



Life in law - Audio

The legislative process

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CONTRIBUTORS

Introduction Keren Bright (KB)

Principal Contributors Rosemary Davies (RD)
Legal Director
Ministry of Justice, London

Sir Stephen Laws KCB QC (SL)
First Parliamentary Counsel 2006-2012

Other voices various members of the legal team (at 2' 47")
Ministry of Justice, London

Introduction - KB **Dangerous dogs, identity cards and now legal aid - just some of the legislation that solicitor Rosemary Davies has worked on as a Government lawyer. Today she has a meeting with Sir Stephen Laws, First Parliamentary Counsel. But beforehand we catch up with her at her office.**

RD My name is Rosemary Davies. I'm one of two Legal Directors at the Ministry of Justice in London. We're just round the corner from Whitehall, and very close to the Houses of Parliament. My colleague and I supervise a team of around 60 lawyers who are responsible for advising the Secretary of State for Justice, Kenneth Clarke, who's also the Lord Chancellor. A large part of what we do is working on legislation.

It's about 9.30 in the morning. I'm in the coffee bar in the atrium of the Ministry of Justice, getting a well-earned cup of coffee before going back upstairs. I've already been here for an hour or so preparing for the day's meetings, catching up on the overnight emails - though these days, with a BlackBerry, work doesn't stay in the office.

Lift atmos: 'Doors closing, doors closing, doors closing' . . .

RD We're just coming into the 6th floor, which is where Legal Directorate is. We're in an open plan office. There's a team of lawyers working on legal aid and legal services; they're very busy on our current Bill, which

is Legal Aid, Sentencing, and Punishment of Offenders. Another team of lawyers specialise in the sentencing aspects, and there's criminal lawyers working on the new criminal offences in the Bill. We have a number of other teams here: Civil and Family Team - they're working on the Family Justice Review; there's an Information and Human Rights Team; we also have a Constitutional Law Team - they give legal advice and provide legal services to the Deputy Prime Minister, Nick Clegg. He's responsible for constitutional and political reform so they've had a busy time. Now they're working on the House of Lords Reform Bill, currently being consulted on by a special committee in Parliament.

Now it's 10 o'clock. I'm off to a meeting about the Legal Aid and Sentencing Bill. These happen a couple of times a week while the Bill's in Parliament. The lawyers get together with the Bill team, make sure we're prepared for the next stage. We call it the 'bird table'; not quite sure why. I think it's because we stand around and whoever happens to be in the office comes, and it's quick.

2' 47"

Office atmos: sound of footsteps and people congregating . . . 'Morning . . . Morning . . . Well, on legal aid we've got over a hundred at the moment . . .'

RD

Although I work for the Government now, I started out as a solicitor in private practice. It was a legal aid practice and we specialised in immigration and judicial reviews against the Government. After I had a period of maternity leave, I was looking for a job I could do part-time and I was attracted by an advertisement for the Home Office. I worked part-time at the Home Office while my three sons were growing up. Then I moved to the Ministry of Justice in 2007, moved from criminal to constitutional law, and then became one of the Legal Directors here.

I've worked for administrations of every main political party: Labour, Conservative, and now Liberal Democrat. As civil servants and lawyers, we're neutral on the policy, and we deliver what the elected Ministers want. That can change, of course. The Identity Cards Act we introduced once in 2004, and got it through the Commons. There was a General Election. We had to go back and start all over again, got it through the Commons and the Lords again, had a record number of what's called 'ping-pong', where it moved from the Commons to the Lords and back again for over six weeks - I think we had five 'pings' and five 'pongs' - eventually made it to the statute book and then it was repealed last year. But never mind.

Bills have their origins in different places. Some come from party manifestos. At the moment, with a coalition Government, what matters is what made it into the Coalition Agreement. So some of the Bills we've been working on - Legal Aid and Sentencing foreshadowed in the Coalition Agreement, Fixed Term Parliaments Bill, and the Referendum on Alternative Vote System - were all contained in the Coalition Agreement. Other ones you don't know about in advance; they're a response to real life events - Dangerous Dogs, the series of horrific

attacks on children by dogs. The Government was under a lot of pressure to do something. In fact, the *Daily Star* had a headline, 'You wet windbag' with a photo of the Home Secretary at the time, Kenneth Baker. And spurred on by the tabloid newspapers, he did something; he introduced the Dangerous Dogs Bill.

I'm off to a meeting now at the Offices of Parliamentary Counsel, to see Sir Stephen Laws, First Parliamentary Counsel, to discuss the legislative programme for next Parliamentary session. We see a lot of Stephen and his colleagues because they draft all the Bills. The relationship between Ministry of Justice lawyers and Stephen's lawyers is a bit like instructing solicitors and counsel. We are the go-betweens with the clients - Ministers and senior policy officials here - and Stephen's team produce the draft which is then introduced into Parliament. Their offices are in Whitehall so the quickest way to get there is across St James's Park, through the back of Horse Guards Parade, and it'll take us about 10 minutes. Luckily, it's a lovely day.

6' 26" ***Walking through St James's Park - sound of leaves crunching underfoot - sound of entering office***

SL Hello, Rosemary.

RD Morning, Stephen.

SL Good to see you again.

SL My name is Stephen Laws, and I'm the First Parliamentary Counsel. My job as First Parliamentary Counsel and Head of the Office is to deliver the Government's legislative programme. A five year Parliament is divided into a number of sessions, normally a year long, and the Government has a programme of legislation to get through each of those sessions. I have to make sure all the Bills are drafted in time to be introduced and to pass through Parliament in the way that the Government wants them.

The Office of the Parliamentary Counsel is over 140 years old. It was founded in 1869 in order to bring consistency to legislation when legislation previously had been drafted by different barristers in the legal profession. The First Parliamentary Counsel was Henry Thring, later Lord Thring. There's a picture in front of me of Lord Thring in a garden, carrying a bowler hat and with a cane, and Victorian whiskers that went right round his face and under his chin.

My responsibilities as Head of the Office mean that I don't do a lot of drafting myself anymore - I've done quite a lot in the past - but I do get involved in constitutional matters, and if there is legislation on a constitutional matter I'm likely to look at that. A reason for that is that one of my other responsibilities is to advise the centre of Government on constitutional issues, such as the appointment of Ministers and recently the formation of Government. I joined the Parliamentary Counsel Office in 1976 and have been here ever since. I became First Parliamentary Counsel in 2006 so I've been doing that job for getting on for six years now, but I've been a drafter for the best part of 36 years.

When a set of instructions comes in from Rosemary's team, my job is to make sure there's a team of drafters to get on with the Bill. In fact, we have six teams here, and one of them will be the first port of call for Ministry of Justice legislation. So I will say to the team leader of that team, 'Do you have enough capacity to take on another MOJ Bill?' and, assuming he says, 'Yes', I shall allocate the Bill to that team and the team leader will put together a number of drafters to work on that Bill. There'll always be more than one drafter working on a Bill because we have a principle in this office that we call the 'four eyes' principle, which is that we don't think any draft should leave the building unless it's been seen by at least two drafters. If it's a small Bill, the team will be only two drafters. If it's an enormous Bill, we may need four, or sometimes as many as six, drafters working on the Bill.

RD

When we're instructing on a Bill, we would normally speak to someone in Stephen's office first. Stephen would allocate a draftsman to the Bill. Often we'll have a meeting in the early stages to discuss timing and the scope of the Bill, any particularly difficult issues. As the drafting process progresses, we'll be in probably almost daily contact: emails, telephone calls, occasional meetings. We'll prepare written instructions. They ought to cover what the problem is, what the current law is; what the difficulty in practice is, what the policy is that we want to achieve, and a few suggestions about what legislative provisions we think are needed to achieve that policy, although the last part of that process is very much Stephen's expertise rather than mine.

Depending on the length of the Bill and the complexity of the subject matter, instructions could be hundreds of pages long. If it's a single-issue Bill and it's relatively simple, the instructions may just be a brief letter, followed up by 'phone calls.

SL

We don't use precedents a lot. Rosemary's instructions will not set out the words she expects us to use. And that's not because we think the words are our business; it's because we want to analyse what is really wanted behind the words. The doctrine of Parliamentary sovereignty means that Parliament can do more or less anything it likes. It's subject to European law. It's subject to the European Convention on Human Rights. But apart from that, all new law is creative. I remember in 2007, when the Northern Ireland devolution was coming towards an end, we were confronted with the possibility that three tests that had to be satisfied in March 2007 might not be satisfied by the politicians in Northern Ireland, although it was thought they might be able to sort them out by May. And I remember saying to the team that was drafting this Bill, 'Wouldn't it all work if we said that in the first St Andrew's Agreement Act all the references to the three days in March that were relevant were, and were always deemed to have been, references to three days in May?' Indeed, that was what the Act eventually provided.

A Government Bill can be introduced into either House. Most of the Government's more political legislation you'd expect to be introduced

into the House of Commons; and anything to do with finance and to do with money is introduced into the Commons. Once a Bill's been introduced into its first House, it will go through various stages at which it can be amended, and the role of the drafters then is to draft the Government's amendments and also to deal with the House authorities on procedural points. We draft the amendments on instructions from the Department, from Rosemary.

RD We would instruct Stephen's team to draft amendments on instructions from our Ministers, and part of our role in the Parliamentary process is to brief and advise Ministers about what Opposition amendments mean, what changes could be made, what compromises could be reached.

SL When the Bill has finished in its second House, the amendments made in the second House are sent back to the first House, and there is then a process known sometimes as 'ping-pong', where the first House will reject perhaps some amendments or make alternative proposals. The Bill goes back to the second House, the second House may have some alternative suggestions, and the Bill goes backwards and forwards until an agreement is reached. Almost invariably an agreement is reached. If there is deadlock, the Bill is lost. Once agreement is reached, the Bill has passed through both Houses of Parliament and is ready to receive the Royal Assent.

Telephone rings

SL Hello . . . Thank you . . . Hello, Chief Whip . . .

SL I think the greatest challenges of the job are always working against the clock. I remember a Terrorism Bill that went through its 'ping-pong' several times between 10 o'clock on Thursday morning and seven o'clock on Friday night, and we were redrafting it at each stage, through the night, at two hours in the House of Lords, two hour rests, two hours in the House of Commons, and then back until eventually an agreement was reached.

That's one of the other challenges, which is to make sure you get things right because it can be almost two years from the time you start planning a Bill until the time it gets to Royal Assent. That means that it takes a long time to put right your mistakes. One of my most anxious moments, I remember, was when I was doing the Finance Bill in 1996 and the Government had decided to put down income tax for the year 1997/98. I went home on the day that the Commons was agreeing the Budget resolutions which would fix the rate of income tax and watched the debate on television, and the television operator put up a banner which said, 'The rate of income tax for 1996/97'. And I spent a very anxious night thinking I'd perhaps put down the income tax for an earlier year than I'd intended to at a cost of several billion pounds; and when I'd worked out how long it would take to repay it out of my salary,

I was very worried indeed. But, fortunately, [when] I came in the next morning, I had got it right; the television channel had got it wrong.

RD The really good thing about our job is the interface between law and politics. If you're interested in the political process and Government, there's no better place to be than the Government lawyer. There's a very wide range of advisory, prosecution, litigation, legislation work available.

SL I agree with Rosemary about a lot of the things that I love about this job: being involved in politics and seeing it; having a front row seat for the big events of our day; and there's team work. One of the things I find it very difficult to say about my career is that I have done anything because all the things I've done, I've done in teams with other people, and that has been a great part of the job.

SL Well, Rosemary, down to business. We need to talk about the Ministry of Justice's legislative programme for the next session . . . (Fade)

AUDIO ENDS