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Each political party produces a manifesto in the run-up to a general election.

The Labour government won the 2005 general election with a majority of 66 MPs.

Private members' bills usually have a 'free vote' where the MPs can vote according to their own opinion.

Legislation is the process by which Parliament makes laws. Parliament is made up of the House of Commons, the House of Lords and the monarch, and all three have a role in the legislation process. The House of Commons is the elected chamber in Parliament and comprises Members of Parliament (MPs) who are members of the government and the opposition parties. There is also a speaker who controls the proceedings in the House of Commons. The government controls the legislative agenda. The House of Lords is the second chamber in Parliament. It consists of unelected peers, Law Lords (judges) and bishops.

A Types of bill

An idea for a new Act of Parliament starts its journey through the legislation process as a bill. There are three types of bill: public bills, private bills and private members' bills.

1

Public bills

Public bills affect the whole country and are mostly proposed by the government; consequently, they are sometimes referred to as 'government bills'. The government controls the legislative agenda, which means that it allocates the most time in Parliament to passing its own ideas for new laws. The government may get ideas for new laws from many different sources, e.g. manifesto promises that it made during its election campaign; cabinet ministers, who may propose changes to the laws concerning their department; public protest and pressure groups; or official law reform organisations such as judicial inquiries, the Law Commission and Royal Commission reports.

These bills are most likely to complete the legislation process and become law as the government has a majority in the House of Commons.

2

Private bills

Private bills may be introduced to Parliament by a large company, a local council or a public corporation when it requires an Act of Parliament to build a new road or factory, for example. These bills do not usually affect the whole country.

3

Private members' bills

These are bills put forward by backbench MPs from any of the political parties. The MP puts his or her name into a ballot at the beginning of the year and 20 names are drawn out. These MPs are then allocated time to explain their bill to the rest of the House. The Ten-Minute Rule does not give them much time to do this and there must be enough MPs in attendance for the vote to be counted. During the 10 minutes other MPs may waste time through false argument. This is known as filibustering. It is not surprising that private members' bills are usually unsuccessful, as they do not have the support of their party. For example, David Alton put forward many unsuccessful private members' bills to change the abortion laws.

Private members' bills are a good way of raising awareness of a controversial issue that the government might not wish to commit itself to. An example of a successful private members' bill was that which led to the **Murder (Abolition of the Death Penalty) Act 1965**, which was proposed by Sydney Silverman, a Labour backbench MP.

Another successful private members' bill was proposed by Doug Hoyle, who abolished the year and a day rule for the crime of murder in 1996 (**Law Reform (Year and a Day Rule) Act 1996**).

B Legislation process

The legislation process has four main stages. The most important one to learn is the parliamentary stage.

1 Idea stage

The idea for a new law can come from many different sources such as the Law Commission, Royal Commission reports, manifesto promises etc. The government devises most new laws.

2 Consultation stage

The idea is discussed with experts and interested parties and a Green Paper is formulated. This is known as a 'discussion document'. The finalised version of the idea is then produced as a White Paper, which is the government's 'statement of intent'.

3 Drafting stage

The idea is written into legal terminology by the Parliamentary Counsel. It has now become a bill and is ready to be presented to Parliament.

4 Parliamentary stage

The legislation process is the stages that a bill must pass through in order to become an Act of Parliament. The most important stages take place in Parliament. Parliament is made up of the House of Commons, House of Lords and the monarch. The process can start in either the House of Commons or the House of Lords (with the exception of finance bills, which must start in the House of Commons).

4.1 First reading

The title of the bill is read out by the MP who is sponsoring it, e.g. the home secretary would sponsor a bill involving the power of the police. The bill is then published and a date is set for the second reading.

See Topic 6 for more information on this stage.

It is important that a bill is drafted properly as a badly worded law causes problems when a judge has to apply it to a case.

It is important to learn these stages in the correct order. An easy way to remember is to take the first letter of each stage (F, S, C, R, T, H, R) and create a sentence. Try: **Fat Snails Can't Reach The Hand Rails.**

This is the most crucial stage for a bill to pass.

4.2 Second reading

The whole House debates the bill. If there is a division, a vote is called. The MPs vote by passing through either the 'aye' door or the 'no' door. They are then counted as they return to their seats. The speaker will announce if the 'ayes have it', which means there is a majority of votes in favour of the bill. It will then pass to the next stage. The political parties use the 'whip' system to ensure party support for an important bill.

4.3 Committee stage

The bill is now scrutinised by a group of MPs called the standing committee. These committees are usually composed of between 16 and 30 MPs, reflecting the composition of Parliament. Any suggestions made at the second reading are considered and the committee may suggest amendments, additions and deletions to the bill.

4.4 Report stage

The standing committee reports back to the House with any proposals for changes to the bill. Each change is debated by the House, which will vote on it. If there are not any proposed changes this stage does not occur.

4.5 Third reading

This is the last read-through of the bill. There may be a short debate and a vote on any final changes to be made. The bill is then said to have 'passed through the House'. It continues its journey through Parliament in the second chamber.

4.6 House of Lords

The House of Lords is made up of unelected peers. Since the **House of Lords Act 1999** there are a few remaining hereditary peers with the rest of the House comprising life peers, bishops and the Law Lords. The role of the House of Lords is to scrutinise the bill further and it may suggest amendments, which must be approved by the House of Commons. The House of Lords has the power to delay a bill for 1 year (1 month for finance bills) but it cannot prevent a bill being passed. The House of Commons may invoke the **Parliament Act** if it wishes to avoid this delay and bypass the House of Lords. This has been used seven times since 1911.

4.7 Royal assent

The bill becomes an Act of Parliament once the Queen signs it, giving it her royal assent.

The most recent use of the **Parliament Act** was to pass the **Hunting Act 2005**.

Evaluation

There are many advantages and disadvantages of the legislation process. Some are specific to a particular stage in the process and some are general criticisms of the whole process.

The House of Lords restricts the government's powers but it cannot prevent a bill from becoming law.

The government is currently considering whether the Lords should be selected or elected.

1

Advantages

- The process ensures that it takes a long time for a bill to become an Act of Parliament. This enables the bill to be effectively scrutinised and checked for errors.
- The first reading allows the opposition to obtain a copy of the bill and prepare its arguments for the debate at the second reading.
- The whips ensure that MPs vote with their party. The public vote for an MP to represent them in Parliament and choose them according to the party they support. An MP should therefore agree with his or her party's policies, even if he or she personally disagrees.
- The standing committee scrutinises the bill, looking for errors and suggesting changes.
- The House of Lords contains many experts including ex-politicians, medical professionals and business people. They act as a 'safety net' in that they often find errors that the House of Commons has missed.
- Acts of Parliament receive a royal crest and it gives the monarch a role in Parliament.
- Private members' bills allow backbench MPs and members of the opposition to create laws that the government has not timetabled.

2

Disadvantages

- The lengthy process means that some bills run out of time and have to be reintroduced in the next Parliament or not at all. Some bills are rushed through the process and are passed containing errors, e.g. the **Dangerous Dogs Act 1991**.
- Professor Zander called the first reading 'a pure moment of nothing'. It can appear a waste of time.
- The whips system is seen as undemocratic and the whips have been accused of 'bully' tactics.
- The standing committee will always have a majority of government MPs sitting on it, so it may control what changes are suggested.
- The House of Lords is unelected and therefore undemocratic.
- The role of the Queen in the legislation process is no more than tradition. She cannot refuse to sign a bill and often one of her staff will sign it on her behalf. This stage has been called a 'rubber-stamping exercise'.
- The ballot restricts the number of private members' bills that can be considered (only 20 per year). The Ten-Minute Rule prevents most of the MPs from getting a proper chance to explain their idea, and other MPs will waste this time by filibustering (wasting time through false argument).

D Supremacy of Parliament

Parliament is the supreme lawmaker in the UK. Statutory laws must be applied by the courts and take precedence over any existing common law (judge-made law).



Summary of Topic 1

Since the **Human Rights Act 1998** came into force, new Acts of Parliament should be compatible with it but will still be applied by the courts even if they are not. Parliament can pass laws that are not compatible with the **Human Rights Act** if it has taken the Act into account when passing the law. Section 19 of the **Human Rights Act** requires that all new Acts of Parliament must state that they are compatible with human rights. If the new Act is not compatible, s.19 requires Parliament to state that this was its intention. Section 3 of the Human Rights Act requires judges to interpret the law in the light of this Act. If the judge believes that an Act is not compatible with human rights, he or she can make a declaration of incompatibility suggesting that Parliament should make an amendment. A judge cannot refuse to follow an Act of Parliament even if it contravenes the Human Rights Act.

The UK joined the European Union in 1973 and so must adhere to the **European Communities Act 1972**, which states that the EU laws take precedence over UK statutes. Parliament is therefore no longer sovereign over EU matters, although the UK could withdraw from the EU if it so wished. Parliament devolved some power to Scotland, Wales and Northern Ireland in 1998 but it remains sovereign.

Summary of Topic 1

Legislation is the process by which Parliament makes laws. Parliament is made up of the House of Commons, the House of Lords and the monarch, and all three have a role in the legislation process.

Types of bill

There are three types:

- 1 Public bills:** these affect the whole country and are proposed by the government. The government controls the legislative agenda, which means that it allocates the most time in Parliament to passing its own ideas for new laws.
- 2 Private bills:** these may be introduced to Parliament by a large company, a local council or a public corporation when it requires an Act of Parliament to build a new road or factory, for example. These bills do not usually affect the whole country.
- 3 Private members' bills:** these are bills put forward by backbench MPs from any of the political parties. The MP puts his or her name into a ballot at the beginning of the year and 20 names are drawn out. These MPs are then allocated time to explain their bill to the rest of the House. An example of a successful private members' bill was that which led to the **Murder (Abolition of the Death Penalty) Act 1965**, which was proposed by Sydney Silverman, a Labour backbench MP.

Legislation process

- 1 Idea stage:** the idea for a new law can come from many different sources such as the Law Commission, Royal Commission reports, manifesto promises etc. The government devises most new laws.
- 2 Consultation stage:** the idea is discussed with experts and interested parties and a Green Paper is formulated. This is known as a 'discussion document'. The finalised version of the idea is then produced as a White Paper, which is the government's 'statement of intent'.

3 Drafting stage: the idea is written into legal terminology by the Parliamentary Counsel. It has now become a bill and is ready to be presented to Parliament.

4 Parliamentary stage: the legislation process is the stages that a bill must pass in order to become an Act of Parliament. The most important stages take place in Parliament. The process can start in either the House of Commons or the House of Lords.

First reading: the title of the bill is read out.

Second reading: the whole House debates the bill. If there is a division, a vote will be called.

Committee stage: the bill is now scrutinised by a group of MPs called the standing committee.

Report stage: the standing committee reports back to the House with any proposals for changes to the bill.

Third reading: this is the last read-through of the bill. There may be a short debate and a vote on any final changes to be made.

House of Lords: its role is to scrutinise the bill further and it may suggest amendments, which must be approved by the House of Commons. The House of Lords has the power to delay a bill for 1 year (1 month for finance bills) but it cannot prevent a bill being passed.

Royal assent: the bill becomes an Act of Parliament once the Queen signs it, giving it her royal assent.

Supremacy of Parliament

Parliament is the supreme lawmaker in the UK. Statutory laws must be applied by the courts and take precedence over any existing common law (judge-made law). Since the **Human Rights Act 1998** came into force, new Acts of Parliament should be compatible with it but will still be applied by the courts even if they are not. The UK joined the European Union in 1973 and so must adhere to the **European Communities Act 1972**, which states that the EU laws take precedence over UK statutes. Parliament devolved some power to Scotland, Wales and Northern Ireland in 1998 but it remains sovereign.

An enabling Act is sometimes known as a parent Act.

It is important to know which of the three types of delegated legislation would be most appropriate to pass a new law.

Parliament does not have the time or expertise to pass every law that is needed each year. It is therefore necessary for it to give some of its power to other people and organisations to make laws. It gives this power in an enabling Act.

A Types of delegated legislation

1

Bylaws

These are made by local councils and other public bodies. For example, local councils may wish to ban drinking in their town centre, as occurred in Manchester in time for the Commonwealth Games. Another example would be the fines incurred by people who let their dogs foul in public parks.

Public corporations such as the buses and train services are able to impose fines for non-payment of fares.

2

Statutory instruments

These are regulations made by government departments to implement the provisions made in Acts of Parliament. For example, the **Dangerous Dogs Act 1991** allows the home secretary to add more breeds of dangerous dogs to the Act if it is deemed necessary. The Department of Constitutional Affairs can make changes to the provision of legal aid under the **Legal Aid Act 1998**. The Department of Agriculture was able to close public footpaths during the foot and mouth outbreak in 2001.

3

Orders in Council

These are laws passed by the Privy Council, which is a group of senior politicians who are allowed to make law without the need for the whole of Parliament to be sitting. They have the power to pass laws in times of emergency, with the permission of the Queen, under the **Emergency Powers Act 1920**. They may do this in wartime.

B

Controls on delegated legislation

It is important that delegated legislation is checked by Parliament and can be challenged in the courts by the public.

1

General supervision of delegated legislation

1.1 Enabling Act

The enabling Act itself sets out the powers that Parliament wishes to give.

1.2 Consultation

The enabling Act may specify that certain organisations or experts must be consulted before delegated legislation is made.

1.3 Publication

All delegated legislation is published and is available for interested parties to read.

2**Parliamentary supervision of delegated legislation****2.1 Relevant government minister**

All bylaws are checked by the relevant government minister. For example, if a council wishes to impose traffic restrictions it will be checked by the transport minister.

2.2 Joint select committees

All statutory instruments are scrutinised by a group of MPs known as a select committee. They check the provisions of any laws made and can question the minister and his or her civil servants.

2.3 Affirmative resolution procedure

Enabling Acts that give important or constitutional powers may require Parliament to vote before the delegated legislation can be passed.

2.4 Negative resolution procedure

Parliament may cancel a piece of delegated legislation within 40 days if an MP puts forward a motion to annul.

2.5 Question time

MPs may question ministers about a piece of delegated legislation.

3**Court supervision of delegated legislation****3.1 Judicial review**

An organisation or member of the public may challenge a piece of delegated legislation in the High Court. The judge will interpret the wording of the enabling Act to decide if the law was made *ultra vires* (beyond the powers granted by Parliament) and if he or she finds that the legislation is *ultra vires* it will be declared void.

Under the Civil Procedure Rules 1999, an application for judicial review must be made within 3 months. The person making the application must also have a legal interest (*locus standi*) in the outcome of the case. This legal interest was extended to include pressure groups in *R v Her Majesty's Inspectorate of Pollution ex parte Greenpeace* (1994).

There are two types of *ultra vires* — substantive and procedural.

Describing these procedures accurately in an exam question on controls of delegated legislation will get you extra marks.

Always give a definition of Latin terms.

It is important to use cases to explain the two types of *ultra vires*.

3.2 Substantive *ultra vires*

Delegated legislation may be declared void if it allows something that the enabling Act did not intend, e.g. in *Commissioners of Customs and Excise v Cure and Deeley* (1962).

***Commissioners of Customs and Excise v Cure and Deeley* (1962)**

The **Finance (No. 2) Act 1940** did not allow Customs and Excise to charge extra for late tax returns so when they started to fine people they were challenged in the courts. The judge found that they had acted beyond their power and therefore it was void.

***R (Ann Summers Ltd) v Jobcentre Plus* (2003)**

The Job Centre refused to advertise job vacancies for Ann Summers Ltd, which is a chain of sex shops. It did this because it thought it would not be fair to force someone to work in such a shop. The judge decided that the Job Centre did not have the power to refuse to advertise jobs. He said that a person who did not want to work in a sex shop would have a good reason not to take the job.

3.3 Procedural *ultra vires*

The enabling Act may set out certain procedures that must be followed before delegated legislation can be passed, e.g. *Agricultural, Horticultural and Forestry Training Board v Aylesbury Mushrooms Ltd* (1972).

***Agricultural, Horticultural and Forestry Training Board v Aylesbury Mushrooms Ltd* (1972)**

The training board was required by the enabling Act to consult anybody who might be affected by one of its laws. It did not consult the Mushroom Growers' Association and therefore the piece of delegated legislation was void.

The courts will also declare delegated legislation to be invalid when the law made under the enabling Act is 'unreasonable'. This was established in the case of *Associated Provincial Picture Houses v Wednesbury* (1948) and is known as 'Wednesbury unreasonableness'.

***R v Sacupima ex parte Newham London Borough Council* (2000)**

This case is an example of 'Wednesbury unreasonableness'. Newham Council offered people who had become homeless bed and breakfast accommodation in Brighton. These people would not be able to afford to stay in Brighton when they had to return to Newham for their benefits, schooling and medical treatment. The decision to rehouse them so far away was held to be unreasonable.

Try to keep your evaluation balanced, e.g. three advantages and three disadvantages.

C Evaluation

1

Advantages of delegated legislation

- Delegated legislation **saves time**. Parliament is only able to pass approximately 50 Acts of Parliament per year. It is therefore vital for Parliament to delegate power to others to make the thousands of other necessary laws.
- It is **flexible**. Delegated laws can be passed much more quickly if they are not required to go through the official legislation process. This is especially advantageous when laws need to be made or changed in times of emergency.
- It is made by **experts**. Local councils are much better equipped to make bylaws concerning their area as they have the expertise to know what is best for the public in that town. Government departments are staffed by expert civil servants who understand the practicalities of making a statutory instrument better than the average MP.

2

Disadvantages of delegated legislation

- It is **undemocratic**. Civil servants who are not elected by the general public may make statutory instruments and it is therefore undemocratic for such people to have so much power to pass delegated legislation.
- The sheer **quantity** of delegated laws made every year (approximately 3,000 statutory instruments are passed each year) means that a great deal of law is being made by people and organisations that are outside of Parliament.
- **Scrutiny**: although there are numerous controls and checks available for delegated legislation, the large quantity makes it difficult for proper scrutiny to occur. It also makes it difficult for the public to be informed of this vast number of changes to the law.

Summary of Topic 2

Parliament gives some of its power to other people and organisations to make laws. It gives this power in an enabling Act.

Types of delegated legislation

- 1 **Bylaws**: these are made by local councils and other public bodies. Public corporations, such as the buses and train services, are able to impose fines for non-payment of fares.
- 2 **Statutory instruments**: these are regulations made by government departments to implement the provisions made in Acts of Parliament. For example, the Department of Constitutional Affairs can make changes to the provision of legal aid under the **Legal Aid Act 1998**.
- 3 **Orders in Council**: these are laws passed by the Privy Council. They have the power to pass laws in times of emergency, with the permission of the Queen, under the **Emergency Powers Act 1920**.

Controls on delegated legislation

- 1 **General supervision of delegated legislation**: enabling Act, consultation and publication.

2 Parliamentary supervision of delegated legislation: bylaws are checked by the relevant government minister; statutory instruments are checked by a select committee of MPs; affirmative resolution procedure; negative resolution procedure; question time.

3 Court supervision of delegated legislation: judicial review. An organisation or member of the public may challenge a piece of delegated legislation in the High Court. The judge will interpret the wording of the enabling Act to decide if the law was made *ultra vires* (beyond the powers granted by Parliament) and may declare it void. There are two types of *ultra vires*: substantive *ultra vires*, e.g. *Commissioners of Customs and Excise v Cure and Deeley* (1962) and procedural *ultra vires*, e.g. *Agricultural, Horticultural and Forestry Training Board v Aylesbury Mushrooms Ltd* (1972). The courts will also declare delegated legislation to be invalid when the law made under the enabling Act is 'unreasonable' ('Wednesbury unreasonableness').

Evaluation

1 Advantages of delegated legislation: saves time, is flexible and is made by experts.

2 Disadvantages of delegated legislation: undemocratic, too much in quantity, scrutiny difficult.