

**WRITTEN EVIDENCE FROM THE BETTER GOVERNMENT INITIATIVE  
TO THE HOUSE OF LORDS CONSTITUTION COMMITTEE INQUIRY  
INTO THE LEGISLATIVE PROCESS**

1. The Better Government Initiative (BGI) is an informal body made up of people with practical experience in government at a very senior level who have no links to particular political parties ([www.bettergovernmentinitiative.co.uk](http://www.bettergovernmentinitiative.co.uk)). We are concerned with the processes of government rather than the political choices associated with individual policy initiatives or programmes. Our evidence deals with the arrangements for deciding the content and quantity of legislation and the material provided to support Parliament's scrutiny function; we do not discuss the actual drafting of Bills, which is a specialist function of Parliamentary Counsel.

**Background**

2. In January 2010 we undertook a detailed examination of the legislative process during the preparation of our report *Good Government: Reforming Parliament and the Executive*<sup>1</sup>. We were concerned at the continuing growth in quantity and decline in quality of legislation, which we attributed to poor preparation of the policies to be given effect through legislation and weaknesses in the support for scrutiny of Bills during their passage through Parliament. We considered it surprising and damaging that the quality of legislation was not protected by explicit agreed standards for the preparation processes for Bills and the quality of documents presented to Parliament.

3. We subsequently submitted our conclusions in May 2012 to the Political and Constitutional Reform Committee's enquiry *Ensuring Standards in the Quality of Legislation* in the form of written evidence<sup>2</sup>. Our principal recommendations were:

- There should be explicit standards for the preparation and presentation to Parliament of legislation.
- Compliance with the standards should be checked by a Cabinet Committee and certified by its presiding Minister.
- A cross-party Parliamentary Committee should monitor compliance with the legislative standards and recommend against providing time on the floor if they had not been met.
- Pre-legislative scrutiny should be the norm.
- The legislative programme should be limited to a size compatible with thorough Parliamentary scrutiny without automatic guillotining in the Commons.

4. In April 2011 the House of Lords *Report of the Leader's Group on Working Practices* had also recommended the establishment of a Parliamentary Legislative Standards Committee<sup>3</sup>.

5. We submitted further written evidence to the PCRC at the committee's request in January 2013 commenting on the view of the then Leader of the House of Commons (Andrew Lansley) that a Legislative Standards Committee would introduce delay and that it would not be possible to assess a Bill without looking at policy. We argued that any delay would be minimal, since the Executive would do its utmost to conform to agreed standards of practice, and that it was

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<sup>1</sup> <http://www.bettergovernmentinitiative.co.uk/wp-content/uploads/2013/06/Good-government-17-October.pdf>

<sup>2</sup> <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/writev/ensuringstandards/mem07.htm>

<sup>3</sup> <http://www.publications.parliament.uk/pa/ld201012/ldselect/ldspeak/136/13606.htm>

perfectly possible to judge whether there had been a serious policy preparation process without attempting to judge the acceptability of the proposed policy. We urged the committee to recommend the establishment of a Legislative Standards Committee.

6. When the report of the PCRC's enquiry *Ensuring Standards in the Quality of Legislation*<sup>4</sup> was published in May 2013 it recommended that there should be a set of standards for good quality legislation agreed between Parliament and the Government and that a Joint Legislative Standards Committee to oversee application and effectiveness of the Code of Legislative Standards should be created.

7. We are not aware of any further activity in this field until the establishment of your inquiry.

### **The Standards**

8. Legislative standards are needed to cover the preparation process necessary to develop policies and procedures to the stage where they are capable of being expressed in legislative form with a reasonable prospect of successful implementation. They also need to specify the material that should be provided to Parliament (in addition to the Bill itself) so as to enable an informed judgement to be made of whether or not this has been achieved.

9. There is a broad measure of agreement among those with an interest in improving the quality of legislation about the scope of any standards. In our view either the Bill itself or accompanying material should provide adequate information on:

- the purpose of the Bill;
- the reason why new legislation is needed;
- the costs, risks and intended benefits in terms suitable for post-legislative scrutiny;
- the consultation process, explaining why the proposed option has been adopted and providing evidence, including from the front line, of how it will work in practice;
- the effects, if any, on Scotland, Wales and Northern Ireland.

10. To be effective, the standards would need to be agreed between Parliament and the Government and enjoy the full support of the Prime Minister.

### **Compliance procedures**

11. Compliance procedures are needed both within Government, to ensure that departments preparing for legislation are meeting the required standards, and within Parliament to provide an independent check.

12. Within Government this task might appropriately be undertaken by the Cabinet Committee responsible for overseeing the legislative programme. We have proposed that the Chair of that committee should be required to certify that the agreed legislative standards have been met when a Bill is presented to Parliament.

13. Andrew Lansley, in his evidence to the PCRC enquiry, argued that a Parliamentary Legislative Standards Committee would simply be unnecessary - "a bureaucratic process" – and that the Government would take all necessary steps to improve the quality of legislation. We consider, on the contrary, that Parliament cannot properly carry out its scrutiny role without its own independent capacity to assess compliance with standards.

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<sup>4</sup> <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpolcon/85/8502.htm>

14. The Legislative Standards Committee would require technical support; we have suggested that this might be provided by the Scrutiny Unit.

### **The process**

15. The first essential step is to establish an agreed explicit set of standards. We have suggested that this might be done by means of a Parliamentary Resolution (a draft, which would also apply to major policy proposals not requiring legislation, is at Annex A) but there may be other appropriate methods of establishing standards that are clear, unequivocal, and agreed between Parliament and Government.

16. We envisage that when a Bill is published the responsible departmental Minister should lay before Parliament a statement of how the standards had been met. Scrutiny Unit officials would then examine that statement in detail, where necessary seeking clarification from the department, and submit a report to the Legislative Standards Committee either confirming the statement or indicating areas of weakness.

17. With such arrangements in place it is to be expected that the overwhelming majority of reports would be favourable. Where weaknesses were identified the Committee would consider whether they were serious enough to require further work to be undertaken before the Bill could proceed and, if so, would recommend that time on the Floor should not be provided.

### **Additional recommendations**

18. Many of the difficulties faced by Parliament in scrutinising legislation arise from the sheer volume of material to be considered. Observance of the standard that legislation should only be employed when it was strictly necessary – not merely declaratory – might help reduce this, but in addition the Government should make every effort to restrict the legislative programme to a size that can realistically be considered by Parliament without automatic guillotining.

19. Pre-legislative scrutiny is a valuable procedure. The Government should aim to extend it to every Bill.

20. We recognise that there are cases, for example emergency legislation or urgent first-session legislation foreshadowed in an election manifesto, where pre-legislation scrutiny or full observance of the standards may not be practicable. In such cases the responsible Minister should provide a memorandum to the Legislative Standards Committee explaining the circumstances.

BGI

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### Illustrative Parliamentary Resolution

That in the opinion of this House, the following principles should govern the conduct of Ministers of the Crown in relation to Parliament:

Ministers have a duty to Parliament to ensure that their policy and 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 or other policy is presented, are:

- a. definition of the problem to be addressed and explanation of why action is desirable or, in the case of legislation, why it 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.

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