The Office of the Parliamentary Counsel describe “good law” as “law that is: necessary; clear; coherent; effective; [and] accessible.”

1. How effective are current practices in Government and Parliament at delivering clear, coherent, effective and accessible draft legislation for introduction in Parliament?

The practices in place to present draft legislation, once drafted, are good, and are very comprehensive. The Parliament website, for example, is extremely easy to navigate and has a wide variety of information and links to further sources that make it easy to have all of the published information to hand. Equally, the government website has a similar amount of information, although it is perhaps not set out as clearly for a general readership.

However, before the stage whereby draft legislation is published, it is largely down to individual departments or individuals Ministers or Secretaries of State as to how clear and accessible any process of drafting may be. In some cases, departments do not engage at all with stakeholders, and draft legislation is withheld until publication, which necessitates a greater need for questions to the government and amendments to draft legislation. If government was always clearer in its intentions, the need to provide more information around context for certain policies or clauses would be diminished, which would speed up the process, provide greater transparency and allow for a greater opportunity for comment, particularly from those outside Parliament.

There is also an issue with explanatory notes. The notes online, around the actual processes as opposed to the documents themselves, are excellent for a general reader. However, the published notes that accompany a Bill are too often written in precisely the same legalistic language that the Bill itself uses. In many cases, therefore, they only serve the purpose of clarifying technical points for those already well versed in the subject matter, and used to the legislative process, and not actually improving the understanding for any general reader on what any element of a Bill is actually seeking to achieve.

2. Are there mechanisms, processes and practices at this stage of the legislative process that hinder the development of ‘good law’?

Not engaging with stakeholders on draft legislation before it is published can hinder the development of good law. Whilst everybody accepts that the government will have a policy agenda that they are wanting to push through, if they do not consult the relevant sector stakeholders at all when drafting they will miss out on some practical implications of their proposals, which will in turn make the need for amendments more pressing – which slows down the legislative process and can reduce the time given to scrutiny in other areas.

3. Are there improvements that could be made at this stage of the process that would result in law that is more easily understandable by users and the public?

As above, in terms of understanding, more user-friendly explanatory notes would be a very good starting point, especially from the point of view of a general readership. The public should be able
to understand what the legislation is seeking to do, and government should move towards making this easier by better utilising this tool.

**Brexit**

*Following the UK’s withdrawal from the EU, Parliament will have to legislate across a range of areas previously legislated for at an EU level.*

4. What impact will the UK’s withdrawal from the EU have on the volume and type of legislation and how will that affect this stage of the legislative process?

We would imagine it will increase the volume of legislation, due to the legal implications of any repeal Bill, and the stated ambition of the government to transition some elements of EU law into British law.

Due to EU law being drafted in a different way to British law, it may make it more complicated for the general reader to understand what changes will come about as a result of any transition.

If it is a simple case of copying legislation into British law, with the same wording (or broadly equivalent), it may not have too significant an impact in the drafting of legislation. However, where there are policy differences as a consequence of withdrawal (which there inevitably will be) it will be very important to highlight this, so that the UK government processes this legislation in the same way it would any new UK legislation – with effective consultation and scrutiny.

5. Will there be changes required to how the Government and Parliament deal with legislation following Brexit?

The volume of legislation may mean there are practical changes required, even if these are simply having requisite space (either online or on paper) to house new proposals and explanatory notes.

There will also be a need for far greater explanation of the impact of any changes from EU law to UK law, and that this is accessible for a general readership. It must be made clear what is happening at all stages of the process, with extended explanatory notes.

**Technology**

*New technologies—and particularly developments in information technology—have changed the way that people access information and share their opinions, experiences and insights.*

6. How effectively do Parliament and the Government make use of technology at this stage of the legislative process?

They both use technology well when drafts are published, and the websites are excellent at holding easily accessible information. For a general readership, however, there may be scope for enhancing their understanding of how legislation works, and what individual Bills are proposing, and using video or audio may make this more accessible.

However, in the drafting process there is little evidence given, or engagement done, on Bills being worked up, so engagement is usually at the behest of the department, and involves only selected
stakeholders. Much more should be online about what the government is currently drafting, with a tool available to input recommendations, or sign up for notifications.

7. How could new or existing technologies be used to support the development and scrutiny of legislation?

As above, utilising audio or video tools may make some elements of the process more accessible, which will aid scrutiny.

It may also be beneficial to better publicise tools that allow stakeholders to register interest in areas, and then be contacted about any announcements or changes. These are useful, but are largely hidden, and should be much more prominent on both the Parliament and Government websites.

Public involvement and engagement

*Engagement with those affected by new legislation, or those with expertise that can assist the development and scrutiny of legislation, is an important factor in ensuring that legislation is effective in meeting its policy objectives.*

8. To what extent, and how effectively, are the public and stakeholders involved in this stage of the legislative process?

Not enough. There is no set standard for engagement at this stage of the process, and it varies widely from department to department and from issue to issue. Once opened up for discussion, consultation can be very good, but with no set tools in place it cannot be said to be successful currently.

9. What factors inhibit effective engagement?

Government pursuing a policy objective in secret, or without any wish to consult, will clearly inhibit any engagement, effective or otherwise. Also, self-selecting who to consult will hamper effective engagement.

10. What mechanisms could be used to increase or improve engagement with the public and stakeholders?

Having a notice of all Bills currently being drafted, or worked up, by departments or individuals, and a tool whereby you could register your interest as a stakeholder or interested party would be a very good start. This way, it would make sure the government could not self-select who it consults (as there would be a list of all those who believe they have an interest), and all notifications on any movements of the draft legislation would be circulated to all those on that register.

The people principally drafting the legislation should always be in the driving seat, so to speak, but any lack of consultation, or any moves to ignore any comments made or advice given, would have to be justified, which would make for more effective scrutiny.
Information provision
Informing the public, stakeholders and parliamentarians about potential legislation is an important part of effective law-making.

11. How effectively is information about potential legislation disseminated at this stage in the process?

As above, not very well. You have to follow Parliament fairly closely, or be informed by government, to know exactly what is going on.

12. How useful is the information that is disseminated and how could it be improved?

When stated the information available is fairly useful. However, it is not publicised widely enough. People should know exactly where to go to see what is being developed, and how they can get involved, or register their interest.

Parliamentary involvement
Parliament is central to the legislative process, but its involvement varies across the different stages of the legislative process.

13. To what extent is Parliament, or are parliamentarians, involved in the development of legislation before it is introduced into Parliament?

It largely depends on the type of Bill or the department in question. Parliamentarians are usually only involved if they are informed by a constituent or a campaigning organisation.

14. Is there scope for Parliament or parliamentarians to be more involved at this stage of the legislation process?

Yes, greater use of pre-legislative scrutiny, particularly for far reaching Bills, would be enormously beneficial. Ideally, any Secretary of State, or MP, should have to justify very clearly why pre-legislative scrutiny is not necessary for their proposed legislation before a Committee in Parliament. At the moment, it is far too easy for Bills to ignore this tool when it suits them. Clearly, many Bills will not require it, but this process will enable better understanding that this tool is available, and will give Parliamentarians the chance to better scrutinise the government’s drafting process, which will have the knock-on effect of better engaging the public in the process as well.

October 2016