Parliamentary Control of Delegated Legislation

Lessons from a Comparative Study of the UK Parliament and the Korean National Assembly

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Abstract

As the scale of administrative agencies expands and their functions become more specialized in the complex and variable administrative reality, delegated legislation has increased explosively. This article examines the need for the introduction of appropriate parliamentary controls to prevent harm caused by the flood of delegated legislation. Through comparison with the UK Parliament, this article identifies the relative position of the Korean National Assembly and presents measures to strengthen parliamentary scrutiny on delegated legislation.

Keywords: statutory instruments, delegated legislation, parliamentary control, parliamentary scrutiny, Korea.

A Introduction

Delegated legislation is law made by ministers or other authorized bodies under powers deriving from Acts of Parliament.[1] It is often called 'secondary legislation' to distinguish it from primary legislation contained in Acts of Parliament,[2] and 'subsidiary' or 'subordinate legislation'[3] in that it fills in the details of Acts.

The increased use of delegated legislation is necessary and inevitable due to the complexity of modern government and the constraints on parliamentary time. In the United Kingdom, the main types of delegated legislation are Statutory Instruments (SIs), Statutory Rules and Orders, and Church Instruments.[4] SIs are documents drafted by a government department to make

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1 R. Fox & J. Blackwell, *The Devil is in the Detail: Parliament and Delegated Legislation*, Hansard Society, 2014, p. 15.

2 R. Rogers & R. Walters, *How Parliament Works* (Nicolas Besly and Tom Goldsmith Eds.), 8th ed., Routledge, 2019, p. 238.

3 *See* UK Parliament Glossary. Available at: www.parliament.uk/site-information/glossary/delegated-or-secondary-legislation (last accessed 31 August 2020).

4 Available at: www.legislation.gov.uk/understanding-legislation (last accessed 31 August 2020).

changes to the law, and they are the most frequent type of delegated legislation. In the latest 2017–19 session (13 June 2017–8 October 2019), the total number of public bills introduced to the House of Commons was 439,[5] while the number of SIs laid before the House of Commons was 2,323 during the same period.[6] Looking at the time-series tendency of the SIs that have been actually issued, an annual average of 3,200 SIs were issued in the 1990s, reaching 4,200 in the 2000s, and falling to around 3,000 in the early 2010s. From 2016 onwards, this has been showing below 1,500 per year.[7]

In the case of South Korea, delegated legislation is mostly called 'administrative legislation' or 'administrative rulemaking'. This is generally divided into two categories according to the German (civil) law tradition: *Rechtsverordnungen* and *Verwaltungsvorschriften*.[8] As the substantive law norms, *Rechtsverordnungen* (administrative regulations) contain abstract and general rules, with binding effects; *Verwaltungsvorscbriften* (administrative guidelines) serve as internal administrative directions that regulate internally rather than facing citizens directly. Therefore, they have no binding legal effects ('external effect') in principle.[9] In terms of their forms, the Presidential Decree, the Ordinance of the Prime Minister and the Ordinance of the Ministries belong to the former; the forms which are not stipulated in the Constitution, such as public notifications, Directives and Established Rules, belong to the latter.

As of September 2020, there are 1,496 Acts of Parliament and 3,447 administrative legislations, accounting for about 70% of the total Acts and subordinate statutes.[10] Following analysis of the increasing trend of the overall size and complexity of Korean law from 1985 to 2015, the number of Korean laws increased approximately 1.8 times, from 788 to 1,391, while the delegations to

5 House of Commons, *Sessional Returns 2017–19: 13 June 2017–8 October 2019* (HC 2019, 1), 2019, p. 77.

6 *Ibid.*, p. 103.

7 P. Loft, *Acts and Statutory Instruments: The Volume of UK Legislation 1850 to 2019* (House of Commons Library Briefing Paper, CBP 7438), 17 June 2019, p. 8.

8 The Korean Constitutional Court has translated the terms, *Rechtsverordnungen* and *Verwaltungsvorschriften*, as 'administrative regulations' and 'administrative guidelines'. *See* Competence Dispute between Local Autonomous Government and President Case (14-2 KCCR 362, 2001Hun-Ra1, 31 October 2002).

9 According to Ziamou, the terms *Rechtsverordnungen* and *Verwaltungsvorschriften* are translated to 'statutory regulations or ordinances (statutory instruments)' and 'administrative regulations or directions' respectively. However, this article follows the Korean Constitutional Court's usage to avoid confusion. *See* T. Ziamou, 'Public Participation in Administrative Rulemaking: The Legal Tradition and Perspective in the American and European (English, German, Greek) Legal Systems', *Heidelberg Journal of International Law*, Vol. 60, 2000, pp. 46-47. Available at: www.zaoerv.de/60_2000/vol60.cfm (last accessed 31 August 2020).

10 1,753 Presidential Decrees, 89 Ordinances of the Prime Minister, 1,225 Ordinances of the Ministries, and 350 other cases. *See* Statistics on Acts and Subordinate Statutes of the Republic of Korea. Available at: www.moleg.go.kr/esusr/mpbStaSts/stastsList.es?mid=a1010 9040100&srch_csf_cd=120001 (last accessed 1 September 2020).

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the Presidential Decrees, Ordinances of the Prime Minister, and Ordinances of Ministries increased 5.4 times, from 7,777 to 41,902.[11]

However, without proper control in response to the explosive increase in delegated legislation, this could become a major variable threatening democracy and the rule of law. One extreme example of this threat would be skeleton (skeletal) legislation. This denotes legislation that sets out a general shape and structure but leaves the details to secondary legislation.[12] This is also described as a "blank cheque"[13] as it gives rise to "legislative uncertainty".[14] In the United Kingdom, there even exists the most anomalous form of such legislation: the Henry VIII clause which enables ministers to amend or repeal Acts of Parliament through secondary legislation.[15] Despite much criticism, Henry VIII clauses have still been found in recent cases.[16]

In South Korea, government-led legislation has been pervasive for rapid modernization under a strong presidential system. Therefore, control of delegated legislation is a crucial issue common to both countries. Through a comparative study of the British and Korean cases, this article will then examine how each parliamentary control system has contributed to enhancing the quality of delegated legislation. Additionally, some implications will be deduced from the British experiences.

Before conducting a comparative study, it is necessary to consider that a simple comparison between the two countries has limitations due to their different political traditions and realities. South Korea has a presidential and unicameral parliament system. This is why a blanket application of the British system is undesirable. Nevertheless, it is meaningful to look at the British case as an important reference in that, the UK Parliament, as one of the oldest continuous representative assemblies, introduced various reports and activities to control delegated legislation from an early stage.

B Importance of Parliamentary Control on Delegated Legislation

The parliamentary control of delegated legislation can be divided into direct control and indirect control. Direct control denotes a method that requires parliamentary consent or approval before subjected delegated legislation takes

11 J. Kim, 'Measuring the Size and Complexity of Korean Law', *Legislation and Policy Studies*, Vol. 9, No. 1, 2017, p. 17.

12 Fox & Blackwell, 2014, p. 19.

13 A. Farina, 'Bones without Flesh: The Issues with Skeletal Legislation' (Australia-New Zealand Scrutiny of Legislation Conference, Brisbane), 26-28 July 2011, p. 12. Available at: www.parliament.qld.gov.au/documents/committees/slc/2011/slc_conference/slcconf-sess04-honfarina.pdf (last accessed 31 August 2020).

14 Select Committee on the Constitution, *The Legislative Process: The Delegation of Powers (16th Report)* (HL 2017-19, 225), 2018, Para. 51.

15 *See* UK Parliament Glossary. Available at: www.parliament.uk/site-information/glossary/henry-viii-clauses (last accessed 31 August 2020).

16 Digital Economy Bill (2016-17) and Data Protection Bill (2017-19). *See* Select Committee on the Constitution, 2018, Paras. 64-65.

effect or suspends delegated legislation which has already been in force. The most classic examples are the German *Zustimmungsverordnungen* (or *Aufhebungsverordnungen*), and the British affirmative (or negative) resolution procedure.

Parliamentary control of delegated legislation is meaningful in the following respects:[17] First, it helps Parliament to fulfil its duties and responsibilities as a 'primary and originary legislative body' that delegates legislative power to the administration; secondly, it allows Parliament to exercise authority to keep the executive in check based on the principle of separation of powers; and thirdly, it grants democratic legitimacy to delegated legislation enacted by unelected public officials.

In addition, the importance of parliamentary control is further emphasized as an alternative to the inherent limitations of administrative and judicial control. It is difficult for executive control to have more active meaning than self-censorship as internal control, and judicial control has clear limitations as a legality test and post-control.

Taking all of these things into account, control by Parliament, the representative body of the people, is most appropriate and effective in ensuring individuals' fundamental rights and enhancing the quality of delegated legislation. As an original legislative body responsible for the review and enactment of laws, Parliament should restore the principle of parliamentary sovereignty.

C Parliamentary Control on Delegated Legislation (SIs) in the United Kingdom

I Parliamentary Procedure on SIs

In the United Kingdom, which has a parliamentary cabinet system, parliamentary control on SIs is carried out in diverse ways, but the submitting ('laying') of delegated legislation before Parliament is most common.

Whether an SI is subject to parliamentary procedure is prescribed in the parent Act. Some SIs are not 'laid' before Parliament for scrutiny and simply become law on the date stated. Some SIs are 'laid' before Parliament after being signed off by a minister (commonly known as 'made'), but they are also not subject to scrutiny.[18] Except for those SIs with no scrutiny procedure, most SIs are assigned to one of three classes:[19] the negative resolution procedure; the affirmative resolution procedure; or a strengthened (enhanced or super-affirmative) procedure.

17 B. Kim, *A Study on the Control over the Legislative Delegation* (PhD Thesis on file at Seoul National University), 1999, p. 209.

18 This 'bare laying procedure' does not give any particular opportunity for actual scrutiny on SIs. However, some believe that it serves to draw the attention of the members to the existence of SIs. *See* W. Suh, 'Control of Administrative Rulemaking: Focusing on Parliamentary Control', *Administrative Law Journal*, Vol. 12, 2004, p. 9.

19 Fox & Blackwell, 2014, p. 75.

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The negative procedure comprises the vast majority of all SIs subject to parliamentary scrutiny.[20] The negative SI will remain in force unless a member introduces an annulment resolution[21] within 40 days.[22]

The affirmative and super-affirmative procedures provide more stringent forms of parliamentary control, since the SI must receive positive approval of both Houses (excepting for a financial instrument that usually requires an approval of the House of Commons only).[23] An SI made under the affirmative resolution procedure cannot take effect "unless Parliament has expressly approved it".[24] Therefore, this procedure deals with the most substantial and important instruments and can "add the strongest legitimation to the delegated legislation".[25]

Some Acts prescribe exceptional parliamentary procedures for enhanced, strengthened or super-affirmative scrutiny procedures. These cases can be found in Orders made under the Legislative and Regulatory Reform Act 2006, the Localism Act 2011, the Fire and Rescue Services Act 2004, and the Public Bodies Act 2011.[26]

II Debates on SIs in the House of Commons

As noted in the Strathclyde Review, "the sheer size and scale of the use of SIs makes scrutiny, particularly in the House of Commons, an incredibly difficult task".[27] Thus, debates on motions to approve or annul SIs may take place in a Delegated Legislation Committee (DLC) composed of 18 members, rather than on the Floor of the House of Commons.[28]

20 In the 2017-19 session, of the 2,323 (including 283 proposed SIs under the provisions of the European Union [Withdrawal] Act 2018) SIs laid in the House of Commons, 1,324 SIs (57%) were subject to the negative procedure; and 689 SIs (29%) were subject to the affirmative procedure. *See* House of Commons, 2019, p. 103.

21 In order to reject a negative SI, either House must table and then pass a motion calling for its annulment. This motion is known as a 'prayer'. *See* Fox & Blackwell, 2014, p. 78.

22 The National Archives, *Statutory Instrument Practice*, 5th ed., 2017, p. 21. Available at: www.nationalarchives.gov.uk/about/freedom-of-information/information-requests/statutory-instrument-practice (last accessed 31 August 2020).

23 *Ibid.*, p. 18.

24 *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 25th ed., 2019, Para. 31.8. Available at: https://erskinemay.parliament.uk/section/5620/parliamentary-control-and-scrutiny (last accessed 31 August 2020).

25 The British affirmative resolution procedure is similar to the German practice of *Zustimmungsverordnungen* which needs the consent of Parliament before they are promulgated; the negative resolution procedure resembles the German *Aufhebungsverordnungen*. *See* H. Pünder, 'Democratic Legitimation of Delegated Legislation: A Comparative View on the American, British and German Law', *The International and Comparative Law Quarterly*, Vol. 58, No. 2, 2009, pp. 364-366.

26 Fox & Blackwell, 2014, p. 76, n. 81.

27 Public Administration and Constitutional Affairs Committee, *The Strathclyde Review: Statutory Instruments and the Power of the House of Lords (Eighth Report)* (HC 2015-16, 752), 2016, Para. 50.

28 R. Kelly, *House of Commons Background Paper: Statutory Instruments* (Commons Research Briefing SN06509), 15 December 2016, p. 14. *See also* Fox & Blackwell, 2014, p. 79.

However, nominated members are usually given just a few days' notice of a DLC and are ill-prepared for the debates. The average time for conducting a DLC during the 2013–14 session was just 26 minutes.[29]

III Scrutiny in Committees

It is reasonable to understand that DLC is a space for debate rather than a Committee in charge of 'scrutinizing' SIs.[30] The UK Parliament has also introduced the following four committees, excluding the DLC, in the section of 'Committees that scrutinize secondary legislation' on its web page:[31]

- The Joint Committee (of both Houses) on Statutory Instruments;
- The Regulatory Reform Committee (House of Commons);
- The Delegated Powers and Regulatory Reform Committee (House of Lords); and
- The Secondary Legislation Scrutiny Committee (House of Lords).

Among these, it is known that the function of the House of Commons Regulatory Reform Committee (RRC)[32] is mirrored in the House of Lords Delegated Powers and Regulatory Reform Committee (DPRRC).[33] These Committees judge certain draft Legislative Reform Orders (LROs)[34] against specified criteria, as set out in Standing Orders and the Legislative and Regulatory Reform Act 2006. They can also examine and report on matters relating to regulatory reform.

Adding to this, the DPRRC scrutinizes proposals in all public bills reaching the House of Lords (except supply and consolidation bills) to delegate legislative power from Parliament to another body, based on the Delegated Powers Memorandum on the introduction of each bill.[35]

Their work is related to delegated legislation but not focused solely on delegated legislation itself. Neither do they not consider the merits of the policy

29 *Ibid.*, p. 182.

30 In the same vein, Fox and Blackwell also deal with the function of the DLC in conjunction with the relationship with the affirmative/negative procedure, dissociating it from the work of the JCSI and the SCLC under a separate section on 'Scrutiny Committees'. *Ibid.*, pp. 79-80, nn. 83-90.

31 Available at: www.parliament.uk/about/how/laws/secondary-legislation (last accessed 31 August 2020).

32 Available at: https://committees.parliament.uk/committee/131/regulatory-reform/role (last accessed 31 August 2020).

33 The DPRRC has been established by the 1992 Jellicoe Report (the Report by the House of Lords Select Committee on the Committee Work of the House). The Committee's ten members are supported by a secretariat including a clerk, administrator and two legal advisers. Even though it plays only an advisory role regarding the delegation in question, not the merits of the policy, the committee's impact is considerable in that more than 80% of its recommendations are reflected in changes of bills. *See* Fox & Blackwell, 2014, pp. 69-71.

34 LRO is a specific type of delegated legislation that the government can use to remove or reduce regulatory burdens resulting from primary legislation. LROs are subject to scrutiny by a special committee in each House, the RRC and the DPRRC. *See* UK Parliament Glossary. Available at: www.parliament.uk/site-information/glossary/legislative-reform-orders (last accessed 31 August 2020).

35 Available at: https://committees.parliament.uk/committee/173/delegated-powers-and-regulatory-reform-committee (last accessed 31 August 2020). *See also* Fox & Blackwell, 2014, p. 70.

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in question. Considering these things, this section shall take a closer look at the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee as scrutiny committees of delegated legislation in the UK Parliament, in the true sense of the 'sifting mechanism for SIs'.[36]

1 Joint Committee on Statutory Instruments

Worrying about the continued increase in delegation legislation, the Committee on Ministers' Powers, the so-called Donoughmore Committee, recommended setting up a Standing Committee in each House. This led to the establishment of the House of Commons Select Committee on Statutory Instruments, the so-called Scrutiny Committee, in 1944. The House of Lords simply retained its Special Orders Committee.[37]

However, due to the 'extensive duplication of effort' of this separate scrutiny system,[38] in 1973 the two committees were replaced by the Joint Committee on Statutory Instruments (JCSI) that consists of seven members from each House.[39] The JCSI is supported by a clerk from each House, a committee assistant and legal advisers from the Legal Services Office in the House of Commons and Counsel to the Chairman of Committees in the House of Lords.[40]

The JCSI examines SIs and draws special attention from both Houses in relation to their form, but not their merits or the policy behind them.[41] The criteria for warranting scrutiny are as follows:[42] 1) defective drafting; 2) elucidation required; 3) doubtful vires; 4) unusual or unexpected or use of powers; 5) failure to observe proper practice; and 6) other grounds.

The House of Commons has regularly managed and published the JCSI's review through its official document, the Sessional Returns. In the latest 2017–19 session, the JCSI reviewed 1,962 SIs and called for special attention to 390 of them. Among these, defective drafting took up the majority, at 100 pieces of legislation. On 57 pieces, the Committee asserted that more explanations were needed, and 43 pieces of legislation failed to observe proper drafting or legislative practice.[43]

2 Secondary Legislation Scrutiny Committee

In 2003, the House of Lords appointed the Secondary Legislation Scrutiny Committee (SLSC), formerly known as the Merits of Statutory Instruments Committee. The 11 members of the Committee are drawn from across the House and are supported by a clerk, a committee assistant, and two advisers.

36 *Ibid.*, p. 83.

37 J. Beatson, 'Legislative Control of Administrative Rulemaking: Lessons from the British Experience', *Cornell International Law Journal*, Vol. 12, 1979, p. 206.

38 *Ibid.*, p. 208.

39 A.H. Birch, *The British System of Government*, 10th ed., Routledge, 1998, p. 161.

40 Fox & Blackwell, 2014, p. 87.

41 House of Commons Procedure Committee, *Delegated Legislation: Proposals for a Sifting Committee (First Report)* (HC 2002-03, 501), 2003, Para. 2.

42 Fox & Blackwell, 2014, p. 201.

43 House of Commons, 2019, pp. 103-104.

The creation of the SLSC is regarded as a positive development in parliamentary control of delegated legislation for two reasons. First, due to pressure by the Committee, Explanatory Memoranda (EMs)[44] are provided for both affirmative and negative SIs, while before the establishment of the Committee, the government only provided EMs for affirmative instruments.[45] Second, it was recommended that the Committee should complement the work of the JCSI[46] which is 'comprehensive and entirely technical'.[47] The Committee can, therefore, focus on the policy merits and implications of SIs as well as their legislative techniques.

The Committee publishes a weekly report on SIs within 12 to 16 days of their being laid before Parliament[48] based on the following grounds:[49] 1) political importance or public policy interest; 2) being inappropriate in view of changed circumstances since the enactment of the parent Act; 3) imperfectly achieving its policy objectives; 4) explanatory material with insufficient information; 5) inadequate consultation process; or 6) others related to EU legislation.

On average, the Committee draws about 7% of instruments for the special attention of the House. In the 2015–16 session, the proportion rose to 9.4% (67 of 712 laid in total), as the Committee defined new grounds of 'deficient Explanatory Memoranda (EMs)', and this fell again to 7.7% (51 of 659 laid in total) in the 2016–17 session.[50] During the 2017–19 session, they reported 7.8% (147 of 1,876 laid in total) on the following grounds:[51]

- 133 instruments (90% of those reported) on the ground of political importance or public policy interest;
- 10 (6.8%) on the ground that the explanatory material laid in support provides insufficient information;
- 8 (5.4%) on the ground that there appear to be inadequacies in the consultation process;
- 4 (2.7%) on the ground of imperfectly achieving its policy objective.

Like other scrutiny committees, the role of the SLSC is entirely advisory, thus it has no right to make a final decision on SIs. However, its activities are somewhat fruitful in that many SIs are 'being prepared' under pressure.[52] These

44 Explanatory Memorandum (EM) is a short document accompanying an SI which sets out. The relevant government departments provide a clear explanation of what the instrument does and why. *See* Fox & Blackwell, 2014, p. 16.

45 *Ibid.*, pp. 83-84.

46 *Ibid.*, p. 52.

47 *Ibid.*, p. 87.

48 *Ibid.*, p. 85.

49 House of Lords Secondary Legislation Scrutiny Committee, *Work of the Committee in Session 2017-19: Revised Statistics (62nd Report)* (HL 2017-19, 426), 2019, p. 2. The latest Sessional Returns covers the 2017-19 session of two-year duration.

50 House of Lords Secondary Legislation Scrutiny Committee, *Draft Electricity Supplier Obligations (Amendment and Excluded Electricity) (Amendment) Regulations 2017; Work of the Committee in Session 2016-17 (32nd Report)* (HL 2016-17, 161), 2017, Paras. 19, 40-41.

51 House of Lords Secondary Legislation Scrutiny Committee, 2019, pp. 2-4.

52 House of Lords Secondary Legislation Scrutiny Committee, 2017, p. 12.

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achievements may be found in some cases where SIs have been re-laid in amended form due to errors.[53]

The SLSC has also continuously calculated and managed the corrections ratio to the total laid at each session, setting the benchmark rate at 5%. In the 2017–19 session, the number of EMs changed was 142 of 1,876 (7.6%) laid, and the number of SIs changed was 131 (7.0%).[54] This is a slight increase from the previous 2016–17 session.[55]

D Parliamentary Control on Delegated Legislation in South Korea

I History of Parliamentary Control on Delegated Legislation under the National Assembly Act

1 Revision of the National Assembly Act in 1997: Introduction of a System for Sending Delegated Legislation to the National Assembly

In South Korea, Parliament's involvement in delegated legislation began in earnest since the 15th National Assembly (30 May 1996–29 May 2000) established a system for sending delegated legislation to the National Assembly through the National Assembly Act.[56] The content at the time of its introduction was as follows:

> National Assembly Act [Acts No. 5293, 13 Jan. 1997, Partial Amendment]
>
> Article 98-2 (Sending of Presidential Decree, etc.) The heads of central administrative agencies shall, where the Presidential Decrees, the Ordinances of the Prime Minister, the Ordinances of the Ministries, the Directive, the Established Rules, and the Public Notice, etc., which provide for matters to be entrusted by the Acts or to be necessary for the enforcement of the Acts, are enacted or amended, *send* them to the National Assembly within *seven days* therefrom.

53 Fox & Blackwell, 2014, p. 208. *See* the case of the Home Information Pack Regulations 2006; the Local Authorities (Alcohol Disorder Zones) Regulations 2008; or The European Organization for Astronomical Research in the Southern Hemisphere (Immunities and Privileges) (Amendment) Order 2017.

54 House of Lords Secondary Legislation Scrutiny Committee, 2019, p. 3.

55 The number of EMs changed was 47 (7.1%) and the number of SIs changed was 35 (5.3%), out of a total 659 SIs. *See* House of Lords Secondary Legislation Scrutiny Committee, 2017, p. 15.

56 In 1996, before the revision of the Act, the LCO (Legislative Counsel Office, formerly the Legislation and Budget Office) of the National Assembly Secretariat published a booklet entitled '*Analysis and Review of Administrative Legislation*' stating that 18 administrative legislations did not conform to the constitutional principle of delegation authority. After that, the LCO continuously analysed the administrative legislation and published a research report, but the timing of publishing was not fixed (once or twice a year) and the titles of the reports were not the same, such as '*The Problems in Enforcement of the Statutes and the Directions for Improvement*', or '*Improvement Issues of Current Statutes*'. *See* J. Kim, 'Control System of Administrative Rulemaking by Congress', *Administrative Law Journal*, Vol. 12, 2004, pp. 44-45, n. 54.

However, this provision only stipulated the administration's obligation to submit the contents of delegated legislation to the National Assembly, and there was no basis for a review system for the submitted legislation. With neither a penal clause in the case of delayed or incomplete submission to the National Assembly nor a review process on submitted legislation, the system was naturally difficult to achieve. The administration, therefore, accepted it as an additional administrative burden and maintained a passive or negative attitude.

2 *Revision of the National Assembly Act in 2000: Introduction of Reviewing Administrative Regulations by Standing Committees*

In February 2000, the 16th National Assembly (30 May 2000–29 May 2004) required the heads of the central administrative agencies to submit delegated legislation to the National Assembly not only when it was enacted but when it was 'repealed'. In addition, new paragraphs (2) and (3) allowed the Deputy Chiefs of Staff[57] of the Standing Committee to examine the details of administrative regulations[58] to provide the results to the members of the Committee and notify the heads of the central administrative agencies concerned.[59]

> National Assembly Act [Act No. 6266, 16 Feb. 2000, Partial Amendment]
>
> Article 98-2 (Introduction of Presidential Decree, etc.) (2) The Standing Committees shall regularly open the committees or sub-committees, and have them examine the Presidential Decrees, the Ordinances of the Prime Minister, the Ordinances of the Ministries (hereafter referred to as the 'Presidential Decrees, etc.' in this Article) which have been submitted by the competent central administrative agencies with respect to whether they are in contravention to the Acts, and where deemed that the relevant Presidential Decrees, etc. are not in accord with the purport and content of the Acts, they may notify the heads of the competent central administrative agencies of their contents.
>
> (3) The Deputy Chiefs of Staff shall examine the Presidential Decrees, etc. under paragraph (2), and provide the results thereof to the members of the relevant committees.

57 The Deputy Chiefs of Staff are public officials with a lot of expertise and working experience in the National Assembly. As policy and legal experts, they propose comments or alternative drafts, after reviewing the validity of the bill, the possibility of conflict with the Constitution and other laws, and the formal suitability. In practice, under the supervision of the Deputy Chiefs of Staff, the Committee staff (legislative researchers) investigate and research the bill agenda. *See* Art. 42 of the National Assembly Act.

58 The Presidential Decrees, Ordinances of the Prime Minister and Ordinances of the Ministries (Except for administrative guidelines).

59 According to the suggestion originally proposed by the Special Parliamentary Committee on Political Reform, the first bill allowed the Standing Committee to 'request for making corrections' to the head of the competent central administrative agency. During the plenary session's deliberation process, however, it was weakened as the phrase 'request for making corrections' was changed to 'notify'. *See* J. Noh, *Democratic Legislative Process*, ORUEM Publishing, 2016, p. 198.

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As above, the 2000 revision explicitly provided the basis for a review system of delegated legislation, but still did not force the notified administrative agency to take any action. It is said that the notice itself could be a burden to administrative agencies that are under parliamentary inspection by the Standing Committee;[60] in reality, the control performance of each Standing Committee was different and treated as an incidental task. Consequentially, it remained a very weak form of direct control.[61]

3 *Revision of the National Assembly Act in 2002: Introduction of Notification of Reasons for Non-submitted Delegated Legislation by Central Administrative Agencies*

The National Assembly extended the period of submission of delegated legislation from seven days to ten days through a follow-up revision of the National Assembly Act on 7 March 2002. This also changed the place of submission from the National Assembly to the competent Standing Committee. In addition, it obliged the head of the central administrative agency to notify of the reasons if they fail to submit delegated legislation to the Standing Committee by the deadline.

> National Assembly Act [Act No. 6657, 7 Mar. 2002, Partial Amendment]
>
> Article 98-2 (Introduction of Presidential Decree, etc.) (1) The heads of central administrative agencies shall, where the Presidential Decrees, the Ordinances of the Prime Minister, the Ordinances of the Ministries, the Directive, the Established Regulations and the Public Notice, etc., which provide for matters to be entrusted by the Acts or to be necessary for the enforcement of the Acts, are enacted, amended or repealed, submit them to the competent Standing Committee of the National Assembly within *ten days* therefrom. Where the heads of central administrative agencies fail to submit within the period, they shall notify the competent Standing Committee of the reasons thereof.

4 *Revision of the National Assembly Act in 2005: the Expansion of Scope of Submission and the Establishment of Post-control Procedures*

The 17th National Assembly (30 May 2004–29 May 2008) added a proviso to Article 98-2§1 of the National Assembly Act: In the case of a Presidential Decree, the draft of the relevant advance notice of legislation shall also be submitted within ten days when advance notice of legislation is given or when a request for examination is made to the Minister of Government Legislation if advance notice of legislation is omitted.

In addition, in response to the previous Act with no follow-up procedures after the Standing Committees' review on delegated legislation, a 2005

60 H. Shin & J. Hong, 'Analyzing the Process of Parliamentary Participation Institutionalization in Administrative Law', *Korean Journal of Public Administration*, Vol. 55, No. 3, 2017, p. 68.

61 Y. Kim, 'Problems and Reform Measures of Parliamentary Control of Administrative Rulemaking', *Administrative Law Journal*, Vol. 12, 2004, p. 17.

Amendment introduced a new provision in paragraph 3, stipulating that the head of the central administrative agency shall notify the competent Standing Committee of the plans for disposal of notified details and the results.

> National Assembly Act [Act No. 7614, 28 Jul. 2005, Partial Amendment]
>
> Article 98-2 (Introduction of Presidential Decree, etc.)
>
> (1) The heads of central administrative agencies shall, where the Presidential Decrees, the Ordinances of the Prime Minister, the Ordinances of the Ministries, the Directive, the Established Regulations and the Public Notice, etc., which provide for matters to be entrusted by the Acts or to be necessary for the enforcement of the Acts, are formulated, amended or repealed, submit them to the competent Standing Committee of the National Assembly within ten days therefrom: *Provided*, that in the case of a Presidential Decree, the draft of the relevant advance notice of legislation shall be submitted within ten days, even when an advance notice of legislation is made (referring to when a request for examination is made to the Minister of Government Legislation in the case of omitting a prior announcement of legislation).
>
> (2) Where the heads of central administrative agencies fail to submit the Presidential Decrees, etc. within the period set under paragraph (1), they shall notify the competent Standing Committee of the reasons thereof.
>
> (3) The Standing Committees shall regularly open the committees or sub-committees, and have them examine the Presidential Decrees, the Ordinances of the Prime Minister, the Ordinances of the Ministries (hereafter referred to as the 'Presidential Decrees, etc.' in this Article) which have been submitted by the competent central administrative agencies with respect to whether they are in contravention to the Acts, and where deemed that the relevant Presidential Decrees, etc. are not in accord with the purport and content of the Acts, they may notify the heads of the competent central administrative agencies of their contents. In such cases, the head of the central administrative agency shall notify without delay the competent Standing Committee of the plans for disposal of notified details and the results thereof.
>
> (4) The Deputy Chiefs of Staff shall examine the Presidential Decrees, etc. under paragraph (3), and provide the results thereof to the members of the relevant committees.

5 *2015 Revised Bill of the National Assembly Act: the President's Veto and Request for Reconsideration on 'the Right to Request' Amendments of Delegated Legislation*[62]

On 29 May 2015, the 19th National Assembly passed a revised bill to the National Assembly Act that allowed more parliamentary power to review and modify delegated legislation, with the approval of 211 out of 298 members and

62 Noh, 2016, pp. 198-203.

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transferred it to the government for presidential endorsement on 15 June 2015.[63] The key point of the revision was to strengthen parliamentary authority to call for a change in the Presidential Decrees, etc. It also stipulated that the head of the competent central administrative agency would report the results to the Standing Committee after dealing with the matters requested for revision. The final bill was as follows:

> Article 98-2 (Introduction of Presidential Decree, etc.) (3) Where deemed that the Presidential Decrees, the Ordinances of the Prime Minister, the Ordinances of the Ministries which have been submitted by the competent central administrative agencies are not in accord with the purport and content of the Acts, the Standing Committees may *request modifications or changes* thereof to the heads of the competent central administrative agencies. In such cases, the head of the central administrative agency shall deal with the matters subjected to a request for modifications or changes, and report the results thereof to the competent Standing Committee.

The revision gave the National Assembly 'the right to request' follow-up amendments, but it did not force the administration to accept them. Even the wording 'demand a revision' in the first draft was toned down to 'request a revision' in the final version.

However, President Park Geun-hye exercised her veto power against the revision on 25 June 2015 and sent it back to the National Assembly for a re-vote, calling it unconstitutional as it violated the separation of powers between the executive and legislative branches. Specifically, the government asserted that the bill would infringe upon the government's administrative legislative power under Articles 75 and 95 of the Korean Constitution; it would be difficult to regard the request as 'the will of the entire National Assembly' since the subject of the request for amendments would not be the 'National Assembly (with a resolution of the plenary session)' but the 'Standing Committee'. The bill was automatically scrapped when the term of the 19th National Assembly expired in May 2016, as the National Assembly did not vote again.

6 *Revision of the National Assembly Act in 2020: Introduction of a Resolution Procedure of the Plenary Session on the Results of Reviews on Presidential Decrees and Ordinances of the Prime Minister*

In the 20th National Assembly (30 May 2016–29 May 2020), a bill was proposed by the former Speaker Chung Se-kyun on 25 May 2018, aiming at the establishment of a plenary session voting procedure for the results of the review

63 This amendment was triggered by some cases of delegated legislation. Moon Jae-in (former chairman of the main opposition New Politics Alliance for Democracy, current President of South Korea) asserted that a decree excluding a feasibility study for some projects under the National Finance Act enabled the Four-river Refurbishment Project, which cost 22 trillion Korean won. *See* H. Kim, 'Opposition Leader Slams Park's Veto', *The Korean Times*, 26 June 2015. Available at: www.koreatimes.co.kr/www/nation/2018/11/113_181665.html (last accessed 31 August 2020).

of Presidential Decrees and Ordinances of the Prime Minister. This was reflected in the Committee's alternative[64] and promulgated on 18 February 2020.

> National Assembly Act [Act No. 17066, 18 Feb. 2020, Partial Amendment]
>
> Article 98-2 (Introduction of Presidential Decree, etc.) (3) The Standing Committees shall regularly open the committees or sub-committees and have them examine the Presidential Decrees, the Ordinances of the Prime Minister, the Ordinances of the Ministries (hereafter referred to as the 'Presidential Decrees, etc.' in this Article) which have been submitted by the competent central administrative agencies with respect to whether they are in contravention to the Acts.
>
> (4) As the result of the examination under paragraph (3), where deemed that the relevant Presidential Decrees and the Ordinances of the Prime Minister are not in accord with the purport and content of the Acts, the Standing Committees shall present the examination report to the Speaker.
>
> (5) The Speaker shall report the examination report under paragraph (4) to the plenary session and the National Assembly shall send it to the government after a resolution of the plenary session.
>
> (6) The Government shall determine how to deal with matters received under paragraph (5) and submit a report on the results thereof (in the case of not complying with the matters received, referring to the reasons therefor) to the National Assembly.
>
> (7) As the result of the examination under paragraph (3), where deemed that the relevant Ordinances of the Ministries are not in accord with the purport and content of the Acts, the Standing Committees may notify the heads of the competent central administrative agencies of their contents
>
> (8) The head of the central administrative agency shall notify without delay the competent Standing Committee of the plans for disposal of notified details under paragraph (7) and the results thereof.
>
> (9) The Deputy Chiefs of Staff shall examine the Presidential Decrees, etc. under paragraph (3), and provide the results thereof to the members of the relevant committees.

Specifically, the revised Act provided different modus operandi depending on the legal forms, dividing the cases into 1) Presidential Decrees and Ordinances of the Prime Minister and 2) Ordinances of the Ministries.

In the case of Ordinances of the Ministries, it allows the Standing Committee to determine whether the ordinances are compatible with the purport or content of the parent Act or not, and to notify the head of the competent central administrative agency, as before.

64 National Assembly Bill (Bill No. 24075, proposed by chairperson of the Steering Committee of the National Assembly, 29 November 2019). Available at: https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_Z1A9K1S1Q2O9N1B1M1V6B1M2N6B6R3 (last accessed 31 August 2020).

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However, in the case of Presidential Decrees and Ordinances of the Prime Minister, the new paragraphs (4) and (5) changed the control authority from the Standing Committee to the National Assembly by sending the review report to the government after a plenary session resolution. In addition, new paragraph (6) requires the government to review whether to deal with the matters received and submit a report on its results or its reasons in the case of non-observance.

This revision resulted because the Standing Committee's resolution under the previous Act had limitations in representing the entire will of the National Assembly.[65] Additionally, the revision also took into account the case of a request for corrections by a resolution of the plenary session, after the examination of the settlement of accounts (Article 84§2[66] of the National Assembly Act) and parliamentary inspections or investigations (Article 16[67] of the Act on the Inspection and Investigation of State Administration).[68]

II Operating Reality: Active Use of Legislative Counsel Office (LCO)

As seen earlier, the current parliamentary system of control on delegated legislation in the Korean National Assembly consists of the administration's submission of delegated legislation to the National Assembly; the submission of pre-announced draft legislation for Presidential Decrees; and the parliamentary review of Presidential Decrees, Ordinances of the Prime Minister and Ordinances of the Ministries. For more effective parliamentary review, the Deputy Chief of Staff shall provide relevant data to help the members of the Standing Committees to examine the Presidential Decrees, etc.

However, this Standing Committees review system was assessed to have failed to function properly as an effective control device on delegated legislation.

65 *See* Kim, *supra* note 62, pp. 30-31, n. 34.

66 Art. 84 (Return and Examination of Budget Bill and Settlement of Accounts)
(2) ... When there exist any illegal or unjustifiable matters as a result of the examination of settlement of accounts, the National Assembly shall request, after a resolution of the plenary session, the Government or the relevant agencies to make corrections of the said matters, such as indemnification or disciplinary measures, and the Government or the relevant agencies shall promptly deal with the matters subjected to a request for corrections, and file a report with the National Assembly on their results.

67 Art. 16 (Follow-Up Action on Results of Inspections or Investigations)
1 The National Assembly shall take follow-up action on the results of the inspections or investigations by a resolution of the plenary session.
2 Where any unlawful or unreasonable matters are found as a result of the inspections or investigations, the National Assembly shall, depending on the severity thereof, demand that the Government or relevant agencies take corrective measures, such as awarding compensation, taking disciplinary action, making improvements to the system, and adjusting budgets; and any matters deemed reasonable to be dealt with by the Government or relevant agencies shall be transferred to the Government or such agencies.
3 The Government shall deal with matters without delay which are subject to corrective measures or transferred under paragraph (2), and report the results thereof to the National Assembly. Available at: https://elaw.klri.re.kr/kor_service/lawView.do?hseq=51670&lang=ENG (last accessed 31 August 2020).

68 *See* the Committee Examination Report on the National Assembly Bill (Bill No. 13751), November 2018, pp. 6-7. Available at: https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_W1J8I0A5K2T5T1X6B0I2X3B7Q9B5V5 (last accessed 31 August 2020).

Standing Committees had a considerable amount of work to do with their legislative and budgetary bills alone, and there was virtually no manpower or time to scrutinize delegated legislation submitted by the administration. In response to this problem, to reduce the high burden of the Committees' duties, the LCO has been allowed to scrutinize delegated legislation. Under Article 7 of the Regulation on the Organization of the Korean National Assembly Secretariat, since 2009, LCO counsellors have been required to provide the results of the analysis and evaluation of delegated legislation when the Chiefs of Staff of the Standing Committee request its review to the head of the LCO.

In the 18th National Assembly (30 May 2008–29 May 2012), the LCO received 2,582 requests for scrutiny and sent the opinion that 141 cases were problematic, while the 19th National Assembly (30 May 2012–29 May 2016) found 139 defective cases of 3,391 requested.[69] In the 20th National Assembly (30 May 2016–29 May 2020), 16 Standing Committees (excluding the National Assembly Steering Committee) requested an analysis of a total of 4,418 cases and got the result that 101 (2.3%) cases did not conform to the purpose or content of the parent Acts.[70] However, only the Science, ICT, Broadcasting and Communications Committee notified the competent ministries of their opinions on two defective cases on 20 November 2017.

Besides analysis by request of the Standing Committee, the LCO conducts analysis and evaluation of the overall delegated legislation including Directives, Established Rules, and Public Notices, to support the parliamentary activities of members.[71] Between 2017 and 2019, it pointed out 135 cases of the total, suggesting that 60 cases (44.4%) would be raised to Acts and 75 (55.6%) would be amended in their legal forms. As a result, 23 of 60 suggestions were proposed in the form of bills to the National Assembly, and 12 bills finally passed; 6 of 75 suggestions were reflected by the administration.[72]

III Assessment: Performance and Limits

Under the current National Assembly Act, even if the government is notified of defective cases, parliamentary opinions do not carry legal binding force. Therefore, the Korean National Assembly's administrative legislation control

69 National Assembly Legislative Counsel Office, *Analysis and Evaluation Cases of Administrative Rulemaking in the 19th National Assembly*, National Assembly Secretariat, 2016, Preface. Available at: https://nas.na.go.kr/nas/info/legislation_info01.do?mode=view&articleNo=382453 (last accessed 31 August 2020).

70 National Assembly Legislative Counsel Office, *100 Analysis and Evaluation Cases of Administrative Rulemaking in the 20th National Assembly*, National Assembly Secretariat, 2020, p. 13. Available at: https://nas.na.go.kr/nas/info/legislation_info01.do?mode=view&articleNo=663537 (last accessed 31 August 2020).

71 The Presidential Decrees, Ordinances of the Prime Minister and Ordinances of the Ministries recently submitted to the Standing Committees are subject to analysis by the Standing Committee under the National Assembly Act. On the other hand, the LCO's own analysis targets all existing delegated legislation (including administrative guidelines – Directives, Established Rules, and Public Notices, etc.).

72 National Assembly Legislative Counsel Office, 2020, pp. 16-19.

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system remains a very weak form of scrutiny that fails to reach the level of the British affirmative resolution procedure able to prevent SIs from taking effect.

There was also criticism that it was not appropriate to determine whether the delegated legislation is right or wrong through a resolution of the Standing Committee. This is grounded in the idea that securing parliamentary democratic legitimacy is only possible through the majority opinion of the whole Parliament. In other words, parliamentary involvement in delegated legislation should be exercised by a plenary session resolution, not through a Standing Committee resolution.[73] In this respect, the 2020 revision can be assessed positively. It has introduced the procedure of 'the plenary session resolution' for expressing parliamentary opinion on Presidential Decrees and Ordinances of the Prime Minister.

E Implications for Enhancing Parliamentary Scrutiny: Lessons from the British Experience

In the United Kingdom, 1) the activities of committees specialized in reviewing delegated legislation have continued to support the resolution of the plenary session; 2) strong pre-control (ex-ante control) is possible as it can stop SIs from taking effect in the case of affirmative SIs, and the administration submits sufficient EMs together when submitting delegated legislation; 3) the SLSC can deal with merit or policy application of SIs, while the JCSI only looks at their technical qualities;[74] and 4) the role of committees is still advisory though some successful cases can be found.[75] The SLSC has also managed statistics on re-laid amendments and EMs from the government, showing performance above a benchmark rate of 5%.

Compared to 1997, when governmental duty of submission of delegated legislation was first stipulated, Korean parliamentary control on delegated legislation has made steady progress in institutional and procedural aspects, now reaching the stage of review and notification. However, it remains at a lower level in that parliamentary notification cannot bind the government directly.

Considering this, the basic direction for strengthening parliamentary control of delegated legislation in South Korea may be set as follows: 1) establishing a general body that takes full charge of receiving, reviewing, notifying the details of the review, and managing the results of the government's follow-up action; 2) strengthening control at the early stage (ex-ante control); 3) strengthening control of appropriateness; and 4) improving the system for enhanced use.

73 H. Kim, 'Die verfahrensrechtliche Problematik der delegierten Rechtsverordnungsetzung – insbes. zur rechtsvergleichende Betrachtung über das deutsche Recht', *Public Law Journal*, Vol. 17, No. 1, 2016, pp. 349-350.

74 Fox & Blackwell, 2014, p. 207.

75 *Ibid.*, p. 208.

I Establishing an Exclusive Institution

In the United Kingdom, the form and content of delegated legislation are considered to have improved thanks to debates on policy merits as well as assessments of the technical qualities of delegated legislation. The existence of the exclusive Committee itself has played a role in alerting the executive, and improving footnotes or EMs.

The Korean National Assembly has no organization that focuses solely on delegated legislation, and review of delegated legislation has been regarded as an incidental duty of the Standing Committees and the LCO. As the Standing Committee carries out reviews on bills, parliamentary inspection, or investigation, work related to delegated legislation is always deprioritized. Members, interested in re-election, may be eager to draft primary legislation to promote themselves. On the other hand, they tend to find no incentive for reviewing delegated legislation with low media attention and ex-post character.[76]

However, this job was originally within the remit of the competent Standing Committee under the National Assembly Act. The LCO, as a department that supports the drafting of primary legislation for members, should put top priority on meeting the burgeoning demand for drafting bills.[77] In the 4-year term of the 20th National Assembly, about 80 legislative counsellors[78] drafted more than 20,000 bills.[79] During the same period, 4,418 pieces of delegated legislation were requested for analysis by the Standing Committees. In this situation, it is hard to expect in-depth parliamentary scrutiny of delegated legislation. As a result, despite the importance of parliamentary control over administrative legislation, this task has not been regarded as a priority by either the Standing Committees or the LCO. Therefore, it is necessary to establish an organization exclusively in charge of administrative legislation, reinforcing professional personnel and raising awareness of parliamentary control.

The establishment of the general body and the assignment of full responsibility are also important in terms of continuous data management. The LCO only carries out analysis of delegated legislation commissioned by Standing Committees, rather than regularly monitoring the government's follow-up. This task has been recognized by neither the Standing Committee nor the LCO as their

76 J. Cho, 'Rule-making and Administration-Assembly Relationship: Suggestions for Korean Politics', *21st Century Political Science Review*, Vol. 13, No. 1, 2003, p. 287.

77 The LCO (under the National Assembly Secretariat) takes charge of drafting members' bills, while the Ministry of Government Legislation supports government bills. The Korean National Assembly has shown a rapid increase in the number of members' bills. Compared with the 16th National Assembly (30 May 2000-29 May 2004) and the latest 20th National Assembly (30 May 2016-29 May 2020), the number of bills proposed by members (excluding bills proposed by the Chairperson of the Standing Committees) increased 13 times from 1,651 to 21,594. *See* Bill Information System of the Korean National Assembly. Available at: http://likms.assembly.go.kr/bill/stat/statFinishBillSearch.do (last accessed 31 August 2020).

78 Based on the organization of the LCO as of 28 May 2020, there are 86 members of staff (including managers and clerks) at the LCO and about 80 are actually engaged in drafting legislation.

79 21,594 bills were proposed by members during the 20th National Assembly, and most of these were drafted through the LCO.

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main business, and no one is responsible for the entire process, including management of delegated legislation submissions, review, notification and government follow-up measures. As a result, notwithstanding the long history of reviewing delegated legislation of more than 20 years, related statistical data has been managed sporadically by the LCO, the Standing Committee and the Proceedings Bureau.

II From Post-control to Pre-control

It is desirable to control delegated legislation in advance to prevent the infringement of people's rights and interests, rather than to control it once it is enacted and takes effect. If only an ex-post facto or legality test is taken, it is difficult to find a difference from a judicial review. In this respect, the UK affirmative resolution procedure is strong as a prior and direct control on delegated legislation.

However, the parliamentary scrutiny system in the Korean National Assembly is not a prior control that reviews before the promulgation of the decrees or ordinances, but a control after the enactment or amendment of the decrees, etc. As a complement to this, the 2005 amendment to the National Assembly Act required the government to submit a draft pre-announcement of legislation to the National Assembly when enacting or amending a Presidential Decree. Nonetheless, the National Assembly has never undertaken an official review of the draft, using the provision above.

While Article 43[80] of the Administrative Procedures Act stipulates that the period for pre-announcement of legislation should not be shorter than 40 days in principle, many cases have omitted the procedure of pre-announcement of legislation, or reduced the notice period to less than ten days.[81] This period is too short for the National Assembly to recognize the enactment or amendment of delegated legislation and determine its illegality or appropriateness.[82]

Therefore, the system of pre-announcement of legislation should be utilized to allow the National Assembly to carry out ex-ante control on delegated legislation. In the long term, it may consider introducing a system in a similar form to the British affirmative/negative resolution, for the case of legislation that has a large impact on people's rights.

80 Art. 43 (Pre-Announcement Period) The period for pre-announcement of legislation shall be determined at the time of the pre-announcement and shall not be less than 40 days (20 days in cases of municipal ordinances and rules) in the absence of special circumstances. Available at: https://elaw.klri.re.kr/kor_service/lawView.do?hseq=47506&lang=ENG (last accessed 31 August 2020).

81 According to a 2016 survey by Rep. Keum Tae-sup, during three years between 2013 and 2015, 476 Presidential Decrees omitted pre-announcement of legislation (of 587 total omission cases) and 613 Presidential Decrees were noticed for less than ten days. *See* D. Jin, 'Many of the Government's Legislation Omitted from Pre-announcement of Legislation', *The Seoul Economic Daily*, 4 October 2016. Available at: www.sedaily.com/NewsView/1L2KAI9APN/GK0109 (last accessed 31 August 2020).

82 H. Kim, 'Eine Studie über Kontrolle von Gesetzgeber gegen der Gesetzgebung der Verwaltung', *Public Law Journal*, Vol. 17, No. 4, 2016, p. 220.

III From Legality Tests to Reasonableness Test

In the United Kingdom, the SLSC initiated active control of the merit of submitted SIs. It established new criteria such as 'political importance or public policy interest' and 'imperfectly achieving its policy objectives', adding to the 'defective drafting' and 'doubtful vires' that JCSI used before. However, the judgement criteria of delegated legislation used by the Korean National Assembly remain at the level of the JCSI.

Article 98-2 of the current National Assembly Act does not mention a measure of judgement on the appropriateness of delegated legislation, using expressions such as "whether ... in contravention to the Act" and "in accord with the purport and content of the Acts". Following this, the role of the Standing Committee is limited to the control of legality. Since this would overlap with judicial control by the courts, it is desirable to allow Parliament broadened criteria. In other words, Parliament needs to judge not only the legality of delegated legislation but the appropriateness or economic feasibility thereof.

IV Enhancing the Influence of Parliamentary Review

The SLSC of the UK Parliament has regularly monitored governmental follow-up action and published statistics accounting for the number of SIs and EMs revoked or corrected per session. On the other hand, the LCO of the Korean National Assembly has not kept track of governmental responses to parliamentary review. Although some figures can be found, these show that the reflection rate is extremely low. The LCO found that 101 cases of a total 4,418 requested were not compatible with the purport or content of the parent Acts, but only one Standing Committee – the Science, ICT, Broadcasting, and Communications Committee – , notified of two cases of the government through its resolution.[83] Eventually, it was found that the ministry had amended only one delegated legislation.[84]

Therefore, it is necessary to establish the authority to impose sanctions for non-submission of delegated legislation, to allow Parliament to request the corrective action on inappropriate delegated legislation of the government, and to supplement the government's response period. This would promote parliamentary scrutiny of delegated legislation and encourage the government to actively respond to Parliament within a reasonable timeframe.

83 Enforcement Decree of the Basic Research Promotion and Technology Development Support Act (Presidential Decree No. 27506) and Enforcement Decree of the Act on the Protection of Information and Communications Infrastructure (Presidential Decree No. 28210). As a result, the Ministry of Science and ICT only amended Art. 18 of the Enforcement Decree of the Basic Research Promotion and Technology Development Support Act.

84 National Assembly Legislative Counsel Office, 2020, pp. 13-14.

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