

How laws are made in the UK and how to influence the law-making process:

About ILPA:

ILPA is a professional association with some 1,000 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum, through training, disseminating information and providing evidence-based research and opinion. ILPA is represented on numerous government and other stakeholder and advisory groups.

Further information about ILPA is available from our website: www.ilpa.org.uk

- Parliamentary briefings and submissions are available in the “Briefings” section of the website
- Consultation responses are available in the “Submissions” section of the website
- Concise information on a range of immigration law matters is provided on information sheets available in the “Info Service” section of the website

Law & law-making:

There are many sources of law:

- Legislation – primary (e.g. Acts of Parliament) and secondary (e.g. Statutory Instruments). Primary legislation is made by Parliament, though nearly all of it emanates from Government. Secondary legislation is made by Government, but with parliamentary approval. (In UK immigration law, the Immigration Rules are a particular form of law made by Government, similar to secondary legislation.)
- Policy – much law (particularly minutiae as to the process by which and criteria to which powers may be exercised by Government or those to whom Government has delegated authority is set out in policy instructions and guidance).
- Common law & caselaw. Common law is understood to be the unwritten underlying legal principles running through UK law, as interpreted over the years by the courts. Caselaw may consist of judicial interpretation of common law or other sources of law (e.g. legislation).
- European law – the law of the European Union, adopted by the UK by the European Communities Act 1972.
- International law – including Treaty obligations, e.g. 1950 European Convention on Human Rights (ECHR), 1951 UN Convention relating to the Status of Refugees (UNCSR) and 1989 UN Convention on the Rights of the Child (UNCRC). However, in UK law, Treaty obligations are not automatically incorporated on the Government signing the Treaty. (Nb. the ECHR is not within European law.)

The Parliamentary process – from a Bill to an Act:

To pass through Parliament a Bill must pass through both Houses; and be agreed by both Houses (with one exception – see below). The process described below begins in the House of Commons. However, a Bill can begin progress in either House, provided it ultimately passes through both Houses.

- Bill is introduced to the House of Commons (First Reading)
- Bill is subject to a debate on the floor of the House of Commons (Second Reading)
- Bill is subject to scrutiny by Committee (a Public Bill Committee of MPs scrutinises the Bill, amendments may be debated, evidence may be taken)
- Outcome of Committee's scrutiny is reported to the House of Commons (Report)
- Bill is subject to a debate on the floor of the House of Commons (Third Reading)
- Bill is introduced to the House of Lords (First Reading)
- Bill is subject to a debate on the floor of the House of Lords (Second Reading)
- Bill is subject to scrutiny by the House of Lords (or a Grand Committee of the House of Lords) (amendments may be debated)
- Outcome of scrutiny is reported to the House of Lords (Report)
- Bill is subject to a debate on the floor of the House of Lords (Third Reading)
- Bill returns to the House of Commons for debate on the floor of the House if there has been any amendment since the Bill left that House; if further amendments are made the Bill will pass between both Houses for debate of any amendments until it has been approved in full on the floor of both Houses (Ping Pong)
- (If the two Houses cannot agree, either the Bill fails and is abandoned or the Commons prevails after approving Bill successively through Ping Pong)
- Bill receives Royal Assent (it becomes an Act)

This process may take several months; and the Committee scrutiny stages may take several weeks.

The Parliamentary process – secondary legislation:

The power for Government to make secondary legislation is generally contained in one or other Act of Parliament. The Act will state what power is given to the Government to make this law, and how it must be approved by Parliament. Approval is generally by one of two routes:

- Affirmative resolution: Parliament must formally approve the secondary legislation before it becomes law
- Negative resolution: Parliament may formally disapprove the secondary legislation after it becomes law, in which case it must be withdrawn

Whether the particular piece of secondary legislation falls within the affirmative or negative resolution procedure, Parliament generally has no power to amend it (cf. a Bill)

Key opportunities for lobbying and influencing are:

1. **Consultation:** Government often puts changes in policy or proposals for legislation out for consultation. Where there is a public consultation, the consultation document should explain to whom responses must be sent and by when. Often the consultation document will pose

specific questions for consideration. When responding to a consultation it may be sensible to seek to provide responses to the set questions, but if these do not properly allow for a full response it is quite acceptable to go beyond these questions.

2. Pre-legislative scrutiny: Sometimes the Government may invite scrutiny on draft legislation – e.g. the draft (partial) Immigration and Citizenship Bill, which was published in July 2008 and is currently receiving scrutiny from the Home Affairs Committee and Joint Committee on Human Rights.

3. Parliamentarians: Areas of concern may be raised directly with parliamentarians – e.g. correspondence and/or meeting with constituency MPs in advance of the introduction of a Bill provides a valuable means to highlight areas and level of concern to which MPs may need to react when the Bill is introduced.

4. Select Committees: Select Committees regularly review Government policy and administration. Committees have pages on the Parliamentary website giving information as to their future, current and past work. Providing evidence to a Committee in the context of a formal inquiry by that committee will usually be published, and the Committee's report may influence current or future law-making.

5. Prior to Second Reading: The Second Reading debate of a Bill will not discuss amendments. However, it is the time for Parliamentarians to express significant areas of concern in relation to the Bill. If a major issue is not raised at this stage, it may appear to be less of a concern if raised later.

6. Public Bill Committee stage: This is the first opportunity for Parliamentarians to put forward and debate amendments to a Bill. For any amendments to have real momentum behind them, it would be better if the area of concern (not the amendment) had been raised at Second Reading.

7. Other stages of a Bill's progress: Amendments may be raised at later stages. However, after Report there are restrictions on what matters may be returned to at Third Reading. Also, if areas of concern have not been pursued at earlier stages, these may have little or no momentum. Ping Pong is not a stage for raising new amendments; it is a process specifically for seeking to reach agreement on outstanding matters between the two Houses.

8. House of Lords: The foregoing comments on the stages of a Bill's passage broadly apply to both Houses. However, since the Government holds a majority in the House of Commons, it is often the House of Lords where the Government may come under most pressure. Nevertheless, for reasons of momentum, concerns expressed in the Commons may prove helpful for peers who are interested in pursuing these or similar concerns in the Lords.

9. Ministerial Statements: Even where lobbying does not succeed in securing an amendment to legislation, it may result in a statement by the Minister. These statements may act as Government commitments. In some instances, they may be used by courts to interpret legislation. In other instances, they may be useful for parliamentarians to return to in the future if the commitment has not been kept and there is a later opportunity to legislate. (Statements by front bench opposition spokespeople may sometimes also be important.)

10. Other parliamentary procedures: Other tools for lobbying Government in parliament include – parliamentary questions (PQs), early day motions (EDMs) and opposition or other debates.

Steps that may be taken in order to lobby and influence and further thoughts:

1. Written evidence to a Public Bill Committee that is expressly subjecting a Bill to scrutiny will be published on the Committee's website. Evidence in response to an inquiry by a Select may be published in the Committee's report. Such evidence may be discussed in debates or in a Public Bill Committee's scrutiny sessions, and these debates will be recorded.

2. Written evidence to a Committee may be sent to the Clerk to the Committee. However, it is useful to check who are the Committee members. This may be useful knowledge for lobbying an individual parliamentarian or seeking to influence the Committee (e.g. if your constituency MP is on the Committee).

3. Letters to MPs or peers (or Ministers) may help to raise their level of interest in a particular area. However, it is useful to consider how to influence any individual parliamentarian/Minister (e.g. what is known of their interests in the area? what have they said previously on the subject? in the case of an MP, are they your constituency MP? who do you know and/or who can you influence, that may influence them?).

4. Broadly speaking, it is important to consider both what and who may influence parliamentarians. In general, it is necessary to keep things simple; and where possible support any particular concern with examples – all the better if the examples are real.

Concluding observations:

These notes are not, and are not intended to be, comprehensive.

Lobbying can be a complex and long-term activity, though in particular circumstances lobbying may be necessary and success achieved over a relatively short period. In many instances, lobbying may link to campaigning activity or litigation – neither of which are discussed here.

In most cases, seeking to ensure consistency of lobbying activity and inclusion of so broad a constituency as possible will be vital. Nothing can be more debilitating to successful lobbying than counter-productive lobbying by others, with similar sympathies but who have adopted inconsistent strategies or demands. During a Bill's passage through Parliament, in particular, time is precious – so time needlessly or unproductively diverted to a poor amendment or ineffective issue may cause a significant opportunity on a related or different issue to be lost.

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