

Delegated Legislation – a necessary evil!

Why does Parliament delegate law making powers?

- Lack of Parliamentary time to debate everything – about 100 Acts per year but 3,000 plus regulations
- Complexity of subject matter – need for expert input – Parliament may lack this expertise
- Broad rules are identified in Enabling Acts
- Allows for swifter response to change
- Allows for local law making for local issues

- Allows for swift response in times of emergency or when Parliament is not sitting
- Removes the need for excessive detail in Acts
- Regulations can be updated regularly without the need for new Acts to be passed
- It is easily revoked

How is delegated legislation made?

Parliament gives authority to different bodies generally in Enabling (or parent) Acts

There are 3 main types:

- Statutory instruments – introduced by Ministers
- Orders in Council – introduced by the Privy Council
- Bylaws – introduced by local authorities and some public bodies

Identify which type of delegated legislation is involved?

1. Detailed regulations are needed for the qualification requirements under a Social Security Act
2. A town council wishes to introduce fines for dogs fouling grass and paths in a park
3. The government wishes to declare war on a foreign power

Answers!

1. A statutory instrument
2. A bylaw
3. An Order in Council

What controls are there on delegated legislation?

Often said to be undemocratic because not debated in Parliament – so there are controls
2 types of control – Parliamentary and Judicial

Parliamentary:

- On introduction – negative resolution procedure, affirmative resolution procedure, super-affirmative resolution procedure – also there is a Joint Select Committee on statutory instruments (usually called a scrutiny committee)

Judicial:

- This is the process of Judicial Review
- Can challenge delegated legislation on grounds of substantive *ultra vires* (meaning beyond the powers)
- 2 types – procedural and substantive
- Or can declare the law 'unreasonable' i.e. no reasonable body would have introduced it (so-called 'Wednesbury unreasonableness')

Should Parliament delegate law making power?

- Takes law making away from democratically elected bodies – so is undemocratic
- The controls are limited and ineffective
- The sheer volume is a problem because it is not well publicised so people do not know what the laws are
- There is often sub-delegation which makes it even more undemocratic
- The process can be abused
