Disability Discrimination Act 1995 (DDA), making websites accessible to and usable by disabled people.

The committee may find the following paper useful in exploring the use of standards. Standards enabling lighter touch regulation. Should the Committee require further information from BSI we would be delighted to offer our assistance.

ABOUT BSI BRITISH STANDARDS

BSI British Standards is the UK's independent National Standards Body, incorporated by Royal Charter and responsible for preparing British Standards and related publications. BSI has 107 years of experience in serving the interest of a wide range of industry sectors including government, business and consumers ensuring standards are useful, relevant and authoritative.

Standardization offers a number of benefits, including encouraging continuous improvement, ensuring safety and enabling organizations to comply with regulation. BSI has an established tradition in managing complex stakeholder relationships, achieving consensus in these areas, and helping the stakeholders to achieve their desired outcomes.

BSI presents the UK view on standards in Europe (to CEN and CENELEC) and internationally (to ISO and IEC). BSI has a globally recognized reputation for independence, integrity and innovation. It is also a leading provider of standardization and consortia services through the development of fast-track standards. The development timescale is typically within six to nine months in the form of a BSI Publicly Available Specification (PAS).

28 October 2008

Memorandum submitted by Chris Johnson*

1. *How do those affected by a large number of SIs keep up-to-date with the many new, or amended, requirements?*

As a classroom teacher with the heaviest teaching load in my department, I can safely say that I often don't notice what new legislation has hit the school. Unless the legislation is directly connected with English teaching or reported in the press (TES/Youth Work Now in particular), I'm probably not even aware of it.

2. *What steps do the Department take to ensure timely and accessible communication about new regulations? Is there evidence that such communication is effective?*

There is plenty of evidence that communication about new regulations is NOT effective: huge numbers of documents about Literacy Strategy, National Curriculum etc, that sit unread in our stock room—and probably thousands of others across the country. We don't get time to read the blizzard of paper.

3. *Is it always clear what a new SI actually requires schools to do? (Examples of clear, and unclear, SIs would be very useful.)*

I am not sure if they are SIs, but the recently-announced duties to promote wellbeing and community cohesion are great ideas but I have no idea what I can do with my monocultural classes of 25+ to promote either. I do have lots of ideas about how to promote these out of school hours but pressure of school work stops that and SIs do not, presumably, apply to out of school hours activities. Brilliant.

4. *Would it be helpful if there were CCDs for schools-related SIs; if so, how many, and on what dates?*

Yes. Common commencement dates would enable you to publish a complete list (in TES) of what new rules have come in, whom they are supposed to affect and how.

5. *Alternatively, would it be more helpful if the introduction of new or amended requirements were more evenly dispersed throughout the year?*

No. By spreading new requirements across the year you never give managers a break and time for initiatives to settle in.

6. *How aware are you of the development of legislation before it comes into force?*

Only if it's reported in the TES or I've been sent an e-mail alert.

7. *Is there adequate advance notice of schools-related SIs, and does this allow enough time for those affected to prepare for and comply with new requirements?*

Unable to answer, as I don't know how many SIs apply to my school/department.

8. *What arrangements are in place to feed back practical experience of implementing SIs? Do those required to implement the requirements consider they have adequate channels of communication to the Department?*

In a teaching career of over twenty years, I have only once been aware in school of a feedback channel to the Department of Education : a questionnaire about workload (several years before the Workload Agreement emerged). Out of school I have come across a few consultations, but in some cases the closing date has been imminent by the time I found out.

9. *Do you have any suggestions on how the process of developing and communicating new regulations could be improved to make it a more effective means of delivering Government policy?*

Yes. Replace the five training days in each school year with six departmental training days, to take place at the start of each half-term. At some of these proposed regulations that affect each department could be discussed and feedback generated. The proposed regulations should be published in the TES.

10. Do you have experience of an SI which, in your view, has been unworkable or has failed to achieve its policy objective?

I am not sure if it related to an SI but I wrote a letter to the Sunday papers in about 1993 saying that the Key Stage 3 English SATs were useless. It's nice to see that someone took notice.

* Chris Johnson is a teacher, youth worker, trainer and consultant. He is currently Assistant Head of English at an inner-Bradford secondary school, a part-time teacher of deaf young people, Chair of North of England Activities and Training, Treasurer of Bradford Young Signers Group and Secretary of Bradford Expedition Leaders Association. This is written in an individual capacity.

October 2008

Memorandum submitted by Lancashire County Council

Please find below the principles of the IRU guidance¹ and our response to the implementation of these in Lancashire.

The Lancashire "Schools Portal", is a web based communication system used for all communications with 647 schools in the County. It is underpinned by the implementation of a robust 'gate keeper' set of functions, processes and support which are predicated on reducing bureaucracy in schools, and realising efficiency savings for both us and schools.

The *italicised* sections are the individual guidance requirements within the IRU. This is then followed by our attempt to implement them.

Gatekeeper—Responsibility—a senior officer (or officers) should be given responsibility for running a gate keeping system. They should be given authority to question material being distributed to schools and, when necessary, prevent it from being sent:

- In Lancashire within the portal team we have appointed an Individual Officer—the Gate keeper who is focussing attention on the key issue of reducing the burden on schools and providing a "point" of challenge.
- The work has the support of Chief Executive Management team, the Executive Director for CYP and Senior leadership team, which has been crucial for success.
- We work right across the Authority with senior officers to challenge existing practices, researching and analysing alternatives which lead to an improved service to schools and process change which delivers efficiency savings for schools and the LA.
- Examining and monitoring of all communication channels; paper, courier systems, electronic portal, fax and email to ensure that duplication is eradicated and that information is transmitted/received in the most appropriate format and spread them across a year which has significantly reduced the peaks.
- The portal has fundamentally redesigned and streamlined a number of laborious and bureaucratic processes and reduced the time and cost required at both ends to complete.
- An online head teachers handbook has been developed by new head teachers with an A–Z of 700 entries all plain English and bite size chunks of information for easy digestion.
- Lancashire jointly hosted with DCSF a "too hard to do" conference in the northwest attended by 45 authorities, aimed at taking the reduction of bureaucracy to schools out of the "too hard to do" drawer and demonstrating the benefits to all of getting it right.
- A data base of 11,000 school specific contacts for all services.

Be prepared and willing to discuss new policies and initiatives with head teachers, governors and staff and/or their representatives, and take into account their views:

- Established the Improving Communications with Schools Group (Star Chamber) and the External Scrutiny Group (ESG), both with head teacher and governor membership, for "formal" discussions and reviews.
- Staff Associations/ teacher Unions meet regularly with Senior Offices to identify areas of improvement.
- Informal channels such as email groups are used to give opportunities for "quick response" to urgent issues.

¹ See: <https://schoolsportal.lancsngfl.ac.uk/IRU%20Gatekeeping%20Guidance.pdf>

- Electronic Schools Portal allows for all schools to feed back comments about particular communications. All feedback is captured and fed back to teams or placed in internal development schedules for business process change.
- Piloting of the “Designated Determined Menu” to allow the proper targeting of communications so that they go directly to the person in school responsible for specific functions/activities. This also demonstrates the commitment to involve all individuals within schools both in the development of the Portal system itself, and the wider implications of how to improve communications in general.
- We have a long way to go in terms of full inclusion of schools in policy development, but plans in place to do better.

When developing new policies and initiatives to clearly demonstrate their direct or indirect benefit to children in schools and to teaching and learning:

- Development of gate keeping protocol in line with IRU guidance—initial, fundamental test is “how does it benefit children/schools etc” This is achieved by consulting the head teachers and feeding back to publishers where they have not provided evidence of clear benefits.
- Communication of protocols to all internal staff, to educate and to change perception, adoption of the principle of putting schools first.
- Services are increasingly recognising the benefits of improving communications with schools. (eg changes to combined finance processes that have significant integration with back office systems to improve the quality, speed and cost of services and reduce the burden on schools). There is still work to do to ensure that the cultural change spreads effectively to all part of the Authority.

Undertake, and make available, impact assessments showing the implication for schools of individual policies and initiatives:

- We have successfully turned back or improved a number of Government department and DCSF returns by applying our internal assessment which have resulted in plain English and e-enabled communications going to Lancashire and North West schools.
Specific examples of the above can be provided.
- We have whistle-blown a number of requests for information which have attempted to bypass ... IRU guidelines; often as a result of speedy changes in legislation, resulting in new data requests.
- We have established an Internal Impact assessment process, based on IRU model, but tailored to Lancashire’s environment.
- This ensures consideration of other sources of data and supports the principle of “collect data once, use many times” (although still work required to capture, share and rationalise data sources and provide more cooperation between teams) Huge amount of work still required to integrate with back office systems.
- The portal is available electronically to all staff. To date we have 500 publishers trained on using the portal—communications requiring a response from schools are sent to gatekeeper for decision / consultation with ESG available—appeal process in place.
- Process transparent to schools—results feed data collection calendar and Schools Portal which indicate statutory/ Non-statutory status.
- The data calendar allows schools to view forthcoming data collections and plan resources accordingly. It also shows schools which have been agreed so schools are able to whistle blow communications which come by other means.
- Impact Assessment processes evaluated by Improving Communications with Schools Group on a regular basis.

The above has resulted in 98% of Lancashire schools using the portal more than four times per week. 15,000 targeted communications have travelled through the portal in the last year, resulting in a saving of £1.1 million. The establishment of our Star Chamber and implementation of the IRU guidance has increased the ability of schools to influence and shape communications.

A team of 12 manage the gate keeping and communication process on behalf of Lancashire’s 647 schools. This includes a telephone helpdesk, hundreds of visits to schools, training and support to 500+ publishers.

December 2008

**Memorandum submitted by Councillor Simon Windle, Deputy Leader,
London Borough of Bexley Council**

Whilst our initial correspondence with Mr. Knight MP, Minister of State, DCSF, was concerned with the wider implications of the ever increasing burden of teacher and Headteacher workload, we have restricted our comments to the issues of SIs, as that appears to be what [the Merits] Committee is mostly interested in. Indeed, even throughout the course of our correspondence with the Minister which lasted most of 2008, new proposals for change were being made, sometimes with what appears to be little true thought and consideration. The abandonment of KS3 SATs and the introduction of School Report Cards were widely, perhaps cynically, considered to be reactionary measures, as opposed to some purposeful policy direction of the Secretary of State and his Departmental Ministers. This is perhaps the most high profile current issue that comes to mind but, as a serving teacher myself of 13 years experience, the anecdotal evidence of teachers is that the Government will announce policy, expect schools to implement and then provide the guidance that accompanies the change. This academic year has seen the implementation of a new KS3 curriculum, adopted in varying degrees by different schools, for which we were given one extra Staff Training Day to prepare for during the last academic year.

I look forward to following the progress of [the] Committee. I sincerely hope that [its] input can benefit all those who have a desire to work and teach Britain's children, especially to arrest the serious decline that the UK seems to be facing in its ability to find suitable persons wishing to seek Headteacher positions.

NUMBER OF SIs

1. *How do those affected by a large number of SIs keep up-to-date with the many new, or amended, requirements?*

Information is disseminated to school managers through a number of different routes including:

- a) DCSF bulletins.
- b) National press including Times Educational Supplement (TES).
- c) Professional association communications.
- d) Local networking.
- e) Courses organised by independent providers.
- f) Nationally organised training eg PM training and National Strategy training.
- g) Local Authority briefings.
- h) Independent management information subscriptions.
- i) Local Authority Management Information Portal.

2. *What steps do the Department take to ensure timely and accessible communication about new regulations? Is there evidence that such communication is effective?*

Where there are changes to regulations, information is sent through the DSCF bulletins. Anecdotal evidence suggests that many Headteachers do not fully avail themselves of this channel of communication. This is for a number of reasons including the fact that some managers have different learning styles and prefer to hear and discuss changes rather than read about them. A small number are not as familiar with technology as they might be. Others are so busy with the day to day business of running a school that they have less time for reading about such changes. This particularly applies to small schools where Headteachers have teaching commitments.

Many of the changes are not statutory but relate to changes in national programmes. Many schools deem these as statutory even if they are not. They therefore attend national training delivered locally.

3. *Is it always clear what a new SI actually requires schools to do? (Examples of clear, and unclear, SIs would be very useful.)*

The language employed in drafting statutory instruments is much clearer than the Acts themselves. The implications are often less clear.

For business-related SIs, the Government have adopted two common commencement dates (CCDs), on 1 April and 1 October of each year.

TIMING OF COMING INTO FORCE

4. *Would it be helpful if there were CCDs for schools-related SIs; if so, how many, and on what dates?*

Whilst it might be more efficient to do this it would be difficult to see how these could be introduced in practice. Some legislation is perhaps not as urgent and could be delayed to a fixed time. It would be difficult to identify suitable periods but the beginning of each term might be appropriate. Information could be disseminated at the end of the previous term thus allowing Headteachers to prepare for staff briefings at the beginning of the term eg INSET days.

5. *Alternatively, would it be more helpful if the introduction of new or amended requirements were more evenly dispersed throughout the year?*

As there are pressure points during the term it would appear inappropriate to distribute requirements throughout the year especially in light of the number of new and amended requirements.

ADVANCE NOTIFICATION / CONSULTATION

Some SIs will have been publicised in draft form in parallel with the relevant Act and the Department will have carried out a consultation exercise on them before laying them before Parliament.

6. *How aware are you of the development of legislation before it comes into force?*

Where the DCSF is consulting before legislation, the timing of such consultations is at an appropriately early stage. It also needs to be borne in mind that there are a number of consultations during the course of a year which are not directly the result of Government legislation but as the result of Government sponsored organisations eg TDA, NCSL and GTCE. There is currently a consultation on a "Code of Practice" originating from the GTCE. Other changes in legislation emanate from the STP and C document and relate to teachers pay and conditions.

7. *Is there adequate advance notice of schools-related SIs, and does this allow enough time for those affected to prepare for and comply with new requirements?*

This is variable. Changes in the performance management regulations were timely but the associated training materials were delayed.

FEEDBACK FROM IMPLEMENTATION

8. *What arrangements are in place to feed back practical experience of implementing SIs? Do those required to implement the requirements consider they have adequate channels of communication to the Department?*

There appear to be none to our knowledge. Channels of communication between the Headteacher and the DCSF are effectively non-existent. This has led to the concern expressed locally that the number of changes expected of schools is unsustainable without additional support.

9. *Do you have any suggestions on how the process of developing and communicating new regulations could be improved to make it a more effective means of delivering Government policy?*

This might be achieved by regular working parties including Headteachers and relevant senior leaders. Where appropriate, any proposed legislation could be discussed with the national WAMG. Again the point needs to be made that it is more the implications of national policies rather than SIs that present the problem together with those from other sources including the National Strategies, TDA etc. It would therefore seem more appropriate to create a monitoring group which ensures that there is a fuller picture of the impact of all proposed changes impacting upon schools including SIs.

10. *Do you have experience of an SI which, in your view, has been unworkable or has failed to achieve its policy objective?*

No.

A FURTHER SECTOR FOR STUDY?

11. *Which other parts of the public sector are similarly affected by large numbers of SIs laid over a short period of time? Do such sectors have distinctive experience which could usefully be studied by the Committee?*

We feel unable to comment upon this other than to suggest that colleagues currently working with us from the field of Health have expressed some concerns.

January 2009

Letter from Mr T S Peryer, Director of Education, London Diocesan Board for Schools

I notice from a recent press report that you are to chair an inquiry into the scale and impact of statutory regulations on schools.

I realize that much could be said on this matter and we are, of course, now in the middle of a world-wide debate about the appropriate level of regulation for the financial markets. Clearly schools must operate within a framework of law and regulation but I am increasingly concerned about the ever-growing extent of regulation. Frankly, there is so much that even the most dutiful and compliant of headteachers and governing bodies are almost certainly bound to be non-compliant in a number of areas simply because they have not read all the regulations, been able to keep up to date with all the changes or remembered what they once read or were told.

I will give one recent and topical example, concerning school admissions. The DCSF has conducted a series of investigations this year and found that huge numbers of schools are non-compliant with the Admissions Code of Practice. Most of those non-compliant schools are individual schools setting their own admission policies and the majority of those are religious-based schools. Much has been made in the media of the extent to which these schools are “flouting” the regulations in order to “cherry-pick” pupils. Whilst that may be true in a handful of schools, it is certainly not the case in the many hundreds and thousands of other schools, who have subsequently been treated as verging on the criminal!

As the Chief Adjudicator has acknowledged, the majority of errors in admission policies are often technical, to do with definitions and the like, eg, inadequate definition of what a sibling is. The document that schools (and local authorities) have to abide by when setting their admission policies and procedures is the Code of Practice on Admissions. Officialdom could argue that it is all clearly set out there what schools have to do and not do in respect of admissions. My point is that the Code is a 128 page document containing:

- 245 uses of the phrase “You must”.
- 74 uses of the phrase “You must not”.
- 89 uses of the phrase “You should”.
- 9 uses of the phrase “You should not”.

That makes a grand total of 417 injunctions in one document alone. There is a separate Code of Practice for the administration of appeals against admission procedures. Is it any wonder that a number of schools were non-compliant?

Admissions are a relatively small part of a school’s day-to-day activity but a trawl through the regulations affecting such things as the curriculum; employment; pupil discipline; child protection; special educational needs; health and safety; discrimination; healthy eating; travel plans; religious education and collective worship; governance and so on and so on would reveal a similar picture.

I wish you well in your endeavours in the hope that (a) you will be able to make some sensible recommendations about stemming the flow of regulation and (b) that you will be listened to.

November 2008

Further letter from Mr T S Peryer, Director of Education, London Diocesan Board for Schools

Further to my letter to you of 19 November, I am writing with a follow-up regarding the Code of Practice on Admissions. In my letter I illustrated the extent of regulations by highlighting the number of occasions “You must”, “You should” etc appeared in the Code.

The Code of Practice, which was only issued two to three years ago, has just been reissued. I am now giving you the latest breakdown of injunctions to school admission authorities with the previous numbers in brackets.

YOU MUST occurs	343 times	(245)
YOU MUST NOT occurs	96 times	(74)
YOU SHOULD occurs	95 times	(89)
YOU SHOULD NOT occurs	11 times	(9)
TOTAL	545	(417)

This is an increase of 128 injunctions or 30%.

7 December 2008

Memorandum submitted by the National Governors' Association

IMPLICATIONS FOR SCHOOL GOVERNING BODIES OF LEGISLATIVE CHANGE

Since the Education Reform Act of 1988 the pace of change in schools has been unrelenting. The fact that much of the change has been welcome—though not all—does not mitigate the considerable effects.

Schools are now more autonomous than they were in the past; this brings greater freedom, but it also reduces capacity. In particular the governance arrangements for schools have not kept pace with the increased accountability and responsibility.

The best comparison is with magistrates, another large group of public spirited volunteers with a difficult public role. Whereas magistrates are selected, and have to go through a rigorous training programme before joining a Bench, governors in contrast are appointed and may immediately participate in full governing body meetings with no training whatsoever.

Yet governing bodies are the key body of accountability in our schools, with 85 specific statutory responsibilities (see annex). Many of these specific responsibilities are delegated to the headteacher, but some are specific to the governing body.

When these responsibilities arise out of primary legislation there is opportunity for full public consultation and parliamentary debate about the pros and cons of the change in question, and about the likely implications for implementation.

When, however, the responsibilities are introduced—or changed—through secondary legislation the consultation can be less comprehensive and the implementation schedule less realistic as a result.

In other areas of society this would be unfortunate. In schools, with limited support staff capability and a volunteer governing body, the failure to properly consult can have serious consequences.

The NGA offers three examples of legislative change which in our view exemplifies the problem.

TRUST SCHOOLS

The primary legislation was very simple, but the detail has been brought forward by regulation. This has produced consequences which, in our view, would have attracted serious critical comment had they been introduced via primary means, not least the enormous powers given to Trust sponsors and the relatively weak provision for appeal of the process.

PERFORMANCE MANAGEMENT IN SCHOOLS

Governing Bodies (GBs) appoint the headteacher. They also performance manage the Head, and, since 2007, GBs oversee the performance management arrangements for the rest of the school staff.

In June 2006 the then DfES brought forward proposals to change regulations on these issues for implementation in September 2007. This was a completely unrealistic timetable. GBs had to work with their headteacher to create a new system in their schools, yet most governing bodies would have just one meeting planned between June and September. In the event, the Department was persuaded of the impracticality of its implementation timetable, but initial protests were met with a lack of comprehension about the problem.

CURRICULUM CHANGE

The national curriculum was created via primary legislation, but subsequent changes have been brought about by secondary legislation. There have been three major revisions to the curriculum and hundreds of minor changes.

In the NGA's view these changes, even when welcomed by the profession, have often been introduced with wholly unrealistic implementation schedules.

IMPACT

Within the Education world the phrase "initiative overload" has become such a truism that it is usually voiced in company with a grim acceptance that the situation, like the weather, cannot be changed.

Yet legislation rushed through at the last minute with little concern for implementation is bad legislation, whether primary or secondary.

The effect in schools is to overload governing bodies to the extent that meetings become a wearisome trudge through all the policies and initiatives that need to be considered approved and amended.

For the professionals in schools the endless piecemeal change has become one of the main reasons given for leaving the job. It is not unruly and undisciplined children that are forcing good teachers and governors out of our schools; it is unruly and undisciplined legislation.

NGA

October 2008

GOVERNING BODY DECISION PLANNER

THIS PLANNER SHOWS TO WHICH LEVEL THE GOVERNING BODY MAY LEGALLY DELEGATE FUNCTIONS

KEY

Level 1: Full governing body

Level 2: A committee of the governing body

Level 3: An individual governor

Level 4: Headteacher.

Column blank: Action could be undertaken by this level.

Column blocked off: Function cannot be legally carried out at this level.

Although decisions may be delegated, the governing body as a whole remains responsible for any decision made under delegation

Key Function	No	Tasks	Decision Level			
			1	2	3	4
Budgets	1	To approve the first formal budget plan each financial year				
	2	To monitor monthly expenditure.				
	3	To establish a charging and remissions policy				
	4	Miscellaneous financial decisions				
	5	To enter into contracts (GB may wish to agree financial limits)				
	6	To make payments				
Staffing	7	Headteacher appointments (selection panel)				
	8	Deputy appointments (selection panel)				
	9	Appoint other teachers				
	10	Appoint non teaching staff				
	11	Agree a pay policy				
	12	Pay discretions				
	13	Establishing disciplinary/capability procedures				
	14	Dismissal of headteacher				
	15	Dismissal of other staff				
	16	Suspending head				
	17	Suspending staff (except head)				
	18	Ending suspension (head)				
	19	Ending suspension (except head)				
	20	Determining staff complement				

	21	In voluntary and foundation schools to agree whether or not the Chief Education Officer/diocesan authority should have advisory rights				
	22	Determining dismissal payments/ early retirement				
Curriculum	23	Ensure National Curriculum (NC) taught to all pupils and to consider any disapplication for pupil(s)				
	24	To establish a curriculum policy				
	25	To implement curriculum policy				
	26	To agree or reject and monitor curriculum policy				
	27	Responsible for standards of teaching				
	28	To decide which subject options should be taught having regard to resources, and implement provision for flexibility in the curriculum (including activities outside school day)				
	29	Responsibility for individual child's education				
	30	Provision of sex education – to establish and keep up to date a written policy				
	31	To prohibit political indoctrination and ensuring the balanced treatment of political issues				
	32	To establish a charging and remissions policy for activities (non NC based)				
Performance Management	33	To formulate a performance management policy				
	34	To establish a performance management policy				
	35	To implement the performance management policy				
	36	To review annually the performance management policy				
Target Setting	37	To set and publish targets for pupil achievement				
Discipline/Exclusions	38	To establish a discipline policy				
	39	To review the use of exclusion and to decide whether or not to confirm all permanent exclusions and fixed term exclusions where the pupil is either excluded for more than 15 days in total in a term or would lose the opportunity to sit a public examination. (Can be delegated to chair/vice-chair in cases of urgency)				
	40	To direct reinstatement of excluded pupils (Can be delegated to chair/vice-chair in cases of urgency)				
Admissions	41	To consult annually before setting an admissions policy (but in community				

		and controlled schools only where the LA has delegated this power to the governing body)				
	42	To consult annually before setting an admissions policy (VA and Foundation schools)				
	43	To establish an admissions policy (special schools where pupils do not have a statement) acting with LA				
	44	Admissions: application decisions (but in community and controlled schools only where the LA has delegated this power to the governing body)				
	45	Admissions: application decisions (VA, Foundation and special schools)				
	46	To appeal against LA directions to admit pupil(s) (Voluntary, Foundation and special schools; also community and VC schools where LA is the admissions authority)				
Religious Education	47	Responsibility for ensuring provision of RE in line with school's basic curriculum (all schools) NB this must fall into line with locally agreed syllabus				
	48	Decision to revert to previous RE syllabus (Foundation Schools except VA of religious character)				
	49	Decision to provide RE according to trust deed/specified denomination in VA schools with religious character (Foundation and VC schools of religious character at request of parents)				
	50	Decision to provide RE in line with locally agreed syllabus (VA schools – only if parents request it. All other schools not covered in 49 above)				
Collective Worship	51	In all maintained schools to ensure that all pupils take part in a daily act of collective worship (after consulting GB)				
	52	To make application to the advisory councils, SACRE, concerning the requirements for collective worship (schools without a religious character) to disapply (after consulting GB)				
	53	Arrangements for collective worship (schools without religious character (after consulting GB)				
	54	Arrangements for collective worship in Foundation schools of religious character, VC or VA schools (after consulting head)				
Premises & Insurance	55	Buildings insurance and personal liability– GB to seek advice from LA, diocese or trustees where				

		appropriate (it is suggested that the GB as a whole should be involved in this decision)				
	56	Developing school buildings strategy or master plan and contributing as required to LA Asset Management Planning arrangements (it is suggested that the GB as a whole should undertake this decision)				
	57	Procuring and maintaining buildings, including developing properly funded maintenance plan				
Health & Safety	58	To institute a health and safety policy (in community and VC schools this would be the LA)				
	59	To ensure that health and safety regulations are followed				
School Organisation	60	To publish proposals to change category of school				
	61	Proposal to alter or discontinue voluntary foundation or foundation special school				
	62	To set the times of school sessions and the dates of school terms and holidays except in community and VC schools where it is the LA				
	63	To ensure that the school meets for 380 sessions in a school year				
	64	To ensure that school lunch nutritional standards are met where provided by the governing body.				
Information For Parents	65	To prepare and publish the school prospectus				
	66	To prepare and publish the school profile				
	67	To ensure provision of free school meals to those pupils meeting the criteria				
	68	Adoption and review of home-school agreements				
GB Procedures	69	To draw up instrument of government and any amendments thereafter				
	70	To appoint (and remove) the chair and vice-chair of a permanent or a temporary governing body				
	71	To appoint and dismiss the clerk to the governors				
	72	To hold a full governing body meeting at least three times in a school year or a meeting of the temporary governing body as often may require				
	73	To appoint and remove community or sponsor governors.				
	74	To set up a Register of Governors' Business Interests				
	75	To approve and set up a Governors Expenses Scheme				
	76	To discharge duties in respect of pupils with special needs by				

		appointing a “responsible person” in community, voluntary and Foundation Schools				
	77	To consider whether or not to exercise delegation of functions to individuals or committees				
	78	To regulate the GB procedures (where not set out in law)				
Federations	79	To consider forming a federation or joining an existing federation				
	80	To consider requests from other schools to join the federation				
	81	To leave a federation				
Extended Schools	82*	To decide to offer additional activities and to what form these should take				
	83	To put into place the additional services provided				
	84	To ensure delivery of services provided				
	85*	To cease providing extended school provision				

*Although these tasks are open to delegation under the Education (School Government)(Terms of Reference) (England) Regulations 2000, the expectation would be that these decisions would be undertaken by the full Governing Body.

Memorandum submitted by the National Union of Teachers

The National Union of Teachers welcomes the opportunity to comment to the House of Lords Select Committee on the Merits of Statutory Instruments as they impact on schools in England and Wales.

It is difficult at times to escape the impression that governments of the last twenty years have seen it as their role to provide a constant flow of regulatory measures for education. The standard work on education law, Butterworths Law of Education, has grown from a single hard back volume of some 550 pages published in new editions every few years to a six volume encyclopaedia in loose leaf form regularly updated. Butterworths now lists 27 pieces of primary legislation specifically concerned with education plus 50 other relevant enactments and some 571 sets of regulations and orders currently in force disregarding all the secondary legislation made under the “other relevant enactments”. It can be estimated that the number of rules regulating the education service in England and Wales far exceeds 30,000.

A common complaint amongst teachers is that the rules are far too prescriptive. Teaching appears to be, by far, the most tightly regulated profession. The concept of a profession is that its members are to be trusted to apply their acquired knowledge and skills accordingly to standards which they expect of themselves and of each other. Despite the high quality of twenty-first century teachers, the confidence that should be placed in teachers is not reflected in the volume of prescriptive legislation which directs their work. It seems to have become a core feature of the education culture that teaching must be subject to prescription according to the current fashions in teaching and learning translated into regulation and order. The National Union of Teachers strongly favours a reversal of this trend.

The following then addresses the 11 questions posed in the Call for Evidence. It is very much hoped that this will be of assistance to the Select Committee.

NUMBER OF SIs

1. How do those affected by a large number of SIs keep up-to-date with the many new, or amended, requirements?

1.1 It is very difficult to do so consistently and effectively. Anecdotal evidence from teachers suggests widespread ignorance of legal requirements and significant non-compliance. Even when they are known, the rules are often considered bureaucratic and lacking clear purpose. The volume of regulation is such that assimilating and implementing its requirements are very considerable workload burdens and despite measures taken with the stated aim of reducing teacher workload, in fact teacher workload continues to increase.

2. *What steps do the Department take to ensure timely and accessible communication about new regulations? Is there evidence that such communication is effective?*

2.1 These questions are primarily for the Department itself, but from the point of view of those who are expected to comply with the regulations, communication is considered to have a low level of effectiveness. No doubt it would be protested by the Department that extensive guidance accompanies most new regulation and that this guidance is readily available on the Department's website. The guidance is however often wordy, repetitive and jargonistic. Its volume alone is daunting.

3. *Is it always clear what a new SI actually requires schools to do? (Examples of clear, and unclear, SIs would be very useful.)*

3.1 No, it is often far from clear. One of the main problems is apparent within the question A "school" has no legal "personality". It is not, in itself, capable of action. The word is however very commonly used in material published by the Department to explain regulatory requirements leaving the reader with no clear idea as to upon whom the legal duty to act actually falls. Convention requires that legal duties are imposed on statutorily accountable bodies rather than upon persons whose duties derive from contracts of employment. In the case of schools, this is ordinarily the governing body—but, of course, governing bodies are generally made up of unpaid volunteers who give of their own time in otherwise busy lives. They have little opportunity or resource to assimilate and secure the effective implementation of the vast number of regulatory requirements.

TIMING OF COMING INTO FORCE

4. *Would it be helpful if there were CCDs for schools-related SIs; if so, how many, and on what dates?*

4.1 Most certainly it would be helpful. There should be no more than two CCDs per year. The NUT would wish to consult members on proposals for the most helpful dates.

5. *Alternatively, would it be more helpful if the introduction of new or amended requirements were more evenly dispersed throughout the year?*

See above.

ADVANCE NOTIFICATION / CONSULTATION

6. *How aware are you of the development of legislation before it comes into force?*

6.1 From the point of view of the NUT itself, DCSF practice is generally good in this respect. However, despite the fact that the NUT is a large and well resourced organisation with a wealth of relevant expertise, again the volume of proposed regulation presents problems. In many areas of law, it seems likely that there are a large number of practising lawyers eager to comment, for themselves and for their clients, on proposed legislation and the impact it will have in practical circumstances. This assists in making good law. There are however relatively few practitioners in the law of education and a very small number indeed whose practice brings them into daily contact with the problems of teachers. This reality places a very heavy burden on those who prepare new education laws to ensure that what they propose is readily understandable by teachers and other stakeholders in the education service, and easily capable of implementation. Despite the best efforts of those involved, it is all too often apparent that regulations impose requirements remote from day to day experience in schools.

7. *Is there adequate advance notice of schools-related SIs, and does this allow enough time for those affected to prepare for and comply with new requirements?*

7.1 This question links again to the question of volume and the fact that, at present, there are not CCDs. The adequacy of advance notice is variable and selective. In general, good advance notice is given of major new initiatives for which legislation is proposed, but the volume of new initiatives makes it difficult for teachers to recognise and act appropriately on the notice which they are given. The introduction of CCDs would at least provide a timetable in which new regulation could be anticipated.

FEEDBACK FROM IMPLEMENTATION

8. *What arrangements are in place to feed back practical experience of implementing SIs? Do those required to implement the requirements consider they have adequate channels of communication to the Department?*

8.1 No. It is a very common complaint by teachers that they lack real opportunities to communicate to the Department their concerns about the impact of legislation in practice.

8.2 The NUT knows that it has an important role to play as a channel of communication for teacher opinion on the practical impact of regulations, but the NUT, in particular, is frustrated by an obstacle which, very clearly, has little to do with ensuring good law and everything to do with political motivation. In 2003, teachers organisations other than the NUT agreed with government a set of measures with the stated aim of reducing teacher workload. The NUT did not accept those measures. The NUT believed that they would not be effective and the Union objected in particular to a proposed regulation which it believed would not be properly understood or implemented and which would have the effect of diluting teacher status and professionalism.

8.3 The NUT believes that its position has been fully vindicated. The agreed measures did not halt nor reduce the volume of new legislation with workload impact. Workload remains very high on the agenda of teacher concerns and is recognised to be so even by those organisations which did subscribe to the agreements with government in 2003. Further there is considerable evidence that the regulations which the NUT opposed, the Education (Specified Work and Registration) (England) Regulations 2003 (paralleled by similar regulations for Wales), are widely misapplied and misused contrary to the government's own stated intentions.

8.4 However as a result of its dissent, the NUT, the largest teachers' organisation in England and Wales, has been excluded by government from processes leading to the adoption of new regulations other than through formal statutory consultation processes. The exclusion extends across a broad range of regulation formative processes far beyond those which were the subject of the original 2003 agreements.

8.5 The NUT considers this to be irrational and damaging to the development of good law. Under the guise of its own distorted version of a European social partnership model, the government has in effect created an exclusive "club", membership of which is confined to subscribers to measures which have long since proved largely ineffective.

8.6 The effect is bad regulation. Proposed legislation goes out to formal statutory consultation only after government has already made commitments as to its form based on longer processes of consultation and negotiation with its selected "partners". There are many examples. Perhaps most significant amongst them are Regulation 6 and paragraph 10 of Schedule 2 to the Education (Specified Work and Registration) (England) Regulations 2003, the regulations enacted to give effect to measures agreed to reduce teacher workload in January 2003. In particular they make provision for persons who are not formally qualified as teachers to undertake legally defined "specified work". They then provide that unqualified persons are permitted to undertake specified work "to assist or support the work of a qualified teacher or a nominated teacher in the school".

8.7 The definition of "specified work" appears in Regulation 6. It is at the core of the regulations and as such it should define the qualities of a person holding the status of a qualified teacher as a highly trained and skilled professional. In fact it fails entirely to achieve this. Paragraph 10 of Schedule 2 then licences unqualified persons to do the same work when they do so to assist or support the work of a qualified teacher. There is however no clear definition of "assist or support". In practice this regulation is being used to justify deployment indeed in some cases the cost saving exploitation of persons who are not qualified teachers to substitute for qualified teachers, even though the government has declared that the regulation was never intended to authorise substitution.

8.8 In comparison with legislation governing qualifications and standards in other professions, eg solicitors and medical practitioners, which are always the subject of wide ranging and in depth debate, these regulations relating to teachers compare very poorly.

9. *Do you have any suggestions on how the process of developing and communicating new regulations could be improved to make it a more effective means of delivering Government policy?*

9.1 An all inclusive system for collecting the views of teachers through their representative organisations should replace the existing politically motivated so-called social partnership structure.

9.2 Such a system should be given a formal statutory authority so as to be binding on present and future governments. Reflecting the difficulties which exist in the formulation of good education laws capable of straightforward implementation by those who have obligations to do so, these processes should go much wider and deeper than formal processes of statutory consultation and should be undertaken at a much earlier stage than formal statutory consultation normally allows.

9.3 CCDs should be introduced.

9.4 The need for regulation should be the subject of fundamental review with a view to re-emphasising confidence in the professionalism of teachers and reducing prescription. Alternatives to regulation in the form of developing positive professional leadership structures should be considered so as to make significant reductions in the volume of prescriptive regulation.

9.5 The nature and extent of guidance on the implementation of regulations should be reviewed and streamlined. Implementation checklists should replace lengthy prose which often appears to assume that teachers are very poorly informed by their own knowledge and experience.

10. *Do you have experience of an SI which, in your view, has been unworkable or has failed to achieve its policy objective?*

10.1 Again there are many examples. These are just a few. The “specified work” regulations have already been mentioned. The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (again paralleled by similar regulations for Wales) which are designed to substitute community school governing bodies as employer respondents before Employment Tribunals even though they are not contractual employers, produce incomprehensible problems in cases in which it is decisions of the local authority contractual employer which are at the root of the problem.

10.2 The same regulations give rise to totally irrational effects in the application of the “Transfer of Undertakings” Regulations in cases in which voluntary aided schools are merged with community schools in school reorganisations.

10.3 The more recently enacted regulations governing consultation on the establishment of new schools are a minefield of complexity. The statutory School Teachers Pay and Conditions Document is now of such complexity as to be, in places, almost incomprehensible. Its recently introduced provisions dealing with the pay of part time teachers require the calculation of fractions for which in some schools there is no known denominator. They actually fail to address the problem of discriminatory employment devices which gave rise to the need for change and have the potential to cause unlawful discrimination against part time teachers rather than prevent it. Its provisions dealing with the calculation of guaranteed Planning, Preparation and Assessment (PPA) appear to produce a circular and ever decreasing fraction. The controversial regulations dealing with pupil exclusions continue to be the source of disputes when decisions are made to override the professional judgements of headteachers and teachers.

A FURTHER SECTOR FOR STUDY?

11. *Which other parts of the public sector are similarly affected by large numbers of SIs laid over a short period of time? Do such sectors have distinctive experience which could usefully be studied by the Committee?*

No doubt others will comment in response to this question.

28 October 2008