1. My name is Mark Ryan and I am a Senior Lecturer in Constitutional and Administrative Law at Coventry University and I have written a textbook on Constitutional and Administrative law (3rd edition, Routledge/Taylor & Francis Group, 2014). In terms of engagement with pre-legislative scrutiny, I have made a written submission to the House of Commons Political and Constitutional Reform Select Committee in relation to the Draft Scotland Clauses Bill (2015) as well as to the Joint Committee on the Draft House of Lords Reform Bill (2011-12). In addition, in September 2016 at Oxford University I delivered a conference paper at the Society of Legal Scholars on the process of constitutional legislation which considered the Committee’s own recommended checklist for legislation set out in its 2011 Report: The process of constitutional change, HL Paper 177. Finally, in 2012 I gave both written and oral evidence to the House of Commons Political and Constitutional Reform Select Committee in relation to the issue of ensuring standards in the quality of legislation. This submission is made in my personal capacity and indicates my brief observations in respect of the pre-legislative stage of the law-making process. It in no way reflects the views of my employer (Coventry University).

2. Question 1: It is axiomatic that laws should be clear, coherent and accessible as these are constitutional principles which underpin the rule of law. It is also clear that the establishment and development of such principles begin at the initial drafting stage (whether or not they form part of a formal pre-legislative process). The practical reality of legislation is that it is drafted by the Government of the day and so it is fair to argue that Parliament is not really (or meaningfully) involved in this initial stage of the legislative process. Indeed, the Coalition Government has previously made it clear that the process and content of draft legislation was the preserve and business of the Government. After all, in terms of the separation of powers, the Executive power is constitutionally responsible for initiating legislation for the Legislature thereafter to consider and scrutinise.

3. Question 2: One suggestion which could prove useful (and which draws for its inspiration upon the Committee’s own recommendations in 2011), is the introduction of a “necessity and context” legislative tag which could be attached to draft legislation. This would require the Government to formally justify the need for its proposed legislation and also how it would sit in relation to other existing legislation (including any law which it would displace). Such a requirement would focus the mind of Government policy-makers on the necessity of the law proposed as it is well documented that one of the major problems with modern legislation is that of its volume and detail. In terms of modern legislation, therefore, less is certainly better than more.

4. Question 3: Legislation, by its very nature, has to cover future eventualities (or close off possibilities or circumstances) and so by necessity requires a minimum level of detail to be legally workable. There is, therefore, an inherent tension in drafting legislation which is crystal clear (but somewhat simplistic and lacking in necessary detail with the result that the courts become involved in the lacuna) and legislation which is so detailed (for the purposes of the law/courts) that it becomes impenetrable to the non-lawyer. Ultimately, the question is who is the clarity aimed at: the lawyer/courts or the lay general public?
5. Question 4: As the expectation appears to be that existing European Union law will be “frozen” in an Act of Parliament pending its removal (or perhaps retention and repackaged into other laws) at a later date, it is clear that in terms of volume, for the next decade, European Union law will dominate the legislative agenda in general and so, by extension, the pre-legislative process as well.

6. Question 5: As an adjunct to the above, it is clear that the next decade or so will be consumed by the issue of the highly complex (and politically divisive) issue of disentangling our domestic law from the law of the European Union. In this context, therefore, there will be enormous pressure placed on the existing parliamentary select committees which focus on the European Union. As a result, perhaps thought therefore should be given to the creation of a new overall Joint Committee on European Union law to perform a general overseeing role for this lengthy process which will necessarily require an integrated approach (given that European Union law straddles many aspects of domestic law).

7. Question 6: From my own observations in the last two decades, Parliament - in particular - seems to have adapted to, and embraced, technological advances with the provision of increasing amounts of information, documents and reports and this development is to be welcomed. My general impression is that the Government has, to some extent, caught up to Parliament in recent years in the provision of information.

8. Question 7: Although Parliament performs an invaluable (and crucially free) “alert” email service, by definition, this is used by an existing captive audience and so perhaps more could be done to outreach to Universities, colleges, schools, local government and libraries, etc. One recent and highly successful example of this was the outreach to the general public and organisations undertaken in 2014 by the House of Commons Political and Constitutional Reform Select Committee in relation to the possibility of a codified constitution (A new Magna Carta? HC 463). This resulted in the largest ever public response and engagement with a select committee.

9. Question 8: Public engagement is essential for the constitutional purposes of “participatory government” in order that people to some extent (however indirect or minimal) feel engaged with the decision-making process which affects their lives. The harsh reality, however, is that the public will be involved if they are aware of an issue and if they seek out the apposite information. In other words, those not aware of the issue will by definition, not search for it or be engaged with the process.

10. Questions 9 & 10: One mistake which should not be made is to assume that all of the population are engaged with digital resources/ the internet, and also that those who are engaged have ready access to it. As indicated above, one possibility is to supply hard copy of materials (however expensive) to public libraries, local authorities/town halls, etc so as to outreach to those not engaged with the digital world. One, albeit highly expensive, alternative approach is the one adopted at referendums with physical copies of information being delivered to every doorstep, thus drawing the attention of every household to the issue. For example, this could be in the form an annual single leaflet which detailed proposed draft laws for the ensuing year.

11. Question 11: This is an issue which is driven by the Government of the day and it needs to do more to disseminate information (and also not solely in digital form either).
12. Question 12: The information provided is useful; however, it could have links to other digital resources and hard copy materials. For example, in relation to Constitutional law matters, a link could be posted to the independent and highly regarded Constitution Unit (the Unit is part of the University of London).

13. Questions 13 & 14: Historically, the process of legislation is driven by Government and controlled by it, but Parliament could be more proactively involved though its select committee deliberations. In short, irrespective of whether the Government of the day would favour or encourage pre-legislative scrutiny by a committee, existing select committees (or combination of) should provide pre-legislative scrutiny of all draft legislation (albeit this would have resource implications which should be provided for by Parliament).

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