

UNION INTERPARLEMENTAIRE



INTER-PARLIAMENTARY UNION

Association of Secretaries General of Parliaments

ANNEXURE

to

COMMUNICATION

from

**MR. Shumsher K. SHERIFF
Secretary General,
Rajya Sabha (Council of States), Parliament of India**

on

“Parliamentary Control over Subordinate Legislation in India”

Geneva Session

October 2015

International Practice on Scrutiny of Delegated Legislation

	India	United Kingdom*	Canada*	South Africa*	Australia*
Pre-Rule making scrutiny	The Committee on Subordinate Legislation examines the Acts passed by Parliament to figure out the areas of subordinate legislation in them and asks the administrative Ministry to frame rules within the stipulated period of six months. Besides, some Acts provide for publication of rules at draft stage for wider consultation with stakeholders. The rules come into effect only when stipulated period for consultation is over as contained in the parent Act and final notification is done. The Committee can take up the draft rule for scrutiny even at this stage.	Pre-legislative scrutiny takes place to determine the content of the matter to be framed through the Rules and the competence of the executive body to do it. There are super affirmative instruments which usually have to be preceded by proposals which are subject to consultations.	The draft rules have to be published in the gazette for public comments.	The Constitutional Court has held that prior public consultation is required before making rules.	Making of rules is governed by statutory provisions contained in the Legislative Instruments Act, 2003. The Act, <i>inter alia</i> , provides for rule makers to consult with interested parties before making rules. However, the failure to consult does not affect the validity of a rule.
Publication of Rules	All subordinate legislations are published in the Official Gazette as	Systematic publication of delegated legislation is ensured by the Statutory Instruments Act, 1946. A	The rules shall be published in the gazette within 23 days of being registered in the Privy	The rules have to be published in the Gazette.	The rules are registered in the Federal Register of legislative instruments, an authoritative source for all

* Raghav P. Dash, Ph.D Thesis on '*Law Making in a Democracy: the Contested Domain of Executive-Legislature Relations in India*', Jawaharlal Nehru University, New Delhi, 2014, pp.219-220

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	soon as they are framed.	statutory instrument is to be sent to the Queen's Printer as soon as it is made to be numbered, printed and sold to the public. Her Majesty's Stationery Office is the nodal office in respect of all statutory instruments.	Council.		delegated legislation accessible in, and maintained in, electronic form.
Laying before Legislature	All subordinate legislations are to be laid on the Table of House within 15 days after their publication in the Gazette, whenever the House is in Session.	If the Act requires a rule to be laid before Parliament, it has to be done before the rules come into operation.	Rules will be tabled if required by the Act.	All rules have to be tabled in Parliament.	All rules are laid before each House of Parliament within six sitting days of that House after registration. Instruments not laid before each House within the prescribed period after registration cease to have effect.
Committee System	Each House of Parliament is having a Committee on Subordinate Legislation to monitor framing and laying of rules, besides scrutinising the scope of delegation as given in the parent Act.	House of Lords performs the chief scrutiny role in matters of delegated legislations. There are committees such as Select Committee on Delegated Powers and Regulatory Reforms, Select Committee on the Merits of Statutory Instruments, Special Standing Committee and a Legislation Steering Committee, which examine the extent of delegation, policy merits, legal compliance of the rules with Act and regulatory oversight	All rules are referred to the scrutiny committee to examine the legality and the procedural aspect of the rules.	There is no provision for the rules to be referred to a Committee.	A Standing Committee on Regulations and Ordinances is appointed by Senate to ensure that the instruments are in accordance with statute; these satisfy civil liberty considerations and do not contain matter more appropriate for parliamentary enactment. No such Committee is available in the House of Representatives.

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		respectively. For instance, the mandate of the Select Committee on Delegated Powers and Regulatory Reforms is to report about the extent and appropriateness of executive delegation in a particular Bill.			
Amendment/ modification of Rules	All subordinate legislations are to be laid on the Table of House for thirty sitting days plus one extra Session during which period members can move a motion for modification or annulment of the rules. If the motion is carried in one House and also adopted by the other Houses, the rules stand modified or annulled, as the case may be.	There are certain rules, subject to negative procedure, which come to annul them is passed within 40 sitting days. Parliament can annul the rules, but not amend them in full or in part into force unless a motion	Parliament may revoke the rules if the scrutiny committee suggests the same.	The Constitution provides that the legislation may provide for amendment or modification of rules.	Parliament can disallow a rule by passing a disallowance motion in this regard. If a notice of a motion to disallow a legislative instrument or a provision of a legislative instrument is given in a House of the Parliament within 15 sitting days of that House a after a copy of the instrument was laid before that House; and within 15 sitting days of that House after the giving of that notice, the House passes a resolution, in pursuance of the motion, disallowing the instrument or provision; the instrument or provision so disallowed then ceases to have effect. All disallowable legislative instruments stand referred to the Standing Committee on Regulations and Ordinances for scrutiny

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					and recommendations.
Procedure for approval by Parliament	The rules come into effect from the date of the publication in the Official Gazette. However, the Committee can suggest modification to any rule subject to acceptance by the Government. The Government is obliged to submit before the Committee the action taken on its recommendations within three months.	The rules may be subject to an affirmative approval, which means that they cannot become law unless both Houses first approve a draft.	Parliament has the power to approve or reject the rule.	The procedure for approval or annulment of the rule is stipulated in the Act.	Legislative Instruments Act, 2003 contains different provisions for different statutes. Some are subject to affirmation by both Houses.