

HOUSE OF LORDS

Merits of Statutory Instruments Committee

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9th Report of Session 2008-09

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

Report with evidence

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### *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
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### *Statutory instruments*

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

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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.”<sup>1</sup>

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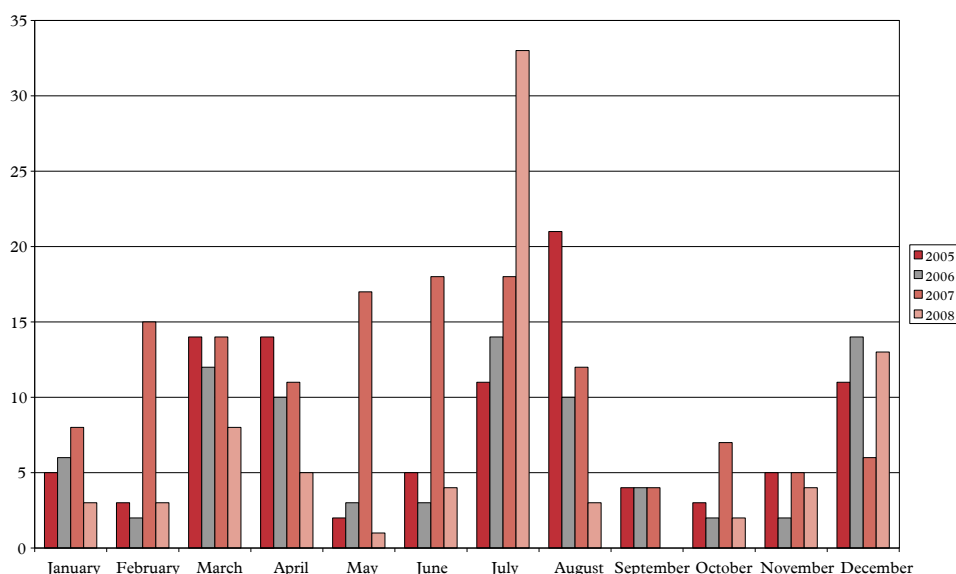
<sup>1</sup> “The Management of Secondary Legislation: follow-up”, 13th Report, Session 2007-08 (HL Paper 70)

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.<sup>2</sup> 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.

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<sup>2</sup> 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.”<sup>3</sup>

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.<sup>4</sup> 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

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<sup>3</sup> First Report, Session 2008-09 (HL Paper 5)

<sup>4</sup> 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.”<sup>5</sup> 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.**

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<sup>5</sup> 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".<sup>6</sup>
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."

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<sup>6</sup> 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.<sup>7</sup>
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.

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<sup>7</sup> “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”.<sup>8</sup> 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)

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<sup>8</sup> 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.**