

HOUSE OF LORDS

Select Committee on the Constitution

15th Report of Session 2008–09

**Fast-track
Legislation:
Constitutional
Implications and
Safeguards**

Volume I: Report

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BOX 1**Scenarios in which fast-track procedures have been used**

Justification relied on to fast-track a bill:
Northern Ireland peace process and devolution settlement (the single largest category in terms of number of bills)
To remedy an anomaly, oversight, error or uncertainty that has come to light in legislation
To respond to the effects of a court judgment
To ensure that legislation is in force in time for a forthcoming event
To deal with economic crisis
To change a public authority's borrowing or lending limit or other funding issues
To deal with a crisis in prisons as a result of industrial action
To respond to international agreements
To implement Treasury announcements in the Budget or autumn statement
To respond to public concerns
Counter-terrorism related

23. There was a general consensus amongst our witnesses that there is a range of situations in which it is constitutionally acceptable for bills to be fast-tracked. Steven Durno, Legal Policy Officer, Law Society, told us that it was possible to make a reasoned case for the fast-tracking of most of the bills which were fast-tracked in the past twenty years (Q249). Professor John McEldowney, Professor of Law, University of Warwick School of Law, and Lord Baker of Dorking thought that fast-tracking a bill which is intended to fill a legal lacuna identified by the Courts and which has cross-party support was acceptable (QQ 59, 293).
24. Some witnesses identified occasions when, in their view, legislation had been fast-tracked for unacceptable reasons. Professor Miers told us that fast-track procedures should not be used for bills dealing with “something that was predictable or had been flagged ... at some point” (Q293). Dr Metcalfe criticised the use of fast-track procedures for legislation introduced primarily to respond to a public outcry (Q140). Lord Baker accepted that this was a “controversial and difficult area” but defended the use of fast-track procedures for what became the Aggravated Vehicle-Taking Act 1992 and the Dangerous Dogs Act 1991 which he had introduced, as Home Secretary, to respond to public concerns (QQ 59, 61, 75–85).
25. None of our witnesses was able to produce a definitive list of circumstances in which it is constitutionally acceptable to fast-track legislation. Sir John Chilcot explained that “the issue is one essentially of parliamentary judgment and decision” (Q3). Going further, Baroness Royall explained that the Government thought that it was “not only difficult but ... [also] wrong ... to define circumstances [in which it is constitutionally acceptable to use fast-track procedures] because expeditious legislation or emergency legislation is there precisely to react to certain circumstances which by their very nature are indefinable” (Q336). We agree that it is impossible to define all the circumstances in which it is constitutionally acceptable to use fast-track procedures.
26. It is equally difficult to come up with a definitive list of legislation that has been fast-tracked. The general procedures for parliamentary scrutiny of a bill are the same in terms of numbers of stages of consideration whether a bill is

fast-tracked or not, and the degree to which there has been a significant departure from the normal intervals between stages can vary considerably. There is, in essence, a fast-track “spectrum”, in terms of the degree to which the normal intervals between stages are departed from.

27. For the purposes of this report therefore we have used the following useful definition of fast-track legislation based on the evidence provided by the Clerk of the House of Commons: “bills ... which the Government of the day represents to Parliament must be enacted swiftly ... and then uses its power of legislative initiative and control of Parliamentary time to secure their passage” (p 146).
28. In practice any of the following procedural characteristics can define and identify fast-track legislation:
 - Legislation which has been taken through all its stages in the Commons in one day;
 - Legislation which has had two or more of its stages taken in one day in the Lords (Standing Order 47 having been dispensed with);
 - Legislation where there has been a significant departure from the normal intervals between stages;
 - Legislation which Parliament has been recalled to consider and pass;
 - Legislation which, even though none of the above apply, has been expedited because of an urgent situation (see for an example of this the Clerk of the Parliaments’ written evidence on the Prevention of Terrorism Act 2005, pp 159, 166).
29. During the course of our inquiry it became clear that some bills—British Shipbuilders (Borrowing Powers) Bill 1983, Town and Country Planning (Compensation) Bill 1985, Dangerous Dogs Bill 1991, Aggravated Vehicle-Taking Bill 1991, Humber Bridge (Debts) Bill 1995 and Hong Kong Economic and Trade Office Bill 1996—which had been fast-tracked through the House of Commons (with all stages being taken in one day) had had a normal passage in the House of Lords.
30. It was suggested that the use of normal procedures in the House of Lords for these bills called into question whether there really was an urgent situation requiring fast-tracked legislation in these cases. Whilst accepting that this may be an issue, there are at least three other possible reasons for this situation: first, what the Clerk of the House of Commons termed, “the disparity of time provided for debate in the House of Commons and in the House of Lords” (p 150); secondly, the Government generally have more direct power in the House of Commons to influence the timetable of a bill than they have in the House of Lords; and thirdly, in at least one of the cases mentioned above—the Dangerous Dogs Bill 1991—there was a clear desire on the part of the Government to ensure the legislation was passed before the long summer recess. The pattern of the parliamentary year with a recess lasting for the whole of August and September meant that this Bill, which was introduced in June, could not have been enacted before the summer recess had the normal timetable been followed in both Houses of Parliament. (Lord Baker, Q 77) But, once the Bill had received an expedited passage through the House of Commons, there was sufficient time before the recess for the usual timings to be observed in the House of Lords.
31. Having identified what we mean by “fast-track legislation”, in the next Chapter we consider the practical implications of the use of fast-tracking.

