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More on the Local Government Bill

Last week I wrote about the Local Government Bill. This contains major provisions for revolutionising our local authority structure, and in clause 68 proposes to repeal the notorious section 28 (directed against promoting homosexuality). The Bill, which started in the House of Lords, began its committee stage on January 25. Clause 68 was not reached, so the threatened anti-gay revolt was put off to another day.

The committee stage began with another row, on a topic I also mentioned last week. This was the novel procedure whereby a Government Bill is first published in draft. A former MP for Yeovil, Lord Peyton, opened for the Conservative Opposition by saying it was a rotten Bill, made worse by this new-fangled procedure. The Government had already put down no less than 284 amendments for committee stage, arising from consultations under the new procedure. More were threatened. In its second report (December 15 1999) the Delegated Powers and Deregulation Committee said (paragraph 2) "We do not think it satisfactory to proceed in this way".

Lord Elton asked the Government spokesman to explain how such an astonishing number of amendments had arisen in the department without the aid of any debate in the Commons. "Normally when one receives an enormous raft of amendments it is as a result of debates in another place, where the Government have had matters drawn to their attention which, sensibly, they then seek to put right . . . why were these amendments not suggested before the Bill was printed and put before your Lordships' House?"

For the LibDems Baroness Hamwee added her voice to these critical comments, and twisted the knife. Why, when asked for a version of the Bill with the Government amendments written in, was the Minister's office forced to use old-fashioned physical cut-and-paste methods rather than modern technology? That sits ill with this Government's proclaimed devotion to "modernisation".

Last year's New Law Journal contained an article by the First Parliamentary Counsel (page 798) explaining the new system of providing explanatory notes to Bills, including "the full wording of provisions that are being textually amended by the Bill". It is a historical curiosity that, although it has only recently been generally adopted, I myself first devised and used this sort of textual memorandum over a quarter of a century ago (see my *Statutory Interpretation,* 3rd edn, page 489). Computers have advanced amazingly since then, so why was Baroness Hamwee made to suffer in this primitive way?

She did not suffer alone. "I had already mentioned to a number of interested outside organisations", she told the House, "that the Minister had agreed to produce a revised version. Those organisations were pleased because their lives would have been made easier and they had expected to be able to see that version through electronic means . . . I am sure noble Lords will agree that such outside bodies often provide invaluable assistance with their comments on how proposed legislation may affect their areas. I am sad that in this case the Government were unable to make use of modern technology."

Lord Dixon-Smith pointed out that there is also another document, 160 pages of it, which sets out, as part of the new-fangled consultation procedure, Consultative Drafts of Proposed Guidance and Regulations on New Constitutions for Councils. "So not only are we dealing

with a major Bill which is to be changed in a dramatic way; much of the detail, the body and the substance of what is going to affect local councils, is in another document which is not before us."

The reply for the Government was given by Lord Whitty, better known in former days as Larry Whitty, general secretary of the Labour Party. He said he was not prepared to be abashed about the tabling of amendments. Many areas of the Bill had been subjected to "a new and very important innovation in the way we approach legislation in this Parliament . . . Clearly, we are still on a learning curve in relation to pre-legislative scrutiny".

Lord Peyton queried the fact that clause 1 gives a local authority power to "do anything they consider likely to achieve" any of the new objects the Bill allots. He proposed an amendment to remove "they consider", making the test objective rather than subjective. Lord Whitty retorted that the Bill was a very important turning point in broadening freedom of choice for local government, and putting back responsibility on to local councils for looking after the wellbeing of their communities. Wednesbury rules would apply, and that was sufficient safeguard. Lord Peyton's amendment would leave remote courts, and not aware local councils, to decide what activities could be undertaken. That was the opposite of what was desirable.

The House agreed with Lord Whitty, defeating the Peyton amendment by 126 votes to 84.

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