Constitution Committee inquiry: The Legislative Process

The Government welcomes the Constitution Committee's inquiry. This Government wants to ensure that new legislation is effectively scrutinised and stress tested before and during its passage through Parliament. I hope the Committee will find this submission helpful in relation to its inquiry. During the course of the inquiry I would be very happy to work with the Committee and to provide further evidence.

Creating good law

The preparation of legislation involves a number of parties within Government, with policy being developed by members of the policy profession, legal input from departmental lawyers and drafting by Parliamentary Counsel. All those involved work together to produce legislation which reflects the good law principles. The Cabinet Office is leading efforts to bolster parliamentary skills within Government and to ensure that civil servants have the requisite skills to support Ministers in Parliament and engage Parliament when Government legislation is being scrutinised.

The Office of the Parliamentary Counsel leads efforts within Government to produce clear and comprehensible legislation. “Good law” principles are embedded in their drafting guidance, and draft legislation is reviewed as it is prepared with a view to assessing its clarity and adherence to the principles in the guidance. The guidance also highlights the need for legislation to be coherent and accessible for the user, this includes drafting in plain English, avoiding unnecessary cross-references and where possible consolidating legislation.

The Office of the Parliamentary Counsel has been working with stakeholders from across the legal profession, industry, Parliament and academia to discuss and take forward ideas to ensure that legislation is clearer and more accessible. This dialogue has helped to highlight several examples of best practice to build upon, including Defra’s publicly available online catalogue of the legislation in their portfolio and the access to the criminal law provided by the Police National Legal Database.

The statute book in the United Kingdom stretches back to the 11th century and new policy often has to be woven into existing legislation. The Government continues to support the work of the Law Commissions in their work to identify and repeal redundant legislation through Statute Law Repeal Bills, but also through their regular Bills to modernise the law in specific areas. Examples of this include the current Intellectual Property (Unjustified Threats) Bill, the Statute Law (Repeals) Act 2013 and the Partnerships (Prosecution) (Scotland) Act 2013.
With regard to new legislation, it is Government policy to seek to legislate only where legislation is necessary to achieve a policy outcome. Within Government there is a stringent bidding process for new primary legislation which is designed to ensure that each legislative programme focuses on the top political and administrative priorities. From the outset, bids for primary legislation are required to set out why primary legislation is necessary to achieve the intended policy outcome and what the consequences would be if new primary legislation was not taken forward. Departments are also strongly encouraged to publish legislation in draft for pre-legislative scrutiny.

Withdrawal from the European Union

The Government will bring forward legislation in the next session that, when enacted, will repeal the European Communities Act 1972 on the day the United Kingdom leaves the EU. The Bill will also transpose current EU law into domestic law, while allowing for amendments to take account of the future negotiated UK-EU relationship. All Government Departments are currently reviewing the EU laws that apply in their policy areas and how our withdrawal from the EU will affect the operation of those laws. Where laws need to be fixed, that is what the Government will do.

The Government is committed to engaging and consulting with Parliament as much as possible. The current framework provides for effective legislative scrutiny mechanisms that should continue as far as possible. Once we have a clearer idea of the size of any legislation, we will work with Parliament to ensure there are robust scrutiny arrangements. It is the Government’s intention to work hand-in-hand with Parliament.

Public involvement and engagement

The Prime Minister has been clear that the Government will seek to publish more Green Papers and White Papers to ensure that policies are drawn up in cooperation with stakeholders. In this Parliament several packages of draft legislation have been published and some of these subject to pre-legislative scrutiny. Draft legislation published by the Government in this Parliament includes:

2015-16 session:
- draft Wales Bill
- draft Investigatory Powers Bill
- draft Finance Bill measures
- draft legislation on energy
- draft legislation on data sharing

2016-17 session:
- draft legislation on further education

Whilst not negating the need for formal consultation and pre-legislative scrutiny, it should be recognised that Government departments are continuously discussing proposals for legislation with public sector partners, the charity sector and industry. These conversations are vital as they allow for frank and confidential debates on new policies and proposals for legislation. I would be particularly interested to hear suggestions as to how new technology can be used to source input from stakeholders.
Since 2010, procedures have been embedded within Government to ensure that new legislation, and especially regulation, and its impact, are thoroughly considered. All new regulatory burdens are scrutinised by the Regulatory Policy Committee (RPC), which provides the Government with external, independent scrutiny of new regulatory and deregulatory proposals. The Committee has included representatives from industry, trade unions, academics and consumer representatives. The RPC’s independent assessment of Impact Assesments, and the Government’s overall performance on regulatory policy, is published on a regular basis.

**Information provision**

The Government has also striven to improve the quality of information provided during the passage of Bills. At the beginning of the current Parliament the Government introduced a new format for Explanatory Notes. The new format uses a modern style which is simpler, easier to navigate and allows better links to online resources. For the first time the notes also provide an overview of the Bill’s extent and whether legislative consent motions are required from the devolved legislatures.

Alongside Bills, Government Departments also provide memoranda to the Delegated Powers and Regulatory Reform Committee setting out the justification for the delegated powers in each Bill. Likewise, memoranda are submitted to the Joint Committee on Human Rights. Both documents are published on the Parliament website, so they are available to parliamentarians and the public. Where possible draft regulations or policy documents are published alongside Bills to help explain how delegated powers will be used.

I hope the Committee will find this submission helpful and I look forward to following the progress of the inquiry.

Yours ever,

Rt Hon David Lidington CBE MP

LEADER OF THE HOUSE OF COMMONS

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