

Hansard Society: Delegated Legislation Review

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What is delegated legislation?

- Made by government Ministers (compare to Acts, which are passed by Parliament)
 - aka Statutory Instruments (SIs), secondary legislation
- Technical details and implementing rules
- “Everyday law” (regulations, rules, orders)
- 1,000s passed every year (compared to 10s of Acts)
- May be subject to judicial review

What is delegated legislation used for?

- Coronavirus restrictions
- Cryptocurrency advertising
- GMOs and gene editing
- Social security
- Napier Barracks
- Children in care
- Sanctions

Parliamentary scrutiny procedures

- The negative procedure (~75-80%): no debate or vote is required for a statutory instrument to become or remain law.
- The affirmative procedure (~20-25%): there is debate and vote on the statutory instrument. Debate (in HoC) is capped at 90 minutes and is normally in a non-specialist Committee. No amendment is possible.
- Strengthened scrutiny procedures (<2%): one of (at least) 17 bespoke procedures that have additional requirements such as public consultation, lengthened timeframes, additional supporting documents or (extremely rarely) powers for a parliamentary committee to recommend changes or veto.

Parliamentary Committees

- Joint Committee on Statutory Instruments (JCSI)
 - Checks for legal issues and technical quality (not merits)
- HoL Secondary Legislation Scrutiny Committee (SLSC)
 - Reviews policy content and draws SIs to the attention of the House of Lords
- HoL Delegated Powers and Regulatory Reform Committee (DPPRC)
 - Reviews Bills for 'inappropriate delegation of power'
- HoC Delegated Legislation Committees (DLC)
 - Set up ad hoc to debate SIs
- European Statutory Instrument Committee (ESIC)
 - Sifting role for EUWA 2018 SIs

Our concerns

- Delegated legislation is needed, but the system is broken
- Powers are too broad
- Scrutiny is ineffective, in particular in the Commons
- The system is confusing

- Delegated Legislation Review:
 - Root and branch reform is needed and could have a range of benefits
 - How would you design the system starting from scratch

Problems with the powers

- Broad, generally worded powers are commonplace
- Transfer of power from Parliament to Government
- Blurring of boundary between primary and secondary legislation (what is “technical” and what are “main policy issues”?)
- Skeleton Bills
- Henry VIII powers

Problems with parliamentary scrutiny

- Scrutiny procedures are largely ineffective
- Mismatch between an SI's content and its scrutiny
- Weak procedures:
 - No power of amendment
 - Negligible risk of rejection
- Government control of Commons time
- Poor quality accompanying documentation
- Inadequate expert resource
- Confusing terminology

Delegated Legislation Review

- Project supported by The Legal Education Foundation
- Developing concrete proposals to reform the system
 - Policy Paper
 - A New Statutory Instruments Act
 - Draft Standing Orders
- Throughout 2022:
 - Public and private events to explore the key issues
 - Published briefings, papers and reports for debate and discussion
- A reformed approach - better for Government, Parliament and the public
 - More tailored, more impactful, more resource, more transparent

Some topics for the Review

- Primary/secondary divide
- Better sifting and scrutiny
- Role of accompanying materials
- Guidance and 'disguised legislation'
- Retained EU law: impact of new powers to amend this
- Devolution: how should scrutiny in Westminster adapt when SIs engage devolved matters
- Regulators: parliamentary scrutiny of their powers



Thank-you

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