

Unit 5: Legislation

Learning Objectives Defining Legislation

After studying this unit, you should be able to:

- Describe the different types of legislation that parliament considers;
- Understand the stages through which a bill passes to become an act or law;
- Distinguish between primary and secondary legislation.

What is Legislation?

In a civilized society there is a requirement for laws to be observed. For this to be credibly fulfilled, these laws must be created by a group of individuals that is representative of the People. The first responsibility of a parliament is thus the making of laws as reflected in the term 'legislature'.

The legislature is defined as an assembly that deliberates and adopts laws and has the power to raise taxes, adopt the budget, and other money bills, and of which consent is required in order to ratify treaties and declare war. The legislature is known as both "congress" and "parliament" in nations around the world. In the parliamentary system the legislature appoints the executive, while in presidential or congressional systems the legislature is a power that is considered equal to and independent from the executive.

Box 1 **Examples of Ministerial Positions**

The following are examples of government ministers. In most parliamentary systems the minister must be selected from the legislature, while in presidential systems they are appointed by the president.

- Prime Minister
- Foreign Minister
- Defense Minister
- Minister of Education
- Environment Minister
- Finance Minister
- Interior/Home Minister
- Health Minister
- Justice Minister
- Minister of Culture

Parliament makes laws for a variety of reasons. The government would have come to power on certain commitments or promises to make or change laws to meet the varying needs of society. As the government

proceeds with its work, there will inevitably be other circumstances that necessitate handling through use of its law-making mechanism. Some situations that the government will face will stem from a combination of both of these factors.

Legislation thus derives from various pressures and is the answer to society's needs for a well-ordered and just code of governance. While government, through its Ministers, will always be the chief initiator of laws, there are opportunities in democratic legislatures for non-Ministers, both from the government and the opposition, to present their own attempts to change the law or to influence draft legislation, though it would be optimistic to expect these to succeed without government support or cooperation.

Types of Legislation

Most bills, or drafts of proposed legislation, are presented by Ministers. They are therefore referred to as government bills in some legislatures. They are more generally described as public bills in the sense that they are inevitably matters that affect all citizens directly or indirectly. However, as noted above, a private Member, that is someone who is not the Speaker or a Minister, may also present a bill in most Commonwealth parliaments: in some parliaments these are termed Private Members' Bills (See Box 2).

There is another form of bill that confer a benefit or right on some particular individual, group or corporate body. These too are presented by private Members generally termed private bills they are not of universal or applicability. The terminology confusing as different parliaments may use different classifications of bills.

Box 2 Successful Private Member's Bills

A **Private Member's Bill** is a proposed law introduced by a backbench member of parliament. The following are examples of successful Private Member Bills from the United Kingdom:

- Murder (Abolition of Death Penalty) Act 1965
- Abortion Act 1967
- Charter Trustees Act 1986
- Law Reform (Year and a Day Rule) Act 1996
- Knives Act 1997
- British Nationality (Hong Kong) Act 1997
- Female Genital Mutilation Act 2003
- Gangmasters (Licensing) Act 2004

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It is not too difficult to see that a bill may contain within it an exception that gives it the characteristics of both public and private applicability. Such bills are termed 'Hybrid' and are essentially treated in legislatures as public or government bills.

The drafting of a bill is a matter for specialists. In most cases, the genesis of the bill would be a Cabinet Paper or a request from a government department, which would be passed to the drafting authorities, whether they are parliamentary counsel or a separate legal drafting department of the government. The responsibility of these specialists is to convert an administrative document into a legal one, paying attention to the nuances of language and the structure required of a statute while researching possible conflicts with existing laws.

The passage of legislation

The first stage of a bill's passage through parliament is called the first reading. Some countries require that all drafts be printed in a suitable medium such as the official Gazette while others do not even demand sight of the full bill at this stage. The 'reading' nowadays consists of the announcement of the title by the presenting Member or the Clerk/Secretary General though it refers to the fact that an actual reading might have been required in less literate times, a practice that still holds in some non-Commonwealth legislatures. The first reading is by practice in most countries a purely formal measure to introduce the bill to the legislature. In others there may be some discussion and possible reference to a parliamentary committee or a Member may call for a vote even at this early stage. If lost, the bill will go no further.

The Speaker will ask the presenting Member to nominate a day for the second reading. In certain parliaments, a specific date is fixed at this time while in others, the date is mentioned as 'tomorrow' which in parliamentary parlance means a date in the future to be fixed according to the demands of business and the availability of parliamentary time.

In some jurisdictions, a bill may be challenged in the courts at this stage for unconstitutionality. The courts will take the matter up as urgent business and provide a determination as soon as

possible: the constitution may specify a period within which the determination has to be conveyed to the Speaker after which parliament may proceed on the basis that it does not violate any constitutional provision.

The bill now passes to its second reading in the House, that is, the stage at which the policy aspects of the bill are discussed in detail. This gives the opposition, as well as government MPs who wish to make their dissent known, an opportunity to suggest other means for dealing with the issues behind the bill. A vote is taken at the end of the debate and, if this does not result in a defeat, the bill will be referred to a committee for closer examination, clause by clause.

A Committee of the Whole House or, more often, a standing committee, is set up to examine the bill. Occasionally it may be a select committee but it is necessary to note that various terminologies are in use in different legislatures, as discussed more fully in the sections of this course dealing with parliamentary committees.

The Speaker does not generally preside over committees. However, in some parliaments, he or she may do so when the Whole House forms the committee. Where a Member other than the Speaker presides over a committee, that Member has the same powers as the Speaker for handling the debate. Amendments to the bill may be presented in committee and if accepted, will be forwarded to the House as part of the committee report.

The next stage is the presentation of the committee report to the House, though this is only a formality when the Whole House has formed the committee. This report or 'consideration' stage gives Members an additional chance to comment on amendments that are suggested in committee.

The final stage of the passage of a bill through the House is the third reading. No further substantive amendments are taken up at this stage, though drafting amendments and re-numbering of clauses may be accepted. Generally there is very little debate during the third reading, and a final vote is taken.

Where there is a second chamber or Upper House, the bill would now be sent there for handling according to procedure.

Finally, after safe passage through parliament, the bill is given assent, or agreement, by the Head of State. However, some parliaments allow the Speaker to issue the necessary certificate declaring that the bill has been converted into law.

When a bill passes successfully through parliament and has been given assent, the legislation has been enacted and the bill becomes an act or law. In the terminology of most parliaments, the clauses of the bill then become sections of the act or law.

It must be noted that parliament may attach a commencement date to an act. This allows an act to remain on the statute books but not to take effect until a certain date, which may be placed within the discretion of a Minister to nominate. Therefore, it may be possible for an act to never become effective, especially if the reasons that were urged for it at its original presentation to parliament are later found to be irrelevant.

Primary and Secondary Legislation

Acts or laws passed by parliament form the body of primary legislation. Many such acts allow the Minister in charge to make further rules, regulations or orders for the effective operation of the act or law. Parliament has, in these cases, effectively delegated some of its law-making powers to the Minister, or less frequently to another official, who formulates secondary legislation, also called delegated or subordinate legislation, under the parent law.

Parliament does this to allow government business to progress smoothly but the procedure is clearly a risky one. Generally, a legislature creates rules for the presentation of secondary legislation before the House within a specified period and may require examination of all such instruments by a committee of the House. Where this is not required, and if as a result, society feels that the executive has gone beyond its remit, it is easy to see that a large number of applications for writs in the courts may result from disgruntled citizens.

Several questions should be kept in mind when the power to formulate delegated legislation is written into a draft bill. For instance:

- Have guidelines been created which outline the procedures for drafting secondary legislation?
- How is the legislature to be made aware of the creation of secondary legislation?

- What are the legislature's powers of scrutiny of secondary legislation?
- Will the legislature be able to amend secondary legislation?
- Does secondary legislation require affirmation or does it come into effect after a specified period?
- How may secondary legislation be revoked if necessary?

Some thought to these and other similar questions will help to prevent many of the problems that arise through the Members of the executive, wittingly or unwittingly, acting beyond their powers.

Unit 5 Questions

Please answer each of the following questions. If you are taking this course in a group you may then meet to discuss your answers.

1. Using the terminology of your parliament, is there a distinction between a private Member's bill and a bill to benefit a charitable organization?
2. Describe the work done in the legislature between the first and third readings of a bill.
3. Do you know of any act or law in your parliament or elsewhere which has been properly enacted but which has not yet been made effective?
4. How satisfactory do you believe the safeguards available in your parliament are in regard to the formulation of secondary or delegated legislation?

Relevant Abbreviations

CPA	Commonwealth Parliamentary Association
IPU	Inter-Parliamentary Union
NDI	National Democratic Institute for International Affairs
UNDP	United Nations Development Program
WBI	World Bank Institute

Relevant Internet Resources

Commonwealth Parliamentary Association
<http://www.cpahq.org/>

Inter Parliamentary Union
<http://www.ipu.org/english/home.htm>

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