

Written evidence submitted by Green Alliance

We welcome the establishment of the Modernisation Committee and the opportunity to respond to its first call for evidence.¹ Green Alliance is a UK based environmental think tank and charity focused on ambitious leadership for the environment.

This submission focuses on the Committee's strategic aim to reform parliamentary procedures to make the House of Commons more effective and is drawn from our experience of engaging with a range of parliamentary processes, including the scrutiny of primary and secondary legislation, the work of select committees, and the work of other legislatures in the UK.²

Development and scrutiny of primary and secondary legislation

We welcome the Committee's suggestion that one of its initial priorities will be "A renewed emphasis on scrutiny of government legislation".³

A new approach is needed on this. Successive Parliaments grappled with a glut of poorly drafted legislation, much of which was amended substantially during its passage to address errors and some of which entered the statute book in a regrettable form.

Too often, previous governments sought unfettered powers and to capitalise on political opportunities, rather than to ensure that law making protects people and the environment and sets clear rules for government, businesses and the public.

This concern is well documented. For example, in November 2021, the House of Lords Delegated Powers and Regulatory Reform Committee (DPRRC) commented "A substantial groundswell of concern is developing about the shift in power from Parliament to ministers. We take the view that a critical moment has been reached where action is needed to bring about significant change in the way in which legislation is framed so that it is, first and foremost, founded on the principles of parliamentary democracy, namely parliamentary sovereignty, the rule of law and the accountability of the executive to Parliament."⁴

The House of Lords Secondary Legislation Scrutiny Committee (SLSC) agreed, saying "...it is imperative that efforts are made to re-set the relationship between Parliament and government—and not to how it was immediately before Brexit and the pandemic but afresh, to reflect the modern conditions of government."⁵

These concerns continue to be raised by Parliament. On 31 October 2024, the SLSC published correspondence with the Leaders of both Houses on the role of the House of Lords in scrutinising secondary legislation and highlighted the importance of "timely, high-quality explanatory material and co-operation from Ministers". The joint reply stated the government "will work closely with Parliament to champion high standards and uphold best practice."⁶

This approach has had detrimental impacts on the quality of law making. For example, the Retained EU Law (Revocation and Reform) Bill caused huge uncertainty for many sectors because of the proposed arbitrary, immediate deletion of thousands of laws, including on environmental protection. While that measure was in the end removed from the bill, other broad powers remained with little constraint. This bill had a significant impact on parliamentarians' time and their ability to engage with wider scrutiny processes.

We welcome the comments that Lucy Powell made in opposition not to use delegated legislation excessively and to improve scrutiny of primary legislation.⁷ These were reinforced by the new Attorney General Rt Hon Lord Hermer KC in October when he delivered the Bingham Lecture, reflecting that "Most pressingly, there is in my view a real need to consider the balance between primary and secondary legislation, which in recent years has weighed too heavily in favour of delegated powers."⁸

These welcome sentiments are, however, yet to be translated into firm action. While the new government has moved swiftly to bring forward legislative on some of its manifesto commitments, this has, in some cases, been at the expense of parliamentary scrutiny.⁹

Impact assessments are not always being published before significant parliamentary debates. For example, none was published on the Water (Special Measures) Bill ahead of its second reading in the House of Lords, a point raised by several Peers.¹⁰ No assessment was undertaken on the withdrawal of winter fuel payments from the majority of pensioners and the impact assessment for the government's flagship employment reforms was also late.¹¹

Worryingly, some bills have sought to consolidate rather than move away from excessive use of delegated powers. For example, despite its positive policy intent – to ensure high product standards – the Product Regulation and Metrology Bill prompted the House of Lords Constitution Committee to reiterate its view that "...skeleton bills inhibit parliamentary scrutiny. Primary legislation is more constitutionally appropriate, particularly where secondary powers have the potential to develop and give effect to policy innovations." The DPRRC starkly called for the removal of the main powers in the bill.^{12,13}

The work of the Modernisation Committee offers an opportunity to convert the welcome commitments of the Leaders of both Houses and the Attorney General into practical improvements to the parliamentary scrutiny of legislation, including on environmental protection. We would be grateful if the following proposals could be considered.¹⁴

1. Commit to effective and meaningful public consultation

Legislation should flow from consultation with the public and those affected by proposed laws. While this should be adopted routinely, too often consultation has been circumvented or ignored. For example, the previous government did not consult external stakeholders on the preparation of its statutory Environmental Improvement Plan and the results of a public consultation on the development of targets on nature and water quality under the Environment Act 2021 were ignored.¹⁵

The development of a new civil society compact is welcome.¹⁶ Taking forward Principle 3 (Participation – to ensure people and communities can be heard and make a difference) provides an opportunity for the government to restore effective consultation processes. The Cabinet Office consultation principles should be reviewed and improved, especially Principle E which states that consultations should “last for a proportionate amount of time”.¹⁷

2. Embed environmental principles into policy making

There is a legal requirement for Ministers of the Crown to have “due regard” to a policy statement on five environmental principles when making policy.^{18,19}

The aim of the policy statement is to ensure that environmental considerations are at the heart of government policy making and considered from the outset, not as tacked on as an afterthought.

However, as our research on the first year of implementation shows, the principles are not yet embedded in key cross government mechanisms which is hindering their effectiveness.²⁰

Lucy Powell MP has confirmed that the Guide to Making Legislation will be updated “shortly” and will include references to environmental principles. Cabinet Office minister Nick Thomas-Symonds MP has confirmed that government departments have been advised to amend their ministerial submission templates to reflect the environmental principles duty. HMT Chief Secretary Darren Jones MP has confirmed that the duty will be reflected in the Green Book when the document is next updated. These commitments must be delivered swiftly.^{21,22,23}

3. Reinvigorate pre-legislative scrutiny and the use of draft bills

The government should consider more frequent publication of bills in draft, allowing pre-legislative scrutiny both inside and outside Parliament.

Previous governments have accepted that publishing bills in draft for pre-legislative scrutiny improves the process of scrutiny and leads to better legislation, especially for constitutional bills.²⁴

However, this can benefit other bills, as the pre-legislative scrutiny of the draft Environment (Principles and Governance) Bill demonstrated. This resulted in significant improvements to the full Environment Bill and the design of the new oversight body, the Office for Environmental Protection, which is now providing important public benefit.²⁵

4. Rethink the approach to drafting laws

To address the trend of overuse of broadly defined powers, we encourage the government to explicitly accept the recommendation of the DPRRC that the principal aspects of policy should be on the face of a bill and only its detailed implementation should be left to delegated legislation. The Guide to Making Legislation and the drafting guidance of the Office for Parliamentary Counsel should be updated to reflect this.^{26,27}

5. Address flaws in assessing the impacts of proposed legislation

We welcome that steps are being taken to address the late submission of impact assessments.²⁸

However, we are concerned that the previous government's Better Regulation Framework is undermining transparency because it changed the way in which impact assessments of bills are scrutinised. The independent Regulatory Policy Committee is now involved at an earlier 'options assessment' stage. This is internal to government, so the Committee is not able to seek external input. The government should revise the Better Regulation Framework to restore transparency in the impact assessment process.²⁹

6. Restore targeted post-legislative scrutiny as a working convention

Post-legislative scrutiny of Acts of Parliament has ground to a halt, with the underpinning conventions untouched since 2008.³⁰

We encourage the government to use the post-legislative reviews scheduled for the first half of this Parliament as a lever to restore this important process as a working convention in Westminster. It is routine in many other legislatures, including the Scottish Parliament. Six inquiries were undertaken by the Scottish Parliament's Public Audit and Post-Legislative Scrutiny Committee and three subject committees also engaged with post-legislative scrutiny during Session 5.^{31,32,33}

The government should work with the house authorities to improve the process, including publishing a central repository of post-legislative memoranda and encouraging a more proactive approach from select committees.³⁴

7. Implement important legislation faster

Several important environmental legislative commitments have not been implemented. For example, a new due diligence scheme for products of illegal deforestation has been severely delayed. Other promised commitments are yet to feature in the legislative programme, for example ending the sale of horticultural peat products and ratification of the Global Oceans Treaty.³⁵

The government should report annually on the implementation of environmental legislation to the Environmental Audit Committee.

All bill provisions should be brought into force no later than two years after Royal Assent.

8. Enhance the role of select committees and other parliamentary processes

Select committees perform a vital scrutiny role. The Liaison Committee has made various recommendations on how their effectiveness could be improved, which should be revisited.³⁶

We suggest that committee hearings are scheduled when the Commons is not sitting in the main Chamber when votes may be called, as is the case in the Scottish Parliament. This would help prevent the disruption of evidence sessions.

There should be a guaranteed debate for all select committee reports to help raise awareness of their recommendations across the House.

Stronger co-ordination between committees should be encouraged, with joint inquiries where relevant and more frequent uptake of guessting.

Setting out a committee's forward programme for a parliamentary session would help improve transparency. It is not always clear what is next on a committee's agenda and how much space there is to consider emerging issues.

We suggest that the current approach on establishing public bill committees should be rethought, including whether select committees could play a role on scrutinising bills where they have relevant expertise. Party whips should be encouraged not to interfere with scrutiny of legislation.³⁷

Increased bicameral working would also be beneficial, for example joint committees and units.

We suggest speakers lists could be published before House of Commons debates, with time limits set in advance, as is the case in the House of Lords. This would increase transparency.

We suggest that the Committee launches a further call for evidence on how to improve the scrutiny of secondary legislation.

The Committee should consider how MPs can be supported to scrutinise the government's legislative programme, for example through training sessions and skill sharing with other legislatures in the UK.

9. Improve trade agreement scrutiny processes

Reform of the Constitutional Reform and Governance Act (CRA) 2010 is required to ensure a parliamentary scrutiny system for trade agreements that is fit for purpose.

There is currently no requirement to make time for parliamentary debates or votes on trade agreements. This has meant that no debate took place under CRA in the House of Commons on recent trade agreements that the UK has entered, including the UK-Australia Free Trade Agreement and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

The government should ensure that a Commons debate is held in parliamentary time and guarantee a vote for MPs on the content of agreements, as has been recommended by the Business and Trade Committee amongst others.³⁸

December 2024

- ¹ Modernisation Committee, call for evidence <https://committees.parliament.uk/call-for-evidence/3442>
- ² Green Alliance’s engagement with parliamentary scrutiny process is led by its specialist legislation and governance unit <https://green-alliance.org.uk/project/legislation-governance-unit/>
- ³ Para 31, Memorandum to the Modernisation Committee <https://committees.parliament.uk/publications/45321/documents/224440/default/>
- ⁴ DPRRC, HL Paper 106, 12th Report of Session 2021–22: Democracy Denied? The urgent need to rebalance power between Parliament and the Executive <https://committees.parliament.uk/publications/7960/documents/211660/default/>
- ⁵ SLSC, HL Paper 105, 20th Report of Session 2021–22: Government by Diktat: A call to return power to Parliament <https://committees.parliament.uk/publications/7941/documents/82225/default/>
- ⁶ SLSC, 5th Report of Session 2024–25, Correspondence with the Leader of the House of Lords and the Leader of the House of Commons regarding the role of the House of Lords in scrutinising Secondary Legislation <https://publications.parliament.uk/pa/ld5901/ldselect/ldsecleg/31/31.pdf>
- ⁷ Keynote speech to the Institute for Government, 14 May 2024, <https://www.instituteforgovernment.org.uk/event/lucy-powell-shadow-leader-commons>
- ⁸ Bingham Lecture, 14 October 2024 https://www.biicl.org/documents/12532_bingham_lecture_2024.pdf
- ⁹ Green Alliance blog, 16 October 2024 <https://greenallianceblog.org.uk/2024/10/16/lack-of-policy-scrutiny-has-become-a-worrying-government-habit-which-labour-needs-to-correct/>
- ¹⁰ Hansard, Lords second reading of the Water (Special Measures Bill, 9 October 2024 [https://hansard.parliament.uk/lords/2024-10-09/debates/BC0D6C71-4A7F-43EC-BD5B-B1897796B651/Water\(SpecialMeasures\)Bill\(HL\)](https://hansard.parliament.uk/lords/2024-10-09/debates/BC0D6C71-4A7F-43EC-BD5B-B1897796B651/Water(SpecialMeasures)Bill(HL))
- ¹¹ Guardian article, 12 September 2024 <https://www.theguardian.com/politics/2024/sep/12/no-winter-fuel-payments-impact-assessment-was-carried-out-no-10-admits>
- ¹² Select Committee on the Constitution, HL Paper 24, 2nd Report of Session 2024–25, Product Regulation and Metrology Bill <https://publications.parliament.uk/pa/ld5901/ldselect/ldconst/24/24.pdf>
- ¹³ DPRRC, HL Paper 17, 2nd Report of Session 2024–25, 15 October 2024 <https://publications.parliament.uk/pa/ld5901/ldselect/lddelreg/17/17.pdf>
- ¹⁴ Green Alliance briefing: How the new government should legislate for people and planet, 10 July 2024 <https://green-alliance.org.uk/briefing/how-the-new-government-should-legislate-for-people-and-the-planet/>
- ¹⁵ Wildlife Trusts press release, 16 December 2022 <https://www.wildlifetrusts.org/news/environment-act-targets-defy-public>
- ¹⁶ <https://www.ncvo.org.uk/get-involved/civil-society-covenant/>
- ¹⁷ Cabinet Office, consultation principles: guidance <https://www.gov.uk/government/publications/consultation-principles-guidance>
- ¹⁸ Section 19, Environment Act 2021 <https://www.legislation.gov.uk/ukpga/2021/30/section/19/enacted>
- ¹⁹ Environmental principles policy statement, January 2023 <https://www.gov.uk/government/publications/environmental-principles-policy-statement/environmental-principles-policy-statement>
- ²⁰ Green Alliance, One year on: is the environmental principles duty working? 1 November 2024 <https://green-alliance.org.uk/wp-content/uploads/2024/11/One-year-on-is-the-EPPS-duty-working.pdf>
- ²¹ Written parliamentary answer UIN 18013, 11 December 2024 <https://questions-statements.parliament.uk/written-questions/detail/2024-12-04/18013>
- ²² Written parliamentary answer UIN 18012, 12 December 2024 <https://questions-statements.parliament.uk/written-questions/detail/2024-12-04/18012>
- ²³ Written parliamentary answer UIN 18306, 12 December 2024 <https://questions-statements.parliament.uk/written-questions/detail/2024-12-05/18306>
- ²⁴ Government response to the House of Lords Constitution Committee Report ‘The Process of Constitutional Change’, September 2011 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/238144/8181.pdf
- ²⁵ Draft Environment (Principles and Governance) Bill 2018 <https://www.gov.uk/government/publications/draft-environment-principles-and-governance-bill-2018>
- ²⁶ Cabinet Office, Guide to Making Legislation, 2022 https://assets.publishing.service.gov.uk/media/62fe365fe90e0703e1bb4844/2022-08_Guide_to_Making_Legislation_-_master_version_4_.pdf
- ²⁷ Office of the Parliamentary Counsel, drafting guidance, March 2024 <https://assets.publishing.service.gov.uk/media/660407d091a320001a82b06b/2024.03.19.Drafting-guidance.pdf>
- ²⁸ Written parliamentary answer UIN HL2719, 4 November 2024 <https://questions-statements.parliament.uk/written-questions/detail/2024-11-20/hl2719>
- ²⁹ Better Regulation Framework Guidance, September 2023 https://assets.publishing.service.gov.uk/media/65420ee8d36c91000d935b58/Better_Regulation_Framework_guidance.pdf
- ³⁰ Post-legislative Scrutiny – The Government’s Approach, March 2008 <https://assets.publishing.service.gov.uk/media/5a7c82caed915d48c24103d5/7320.pdf>
- ³¹ Written ministerial statement, The Review of the United Kingdom Internal Market Act 2020, 12 December 2024 <https://questions-statements.parliament.uk/written-statements/detail/2024-12-12/hcws299>
- ³² Letter from Defra Secretary of State to the Environmental Audit Committee, 29 November 2023 <https://committees.parliament.uk/publications/45881/documents/227688/default/>
- ³³ Post-legislative scrutiny in the Scottish Parliament: a reflection of session 5, Dr Tom Caygill, 3 October 2024 <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2024/10/3/a76a12dc-93ff-47b9-89e2-711f50de8b7a#Appendix-A>

-
- ³⁴ Post-legislative scrutiny in the UK Parliament, Dr Tom Caygill, Nottingham Trent University, November 2021 <https://www.wfd.org/sites/default/files/2021-12/2021-10-18-PLS-in-the-UK-Parliament-Dr-Thomas-Caygill-FINAL.pdf>
- ³⁵ Green Alliance briefing, Status of unfinished legislative business, 13 December 2024 <https://green-alliance.org.uk/wp-content/uploads/2024/12/Status-of-unfinished-legislative-business-on-the-environment.pdf>
- ³⁶ Liaison Committee, The effectiveness and influence of the select committee system, 9 September 2019 <https://publications.parliament.uk/pa/cm201719/cms/elect/cmliaisn/1860/1860.pdf>
- ³⁷ Guardian article, 10 October 2024 <https://www.theguardian.com/politics/2024/oct/10/labour-whips-warn-their-mps-not-to-try-to-amend-bills-or-disagree-in-public>
- ³⁸ Committee Chair: Government ‘must stop dodging scrutiny’ of trade deals, 28 March 2024 <https://committees.parliament.uk/committee/365/business-and-trade-committee/news/200676/committee-chair-government-must-stop-dodging-scrutiny-of-trade-deals/>