

Parliamentary Scrutiny of Delegated Legislation: Lessons from Comparative Experience

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Abstract

Recent years have seen an increase in the use of delegated legislation to implement major policy decisions in the UK. This has exacerbated the longstanding criticism that Westminster lacks sufficiently robust procedures for parliamentary scrutiny of delegated legislation. However, the UK is not the only country to use delegated legislation, or to face the challenge of ensuring it receives adequate parliamentary scrutiny. This article therefore places the UK system in wider context by comparing it to six other national parliaments. We highlight one comparative strength of the UK system, two weaknesses it shares with the other six cases, and one way in which the UK might learn lessons from elsewhere. Overall, our evidence suggests that no one country offers a clear template for more rigorous parliamentary scrutiny of delegated legislation. Successful reform of the UK's system is likely to require creative procedural innovation.

Keywords: delegated legislation, House of Lords, House of Commons, parliamentary scrutiny, statutory instruments, Westminster, parliament

Introduction

RECENT YEARS have seen widespread concern about the increasing use of delegated legislation in the UK. Unlike primary legislation, delegated legislation is usually created by the executive, not Parliament. There are good reasons for delegating powers to ministers that allow them to set out technical policy details within broader frameworks established by Parliament. This facilitates flexibility, makes use of government departments' technical expertise and avoids placing excessive pressure on limited parliamentary time.¹ However, ministers have recently produced much more delegated legislation and have increasingly used it to implement major policy decisions rather than administrative technicalities. This process has been underway for several decades, but reached a new scale in ministers' handling of the Brexit process and the Covid pandemic. The increased use of delegated legislation has shown little sign of abating: for example, Rishi

Sunak's government has proposed bills on industrial action and retained EU law containing significant delegated powers.² A House of Lords committee has described the latter bill starkly as 'a mechanism that gives Ministers the power to decide what becomes of whole swathes of UK law'.³

This growth in the volume and policy significance of delegated legislation has exacerbated the longstanding complaint that the UK lacks sufficiently robust procedures for subjecting it to parliamentary scrutiny. Such scrutiny is important for ensuring democratic accountability, by allowing legislators to debate and potentially reject policy proposals. Many parliamentarians and external experts have long argued that the UK's current procedural arrangements are simply not adequate to this task.⁴ But recent trends

²Specifically, Strikes (Minimum Service Levels) Bill as introduced on 10 January 2023, s.3; see also Retained EU Law (Revocation and Reform) Bill, introduced on 22 September 2022, for example, ss.12, 13, 15 and 16.

³House of Lords Delegated Powers and Regulatory Reform Committee, *Retained EU Law (Revocation and Reform) Bill; Northern Ireland Budget Bill; Neonatal Care (Leave and Pay) Bill; Employment (Allocation of Tips) Bill*, 25th Report of Session 2022–23, HL Paper 147, p. 2.

¹J. King, 'The province of delegated legislation', in E. Fisher, J. King and A. Young, eds., *The Foundations and Future of Public Law: Essays in Honour of Paul Craig*, Oxford, Oxford University Press, 2020, pp. 146–147.

in the use of delegated legislation have given these complaints even greater weight and wider support. They have also been given a practical outlet, in the form of the Hansard Society's new Delegated Legislation Review, established in November 2021 to examine the UK's system for scrutinising delegated legislation and to suggest improvements.⁵

However, the UK is not the only country which uses delegated legislation. Though its scale and nature vary, delegated legislation of some kind is a ubiquitous feature of many modern democracies. So too is the challenge of ensuring it receives adequate parliamentary scrutiny. That challenge has caused concern across the world, in countries as far apart as Japan, Nigeria and Australia.⁶ Given this shared experience, we can obtain a useful perspective on the UK's system by placing it in comparative context. Asking how other countries' parliaments scrutinise delegated legislation can help to illuminate what aspects of the UK's system are distinctive or common, and might highlight alternative procedural options for UK policy makers to consider. Yet, discussions of UK reform have typically not drawn directly on experience elsewhere and—with some notable exceptions—there is a relative shortage of modern comparative academic studies of this topic which include the UK.⁷

⁴R. Fox and J. Blackwell, *The Devil is in the Detail: Parliament and Delegated Legislation*, London, Hansard Society, 2014.

⁵See B. Fowler, R. Fox, T. West and D. Vangimalla, *Delegated Legislation: The Problems with the Process. Introducing the Hansard Society's Delegated Legislation Review*, London, Hansard Society, 2021.

⁶See K. Musashi, 'Parliamentary control over delegated legislation in Japan', *European Journal of Law Reform*, vol. 21, no. 4, 2019, pp. 545–561; J. Benson, 'Delegated legislation in Nigeria: the challenges of control', *European Journal of Law Reform*, vol. 17, no. 3, pp. 403–423; L. Neudorf, 'Strengthening the parliamentary scrutiny of delegated legislation: lessons from Australia', *Canadian Parliamentary Review*, vol. 42, no. 4, pp. 26–32.

⁷See, for example, J. E. Kersell, *Parliamentary Supervision of Delegated Legislation: the United Kingdom, Australia, New Zealand, and Canada*, London, Stevens, 1960; C. B. Jensen and R. J. McGrath, 'Making rules about rulemaking: a comparison of presidential and parliamentary systems', *Political Research Quarterly*, vol. 64, no. 3, 2011, pp. 656–667; S. Rose-Ackerman, S. Egidy and J. Fowkes, *Due Process of Lawmaking: The United States, South Africa,*

This article, therefore, presents comparative evidence summarising how six other parliaments with a 'Westminster' heritage have equipped themselves to scrutinise delegated legislation. In particular, we have analysed the formal scrutiny mechanisms available to parliamentarians in Australia, Canada, India, Ireland, New Zealand and South Africa, to understand how they compare to those in the UK. This allows us to highlight the comparative strengths and weaknesses of the UK's system for scrutinising delegated legislation. In so doing, we hope to inform ongoing debates in the UK and to contribute to the wider understanding of legislatures' diverse responses to the challenge of ensuring adequate parliamentary scrutiny of delegated legislation.

Why does parliamentary scrutiny matter?

There are several principled and pragmatic reasons for ensuring delegated legislation can be subjected to adequate parliamentary scrutiny. Chief amongst these reasons is that parliamentary scrutiny confers greater legitimacy on laws. Parliamentarians can convey this legitimacy by virtue of being elected (at least in the House of Commons), and by representing a wider range of groups and voices, hence the basic constitutional requirement for primary legislation to receive parliamentary approval. Moreover, the very term *delegated* legislation reflects the fact that ministers are using specific powers granted to them by the parliament. Parliamentary scrutiny can thus prevent delegation of power becoming a complete abdication of power. Such scrutiny might also have practical benefits, highlighting deficiencies in either the policy content or the technical drafting of ministers' proposals. All these arguments for adequate parliamentary scrutiny grow more important, as delegated legislation deals to a greater extent with the substance of policy rather than technical details.

What might it actually mean for parliamentary scrutiny to be 'adequate'? Adam Tucker

Germany, and the European Union, New York, Cambridge University Press, 2015; S. Rose-Ackerman, *Democracy and Executive Power: Policymaking Accountability in the US, the UK, Germany, and France*, New Haven CT, Yale University Press, 2021.

offers a benchmark for answering this question.⁸ He begins from the observation that scrutiny of delegated legislation must necessarily be less rigorous and all-encompassing than scrutiny of primary legislation. Were it not, this would defeat the entire object of having delegated legislation: allowing ministers to carry out the time-sensitive and/or technical decision-making for which parliament lacks the necessary time and expertise. Tucker therefore suggests that within this limitation, parliaments should aim to adopt procedures that allow at least a minimal level of meaningful scrutiny. In practice, this means procedures which ‘require the Government to publicly defend the merits of its delegated legislative proposals, and run a genuine, even if only small, risk of them being voted down’.⁹ In other words, delegated legislation must face at least the potential of (a) being debated, and (b) being defeated.

It is widely accepted that the UK Parliament’s current system for scrutinising delegated legislation—which mostly comes in the form of ‘statutory instruments’ (SIs)—falls far short of this benchmark. The UK’s system cannot be summarised neatly, owing to the wide variety in types of delegated legislation and in the parliamentary processes for scrutinising it. But there are nonetheless some well-noted overarching patterns. First, there is almost no sustained debate of proposed delegated legislation, particularly by the elected lower house, and especially when it comes to proposals’ substantive policy merits (as opposed to other legal or technical criteria). The House of Lords does conduct at least some so-called ‘merits-based’ scrutiny through its Secondary Legislation Scrutiny Committee (SLSC) and in debates on the floor of the chamber. But the SLSC mostly ‘sifts’ SIs, identifying those which peers might wish to examine more closely on various grounds, rather than itself being a venue for much substantive policy discussion. The House of Commons appoints *ad hoc* Delegated Legislation Committees (DLCs) to scrutinise the policy content of some SIs, but they are largely seen within Parliament as a pointless chore, and outside Parliament—to the few who are even aware of them—as

entirely ineffectual.¹⁰ Further scrutiny of delegated legislation is provided by the Joint Committee on Statutory Instruments (JCSI), which draws its members from both Houses, but this committee explicitly does not scrutinise the policy merits of proposals. Instead, the JCSI considers proposals against various technical and legal criteria, which is valuable for highlighting procedural errors and missteps, but cannot confer the legitimacy that comes from asking ministers to defend their proposals under the threat of losing them.

Moreover, statutory instruments face almost zero risk of being defeated in the UK Parliament. Both chambers of Parliament usually have the formal power to reject SIs, though the precise mechanism depends on the applicable scrutiny procedures. The two most common routes are the ‘negative resolution’ and ‘affirmative resolution’ procedures; other more demanding procedures exist, but are used relatively rarely.¹¹ Instruments subject to the ‘negative resolution procedure’ become law by default unless either chamber votes to annul them; those subject to the ‘affirmative resolution procedure’ require active approval (usually from both chambers). Both procedures thus allow parliamentarians to vote down proposed delegated legislation. However, such defeats are vanishingly rare. In 2021 the Hansard Society recorded that ‘just six SIs have been rejected since 1950, and no SI has been rejected by the House of Commons since 1979’.¹² This pattern has distinct causes in each chamber. The House of Lords does regularly debate SIs, but generally avoids using its power to block them, exercising self-restraint owing to its wholly unelected composition. The elected lower chamber is under no such constraint, but ministers’ control of the Commons agenda often allows them to simply block or delay MPs’ attempts to vote down specific pieces of delegated legislation.¹³

The shortcomings of the UK’s system have become more notable and more widely noticed as the scale and policy significance of

⁸A. Tucker, ‘Parliamentary scrutiny of delegated legislation’, in A. Horne and G. Drewry, eds., *Parliament and the Law*, Oxford, Hart, 2nd edn., 2018.

⁹*Ibid.*, p. 363.

¹⁰Fowler, et al., *Delegated Legislation*, pp. 18–20.

¹¹The standard scrutiny procedures for most statutory instruments are set out in the Statutory Instruments Act 1946, ss.4–6.

¹²Fowler, et al., *Delegated Legislation*, p. 16.

¹³Fox and Blackwell, *The Devil is in the Detail*, pp. 78–79.

delegated legislation has grown. New laws passed during the Brexit process have handed ministers the power to determine major details of various post-Brexit policy frameworks, in areas such as agriculture, environmental protection and immigration. Many of the restrictions introduced during the pandemic were likewise delivered by ministers with little or no parliamentary oversight. The Sunak government has continued to include broad delegated powers in its proposed legislative programme—as evidenced by the powers contained within the Strikes (Minimum Service Levels) Bill and the Retained EU Law (Revocation and Reform) Bill.¹⁴

These trends in ministers' use of delegated legislation have contributed to a growth in the political attention paid to the issue of parliamentary scrutiny. Concerns about the system have become more severe and have spread beyond the usual cast of think tanks, academics, concerned peers and the small handful of MPs with the time and inclination to reflect thoughtfully on their own procedures. For example, two Lords' committees issued simultaneous reports on the matter in November 2021, with their strength of feeling conveyed by rather punchier titles than usual: *Democracy Denied?* and *Government by Diktat*.¹⁵ A number of prominent MPs from across the party divide, including Labour's Angela Eagle and Thangam Debbonaire, and the Conservatives' Steve Baker and Mark Harper (who have both since become ministers) spoke at the launch of the Hansard Society's Delegated Legislation Review in 2021.¹⁶ This topic was

even highlighted as a problem in a July 2022 speech by former prime minister, Theresa May, who was herself accused of excessive resort to delegated powers during the Brexit process.¹⁷ Inadequate parliamentary scrutiny of delegated legislation is thus an important problem, with a potentially growing audience for solutions.

Our approach

Our goal in this short article is to understand what formal procedures are in place for parliamentary scrutiny of delegated legislation in a set of other similar democracies, to gain better comparative context for the UK's own rules. We focus on six cases: Australia, Canada, India, Ireland, New Zealand, and South Africa. These cases vary in geography, size and constitutional arrangements (such as federalism and bicameralism). They also vary in how far their constitutions explicitly acknowledge and constrain parliamentary delegation to the executive. But they all share a colonial past as former parts of the British empire, which has left common legacies in their parliamentary procedures and legal systems, hence the tendency of some to describe these loosely as 'Westminster' parliaments. This increases our ability to meaningfully compare these systems to each other and to the UK, while being mindful that they each face very different constitutional and political contexts.

For each of these six countries' national parliaments, we identify the formal mechanisms available for parliamentary scrutiny of delegated legislation. For these purposes, we defined delegated legislation as legislation created by the executive under powers specifically granted by the legislature.¹⁸ This working definition excludes primary legislation made by the parliament, and any non-delegated powers inherently granted to the

¹⁴Strikes (Minimum Service Levels) Bill as introduced on 10 January 2023, s.3 which contains a prospective Henry VIII power (s.3(2)(b)); see also Retained EU Law (Revocation and Reform) Bill, as introduced on 22 September 2022, see s.12, 13, 15 and 16 which confer vast powers onto the 'relevant national authority'.

¹⁵House of Lords Delegated Powers and Regulatory Reform Committee, *Democracy Denied? The Urgent Need to Rebalance Power Between Parliament and the Executive*, 12th Report of Session 2021–22, HL Paper 106; House of Lords Secondary Legislation Scrutiny Committee, *Government by Diktat: A Call to Return Power to Parliament*, 20th Report of Session 2021–22, HL Paper 105.

¹⁶Hansard Society, 'Launching Our Delegated Legislation Review: powers, procedures, politics and time', *Hansard Society Blog*, 9 November 2021; <https://www.hansardsociety.org.uk/blog/launching-our-delegated-legislation-review-powers-procedures-politics-and>

www.instituteforgovernment.org.uk/events/james-brokenshire-lecture

¹⁷Institute for Government, 'The James Brokenshire lecture on public service: delivered by the Rt Hon Theresa May MP', 7 July 2022; <https://www.instituteforgovernment.org.uk/events/james-brokenshire-lecture>

¹⁸For a much deeper exploration of this tricky definitional issue, see A. McHarg, 'What is delegated legislation?', *Public Law*, Autumn 2006, pp. 539–561.

executive by the constitution (such as the power to issue decrees). It proved reasonably straightforward to identify the types of law-making which met this definition in each case. Though the precise terminology varies between and within countries, the most prevalent terms are ‘legislative instruments’ in Australia and New Zealand, ‘statutory instruments’ in Canada and Ireland (as in the UK), and ‘subordinate legislation’ in Ireland and New Zealand.

We used three main types of empirical source for this work: academic literature, procedural information from the parliaments themselves (both in the text of formal rules and authoritative commentary on those rules) and primary legislation. Taken together, these allowed us to summarise the institutional arrangements in place for parliamentary scrutiny of delegated legislation in each jurisdiction. Naturally these formal rules are only part of the picture, as they cannot tell us how legislators actually behave in practice. But they at least demonstrate the formal framework that legislators operate within and the institutional tools which they could call on if they so wished.

This procedural data allows us to evaluate the comparative strengths and weaknesses of the UK’s procedures in fulfilling the criteria described above: allowing proposed delegated legislation to be debated and to be put to a vote. In the remainder of this article, we highlight some of these comparative strengths and weaknesses.

Comparative strengths

Our research highlighted one particular strength of the UK system: it has a well-established mechanism for conducting detailed technical and legal scrutiny, in the form of the Joint Committee on Statutory Instruments. This committee of peers and MPs scrutinises a large number of instruments on a weekly basis and decides whether to draw them to the attention of either House. It may also directly engage with government departments before issuing its report on an instrument, in order to seek further information. As highlighted above, the JCSI scrutinises the technical quality of instruments, rather than their substantive policy merits. This scrutiny entails assessing each instrument against

a wide set of criteria, such as whether its drafting is defective and whether it makes unexpected use of the original delegated power. Ultimately, the JCSI lacks any formal power to block or amend instruments, even when it has serious objections. Nonetheless, it considers a large number of instruments, conducts serious and detailed scrutiny, and wields some influence with government departments.¹⁹ The JCSI thus represents an imperfect, but valued, arena for detailed technical scrutiny of delegated legislation.

This places the UK in line with the better-equipped legislatures among those we’ve studied. We identified similar committees in four of our six cases: Australia’s Senate Standing Committee for the Scrutiny of Delegated Legislation, Canada’s Standing Joint Committee for the Scrutiny of Regulations, New Zealand’s Regulations Review Committee, and the Committees on Subordinate Legislation in each chamber of the Indian Parliament. These committees hold similar formal roles: conducting detailed scrutiny of delegated legislation, but with an overwhelming focus on technical scrutiny, rather than merits-based scrutiny. Despite some variation in the criteria used by these committees, they are broadly similar and overlap closely with those used by the JCSI at Westminster. There also appears to be some variation in the share of delegated legislation which actually receives this kind of committee scrutiny. In particular, the Indian Committees on Subordinate Legislation have been criticised for only considering and reporting on a small portion of all delegated legislation.²⁰ Notwithstanding this variation, at a broad level, specialised scrutiny committees are a common feature that gives these four other parliaments a potential arena for detailed technical examination of delegated legislation.

The two other jurisdictions we studied—Ireland and South Africa—have an altogether different model. They do not have any permanent committee focussed specifically on scrutinising all delegated legislation against legal and technical criteria. They do

¹⁹See Fox and Blackwell, *The Devil is in the Detail*, pp. 87–90; 199–207.

²⁰J. Singh and R. P. Dash, ‘Parliamentary control of delegated legislation’, in A. K. Mehra, ed., *The Indian Parliament and Democratic Transformation*, London, Routledge India, 2018, pp. 233–250.

have procedures which allow delegated legislation to be referred to more general scrutiny committees monitoring a particular government department or policy area, but which don't ensure any sustained scrutiny. The Irish Seanad had a Select Committee on Statutory Instruments until the 1960s and South Africa briefly experimented with an interim Joint Committee on Scrutiny of Delegated Legislation between 2011 and 2014. Today, however, it appears that both parliaments lack any permanent committee dedicated to general scrutiny of delegated legislation.

Studying these six other parliaments therefore suggests that one aspect of the UK's system—the JCSI—is a comparative strength, providing a specialised arena for technical scrutiny of delegated legislation. Such an arrangement is not unique to the UK, but nor is it ubiquitous, meaning the UK ranks alongside the better-equipped parliaments we studied in this regard.

Comparative weaknesses

Our comparative evidence also provides valuable context for three weaknesses of the UK's system. The first two are weaknesses the UK appears to share with the other cases studied here. The third is an area where the UK might potentially draw lessons from other parliaments.

First, the UK shares a common weakness with the other systems studied here: the lack of any focussed arena for merits-based scrutiny. This was a notable absence from all six parliaments. As highlighted above, while four of the six cases have specialised delegated legislation committees, these all conduct technical scrutiny of proposals rather than considering their policy merits. Beyond committees, these other parliaments do generally have at least some provision for delegated legislation to be debated on the floor of one or (where relevant) both chambers. Such debates may not provide detailed expert analysis of the kind encouraged in committees, but might have other distinct advantages, if their prominence allows for more of the public justification and discussion that can help lend legitimacy to delegated legislation. However, the extent of these debates is variable and usually short. Indeed, debates are sometimes reduced to a proposal being moved and then voted on, without any discussion at all. They thus seem a poor

substitute for having a specific parliamentary arena devoted to merits-based scrutiny of delegated legislation.

On paper, one might think that the UK was comparatively well-equipped in this regard, with the Commons' Delegated Legislation Committees providing the kind of policy-focussed scrutiny arena which other parliaments lack. However, as highlighted above, DLCs are in fact one of the most widely criticised parts of the UK's system. Debates in these committees are typically brief, superficial, opaque and ill-informed, and have been characterised as 'a wholly unsatisfactory way to consider legislation of any kind and a waste of Members' valuable time and resources'.²¹ The Lords' SLSC conducts more extensive scrutiny than DLCs, but is largely concerned with 'sifting' and raising concerns for the wider chamber, rather than conducting extensive political debates. In practice therefore, the UK Parliament—and particularly the elected Commons—lacks any effective arena for merits-based scrutiny, leaving it little better off than its comparators.

A second shared weakness among these cases is a lack of effective amendment power. Such a power would allow parliamentarians to raise objections to proposals and potentially to change them, short of outright rejection. The UK Parliament has no formal power to amend most delegated legislation. The same appears to be largely true in Australia, Canada, Ireland and South Africa. While there is some formal scope for amendment in New Zealand and India, various procedural obstacles can limit the use of these parliaments' powers in practice. This may explain why, as of 2017, the New Zealand Parliament had used this power just once, in 2008 (and even that one instance was at the instigation of a government minister).²² Amendment powers in these other parliaments seem to be either entirely absent or formally permitted but little-used.

Finally, and more constructively, there is one area where our analysis suggests the UK might learn lessons from other parliaments, rather than simply sharing common weaknesses with them: agenda control. As touched

²¹Fox and Blackwell, *The Devil is in the Detail*, p. 185.

²²M. Harris and D. Wilson, eds., *Parliamentary Practice in New Zealand*, Auckland, Oratia, 4th edn., 2017, p. 474.

on above, one of the key weaknesses of the UK's system is the inability of MPs to insist on debating a particular statutory instrument, especially if it is subject only to the 'negative resolution' procedure. Such debates are pursued through the rather archaic process of laying a 'prayer' motion, and the government is generally able to block such motions from the Commons agenda. This largely prevents the elected and politically dominant portion of Parliament from holding debates on delegated legislation and exposing controversial or contested delegated legislation to public scrutiny. Similar complaints have been made about the government's agenda control in the Indian Parliament.²³ By contrast, several of the countries studied here—particularly Australia, Canada, and New Zealand—do have procedural mechanisms for ensuring opposition to delegated legislation cannot simply be ignored or delayed indefinitely by ministers.

One such mechanism is to specify that motions proposing to 'disallow' (that is, repeal) a piece of legislation have to be discussed at a certain point in the week, within a certain time period, or at a time demanded by the proposer. Such a rule exists in the Australian Senate, where motions to disallow an instrument are classified as 'Business of the Senate' and so take precedence over other business on the day for which they are set down. An alternative method for circumventing agenda control is to specify that motions for disallowance automatically take effect if they are not dealt with in some way within a certain timeframe. This means ministers cannot simply block such motions without also losing their proposed delegated legislation. A procedure of this kind exists in Australia (with a fifteen sitting day period for the government to respond to notice of a motion to disallow), and is available to all members in both Houses. The fact such motions take effect automatically if not dealt with means that typical practice in the House of Representatives is for ministers to allow them to be moved and debated during government time. Similar procedures exist in Canada (again with a period of fifteen sitting days) and New Zealand (with a period of twenty-one sitting days), but these

are more limited tools as they only apply to motions tabled by certain members.

Naturally, enhancing non-government actors' ability to secure Commons debates on statutory instruments involves a trade-off. Allowing more frequent and extensive debates must be balanced with ensuring there is some way to limit debates (as the Commons has finite time), and prioritise among them (as that time should be spent wisely). Unconstrained power to trigger debates could risk motions being used excessively even for uncontroversial regulations, with the intent—or effect—of taking time away from other important parliamentary business.

Perhaps for these reasons, some of the cases studied here limit the members who can trigger debates or votes on statutory instruments, and/or the grounds on which they can do so. For example, in Canada attempts to revoke regulations under s.19.1 of the Statutory Instruments Act 1985 can only be triggered by a report from the Standing Joint Committee for the Scrutiny of Regulations, which focusses on technical rather than merits-based scrutiny. This process therefore drastically curbs the ability of Parliament to reject delegated legislation for substantive policy-based reasons. A similar provision exists in New Zealand whereby only members of the Regulations Review Committee can table motions of disallowance that automatically take effect if not addressed within twenty-one days.

Taken together, our evidence suggests that the UK Parliament might fruitfully consider ways to ensure MPs can more easily obtain debates on statutory instruments that cause them concern. It is unlikely that this would lead to delegated legislation suddenly becoming a regular focus of attention inside or beyond Parliament. It also seems unlikely that such changes would lead to many more statutory instruments being defeated. However, reform might ensure that more delegated legislation gets the publicity and scrutiny, and potentially the legitimacy, that can come through public political discussion. In turn, this might incentivise governments to craft statutory instruments with more of an eye on parliamentary and public opinion, anticipating these later clashes. Any such mechanisms would need to be carefully designed, to balance the benefits and downsides. But other parliamentary chambers offer some approaches which might be considered.

Placing the UK in comparative context thus highlights some weaknesses it shares with

²³K. A. Abraham, 'Delegated legislation: the blindspot of the Parliament', *The Wire*, 16 May 2019; <https://thewire.in/government/delegated-legislation-parliament-executive>

the other cases we have studied. The Westminster Parliament is like the six other legislatures considered here in lacking any specific arena for detailed merits-based scrutiny by MPs, and an ability to regularly amend delegated legislation. However, there are also ways in which the UK might learn lessons from elsewhere about how to ensure that MPs' opposition to delegated legislation cannot be entirely stifled.

Conclusion

This short article has aimed to provide comparative context for the UK Parliament's procedures for scrutinising delegated legislation. In particular, we have studied six other parliaments, asking how far they have the institutional tools required for adequately scrutinising delegated legislation. This has allowed us to evaluate the UK system's comparative strengths and weaknesses.

The UK system clearly has many deficiencies, especially in the House of Commons, which have been widely and persuasively highlighted elsewhere. However, our comparative analysis has shown that these deficiencies are neither unique to the UK nor significantly worse in the UK than elsewhere. Despite wide procedural variation across parliaments, the UK's system appeared more well-developed than the procedures in two of our chosen cases (Ireland and South Africa). The other four cases (Australia, Canada, India, and New Zealand) share the UK system's broad features: established mecha-

nisms for technical scrutiny of delegated legislation, but scant tools for effective merits-based scrutiny.

Looking beyond the UK has highlighted some possible lessons for how to ensure MPs are able to air their concerns about specific pieces of delegated legislation. Australia, Canada and New Zealand have procedures which can make it harder for ministers to simply block or ignore attempts to object to proposed delegated legislation. Given that the UK system is frequently criticised for allowing ministers to do this in the House of Commons, parliamentarians might consider whether international experience offers tools which could be borrowed and adapted.

Our findings may also hold a wider lesson. Not one of the countries we studied offers a clear template for how to ensure more effective parliamentary scrutiny of delegated legislation. It seems unlikely that the solution to the UK's problems lies in taking an existing model from another parliament and adapting it to the needs of Westminster. Successful reform appears to require procedural innovation and creativity as well as learning from elsewhere.

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