Bennett Institute for Public Policy Cambridge

INSTITUTE FOR GOVERNMENT

The legislative process

How to empower parliament

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About this report

This report has been produced as part of the Institute for Government/Bennett Institute 'Review of the UK Constitution'. It looks at balance of power between parliament and the executive throughout the legislative process, and makes recommendations for reform to empower parliament.

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Summary

The UK's central constitutional principle is parliamentary sovereignty – that, in principle, parliament holds the power. But in practice, a government with a majority wields much of that power. Nowhere is this more apparent than in the legislative process. While governments are elected to deliver their manifesto commitments, including through legislation, democratic legitimacy derives from parliamentary approval of that legislation. The UK parliament represents the whole electorate rather than just the governing party, and so should be able to scrutinise, influence and in rare circumstances reject government legislative proposals.

Beyond constitutional principle, legislative scrutiny is also essential to ensure that government policies and proposals for implementing them are robustly tested, to allow interest groups and the public to raise concerns in a public forum, and to secure political endorsement for key government activities.[1]

However, in practice, parliament's ability to perform these functions effectively is limited. Government defeats on legislation are rare under a majority government. Parliamentarians may be able to extract concessions from ministers through behind-the-scenes influence.[2] However, the effectiveness of these strategies can depend on the government of the day's willingness to engage with MPs and can be further limited by the structure of scrutiny processes. The executive's strong control of parliamentary mechanisms, not least the Commons timetable, means that procedure often prioritises speed and efficiency over opportunities for scrutiny. Recent trends towards passing bills on expedited timetables and increased use of secondary legislation – accelerated by the UK's exit from the EU and the coronavirus pandemic – have curtailed opportunities for parliamentary input still further.

It is vital that parliament has the tools, resources and opportunities to scrutinise, challenge and influence government legislation. In this paper we consider how to ensure it is given these and so has an appropriate degree of power within the legislative process.

Examining the legislative process

Problems with the current process

There are many political, practical and procedural problems with the legislative process. It is unhelpfully opaque, even to many parliamentarians, and lacks input from experts – from outside parliament but also within it, thanks to a limited and often rushed committee stage. There is too little interchange between the executive and parliament when first designing legislation, storing up problems for later. Together these prevent parliament from performing its functions well and can result in poor quality legislation. Any recommendations for reform of the legislative process should as such aim to address these problems in turn.

- **The legislative process is complex and inaccessible.** Parliamentarians, officials and civil society groups all told us that they had difficulty understanding parliamentary procedure, requiring resources to help them navigate the system and creating a barrier to participation.

- **Parliamentarians are not always given sufficient time to consider legislation.** The volume of legislation has remained fairly constant over the last three decades but the time the House of Commons dedicates to considering government bills is on a downward trajectory. Brexit and Covid have led to trends towards government choosing to pass bills on expedited timetables, even when not urgent, giving parliamentarians less time to consider the propositions before them.

- **Governments are introducing bills in parliament before policy is fully developed.** Several parliamentary committees have raised concerns about the increased use of delegated powers in lieu of policy detail on the face of the bill; governments are making substantial amendments to bills at late stages more often, again leaving little opportunity for parliamentary scrutiny.

- **Parliamentarians do not have the capacity and resources to properly scrutinise the content of legislation.** MPs have many competing demands on their time, which means legislative scrutiny is often not a priority. MPs, including on opposition frontbenches, have access to only a handful of staff members to help them develop policy or draft amendments. Peers have access to even fewer resources. The support of parliamentary staff in relation to legislation is limited to mainly providing impartial information and procedural advice.

- **It is difficult for parliamentarians to amend a bill once it has been introduced into parliament.** Government defeats on amendments are rare, and the threshold for government concessions is high. Amendments require further political sign-off, analysis and drafting capacity, which from the government's point of view can add unwanted time and complexity to a bill's passage. While this may be understandable, the attitude limits parliament's ability to influence the content of legislation, beyond what the government has set out in the original bill.

The stages of a bill

To assess where and which reforms to the legislative process may be necessary we examine what opportunities there are to influence legislation at each stage of the process – from policy development to post-legislative scrutiny – and what procedural and practical barriers prevent this. To do this we take stock of existing parliamentary recommendations.

We argue that there are several aspects of the legislative process that require improvement. In some, this would require the government and parliament to simply adhere to established best practice. For example, the government should follow its own guidance on the length of policy consultations, and not seek to pass legislation on an expedited timetable unless essential. In others, existing

recommendations for reform should be revisited. For example, the House of Commons Procedure Committee's recommendations on private members' bills deserve further consideration.

We identify two areas for further inquiry where there is the greatest potential to improve parliamentary scrutiny and where we can best make a contribution through detailed proposals for reform. The first concerns pre-legislative scrutiny (PLS). Greater use of PLS has been the most common parliamentary recommendation, and there is broad consensus that its greater use could improve outcomes – but there has been a persistent lack of government uptake. This should change. The second concerns the House of Commons committee stage – the main opportunity for detailed scrutiny and to bring outside perspectives in to the process – which is undervalued and where again greater use would likely improve the process as a whole.

Reforming the legislative process

Embedding pre-legislative scrutiny in the legislative process

PLS has many benefits: it can be beneficial for the government, helping to smooth out a bill's passage, preventing defeats down the line, and ultimately improving the quality of legislation. It also creates opportunities for parliament to influence legislation at an early stage when it can have the most impact – including calling for further policy development, drawing upon members' policy expertise, and creating opportunities for civil society engagement. While this is not guaranteed to result in greater parliamentary influence, it creates additional opportunities for it to happen.

There are practical and political barriers to the greater use of PLS. Most important is time – it can take up to four months for a committee to report, although there have been examples of committees considering draft clauses or holding one-off evidence sessions. Ministers are often reluctant to delay legislation out of a desire to deliver on their policy objectives, perhaps led by concern that their political fortunes might change before they are able to do so. The current system used for PLS is discretionary, meaning it is up to the government to decide whether to publish a bill in draft for PLS. While there have been bursts of enthusiasm for this process, uptake remains low.

Therefore we recommend a more formal procedure be put in place – albeit with the flexibility to respond to the government's concerns about its implications for legislative timetables. Drawing on the example of the Irish parliament, in which committees are given the opportunity to conduct PLS on all government bills, we recommend:

- The government should be required to publish all bills in draft. In the case of urgent or emergency legislation, there should be a mechanism through which the House of Commons can agree to grant a waiver.

- Commons select committees should be given the opportunity to request PLS on any bills in their departmental remit, unless the government chooses to establish a joint committee to scrutinise a specific bill.

- There should be a 'menu' of options for PLS to allow for flexibility within the process and prevent adding significant additional time to a bill's timetable in all cases. These should include: a full committee inquiry and report on the whole bill, scrutiny of draft clauses, a shorter PLS inquiry, or holding a one-off evidence session before the formal introduction of the bill.

Reforming Commons committee stage

Research suggests that while the level of activity of Commons bill committees – in terms of the number of amendments debated – has increased over the last half a century, their impact on government legislation has decreased. Committee members are often chosen by their party whips for loyalty over expertise, and given little policy support or advice once in the role. This has resulted in a high volume but low quality of amendments tabled – few of which are successful. The highly partisan nature of these forums hampers constructive interchange between parliament and the government, limiting opportunities for MPs to exert more subtle forms of influence that might otherwise compel the government to introduce changes at a later point in the process.

There is some evidence to suggest that reforms to permit public bill committees to take oral evidence from ministers, experts and civil society groups have improved their work.[3] MPs can draw on oral evidence to strengthen their arguments and more successfully press the government for changes to bills. But oral evidence is taken on only a minority of bills – just 27% of all bills in the last five parliamentary sessions. And in addition, witnesses are often decided in an opaque manner, carved up between the opposition and the government, invited at the last minute, and rarely venture beyond the 'usual suspects'.

Opportunities to bring in more expertise and a more diverse range of perspectives into committee stage, and to help backbench and opposition MPs exert greater pressure on the government, are being missed. One proposal, already adopted by the UK's devolved parliaments, is to abolish bill committees altogether and give select committees responsibility for scrutinising legislation. This approach would have many benefits – including drawing on the greater expertise of select committee members – but would risk undermining the independence that select committees have developed in recent years, and given the time required could also dominate their work, leaving less time for important proactive scrutiny of government policy and agenda. On balance we consider that the disadvantages would outweigh the benefits.

That is not to say there is not a useful role select committees can play in the legislative process. We believe that a formal role for select committees could be created, building on the ad hoc or informal inquiries many already undertake. We recommend:

- There should be a minimum of two or three relevant select committee members on each public bill committee, to ensure a strong link between the two.

- Select committees should be able to request a 'select committee' stage on all government bills, so creating the opportunity to take evidence and for the committee to set out its view on the bill.

- The practice of oral evidence taking should be expanded to include bills that start in the House of Lords, and those put to committee of the whole house, through the split committal process.

- The House of Commons Commission should review the resources available for members to support legislative scrutiny, including expert policy and legal resources.

We recognise that many of these recommendations may add time and potential friction to the legislative process. But legislating is a serious business – policy is more likely to succeed where it has been robustly tested and where it has broad support from the people's representatives. The government's short-term desire for efficiency, should not overrule the long-term objective of effectiveness.

Introduction

The legislative process is a microcosm of the wider parliament–government relationship. Ultimately it is parliament that has the constitutional power to make legislation – but most legislation is introduced by the government and passed through the House of Commons according to its timetable; most amendments are made in the name of ministers.

A key function of the UK parliament is to enable a democratically elected government to deliver on its manifesto pledges through legislation. But this does not mean that the government should be able to act without constraint. Manifestos do not contain fully developed policy proposals or, understandably, provide a basis for new policies or legislation that may be required to respond to events that arise during an electoral term. No government can represent the views of the whole of the electorate – indeed, under the first past the post system UK governments rarely receive a majority of votes in a general election.

Given this, parliament represents a wider cross-section of views beyond the governing political party, providing a forum for a national debate on the laws to which citizens are subject. It should be able to properly check, discuss and influence the content of legislation.

It is not clear that the current constitutional arrangements allow the UK parliament to perform its function effectively. The UK's majoritarian system means that government defeats on legislation in the House of Commons are rare. Defeats in the House of Lords are much more common, but as amendments need to be subsequently agreed by the Commons these 'defeats' do not necessarily translate into changes to the bill.

There are other ways parliament can influence legislation. In their book *Legislation at Westminster* Meg Russell and Daniel Gover outline the other ways parliament can exert power, including through 'anticipated reactions', the government internalising what parliament will accept, and agenda setting.[1] But the success of these strategies depends on the government being responsive to its own backbenches, and by extension the views of the wider public. Of course, governments who fail to do so, risk their own ultimate demise, but in the short term parliament is often powerless to make a government change course or even amend the application of unpopular policies.

This problem has grown more severe in the years since Brexit and the pandemic. Several committees have expressed concerns that parliament is being sidelined.[2] The government has increasingly made use of broad delegated powers to forgo new primary legislation altogether and implement new policy through secondary legislation – for which parliamentary scrutiny is limited and there is no opportunity for amendment at all.*

* For a detailed critique of these issues and proposals for reform see the Hansard Society's Delegated Legislation Review, www.hansardsociety.org.uk/projects/delegated-legislation-review

A consequence of the executive's control of parliament and its processes means that it can often be focused on efficiency, ensuring bills are passed in a timely and smooth manner rather than providing opportunities for parliamentarians to express their views. The exceptional circumstances of UK's exit from the EU and the coronavirus pandemic have led to the increased use of procedures that curtail parliamentary scrutiny, setting precedents that normalise the use of what should be extraordinary mechanisms, even in ordinary circumstances. Many MPs, ministers and officials whose careers have been dominated by this period, now stretching across more than five years and two parliaments, know no different – leading to changes in culture as well as procedure.

We conclude that under the current arrangements parliament does not have sufficient power to provide the check on executive action required to maintain balance in the UK constitution. This report will consider how to empower parliament to exercise its constitutional role and function.

Not every parliament is the same, and the political context has a bearing on the balance of powers between parliament and government. The dynamics of the relationship between government and parliament can vary depending on the political circumstances, and parliamentary arithmetic.

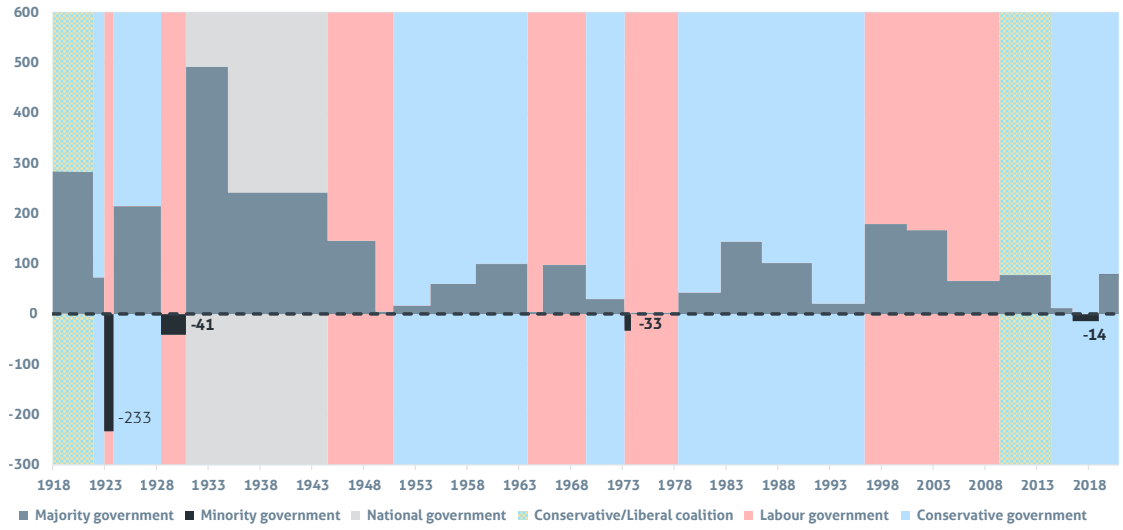
If the government commands a majority in the primary chamber, the House of Commons, it is usually able to pass its bills with few changes as parties are able to 'whip' their MPs.* The larger the Commons majority, the lower the risk of defeat, and therefore the weaker the bargaining power of parliamentarians.

In coalition governments the combined majorities of multiple coalition partners may often be bigger than single-party majorities – in both the Commons and the Lords – which means that provided party leaders can keep their parliamentary parties onside, bills may enjoy an easy passage through parliament. The need for inter-party negotiations and agreements can also give ministers less room to offer concessions because of reluctance to reopen negotiations with their coalition partners on delicately balanced bills.

A narrow parliamentary majority will mean that the government is at a higher risk of defeat, putting parliamentarians in a more powerful position. But as Figure 1 shows, minority governments are rare, and usually short-lived.

* Political parties exert control over their MPs by whipping – using the powers of persuasion, incentives of promotion or political support, and occasionally coercion. Although there is some evidence that MPs are becoming more rebellious – 32% of Conservative MPs rebelled at least once in the 2019–21 session compared to 18% in 2015 – it is still rare for a majority government to lose votes on legislation outright.

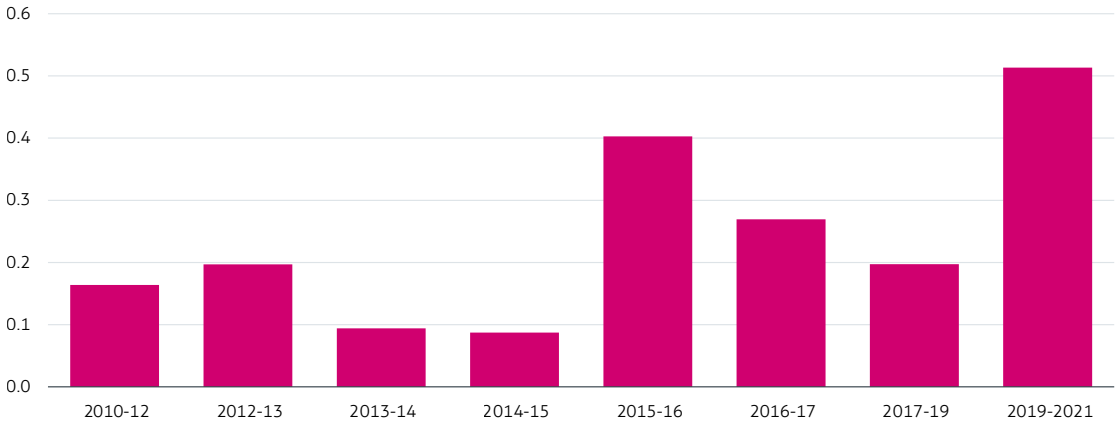
Figure 1 **Size of UK parliamentary majorities 1918–2019**



Source: Institute for Government analysis of Parliament.uk.

Increasingly, the House of Lords – where the government usually lacks a majority – has been the main arena for parliamentary defeats. As Figure 2 shows, since the 2016 Brexit referendum, these have increased substantially. This provides an important check on government. Peers can ask the House of Commons to 'think again' on certain aspects of legislation, which regularly results in government concessions.[3] However, the powers of the House of Lords are limited both formally and informally,* and recognising their lack of democratic mandate, peers often exercise self-restraint and rarely use their powers to their full extent.

Figure 2 **Number of government defeats in the House of Lords, per sitting day, per session 2010–21**



Source: Institute for Government analysis of House Lords. Notes: 2019 session excluded (one defeat in 15 sitting days).

* Formally, the House of Lords can only delay, not block, legislation and has a limited role in financial issues. Informally, but by strong convention, the Lords is expected to respect manifesto commitments.

The scope of this paper

Some of the solutions to redressing the balance of power between parliament and the government may lie in major constitutional reforms, including voting reform and reform of the House of Lords. These are not the focus of this paper, although will be considered elsewhere in the IfG/Bennett Institute 'Review of the UK Constitution'. However, there is much room to empower parliament within the current system.

This paper will look at the legislative process as a whole – from policy development in government to post-legislative scrutiny – to consider how to empower parliament to be better able to scrutinise and influence legislation. We focus on primary legislation, though recognise the noted problems with scrutiny of secondary legislation and share the concerns raised by several House of Lords committees and the Hansard Society among others.[4] The relationship between the democratically elected House of Commons and the executive is most in need of rebalancing, and as such we also focus our attention on improving processes there, although we do consider the House of Lords too.

Drawing upon interviews with those involved in the legislative process from all angles – from government, parliament and civil society – and parliamentary data on legislation, in Part 1 of the paper we establish the problems with the legislative process. Building on this, we then examine the legislative process stage by stage, looking at the opportunities for and barriers to parliamentary scrutiny and influence at each step of the process. In Part 2 we turn to potential reforms. We draw upon 30 years of parliamentary committee recommendations to suggest potential improvements and identify areas for further inquiry, before making our own recommendations.

Part 1: Examining the legislative process

Problems with the legislative process

Almost everyone we spoke to while researching this report agreed that scrutiny of legislation was inadequate, although for different reasons. In this section we identify five key cross-cutting problems with the legislative process as it works today that limit the extent and effectiveness of parliamentary scrutiny.

1. The legislative process is complex and inaccessible

The legislative process in the UK parliament has developed over centuries, and remains heavily dependent on complex procedures and opaque precedents that are in some cases genuinely misleading. For example, when a government bill is published after first reading the Commons clerk will ask the whip for a date for second reading, who will often respond "tomorrow". But as the MPs' guide to procedure explains, this "doesn't mean the second reading will actually happen tomorrow. In practice, there are usually two weekends between first reading and second reading."[1]

As a result, in-depth knowledge of parliamentary procedure is reserved for experienced parliamentary clerks, and although there have been attempts to open up the process in recent years, such as publishing an online version of Erskine May, the legislative process remains confusing to almost all who are expected to participate in it.

MPs, peers and their staff typically require extensive support to navigate the passage of a bill, with a significant proportion of parliamentary resources dedicated to helping them do so, often at the expense of policy support or the actual content of legislation.

Structures exist within the civil service to help officials understand parliamentary process and assist ministers to navigate it. This includes at departmental level through bill managers co-ordinated by the secretariat of the Parliamentary Business and Legislation (PBL) Committee, which provides resources and support. Nonetheless, even experienced officials told us that lack of clarity in the process could create tensions in the government–parliament relationship and that they often struggled to access expert advice on niche procedural questions, taking time and resources away from more substantive engagement with parliament.

Civil society groups also told us that understanding the legislative process was one of the biggest barriers to engagement with it. Many said they struggled with basic questions such as how to know which bills were before parliament, what amendments could be put down or at what stage. Where there were helpful how-to guides on

the parliament website they were often difficult to find. And though they said clerks could be helpful, if given the right questions, just being able to contact them required existing relationships that not all enjoyed.

These challenges are particularly acute for smaller organisations with fewer resources, thereby disadvantaging less well funded groups. There was concern that this could create an inequality in participation compared to better funded campaigns, trade associations or business and lobby groups who may be able to employ public affairs professionals.[2]

One option to address this problem could be to simplify the legislative process in the UK parliament; perhaps drawing inspiration from the more modern process used in the Scottish and Welsh parliaments based around three or four simple 'stages'. But at a minimum, to improve parliamentary scrutiny of legislation, future reforms must consider how to make the process more accessible, in terms of language and procedure, to those both within and outside parliament.

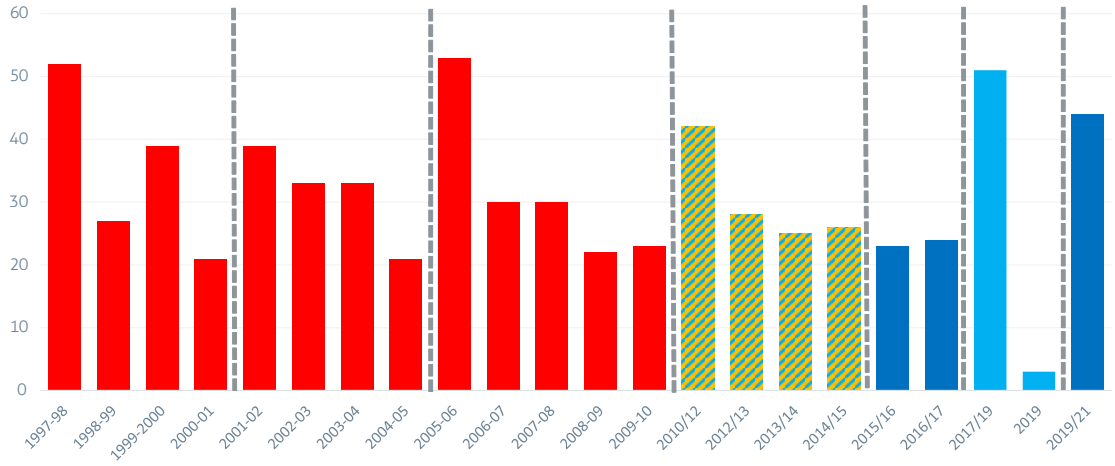
2. Parliamentarians do not always have sufficient time to consider legislation

Several people we interviewed expressed concerns that the amount of legislation that was put before parliament in a single session was preventing effective scrutiny. Although the PBL cabinet committee is expected to judge bids for legislation according to necessity, Lord Lisvane, a former clerk of the House of Commons, said there was an increasing trend for governments introducing legislation when not strictly necessary. Lisvane argued that senior ministers had claimed that bills were necessary to 'send a message' rather than to change the law. He cites the National Citizen Service Act 2017, which had the aim of "enabling participants from different backgrounds to work together in local communities to participate in projects to benefit society", as an example of a policy that could have been better implemented through non-legislative means.[3]

There have also been examples of clauses of bills that have a declaratory purpose but no legal effect. For example, section 38 of the European Union (Withdrawal Agreement) Act 2020 states that "it is recognised that the parliament of the United Kingdom is sovereign", a statement that describes the UK's constitutional position but serves no legal purpose.

Since 1997, there has been more variation in the number of bills within each parliamentary term than between different governments. Broadly speaking there is a trend for high volumes of legislation to be passed in the first session after an election, likely owing to the government's fresh electoral mandate and desire to deliver. The 1997–98 and 2005–06 post-election sessions had the highest number of bills gaining royal assent, at 52 and 53 respectively. These were followed closely by 51 bills in the 2017–19 session, although this post-EU referendum session was abnormally long at 349 sitting days.

Figure 3 **Number of bills receiving royal assent per parliamentary session, 1997–2021**



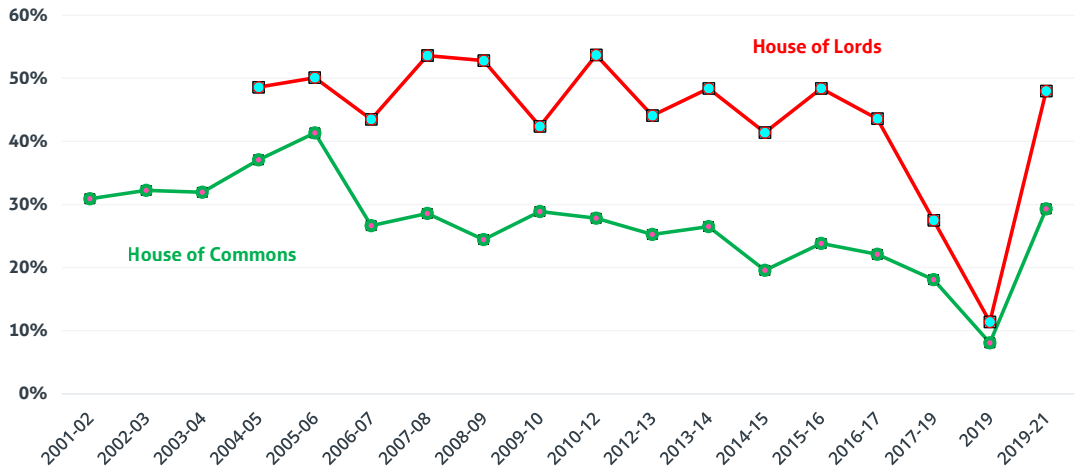
S0ource: Institute for Government analysis of sessional returns. Notes: The length of each parliamentary session varies. The 2010–12 and 2017–19 sessions were two-year sessions, the latter lasting the longest. Pre-election sessions tend to be the shortest, with the 2019 session lasting just 15 days.

The number of bills alone does not give the full picture as the length of a bill in one session could be equivalent to several in another. Some people we interviewed suggested that bills have got longer and more complex in recent sessions – for example, the Police, Crime, Sentencing and Courts Act 2022 is 338 pages.

The number of bills has remained fairly constant over the past 30 years, but analysis from the House of Commons Library found that the percentage of time spent in the Commons chamber on government legislation has been on a downward trajectory.[4] Until 2005, the Commons spent about a third of its time on government legislation, peaking at 41% in the 2005–06 session. Since then this has been declining steadily, averaging just 24% from 2006–2021.

This decline could be related to the 2009 Wright reforms, which created more time on the floor of the House of Commons for backbench business and/or the introduction of bill programming, formalised in the standing orders in 2004. The House of Lords – where programming is not used – has consistently spent a greater proportion of its time than the Commons on legislation, averaging 44% since 2004. (This also dropped in the extra-long 2017–19 session, to 39%, but increased to 48% in the 2019–21 session.)[5]

Figure 4 **Percentage of time of the floor of each house spent on government legislation per session, 2001–2021**

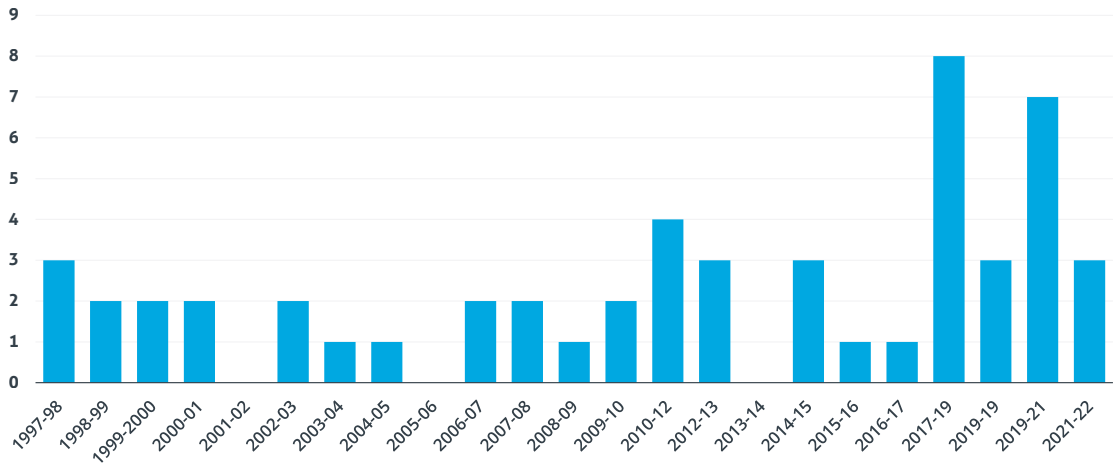


Source: Institute for Government analysis of House of Commons sessional diaries and House of Lords statistics on business and membership. Notes: The 2017–19 and 2019 sessions remain outliers due to their unusual length. The 2017–19 session, in which the minority Conservative government struggled to pass legislation, was over twice the length of a normal session (349 sitting days) and the 2019 session lasted only 15 sitting days before it was prorogued for a general election.

Beyond the amount of time spent discussing legislation, the timetabling of legislation can also have significant implications for the level of scrutiny. Parliamentarians need time between each stage of the bill to gather information on its potential effects, to consider possible amendments and engage with experts and civil society groups outside of parliament.

The House of Lords Constitution Committee has expressed concerns about the use of fast-tracked legislation. As Figure 5 demonstrates, the use of fast-tracked procedure is not new, but its use has increased in the last five years – in part as a result of the UK's exit from the EU and the coronavirus pandemic – in particular in the 2017–19 and 2019–21 sessions where legislation was needed to give legal effect to agreements with the EU in specific timescales. The short session in 2019 also meant that legislation needed to be rushed through before prorogation.

Figure 5 **Number of bills receiving second and third reading on the same day in the House of Commons, 1997-2022**



Source: Institute for Government analysis of House of Commons Library, *Expedited legislation: Public bills receiving their Second and Third Readings on the same day in the House of Commons*, 15 March 2020, https://commonslibrary.parliament.uk/research-briefings/sn04974. Notes: Some variation may be explained by session length.

Aside from 'emergency' fast-tracked legislation there have also been several high-profile examples of substantial bills being rushed through the Commons. Perhaps most notable is the European Union (Withdrawal Agreement) Act 2020, which implemented Boris Johnson's 'Brexit deal' – it passed the Commons in just five sitting days. Attempts to pass the bill in the previous parliamentary sessions had been blocked after MPs rejected the government's programme motion on the basis that it sought to rush the bill through with minimal scrutiny. While the government argued that this was necessary to meet the negotiation timetable with the EU, there are several other examples where the logic of the urgency was less clear.

For example, the UK Internal Market Act 2020 – a complex piece of legislation with significant constitutional implications – was introduced on 9 September 2020 and passed all its Commons stages in just six sitting days by 29 September 2020, with unusually, committee of the whole house beginning the day immediately after second reading, severely reducing the scope for proper scrutiny there. The House of Lords, which has control over its own business, took much longer with the bill. It scrutinised it over nine sitting days between 19 October and 2 December, resulting in a high number of amendments that led to several government concessions after the bill entered 'ping-pong'.

Several interviewees also raised the problem of parliament being asked to consider multiple controversial and substantial pieces of legislation at the same time. For example, towards the end of the 2021–22 session, the Lords was concurrently considering the Elections Bill, which included plans to introduce voter ID; the Nationality and Borders Bill, which contained provisions to deter illegal migration; and the Police, Crime, Sentencing and Courts Bill, which placed new restrictions on protests. This made it difficult for peers to scrutinise all aspects of the legislation in detail, forcing them to pick a couple of key areas to focus on and leaving some less politically high-profile but equally important aspects of the legislation without

thorough consideration. It has been suggested that this was a deliberate tactic used by the government to minimise parliamentary opposition. As rebellions require parliamentarians to expend political capital, they may be forced to choose their battles. However, this could also be attributed to poor management of parliamentary business and ineffective scheduling of bills.

3. The government is introducing bills into parliament before policy is fully developed

For parliament to be able to scrutinise legislation effectively, the policy content must be clear. The PBL Cabinet Committee* assesses bids for slots in the legislative programme according to their policy progress but the Cabinet Office's *Guide to Legislation* does state: "If it is politically important, a bill may be given a slot in the programme before many of the details have been fully worked out."[6] It goes on to state that PBL should grant a slot "only if it is confident that the remaining details could be worked out and the bill prepared in good time for introduction, including sufficient time for public consultation where appropriate". However, there are numerous recent examples of legislation being introduced into parliament and then rushed through with incomplete or undeveloped policy proposals.

Often, several policy issues at different stages of development can be combined into one piece of legislation. While aspects of the bill may have undergone robust consultation, others may be rushed to meet the assigned slot. For example, the proposal for a register of consultant lobbyists in the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 had undergone significant development and consultation, but the decision to include restrictions on non-party campaigning in the bill was made at a later stage, resulting in a less rigorous process that prompted an unanticipated backlash from the charity sector.

In some cases 'delegated powers' have been used in place of clauses on the face of the bill, giving ministers powers to fill in the details of a policy later, but making it incredibly difficult for parliament to scrutinise. The Northern Ireland Protocol Bill, introduced into the House of Commons in June 2022, is an example of this. It contained wide-ranging powers for ministers to implement a whole new system for trade between Great Britain and Northern Ireland, to replace the Withdrawal Agreement, but the government has to date provided little detail as to how it will implement it in practice.

Several House of Lords committee reports have been highly critical of this practice; the Lords Delegated Powers and Regulatory Reform Committee and the Lords Secondary Legislation Scrutiny Committee have criticised the use of such 'skeleton bills', which they argue upset the balance of power between parliament and the

* PBL is comprised of ministers with a general responsibility for legislation including the Cabinet Office, the leader of the House, the whips, the Treasury and the law officers, and secretaries of state in the territorial offices. Cabinet Office, *Guide to Making Legislation*, 2022, retrieved 4 August 2022, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1048567/guide-to-making-legislation-2022.pdf

executive.[7] The Lords Constitution Committee has said that it is "constitutionally objectionable for the Government to seek delegated powers simply because substantive policy decisions have not yet been taken".[8]

In other cases, the government has made significant amendments to a bill at late stages of its passage, introducing new policy content, again with little opportunity for parliamentary scrutiny. For example, the UK government introduced new schedules to the United Kingdom Internal Market Act 2020, setting out the operation of a new public body established under the Act at Lords report stage. As the bill had started in the Commons this gave MPs little to no opportunity to consider the changes.

The government tabled 18 pages of amendments to the Police, Crime, Sentencing and Courts Bill at committee stage in the House of Lords. These proposed making substantial and controversial changes to the legislation – including placing new restrictions on protests and expanding stop and search powers – again only after it had passed its Commons stages.[9] However, the Lords voted down many of these amendments and so they were lost, demonstrating the risks to the government of such late-stage changes.

The incompleteness of legislation may in part be explained by the increased speed at which officials preparing it are expected to work. Several officials responsible for different legislative development stages told us that the pace of urgent legislation related to coronavirus and EU exit had changed ministerial expectations about the timescales required to deliver a bill. The time that would previously have been allowed for checking and quality assurance after a bill had been drafted and before it was introduced was often now much curtailed. This increased the risk of the need for amendments to correct mistakes in a bill as introduced.

It is understandable that ministers want to deliver their policy objectives in a timely manner, but this should not be achieved at the expense of good scrutiny. Rushing policy in bills risks exactly this, and can lead to poor quality law.

4. Parliamentarians do not have the capacity and resources to effectively scrutinise the content of legislation

Modern MPs have a huge number of demands on their time. Mass communication has meant they have more constituency correspondence than ever before, resulting in high volumes of casework for them and their staff. Alongside constituency work 'on the ground', MPs are also involved in lobbying or advocacy work, on behalf of their local area or for specific causes. They may sit on parliamentary groups such as all-party parliamentary groups (APPGs) and on select committees.

Members participate in other parliamentary proceedings too, tabling written and urgent questions and participating in backbench or opposition day debates. All the while they are expected to keep abreast of the legislative programme, participate in legislative scrutiny on bills put before parliament, vote in divisions, sit on public bill committees or secondary legislation committees, and, should they wish to, participate in debates on the floor of the House.

MPs must choose wisely how they spend their time, carefully considering which activities are expected to have the most impact or yield results. For many, legislative scrutiny is simply not their priority, especially when it is unlikely to result in tangible changes to the outcome. MPs may also want to prioritise activities that are more visible and understandable to the public and specific constituents, not least to demonstrate their value at the next election. Several people we interviewed suggested that a key barrier to better legislative scrutiny was a lack of MPs' appetite to do more work in this area.

Even if MPs are interested in scrutinising a particular bill, sitting on a bill committee or tabling amendments at report stage, their limited time and resources constrain their ability to participate meaningfully and constructively. Legislation is drafted by specialist parliamentary counsel, informed by policy developed by groups of civil servants over a matter of years. MPs by contrast are usually supported by no more than a handful of staff, some of whom deal with casework rather than supporting members in proposing changes to legislation to address their policy concerns.

A study by Rebecca McKee found that on average in 2018 MPs had 4.3 people supporting them, including administrative and executive staff as well as research staff.[10] Opposition parties are entitled to financial assistance to support their parliamentary business known as 'short money', allocated in proportion to the number of votes won by their party at the most recent general election. The leader of the opposition's office also receives a modest level of public funding.

Even for the largest parties, this money does not go far. The Labour Party has only one or two staff supporting each shadow cabinet member. These staff are expected to be across the breadth of the department's work and sometimes several bills at a time. Opposition staff told us that they are often reliant on well-resourced civil society groups for expert advice on suggesting changes to bills. While this can add value to the process, relying on such sources of policy advice can also carry the risk of making MPs reliant on groups that represent a narrow set of interests.

There is some support for members in their legislative duties from the parliamentary administration, but this is again limited and not joined up. Parliamentary clerks can advise on whether amendments are within the scope of the bill, and on how to translate their policy ideas into legal text. The House of Commons Library provides briefings for members written by subject specialists and can answer inquiries related to legislation. But unlike in select committees, bill committees have no dedicated policy staff and the role of the clerks responsible for staffing these is entirely confined to procedural and logistical support.

Members of the House of Lords have access to even fewer resources; they do not receive allowances to employ staff, although political parties may use party funds to hire researchers to support groups of members. The House of Lords Library performs similar services to its Commons counterpart, but is considerably smaller and made up of generalist staff rather than subject specialists. The staff and services for members of each house remain separate, with the exception of the cross-house Parliamentary Digital Service, leading to duplication in some areas.

There are aspects of parliamentary scrutiny that better equip MPs and peers to fulfil their duties here, despite the imbalance of resources. Select committee members and their staff are able to develop expertise in a particular area, and both houses have invested resources in specific policy support for such committees as well as cross-cutting legal, accounting and audit resource that can be called on by any committee. In contrast with bill committees, select committee membership is generally deemed a worthwhile use of parliamentary time – in part because it is easier for MPs to explain to constituents – although levels of interest can vary depending on the committee. The scrutiny provided by each type of committee are of a different nature, but reforms to the process and support offered could increase MPs' appetite to engage.

5. It is difficult for parliament to amend a bill once introduced

Ultimately it is rare for the substance of legislation to change significantly during its passage through parliament. Government defeats on amendments are uncommon when the government has a majority. A study of 12 bills by Meg Russell and Daniel Gover found that of the 964 amendments agreed the vast majority – 728, or 97% – were tabled in the name of a minister – though the authors note that many were made in response to non-government amendments or other forms of parliamentary pressure.[11]

Nonetheless, the bar for government concessions remains high. The Cabinet Office's *Guide to Making Legislation* states that:[12]

> **"Every amendment the Government makes to a bill delays its progress. Government amendments to bills after introduction must therefore be kept to a minimum and will only be agreed by the PBL Committee if they are considered essential to ensure that the bill works properly. To avoid a government defeat or otherwise significantly ease handling in parliament [sic]."**

The default, therefore, is to avoid amendments where possible – the guidance suggests they should be made only when unavoidable. There are many reasons why the government may be reluctant to agree amendments or to bow to parliamentary pressure.

Some are largely practical: as the guide goes on to state "amendments after introduction also place additional pressure on parliamentary time and drafting resources", requiring additional political sign-off, policy analysis and time with parliamentary counsel.[13] Any amendments to the policy content of a bill also have to be signed off by the appropriate cabinet committee and PBL (more minor technical amendments need approval only from the latter). This not only takes time, but may require ministers to expend political capital in convincing their colleagues of the need to make changes to bills they have already signed off. This can be particularly difficult for bills on which ministers are divided or in a coalition government.

Changes to the content of bills also puts pressure on officials, who will need to assess the practicability of proposed changes, what their implications might be and, if necessary, conduct additional analysis and consultation.

Others are more political: often concessions can be interpreted as a sign of political weakness, forcing governments into 'U-turns' or to 'bow to pressure', rather than as parliamentary input to be welcomed. The often adversarial relationship between parliament and government can prevent sensible proposals from making it on to the statute book.

For all these reasons parliament may be most successful in influencing the content of legislation before a bill is actually introduced, either by inputting into the policy formulation process formally through consultation or informally through discussions with ministers, or through pre-legislative scrutiny, which affords the government the opportunity to go away and make changes before the text of the bill is finalised.

Fully addressing some of the problems outlined in this section would require a radical overhaul of the legislative process and the resourcing and operation of parliament. In the absence of political impetus for such substantive change, we instead focus on what a set of reforms that are modest, practical and implementable would look like.

The legislative process: bill stages

To assess what reforms to the legislative process may be necessary, we must first examine the stages of a bill's passage through parliament, from policy formulation to post-legislative scrutiny. We examine the opportunities for parliamentary scrutiny and influence at each stage and whether there are barriers preventing the full utilisation of scrutiny tools.

Recognising that reform of the process has long been the subject of many parliamentary inquiries, we analysed 21 parliamentary reports since 1997 on various aspects of the legislative process. From these we identified more than 330 recommendations on the legislative process, the vast majority of which have not been implemented, and we have highlighted where they should be revisited.

Types of legislation

There are three types of bills: public bills, which apply to everyone in the same way; private bills, which change the law for a limited set of private individuals or organisations; and hybrid bills, which combine aspects of both. Public bills are both the most common (76% of total bills receiving royal assent between the 2010 election and May 2021) and the most important and so they are our focus here.

Public bills can be introduced either by the government or as a private member's bill (PMBs). However, few succeed without government support, on average only 5% of the private members' bills introduced each session receive royal assent, making up 15% of total public bills passed. The House of Commons Procedure Committee has made comprehensive recommendations for reform, but the government has not provided time for these proposals to be discussed or adopted.[14]

We recommend that the government provides an opportunity for the House to accept the Procedure Committee's recommendations.

The remainder of this section considers the stages of the legislative process for government legislation.

Preparing legislation for parliament

The legislative process begins long before a bill is introduced into parliament. It begins in UK government departments, where officials begin developing policy on the direction of their minister. It is rare for departments to engage directly with parliamentarians at this stage, but several parliamentary committee reports (House of Commons Political and Constitutional Reform Committee, 2013, and House of Lords Constitution Committee, 2017) have emphasised the importance of best practices including the use of evidence, green papers and white papers, and consultation with key stakeholders when developing plans for new government bills.[15]

Best practice is not always followed; government consultations often run for far less than the recommended minimum of 12 weeks. For example, the consultation on the UK Internal Market white paper lasted just five weeks over July and August 2020, when the UK parliament and devolved legislatures (on whom the bill would place several constitutionally relevant restrictions) were in recess.[16] Ensuring that officials follow best practice in the policy development stage is fundamental to underpinning a good legislative process.

The legislative programme

The government must determine its programme before the start of each parliamentary session, which is then announced in the King's Speech that opens parliament. Departments bid to the Parliamentary Business and Legislation (PBL) Cabinet Committee for their bills to be included; the committee assesses these on necessity, political urgency and policy progress, making trade-offs between them.[17] Typically bills that implement manifesto commitments or other government priorities are given precedence, and any that do not make it into the session's programme are given the option of being published in draft instead in the hope of facilitating their passage in a later session.

Several parliamentary committees have called for greater parliamentary input into this early stage. The House of Commons Committee on Modernisation recommended consulting with other political parties on the draft legislation programme (2003) and holding a specific debate in parliament (2008). This could give MPs an opportunity to help shape the government's legislative programme before it is finalised. However, interviewees raised concerns about whether this would be possible in the time frame, as the programme is only finalised shortly before the King's Speech, and argued that the debate on the King's Speech was a sufficient opportunity for parliamentary input on legislation for the forthcoming session.

Before a bill is introduced into parliament, its policy content must also be signed off by the relevant cabinet committee and then instructions sent to the Office for Parliamentary Counsel (OPC), whose drafters translate it into legal text to produce a draft bill. PBL is responsible for ensuring the quality of the bill, and the accompanying documents such as explanatory notes and impact assessments.

As we set out above, there are a growing number of examples of poor quality bills being introduced into parliament, before the policy details have been fully worked out. To remedy this the House of Lords Constitution Committee (2013, 2017) recommended a code of legislative standards, and a parliamentary committee to assess whether they have been applied. However it is not clear whether it would be possible to establish an objective list of standards. Judgments about the quality of legislation will inevitably stray into political and policy questions. The Cabinet Office's *Guide to Making Legislation* already provides comprehensive guidance on the quality of bills, and projects like the good law initiative by OPC have also sought to create principles for improving legislation.[18] It is for PBL to rigorously ensure departments live up to the standards it has set them.

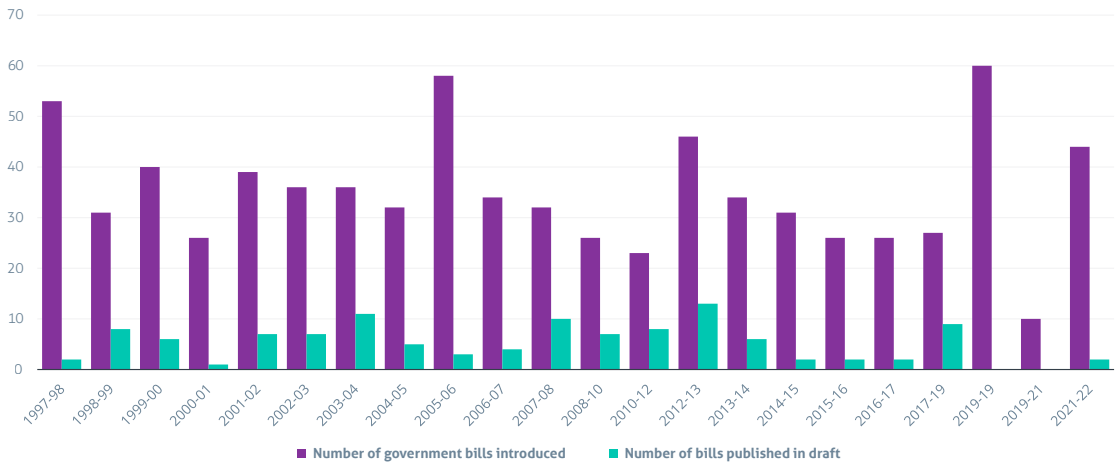
Pre-legislative scrutiny

Bills the government chooses to publish in draft may be subject to pre-legislative scrutiny (PLS) before they are formally introduced to parliament. This stage provides an opportunity for parliamentary input into legislation before it has been finalised. This can be undertaken by an existing House of Commons select committee, or an ad hoc joint committee comprised of members from both houses and established specifically to consider the draft legislation. Most bills put to PLS (65%) are scrutinised by select committees, and 35% by joint committees. The committees take written and oral evidence and publish a report making recommendations for how the bill could be improved, to which the government must respond.

Only a handful of bills are put to PLS in each parliamentary session. Just 53 since June 2007 have undergone PLS – of that total 44 subsequently received royal assent, little over a tenth (11.6%) of the total government bills passed into law (this has varied significantly between governments).

PLS has largely been limited to non-partisan bills, allowing a committee examining the bill to provide technical input, considering clarifications and implications of the draft. While some of those interviewed for this paper agreed that these kinds of bills were best suited to PLS, others stressed the benefit of it on more contentious bills – in line with the 2006 recommendation of the Committee on the Modernisation of the House that government should increase the use of PLS on party-political bills.[19]

Figure 6 **Government bills introduced and published in draft, by parliamentary session 1997–2022**



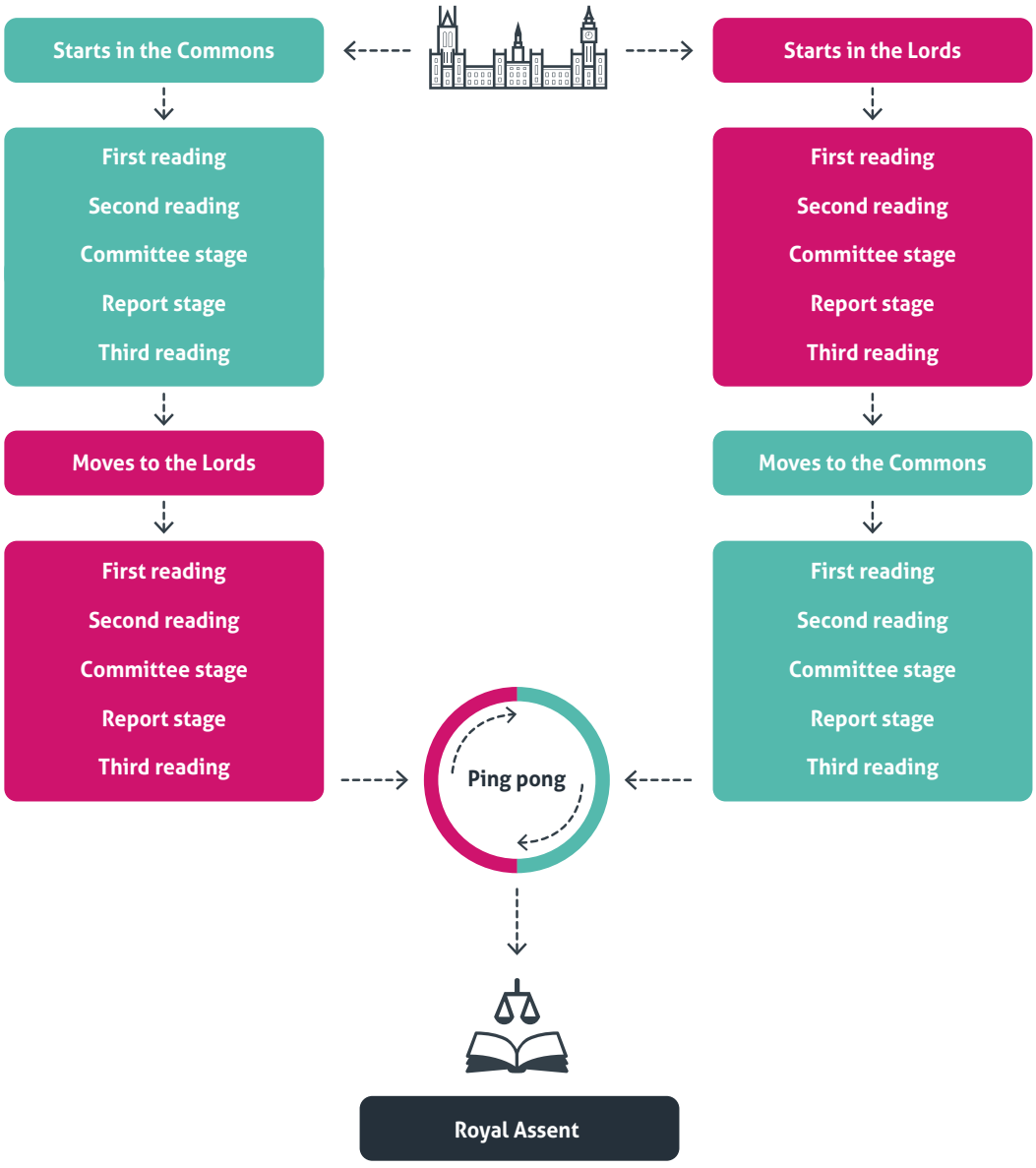
Source: Institute for Government analysis of Parliament.uk.

Eight select committee reports since 1997 have suggested expanding the use of PLS and making it more of a core part of the legislative process. Indeed, this has been the most common recommendation parliamentary committees have made for improving the legislative process.[20] Nonetheless, PLS remains at the discretion of the government, an infrequently and sporadically used mechanism with untapped potential to improve legislation.

Introduction into parliament

The formal part of the legislative process begins when a bill is introduced into parliament. A bill can either start in the House of Commons or the House of the Lords but most (an average of 60% between 1997 and 2021), and the more political and controversial, start in the Commons.

Figure 7 **Stages of a bill in the UK parliament**



Source: Institute for Government analysis.

First reading

The first official stage of a bill is the first reading. This stage is a formality, providing no opportunities for MPs to debate the bill. The short title of the bill is read out and it is published alongside explanatory notes and other accompanying documents. These could include impact assessments, delegated powers memoranda, statements of compatibility with European Convention on Human Rights, and legal issues memoranda including environmental law statements. The House of Commons Library draws upon these and other materials to produce impartial briefings for MPs and the wider public before the bill's second reading.

These documents are useful in helping parliamentarians understand the content, the background and the implications of the legislation they are being asked to consider, but can often contain much complex information – which does not help the problem of MPs lacking time and resources noted above. Several parliamentary committees (House of Commons Committee on Modernisation of the House, 2006, 2008, Political and Constitutional Reform Committee, 2013) have recommended that simplified summaries should be published alongside bills to make them more accessible to the parliamentarians and to the public.

Some improvements have been made to make the information accompanying bills more accessible, including through bill pages on the Parliament.uk website. But these continue to be difficult to navigate for those unfamiliar with legislation and the legislative process, and further improvements are necessary.

Second reading

Second reading is when MPs are given the opportunity to debate a bill. This debate focuses on the principles of the bill rather than detailed scrutiny of the text. The text of the bill itself cannot be amended at this stage, but MPs – usually opposition MPs – can table a fatal 'reasoned amendment' to prevent the bill from progressing. This is an early chance for the opposition to signal its rejection to the bill on political grounds, even if it does not succeed. It rarely does: the last government defeat at second reading was on the Shops Bill 1986 relating to Sunday shopping hours regulation.*

Objections raised in the second reading debate can cause the government to reconsider its position on legislation. The House of Lords Reform Bill 2012 was withdrawn by the Liberal Democrat leader and deputy prime minister in the coalition government Nick Clegg after second reading when it became apparent that the Conservative and Labour parties would not back the programme motion allocating time for the bill. However, this is rare and for the most part second reading is not a key mechanism for parliamentary influence.

After the second reading, the government tables a programme motion setting out the provisional timetable for the remaining stages of the bill. Before it is tabled for decision the timetable has normally been negotiated by the two main parties behind the scenes. Parliament does have the opportunity to vote on this, but this is an all-or-nothing vote so, despite concerns about governments rushing legislation, this timetable is rarely challenged.** The House of Commons Procedure Committee recommended in 2013 that programme motions be made amendable to allow the House to more clearly express its view on the timetable.[21]

* This defeat came from a surprise backbench rebellion by Conservative MPs over the long-standing and contentious issue of Sunday trading. It was opposed by Labour and the more socially conservative members of the Conservative Party.

** A notable exception is when MPs opposed the programme motion for the bill implementing Boris Johnson's Brexit deal, prompting the government to withdraw the bill and call an election.

Committee stage

Committee stage is generally the longest stage of a bill's passage and is where there is most potential for parliamentary influence. Each clause and schedule in the bill must be agreed to, amended, or removed and new clauses and schedules may be proposed and agreed to, potentially forcing ministers to defend every clause and schedule of the bill during this stage.

Constitutional bills, 'bills of major importance', and completely non-controversial bills are taken in 'committee of the whole house', meaning all MPs can contribute to a debate in the Commons chamber. But most are referred to a public bill committee chaired by a senior MP selected from a panel of chairs and – under the current make-up of the Commons – 17 MPs chosen by the party whips.

The membership of bill committees reflects the party composition of the House. Therefore, a majority government has a built-in majority and so rarely loses a vote in committee. Additionally, whips often choose members for their party loyalty rather than their expertise or interest, so members often engage only at a superficial level. The 2009 Wright report noted that the process for appointing members of public bill committees was "markedly less transparent and democratic than those for select committees". Wright recommended that the process be reviewed but there has been little progress since on this issue.[22]

Since 2008, there have been some reforms to try to bolster the committee stage. Following a recommendation from the Committee on Modernisation, public bill committees on programmed bills started in the Commons have been empowered to take oral evidence, for example.

Nevertheless, almost all *successful* amendments at committee stages are tabled by the government. Many of these may be the result of parliamentary pressure – from the opposition, committee witnesses or the government's own backbench MPs – but many are also on the government's own initiative. These might involve drafting changes to clarify issues, tidy up clauses, to respond to events, or new proposals from the ministers. Ministers may also commit to looking at the issue in more detail, or table an amendment at report stage.

Despite committee stage being a key opportunity for detailed parliamentary scrutiny, many of the people we interviewed were sceptical of its merit, suggesting that there is room for further improvement and reform.

Report (or consideration) stage

Report stage is an opportunity for a wider group of MPs to influence the bill. But like with much of the legislative process, the government has a high degree of control over what gets agreed at report stage.

Any MP can propose amendments or new clauses, or schedules to a bill, and the Commons Speaker decides which are discussed (normally in broad thematic groups) and voted on. Government amendments are invariably selected and put to the

House for decision. Amendments from the official opposition and amendments with substantial cross-party support are more likely to be selected but the process of selection and grouping can be opaque, making it difficult for MPs and those outside parliament to understand which issues are being debated and when. Increasingly, report (consideration) comprises a single debate across all the amendments that met the basic criteria of relevance, ending in votes on no more than a handful of items.

Several parliamentary committees have raised concerns over the organisation of time at this stage and that there are often groups of amendments that are not debated – something marked for reform in the Wright report.[23] The procedure committee successfully suggested that amendments be tabled three days before the debate, that a draft of these amendments be published two days before the debate. The committee's further proposal – that there should be a set amount of time for each group of amendments – has not so far been adopted.[24] This is a key area where explanation of the process could also help those both within and outside parliament engage.

Another suggestion from the procedure committee was to allow select committees to table amendments as a group.[25] The committee argued that this could potentially shift some more power to parliament, as the Speaker might be more likely to accept amendments for debate if they had committee backing. While this has not been formally adopted, in practice select committee members often sign up the same amendments to try to signal their collective cross-party support, but formalising the process could add weight to such amendments.

Third reading

Third reading is the final opportunity for the Commons to debate the bill, although in practice the debate usually consists of brief speeches by MPs and ministers congratulating those who have worked to get the bill to this stage. Generally, it is immediately after the report stage ends, lasts no more than an hour, part or all of which time may be taken up by the final votes at report stage. It focuses on the substance of the bill as it stands after the report stage. Even the House of Commons Procedure Committee has recommended that this stage be kept brief.

MPs will then vote on whether to approve the third reading of the bill. Like with the second reading, this is an all-or-nothing vote, but defeats at this stage are rarer still – the last being on the Local Authority Works (Scotland) Bill 1977.[26] But usually this stage is merely a formality, and at this late stage is not a central opportunity for parliament to exert its influence.

House of Lords stages

The House of Lords follows the same bill stages as the Commons but with a few differences in procedure. Unlike the Commons, the Lords controls its own timetable – subject to agreement between the main political parties and cross-bench peers – meaning that the legislation cannot be rushed through the second chamber and peers often have more time for detailed scrutiny.

During the committee stage, rather than being sent to a bill committee, the bill is usually debated in committee on the floor of the House (or sometimes in 'Grand Committee') so all members can participate. While amendments are tabled, and debated, they are not normally voted on at this stage. Votes on contentious matters are generally held over to report stage, again involving the whole house. This is when most government defeats occur.

At third reading in the Lords, unlike in the Commons, bills may be amended, though usually only to tidy up the consequences of changes made at report stage, not all of which may have been foreseen by the government.

The House of Lords is self-regulating so there is no limit on time, although in practice timing is normally broadly agreed between the main political groups. Rather than a Speaker selecting amendments, members are expected to move their amendments to a vote only if they attract significant support.

Scrutiny in the Lords is generally considered to be of a high quality. The lack of time constraints allows for greater consideration of bills, and the lack of a government majority for any one party increases the likelihood of defeat and the need for governments to negotiate. The House of Lords is often said to be a less partisan chamber, fostering a higher level of cross-party working. There are many cross-benchers with no formal party allegiance, and also experts in specific policy areas.

There are limits on the Lords' power. The Commons has 'financial privilege', which refers to the right to decide on public taxes and spending and so the Lords also has a limited role on money[27] and supply bills and lords' amendments can be overruled on this basis. The Salisbury Convention also means that the Lords undertakes not to block bills that were part of the manifesto on which a government was elected.

If a bill that started in the Commons is defeated in the Lords then it falls, but the Parliament Act of 1911 (as amended in 1949) means that if an identical bill is introduced again in the Commons in the following parliamentary session, the Commons alone can present the bill for royal assent even if the Lords continues to object. This is rare, last happening with the Hunting Act 2004. The Parliament Acts do not apply to bills that start in the Lords.

The House of Lords rarely exercises its constitutional powers to their full extent, rarely delaying legislation, and deferring to the elected House. Nonetheless there has been a trend towards more government defeats on amendments in the Lords in recent years, with 129 in the 2021–22 parliamentary session alone, the highest ever number.[28] In part this is due to a greater volume or large, multi-topic bills, known colloquially as 'Christmas tree bills' because of the number of issues they have 'hung on them', and noted concerns about poor quality of legislation requiring more work from the Lords.[29]

The House of Lords is an important check on the government. While procedural improvements could be made in some areas, there is a risk too that a second chamber that is seen as too powerful could bring questions of its legitimacy into sharper focus.

Consideration of amendments

After the Lords has considered a bill, it will send it back to the Commons (or vice versa). If the second House has not amended the bill, it goes for royal assent. If amended then it returns to the first House, which can reject the amendments, agree to them, amend them, or propose new ones in their place. The bill then returns to the second House for it to consider the changes. The government has a high degree of control of this process in the Commons.

If there is deadlock with the same amendment rejected twice by one House and insisted on by the other – as happened with the European Parliamentary Elections Bill 1997–98 – a situation known as 'double insistence', then the bill falls. This is an extremely rare occurrence. More commonly the government will offer alternative amendments or concessions, to prevent further delay to the bill. This can result in the bill going back and forth repeatedly between the Houses in a process known as 'ping-pong'. For example, the Nationality and Borders Bill went back and forth three times over a month in 2022 before it gained royal assent.

Peers exercise self-restraint, mindful of their need to defer to the primary chamber and their limited political capital resulting from their lack of democratic mandate. They will choose carefully which amendments to continue to push and which to back down on. In recent years this has been one of the primary mechanisms for extracting changes to legislation. But it can often take place at a fast pace: the UK Internal Market Bill went back and forth four times across eight days, including late night debates running past 11pm. This means that parliamentarians in both houses have little time to fully consider proposed amendments, their merits and implications; the government should consider this when timetabling legislation in the House of Commons.

Royal assent

Royal assent is the final stage of a bill. Once it has been agreed by both Houses, then the bill goes to the monarch. They will then officially agree to make the bill an Act of parliament. The act or parts of the act will then either become law the same day, at a later date if stipulated in the legislation itself, or on the date(s) set by the minister in regulations.

Post-legislative scrutiny

The legislative process does not end when a bill becomes law. Parliament can scrutinise whether those laws are working as intended and propose possible solutions where they are not. This system has been formalised only since 2008, when the Cabinet Office instructed government departments responsible for an act to produce a memorandum assessing the impact of the act. Departments are supposed to publish this document three to five years after an act is passed, which is then presented to parliament, which can decide to conduct further scrutiny. However, publication of these memoranda has been patchy.[30]

This reflects a general lack of enthusiasm for post-legislative scrutiny from government departments, which has decreased as time has gone on. While there were 69 memoranda published by government departments from 2011–2014, just 19 were from 2015–2019.[31] This may be in part the result of the lack of parliamentary take-up; between 2008 and 2017 there were 24 post-legislative inquiries initiated by select committees, 20 of which were of acts passed under the Labour government.[32]

Departmental select committees are responsible for conducting post-legislative scrutiny, but they often prioritise scrutinising new government policy and proactive inquiries, leaving little time for this type of scrutiny. To address this, the Wright committee recommended allowing parliament to set up ad hoc committees for post-legislative scrutiny to reduce the burden on select committees.[33] However, so far, this has not happened in the Commons, although a few have been established in the Lords.*

Towards a better legislative process

There are many areas of the legislative process where reforms could improve parliamentary scrutiny, and create or enhance opportunities for parliament to influence government. In some, recommendations have already been made by parliamentary committees; we have indicated where these merit a further look. In others, improvement would simply require that the government and parliament adhere to existing best practice, for example in government consultations and post-legislative scrutiny.

However, two of the above stages deserve greater consideration. Both the pre-legislative scrutiny and committee stages have potential for parliament to influence legislative outcomes and are currently underused. Part 2 considers these two areas in further detail.

* For example, on adoption legislation (2013), the Mental Capacity Act 2005 (2014), the Inquiries Act 2005 (2014), the Extradition Act 2003 (2015), and the impact on people with disabilities of the Equality Act 2010 (2016), see Kelly R, *Post-Legislative Scrutiny*, House of Commons Library, 23 May 2013, retrieved 14 November 2022, https://commonslibrary.parliament.uk/research-briefings/sn05232

Part 2: Reforming the legislative process

Embedding pre-legislative scrutiny

There is broad consensus – among ministers, officials, parliamentary staff and parliamentarians – that pre-legislative scrutiny (PLS) significantly improves the quality of legislation, and provides meaningful opportunities for parliamentary input into government bills. Yet political expediency frequently discourages its use.

The government has nominally committed to the use of PLS. The Cabinet Office guide to making legislation states that the government will publish bills in draft form "wherever possible".[1] But despite repeated recommendations for PLS to be used more frequently, it remains a rarity. This section considers the benefits and the challenges PLS brings and makes recommendations to embed it in the legislative process more widely.

Pre-legislative scrutiny can take multiple forms

Pre-legislative scrutiny is not a formalised process in the UK, and can be conducted in several ways. All are dependent on the government agreeing to publish legislation in draft form. As outlined above, the draft can be scrutinised by a joint committee or a select committee, both of which typically publish a report on its findings, which the government then responds to.

However there are different models for PLS that can be used. In some cases multiple committees have had a role in the process, as happened with the Draft Investigatory Powers Bill 2015, the Draft Immigration Bill 2009 and the Draft Apprenticeships Bill 2008.

Another alternative, in lieu of publishing a report, is for a select committee to simply hold an evidence session on a draft bill. For example, the Housing, Communities and Local Government Committee scrutinised the government's draft Public Service Ombudsman Bill 2016 in a one-off evidence session with the local government and social care ombudsman and the housing ombudsman.

PLS is also sometimes conducted on specific clauses of a bill. In 2012 the government published in draft the more technical clauses of the Children and Families Bill, which were then scrutinised by the justice committee. Such scrutiny can be beneficial for both parliament and the government, allowing for more focused attention, and more time for government to draft the full bill.

Some bills are simply published in draft, allowing MPs, peers and interest groups to consider the content when there is no scrutiny by a committee. This was the case with the Draft Taxation of Pensions Bill 2014. It has become routine practice for the Treasury to publish in draft technical taxation clauses proposed to be included in the annual Finance Bill.

Pre-legislative scrutiny has many benefits

PLS can create opportunities for parliament to influence legislation at an early stage. As set out in an earlier chapter of this report, practical and political constraints mean that it can be difficult to amend legislation during its formal parliamentary stages. PLS allows parliamentarians to consider legislation before it enters those stages, enabling them to suggest changes to the policy content and aims of the bill as well as changes to specific clauses and drafting. For example, pre-legislative scrutiny of the Climate Change Bill 2008 led to the strengthening of the Climate Change Committee.

PLS gives the government more time to reflect on its proposals, conduct further analysis or policy work and, if necessary, establish cross-party consensus for measures in a way that the legislative process does not necessarily facilitate. It can also feed into the legislative process at a later stage. PLS on the climate bill also proposed increasing the 2050 carbon reduction target to 80% rather than 60%. While this did not lead to changes to the final draft it ended up influencing the bill, with the lead minister announcing at report stage that the government would, in fact, amend the bill to change the target to 80%.

PLS committees can draw upon members' policy expertise. For example, the draft Online Safety Bill was scrutinised by a joint committee that included a peer with experience on the board of the press standards board of finance and the advertising standards board of finance. Another peer chaired a charity that dealt with children's rights online. The Commons Digital, Culture, Media and Sport Committee also carried out its own inquiry into the draft bill.

PLS is a key tool to allow civil society and the public to engage with legislation. Committees responsible for conducting PLS often take oral and written evidence, providing a good opportunity to bring perspectives and expertise from outside parliament into the process. This is particularly the case for constitutional bills, which are taken in committee on the floor of the house and accordingly cannot take evidence at committee stage; for example, the Dissolution and Calling of Parliament Act.

Civil society groups also told us that they found PLS a useful means of engaging with government and parliament. One environmental group said it was one of "the most effective stages for making substantial changes" to legislation. PLS provides something concrete for civil society groups to engage with, while allowing them enough time to formulate a response, and can also be valuable for parliamentarians in their deliberations.

PLS can help the government tease out political problems. This input at an earlier stage has benefits for the government too. It allows ministers and officials to identify where issues may arise with the bill, both politically in parliament and among those who will be affected by the legislation. Several of those we interviewed for this paper observed that PLS can make a bill's passage through parliament easier, as the government was able to fix issues in the bill and get ahead of the parts that would be politically contentious.

For example, the Draft Investigatory Powers Bill 2015 was brought forward after the similar Communications Data Bill had been pulled before its introduction to parliament. The topic of surveillance powers of intelligence agencies and police was highly controversial, and so the new Draft Investigatory Powers Bill underwent thorough pre-legislative scrutiny by three committees. There were 198 proposed amendments to the bill, the vast majority of which were adopted in the final version. This helped a highly technical and controversial bill to pass parliament. That said, this extensive scrutiny was possible only because of a lack of political and practical pressure for the bill to pass quickly. It can also help ministers test arguments, make clarifications, and correct misunderstandings ahead of the more high-profile debates on the floor of the House.

PLS can act as a form of quality control. Pre-legislative scrutiny can also provide an opportunity to allow MPs to test the quality of legislation, to raise concerns about the scope of delegated powers, to request more policy detail on the face of the bill or draft statutory instruments. This can allow departments to make corrections or improvements before the bill is formally introduced, and help the government avoid defeats, as noted above.

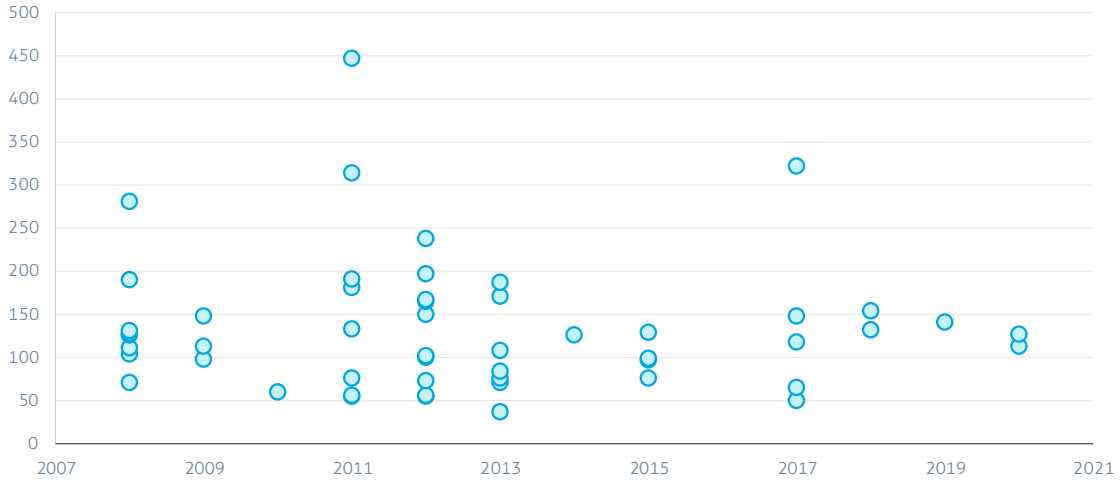
Most importantly, PLS leads to a better quality of legislation passed. Most of those we interviewed for this paper agreed that PLS resulted in a better bill being introduced to parliament. For example, the Political and Constitutional Reform Committee's pre-legislative scrutiny of the Recall of MPs Bill was praised by the then minister for the constitution, Sam Gyimah, as "helpful in shaping the bill".[2] Better legislation that has been subject to robust scrutiny, testing and ultimately endorsement by parliament can lead to better outcomes, which will benefit the government.

While PLS has many benefits, there is no guarantee that it will be effective or change the outcome. There are no formal votes or approvals and so the success of the committee's recommendations depend on the government's appetite to accept them. PLS conducted by the Transport Committee on the draft Civil Aviation Bill 2011 was largely ignored, with the government introducing the bill two days after its report was published and never publishing a response. Committees may also overstep their remit. For example, the Joint Committee on the Modern Slavery Bill attempted to actively redraft the proposed legislation, something not expected in PLS, expending considerable resource on an activity the government would be unlikely to be receptive to. Nonetheless, PLS provides an opportunity for parliamentary influence that is otherwise not present if a bill is not published in draft.

Political and practical barriers prevent barriers to use of pre-legislative scrutiny

The primary barrier to greater use of PLS is time. Every government wants to deliver the agenda on which it has been elected and will want bills passed more quickly, not less. The Cabinet Office recommends three to four months for a committee to produce its report. Since the beginning of Gordon Brown's premiership in June 2007 the average time between the government publishing a bill in draft form and a committee publishing its report was 133 days, just under 4.5 months. However, as Figure 8 demonstrates, there is significant variation between bills; for example, the committee scrutinising the Enhanced Terrorism Prevention and Investigation Measures Bill took 447 days to report compared to just 37 days for the Dangerous Dogs Bill.

Figure 8 **Calendar days between publication of a draft bill and committee report by year**



Source: Institute for Government analysis of Parliament.uk. Notes: In some cases longer timetables may be explained by the inclusion of parliamentary recesses.

As outlined above, other forms of PLS, such as one-off evidence sessions or scrutiny of draft clauses, can take place on a curtailed timetable. Nonetheless, under current practice, the time needed for PLS means that it is rare for a bill to be published in draft and then introduced to parliament in the same session.

Ministers may also be cautious of delaying legislation for fear that their political fortunes may change, with the possibility of government reshuffles or general elections. For example, the Civil Law Reform Bill was published in draft in December 2009 but the committee only reported in May 2010 – just after the election at which the Labour government that had published it left office. The bill was never introduced. The government may also be concerned that giving MPs and civil society groups longer to consider a controversial bill may give them more time to mobilise against it and therefore could result in more parliamentary or political opposition.

There are also capacity constraints on the parliamentary side. Select committees have many responsibilities and their time is limited; opportunities to conduct PLS on the bills the government does publish in draft may also depend on the appetite of the chair. Joint committees – the alternative to select committees for PLS – require parliamentary staff to run them, space for meetings and members to sit on them, limiting the number of joint committees it is possible to set up.

Aside from these objections there are also practical limitations to how many bills can be published in draft form. Parliamentary counsel, the civil servants responsible for drafting legislation, have their workload increased by PLS as they need to write the draft bill and then the final bill. This is a small group with very specific skills, making it harder to dramatically scale up the use of draft bills without expanding the capacity of the office. Normally, dealing with the urgent matters arising in the current legislative programme has to take priority over preparing a draft of a bill intended for the following session.

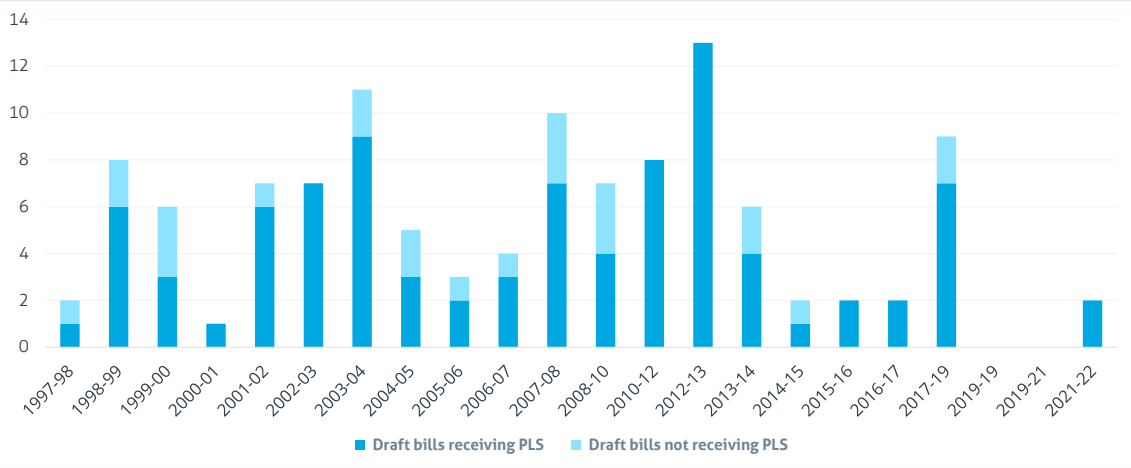
Use of pre-legislative scrutiny is sporadic and dependent on the government's appetite for scrutiny

As a result of these barriers, despite repeated recommendations to conduct more PLS, its use remains limited. On average since 1997 there have been five draft bills published in each parliamentary session (against 35 introduced straight into parliament without draft). As Figure 9 shows, the number of draft bills has varied significantly between governments and sessions. In 2003 the leader of the House of Commons, Peter Hain, made a commitment to announcing how many bills the government would publish in draft per session.[3] That year a third of all bills (11 of 33) were published in draft. Of those, nine received pre-legislative scrutiny from a committee. But such commitments to PLS have not led to consistent use: by the 2005–06 session just two of 53 bills underwent PLS.

In the early years of the coalition government there was another uptick in pre-legislative scrutiny. In the 2010–12 and 2012–13 parliamentary sessions PLS was conducted on eight and 13 bills. However, once the Conservative government had a majority, that number fell again with just four bills receiving PLS between May 2015 and June 2017. This number went up again under Theresa May in the 2017–19 parliamentary session, with seven bills undergoing PLS, perhaps reflecting the nature of minority government. Boris Johnson made minimal use of PLS, publishing no bills in draft before the 2021–22 session.

This can be partly explained by the need to act quickly on Brexit and coronavirus legislation, but even in the most recent parliamentary session, 2021–22, PLS was conducted on just two bills.

Figure 9 **Number of bills published in draft and receiving pre-legislative scrutiny 1997–2022**



Source: Institute for government analysis of Parliament.uk.

Recommendations for reform: a more formalised system

Greater use of PLS has huge potential to improve the legislative process, empowering parliamentarians, facilitating good working relations between government and parliament at a stage where policy changes can be more easily made and ultimately result in better legislation.

Attempts to encourage ministers to put more draft bills to parliament have been unsuccessful. While there may have been the odd burst of enthusiasm for PLS, there are no signs that it has become an integral part of the legislative process, as recommended by parliament itself. An alternative way forward would be to formalise this stage of legislative scrutiny in parliamentary procedure and give parliament the opportunity to choose which bills it conducts pre-legislative scrutiny on, rather than being at the complete discretion of the government.

Lessons can be learnt from Ireland, where in 2011 the Oireachtas (parliament) placed a new obligation on the government to conduct PLS (see Box 1). This has proved successful in giving parliament a greater say in the legislative process.

Box 1 **Pre-legislative scrutiny in Ireland**

Following the 2011 election in Ireland, the government committed to involve the legislature more in the early stages of the legislative process. This began informally, but since 2014 it has become an ingrained part of the legislative process in Ireland, and has been underpinned by a protocol approved by government in 2014.

According to the protocol, all government bills should be published in draft form – known as 'general schemes' or 'heads of a bill', equivalent to a UK draft bill – and sent by the minister to the relevant committee for review. That committee then decides whether to conduct PLS on the bill. If the committee chooses not to conduct scrutiny, or deems that enhanced scrutiny is not necessary, then the bill can be introduced. If a committee decides to undertake PLS, the 2014 protocol envisages an 'anticipated' period of eight weeks to do this and produce a final report containing recommendations to inform the drafting of the bill.

The government minister responsible for the bill then considers the recommendations produced by the committee but, like in the UK, is not obliged to make changes or formally respond. Under the 2014 protocol, the government could only skip this process in exceptional circumstances, when a waiver was approved by the sectoral committee. This may include emergency legislation. For example, the Withdrawal of the UK from the EU (Consequential Provisions) Act 2020 (known as the Brexit Omnibus Bill) and various Covid-related bills were passed without PLS. More recently, the standing orders were amended so that a minister can only publish a bill without a general scheme if approved by a motion in the Dáil (lower house). Budgetary-related legislation – for example, the Finance Bill, Social Welfare Bill and Appropriation Bill – are not subject to PLS.

Although the formal requirement to conduct PLS was only introduced in 2013, midway through the 31st Dáil session (which ran between 2011 and 2016), around one in five of government bills passed during that session were subject to pre-legislative committee scrutiny. A 2017 review of the PLS process found that over 40% of the recommendations made by committees during this session were adopted by the government.[4]

There have been some problems with the implementation of PLS in Ireland. The PLS process, in reality, often takes a lot longer than the prescribed eight weeks. Due to government frustrations over this protracted timescale, the standing orders of the Dáil were amended in September 2022 to allow a minister to introduce a bill after the eight-week period, regardless of whether the committee had reported. A longer period of scrutiny is still possible if agreed between the minister and relevant joint committee. There have also been issues around government providing the correct information to committees, and publishing final bills before a committee has reported. Nonetheless, it has strengthened the position of the legislature relative to the executive.

A similar requirement in the UK could result in more bills receiving pre-legislative scrutiny. We acknowledge that adding an additional step to the legislative process is likely to create additional challenges for both the government and parliament. To address this, we propose ensuring sufficient flexibility within the system that ministerial priorities, constraints on parliamentary time, and the need for urgent or emergency legislation can be accommodated.

Parliament should be given the *opportunity* to conduct pre-legislative scrutiny on all bills. This does not mean that all bills will need to undergo the full PLS inquiry process, but this should be subject to negotiation and agreement between the government and parliament.

We recommend:

- The standing orders of the House of Commons should be amended so the government is required to publish all bills in draft before they are formally introduced.

- The government should either commit to establish a joint committee or consult with the relevant select committee to give it the opportunity to request to conduct pre-legislative scrutiny. The government and the relevant select committee should agree on the appropriate form of scrutiny (from the options detailed below) and the timescale. If the committee indicates that they do not want to conduct PLS, the government may proceed with introduction.

  We recognise that there are circumstances – for example, in times of national emergency – when urgent legislation is needed, and it may not be feasible to publish a bill in draft. In such circumstances, the government should be able to obtain a waiver, and introduce a bill straight away. A waiver could be granted by:

  - Parliamentary committee, such as the Procedure Committee.

  - The Speaker – there is some precedent for the Commons Speaker to have such an impact on legislation. For example, under 'English votes for English laws', it was at the discretion of the Speaker to determine what legislation should be subject to the procedure.[5]

  - The approval of a motion on the floor of the House of Commons – perhaps before first reading. This would be in line with changes introduced in Ireland in 2022.

The time taken for PLS has been an obstacle in the UK and has caused issues in Ireland. A four-month PLS process for every bill would greatly slow down the legislative process in the UK and put considerable strain on select committee time. However, this approach would allow select committees to decide how to prioritise their own resources, and they would be unlikely to want to conduct PLS on every bill. If a select committee does not want to conduct PLS then there would be minimal delay to legislation.

Time constraints could also be mitigated by utilising alternatives to a four-month PLS process.[6] As set out above, there is precedent for PLS to take forms other than a full inquiry.

- The government should agree with the relevant select committee or joint committee whether to conduct:

    - A full PLS inquiry on a draft bill, including a committee report and government response. If full pre-legislative scrutiny is conducted on a bill, the relevant committee should have four months to produce its report, as is the current standard timescale.

    - An inquiry on draft clauses of the bill. This could take place on a shorter timescale of two or three months.

    - A condensed PLS inquiry comprising a one-off or small number of evidence sessions, followed by a letter of committee recommendation. This could be completed on a much shorter timescale.

These options still allow for scrutiny at an earlier stage but would place less time pressures on the government and parliament, while still helping to provide topical expertise to the members of the select or joint committee providing the scrutiny, which could then feed into scrutiny at later stages. In this vein we also recommend:

- Parliament should adopt the Committee on the Modernisation of the House's recommendation that Standing Order No. 86(2) should be amended to include participation in PLS as a qualification to be considered when appointing a bill committee.[7]

We recognise that adding time for pre-legislative scrutiny may result in more bills running out of time towards the end of the session. Therefore greater use of the carry-over procedure may be required. But we would also emphasise that legislation that has been subject to pre-legislative scrutiny may also enjoy an easier passage through parliament.

Reforming Commons committee stage

Bill committees have a limited impact on legislation

Committee stage is intended to be the main forum for detailed scrutiny of legislation, a chance for MPs of all parties to seek changes. But studies suggest that, although the amount of activity at the committee stage has increased over the last half a century, its impact on legislation has actually decreased.

Analysis from Louise Thompson, an academic specialising in the UK parliament, found that the number of amendments tabled had increased significantly since the 60s and 70s. Between 1967 and 1971 there was an average of 26 opposition amendments moved at committee stage, compared to 114 between 2000–2010.[8] (Government amendments have also been subject to a similar increase, from eight to 53.) However, these opposition amendments are also less likely to be successful: the average number of successful opposition amendments per session fell from 44 to six in the same period.

Aside from opposition amendments, committees can also influence legislation by prompting the government to table its own amendments at a later stage of the bill in response to points raised by members. But Thompson also found that the "average number of ministerial commitments to table amendments at the report stage has fallen by a third" from the period 1967–71 to 2000–10.[9]

This may be partially explained by the government's resistance to amendments. The need for collective agreement means that ministers do not have the discretion to accept an amendment on the spot at the committee stage, even if they are persuaded by the argument for it. As discussed in an earlier chapter, the *Guide to Making Legislation* also places a high bar on accepting amendments and encourages a default that they will not be accepted, even if there is a strong policy case for making changes to the bill.

However, several people we interviewed also expressed concerns about the poor quality of debate in bill committees. Opposition MPs often use the opportunity for political gain, tabling drastic changes to the bill to take up time or to demonstrate their opposition rather than focusing on changes likely to be implemented. While such an approach may be useful for political purposes, it may explain why bill committees have limited impact on legislative outcomes.

Members are usually chosen for party loyalty rather than their level of interest or expertise

Bill committees are highly partisan, with limited opportunity for cross-party working that would normally be needed to successfully challenge the government. Unlike select committees, which are set up for the duration of a parliament, bill committees are set up ad hoc for each piece of legislation, so there is no opportunity or incentive for members to build relationships across party lines.

Members of bill committees are selected by party whips, largely on the basis of party loyalty. While members with a particular expertise in a subject may express an interest in a piece of legislation to the whips, there is no compulsion for members to be selected on the basis of their experience. Indeed party whips may often see expertise as a risk factor for rebellion, with backbenchers who are well acquainted with a subject more likely to be independent-minded and challenge the government's line. For example, in 2011 the then Conservative MP and former GP, Sarah Wollaston, claimed that her request to serve on the public bill committee for the Health and Social Care Bill was rejected due to her refusal to agree in advance to give her unconditional support for it.[10]

There is little overlap between the membership of bill committees and the relevant select committees. We analysed the membership of 28 bill committees for government bills from the most recent sessions and found that they included an average of 1.6 members of the select committee responsible for overseeing the work of the sponsoring department. Three bill committees had no members concurrently sitting on the relevant select committees, including the controversial Police, Crime, Sentencing and Courts Bill, although this bill committee did include several former members of the select committee. Thirteen committees had only one select committee member, and 12 had more than one. Only three bill committees had select committee members from the governing party and the official opposition.

Table 1 **Overlap between bill committee and relevant select committee membership 2021/22 and 2022/23**

Bill committee	Number of members from relevant select committee
Charities Bill [HL]	**0**
Police, Crime, Sentencing and Courts Bill	**0**
Public Service Pensions and Judicial Offices Bill [HL]	**0**
Commercial Rent (Coronavirus) Bill	**1**
Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill	**1**
Dormant Assets Bill [HL]	**1**
Elections Bill	**1**
Finance (No.2) Bill	**1**
Genetic Technology (Precision Breeding) Bill	**1**
Leasehold Reform (Ground Rent) Bill [HL]	**1**
National Security Bill	**1**
Nationality and Borders Bill	**1**
Product Security and Telecommunications Infrastructure Bill	**1**
Professional Qualifications Bill [HL]	**1**
Public Order Bill	**1**
Subsidy Control Bill	**1**

Average	**1.6**
Animal Welfare (Kept Animals) Bill	**2**
Health and Care Bill	**2**
Higher Education (Freedom of Speech) Bill	**2**
Levelling-up and Regeneration Bill	**2**
National Insurance Contributions Bill	**2**
Nuclear Energy (Financing) Bill	**2**
Animal Welfare (Sentience) Bill [HL]	**3**
Building Safety Bill	**3**
Judicial Review and Courts Bill	**3**
Northern Ireland (Ministers, Elections and Petitions of Concern) Bill	**3**
Online Safety Bill	**3**
Skills and Post-16 Education Bill [HL]	**5**

Source: Institute for Government analysis of Parliament.uk API data. Notes: Relevant select committee is the committee responsible for scrutinising the work of the government department sponsoring the bill. For bills where the sponsoring department changed throughout the course of its passage – for example, the Elections Bill – the original department has been used.

Bill committee members have limited access to specialist support

Bill committee members are required to scrutinise often technical legal drafting but have limited support to do so. Members can access House of Commons Library briefing papers, make inquiries and use their own staff. But despite their role in the legislative process, they do not have special or privileged access to policy or research support beyond that available to other MPs. The Commons scrutiny unit did at one time provide special briefings for bill committee members, but these were abandoned due to lack of uptake.

The official opposition generally has one or two (usually fairly junior) staff supporting each shadow cabinet member. They are required to be across the whole departmental brief and often several pieces of legislation. Smaller opposition parties and backbenchers have even less party support for legislative scrutiny.

Several people we interviewed attributed the poor quality of debate in bill committees to a lack of detailed understanding of the bill among members being tasked with scrutinising and the options for amendments. Some told us that the opposition often tabled poor-quality amendments to the earlier stages of a bill to take up time to allow researchers to work on amendments for later in the bill.

Members of the devolved assemblies have greater support from their respective parliamentary administrations for legislative scrutiny, in particular during committee stage. In Northern Ireland, for instance, departmental committees responsible for scrutinising legislation can instruct parliamentary clerks in the Bill Office to draft amendments. These are then included in the committee's report and may be taken up by members at the bills' amending stages. In the Scottish parliament, standing

committees responsible for legislative scrutiny have dedicated researchers and can also appoint specialist advisers for bill inquiries, who provide expert briefing for the committees.

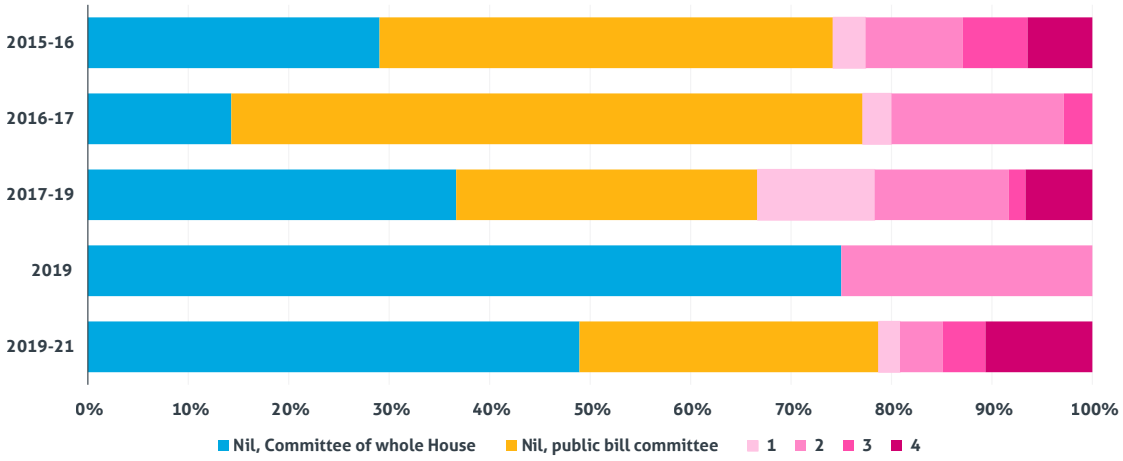
In Senedd Cymru, members have access to lawyers who can review proposed amendments and provide advice on legal drafting. This is in part to ensure that amendments are not outside of the competence of the Senedd. There have been examples of members of the Senedd drawing on this resource to develop amendments to bills before the UK parliament, which are then tabled by their counterparts at Westminster, suggesting a demand for this resource which is unmet in Westminster.

Oral evidence has improved committee stage, but it still is not taken on most bills

The introduction of evidence-taking powers has brought many benefits to committees, increasing the expert knowledge available to committees, allowing interest groups and organisations to raise concerns in a public forum, and demonstrating parliamentary engagement with wider society.[11] Thompson also found a correlation between bills on which oral evidence was heard and those which were more amended. She found: "Committees taking oral evidence see a much greater number of government amendments being moved, averaging 79 per bill compared to only 58 for those taking no oral evidence." She suggested that these sessions were used by backbench and opposition MPs to strengthen their cases for changes to legislation, making them more likely to be successful in exerting pressure on the government.[12]

In spite of this, oral evidence is still not taken on most bills. As Figure 10 shows, of all the bills that had a committee stage in the last five parliamentary sessions, only around a quarter (27%) were examined by a committee that held at least one oral evidence session.

Figure 10 **Oral evidence sessions on public bills at committee stage, 2015-2021**

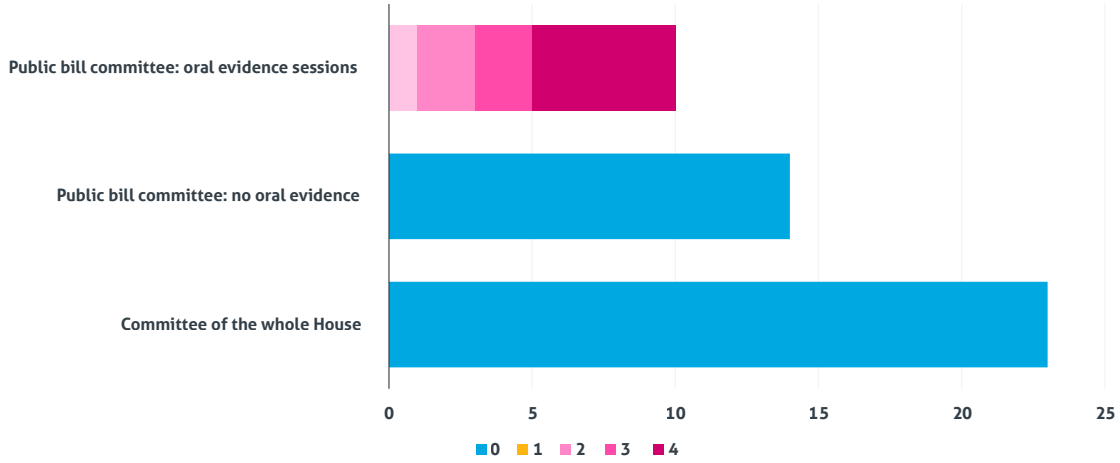


Source: Institute for Government analysis of sessional returns.

This is largely because oral evidence can only be taken on government programmed bills and not on bills that start in the House of Lords, go to the Committee of the whole House, or private members' bills.

Of the 47 bills that went to committee stage during the 2019–21 parliamentary session, almost half (23) went to the Committee of the whole House, meaning there was no opportunity to take evidence at all; this was a higher proportion than in other recent sessions. Of the 24 bills that went to public bill committee, 14 did not take oral evidence (seven were private members' bills, and three started in the House of Lords). In total just 10 out of the 47 bills benefited from the 2008 reforms.

Figure 11 **Oral evidence sessions on public bills at committee stage, 2019–21 session**



Source: Institute for Government analysis of sessional returns.

Many of the bills on which oral evidence was not taken received more submissions of written submissions than bills that did take oral evidence, demonstrating appetite for engagement. For example, the Pensions Schemes Bill [HL] 2019–21 received 24 written submissions but took no oral evidence; in contrast, the National Security and Investment Bill received just six written submissions, but held four evidence sessions with a total of 13 witnesses.

Similarly, many bills that went to Committee of the whole House were of relevance to the wider public and civil society – for example, the European Union (Future Relationship) Bill, which implemented the Brexit deal, and the Covert Human Intelligence Sources (Criminal Conduct) Act 2021, which established legal authorisation of criminal conduct for intelligence sources. Part of the purpose of the Committee of the whole House is to allow an opportunity for all MPs – rather than just a subset – to participate in detailed scrutiny of major bills or bills of constitutional importance. However, this approach does prevent public evidence taking on bills of this kind, meaning that there is no opportunity for outside input that could enrich and enhance the quality of debate.

Committee of the whole House is also used in instances where a bill is passed on an expedited timetable and the purpose is to complete committee stage quickly. While in some emergency situations this may be necessary, as highlighted in Part 1, there is an increasing tendency for the government to rush through bills when not. One of the consequences of this is a lack of public evidence taking, and therefore this format should be used sparingly.

Parliament does have the option to consider some aspects on the floor of the House and others in public bill committee using a procedure known as 'split committal'. A 2019 House of Lords Constitution Committee report recommended that the usual channels should consider using this procedure more frequently,[13] but so far (with the exception of the Finance Bill, where there is a convention that it should be used) this has rarely happened. The Constitution Committee also recommended that oral evidence should be taken on bills starting in the House of Lords, but again this has not been implemented.[14]

Bill committee witnesses tend to be the 'usual suspects'

The introduction of evidence taking for public bill committees has had a positive impact on legislation, although the manner in which witnesses are selected in the current set-up limits the diversity, and value, of that evidence. The list of witnesses is drawn up by the programming sub-committee, usually compromised of the party whips, which often meets just days before the first oral evidence takes place.

Several people we interviewed said it often felt like there were 'government' and 'opposition' witnesses, who were selected on the basis of their support for each party's policy position, rather than bringing a range of perspectives to the process. Unlike for select committees, where clerks and committee specialists may advise on possible experts or groups to consult, for bill committees the role of clerks is limited to the practical aspects of arranging evidence sessions and inviting witnesses chosen by the whips.

We were told that witnesses were often the 'usual suspects' who already had good connections to parliament and government and had often been consulted at other stages of the policy process. Civil society groups said that they found it difficult to know how to engage with legislation, who to contact, and how to put themselves forward to give oral evidence. The present practice also reduces the possibility that members of the public, with experience of an issue who could make a valuable contribution to such a session, may be called up to give evidence unless they have an existing relationship with government, naturally not always the case. While there is a value in continuing to engage groups and individuals who have detailed expertise, and are able to reflect on the evolution of the legislation, committees may be missing an opportunity to engage with a more diverse range of views and voices – and to strengthen the democratic process.

The timing of witness selection and invitations can also be a limiting factor. Witnesses may be given as little as a few days' notice of an evidence session, giving them little time to prepare – which may limit the quality of responses, and in some cases put off witnesses who may be less familiar with the process. Historically, this has also limited the geographical diversity of witnesses, with those based outside London finding it harder to participate at short notice – though the introduction of remote evidence taking for public bill committees, brought in during the pandemic, has helped improve this.

Research has found that witnesses for public bill committees were less diverse in terms of demographic characteristics than other key comparators. In the 2019-21 session, House of Commons select committees had a higher proportion of female witnesses (37%) than public bill committees (27%) in the same session.[15] A study by Hugh Bochel published in *Parliamentary Affairs*, found that in the 2017–19 session just 27.5% of public bill committee witnesses were female, compared to 46% of witnesses giving evidence on legislation to committees in the Scottish parliament.[16]

The role of select committees

One proposal that has been put forward to improve the committee stage is to abolish bill committees altogether and give departmental select committees a direct role in legislative scrutiny. This approach is used in all the UK devolved legislatures, as well as other legislatures around the world. It could have many benefits:

- Select committee members are able to develop expertise in their departmental area, making them better equipped to scrutinise legislation
- Members can develop good working relationships, encouraging cross-party working and potentially reducing the partisan nature of committee stage
- The relative permanence of select committees means that they are able to develop relationships with experts, civil society groups and other stakeholders in relevant policy areas who they may call upon to give evidence
- Select committees are supported by staff and advisers, who can provide policy expertise to members, informing amendments.

However, giving select committees a formal role in the legislative process would fundamentally change their nature, in ways that could undermine their effectiveness. Since the introduction of elections for select committee chairs, they have become increasingly independent of government. Chairs from the governing party have been increasingly willing to publicly criticise government policy, members have continued to develop good cross-party relationships, and an increased focus on impact has meant that they are arguably one of parliament's most effective tools for influencing government policy. Changes to their role should be carefully balanced against their potential consequences.[17]

Lessons from Scotland and Wales suggest that departmental committees with a role in legislative scrutiny are less independent than Westminster select committees. The whips take a greater interest in the membership of such committees, meaning members of key committees may be chosen for their party loyalty. Interviewees told us that while there was often good cross-party working during non-legislative inquiries and during the evidence-taking stage of bill scrutiny when it came to line-by-line scrutiny and votes, members fall back into political party divides.

Given the amount of primary legislation passed in the UK parliament (around 20–50 bills a session compared to an average of 15–20 passed by the Scottish parliament and just 3–5 by the Senedd) there is also a risk that legislative scrutiny would dominate select committees' work. This would limit their ability to pursue proactive – or even reactive – inquiries into policy areas and engage in agenda-setting, where their political priorities may influence the work of the government. It would ultimately result in an even larger proportion of parliament's work being dominated by the executive, potentially reducing the already limited opportunities for parliament to dictate its own programme of work.

Recommendations for reform

Despite the potential disadvantages identified above, we believe the legislative process could benefit from select committee input. Many already conduct ad hoc inquiries into government legislation, demonstrating an appetite for this kind of scrutiny. But at present such scrutiny is adjacent to, rather than a part of, the legislative scrutiny process and there is no guarantee that it can be conducted in time to influence the formal bill scrutiny process.

Therefore we make the following recommendations:

Role of select committees in the legislative process

- The House of Commons should amend its standing orders to require a minimum number of select committee members – two or three – on each bill committee. This modest number would stop members from becoming overburdened, but ensure there is a stronger link between each bill committee and each select committee.

- Select committees should be able to request a 'select committee stage' on all programmed bills between second reading and committee stage. This would allow select committees to hold an inquiry or one-off evidence sessions on a bill, and produce a statement or report on what they consider to be the key issues or problems with the bill. They may wish to include draft amendments in these outputs, as is current practice in the Northern Ireland assembly, which can be tabled at a later stage of the bill.

As a 'select committee stage' would be optional, it would avoid overburdening committees with legislation, allowing them to focus on the bills to which they felt they could add most value. Formalising a role for select committees would bring them into the legislative process itself, and ensure their scrutiny takes place on a timescale and in a format that would allow it to inform scrutiny at committee stage. As select committees already have relationships with key stakeholders in their area it would also allow members to hear from a broader range of witnesses than those determined at short notice through the usual channels.

Members of bill committees could be invited to attend these meetings, using a procedure similar to the 'guesting' procedure for joint working in select committees, to help inform their committee deliberations. This interchange could encourage joint working between select committees and bill committees, encouraging cross-party working and amendments. It could be particularly useful where a select committee has conducted pre-legislative scrutiny (in accordance with our earlier recommendation), giving select committees the opportunity to question ministers on whether their recommendations had resulted in changes to legislation, and to highlight potential amendments where they had not.

To minimise the delay that this stage would create for the legislative timetable, bills that are put to 'select committee stage' could not take oral evidence in public bill committee.

Resources for members of bill committees

- There should be a review of opposition resources to ensure they have sufficient policy and legal/drafting support to table high-quality targeted amendments to legislation.

- The House of Commons Commission should conduct a review of House services and resources available to members for legislative scrutiny, with a particular focus on support for bill committees.

The commission should consider provision of new resources; for example, legal advice for members drafting amendments. It should also consider how to best use existing expertise in parliamentary services and ensure co-ordination between the different departments including the House of Commons Library, the committee office including the scrutiny unit, and the public bill office. For example, pre-legislative joint committees are often supported by policy-specific groups of parliamentary staff, including select committee and House of Commons Library staff. A similar model could be used to support bill committees. The staffing used to support pre-legislative scrutiny committees should be used as a model.

In addition to this, we recommend the following changes to House of Commons committee stage:

- Bills should not be put to the Committee of the whole House for the purposes of shortening the bill timetable unless absolutely essential. Doing so curtails opportunities for parliamentarians, the public, civil society and business groups to scrutinise policy. This increases the risk of poor legislation or legislation without broad-based support ending up on the statute book, meaning policies are less likely to succeed and more likely to be reversed.

- The House of Commons should make greater use of the split committal procedure, allowing some clauses of wider interest to MPs to be discussed in Committee of the whole House, and a bill committee to take oral evidence on more technical aspects of the bill.

- All public bill committees on government bills – including those that start in the House of Lords, which do not have a select committee stage – should hold at least one oral evidence session. If the government proposes that evidence should not be taken on a bill it should be required to include this in the programme motion. This minister should be required to explain the rationale behind this decision.

- As soon as a government bill has its first reading the scrutiny unit should issue an open 'call for evidence' to be displayed prominently on parliament's website, and the pages of the relevant committees. This evidence should be presented to the programming sub-committee and be used to inform the selection of bill committee witnesses; if the bill is put to the Committee of the whole House it should be included in the House of Commons Library briefing. The minimum time period between the meeting of the programming sub-committee and the first evidence sessions should be increased from one day to one week.

- There should be a dedicated parliamentary clerk with responsibility for advising civil society and third-sector groups on procedural matters and how to engage with the legislative process and the passage of specific bills that have been announced in the King's Speech in each session.

Conclusion

The UK's central constitutional principle of parliamentary sovereignty is under strain. The gradual erosion of parliament's powers over the legislative process, at the expense of an ever more controlling executive, is a big part of this. There have been many proposals for reforms to improve the legislative process in ways that would redress this imbalance. Parliament itself has made many recommendations – many of which this report highlights and adds to. But for these to be implemented they require government support, and a willingness to cede some power. Many governments have proven unwilling to do so.

Government should be able to deliver its legislative agenda, but legislating is a serious business – once on the statute book, laws can be difficult to change. Many objections to proposals to improve parliamentary scrutiny relate to concerns about convenience or preferences. Indeed, most of the recommendations would involve adding additional steps to the parliamentary process. However, the government should be willing to accept some delay and parliamentary challenge to ensure legislation is of as high a quality as possible. Ultimately, it is in the government's interests to ensure this. Properly scrutinised legislation that has been subject to challenge is more likely to deliver good results. Government policies often fail to live up to potential due to poorly designed legislation or a failure to test it properly through consultation and parliamentary scrutiny. Legislation that has been meaningfully endorsed by parliament is also more likely to be seen as legitimate and achieve longevity on the statute book.

All governments should remember that the fortunes of political parties change, and most will spend periods of time in opposition. All politicians should be mindful to ensure that the parliamentary process is designed so that it is best able to deliver democratic outcomes, and robust legislation, not just provide the government of the day with the easiest means of delivering on its manifesto.

Annex 1: General principles

To inform our analysis of the legislative process and our proposals for reform we developed the following principles, which, we would suggest, should underpin the legislative process.

The legislative process should enable the government to deliver on its manifesto commitments that require legislation and to propose legislative responses to emerging priorities. A key function of the UK parliament is to enable a democratically elected government to deliver on its manifesto pledges where these require legislation. It can also allow governments to respond to unexpected or emerging events.

Parliament has the constitutional authority to approve Acts of parliament. The government derives its constitutional authority from, and is accountable to, parliament. Parliamentary approval of legislation is essential for democratic legitimacy.

Parliament should be able to check, discuss and influence the content of legislation. The government should not be able to legislate without constraint. Manifestos do not contain fully developed and detailed policy proposals, nor provide a basis for new policies or legislation that may be required to respond to events or challenges that arise during an electoral term. No government can represent the views of the whole of the electorate – indeed under the first past the post system a government rarely receives a majority of votes in a general election. Parliament represents a wider cross-section of views beyond the governing political party and should provide a forum for national debate on the laws to which citizens are subject.

When should parliament legislate?

Legislation should only be introduced where necessary to deliver on a particular policy objective and balanced against parliament's capacity to scrutinise it. Legislation should only be used where the implementation of government policy requires changes to the law – not for declaratory purposes or to signal action on an issue where other policy tools and levers are available. Government should consider constraints on parliamentary capacity – in terms of time and resources – when planning its legislative programme, and ensure that the volume of legislation does not exceed the capacity of parliament to conduct effective and timely scrutiny.

Policies should be fully developed before they are put before parliament in the form of legislation. Parliament should be able to scrutinise the policy substance of legislation. Delegated powers should not be used in place of detail on the face of the bill, drafting should be complete at the point of introduction and substantial new policy content should not be introduced through government amendment at a late stage in the legislative process unless absolutely necessary.

How should parliament legislate?

Scrutiny should result in parliamentary influence on the content of legislation. Modern MPs have many competing demands on their time, if mechanisms for scrutiny are overly onerous, too time-consuming and unlikely to result in changes or impact, then members may de-prioritise these activities in favour of other ones. Scrutiny should facilitate meaningful engagement between the government and parliament, not create additional processes for the sake of it. But MPs should also take their roles as legislators seriously and be willing to dedicate time and resources to conduct a detailed examination of the government's proposals, even on issues that attract less public attention.

Parliament should have sufficient time to scrutinise legislation. Good quality scrutiny requires sufficient time for parliamentarians to consider proposed legislation, to reflect on any briefings or evidence they receive, and to raise concerns with ministers. Although there are some circumstances that may warrant legislation to be passed on an expedited timetable – for example, to respond to unforeseen circumstances and national emergencies – this should remain the exception not the norm.

Adequate resources and information should be available to parliamentarians to scrutinise legislation effectively. MPs and peers should be able to access specialist resources and information to inform their legislative scrutiny. As well as procedural advice from parliamentary officials, the government has a responsibility to provide information to facilitate parliamentary scrutiny, including briefings and policy assessments, and access to officials and ministers to provide information, clarifications and discuss the policy content of bills.

Changes to the substance of legislation need to be well developed and their implications fully considered. Amendments – either made directly by parliamentarians or tabled by the government in response to parliamentary pressure – are the primary mechanism through which parliament can influence legislation. The implications and consequences of such changes should be fully examined to avoid poor legislation or unintended consequences.

The legislative process should maximise opportunities for input from a wide range of outside voices. A key part of parliament's purpose is to bring democratic legitimacy to the government's policies. The legislative process should provide opportunities for citizens and interest groups to feed in their views for parliamentarians to consider, especially those who may not have been consulted at earlier stages of the policy making process.

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