

Converting the Queen's Speech promises into legislation

May 25 2010

The coalition government's Queen's Speech outlines a highly ambitious programme of legislation, which on past form seems likely to be fully implemented and very little amended in the House of Commons or the Lords. But how is such a full and dynamic policy programme actually converted into workable laws? [Edward Page](#) illuminates one of the key processes in the 'efficient secret' of British government.



Getting the advance headlines for the laws that the Coalition wants to pass is the easy bit. We don't yet know how tough it will be to get all 21 bills outlined in the Queen's Speech through parliament, but we can say that writing them in short order is hardly going to be a cakewalk. Translating policy intentions into a legal text sounds easy enough, but it is rarely achieved without a huge amount of specialist effort and lots of crucial policy deliberation.

At first, the process may seem straightforward enough. The policy civil servants are organised into bill teams which first of all work out what the minister wants. They then instruct the departmental lawyer (often a generalist solicitor from the team handling all the department's legal business). The departmental solicitor in turn instructs the people who are specialists in writing bills – the draftsmen and women (called Parliamentary Counsel) of the Office of Parliamentary Counsel (OPC). It will be a lot easier for the coalition government to write a big pile of bills in short order now than it was 13 years ago, because the number of these parliamentary drafters has doubled to 60. This change was thanks largely to the late Labour minister, Robin Cook, who saw the small staff numbers in the OPC as a bottleneck in the legislative process. So what is not straightforward?



Courtesy of UK Parliament via Flickr

First of all, the policy as it is announced in party manifestos or Queen's Speeches generally offers little more to go on than a biro drawing on a beer mat offers a builder constructing a large house. Yet a finished piece of legislation needs to specify in exact detail precisely

- what existing laws will be used or amended,
- who will benefit or be penalised by the new law,
- how beneficiaries and transgressors are defined,
- how exactly it will be financed,
- how the law will be enforced,
- what kinds of exemptions need to be made.

These are all the kinds of things that are typically left unanswered in policy statements, or not answered to the degree that they constitute instructions to be sent off to the drafters. Yet such details often make the difference between hitting and missing the intended target, between creating a workable or a 'dead letter' law, and between good government and chaos.

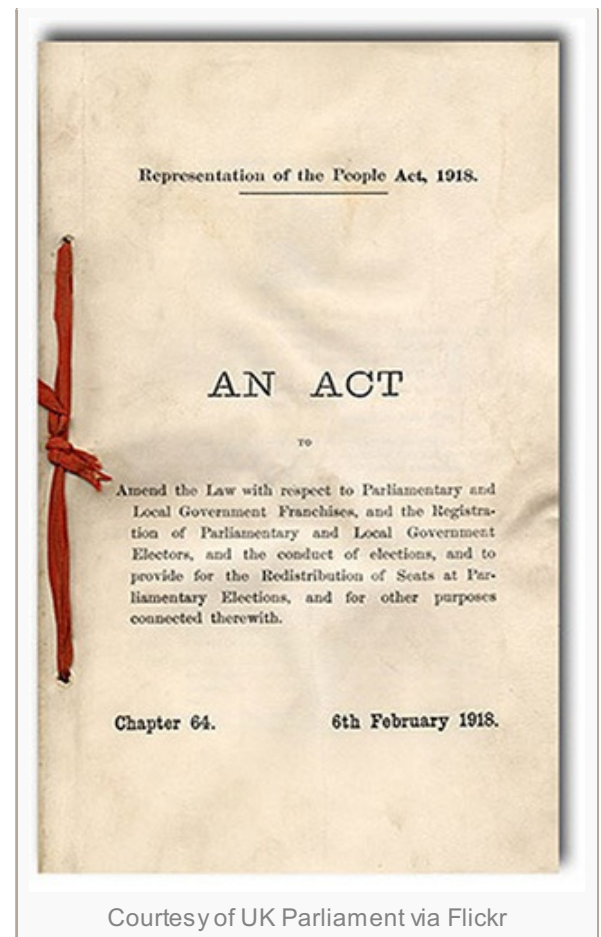
On the basis of past experience, the big challenge is likely to

be for the departmental civil servants in the bill teams, many of them surprisingly junior, as they try to work out exactly what answers the politicians would give to these questions of detail if the politicians had to think about them. (Minister often have not done so already, or will not willingly do so amongst the press of other business). Frequently politicians are themselves unclear about precisely what they want, and the policy officials have to guess – often on the basis of ministerial statements and policy documents known at one time to have had a minister's approval. The officials might run all this past the politicians to check, or they might be so confident they know the politician's will that they do not feel they need to.

Sometimes the bill team will come up with a good answer to the detailed policy questions and so Parliamentary Counsel will happily write up the recommendation in a draft clause, or the team might get a few detailed queries to answer. At other times they will get a reply from Counsel pointing out why something might be inadvisable, if not impossible. Such advice from the OPC usually means the departmental civil servants must go back to square one. If they are lucky this means just revisiting one clause or section; if they are unlucky they might have to rethink the whole basic design or structure of the legislation.

The “to-ing and fro-ing” between specialist Parliamentary Counsel, the departmental lawyer and the bill team is likely to bring in some subtle changes in lawmaking under a coalition. In the past it was frequently the junior minister who took day-to-day responsibility for dealing with the queries, problems and requests for clarification that were passed up to the ministerial level for a “policy steer”. A possible problem for the coalition government here is that it has junior ministers from two different parties. It is currently unclear whether there are to be inter-party arrangements for dealing with policy disagreements at this level of detail. Or perhaps secretaries of state, the top ministers in each department, will take a greater role in this process than they have in the recent past.

In 1875 Sir Henry Thring, the first head of the Office of Parliamentary Counsel and almost the patron saint of parliamentary drafters worldwide, provided the drafters' motto: “Bills are made to pass as razors are made to sell”. This is conventionally interpreted to mean that the text of legislation is a compromise thrashed out between many different stakeholders, rather than a technical legal exercise. The policy and legal civil servants are now doing the thrashing out, and the whole process has just got even more interesting. Under coalition government the kinds of inter-party debate usually associated with the legislative stage now become part of the hitherto secluded, if not calm, world of policy development within the executive branch.



Courtesy of UK Parliament via Flickr