



In Focus

Proposal for Government Departments to Cease Devising New Legislation for a Period of Time and Concentrate on Sound Administration

Background

Periodically, concerns have been raised about the amount of new legislation introduced. Lord Framlingham (Conservative) has tabled a question for short debate in the House of Lords on 8 September 2016 about whether the Government plans to consider the proposal that, for a period of time, all government departments should cease devising new legislation and concentrate on sound administration. Lord Framlingham made such a proposal during a debate on the draft House of Lords Reform Bill in 2012. He noted that during his 27 years as an MP (when he sat as Michael Lord), 33 education Acts, 35 health acts and 100 criminal justice acts were passed, which he described as “a veritable torrent of legislation that produced little or no benefit to anyone”.¹

More recently, during a debate about the balance of power between Government and Parliament, a number of speakers expressed concerns about the volume of legislation. For example, Lord Norton of Louth (Conservative), Professor of Government and Director of the Centre for Legislative Studies at the University of Hull, identified as a problem “the sheer volume of legislation”.² He argued that there was a “qualitative as well as a quantitative” issue, with “not just the length, but also the complexity and scope” of legislation making it difficult for Parliament to scrutinise the Executive. In his view, “Governments are trying to do too much”. Lord Butler of Brockwell (Crossbench), a former Cabinet Secretary, argued that bills were “ill thought out, inadequately prepared, insufficiently consulted on and hugely added to by the Executive during their passage and finally often replaced before they are brought into operation”.³ Baroness Thornton (Labour), drawing on her experience as a Whip, a Minister, a front-bench spokesperson and a backbencher, said she had believed since her own party’s period in government “that we have too much legislation”.⁴

In response, Baroness Stowell of Beeston, then Leader of the House, spoke of the need for governments to bring forward legislation as they “have to get on with implementing the commitments in their manifesto”.⁵ She also acknowledged the need to ensure that the Government understand their responsibilities in fulfilling commitments relating to good legislative practice, such as complying with Cabinet Office guidance and bringing forward impact assessments and draft subordinate regulations in good time.⁶ Baroness Stowell also noted that in the 2015–16 parliamentary session, “about 750 pieces of secondary legislation were laid in Parliament [...] the lowest number for more than 20 years”.⁷

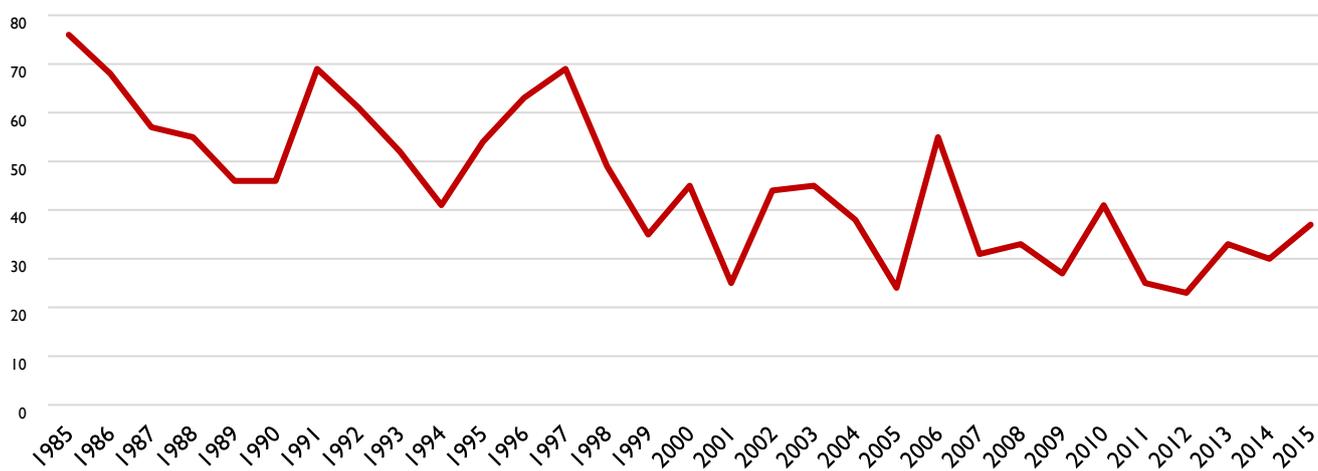
Robert Rogers (Lord Lisvane, former Clerk of the House of Commons) and Rhodri Walters (former Reading Clerk of the House of Lords) have enumerated a number of reasons why governments legislate: to reflect commitments made in general election manifestos; to reverse the policy of a previous government; to reflect new and developing policies as a result of changing circumstances, subjects moving up the political agenda, or sometimes the personal priorities of a senior member of the Cabinet;

through financial bills, to raise revenue and authorise how it is spent; to give effect to international commitments in domestic law; to respond to events (for example, “fear about the potential for fraud in postal voting gave rise to the Electoral Administration Bill in 2005”); and ‘housekeeping bills’, which allow government departments to keep “the business of government and public affairs up to date”.⁸

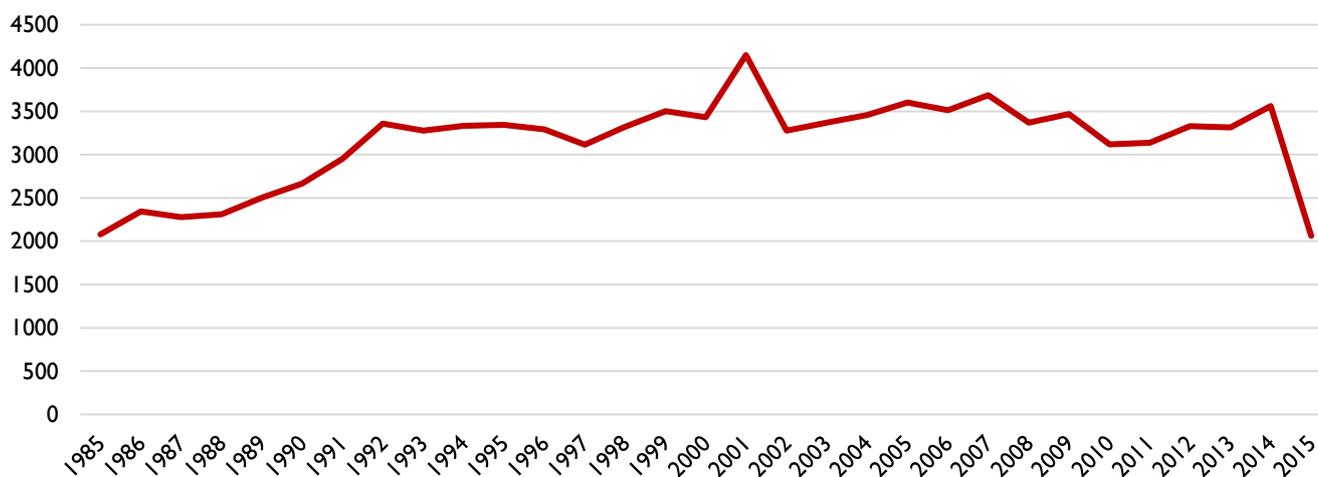
Volume of Legislation

The charts below show the number of UK Public General Acts (including Consolidation Acts and Tax Law Rewrite Acts) and UK Statutory Instruments (SIs) over the past 30 years. This data excludes Acts and SIs made by the Scottish authorities since 1999, but includes SIs made by the National Assembly for Wales since 1999 as they are numbered in the same series as UK SIs, although not printed in the same volumes. The data in the charts is drawn from the House of Commons Library briefing [Acts and Statutory Instruments: The Volume of UK Legislation 1950 to 2015](#) (21 December 2015). A House of Lords Library briefing, [Volume of Legislation](#) (10 May 2013), looks at the volume of legislation from the perspective of the House of Lords (for example, excluding those Acts which have received less consideration by the House of Lords, such as Finance, Consolidated Fund and Appropriation Acts).

UK Public General Acts, 1985–2015



UK Statutory Instruments, 1985–2015



Attempts to quantify the size of the statute book have looked at not just the number of Acts passed or SIs made, but also the number of pages of legislation. The Office of the Parliamentary Counsel (OPC) noted in 2013 that there “seem to be several different approaches to measuring the volume of legislation”, depending on choices made about whether to count Bills or Acts; all Acts or only

government Acts; devolved legislation or only legislation passed by Westminster; Acts passed in calendar years or parliamentary sessions and so on.⁹ Making consistent comparisons over time about the number of pages of legislation is complicated by changes in drafting styles and publishing practices. However, the OPC reached the following conclusions:

- The average number of government bills in a typical parliamentary session is between 35 and 50 depending on the length of the session.
- The number of Acts promulgated in recent years is consistent with trends in previous decades; in fact, the average number of Acts has slightly declined over the past 40 years.

However:

- It is extremely difficult to estimate how much legislation is in force at any one time.
- The average length of bills introduced to Parliament seems to be significantly greater than in previous decades.
- Multi-purpose bills (sometimes called ‘Christmas Tree’ bills) are more common than they were.
- Between 1983 and 2009 Parliament approved over 100 criminal justice bills, and over 4,000 new criminal offences were created. In response to that trend the Ministry of Justice has established a procedure to limit the creation of new criminal offences.¹⁰

Daniel Greenberg, a former Parliamentary Counsel, argued in a report in April 2016 that “the length of new bills and the number of clauses they include is becoming so great that Parliament is unable to properly scrutinise them”.¹¹ He calculated that while the number of Acts passed by governments had stayed “approximately the same” over the past 50 years, “the average number of clauses included within them has doubled”.

Estimates vary widely as to how much UK legislation originates from the European Union—for example the House of Commons Library has suggested that “it is possible to justify any measure between 15 percent and 55 percent or thereabouts” for the proportion of SIs derived from EU law.¹² The impact of UK withdrawal from the EU on the size of the statute book is still to be determined; as part of the withdrawal process, decisions would need to be made about how to deal with existing domestic legislation passed to enable EU law to have effect in the UK.

Legislative Principles and Practice

The Cabinet Office [Guide to Making Legislation](#), prepared by the Secretariat to the Parliamentary Business and Legislation (PBL) Committee of Cabinet, provides guidance to departmental bill teams on preparing primary legislation. The guide notes that governments normally introduce a programme of up to 30 bills in a parliamentary session, each of which is “part of the wider legislative programme and cannot be considered in isolation”.¹³ At least annually, the chair of the PBL Committee requests bids for legislation for the following parliamentary session.¹⁴ The guide advises departments “to consider whether primary legislation is necessary” and “whether the ends they wish to achieve could be reached by purely administrative means” before they seek a slot in the government’s legislative programme.¹⁵ According to the guide, the PBL Committee considers departments’ bids for legislation against criteria such as: whether legislation is necessary; the political content and urgency of the proposed bill; how far advanced work is on the bill and how well prepared the bill is likely to be.¹⁶ The guide notes that the PBL Committee will look “favourably” on bills that have been published in draft for consultation and pre-legislative scrutiny, although if a bill is “politically important”, then it may be given a slot in the programme “before many of the details have been fully worked out”.

The guide also advises that “an understanding of ‘good law’” should be the default and “should underpin the preparation and promotion of legislation”.¹⁷ The Good Law Initiative, launched in 2013 and led by the OPC, sought to “appeal to everyone interested in the making and publishing of law to come together with a shared objective of making legislation work well for the users of today and tomorrow”.¹⁸ The OPC defined ‘good law’ as being: “necessary; clear; coherent; effective; accessible”. The OPC stated that it was “working with government policy teams about alternatives to legislation” and “encouraging everyone involved in the legislative process to challenge and be challenged on the level of detail they are proposing to legislate for, and on the case for legislating in the first place”.

In its inquiry in 2013 into ensuring standards in the quality of legislation, the House of Commons Political and Constitutional Reform Committee noted that “a concern of many of our witnesses was the increasing volume of legislation” and that “a number of witnesses questioned whether all of the legislation passed by Parliament each year was necessary”.¹⁹ The Committee identified some standards it suggested could be applied to legislative proposals to “minimise the risk” of “bad quality legislation”.²⁰ These included the following principles: “policy should be well tested, for example through the use of internal and external consultation”; “pre-legislative scrutiny is an important stage in refining a bill”; “legislation must be necessary, without duplicative powers or remedies”; “legislation should be to the point, with proper justification for extraneous material or large multi-topic bills”. The Committee recommended that a Code of Legislative Standards should be agreed between Parliament and Government, and that a Joint Legislative Standards Committee with an oversight role should be created.²¹ The Government said that it did not believe a Code of Legislative Standards or a Legislative Standards Committee was “necessary” or “would be effective” in improving legislation.²² In the House of Lords, a Leader’s Group on Working Practices in 2011 and an informal cross-party group of backbench peers in 2010 had also both recommended the creation of a Legislative Standards Committee.²³

¹ [HL Hansard, 30 April 2012, col 2063.](#)

² [HL Hansard, 9 June 2016, col 886.](#)

³ [ibid, col 868.](#)

⁴ [ibid, col 884.](#)

⁵ [ibid, col 898.](#)

⁶ [ibid, col 900.](#)

⁷ [ibid, col 899.](#)

⁸ Robert Rogers and Rhodri Walters, *How Parliament Works*, 2015, pp 174–5.

⁹ Office of the Parliamentary Counsel, [When Laws Become Too Complex](#), 16 April 2013.

¹⁰ [ibid.](#)

¹¹ Daniel Greenberg, [Dangerous Trends in Modern Legislation... And How to Reverse Them](#), Centre for Policy Studies, April 2016.

¹² House of Commons Library, [‘How Much Legislation Comes from Europe?’](#), Second Reading Blog, 2 June 2014.

¹³ Cabinet Office, [Guide to Making Legislation](#), 2015, p 9.

¹⁴ [ibid, p 24.](#)

¹⁵ [ibid, p 25.](#)

¹⁶ [ibid, p 27.](#)

¹⁷ [ibid, p 24.](#)

¹⁸ Office of the Parliamentary Counsel, [‘Detailed Guidance: Good Law’](#), 16 April 2013, updated 25 November 2015.

¹⁹ House of Commons Political and Constitutional Reform Committee, [Ensuring Standards in the Quality of Legislation](#), 20 May 2013, HC 85 of session 2013–14, pp 7–8.

²⁰ [ibid, p 15.](#)

²¹ [ibid, p 3.](#)

²² House of Commons Political and Constitutional Reform Committee, [Ensuring Standards in the Quality of Legislation: Government Response to the Committee’s First Report of Session 2013–14](#), 25 July 2013, HC 611 of session 2013–14, pp 2 and 4.

²³ House of Lords Library, [House of Lords: Reform of Working Practices, 2000–12](#), 11 October 2012, pp 18 and 24.

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