

# Delegated Legislation in Nigeria: The Challenges of Control

Jemina Benson\*

## Abstract

*In considering how society generally is regulated, most times focus is always on Acts of parliament that are passed by the legislative arm of government. However, delegated legislation is another aspect of law making that is of immense importance for the regulation of any given society. This form of lawmaking being a deviation from the norm has some challenges in terms of control. This article seeks to examine some of these challenges emphasising that adequate parliamentary scrutiny will prevent the harbouring of bad-quality legislation.*

**Keywords:** delegated legislation, parliament, control, quality, parliamentary scrutiny.

## A Introduction

Delegated legislation, also known as secondary legislation or statutory instrument, are laws made by the executive or other administrative bodies and they form part of the wider legislative process that is used for the regulation of any given society. Modern society imposes on government social, cultural, and economic matters of human endeavours<sup>1</sup> and the government needs to provide legislations to regulate these activities, but legislations in these areas are so enormous that it is impossible for the parliament to legislate in details to cover all these matters. Thus, the grant of rule-making power by the parliament to the executive became a necessity and a permanent feature of society.<sup>2</sup>

Though considered as an infringement on the doctrine of separation of power,<sup>3</sup> the need for such legislations is obvious because parliament lacks the time and the resources to legislate comprehensively.<sup>4</sup> Therefore, broad areas of

\* Jemina Benson LL.M (University of London) is a legislative drafter for Rivers State House of Assembly in Nigeria. Email: jeminabenson@yahoo.com.

1 J.O. Anwo & L.B. Sabitiyu, *Principles of Administrative Law*, Nigerian Open University 2012, p. 41.

2 K.C. Wheare, 'Controlling Delegated Legislation: A British Experiment', *The Journal of Politics*, Vol. 11, No. 4, 1949, p. 748.

3 H.W.R. Wade, *Administrative Law*, Oxford, Clarendon Press 1967, p. 291.

4 M. Elliot, *Beatson, Matthews and Elliot's, Administrative Law Text & Materials*, 3rd edn, Oxford University Press 2005, p. 633.

law, which require significant amount of details, are left to this form of law making, in order to make their principles workable.<sup>5</sup>

This means that the collective force of matters that are dealt with under delegated legislation impacts on all areas of our daily life.<sup>6</sup> Therefore, the extent to which these powers are delegated and how they are exercised requires careful consideration.<sup>7</sup> This is because the authority to make rules having statutory effect is a power that has its consequences. These rules are no less than statutes and they guide the conduct of the citizens and must be obeyed. They have equal force of law as the empowering Act.<sup>8</sup> So, the need to ensure that they respect the limitations in the enabling Act and are subject to the instrument of control of both the parliament and the judiciary is a necessity.<sup>9</sup>

Writers have argued that this power should not extend to matters of principle on which a decision of parliament ought to be taken.<sup>10</sup> Also, the discretion of such powers should not be left unchecked. But, delegated legislation is still considered as a useful process that contributes to the overall legislative and regulatory quality. In order to serve its purpose and to prevent it from harbouring bad-quality legislation, certain safeguards need to be put in place especially by the parliament to ensure that these laws when passed will fulfil the purpose for which they are enacted and be able to produce the regulatory result by the policy maker.<sup>11</sup> They should be laws that enjoy the support and co-operation of all actors in the legislative process<sup>12</sup> and be able to command the wilful compliance of the citizens whose lives they are to regulate. They should meet the procedural conditions of consultation and publication and general drafting conventions that promote clarity, precision, and unambiguity.<sup>13</sup> These are all issues that will promote effectiveness and serve as criteria for quality in parliamentary scrutiny.

To this end, this article hypothesises that adequate parliamentary scrutiny prevents the harbouring of bad-quality delegated legislation. To prove this hypothesis, analysis will be done on the system of delegated legislation in Nigeria to establish whether these instruments are made under proper authority; secondly, whether the exercise of these powers is in line with the powers conferred by the Primary Act; and thirdly, whether the mechanism if any that has been put in place is enough to safeguard them against abuse and prevent the harbouring of bad-quality legislation, and if not, what measures can be taken.

Generally, in Nigeria, the delegation of law-making powers can be traced to the Constitution. Sections 4(1) and 4(6) vest the legislative powers on the

5 I. McLeod, *Principles of Legislative and Regulatory Drafting*, Hart Publishing 2009, p. 159.

6 E.C. Page, *Governing by Numbers: Delegated Legislation and Everyday Policy Making*, Portland, Hart Publishing 2001, p. 141.

7 H. Xanthaki, *Thornton's Legislative Drafting*, 5th edn, Bloomsbury Professional 2013, p. 403.

8 D.R. Miers & A.C. Page, *Legislation*, London, Sweet and Maxwell 1982, p. 140.

9 H. Xanthaki, Written evidence to the House of Lords, Delegated Powers and Regulatory Reform Committee, Inquiry into Delegated Powers Memoranda, 2014, p. 62.

10 Xanthaki 2013, p. 403.

11 H. Xanthaki, 'The Problem of Quality in EU Legislation: What on Earth Is Really Wrong', 2001, available at: <<http://sas-space.sas.ac.uk>>.

12 *Ibid.*

13 Xanthaki 2014, p. 64.

National Assembly and the State Houses of Assembly, respectively.<sup>14</sup> This power to make laws that reside with the legislative arm can however be delegated to another body, but the legislature must first lay down the legislative policy and principle and must afford guidance for carrying out the policy before it delegates it to a subsidiary body.<sup>15</sup>

Section 18 of the Interpretation Act, which gave various definitions of which statutory instrument is one, defines it to mean:

any order, rules, regulation, rules of court, bye laws made either before or after the commencement of this Act in exercise of powers conferred by an Act.<sup>16</sup>

From the above definition, it is clear what amounts to delegated legislation in Nigeria. The definition states clearly the various forms that delegated legislation may take. The subsidiary bodies to whom power can be delegated include the president, governors, ministers, commissioners, administrative agencies, professional bodies, etc.<sup>17</sup> When carrying out these powers, these bodies act every bit like the parliament and make laws that have the same force as laws made by the parliament.<sup>18</sup> These legislations derive their legitimacy from Acts of parliament, and they can only be made where there is express provision in the primary legislation to do so.

Consequently, Nigeria like most other countries has a mass of her laws being exercised by administrative authorities, but there is hardly opportunity for the scrutiny of these legislations by the parliament before or after they are passed. Also, unlike other jurisdictions, there is no general pattern or procedure that is laid down that can be followed for the making of these legislations.<sup>19</sup> The procedure to be followed in each particular case largely depends on the enabling law, and this causes a lot of variations between the different regulations that are made and as such the safeguards in place are far too meagre to constitute an adequate control of delegated legislation.

Compared to the British system, delegated legislation is also made under an enabling Act. However, the British system has various procedures to which rule making can be subjected. This could be by affirmative or negative procedure, where no express procedure,<sup>20</sup> is used, then they come into force if no objection is made. The type of procedure that the instrument is subjected to determine the level of scrutiny that parliament can exercise on it. As such, for more significant

14 Constitution FRN 1999 as Amended.

15 S.O. Imhanobe, 'Delegated Legislation', in E. Azinge & V. Madu (Eds.), *Fundamentals of Legislative Drafting*, Nigerian Institute of Advanced Legal Studies 2012, p. 196.

16 Interpretation Act 1964 LFN.

17 Imhanobe 2012, p. 196.

18 *Ibid.*

19 Legislative Instrument Act 2003 (LIA) Australian, see also Statutory Instrument Act in United Kingdom.

20 D. Greenberg, *Craies on Legislation*, London, Sweet and Maxwell 2012, p. 337.

instrument, the affirmative procedure is used.<sup>21</sup> Here also, emphasis is placed on laying of such instrument before parliament or its committee for it to come into force. These methods serve as a check on delegated legislation.

Unlike the above, delegated legislation in Nigeria leaves a lot to be desired, and inadequate parliamentary scrutiny has been identified as the root cause of the problem. Therefore, the article proposes that the parliament who is the donor of these powers ought to provide adequate scrutiny for delegated legislation and this will be able to safeguard it from harbouring poor quality of legislation. The enabling clause in the Primary Act can be a starting point in the parliamentary scrutiny by ensuring that it conveys clearly the policy aim of the ministerial power,<sup>22</sup> and it is in compliance with the narrow limits of the delegation. These can serve as quality criteria for effective scrutiny.

## **B Justification for Delegated Legislation**

The changing nature of society requires that state would regulate more the activities of its citizens and the way to go about this is through delegated legislation. Therefore, its importance cannot be overemphasised. As it is argued, “if parliament were not willing to delegate law making powers, it would be unable to pass the quality of law which modern society require”.<sup>23</sup> In this regard, several writers have seen the need for delegated legislation.

As far back as 1893 Sir Henry Jenkins in support of delegated legislation wrote:

statutory rules are in themselves great public advantage because the details can thus be regulated after the bill passes into an Act with greater care and minuteness and with great adaptation to local and other special circumstances than they can possibly be in the passage of a Bill through parliament.<sup>24</sup>

Smith is also of the view that complex reforms will prove abortive unless parliament after laying down the general principle were to entrust the responsible ministers with their detailed implementation.<sup>25</sup> What this shows is the inevitability of delegated legislation. Succinctly, some reasons have been given why delegated legislation is regarded as a normal feature in most modern societies.

### *I Pressure on Parliamentary Time*

Modern legislation requires more time and details than parliament has the time or inclination to handle.<sup>26</sup> With this shortage of parliamentary time, requiring

21 *Ibid.*, p. 339.

22 V.C.R.A.C. Crabbe, *Legislative Precedent*, Vol. II, London, Cavendish Publishing Ltd. 1998, p. 48.

23 Report of the Committee on Ministers, p. 23.

24 Greenberg 2012, quoting Sir Henry Jenkins First Parliamentary Counsel, p. 291.

25 S.A. De Smith, ‘Delegated Legislation in England’, *The Western Political Quarterly*, Vol. 2, No. 4, December 1949, pp. 514-526, at 516.

26 *R v. St Helens Justices exp Jones* [1999] 2 All ER 73 at 83.

them to enact the minute details of every legislation will be impossible. Therefore, its concentration on the essentials<sup>27</sup> while leaving details to be worked out by the departments is a welcome development. Henry Thring in support of this is of the view that parliament will have more time for the consideration of more serious questions involved in legislation, if subordinate matters can be withdrawn from its cognisance.<sup>28</sup>

## *II Emergency Powers*

The relative speed with which delegated legislations are usually made is also an advantage to it.<sup>29</sup> This is very necessary in times of emergency. An example is the Emergency Power Act of Nigeria 1961, which confers on the President the power to make regulations that are necessary or expedient for the purpose of maintaining order in the country. This gives the President the power to declare some states in the federation under Emergency rule.<sup>30</sup> These laws are easy to amend and revoke so as to make them up to date and meet up with the needs of the society. They allow for quick changes without government having to push through a completely new Act, and they can be used for those schemes involving economic control that require high level of flexibility for their implementation.<sup>31</sup>

## *III Technical Character of Modern Legislation*

Legislators do not most times have the expertise and the knowledge that is required for certain legislations. For instance, laws concerning safety and technology require experts who are knowledgeable in the particular area. In such a situation, parliament will be required to deliberate on the main issues thoroughly and leave out the details to be filled in by the experts.

## *IV Need for Flexibility*

Another justification for delegated legislation could be seen with regards to the relative speed with which it can be made.<sup>32</sup> Delegated legislation is capable of changing rapidly and adjusting to situations.<sup>33</sup> This makes it suitable to be used for certain types of regulations like those whose details have not been fully worked out at the time when the Act is being passed. Others are those statutes which are likely to change frequently example fees payable for the application of a licence.

The foregoing has made it clear that the conditions and situations that require for the use of delegated legislation may be weighty, but this does not mean that the traditional role of the legislature being the body that is responsible for law making should be ignored. This rule is still very prevalent in our legal sys-

27 S.G.G. Edger, *Craise on Statute Law*, 7th edn, London, Sweet and Maxwell 1971, p. 291.

28 Thring *Practical Legislation* 1818 13.

29 McLeod 2009, p. 160.

30 State of Emergency (Certain States of the Federation) Proclamation 2013.

31 Xanthaki 2013, p. 404.

32 McLeod 2009, p. 160.

33 Edger 1971, p. 291.

tem only that it should be relaxed when necessary.<sup>34</sup> Also, there is no dispute that the primary use of delegated legislation is to allow statutory authorities to fill in the details of a statutory scheme. The question as to whether delegated legislation is actually used for this purpose is rather arguable, considering the extent to which some of these legislations go.

Despite this fact, delegated legislation is bound to remain part of our politics. It is seen that, in recent times, parliament has tended to delegate more of their powers than they have done in the past. Without this, the administration of modern public services would be at best slow and at worst impossible.<sup>35</sup> Thus, the concept of delegated legislation is not only seen as desirable but highly convenient.<sup>36</sup> Parliament after making the law can entrust the details of implementation to the minister<sup>37</sup> or other administrative body. So there is no reducing the amount of delegated legislation that can be made. The only issue for discussion is what are the present safeguards and how far are they adequate? In answering this question, certain points have to be borne in mind: the issue of who may make the legislation, the grant of powers, its scope of application, the criteria for its exercise, and the procedure to be followed. These are all issues that need to be clearly defined. These issues need to be settled before subsidiary legislation can be said to satisfy the criteria of quality. Also, in the course of delegation, care needs to be taken not to delegate power for the wrong reasons. The identity of the delegate and the extent to which powers can be delegated are all matters that are very important.

Provision needs to be in place, which will ensure that administrative bodies while making delegated legislation do not use their powers in a way that is not contemplated by the parliament. To ensure that they do not go outside their given authority, they should be watched by parliament;<sup>38</sup> otherwise, this trend rather than fulfilling its purpose can pose a danger to democracy. In the exercise of this power, authority must flow from the Primary Act. Vague enabling laws can open the floodgates to dictatorship as such should be used sparingly. Primary Acts should specify the content, purpose, and extent of the legislative authority as a means of preventing legislative abdication.<sup>39</sup> This is because misapplied power is not only dangerous, it is wasteful.

Furthermore, the significance of delegated legislation can be seen in terms of the number of people affected by it generally. Therefore, a theory that proposes that the law-making power should be left only in the hands of the elected officials may not be tenable at this point. Even the Donoughmore committee set up in England unequivocally affirmed the desirability and constitutionality of delegated legislation.<sup>40</sup> However, a line has to be drawn between what is proper delegation

34 Xanthaki 2013, p. 405.

35 Page 2001, p. 22.

36 *R v. Burah*, 1878 App Cas 899, 906.

37 J.A.G. Griffith, 'Delegated Legislation: Some Recent Development', *Modern Law Review*, Vol. 123, 1949, pp. 297-318, accessed on 10 June 2014.

38 *Ibid.*, p. 300.

39 *Ibid.*, p. 466.

40 Donoughmore Committee report on Ministers Powers, 1929, 23.

and what is not. In its exercise, it should be confined to the normal type of delegated legislation where powers are open and confined to details rather than those that are vague and their limits cannot be defined. This will prevent authorities from doing whatever they please in delegated legislation or even go to the extent that the primary legislation has not envisaged.<sup>41</sup>

Confined within its limits, delegated legislation is not incompatible with good administration. The fact that power is delegated to other authorities does not impair the superior law-making power conferred on the legislature. But, the situation in Nigeria still leaves a lot to be desired. The procedure to be followed in a particular case largely depends on the enabling law itself.<sup>42</sup> This leaves every case to be adjudged on its own merit. The point as to whether these regulations that are made are used to fill in details rather than make substantive laws is not been checked by anyone. Statutes empowering executives to make regulations may include powers to alter the enabling statute that confers the power.<sup>43</sup> In other words, the law makers' control of delegated legislation is not as effective as it should be. Judicial control which is mostly relied on is not satisfactory because often times it is belated if not crippled by the sheer indifference of people. Several other problems could be pointed out but suffice it to say that a situation where delegated legislation does not fall within clearly defined details of the Primary Act or where the powers conferred are so wide that one cannot tell what the actual limits are is to say the least not justifiable.

### C Criticism of Delegated Legislation

Having realised the need for delegated legislation, the argument that law-making power should be concentrated only in the hands of the elected officials is an argument that does not appear to be sound. This is why the criticism against delegated legislation does not seem to be based on the volume or the cumbersomeness<sup>44</sup> of the legislation; rather it is based on other matters such as the lack of adequate control and the tendency of it being abused, etc., some of which are as follows:

#### *I Deals with Matters to Be in Primary Legislation*

A major criticism of delegated legislation as put by Daintith and Page is that there has been an increasing tendency for government to use it as a means to deal with matters of principles and policy rather than with details.<sup>45</sup> There is the argument that measures that are supposed to be in primary legislation are sometimes slipped into delegated legislation. The general presumption is that delegated legislation is meant to take care of the details of the law after the parliament has laid

41 A.F. Benette, 'Uses and Abuse of Delegated Power', *Statute Law Review*, Vol. 11, No. 1, 1990, pp. 23-27, at 24.

42 P.A. Oluyede, *Nigerian Administrative Law*, Ibadan University Press 1988, p. 333.

43 Emergency Power Act of Nigeria 1961.

44 A.T. Olowo, *Administrative Law in Nigeria*, Jator Publishing Company 1997, p. 66.

45 T. Daintith & A. Page, *The Executive in the Constitution*, Oxford University Press 1999.

down its structure, and in doing this, it should be in line with what has been stipulated in the enabling Act. Anything to the contrary is an aberration.

This position does not even go down well with some critics who are of the view that allowing the delegate to fill in the details while making the law only in a skeleton form is not fair to the citizens because such details are expected to be filled in by the elected representatives of the people.<sup>46</sup> Ojo argues that, most times the enabling Acts merely state the subject on which the regulation is to be made without further indication as to what kind of legislation is intended to be authorised.<sup>47</sup> In this way, very crucial matters are left to be handled by the rule-making agency.

### *II Makes Executives too Powerful*

There is also the criticism that the executives are becoming too powerful as a result of the over-reliance of government on delegated legislation.<sup>48</sup> Executives could make laws without passing it to the parliament for scrutiny.<sup>49</sup> Page points out that the use of emergency power highlighted a more general tendency for the amount of delegated legislation to increase.<sup>50</sup> Most prominent among the critics was Lord Chief Justice Hewart, who in his *New Despotism* alleged “administrative lawlessness and an over mighty executive”.<sup>51</sup> Concerns here were mainly on the use of Henry VIII Clauses, which has the effect of amending or repealing primary legislation.<sup>52</sup> Beatson described this form of law making as tipping the balance too far in favour of administrative branch at the expense of the parliament.<sup>53</sup> Rippon alleged that they are used at an alarmingly high rate.<sup>54</sup> This creates the fear that they may even be used to modify what parliament has already laid down or better still be used in a radical manner that is not envisaged by the parliament, which is not far from what is happening today. This obviously transcends the classical functions of simply empowering the administrative authority to supplement statutory schemes.<sup>55</sup>

### *III No Limits in Enabling Clauses*

Other criticism that is made against the concept of delegated legislation is that delegated authorities are given the power to make laws most times without limitations. This goes to the extent that the powers of the court to control them are even ousted.<sup>56</sup> As a result of this, they may make laws that are unreasonable since they are not been scrutinised by any authority.

46 Oluyede 1988, 327.

47 Ojo, *Delegated Legislation*, 1964, 200 Thesis submitted to Institute of Advanced Legal Studies London for the award of Doctorate Degree, VLE, accessed on 15 July 2014.

48 Miers & Page 1982, p. 22.

49 *Ibid.*

50 *Ibid.*

51 Lord Chief Justice Hewart, ‘The New Despotism’, 1929.

52 Elliot 2005, p. 635.

53 *Ibid.*

54 L. Rippon, ‘Henry VIII Clauses’, *Statute Law Review*, Vol. 10, No. 3, 1989, p. 205.

55 Elliot 2005, p. 636.

56 Olewo 1997, p. 66.

This criticism however raises a lot of debate, as the criteria that can be used by the court to determine what amounts to unreasonableness are very subjective. The power of the court to decide what is unreasonable is determined by what is contained in the enabling Act, and it can only consider an act to be unreasonable if it exceeds the scope of the statutory authority and thus declares it as *ultra vires*.<sup>57</sup> Acts may seem unreasonable on the face of it, but the court may still not be able to set it aside as they may still fall well within the scope of the discretion given by the enabling Act. See the case of *Associated Provincial Picture House v. Wednesbury Corporation*.<sup>58</sup> However, it should be noted that courts can also look at the intention behind the parent legislation to decide whether the government is acting lawfully in making the subsidiary legislation; if it is not, the court will declare it *ultra vires*.<sup>59</sup>

#### IV *Inadequate Control by the Parliament*

Control over delegated legislation by the parliament has been a major source of criticism.<sup>60</sup> Parliament does not have the time or the expertise to keep some of these legislations under check as such delegates carry out this function the way it pleases them with little or no form of surveillance on them. In most cases one finds that parliament delegates powers on the subjective discretion of the delegate<sup>61</sup> by the use of such loosely worded phrase like “if the Minister is satisfied”, “in the opinion of the Minister”, “as he deems fit”. The use of these types of phrases is dangerous<sup>62</sup> and may lead to arbitrariness. The extent of the power conferred is so wide that it is difficult to know the limits of the delegate. Ojo describes it as making the delegate a judge in his own matter.<sup>63</sup> In Nigeria, many of these delegates use these powers as a past time as such they make and amend other legislations by implication without thinking of the consequences of their actions.<sup>64</sup>

#### V *Cumbersomeness and Non-Compliance with Procedural Rules*

The sheer volume of delegated legislation is another matter that has attracted criticism. Coupled with that, there is sometimes non-compliance with publication and consultation. Several of these laws are made without people being able to find them as a result of non-publication. Most often, people are hardly aware when these laws are made as there is no consultation. In Nigeria, even when they are published, they do so in different places, and this makes it impossible for the citizens to know what the present law is.

Regulators can get away with this because, in many cases, the enabling law does not impose a duty on the delegate to give notice of the proposed rule-mak-

57 P. Leyland & G. Anthony, *Textbook on Administrative Law*, Oxford University Press 2013, p. 316.

58 (1948) 1 KB 223.

59 *R v. Secretary of State for the Environment Transport and Regions ex parte Spath Holme Ltd.* [2000] 1 All ER 884.

60 Olewo 1997, p. 66.

61 Sir. C. Allen, *Law in the Making*, 7th edn, Clarendon Press 1964, p. 551.

62 Oluyede 1988, p. 328.

63 Ojo 1964, p. 200.

64 Oluyede 1988, p. 328.

ing. This creates a lot of unfairness as the people who are bound by these laws sometimes have no idea of these laws, and where publication is required, failure to publish does not invalidate the Act.<sup>65</sup> Consequently, citizens remain in complete ignorance of what rights and their property has been secretly conferred by the government or some authority and to what residual rights they may be entitled to under the Act.<sup>66</sup>

## VI *Undemocratic*

The fact that delegated legislation takes law making away from the democratically elected persons, to persons who are not elected is a criticism against it. This situation though acceptable as a result of the demands on the parliamentary time, the fact that parliament is not able to provide sufficient control is a problem. To crown it all, neither of the Houses of parliament even in the course of scrutiny can make amendment to these legislations.<sup>67</sup> They either accept the whole or reject the whole of it without any form of amendment. In Britain, the possibility of amending delegated legislation has been considered at some point, but when it was thought that an amendment of the standing orders will be able to effect this change, it was however realised that this will not be sufficient. What will be required will be a change of all the enabling clauses. This will cause a lot of complications and invariably go contrary to the intention of the Parliament and frustrate the purpose for which these powers were given.<sup>68</sup>

Sub-delegation is another issue raised with delegated legislation. In this case, law making is handed down a second level. This has raised the criticism that regulations are made by civil servants and the legislature is just a rubber stamp that does the biddings of the executive. However, the fact is that this type of legislation is here to stay in so far as it promotes the effectiveness of the overall law-making system. To achieve this purpose, mere delegation is not enough, and there has to be the proper framework and procedure that must be followed for it to achieve its desired aim. For every power that is given, there should be some way for the recipient to be accountable to some sort of authority as to how that power is exercised. When these powers are used arbitrarily against individuals, they should be able to access the courts to enforce their basic liberties on a basis of equality and fairness since they have been more or less subjected to an *ad hoc* system of law making. There is also the need for the Parliament's powers to delegate to be properly defined and streamlined. This is to ensure that in the delegation of these powers, the Parliament does not abdicate its powers.<sup>69</sup>

The foregoing issues raised have shown how easily bad delegated legislation can be harboured in our legal system in the course of making delegated legislation. The process of sub-delegation is something that can lead to legislative interference, and this is even worse when such powers are based on the subjective dis-

65 *Lord Scott Blackpool Corporation v. Locke* (1948) PL 395.

66 *Ibid.*

67 Greenberg 2012, p. 338.

68 Greenberg 2012, p. 338.

69 M.A. Etudaiye, 'The Statute of Tax, Duties Fees and Legislative Powers', <<http://Unilorin.edu.ng>>, accessed on 4 August 2014, p. 259.

cretion of the delegate. As such, great care is to be taken as to how these powers are being extended.<sup>70</sup> These powers most times are exercised without a reflection of some of the implications it can have on other laws and the society at large because they are done with no formality.

Considering the fact that legislation is the way through which a government can truly govern its people and achieve its social and economic policies,<sup>71</sup> delegated legislation is obviously a very important tool for this to be achieved.<sup>72</sup> How these powers are controlled will determine whether they will effectively carry out the intention of the government or harbour bad legislation. The scope of the powers that are given must be expressly defined in the enabling Act and it must be exercised within that bounds. Contrary to this, the Parliament should be able to exercise its powers against it.

#### D Control of Delegated Legislation

There are various kinds of control that have been put in place to safeguard the exercise of these powers. Some put in place by parliament and others by external bodies. However, it has been argued that parliament who is the giver of these powers should be able to exercise the most control of delegated legislation.<sup>73</sup> Since the granting of these powers requires the consent of parliament, it has the opportunity to consider the powers sought at the time when the Parent Act is before it as a bill.<sup>74</sup> Also, through its committees, parliament can be able to exercise some level of scrutiny to ensure that legislative measures are in line with its intentions.

This could be done by developing adequate procedure and laying standards that should be followed in the formulation of rules and regulations<sup>75</sup> and by looking at the enabling clause and prescribing several control features like tabling, disallowance, and prescribing some procedural requirements like consultation and publication and the affirmation by both Houses of Parliament.<sup>76</sup> These conditions ought to be met before regulations can be said to be in force.

The effectiveness of these measures has not been put to test in Nigeria, as the country does not really have in place an adequate system of parliamentary scrutiny of delegated legislation. What seems to be relied on here is judicial control, which is not enough<sup>77</sup> because decisions that are made under judicial review seem to affect only parties to it as against parliamentary scrutiny that cuts across the whole society.

70 Olewo 1997, p. 67.

71 Oluyede 1988, p. 326.

72 Miers & Page 1982, p. 31.

73 T.O. Oyelami, *The Challenges of Controlling Administrative Legislation in Nigeria*, <www.nials.nigeria.org>, accessed on 12 July 2014.

74 Miers & Page 1982, p. 156.

75 B. Schwartz, 'Delegated Legislation in America: Procedure and Safeguards', *The Modern Law Review*, Vol. 11, No. 4, October 1948, pp. 444-465, at 449.

76 Chapter 15 Legislation and Disallowance Department of Parliamentary Services 326.

77 Elliot 2005, p. 648.

Having said that, we are also mindful of the fact that the control of delegated legislation is not without its own problems even in well-established democracies like the United Kingdom. The British system has certain committees that are in charge of the scrutiny of Statutory Instruments (SIs). These are the Joint Committee on Statutory Instrument and the Commons Select Committee on Statutory Instrument. These committees scrutinise SIs to see where they are defective in terms of drafting, unauthorised use of power, ultra vires, or to see if they have been unduly delayed to be brought before Parliament.<sup>78</sup> Where there are defects, they bring this to the notice of the House. This process has been described as being an empty form as most times, no further action is taken by the House by way of debate since most SIs are not debated.<sup>79</sup>

Also, the procedure that is adopted for the making of SIs determines the level of scrutiny that Parliament can have on it. Government departments who are responsible for the instruments determine the choice of procedure that will apply to a particular instrument.<sup>80</sup> Affirmative procedure is not often used, rather the negative procedure whereby the regulation takes effect in the absence of disapproval or annulment is what is mostly used for the simple reason that it places less pressure on parliamentary time. The scrutiny of these instruments is mostly done by a standing committee and this is when they are affirmative instruments. They may only be debated on the floor of the House where there is an agreement with the government or where the negative procedure is used and they are prayed against which rarely happens. This makes scrutiny on the floor of the House seem to be rarely possible.

Although these Committees seem to exercise some degree of scrutiny over delegated legislation, the dominance of the executive makes it almost impossible for a disapproval of an instrument that the committee is against. Also, the fact that approval cannot be subject to amendment<sup>81</sup> and Parliament not being free to determine those instruments that should be subject to scrutiny on their merit and those which should not are all matters that have made it difficult to have proper scrutiny of these legislations. The decision as to whether a particular instrument requires parliamentary debate is a decision that the parliament itself should make and not the executives. Using the availability of time as the distinction between those instruments that should be given affirmative resolution and those that should be given negative resolution makes it impossible for instruments to receive the scrutiny in proportion to their merit. Instruments that are considered under the affirmative resolution may not always be more important than those that are considered under the negative resolution.

With regards to the requirement of laying, it is deemed satisfied once the document has been submitted to the votes and proceedings office of the Parliament or the office of the Clerk of the House is notified of it. This exercise is seen

78 Miers & Page 1982, p. 26.

79 J.D. Hayhurst & P. Wallington, 'The Parliamentary Scrutiny of Delegated Legislature', *Public Law*, Winter, 1988, p. 564.

80 Greenberg 2012, p. 347.

81 Greenberg 2012, p. 338.

as a mere procedure and does not give the Parliament the opportunity to have formal discussion on it. All of this shows the overriding need for caution in the exercise of delegated legislation.

One of the things we set out to consider in this paper is whether delegated legislation is done under proper authority and in line with the powers conferred. This is what forms the guiding principle of delegated legislation coupled with the fact that the Parliament must be able to lay down the policy in respect of a given measure which will serve as a guideline to delegates to whom this responsibility is vested. When these guidelines are in place, it is used as criteria and easy to see when regulators step out of the line. At this juncture, there is need to scrutinise selected enactments in Nigeria, in order to consider how they have fared under these criteria.

Section 35 of the Fire Arms Act Cap 69 (1958) empowers the Inspector General of Police to delegate all or any of his powers or duties conferred on him under the Act to any police officer. The observation that could be made with regards to this is that this may be the wordings of the enabling clause but is that really the intent of the Law? Can any police officer really carry out all the duties that are conferred on the Inspector General?

Secondly, Lagos State Legal Notice No. 10 of 1999 made pursuant to powers conferred under Section 12 Tribunal of Enquiry Law Cap 190 Laws of Lagos State of Nigeria 1994, makes provision to the effect that, powers exercised under it has the effect of judgement of a court, and cannot be reviewed by a court or shall any appeal lie to it. This obviously cannot be in line with the powers conferred to make this regulation.

Thirdly, Section 43(d) of the Electric Power Authority Act 1990 empowers the Minister to prescribe any fee or anything which is to be prescribed generally for the better carrying out of the purpose and provision of the Act. This is a wide-ranging power that does not seem to have any clear limit.

Fourthly, Section 107 of the Stamp Duties Act 1990 empowers the President or the Governor to make regulations to increase, diminish or repeal chargeable duty under the Act subject to the approval of the National Assembly or State Houses of Assembly. Since there is no scrutiny in any of the parliaments this exercise is carried out purely in violation of the intent of the law.

Section 9(2) of the Nigerian Civil Aviation Training Center Act of 1964 provides that an order made under the Act shall be laid before the legislature within 14 days of its making. Also, Section 12(1) of the Yellow Fever and Infectious Disease (Immunisation) Act (Laws of the Federation 1991) provides that the President or the Governor of a state may declare by order, any disease to be infectious and such an order must be laid before the legislature at the next meeting after the making of the order, and if the legislature disapproves, it shall cease to have effect but without prejudice to anything previously done under it. These powers are exercised in violation since the approval of the House is not sought.

There are also cases with regards to how delegated power is exercised in Nigeria a few will be considered here. In *Attorney General of Abia State v. Attorney*

*General of the Federation*,<sup>82</sup> where a bad piece of subsidiary legislation was declared invalid. In *Attorney General of Bendel State v. Attorney General of the Federation*,<sup>83</sup> it was held that the Bendel State House of Assembly was not the proper authority to pass into law the Revenue Allocation Bill.<sup>84</sup> Other cases involving delegated legislation were on the ground that it violated the constitution or the enabling legislation.<sup>85</sup>

From the above discussions, it is clear that parliament needs to be alert to prevent the exercise of delegated legislation as enumerated above. This is necessary because these rules affect the core of the existence of the citizens. Critics are of the view that the system of delegated legislation in Nigeria is inadequate.<sup>86</sup> They have argued that it is important that general statutory provisions relating to the exercise of delegated legislation be introduced as early as possible so that they can be placed before the Federal Parliament.<sup>87</sup>

The laying requirement as applicable in Britain is not carried out in the Nigerian Parliament. The object of laying is for the parliament to be able to scrutinise these instruments either before or after they are made to ensure that they are in line with the stated requirements, but unlike the British system, the Nigerian Parliament has no committees that are put in charge of these processes. Instruments that are made do not go through any further legislative process by the House or a committee of the House, as such, most of the instruments go unchecked as the mechanism to check them is hardly in place. Departments and regulators carry on this duty with little or no control.

There are situations where the enabling statute states in the schedule the subject of which a regulation or rule might be made.<sup>88</sup> For instance, the Emergency Power Act 1964<sup>89</sup> enumerates nine items upon which regulations can be made by the President. Also, the Fire Arms Act of 1958<sup>90</sup> makes provision in the schedule for about 12 items upon which regulations can be made. The reason for this is so that there is a clear field upon which the executives can legislate and to ensure that they are confined to that field. In a situation where there are no checks to ensure that these guidelines are strictly followed, there is the tendency that regulators could step out of line and the citizens will be made to suffer.

The wordings used to draft the enabling clauses also pose a problem in delegated legislation. They usually provide that “the President in Council may make regulations...” or where the powers are not to be exercised by the President, but by some other person, it is usually at the approval of a higher body. Some writers

82 (2000) Vol. 17 WRN 1 at 140-141.

83 (1982) All NLR 85.

84 See also *PHMB v. Ejitagba* (2000) 11 NWLR pt. 677 p 154 SC and *Nigerian Air force v. Obiosa* (2003) 4 NWLR pt. 810 p 233 SC.

85 *Phoenix Motors Ltd. N.P.F.M.B.* (1993) 1 NWLR, Pt. 272 at 728; see also *Bamgboye v. University of Ilorin* (1991) 8 NWLR [Pt 207] 1 at 30.

86 Ben Nwabueze, *Constitutional Law of the Nigerian Republic* 1964, 205.

87 Report of the Elias Commission of Inquiry into the Administration, Economic and Industrial Relations of the Nigerian railway Corporation in 1960, 20.

88 Oluyede 1988, p. 343.

89 Cap Laws of the Federation of Nigeria.

90 Cap 87 Laws of the Federation of Nigeria.

have argued that this will be able to provide a criterion for adequate parliamentary scrutiny and to ensure ministerial responsibility.<sup>91</sup> The effectiveness of this kind of control is also questionable, giving the fact that a situation where the government commands majority the possibility of the laws that are desired to be passed by the government failing is very slim.

Even where scrutiny is done, Parliament is more interested in the political merits of these legislations.<sup>92</sup> As a result of this, the controls that are exercised seems to be on the general aspect of the delegated legislation rather than on the details of such legislations because at the end of the day instruments are either approved or rejected in their entirety since there are no rules for their amendment.

From the forgoing, it is clear that too little control gives the executives an opportunity to over step their bounds and too much control means that the value of delegating is lost.<sup>93</sup> Against this backdrop, it is clear that for society to prevent bad quality of delegated legislation, there has to be a balance. Rule-making power should be carried out within certain clear limits and under the watchful control of the Parliament in order to prevent the harbouring of bad-quality legislation.

## **E Effects of Parliamentary Scrutiny on Delegated Legislation**

In determining the extent of parliamentary scrutiny and its effects on delegated legislation, the starting point is for Parliament to look at the enabling clause in the primary legislation.<sup>94</sup> It is from the enabling clause that the permitted content and the nature of the subsequent delegated legislation will be determined.<sup>95</sup> Questions relating to the granting or restricting of powers to make delegated legislation or the form that it should take will arise here.<sup>96</sup> Parliament before the passing of the Primary Act should ensure that the powers that are conferred in the enabling clause are both substantial and clear. When it is found that the enabling clause has not been followed in the making of delegated legislation, members have the right to bring private member bills against it. Parliament can also amend the enabling statute to restrict or withdraw the rule-making powers.<sup>97</sup>

If the approach in Canada is taken at the time when they were also developing their own system of delegated legislation, Parliament in most cases had to use normal procedure to discuss powers that it had delegated to the executives to prevent the abuse of these powers.<sup>98</sup> Other measures that can be used are bills pro-

91 D.C. Holland & J.P. McGowan, *Delegated Legislation in Canada*, Toronto, Carswell Co. Ltd. 1989, p. 51.

92 Miers & Page 1982, p. 159.

93 Holland & McGowan 1989, p. 49.

94 Elliot 2005, p. 638.

95 *Ibid.*, p. 634.

96 D.J. Whalan, 'Scrutiny of Delegated Legislation by the Australian Senate', *Statute Law Review*, Vol. 12, No. 2, 1991, pp. 87-108.

97 The Indian Law Institute New Delhi, *Delegated Legislation in India* 1964, p. 163.

98 J.E. Kersell, *Parliamentary Supervision of Delegated Legislation: The United Kingdom, Australia, New Zealand and Canada*, London, Stevens 1960, p. 111.

posing to delegate legislative powers should be accompanied by a memorandum explaining the scope and the nature of the delegation. This memorandum should go as far as explaining why these matters are to be treated under delegated legislation rather than under the Primary Act. This will enable the Parliament to decide whether the delegation is appropriate<sup>99</sup> and whether the level of parliamentary control as chosen by the departments<sup>100</sup> is adequate.

It should be noted that the care with which this job can be done diminishes proportionally with the increasing number of regulations that are required to be scrutinised. Therefore, the answer to the situation would be to appoint standing committees in the various Houses of Parliament to be in charge of scrutiny of these instruments. These committees having clear terms of reference are most suited to perform this function of scrutiny as the House cannot really do this on its floor as a result of the pressure on its time. These committees, though have no powers to amend the bill, but can scrutinise the conferral powers to ensure that the delegated legislation falls within the ambit of the enabling law. Also, it can consider whether there has been an unusual or unexpected use of the statutory power.<sup>101</sup> This means that scrutiny will on the long run be focusing on not only the political merit, but also the technical merits of these legislations. The committee will have to expose those legislations that are verbose and unintelligible, it will also report on those delegated legislations that impose taxes and raise the issue of sub-delegation. The vigilance of these committees has been effective in Britain in the sense that it brings to the attention of the House those instruments that are defective in form and substance. Where such instruments are found to be grossly inappropriate, they may be annulled on the motion of a member of the House.

Also, as Mallory has argued, the practice of tabling will be more effective if referred to committees for consideration.<sup>102</sup> This will not only help in the aspect of scrutiny by checkmating the executives from ventilating their grievances through legislation, but also preserve the principles of parliamentary supremacy at least in the area of law making. This will also help in the drafting of the legislative text as drafters who are attached to these committees will have a chance to look at these legislations to ensure that they meet drafting requirements. With parliamentarians voting along party lines and the dominance of the government, how all this is to be achieved is another question. Having said that this does not mean that it is impossible. Scrutiny has the effect of making the government and the authorities that make delegated legislation to be careful in the exercise of their powers. If applied in Nigeria, it will go a long way to prevent the harbouring of bad delegated legislation.

99 House of Lords, Delegated Powers and Regulatory Reform Committee, Special Report: Quality of Delegated Powers Memoranda, 2014.

100 Greenberg 2012, p. 347.

101 C.T. Carr, 'Delegated Legislation', *Journal of Comparative Legislation and International Law*, Vol. 25, No. 314, 1921, p. 244.

102 J.R. Mallory, 'Can Parliament Control the Regulation Process', *Canadian Parliamentary Review*, Vol. 6, No. 3, 1983.

## F How Scrutiny Affects Quality of Legislation

If Parliament or its committee is able to put some of these checks enumerated above, then delegated legislation will conform to general drafting rules. Issues of clarity, unambiguity, precision, and accessibility would be complied with. Such legislation will be made in clear and lucid form, the language to be used would be plain and the words precise.<sup>103</sup> On the whole, such an instrument will promote the effectiveness of the overall legislative system. Powers would be transferred at the proper time and from trustworthy authorities.<sup>104</sup> The manner of the transfer would be checked. Parliament will also be able to assess it using clearer criteria to ensure that the instrument adheres to drafting convention and are consistent with existing legislations. It will comply with procedural rules and take into account the views of interested parties who must be consulted before these laws are made.<sup>105</sup> This will lead to certainty and security in the law and on the long run effective judicial protection.<sup>106</sup>

Bad-quality delegated legislation leads to vague and conflicting provisions and over-regulations of the citizens, which result in the loss of interest on the part of the citizens. When citizens loose interest in the law, compliance with it becomes a matter of fear of sanction rather than wilful compliance. Such laws impose excessive burden on citizens and possess a challenge on the enforcers of the law. For a system to prevent the harbouring of bad-quality legislation, there is need for the Parliament to impose standards that must be met by the delegates before the exercise of rule-making.

## G Judicial Review

There are other means through which delegated legislation can be controlled. The most frequently used method in Nigeria is judicial review.<sup>107</sup> Here, the court applies settled judicial principle for the interpretation of statutes<sup>108</sup> and is able to exercise its power with regards to how such powers fall within the four corners of the enabling Act and to ensure that such powers are carried out in good faith and nothing else. The court has no power to inquire into the policy or any other scene of the transaction.<sup>109</sup> What this shows is that the court will only have the power to set aside a regulation based on the fact that proper procedure has not been followed. The court in doing this will have to follow whatever has been laid down in the enabling Act. Thus, bringing us back to the foremost argument that Parliament as the giver of this power is better placed to exercise adequate control of

103 Olewo 1997, p. 68.

104 Edger 1971, p. 293.

105 *Ibid.*

106 Xanthaki 2001.

107 Oluyede 1988, p. 343.

108 *Ibid.*, p. 344.

109 *Ibid.*, p. 346.

delegated legislation. There are, however, other grounds by which the court can set aside a regulation.

### *I Review on Grounds of Ultra Vires*

The ultra vires rule states that delegated legislation cannot exceed the limits of the principal legislation.<sup>110</sup> Here, the court is to ensure that the powers exercised is not broader than the terms of the delegation.<sup>111</sup> According to Seidman, an agency may be in contravention of this rule when it exercises powers that are not delegated to it or matters that are not authorised by the delegated legislation or does this without taking into account the consideration that are prescribed in the delegated legislation or without following the procedures that are laid down in the principal Act.<sup>112</sup> The court in the exercise of this power can declare ultra vires any act.<sup>113</sup> This was seen in the case of *Akingbade v. Lagos Town Council*.<sup>114</sup>

### *II Review on Grounds of Sub-Delegation*

This is the Latin rule of *delegatus non potest delegare*, which means that when powers are delegated to a person, such a person cannot delegate the powers delegated to another person except by express authorisation from the conferring authority.<sup>115</sup> In the interpretation of this principle, a distinction needs to be made between administrative matters and legislative matters. Most times we see that when powers are conferred on the Minister or the Commissioner, officers of their department tend to act on their behalf. If such powers are legislative in nature, we can hardly say that such legislative powers are also to be exercised by officers of their department going by this maxim. This is more so when discretion has been given to a superior authority such discretion cannot be exercised by a delegate. See case of *Majiyagbe v. A G and Ors*<sup>116</sup> where the court held that a revocation was not proper on the ground that being a statutory Act it cannot be delegated by the Governor. There are several cases where there has been a departure from this rule in Nigeria. This can be seen in the Fire Arms Act,<sup>117</sup> where it was provided that the Inspector General of Police may by notice, published in the Gazette, delegate all or any of his powers to a police officer.<sup>118</sup>

Suffice it to say that all the methods that are used to make delegated legislation can be reviewed by the courts in the case where there is abuse or in a situation where it has not been laid before the Parliament where that is a requirement. Similarly, where there is non-approval or the delegate simply exceeds the powers

110 A. Seidman, R. Seidman & N. Abeysekere, *Legislative Drafting for Democratic Change, A Manual for Drafters*, Kluwer Law International 2001, p. 297.

111 Schwartz 1948, pp. 449-465, at 462, accessed on 7 August 2014.

112 Seidman, Seidman & Abeysekere 2001, p. 297.

113 Oluyede 1988, p. 348.

114 1955 2 NLR 12, 90.

115 Oluyede 1988, p. 350.

116 (1957) N.R.N.L.R., 158.

117 (Cap 69 LFN1958).

118 Olewo 1997, pp. 69-70.

that are conferred to it, the court can declare delegated legislation to be null and void and of no effect.

## H Drafters Responsibility

Delegated legislation most times is not drafted by the Parliamentary Counsel even in the United Kingdom. They are usually drafted by the departmental lawyers and there is likely to be less formality in terms of process than in the primary legislation.<sup>119</sup> The problem with this trend is that the departmental lawyer though they may be versed in the technicalities of the particular area of law, they may not be so experienced in the drafting of legislation. The British model, however, takes certain precautions in this regard as statutory instrument that amends primary legislation is by rule shown to the Parliamentary Counsel in draft form. Also, statutory instruments that tend to be problematic are given to the Parliamentary Counsel to draft on the instruction of the department.<sup>120</sup>

In the same vein, when instruments are considered at the committee, drafters can have access and check that they are in line with drafting rules. In the Nigerian system, drafters are part of the committee system as such will be availed this opportunity if delegated legislations are considered by parliamentary committees following the British model.

It is obvious from the foregoing that the practice and experiences that are founded in some jurisdictions like the United Kingdom with regards to the control of delegated legislation are inapplicable in Nigeria. The kind of control that exists in Nigeria can be said to be more of political control because regulations are usually made by the President or the Governor in Council or if the powers are to be exercised by some other persons, on the approval of a higher authority.<sup>121</sup> It has been argued that this is to some extent a kind of scrutiny in itself but the position in this paper is that such level of scrutiny is not enough.<sup>122</sup>

In Nigeria, there are no procedural rules that are followed, or is much use made of the procedure whereby the enabling law will require consultation or publication as a condition precedent to the making of any delegated legislation. There is no general statute that requires that subsidiary legislation be laid before the Parliament. Each bill is dealt with on its own merit. The form of laying that is done in Nigeria; that is when it is done at all, is simply laying without any further direction or control. Also, individual Acts that are made provide that these instruments that are made be published in the Gazette as soon as practicable. The meaning of the phrases “as soon as possible” and “as soon as practicable” is somewhat ambiguous and does not tell at what time these actions should be carried out.

The truth is that Parliament cannot effectively control the exercise of delegated legislation in a mass. It can only do this if delegated legislation is laid before it

119 Greenberg 2012, p. 333.

120 *Ibid.* (Transfer of Function Order).

121 Olewo 1997, p. 89.

122 Imhanobe 2012, p. 204.

and with proper parliamentary procedure for challenging unsatisfactory regulation. Parliament will be able to fulfil a supervisory function in delegated legislation if provisions can be made for detailed scrutiny of certain instrument in small parliamentary committees with narrow but clearly defined terms of reference. This will reduce the risk of constitutionally undesirable features being imported into delegated legislation.<sup>123</sup>

### *I Conclusion and Recommendation*

The focus of this article is to bring to the fore the main reasons why bad-quality delegated legislation is harboured in the Nigerian legal system. It attributes it mainly to the lack of adequate parliamentary scrutiny. This might not be the only reason but the fact that Parliament is the giver of these powers places an onus on them to ensure that these powers when exercised would be to the utmost benefit of the society and not to its detriment.

Delegated legislation has been shown to be both legitimate and constitutionally desirable.<sup>124</sup> Due to the exigencies of modern society, the Parliament after laying the policy of the legislation donates some of its law-making powers to the executive to fill in the details in order to get the kind of laws that society deserves.

The reason for this is stated as mainly lack of time on the part of the Parliament and the exigencies of modern society. Parliament lacks the expertise to legislate in details on every aspect of the society and the flexibility with which delegated legislation can be used to make laws especially in times of emergency are reasons that have been used to justify the delegation of law-making power.

However, the role of delegated legislation is to fill in the details after Parliament has laid the policy in the primary legislation, but we have seen that making a distinction between those aspects that should be in the Primary Act and those details to be left to the executives has caused its own controversy as the executives have been accused of using these delegated legislation to pull through their policies without recourse to the rigors of adequate law-making process in the Parliament. Also, regulators tend to exercise these powers in a manner that is not in line with the Primary Act and do not follow the policy and intent of the Parliament.

Consequently, delegated legislation has been criticised as making the executives too powerful and contravening the principles of separation of powers. Several other criticisms are made against delegated legislation. This is further heightened by the fact that there are no adequate measures in Nigeria that will serve as safeguard to prevent the exercise of this law-making power from harbouring bad-quality legislation.

Some forms of control are analysed such as parliamentary and judicial controls, but the contention is that parliamentary control is the most effective though obviously lacking in Nigeria. In carrying out this function, the focus of

123 Kersell 1960.

124 *Bailey, Jones and Mowbray, Cases, Materials and Commentary on Administrative Law*, 4th edn, Sweet and Maxwell Ltd. 2005, p. 200.

Parliament should be on the enabling clause and other procedural requirement such as consultation and publication ought to be complied with and to ensure that the regulation is within the line of the parent legislation. Due to the cumbersome nature of this task and their sheer number, Parliament has to rely on its committee who perform this function and report back to it. Parliament has the final authority to stop a delegated legislation that does not fulfil the requirement to further the overall objective of the law.

The article has been able to prove from given examples that adequate parliamentary scrutiny is lacking in Nigeria and that is the reason why the system harbours bad-quality delegated legislation. Parliament has not been able to provide any guidelines for the making of delegated legislation and after these powers are exercised, there is no form of scrutiny on it to ensure that it is within the limits of the powers conferred.

The analysis also shows that most of the powers that are exercised are not in line either with the powers conferred or the general intention of the Act, as such, there is need for safeguard. In order to prevent the harbouring of bad-quality delegated legislation, Parliament should set standards and lay down certain requirement that regulators must comply with before delegated legislation can be made. Procedural rules of publication and consultation should be made condition precedent for the exercise of these powers. This will go a long way to make regulators cautious.

Consequently, the following recommendations are made:

- I That draft from proposed instrument as a matter of requirement should be laid in Parliament and receive approval before they are made.
- II That provision should be made in the enabling Act for the revocation and amendment of instruments that do not comply with the enabling Act.
- III That laying requirement should be complied with as it serves as a check upon the powers that are conferred.<sup>125</sup> It invariably raises the interest to ensure that adequate scrutiny is given to those measures that are laid before it.
- IV That legislative committee to scrutinise delegated legislation is a system that should be transplanted to Nigeria. The importance of this cannot be over-emphasised as an effective control measure for delegated legislation.
- V That a general statute be made that will regulate the making of delegated legislation.

125 Schwartz 1948, p. 460.