Preparing legislation for introduction to Parliament

Introduction
1 The Committee have asked for comments on Parliament and the Legislative Process Inquiry.

2 The initial question is why a piece of legislation needs to be enacted. For each of the political parties, this is as a result of the democratic process. The parties put forward their manifestos to transform society which is the basis of their legislative programme should they form the next Government.

3 The Coalition Government in 2010-15 as part of their negotiations, agreed between the two parties, a set of policy areas that each side regarded as non-negotiable. Whilst people were struck at how quickly the Coalition Government was put together, it was clear that there was a list from each of the two parties on their individual legislative must-haves rather than consolidating areas of policy.

4 If there are future coalition governments this may result in a different set up with support for individual pieces of legislation.

Creating Good Law
5 Once an incoming Cabinet decide on their legislative programme, it will be a matter for the Secretary of State, should they have a Bill, to then ask their department to facilitate that legislation.

6 To make legislation effective and ultimately make good law, any Government has to be very clear what their broad policy is and enable civil servants to draw up evidence-based policy.

7 At that stage there will be some consultation with interested parties, and the legal advisors of the department will then draft instructions to Parliamentary Counsel to draft the Bill. It is hoped that The Office of Parliamentary Counsel who describe good law as law that is necessary, clear, coherent and accessible can revert to Ministers if new legislation does not conform to those principles.

8 The public have to understand new legislation. This would have been flagged up in the Manifesto and then the Queen’s speech.

Brexit
9 Other than an announcement by the Prime Minister, of a “Great Repeal Bill” it is unclear how this would work legislatively. Some clarity from the Government after discussing with leading constitutional and legislative experts should be done as a matter of urgency.
10 It is not clear whether the Government will be transferring all the European legislation into domestic law, which currently applies or whether the Government will proceed to enact those laws which they wish to enact and repeal those that they do not want as UK Law.

11 Leading Counsel should be engaged as soon as possible. The public can be made aware of this Opinion by leading Counsel. Lack of clarity on this issue given the Government’s reported timetable to trigger Article 50, is not helpful in my view.

Technology
12 Those who have access to the internet would be able to access Parliamentary and Government websites to find out about legislation. Not all of the members of public do access these websites and senior citizens and other citizens have a different way of working and some cannot afford it. Public Libraries are important in accessing and disseminating this information.

13 Factual political programmes on the media can inform people of forthcoming legislation. This could be another call for the public to put in their views to forthcoming legislation at Green Paper or White Paper stage. A statement to Parliament should not substitute the Green Paper/White Paper process.

Public involvement and engagement and information provision
14 What inhibits public involvement is the sheer volume of legislation that is enacted. However civil society is well organized in the UK. Therefore using media to announce forthcoming legislation and the start of the consultation process on pre-legislation, may be useful.

15 There are now many organisations in civil society and other organisations with specific interests including All Party Parliamentary Groups could also play a part in feeding in evidence on new legislation that affects their specific interest.

16 When civil servants are looking at evidence for a particular policy prior to consultation, and drafting legislation, they have contact with interest groups/academics/charities/ngos to get an idea on who to consult.

17 ‘A call to new legislation’ on the department’s website and parliament’s website would also facilitate dissemination.

18 The public does become engaged when select committees have enquiries, in my experience. Whilst there is limited time for oral evidence, there is a wealth of written evidence, and this has been a good way of informing a select committee’s inquiry.
Parliamentary involvement

19 I was a member of the Health Select Committee from 2010-15. My experience of the Health and Social Care Act was that the Government failed to consult widely with stakeholders and even the NHS. As a result, as part of our initial public expenditure report, the Committee heard evidence from expert witnesses who were finding it difficult to give their evidence based on what was going to be in the Health and Social Care Bill as it was not clear what the Government were setting out in the Bill. It was not in the Manifesto and the Government were keen to protect their position.

20 As a result the Bill had to be paused because of the controversial nature of the legislation. If Governments are going to put through such legislation, it would be appropriate to a have a Green paper and a White paper before the draft Bill.

21 It is possible for joint committees to look at legislation but committees are not able to alter the policy. If a government has not consulted properly, this would be amended in Bill Committees but this is not always agreed by a Government keen to protect its legislation. It would be possible to limit the unreasonable outcomes of a particular policy.

Conclusion

22 In my view there is a balance to be struck between the volume of legislation and good legislation. It is clear from legislation such as the Dangerous Dog Act, which is often cited as legislation that was enacted too quickly without proper scrutiny. However, sometimes Governments feel that they need to legislate often, a continual stream of legislation, to be seen to be carrying out their manifesto.

23 Added to this the Law Commission is tasked with consolidating outdated/outmoded legislation. All the Commission’s law reform projects involve thorough public consultation. The consultation papers and often a summary of responses are available on the project pages of the website, as are the final reports and Parliament gives the final approval.

24 Evidence-based policy is public policy informed by rigorously established objective evidence. An important aspect of evidence-based policy is the use of rigorous studies to identify programs and practices capable of improving policy-relevant outcomes. This is would be followed by the consultation on the principles set out by the Cabinet Office, which provides guidance on type and scale of consultation, duration, timing, accessibility and transparency.

25 I consider publishing a green paper and white paper together with impact assessments built on evidence based policy would be a route to good legislation and all form part of the pre- legislative stage.

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