The Better Government Initiative—written evidence (LEG0063)

1. The Better Government Initiative (www.bettergovernmentinitiative.co.uk) is a strictly non-political body. Its membership is principally made up of retired very senior civil servants. Our experience covers almost every stage of the legislative processes within government at every level: the initial development of the policy and its agreement by Cabinet Committee, the drafting of instructions to Counsel setting out the ground to be covered by the legislation, securing a place within the Government’s legislative programme, and supporting ministers during the Bill’s passage through Parliament (the actual drafting process is a matter for Parliamentary Counsel).

2. We drew on this experience in drafting the relevant sections of our comprehensive report ‘Good Government: Reforming Parliament and the Executive’ published in 2010. This in turn formed the basis of our written evidence to the Political and Constitutional Reform Committee (PCRC) included in its report ‘Ensuring Standards in the quality of legislation’ published in May 2013.

3. The written evidence to the PCRC remains an accurate statement of our position on the steps necessary to ensure that legislation presented to Parliament is of high quality and that Parliament has the necessary material to subject it to thorough scrutiny before it is enacted.

4. The recommendations cover four stages:

   4.1 **Setting explicit standards for the development of the policy that the legislation will implement.** The Government should issue published instructions to departments preparing legislation on the matters to be covered in their submissions to Cabinet Committees seeking approval of the policy. These should include:

   a) a full explanation of the justification for the policy;
   b) why it needs to be implemented through legislation;
   c) how it will work in practice;
   d) an accurate assessment of the costs, benefits and risks (this could be covered by a conscientiously prepared impact assessment; they are currently often seriously deficient and improvements in Parliamentary scrutiny are long overdue);
   e) a record of any necessary consultations that have been undertaken;
   f) the implications, if any, for the devolved governments.

   4.2 **Constructing a Government legislative programme that is capable of effective parliamentary scrutiny.** Before including a Bill in the legislative programme the Cabinet’s Legislation Committee should require a statement from the relevant Secretary of State that the standards have been complied with or, if not, a full explanation of the reasons why this could not be done. The Government should also

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2 [https://publications.parliament.uk/pa/cm201314/cmselect/cmpolcon/85/85vw09.htm](https://publications.parliament.uk/pa/cm201314/cmselect/cmpolcon/85/85vw09.htm)
commit itself to limiting the legislative programme to what is capable of being considered by Parliament without excessive use of timetable motions.

4.3 Providing Public Bill Committees with all the information necessary to undertake a thorough scrutiny of the Bill. This would include the statement from the Secretary of State explaining how the standards had been complied with and the associated impact assessments (also to be provided to the proposed Legislative Standards Committee – see below). Detailed analysis of this material would frequently require more time than could reasonably be provided by the members of a Parliamentary Committee without official support. We proposed, with their agreement, that this should be provided by the Scrutiny Unit staff.

4.4 Establishing a new Legislative Standards Committee, supported by the Scrutiny Unit, to advise the House of Commons on whether Bills had been sufficiently well prepared to justify providing them with time on the floor.

5. More detailed recommendations on the procedures to be adopted within Government and the involvement of Parliament in agreeing the necessary changes with the Government are included in the annexes to our written evidence to the PCRC. We additionally recommended that, wherever practicable, pre-legislative scrutiny should become the norm and the use of post-legislative assessments should be increased.

6. We were of course aware that, for a variety of reasons, this structured process could not be followed in every case. However, where this could not be done the Government should provide a detailed justification to the relevant Parliamentary Committees.

7. Our recommendations were substantially accepted in the PCRC’s final report\(^3\). In the Government’s response to the report\(^4\), however, it was argued that there was no need for a code of legislative standards on the grounds that existing procedures within Government for securing high quality legislation were sufficient and a current review of Explanatory Notes by Parliamentary Counsel would improve the information provided to Parliament. It further argued that without a code of legislative standards a Legislative Standards Committee, which had also been recommended in an earlier ‘House of Lords Report of the Leaders Group on Working Practices’ \(^5\), would be redundant and that such a committee would inevitably and inappropriately be drawn into discussion of the underlying policy that the Bill was designed to achieve.

8. We remain of the view that the present arrangements for preparing legislation for introduction to Parliament are seriously deficient. This is evidenced by the volume of amendments to Government Bills that are now regularly required (for example the House of Lords Public Bill Sessional Statistics record that over 400 amendments were made to the Investigatory Powers Act 2016). Nor do we accept that a Legislative Standards Committee would be unable to judge whether there had been a serious policy preparation process without attempting to judge the acceptability of the proposed policy.

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\(^3\) [https://publications.parliament.uk/pa/cm201314/cmselect/cmpolcon/85/8502.htm](https://publications.parliament.uk/pa/cm201314/cmselect/cmpolcon/85/8502.htm)

\(^4\) [https://publications.parliament.uk/pa/cm201314/cmselect/cmpolcon/611/61104.htm](https://publications.parliament.uk/pa/cm201314/cmselect/cmpolcon/611/61104.htm)

9. The review of Explanatory Notes, though helpful in understanding the purpose of the Bill, fell far short of providing the essential detailed material set out in Paragraph 4A above.

10. We therefore continue to recommend that effective parliamentary scrutiny of legislation will depend on the establishment of a code of standards agreed by Parliament and Government (a draft resolution designed to achieve this is annexed) and a Legislative Standards Committee to oversee the implementation of the code.
ANNEX

11. This draft builds on the 1997 resolutions following the Scott Report. The resolutions passed by the Commons and the Lords were largely identical. The Lords motion moved “that, in the opinion of this House, the following principles should govern the conduct of Ministers of the Crown in relation to Parliament:”

12. This was followed by five paragraphs. The first four said that “Ministers have a duty to Parliament to…” or “should ...” do various things in talking to Parliament or in instructing civil servants giving evidence before Parliamentary Committees. The fifth paragraph prescribed the interpretation of “public interest” by reference to statute and the Code of Practice on Access to Government Information (Second Edition, January 1997), and said that the duty of civil servants giving evidence to Parliamentary Committees should be in accordance with the Civil Service Code (January 1996).

13. The resolution could either specify the elements of thorough preparation; or it could refer to another document containing them, perhaps a report by the Commons Liaison Committee setting out a checklist of tests which Select Committees should apply to policy or legislative proposals presented to Parliament. The draft below follows the former approach.

Draft

14. “That in the opinion of this House, the following principles should govern the Conduct of Ministers of the Crown in relation to Parliament:

15. Ministers have a duty to Parliament to ensure that their legislative proposals have been thoroughly prepared. The main elements of thorough preparation, which should be set out in a document laid before Parliament when a Bill is presented, are:

   a) definition of the problem to be addressed and explanation of why action is desirable and why legislation is operationally necessary;

   b) analysis of the costs, benefits, and risks of different options; and definition of the purpose and intended effect of the proposal in terms suitable for use as criteria in post-implementation scrutiny;

   c) demonstration of the considerations which led Ministers to the proposed option;

   d) demonstration of how the proposal will work in practice;

   e) evidence of consultation on the proposal.

16. Guidance to Ministers should set out how the provisions in the resolution should be interpreted.”