House of Lords Constitution Committee inquiry into the legislative process: The Passage of Legislation through Parliament

General Features

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The CIOT has made a number of proposals for improving parliamentary scrutiny of the Finance Bill and other tax legislation.

These proposals were made in a submission to the House of Lords Constitution Committee. The Committee is conducting a large-scale inquiry into the legislative process, in four parts. CIOT has previously responded to the first two parts – on preparing legislation for introduction in Parliament and the delegation of powers. This consultation covered the passage of legislation through Parliament. A further consultation will, in due course, look into the period after Royal Assent.

The main points of the CIOT's response were as follows.

Parliamentary scrutiny processes

The quality of parliamentary scrutiny of tax legislation is not high. The absence of meaningful House of Lords scrutiny of Finance Bills during their passage means that flaws in Commons scrutiny are all the more glaring. These deficiencies are only partly compensated for by the pre-legislative work of select committees and other earlier consultation.

We welcome the fact that it is now possible to submit written evidence to public bill committees; however, we are concerned that the process is not operating in a timely fashion. We welcome the granting of the ability for public bill committees to take oral evidence, but we are disappointed that the government has – despite cross-

party pressure – so far been unwilling to do this for Finance Bill committees. We find their arguments unpersuasive.

We favour more effective liaison between select committees and the Finance Bill public bill committee so that concerns identified by the former are pressed more by the latter. There is a strong case for increasing the resources available to Parliament for scrutinising tax matters. We believe there are ways that the House of Lords could play a greater role in scrutinising tax legislation without challenging the Commons' ultimate financial privilege.

Timetabling

Finance Bill clauses selected for consideration in Committee of the Whole House tend to get less technical scrutiny. This selection should be used sparingly. Additionally, we would find it helpful to have a longer gap between publication of bills and the commencement of committee stage – a minimum of four weeks.

Explanatory materials

Finance Bill explanatory materials often simply repeat what the legislation itself says, without being particularly explanatory. Good Explanatory Notes should state the purpose and effect of each measure clearly, a matter of fundamental importance to interpretation. Asking the Office of Tax Simplification to publish simplification assessments of new tax proposals would assist parliamentary scrutiny.

Public engagement

We have seen significant improvements in the pre-legislative consultation process on tax policy in recent years but engagement with Parliament for stakeholder groups during the passage of legislation remains difficult. Once a Finance Bill has been published, it is difficult to get a change, even where there is a clear error in the drafting. Governments frequently need to come back in following Finance Bills to correct mistakes made in earlier ones. There is an over-reliance by government on non-binding HMRC guidance rather than amending legislation.

Technology could be used more effectively to show how existing legislation would change if proposed legislation were enacted. Government could consider an online facility to input comments by clause numbers, so MPs can see who says what

against each clause.

The full response can be found on our website.