

## 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 United Kingdom. It provides a synopsis of the main legislative stages for measures in the UK Parliament as well as outlines of the procedures in the Scottish Parliament and Welsh and Northern Irish Assemblies with regard to areas where these national administrations have legal responsibility.

### ○ 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 United Kingdom as 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). They usually have to be passed within the (normally twelve month) parliamentary session in which they are introduced although there is now a procedure for extending consideration to a second session.

#### ❖ **Secondary Legislation** (also referred to as 'delegated' or "subordinate" 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 secondary legislation in the United Kingdom is made through Statutory Instruments (SIs), in the form of ministerial regulations, orders in council and codes of practice. This is a familiar route for a good proportion of UK law as well as the implementation of many measures originating in the European Union.

SIs are drafted by the legal offices of Government departments and are often subject to consultation with stakeholders, interest or expert groups and the wider public before being finalized and submitted for parliamentary approval.

### ○ Main Stages in UK Governmental Legislation

As the discussion in *chapter 28* of *The Companion* indicates, policy-making is a complex process that is 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, with further policy statements being announced during the year, often as a prelude to future measures.

Traditionally in a non-election year the Queen's speech was usually delivered annually in late November. In an election year it varied with the timing of the election, the date of which was determined by the Government within the requirement of a five-year maximum parliamentary term. Under the 2011 Fixed Term Parliaments Act, general elections will take place every five

calendar years ordinarily on the first Thursday in May<sup>1</sup>. To accord with this development, there was no Queen's Speech in 2011, it has been rescheduled for 2012

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

### ❖ Stage 1: Pre-legislation

The party political and electoral systems in the United Kingdom mean that in practice the Government is composed of senior Members of Parliament (MPs) from the majority party who form the Cabinet led by the Prime Minister.<sup>2</sup> It determines the Government's policy agenda. Its legislative programme, particularly in the early period of office, largely reflects its election commitments.

The 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 with 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 policy-making by eliciting the views of those likely to be affected, those with expert knowledge and the wider public. The process enables Government Departments to address issues that may otherwise have been overlooked or require further review. Such consultation can take different forms:

#### ■ Consultation on a Draft Bill

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 Consultation

In preparing legislation involving major policy proposals or changes to existing measures, the Government may first issue Green and White Papers.

*A Green Paper (so-called because it was historically printed on paper of that colour) puts forward draft Government proposals for future policy along with possible courses of action with the aim of stimulating public debate.*

*A White Paper (historically, this was bound in white paper) takes account of the responses to the Green Paper, provides a more definitive statement of the Government's intentions*

<sup>1</sup> 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 14 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 the Members of the House.

<sup>2</sup> In the case of the Coalition Government formed in 2010, the Cabinet is composed of Conservative and Liberal-Democrat MPs.

*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, 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 position, 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

Provisions for individual members of the public to engage more directly in policy-making through initiating parliamentary procedures are also under way. Since August 2011, under an e-petition scheme, petitions 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.

#### ❖ Stage 2: Parliamentary Consideration

Once a Bill is finalized, it has to be steered through Parliament. Financial Bills or those that involve the public's money have to be introduced in the Commons. Others can be introduced into 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).

If a Bill starts in the Commons, the route is as follows (with an analogous pathway for Bills initiated in the House of Lords):

- 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 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 undergoes similar stages to the House of Commons.
- Consideration/ Reconciliation of amendments: Bill as amended by the Lords considered by the House of Commons. If further amended, it is subject to later consideration by the Lords. If it disagrees/makes further suggestions, the Bill 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.)

[In the longer term, this process may be extended under proposals to add a Public Reading Stage for Government Bills giving members of the public a direct opportunity to comment on the details of the legislation].

### ❖ Stage 3: Queen's (Royal) Assent

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

### ❖ Stage 4: 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 affects 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 (proportionality, accountability, consistency, transparency, targeting) as set out according to guidance from the Treasury and the Department for Business, Innovation, and Skills. They must be published: at the consultation stage (if a public consultation is conducted); when the Government declares its position (usually when its consultation response is published); when a proposal enters Parliament and at the enactment stage (if changes have been introduced); and in a post-implementation review.

### ○ The Legislative Process in Scotland

The Scottish Government can instigate both primary and secondary legislation (Scottish Statutory Instruments) on matters of devolved responsibility. The formal legislative process is modelled on that of the UK Parliament with Bills having to be approved by the Scottish Parliament (Parliament na h-Alba) and ratified by the monarch as Acts of the Scottish Parliament. There are again several types of Bill, with the public Bills introduced by the Scottish Government being termed Executive Bills and the Government's legislative programme for the parliamentary year being laid out by the First Minister. Elections are normally held every four years on the first Thursday in May, though to prevent a clash with the UK election planned for 2015, the next is scheduled for 2016. Normally, a parliamentary year is 12 months, starting with the first meeting after the election).

Departmental 'Bill Teams' are responsible for developing proposals for parliamentary consideration, liaising with other departments where necessary and with the legal team drafting the measure (the Office of the Scottish Parliamentary Counsel). The Department's plans are again frequently subject to public consultations in the form of an Executive consultation document and/or detailed proposals (which may include a draft of a Bill) issued according to good practice guidelines. Typically, these invite responses to specific questions or more general comments from interested organizations and the wider public, though other mechanisms such as public meetings, focus groups, and online discussion forums may also be used. A public petitioning system and provisions for the public to attend cross-party policy groupings meetings also provide opportunities for public input into policy-making.

Once a draft Bill is agreed, departments remain responsible for navigating it through the three stages of Scotland's unicameral (single chamber) Parliament:

#### ❖ Stage 1

Introduction of a Bill along with accompanying documentation (including a statement of legislative competence, financial assessments and an impact assessment) for scrutiny and report on its general principles by the relevant committee(s) (Stage 1 Report). This is followed by a debate on its general merits and approval by the whole Parliament.

#### ❖ Stage 2

Committee Stage – detailed examination of the Bill by a committee responsible for areas covered by the sponsoring department and consideration of any amendments proposed by its members.

#### ❖ Stage 3

Whole Parliament consideration initially of any amendments to the Bill and then whether it should be passed.

Once passed, there is a four-week period allowing for verification that the Bill is within the Parliament's remit; confirmation means that it is then submitted for Royal Assent and enacted for implementation on the specified date or dates.

### ● The Legislative Process in Wales

Unlike Scotland, devolution in Wales initially limited the National Assembly (Cynulliad Cenedlaethol Cymru) to initiating, scrutinizing, and implementing secondary legislation (see above) from the primary legislation drawn up by the UK Parliament. The 2006 Government of Wales Act, however, provided for a transition to a full legislature in devolved matters, a process completed following the

2011 referendum. As in Scotland, Bills have to be approved by the Assembly and receive the Royal Assent before becoming Acts of the Assembly. The Welsh Government's programme for the year is announced by the First Minister. Elections are again held every four years on the first Thursday in May, though that for 2015 has similarly been rescheduled for 2016. Normally, an assembly year is 12 months, starting with the first meeting following the election.

The pre-legislative process (for both primary and secondary legislation) again entails internal and public consultation conducted by the relevant departments. The latter may involve the publication of White Papers and/or issuing draft Bills to interested parties and, in the case of secondary legislation, questionnaires to elicit specific as well as general comments from stakeholders, those with particular expertise, and the general public. Citizens can also express their policy concerns through a petition system.

In the case of primary legislation, Government Bills (and others) have to be steered through a four-stage Assembly process:

#### ❖ **Stage 1**

Introduction – consideration of the general principles of the Bill by the relevant committee, debate and agreement on those principles by the Assembly.

#### ❖ **Stage 2**

Committee stage – detailed scrutiny of the Bill and any amendments.

#### ❖ **Stage 3**

Whole Assembly – detailed consideration of the Bill and any amendments.

#### ❖ **Stage 4**

Whole House – vote and agree the final Bill.

(There is also provision for an additional amending or Report Stage between stages 3 and 4).

Once passed and ratified by Royal Assent, the Act comes into force on the specified date or dates.

### ○ **The Legislative Process in Northern Ireland**

The Northern Ireland Executive can initiate primary and secondary legislation (Statutory Rules) in the areas of responsibility transferred to the Northern Ireland Assembly, with Bills requiring its approval and the Royal Assent to become law. In line with the other devolved administrations, but reflecting power-sharing arrangements, its agenda and proposed public Bills are usually presented to the Assembly at the beginning of the session by the First and Deputy First Ministers. Elections are normally held every four years in May, though the next is scheduled for 2016. Normally, a parliamentary year is 12 months, starting with the first meeting after the election.

Political complexities and power-sharing provisions mean that policy formulation can involve highly convoluted negotiation within the parties making up the Executive as well as within and between departments. As with the rest of the United Kingdom, public consultations on both primary and

secondary legislation (carried out in accordance with the Cabinet Office Code of Practice on Written Consultations) are integral to the pre-legislative stage.

Once a draft Bill is agreed, it is subject to consideration by the Assembly:

#### ❖ **Stage 1**

Formal introduction of Bill; no debate.

#### ❖ **Stage 2**

Assembly debate – focused on the Bill’s general principles.

#### ❖ **Stage 3**

Committee Stage – detailed scrutiny and report back on the Bill and any amendments by the appropriate committee which can take evidence from interested bodies and individuals and the sponsoring department.

#### ❖ **Stage 4**

Consideration Stage – whole Assembly debate and vote on all elements of the Bill including amendments.

#### ❖ **Stage 5**

Further Consideration – debate limited to new amendments (if there are none, there is no debate).

#### ❖ **Stage 6**

Final Stage – debate and vote on the Bill.

Following checks to ensure the Bill is within the Assembly’s legislative competence and Royal Assent, it is implemented according to the stipulated time frame as an Act of the Northern Ireland Assembly.

#### ○ **Further Reading**

*Chapter 28 of The Companion* provides an overview of the main perspective on policy-making processes. Policy development in the devolved administrations and their differing legislative power is discussed in *Chapter 42*.

Consultations on UK-wide and English policy proposals can be followed on the consultation sections of Government Department web sites and those of the devolved administrations on their respective sites. The progress of a Bill and amendments to it can be tracked on the UK Parliament web site and those of the Scottish Parliament and Welsh and Northern Ireland Assemblies (see the *Guide to Key Sources on UK Social Policy* for the web addresses).