Help Sheet 1: Legislative Processes in the United Kingdom

Introduction

This Help Sheet is designed for readers who are not familiar with the system of legislation in the UK. It provides a synopsis of the main forms of legislation in the UK and an outline of the legislative stages for measures in the Westminster Parliament which apply to areas that have not been devolved to the Scottish Parliament and the Welsh and Northern Irish Assemblies as well as those pertaining to England.

Details of the legislative processes in the Scottish Parliament and the Welsh and Northern Irish Assemblies can be found in Help Sheet 2.

Main Forms of UK Legislation

Primary Legislation

This is legislation established by an Act of Parliament (or statute) following the approval of a Bill by both the House of Commons and the House of Lords and its ratification by the reigning monarch. It either creates a new law or changes an existing one, and on implementation applies to the UK as a whole or specified areas within it. Most bills are Government Public Bills (which affect the whole jurisdiction, as distinct from Private Bills, which are specific to a locality or institution and Private Members’ Bills, which are Public Bills proposed by MPs). Bills usually have to be passed within the (normally twelve-month) Parliamentary session in which they are introduced, although there is a procedure for extending consideration to a second session.

Secondary Legislation (also referred to as ‘delegated’, ‘subordinate’ or ‘subsidiary’ legislation)

This is law made by ministers under powers granted by statutes that lay out a measure’s broad principles and allow the Government to issue more detailed provision on its implementation without having to generate a new Act of Parliament. The detail ranges from highly technical considerations (such as the calculation of benefit levels, pension finance or health and safety protection) to additional information on administrative procedures. Most UK secondary legislation is made through Statutory Instruments (SIs), in the form of ministerial regulations, orders in council and codes of practice.

SIs can also be used to update, amend or enforce existing legislation, and they have become a key form of UK legislation, with upwards of 3000 issued annually. They are drafted by Government Departments’ legal offices, and are often subject to consultation with stakeholders, interest or expert groups and the wider public before being finalised and submitted for Parliamentary approval. Around two-thirds are not actively considered by Parliament, and the growth in the use of SIs has led to concern over a shift in power away from it and provisions for enhanced scrutiny by specialist Parliamentary Committees.

Main Stages in UK Governmental Legislation

As the discussion in Chapter 42 of the Companion indicates, policymaking is a complex process subject to many influences and interventions. In formal terms, however, a Government’s legislative
proposals for a Parliamentary session are announced in the Queen’s Speech, at the beginning of that session or shortly after a general election, with further policy statements being announced during the year, often as a prelude to future measures. Under the 2011 Fixed Term Parliaments Act, general elections take place every five calendar years ordinarily on the first Thursday in May, with the Queen’s Speech scheduled accordingly for later in the month. Policy announcements can also be made as part of the Chancellor of the Exchequer’s Autumn Statement and in the Budget (see Help Sheet 3).

Since 2015 standing orders of the House of Commons have provided that consideration of bills applying only to England or to England and Wales is effectively confined to members from the nations affected.

Schematically the process by which a policy proposal becomes a Bill and then law can be summarised as follows:

- **Pre-legislation**

The party political and electoral systems in the UK mean that in practice Governments are composed of senior Members of Parliament (MPs) from the majority party, who form the Cabinet led by the Prime Minister. It determines an administration’s policy agenda and legislative programme. In the early period of office particularly this largely reflects its election commitments.

Responsibility for the detailed preparation of legislation and steering it through Parliament mainly rests with Government Departments. Depending on the scope of the proposal this may entail extensive liaison with the Treasury and other Departments as well as specialist lawyers (the Parliamentary Counsel) who undertake the detailed drafting.

Prior to formal submission to Parliament, it has become common practice to subject policy proposals to external consultation. This is partly in order to expedite Parliamentary consideration. But it is also intended to facilitate informed policymaking by eliciting the views of those likely to be affected, those with expert knowledge and the wider public. The process enables Departments to address issues that may otherwise have been overlooked or require further review. Such consultation can take different forms:

- **Draft Bill Consultation**: the responsible Department often produces bills in draft form, allowing for comment by interested parties. Most are also examined either by Select Committees of the House of Commons or Lords, or a Joint Committee of both. The draft may then be amended before it is formally submitted to Parliament.

- **Public Consultations**: in preparing legislation involving major policy proposals or changes to existing measures, the Government may first issue:
  
  a. A [Green Paper](#) (so-called because it was historically printed on paper of that colour) that puts forward draft Government proposals for future policy along with possible courses of action with the aim of stimulating public debate.

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1 There are two provisions that can trigger an earlier election: when the House of Commons passes a motion of no confidence in the Government and fourteen days elapse without the House passing a vote of confidence in an alternative Government, or a motion for an early election is passed by two-thirds of members of the House.

2 In the case of the Coalition government formed in 2010, the Cabinet was composed of Conservative and Liberal-Democrat MPs. The term MP is reserved for members of the House of Commons, but a few Government Ministers sit in the non-elected House of Lords.
b. A White Paper (historically, bound in white paper) that takes account of the responses to the Green Paper, provides a more definitive statement of the Government’s intentions and approach, and sets out its legislative plans. This usually forms the basis for a bill but also provides the Government with a further opportunity to seek feedback before its policies are formally presented to Parliament. To gain further public or specialist input, a draft Bill may be attached to the White Paper.

These two stages may be merged, and Departments may also issue other consultation documents calling for views from the general public, stakeholders or those with particular expertise on technical issues, on specific aspects of its proposals and/or the options being considered. Like the Green and White Papers, these consultations (which apply particularly to secondary legislative proposals) have to be conducted in line with a cross-Departmental code of practice.

To ensure their effectiveness, the documents not only outline the Government’s proposals but often include open-ended questionnaires covering the main areas on which views are sought. These and any other comments have to be submitted within a specified time frame. Departments subsequently publish analyses of these, including summaries of the views submitted along with the Government’s response to the consultation, the rationale for its approach and its legislative intentions.

In cases of highly controversial issues over which there is extensive public concern, the Government may appoint ad hoc independent commissions (historically Royal Commissions) to investigate and make recommendations. These are usually chaired by a major public figure and composed of a mix of experts and interest-group representatives with powers to take evidence, commission research and consult widely. Their recommendations are not binding (and not always unanimous) and, depending on the Government’s response, may or may not lead to legislative proposals and further consultations prior to constructing a Parliamentary Bill.

- Public Involvement in Parliamentary proceedings – there are also provisions for individual members of the public to engage more directly in policymaking through initiating Parliamentary procedures. Since August 2011 under an e-petition scheme those securing 100,000 signatures on any matter for which the Government has responsibility are eligible for debate in the House of Commons, opening the way for possible legislative action. In addition, 10,000 petitions secure a response from the Government, alerting it to a possible issue to examine.

- Parliamentary Consideration

Once a bill is finalised, it has to be steered through Parliament. Financial bills or those that involve the public’s money have to be introduced in the Commons (see Help Sheet 3). Others can be introduced via either House. Whatever the starting point all bills are subject to the same stages of consideration, first in one House and then the other, and must be approved in the same form by both Houses (the ease with which it progresses varying with the proposal and the strength of the Government’s majority).

Whatever their starting point, the route through is similar, with a bill progressing through the Commons as follows:

- First Reading: a formal stage with no debate when a bill is laid before the House;
Second Reading: at this stage the policy objectives are set out by the overseeing Departmental Minister, paving the way for debate on the bill’s core principles and merits, followed by a vote usually in favour of the bill progressing;

Committee Stage: clause-by-clause scrutiny by a Public Bill Committee (one is set up for every bill), which also considers and agrees any amendments tabled by the Government or proposed by MPs (the proposals being selected by the chair of the Committee). If the bill starts in the House of Commons, it can also take evidence from experts and interested groups to inform its decisions;

Report Stage: consideration of the amended bill by the House, allowing for further debate and amendment;

Third Reading: final version of bill debated and approved by the House;

Bill progresses to the House of Lords, where it follows similar stages;

Consideration/Reconciliation of amendments: the bill as amended by the Lords is considered by the House of Commons. If further amended, it is subject to later consideration by the Lords. If it disagrees/makes further suggestions, it is returned to the Commons for consideration and back again until both Houses agree the wording of the bill. (If the Lords reject the bill, the Commons may then pass it in the next session, though the time lost can affect progress on other elements of a Government’s programme.)

Queen’s (Royal) Assent

By convention, this is now given automatically, and at this point, the bill becomes an enforceable act.

Implementation

An Act may be enforceable immediately, on a specified date or phased in, with implementation overseen by the relevant Department (often through the process of secondary legislation).

Impact Assessments

Feeding into and running alongside the above stages, there is often a further process arising from the requirement that Departments have to provide Impact Assessments (IAs) for all Government interventions of a regulatory nature that affect the private and third sectors or public services. These are brief economic assessments of the social costs, risks and benefits of an intervention intended to ensure it meets what are seen as the principles of good regulation as set out in guidance from the Treasury and the Department for Business, Innovation and Skills. Some measures (for instance, the 2015/16 Trade Union Bill) may also be subject to Equality Impact Assessments.  

3 Before progressing or implementing policy public authorities in England may also conduct an Equality Impact Assessment to assess whether it might have a disproportionate effect on people with protected characteristics under the 2010 Equality Act (which consolidated and extended previous legislation). Though not a requirement this is one way whereby they can demonstrate compliance with the Public Sector Equality Duty placed on them by the Acts. More extensive provisions apply in the devolved administrations (see Help Sheet 2).

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Further Reading

Chapter 42 of the Companion provides an overview of the main perspective on policymaking processes. Consultations on UK-wide and English social policy proposals can be followed (by the relevant Department) at www.gov.uk/government/publications?publication_filter_option=consultations. The progress of a bill and amendments to it can be tracked on the UK Parliament website, www.parliament.uk.

Information about the range of pressure groups involved in lobbying throughout the pre-and legislative stages (and subsequently) can be found in the Guide to Key Sources on UK Social Policy.