



House of Commons
Procedure Committee

**Delegated Legislation:
Proposals for a Sifting
Committee: The
Government's
Response to the
Committee's First
Report**

Second Report of Session 2002–03

Report, together with formal minutes

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The Procedure Committee

The Procedure Committee is appointed by the House of Commons to consider the practice and procedure of the House in the conduct of public business, and to make recommendations.

Current membership

Sir Nicholas Winterton MP (*Conservative, Macclesfield*) (Chairman)
Mr Peter Atkinson MP (*Conservative, Hexham*)
Mr John Burnett MP (*Liberal Democrat, Torridge and West Devon*)
David Hamilton MP (*Labour, Midlothian*)
Mr Eric Illsley MP (*Labour, Barnsley Central*)
Huw Irranca-Davies MP (*Labour, Ogmore*)
Eric Joyce MP (*Labour, Falkirk West*)
Mr Iain Luke MP (*Labour, Dundee East*)
Rosemary McKenna MP (*Labour, Cumbernauld and Kilsyth*)
Mr Tony McWalter MP (*Labour, Hemel Hempstead*)
Sir Robert Smith MP (*Liberal Democrat, West Aberdeenshire and Kincardine*)
Mr Desmond Swayne MP (*Conservative, New Forest West*)
David Wright MP (*Labour, Telford*)

Powers

The powers of the committee are set out in House of Commons Standing Orders, principally in SO No 147. These are available on the Internet via www.parliament.uk.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at http://www.parliament.uk/parliamentary_committees/procedure_committee.cfm. A list of Reports of the Committee in the present Parliament is at the back of this volume.

Committee staff

The current staff of the Committee are Simon Patrick and Charlotte Littleboy (Clerks) and Susan Morrison (Committee Assistant).

Contacts

All correspondence should be addressed to the Clerks of the Procedure Committee, Journal Office, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 3318; the Committee's email address is proccom@parliament.uk

Report

1. On 10 March 2003 we published a Report entitled *Delegated Legislation: Proposals for a Sifting Committee* as our First Report of Session 2002–03. In it, we recommended:

We welcome the Lords' decision to appoint a sifting committee, but emphasise our view that it would be advantageous for discussions to begin immediately with a view to establishing a Joint Committee for sifting delegated legislation from the outset. The alternative of waiting for the Lords Committee to start and then attempting to join in later strikes us as much less sensible.¹

2. We have now received a letter from Ben Bradshaw MP, Parliamentary Secretary at the Privy Council Office, rejecting this recommendation. The letter, and a letter from our Chairman to the then Leader of the House, Rt Hon Robin Cook MP, to which it refers, are set out below, as Annexes A and B.

3. We are disappointed at the Government's decision not to accept our recommendation that sifting should be undertaken by a joint committee from the outset. Our reasons are:

- **The initial sifting of the instruments concerned will be undertaken by staff, and the authorities in the Lords will have to consider the numbers and qualifications of the staff to appoint for the new committee, which will begin work at the start of next Session. The burden will be heavier than if Commons staff were also involved from the beginning. The team would then have to be reorganised if Commons staff were appointed later to work with a joint committee.**
- **Most of the instruments concerned are subject to annulment by resolution of either House, and the arguments (which the Government has accepted) for the Lords to consider the merits of these instruments in a systematic way apply no less strongly to the Commons: we have been advocating such a process since 1996.²**
- **Although the instruments would be debated separately (and some might be debated in one House but not the other), scrutiny of delegated legislation is an area where experience has already shown that much of the work can be undertaken by both Houses together, pooling the expertise available.**
- **The debating of more instruments will take more Parliamentary time, but we consider that such systematic scrutiny of the more significant instruments will be time well spent, and will for the first time ensure that the House's responsibilities for delegated legislation are carried out fully. To make best use of the time, several negative instruments could be debated in the same standing committee, as we have already recommended in the case of affirmative instruments.³**

1 Procedure Committee, First Report of Session 2002–03, *Delegated Legislation: Proposals for a Sifting Committee*, HC 501, para 11

2 Procedure Committee, Fourth Report of Session 1995–96, *Delegated Legislation*, HC 152, paras 33, 41

3 *Ibid*, para 40

4. We also take issue with the remarks in the Minister's letter about plans by the Select Committee on Modernisation of the House of Commons to cover this area. We mentioned in our First Report that the Committee had previously announced such plans for this session, but added that since then that Committee had not put the subject in its future programme.⁴ As the orders of reference of the two committees overlap so much, our Chairman is also a member of the Modernisation Committee and there are regular discussions between the two chairmen about plans for inquiries. The then Chairman of the Modernisation Committee suggested that the Procedure Committee should deal with the topic of delegated legislation, and, subject to any further discussions, we believe that it would be sensible for us to do so, especially as most of the recommendations in our 1996 and 2000 reports remain to be implemented.

⁴ See Select Committee on Modernisation of the House of Commons, Second Report of Session 2001–02, *Modernisation of the House of Commons: A Reform Programme*, HC 1168–I, para 53; Procedure Committee, First Report of Session 2002–03, *Delegated Legislation: Proposals for a Sifting Committee*, HC 501, para 7

Annex A: Letter to the Chairman from Ben Bradshaw MP, Parliamentary Secretary, Privy Council Office

Thank you for your letter to Rt Hon Robin Cook MP of 6 March kindly alerting him to the publication of your Committee's First Report of the current session. I have been asked to reply.

The Government has noted the view your Committee expresses in the report that it would be advantageous if the sifting committee agreed to by the House of Lords were established as a joint committee from the outset.

As you will well appreciate, the Government is concerned that a sifting committee may lead to greatly increased demands on parliamentary time and on government departments. As your letter acknowledges, the increase in activity for scrutinising negative instruments is likely to be only partially offset by a reduction in the number of committees required to debate affirmative instruments. We wish to see how the Lords sifting committee works out in practice before contemplating any extension to include the Commons.

In view of this, I think there would be little purpose in holding the kind of meeting you suggest, though I am, of course, always ready to meet with you to discuss procedural concerns.

The Government notes that your Committee intends to conduct a wider inquiry into the scrutiny of delegated legislation and looks forward to your conclusions with interest. As you will be aware, the Modernisation Committee too has said that it will return to the scrutiny of secondary legislation, including the possibility of a sifting committee.

Annex B: Letter from the Chairman to Rt Hon Robin Cook MP

I am writing to let you know that the Procedure Committee has agreed to a report on Delegated Legislation, which will be published as HC 501 next Monday (10 March). This arises because of the recent discussion in the Lords on the proposals for a sifting committee for statutory instruments, culminating in the decision by their Liaison Committee last month to establish such a committee from the beginning of next Session. I wrote on behalf of the Procedure Committee to Lord Brabazon of Tara supporting his suggestion that the sifting committee should be established from the outset as a joint committee, and our report will publish this exchange of correspondence.

As you are aware, the Procedure Committee recommended the establishment of a sifting committee in its reports in 1996 and 2000, and I followed this up in letters to you on 16 January and 15 May last year. The Committee believes that it would be sensible for the Commons to be involved in the discussions about scope and staffing of the sifting committee from the outset, rather than waiting for the Lords' Committee to start and attempting to join in later. As I said in my letter to Lord Brabazon, although the Members from each House would be responsible for recommendations for debate in that House, it seems sensible for the initial examination of the instruments by staff to be done once, not twice.

I do hope that you will be able to give this proposal a fair wind, so that the necessary discussions between the Houses at committee and official level can proceed as soon as possible. It seems to me that the possible increase in committee activity for scrutinising negative instruments in a more systematic way will be partially offset by a reduction in the number of committees which need to be set up to debate affirmative instruments.

Our report will also contain a summary of the other recommendations of our 1996 and 2000 reports. It is a pity that hardly any of them have yet resulted in any action (except for the occasional statutory provision for “super-affirmative” orders and the laying of explanatory memoranda with affirmative instruments), and we propose to return to the subject of delegated legislation later this session.

In the meantime, if it would be useful to have a meeting, perhaps including House staff, on the prospects for implementing our proposal for a joint sifting committee, I would be pleased to help to arrange this.

6 March 2003

Formal Minutes

Wednesday 7 May 2003

Members present:

Sir Nicholas Winterton, in the Chair

Mr John Burnett
Huw Irranca-Davies
Mr Iain Luke
Rosemary McKenna

Sir Robert Smith
Mr Desmond Swayne
David Wright

The Committee deliberated.

Draft Report (Delegated Legislation: Proposals for a Sifting Committee: the Government's Response to the Committee's First Report), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 4 read and agreed to.

Annexes A and B agreed to.

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

* * * *

[Adjourned till Wednesday 14 May at Two o'clock.]

Reports from the Procedure Committee since 2001

The following reports have been produced since the beginning of the 2001 Parliament:

Session 2002–03

First Report	Delegated Legislation: Proposals for a Sifting Committee	HC 501 (<i>Reply: 2nd Report</i>)
Second Report	Delegated Legislation: Proposals for a Sifting Committee: The Government's Response to the Committee's First Report	HC 684

Session 2001–02

First Report	Making Remedial Orders: Recommendations by the Joint Committee on Human Rights	HC 626
Second Report	Appointment of Deputy Speakers	HC 770 (<i>Reply: 2nd Special Report, HC 1121</i>)
Third Report	Parliamentary Questions	HC 604 (<i>Reply: Cm 5628</i>)
First Special Report	Major Infrastructure Projects: Proposed New Parliamentary Procedures	HC 1031