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9 Downing Street
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Mr Charles Walker OBE
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Rt Hon Sir Patrick
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Chair, ESIC
House of Commons,
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The Rt Hon. the Lord
Trefgarne
Chairman, Secondary
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Committee
House of Lords
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The Rt Hon. the Lord
Cunningham of Felling
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Chairman, Secondary
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19 November 2018

Dear Charles, Sir Patrick, Lord Trefgarne and Lord Cunningham,

FLOW AND VOLUME OF SECONDARY LEGISLATION

Thank you for your letter to Departmental SI Ministers of 1 November asking for further information on the remaining EU exit SIs we are expecting to lay between now and the end of March next year. We are responding on their behalf.

We agree that the laying of EU exit SIs has accelerated rapidly from a low base. However, as there are many parts to the process in Government and Parliament, it has been useful to allow the system to be tested without huge pressure. We welcome the constructive discussions we have had with you and your Committees, and have been happy to go beyond what is usually expected by providing a forecast of the likely number of SIs, broken down by month, and indicating the departments that will be laying the most SIs.

We hope this has helped your Committees to plan your work better whilst ensuring Parliament has more clarity on when it can expect to scrutinise exit SIs. We want to provide further assurances and assist in your Committees' planning. We have therefore set out at Annex A an indication of the likely percentage of EU exit SIs each department expects to lay. We hope that this information, taken alongside that previously provided (including on the number of SIs expected to be laid each month, which we re-attach in Annex B) provides you with a sufficient forward look to enable you to plan your resources.

We want to be as helpful as possible to the Committees and we have gone further than any previous Government in being open and transparent about our plans regarding secondary legislation.

Flow of Brexit SIs

As Chris Heaton-Harris outlined in his letter of 25 October, the number of EU exit SIs being laid started to increase significantly from 1 November onward, and progress has already been made. As of 16 November 138 SIs have been laid since Royal Assent of the EU (Withdrawal) Act - 56 were laid in October alone. 87 proposed negatives have so far been

laid for consideration by the Sifting Committees and we expect around 146 more negatives under the EU (Withdrawal) Act to be laid ahead of exit day. 42 affirmative SIs have been laid of which 37 are under the EU (Withdrawal) Act or a combination of that Act and other powers. The final number of affirmatives will of course depend on the sifting recommendations.

Ever since we published the white paper for what became the EU (Withdrawal) Act in January 2017, we have indicated we expect that the total number of Brexit SIs needed before exit day to be between 800-1,000. As Chris Heaton-Harris noted in his letter of 25 October, we have been clear that this total would likely fluctuate and could only be an indicative figure as departmental plans were finalised and negotiations progressed. This figure has continued to become clearer as policy decisions have crystalised, other exit-related primary legislation has received Royal Assent, and legal drafting finalised, which is why we now expect the total number of EU exit SIs we need will be fewer than 800. We now expect the total number to be up to 700, although again this may fluctuate.

The Government has always said that the objective is to ensure a functioning statute book. To do this, SIs necessary for exit day have been prioritised, and other SIs with less time pressure will be laid later in the process to enable a manageable flow and allow the necessary scrutiny by Parliament.

Departments quite rightly continue to refine the drafting and policy content of each SI and, in some cases, have combined measures to form coherent packages and/or to aid public understanding. Furthermore, around a quarter of statutory instruments will legislate on behalf of the devolved administrations adding another layer of complexity. This all impacts the number of SIs and the departmental breakdown. For these reasons, providing a reliable department-by-department month-by-month snapshot would be misleading. But we hope that you will find the detail provided at Annex A useful to understand the likely percentage breakdown of the total number of SIs we expect each department to lay.

Your letter also asked about 'business as usual' SIs. In the months between now and exit day we are very confident that the volume of non-EU exit SIs will be much lower than in comparable months in previous sessions. As the SLSC noted in its interim report on the work of that Committee in this session so far, the number of routine SIs laid before Parliament has remained at a relatively low level.

The number of treaties to be laid under the Constitutional Reform and Governance Act 2010 will be determined by the wider EU exit scenario. In the unlikely event of no deal, we will seek to put a number of successor international agreements with third countries in place by the end of March 2019 to replace EU international treaties and ensure continuity. In a deal scenario, our existing EU international agreements would continue to apply and so we would seek to bring successor treaties into force for the end of the Implementation Period.

Parliamentary scrutiny

You asked in your letter about the secondary legislation required for a deal scenario and a no deal scenario. The majority of EU exit SIs will be needed for a no deal scenario as well as for a deal at the end of the implementation period. Once the withdrawal agreement is legislated for, the SIs that are currently being laid under the EU (Withdrawal) Act will be deferred, amended or revoked by the Withdrawal Agreement Bill, ready for the end of an implementation period rather than for exit day.

Proper parliamentary scrutiny is a vital part of our democracy and the Government is keen to ensure Parliament has sufficient time to scrutinise these important pieces of legislation. We

do not plan to use the urgent procedure under the EU (Withdrawal) Act. This power is there as a very last resort.

We will continue to work closely with you and your Committees at both Ministerial and official levels and we will write to you again with a further update before the end of the year.

I am copying this letter to the other Business Managers and all SI Ministers.



**RT HON ANDREA LEADSOM MP
LEADER OF THE HOUSE OF COMMONS**



**CHRIS HEATON-HARRIS MP
PARLIAMENTARY UNDER SECRETARY OF STATE FOR EXITING THE EUROPEAN
UNION**

Annex A

Department	Percentage of Brexit SIs
BEIS	10-15%
CO	up to 5%
DCMS	0-5%
DEFRA	15-20%
DExEU	up to 5%
DfE	up to 5%
DfT	10-15%
DHSC	up to 5%
DIT	up to 5%
DWP	up to 5%
FCO	up to 5%
FSA	up to 5%
HMRC	10-15%
HMT	10-15%
HO	up to 5%
MHCLG	up to 5%
MOJ	up to 5%
Other	up to 5%

ANNEX B

Projected flow of SIs provided in letter from Chris Heaton-Harris of 25 October 2018:

- 50-100 SIs, of which 55% are likely to be negative under the EUWA in October;
- 150-200 SIs, of which 55% are likely to be negative under the EUWA in November;
- 100-150 SIs, of which 35% are likely to be negative under the EUWA in December;
- 100-150 SIs, of which 25% are likely to be negative under the EUWA in January;
- 10-50 SIs, of which 20% are likely to be negative under the EUWA in February;
- 10-50 SIs, of which 30% are likely to be negative under the EUWA in March.