Professor Helen Xanthaki, University of London—written evidence (LEG0054)

1. I respond to the call for evidence on the Passage of Legislation through Parliament in my capacity as a Professor of Laws at University College London, and the President of the International Association for Legislation.

2. My research focuses in legislative drafting and legislative quality. I will focus my evidence on the first question of the Call namely the parliamentary scrutiny process, and most specifically on the effectiveness of scrutiny of legislation in its passage through Parliament.

3. The premise of my response lies with the theory of effectiveness of legislation as the criterion of legislative quality\(^1\), and the contribution of Parliament in legislative scrutiny for the purposes of producing good effective laws.

4. From a functional and instrumental perspective, legislation is a tool for regulation. A good law is a law that, with the support and cooperation from all actors in the legislative process,\(^2\) is able to produce the regulatory results required by policy makers.

5. In view of the myriad of parameters that are unique to each Bill, there are no precise elements of good legislation at this level. If anything, the qualitative definition of good law as an effective law respects, and embraces, the subjectivity and flexibility of both drafting rules and conventions and, ultimately, of phronetic legislative drafting.

6. But even the qualitative definition of good law accepts that the text of good law is nurtured by the principles of efficacy, effectiveness, cost efficiency, clarity, precision, unambiguity, plain (easified) language and gender-neutral language.

7. These follow the following hierarchy of drafting virtues:

---


8. On the basis of the above, Parliament can contribute to the production of laws of good quality by focusing its scrutiny on the attainment of the drafting virtues that nurture legislative effectiveness.

9. This new element of legislative scrutiny requires that members of both Houses become aware both of the definition of good legislation and its elements.

10. In my consultancy to a number of Parliaments, I introduce the following checklist for the textual quality of Bills:

   - Preliminary provisions
     - Title: brief, accurate, to the point, unique, distinctive
     - Enacting clause: according to house style
     - Commencement: clear date
     - Objectives provision: measurable criteria of post legislative scrutiny

   - Substantive provisions
     - Clarity
     - Precision
     - Unambiguity
     - Content
     - Within the scope of the constitution/law/legislation
     - Objectives achievable via means foreseen
     - Post-legislative scrutiny cycle / sunset clause

   - Final provisions
     - Savings and transitional: these may also be placed in a schedule if they are long
     - Repeals
     - Consequential amendments: these may be placed in a schedule especially if they are numerous and can conveniently be presented in a tabular form
     - Schedules

11. Perhaps more importantly, members of Parliament need to identify the real policy goals, the mechanisms for their achievement, and the ability of the Bill to contribute to the attainment of the desired regulatory results. This ensures that the policy pursued is shared openly, that the policy option pursued is scrutinised for its capacity to lead to the desired
policy goals, and that the Bill before Parliament can effectively contribute to the attainment of the policy goals.

12. Identifying a mismatch amongst policy goals, policy mechanisms, legal concepts, and legislative expression puts an end to bad laws, to the foreseeable wastage of public funds, and to the foreseeable burden of the statute book from laws that are destined to fail.

13. This type of legislative scrutiny can enhance citizens’ trust to the law, and to the role of Parliament in its effective scrutiny.

14. There is a direct link between quality of legislation with certainty in the law, and ultimately the rule of law and human rights. Parliament can effectively defend and indeed contribute actively to the right to good law.

15. Although it is the task of the executive to draft legislation of good quality, a modern Parliament has a crucial role to play in scrutinising effectively the Bill drafted by the executive. In addition to other considerations, Parliament must scrutinise legislation under the prism of legislative quality. Legislative quality is synonymous to effectiveness of legislation. A modern Parliamentarian must become aware of what effectiveness is, and how it can be achieved. The effort of parliamentary training in legislative quality is not minimal. But the rewards for the jurisdiction and its citizens make it certainly worth pursuing.