**Cabinet Office Guide to Making Legislation**

**Note by Peter Owen**

At the 27th August meeting of the Executive Committee I was invited to undertake a comparison of our proposals for better legislation with the existing Cabinet Office Guidance in preparation for a meeting with Graham Allen.

The Cabinet Office Guide to Making Legislation is an admirably comprehensive 300-page document. It goes into minute detail about every aspect of the procedures to be followed in obtaining Government clearance for including a bill in the legislative programme, the preparation of the written document, its passage through Parliament and eventual enactment.

The overwhelming majority of the 300 pages, however, is concerned with technical aspects of the handling of a bill. In contrast, most of our recommendations deal with care in the initial preparation of the policy and clarity in its presentation to Parliament.

Our detailed recommendations, set out in Annex C of the *Mid Term Review*, were

“When a bill is presented to Parliament either the bill itself or accompanying documents must include:

1. a clear description of the purpose of the bill defining the problem to be addressed;
2. an explanation of why new legislation, rather than the use of existing powers is necessary;
3. an analysis of costs (including net fiscal costs), benefits, and risks of different options for achieving the declared purpose (as the already required Impact Assessments are intended to do); and a declaration that the analysis complies with the standards set in the Treasury Green and Magenta books;
4. a record of the consultation that has been undertaken and a certificate that it complies with Cabinet Office guidelines;
5. an explanation of why the proposed option has been chosen;
6. a description of the intended effects in terms that can be used in post-implementation evaluation;
7. a full explanation of how the proposal will work in practice, identifying responsibility for delivery and resources;
8. when there are powers to make secondary legislation, an explanation of their purpose and the governing principles, providing a draft order as an example whenever possible.” (My numbering)

The only sections of the Cabinet Office guide that touch on some of the issues with which we are concerned are those on the explanatory notes and impact assessments.

**Explanatory Notes**

 The purpose of the explanatory notes is described in the Cabinet Office Guide as

“… to:

* help the reader grasp what the bill does and how it does it, and to provide helpful background;
* explain what the bill does, perhaps by explaining what the problem the bill is trying to address is. Reference can be made to a white paper or, sometimes, another document which it follows;
* inform Parliament and others of the main impact on public expenditure or public service manpower, on business, the third sector and the environment.

Their purpose is to make the bill accessible to readers who are not legally qualified and who have no specialised knowledge of the subject area.”

This scarcely measures up to our hard-edged recommendations. However the government is considering changes to improve and strengthen explanatory notes. Its response to the PCRC report stated:

“Parliamentary Counsel has been asked, as part of the Good Law initiative, to conduct a comprehensive review of Explanatory Notes. A comprehensive survey of users is being undertaken to establish exactly what users think should be included in revised Notes and how this information should be presented.”

 An option for us might be to press for clear requirements on the lines of our recommendations 1, 2, 4, 5, 6 and 7 to be substituted for the present wishy-washy and ill-defined references.

**Impact Assessments**

The drafting of the section in the Cabinet Office Guide on impact assessments is far more satisfactory:

“13.2 An impact assessment should cover the following seven steps:

Step 1: identify the problem

Step 2: specify desired objectives

Step 3: identify viable options that achieve the objectives

Step 4: identify the impacts (e.g. economic, social and environmental)

Step 5: value the costs and benefits of each option

Step 6: consider enforcement and implementation issues

Step 7: plan for evaluation and evaluate the chosen policy

**Developing an impact assessment**

13.7 The **development stage** should focus on the definition of the policy problem, the rationale for government intervention, the identification of policy objectives and the gathering of evidence. The impact assessment does not need to be published at this stage and will usually be a ‘live’ working document.

13.8 The **options stage** should focus on the identification and development of options and the testing of these options through engaging with interested parties ahead of formal consultation. There should be initial estimates of costs and benefits. Alternatives to traditional regulation (e.g. self regulation or voluntary codes) need to be properly considered from the outset.

13.9 This **consultation stage** should focus on firming up the options considered, ensuring that there is greater quantification of costs and benefits of each option as far as possible, even if the numbers are indicative. You should use the consultation to seek stakeholders’ views on your proposals for a review, your cost and benefit estimates, and the key assumptions and data that contribute to the analysis. When a policy proposal is taken out to public consultation the impact assessment must be published.

13.10 The final impact assessment must be published first at the **final proposal stage**, when the Government announces its firm position on a single policy option (this will often be when it publishes its consultation response), and again when the proposal enters Parliament. An impact assessment must be published when a government bill or private member’s bill with government support is introduced in either House. An impact assessment must also be published when a draft statutory instrument (that imposes or reduces costs on business or civil society organisations) is laid in Parliament.”

If this were followed rigorously we would have few problems. But it isn’t. Our unspoken objective in including recommendation 3 in our list was not so much to change the present rules as to involve Parliament in their enforcement. This is a trickier topic to handle. Perhaps we should encourage the PCRC to argue that, if there is to be no special-purpose committee, there should nevertheless be arrangements, in view of departments’ evident reluctance to follow the government’s own rules, for the Treasury to certify that impact assessments conform with the Green and Magenta book requirements when a bill is presented to Parliament.

Our final recommendation, on statutory instruments, seems to have been largely ignored. Do we wish to persist?

7 September 2013