



HOUSE OF LORDS

Constitution Committee inquiry: The Legislative Process

Draft Call for Evidence on the delegation of powers

The Constitution Committee is conducting a large-scale inquiry into the legislative process. This follows its major 2004 report on *Parliament and the Legislative Process*.¹ The Committee is interested in how bills are prepared by Government and scrutinised in Parliament; whether and how outside organisations and the public are involved in the process; and how the legislative process is, or could be, affected by new technology and by the UK's withdrawal from the EU.

The inquiry began in October 2016 and will continue over the next year. It will be taken in four parts, each addressing a stage or significant factor in the legislative process. These are:

1. Preparing legislation for introduction in Parliament;
2. The passage of legislation through Parliament;
3. The delegation of powers; and,
4. The period after Royal Assent.

The Committee took evidence on stage 1, 'Preparing legislation for introduction to Parliament', between October and December 2016. The Committee has not yet issued a Call for Evidence in relation to stage 2: 'The passage of legislation through Parliament'—it will return to this topic in the 2017-18 Session of Parliament.

Stage 3: The delegation of powers

The Committee is now seeking evidence in relation to stage 3 of its inquiry: 'The delegation of powers', before the expected introduction of the Government's 'Great Repeal Bill' in the next session of Parliament. Delegated powers are frequently included in the Bills presented to Parliament by the Government. These powers allow Ministers (and occasionally other public bodies) to use 'secondary legislation' (usually in the form of statutory instruments) to do things which would otherwise need another Bill. The Committee is focusing on the inclusion of delegated powers in primary legislation, although it will consider secondary legislation and the manner in which it is scrutinised as necessary to inform its consideration of the delegation of powers in primary legislation.

¹ Constitution Committee – Parliament and the Legislative Process:
<http://www.publications.parliament.uk/pa/ld200304/ldselect/ldconst/173/17302.htm>

The Committee would welcome written submissions on any aspect of this topic, and particularly on the issues and questions set out below. We welcome contributions from all interested individuals and organisations.

Written evidence should be submitted online via the committee's website, <http://www.parliament.uk/legislative-process-written-submission-form>. The deadline for submissions is 5pm on Wednesday 18 January 2017.

Questions

Consistency of approach

1. For what purposes is it appropriate to delegate powers to make law to Government? Is there a clear boundary between subject-matters which are appropriate for primary legislation on the one hand, and for secondary legislation on the other?
2. Does the Government have a consistent approach to the delegation of powers and, if so, on what basis has that approach been adopted? Has the outcome of this approach been satisfactory?
3. How effective is parliamentary scrutiny of provisions in primary legislation that delegate power to the Government?
4. Are there circumstances in which 'skeleton' Bills and clauses are appropriate? Are 'skeleton' Bills and clauses becoming more frequent, and if so, why?
5. How far are matters previously dealt with in secondary legislation moving into guidance, codes of practice and directions; and what are the implications of any such movement for Parliamentary scrutiny?

Scrutiny of secondary legislation

6. The extent to which it is appropriate for Parliament to devolve power to the Government inevitably depends on the appropriateness of Parliament's future scrutiny of the exercise of those powers. To what extent are current procedures for scrutinising secondary legislation effective?
7. Is there a case for making secondary legislation amendable in certain circumstances (and if so, in which circumstances), or for greater use of an enhanced scrutiny process that allows Parliament to scrutinise draft instruments before a final version is introduced for approval (such as the existing super-affirmative procedure)? What problems arise from the 'take it or leave it' process currently used for agreeing secondary legislation?
8. Is there a case for allowing either or both Houses of Parliament additional powers to delay or reject secondary legislation?

Henry VIII powers

9. Bills often include 'Henry VIII powers', which allow the Government to amend or repeal primary legislation by secondary legislation. For what reasons might such powers be appropriate, and with what level of scrutiny? Are there any subject-matters or purposes for which Henry VIII powers should never be used? Should Henry VIII powers ever be exercisable by a person who is not a Minister?

Information provision

10. Do the Explanatory Notes that accompany a Bill contain sufficient information about what the proposed secondary legislation will do?
11. How far is the intended content of secondary legislation made clear when the Bill is going through Parliament? Should draft secondary legislation be routinely made available when Bills are scrutinised by Parliament? Are there any examples of secondary legislation that brought forward provisions which were unexpected in the light of information provided by Government when the primary legislation was being enacted?

Brexit

12. To what extent, in Brexit-related primary legislation, might the use of secondary legislation be necessary or justified to convert the 'acquis' (the body of existing EU law) into British law?
13. Do you envisage that any changes will be required to procedures related to the delegation of powers or secondary legislation, to cope with the legislation likely to be required as a result of Brexit?

ANNEX: GUIDANCE FOR SUBMISSIONS

Written evidence must be submitted online via the committee's inquiry page <http://www.parliament.uk/legislative-process-written-submission-form>. Please do not submit PDFs (if you do not have access to Microsoft Word you may submit in another editable electronic form). If you cannot submit evidence online, please contact the committee staff.

The deadline for written evidence is 5pm on Wednesday 18 January 2017.

Concise submissions are preferred. A submission longer than six pages should include a one-page summary. Paragraphs should be numbered. Submissions should be dated, with a note of the author's name, and of whether the author is making the submission on an individual or a corporate basis. All submissions submitted online will be acknowledged automatically.

Personal contact details supplied to the committee will be removed from submissions before publication but will be retained by the committee staff for specific purposes relating to the committee's work, such as seeking additional information.

Submissions become the property of the committee which will decide whether to accept them as evidence. Evidence may be published by the committee at any stage. It will appear on the committee's website and be deposited in the Parliamentary Archives. Once you have received acknowledgement that your submission has been accepted as evidence you may publicise or publish it yourself, but in doing so you must indicate that it was prepared for the committee. If you publish your evidence separately you should be aware that you will be legally responsible for its content.

You should not comment on individual cases currently before a court of law, or matters in respect of which court proceedings are imminent. If you anticipate such issues arising, you should discuss with the clerk of the committee how this might affect your submission.

Certain individuals and organisations may be invited to appear in person before the committee to give oral evidence. Oral evidence is usually given in public at Westminster and broadcast in audio and online. Persons invited to give oral evidence will be notified separately of the procedure to be followed and the topics likely to be discussed.

Substantive communications to the committee about the inquiry should be addressed through the clerk or the chairman of the committee, whether or not they are intended to constitute formal evidence to the committee.

This is a public call for evidence. Please bring it to the attention of other groups and individuals who may not have received a copy directly.

You may follow the progress of the inquiry at <http://www.parliament.uk/legislative-process-inquiry>.

To contact the staff of the committee, please email constitution@parliament.uk.