



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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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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NOTE:

The Report of the Committee is published in Volume I (HL Paper 116-I)
The Evidence of the Committee is published in Volume II (HL Paper 116-II)

References in the text of the Report are as follows:

- (Q) refers to a question in oral evidence
- (p) refers to a page of written evidence

Fast-track Legislation: Constitutional Implications and Safeguards

CHAPTER 1: INTRODUCTION

Background

1. We have maintained a longstanding interest in the operation of the legislative process. In 2003–04, we undertook an inquiry into Parliament and the Legislative Process, where we identified ways in which we believed that legislative scrutiny by Parliament could be improved. In our July 2008 report on the Criminal Evidence (Witness Anonymity) Bill, we noted that this was the third “emergency bill”—i.e. a bill whose parliamentary passage was expedited, or “fast-tracked”—to be considered in recent months, following on from the Northern Ireland (St Andrews Agreement) (No 2) Bill in March 2007 and the Banking (Special Provisions) Bill in February 2008. We then commented:

“While we accept that from time to time exceptional circumstances may arise requiring the Government to prepare, and Parliament to deliberate on, a bill according to an expedited timetable there are obvious risks, especially where the bill deals with a complex social and legal problem. We may consider this issue further in a future inquiry into the legislative process”¹.
2. In the light of this, we decided to undertake an inquiry into “constitutional issues that may arise when there is resort to emergency legislation”, and in particular, “situations where bills receive an expedited passage through Parliament”. This inquiry has arisen not from a desire to consider theoretical constitutional principles or arcane parliamentary procedure, but rather from a wish to affirm the importance of the legislative process, and a desire to see it improved.
3. The pertinence of this inquiry was confirmed by the Government seeking to fast-track two bills through Parliament whilst we were engaged in this inquiry. The Northern Ireland Bill 2009 (see paras 120–8) was brought forward whilst we were hearing oral evidence in connection with this inquiry and we were therefore able to take account of it in this report. Just before this report was published, the Government introduced the Parliamentary Standards Bill to the House of Commons and announced that they would seek to fast-track its progress through Parliament in order to secure Royal Assent before the summer recess. We consider the issues around the fast-tracking of this Bill in our separate scrutiny report on the Bill.

The inquiry process

4. We received written submissions from seven witnesses, and heard oral evidence from 14 witnesses over seven sessions. Witnesses included academics, legal,

¹ 9th Report (2007–08), *Criminal Evidence (Witness Anonymity) Bill* (HL 147), para 19.

parliamentary and constitutional experts, politicians, campaign organisations, civil servants and parliamentary officials, thus providing us with a number of different perspectives on the issues that we were considering. We are grateful to all those who took the time to respond to our inquiry.

5. An inquiry of this nature of necessity requires us to consider the procedure and experience of the House of Commons as well as the House of Lords, and we are grateful to the Clerk of the House of Commons for his written submission, and to the then Deputy Leader of the House of Commons, Chris Bryant MP, for his oral evidence. We note in particular the Clerk of the House of Commons' observation that "the issues being examined by the Select Committee on the Constitution are, of course, of considerable interest to Committees of this House. I understand that our Procedure Committee has it in mind to conduct an inquiry into the programming of legislation, which will no doubt embrace issues raised by 'emergency' legislation" (p 146). We will follow the progress of any such inquiry with interest.
6. We also contacted other legislatures in the UK (the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly), as well as a number of 'Westminster-style' legislatures (including New Zealand, Australia and Canada) to seek to gain a sense of their own experience of fast-track legislation. A summary of their responses is included as Appendix 6 and we thank those who responded to our requests for information. We also thank the Hansard Society for the information they provided on experience in New Zealand. Whilst such comparisons are useful, we acknowledge that the constitutional, parliamentary and political contexts vary.

Four specific issues

7. During the course of the inquiry, we were conscious of four issues.

a) The lack of previous research

8. There is a scarcity of previous work on fast-track legislation in general terms. Professor David Miers, Professor of Law, University of Cardiff Law School, told us:

"It is quite remarkable how little academic work there is on emergency bills as a kind of generic ... if you look at the practitioner books, if you look at the books on drafting ... [and] on statutory interpretation, there is nothing there about emergency legislation" (Q 295).

9. The perception that little previous thought has been given to the subject was one strong motivation for our undertaking of the inquiry, and we hope that this report forms a useful contribution to consideration of fast-track legislation as a discrete issue. As the Leader of the House of Lords, Baroness Royall of Blaisdon, told us:

"The exercise in which this Committee is currently engaged is an invaluable stock-taking. I think it is very necessary for Parliament to look at procedures from time to time and to see whether or not procedures have been properly used, if they have been abused" (Q 342).

b) The question of terminology

10. The evidence that we received led us to the conclusion that the term "emergency legislation" is not a helpful one to use in this context. Professor

