

Not acted upon

7. The new definition of a statutory instrument should be arrived at by taking the sum of the law-making and rule-making exercised by the Crown and its agencies and by any other delegate or sub-delegate of Parliament, and whether made pursuant to or under a statute or to the Prerogative, and by declaring the whole to be subject to Parliamentary scrutiny. If it is then desired to exclude any documents or classes of documents from scrutiny, from registration and publication, those documents or classes of documents would need to be defined expressly. Such definitions should be construed narrowly and a statutory direction to this effect should be included in the Statutory Instruments Act.

Not acted upon

8. The Statutory Instruments Act should provide for a Statutory Instruments Reference Committee having the authority to issue a conclusive determination for the purposes of Parliamentary scrutiny as to whether any particular document is a statutory instrument or not.

Not acted upon

9. Any Departmental Guidelines, Directives or Manuals which contain substantive rules not contained in statutes or in other statutory instruments should be included within the definition of a statutory instrument and be subject to Parliamentary scrutiny. This inclusion should extend to Guidelines, Directives, etc. which constitute instructions to staff where the rules so made are applied to or in respect of non-staff members or where the breach of the rules can lead to disciplinary action against the staff member committing the breach.

Not acted upon

10. Where any statutory instrument is to come into force before registration and publication, the reasons therefor should be provided to the Standing Joint Committee on Regulations and other Statutory Instruments.

Not acted upon

11. Should the distinction between "regulations" and "other statutory instruments" be retained, the words "regulation-making authority" in the Statutory Instruments Act should be re-defined to make clear that in respect of regulations made by the Governor in Council by Order in Council they mean the Department, Ministry or other body which recommends the draft Order to the Governor in Council.

Overtaken by the Consolidation of the Regulations

12. Section 32 of the Statutory Instruments Act should be amended to require the publication of the regulations that have been registered under that section.

F. Matters relating to the form of Statutory Instruments

(Paragraphs 56-69)

Acted upon

1. Both the enabling authority for subordinate legislation and other documents or statutory instruments referred to within the body of a statutory instrument should be clearly and adequately identified with the actual place of publication being disclosed.

Acted upon

2. The references to intermediate enabling authority, not being statutes, and to all instruments mentioned within a statutory instrument, should be given by a footnote showing the place and date of publication, and registration number if one exists. The giving of footnote references should not be confined to instruments the details of whose registration and publication can not be traced through Part II of the Canada Gazette.

Acted upon

3. When a statutory enabling power has been amended since the last Revision of the Statutes of Canada, the preamble to a statutory instrument made in reliance on that power should recite not only the relevant section number or numbers and the name of the Act but also the reference to any amending statute which has amended the enabling power.

Acted upon

4. The footnotes to an amending statutory instrument should disclose all the prior amendments relevant to the provision or provisions of the statutory instrument now to be amended.

Acted Upon

5. Statutory instruments should be accompanied by Explanatory Notes. This is especially to be desired in the case of amending statutory instruments. An Explanatory Note should describe the subject matter dealt with in such a way as to indicate the point of the statutory instrument in a purely informative way without entering into justification, argumentation or construction of the law.

G. The withholding of information from the Committee

(Paragraphs 70-80)

Acted upon

Those Departments of State and Authorities which make, or propose to the Governor in Council the making of subordinate legislation should explain to the Committee, if called upon, how it is that a particular piece of subordinate legislation does not infringe one or more of the criteria for scrutiny. An explanation should include legal reasons where such are called for as where the Committee has questioned the vires of a statutory instrument, the interpretation of some apparently obscure or ambiguous provision, or the status of a document as being or not being a statutory instrument.

H. Sub-delegation of rule-making power

(Paragraphs 81-84)

Not acted upon

If it is desired or thought necessary to give to a delegate of Parliament power to sub-delegate rule-making power, the power should and must be conferred expressly by the enabling statute.

I. The Language of Delegation

(Paragraphs 85-95)

Not acted upon

1. The precise limits of subordinate law-making power should always be defined in clear language in the enabling statute.