



HOUSE OF LORDS

Select Committee on the Constitution

21st Report of Session 2008–09

**Government
Response to a report
on Pre-legislative
Scrutiny in the
2007–08 session**

Report

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Select Committee on the Constitution

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To examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution.

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Professor Adam Tomkins, Legal Adviser, is a Member of and unpaid Ad Hoc Legal Adviser to Republic.

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Government Response to a report on Pre-legislative Scrutiny in the 2007–08 session

1. On 2 April 2009 we published a report¹ on pre-legislative scrutiny in the 2007–08 session.
2. The Government responded with a letter from Baroness Royall of Blaisdon, the Leader of the House dated 21 July. The response is reproduced here, for the information of the House, as Appendix 1.

¹ HL Paper 66, Session 2008–09

APPENDIX 1: GOVERNMENT RESPONSE

I am very grateful for the Eighth Report of the Constitution Committee on Pre-Legislative Scrutiny in the 2007–08 session. This letter responds to the conclusions contained within the report. Please accept my sincere apologies for the fact that you have not received an earlier response.

The Government remains committed to the publication of bills in draft for Pre-Legislative Scrutiny wherever possible and, as the Committee recognises, this was demonstrated by the publication of nine Bills in draft in the 2007–08 session, a significant increase on the previous three years. However, we also recognise that sustained effort is needed to maintain this progress and this becomes more challenging towards the end of a Parliament when there is less time to carry out pre-legislative scrutiny on bills before they are introduced.

Since the Committee's report was published in March, the Government has published two draft bills this session (2008–09), the draft Bribery Bill and the draft Flood and Water Management Bill. As re-iterated in the Government's Draft Legislative programme, published as part of 'Building Britain's Future' on 29 June, we also intend to publish a further three draft bills later this session, the Immigration Simplification Bill, the Antarctica Bill and the Civil Law Reform Bill. We had intended also to publish draft Bills on Community Empowerment and on Communications Data, thereby bringing the total to seven, but, in the event, these have been withdrawn, in both cases so that the Government can consult further on the underlying policy issues. The Government does not believe that it is a sensible use of Parliamentary time to consider draft Bills where the underlying policy to which they give effect has not been thoroughly developed within Government.

The Draft Legislative Programme also announced the Government's intention to publish two further draft bills in the next Session, 2009–10: the House of Lords Reform Bill and the Animal Health Responsibility and Cost Sharing Bill. As the next session will begin with the Queen's Speech on 18 November and must end at the latest by 10 May, it is unlikely that there will be time to publish further bills in draft and carry out pre-legislative scrutiny.

The Government also recognises that improvements could be made to the process of publishing bills in draft. Specifically in response to the issues that the Committee raised:

The time Provided for Pre-Legislative Scrutiny

The Government agrees on the importance of allowing as much time as possible for pre-legislative scrutiny, with a minimum of twelve weeks as an objective. The two draft bills published so far this session were both published to allow twelve weeks. The Government will continue to strive to allow the maximum time available for pre-legislative scrutiny. The Leader of the House of Commons routinely reminds departments of this timescale and we do all we can to prevent slippage. When slippage does sometimes occur, the Leader keeps the Liaison Committee and the Lord Chairman of Committees informed and departments liaise with relevant Commons select committees and Lords committee officials to discuss an acceptable publication timetable.

There have recently been delays in establishing joint committees to consider draft bills. Though the Government does all it can to minimise these delays, the Committee will appreciate that this is not something which lies exclusively within the Government's control.

“Bunching” of publication of draft bills

The Government believes that timing considerations mean that draft Bills cannot always be spaced as evenly throughout the year as either the Government or Parliament would like. We will continue to work to improve processes to ensure that the spread can be as even as possible. Of the five remaining draft bills this session, our original intention was to publish two bills at Easter, two before the summer and one during the spillover, so spacing them out during the session. Due to the need for further consultation, the two bills due to be published before the summer both have had to be delayed until after recess.

Government liaison with Committees

The Government recognises the value that the House of Lords can bring to pre-legislative scrutiny. Whilst in most cases, pre-legislative scrutiny is undertaken by Commons departmental Select Committees, in several cases recently, there has been interest both from Commons departmental Select Committees and from the Lords. Where there are significant expressions of interest from the House of Lords we would not envisage meeting a request from a Commons select committee to undertake sole consideration of a bill and we will continue to seek Lords participation in pre-legislative scrutiny.

The Leader of the House of Commons has written to the Commons Liaison Committee several times this Session to update them on progress with the publication of draft Bills. These letters have been copied to me and to the Lord Chairman of Committees. I will be happy to ensure in future that they are also sent to the Lords Liaison Committee.

The fate of draft bills after Pre-legislative Scrutiny

The Government believes that it has a good record for introducing draft bills. Of the nine Bills published in draft in the 2007–08 session, the following five of them have been included in the current session:

- the Draft Apprenticeships Bill was taken forward as part of this session’s Apprenticeships, Skills, Children and Learning Bill;
- the Draft Constitutional Renewal Bill has just been introduced to Parliament as the Constitutional Reform and Governance Bill;
- the Draft Construction Contracts Bill included in this session’s Local Democracy, Economic Development and Construction Bill (not as the Committee’s report stated as part of the draft Community Empowerment Bill);
- part of the draft (partial) Immigration and Citizenship Bill was included in this session’s Borders, Citizenship and Immigration Bill and;
- the draft Marine Bill was taken forward as this session’s Marine and Coastal Access Bill.

Of the remaining four draft Bills published last session, the draft Counter-Terrorism (Temporary Provisions) Bill was intended to be introduced to Parliament only if the need arose. Of the remaining three bills, Cultural Property, Heritage Protection and Marine Navigation and Port Safety, it became clear that there would be insufficient space in the current session to take all those bills to Royal Assent. The Government remains fully committed to all of these measures and will introduce them as soon as parliamentary time allows.

Of the two draft bills published so far this session, both have been included in the Government’s Draft Legislative Programme for the next session even though, as noted above, it will be particularly short.

Baroness Royall of Blaisdon, Leader of the House of Lords