



ISBN: 978-1-903903-55-1

Published by The Constitution Unit  
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## Executive Summary

The old standing committee system, though vital to the legislative process, was deemed ineffective by numerous commentators on parliament and had long faced pressure for reform. Ad hoc and unspecialised, standing committees lacked many of the features characteristic of effective committees found in other parliaments around the world.

In November 2006, under the chairmanship of Jack Straw, the Modernisation Committee published a report on [Public Bill Committees](#), which proposed that most government bills beginning their parliamentary passage in the House of Commons would be sent to a 'public bill committee' (PBC). Such committees would be empowered to receive oral and written evidence, in addition to holding traditional line-by-line scrutiny sittings, thus bringing potential to better inform members, involve the public, and improve the quality of parliamentary scrutiny.

This report reviews the experience of PBCs in the 2006-07 and 2007-08 parliamentary sessions, and concludes that the reforms have been successful in adding value to the legislative process, but that more could be done.

The appearance of expert witnesses before PBCs has increased the quality and quantity of information available to committee members. The reforms have enhanced transparency of briefing by outside organisations, providing an official platform to inform and influence parliament's consideration of legislation.

Members of PBCs are (perhaps compelled to be) more engaged with the task of legislative scrutiny, and backbenchers are becoming more confident participants in the committee stage. Debate is more fruitful, and the flexibility of each PBC to divide its time between witness and detailed scrutiny sessions as it sees appropriate, is welcome.

PBCs nonetheless suffer from problems that require addressing if their benefits are to be maximised. Their timetabling limits members' ability to deliver effective scrutiny, with insufficient time to prepare for the committee stage, or to reflect on what is learnt through evidence-taking before moving to line-by-line scrutiny. It is proposed that adequate fixed gaps need to be built into the process to correct this.

A lack of committee ownership over witness selection, at present an opaque process orchestrated via the usual channels, is a key grievance. This report recommends that the committee itself should determine its timetable and list of witnesses.

Concerns that committee memberships fail to reflect the balance of opinion in the House of Commons also need to be addressed. One possible reform would be to alter the composition of the Committee of Selection to diminish whip influence.

Some of this report's recommendations are simple and easily achievable. For example an increase in resources to facilitate the running of PBCs, and better publicity for the new committee



## **Preface**

In November 2006 the House of Commons approved a series of changes recommended by its Select Committee on Modernisation that altered the procedures by which parliament scrutinises government bills. The committee stage of the legislative process in the House of Commons, the stage where bills are examined in detail, was overhauled in the interests of achieving enhanced scrutiny and a more informed and accessible legislative process. Standing committees, as were, were re-named 'public bill committees' and endowed with the power to call witnesses and receive written submissions from interested and expert bodies external to parliament, in the course of their scrutiny of a bill. To a limited extent, these committees have become more like select committees.

The introduction of public bill committees was an important innovation in the way the House of Commons scrutinises legislation. But it has not been subject to any evaluation. We encouraged Jessica Levy to pursue her Masters dissertation at UCL on this topic. It was a good dissertation, so she was later invited to develop it - following further research - into a report for the Constitution Unit

## **Acknowledgments**

I would like to thank all those who provided support and advice during the completion of this report. Special thanks to Dr Meg Russell whose idea it was to turn a Masters dissertation into a more in-depth project and publication. Without her confidence and wise guidance it is unlikely that this project would have materialised. I am also extremely grateful to Professor Robert Hazell and all at the Constitution Unit for providing me with this opportunity to produce a report for them, which I hope will prove useful.

I warmly acknowledge Emily Commander, Paul Evans, Matthew Hamlyn, and Helen Irwin who kindly read and commented on a draft of this report. Any remaining shortcomings or mistakes in this final version are entirely my own.

To all those I interviewed (without whom this publication would lack its substance), I thank you for kindly giving up your time to speak with me. Thanks go to three government ministers; two frontbenchers from the Conservatives and one from the Liberal Democrats; four members of the Chairmen's Panel; and two Labour backbenchers. To six House of Commons clerks, including four very senior figures; three members of the Scrutiny Unit; one civil servant; and two members of the Parliamentary Counsel. Also to a special adviser close to the process; three individuals who appeared as witnesses to PBCs; and one parliamentary correspondent.

Last but not least, I would like to express my gratitude to Dr Tony Wright MP, for whom I have been working while completing this project, for his encouragement and kind support.



## **Methodology**

This investigation developed from an initial 10 000 word dissertation completed as part of a Masters course. The methodology began with a detailed study of all the PBCs held during the 2006-07 and 2007-08 sessions. Via the parliamen39 58.56 19(a)-40 1 n 293.52 7241 0 0 1 15'



## **Section 1: The Reforms to Create Public Bill Committees**

### **The old standing committee process and its critics**

Standing committees were introduced to the British political system by William Gladstone in 1882, though they had been proposed as early as the 1850s by the Commons' most famous Clerk of the House, Sir Thomas Erskine May (Seaward & Silk 2003: 157). The committees were provided for

The inconsistency between the committees' nomenclature and how they were constituted is just one unusual feature of British standing committees that contributed to them being considered atypical of comparative committees overseas. Legislative committees elsewhere differ according to their status, powers and structure, with the most active and effective committees characteristically being permanent, specialised, and with jurisdictions mirroring government departments. A strong committee system, able to have 'a significant independent impact on public affairs' (Shaw 1998b: 237), is more likely if committees are cohesive, a feature associated with a permanent membership (Arter 2003: 73); if political parties play a small role in who is chosen to sit; if the committees are able to consider bills before they are discussed in plenary (Shaw 1998a: 789); and if they are supported by generous staffing. The power to receive oral and written evidence boosts a committee's expertise, although it is recognised that this is likely to be naturally fostered as permanent committee members accumulate knowledge over time. In some parliaments, legislative committees double up with executive oversight functions conducted by our select committees, with the same members responsible for both bill and departmental scrutiny. The UK's standing committee system displayed none of these features and has consequently long been regarded as an oddity. Though UK standing committees were more in line with the Commonwealth experience, their difference from the US and European equivalent, significantly their lack of specialisation and permanence, has stymied their effectiveness. The urgency for reform is understandable if one considers the opi

prompted its reform. In their evidence to the Modernisation Committee's inquiry which recommended the changes under examination here, the Hansard Society summarised the criticisms of the work of standing committees as follows: '[standing committees] fail to deliver genuine and analytical scrutiny of [bills], their political functions are neutered, dominated almost exclusively by government..., they fail to engage with the public and the media (in contrast to select committees) and they do not adequately utilise the evidence of experts or interested parties' (quoted in Modernisation Committee 2006a:

(Power 2001: 1). From within parliament,



scrutiny because they will be more informed. Select committee membership is popular and there is considerable demand to join the more high-profile committees (Norton 2001: 324-25). Select committee duties are a consensual and collective activity, adding to the positive public perception of these bodies. The aim of select committees is to cooperate in order to seek improvements in government policy where these are found to be necessary. As Robin Cook commented, achieving a House of Commons which is effective in holding the government to account 'should not be a partisan issue' (2001: para 2). They offer a different mode of operation (see King 1976) in a political system characterised by the party political battle.

### ***The Legislative Process – the Modernisation Committee's report***

When Robin Cook was its chair (2001-03) the Commons Modernisation Committee was at its most engaged in suggesting reforms that would foster an effective legislature. Despite introducing headline measures like devolution, Freedom of Information, and a Human Rights Act, New Labour in office was not as committed to wholesale reform as it had professed to be in advance of the 1997 general election (Flinders 2002: 27). But as Leader of the House, Robin Cook had succeeded in enthusing parliament of the need for change, encouraging the publication of more bills in draft, orders relating to the carry-over of business, and reforms designed to empower select committees. When Jack Straw became Leader of the House in 2006, he also brought this modernising initiative to the role. A politician with a genuine







the proposals for the committal of bills to committees with powers to take evidence to become the normal practice for programmed government bills which start in this House; agrees that this be achieved by Standing Orders through the programming process, with such committees having freedom to decide how many evidence sessions should be held; agrees that the notice period for amendments to bills to be selected for debate in standing committee should, subject to the discretion of the Chair, be extended from two days to three days; supp2ysta Chair, be8 13.44 re Wexsupp2yo wx be eva9(t)2.e.†

**Table 1: Comparing the recommendations of *The Legislative Process* with what was accepted by the House of Commons**

Issue to be reformed	Recommended by <i>The Legislative Process</i>	Accepted or rejected by House of Commons
	<p>- That committees empowered to receive written and oral evidence before clause-by-clause scrutiny should become the norm for scrutinising government bills which originate in the Commons. These committees should be renamed public bill committees ('PBCs').</p>	<p>Accepted. The House emphasised the need for these bills to be programmed, have started in the Commons, and not to have received pre-legislative scrutiny.</p>
	<p>- The initial programme motion moved after second reading should contain only a provision that a bill be committed to a PBC, and that proceedings be programmed.</p> <p>- There should be a second programme motion, moved one or two days later, to establish the bill's out-date from committee. This is to allow account to be taken of what was said during the second reading debate.</p>	<p>All proposals regarding the programming motion were rejected. The House accepted the status quo - the date a bill is to leave committee is to be decided by a single motion passed at the end of second reading.</p>
	<p>- All PBCs should hold at least one evidence session with the relevant minister and civil service officials.</p>	<p>Accepted</p>
	<p>- That time restrictions on evidence-taking be removed; it be up to the committee to determine the division of the time available between evidence-taking and clause-by-clause debate.</p>	<p>Accepted</p>





## **Section 2: Public Bill Committees So Far**

### **How do they work?**

The committee stage is the third formal phase of the legislative process in the House of Commons; it follows the introduction of a bill at first reading and a second reading debate on the bill's broad principles. At the end of second reading (if it is agreed to take the bill forward) a motion is put to commit the bill to a public bill committee under Standing Order 83(A). A date by which the PBC must complete its deliberations is announced<sup>9</sup>, but no other procedural restrictions are placed on the committee. For example, in contrast to procedure for special standing committees, a PBC's out-





providing a single, easily accessible location for all the information which members, witnesses, and the public may need about a bill. The use of laptops in committee, enabling access to this as well as other briefing material during committee sessions is being trialled. The publication of 'alternative texts' of the bill showing the impact of particular amendments is an innovation that has had a slower introduction.

evidence sessions<sup>13</sup>. As a result, a total of 12 government bills were sent to a PBC empowered to call for both written and oral evidence, and one, the Criminal Justice and Immigration Bill, was carried over from the previous session. These 13 committees met for 147 sittings, during 36 of which witnesses were present. The PBCs heard from 229 witnesses and received 190 pieces of written evidence.

**Table 2: Bills scrutinised by a Public Bill Committee with full evidence-taking powers, sessions 2006-07 & 2007-08**

Committee Name	Date of 1 <sup>st</sup> committee sitting	No. of sittings
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### **Section 3: What Value is Added by the New Public Bill Committee Process?**

It is logical to assess any success of, or value added by, these reforms against the original objectives set out by the Modernisation Committee. As explained in Section 1 above, did not include an explicit statement of the aims of the reform proposals for the committee stage of legislation. These are,

submission alone. Another PBC witness, Janet Allbeson, Policy Advisor at One Parent Families/Gingerbread, expanded on the particular impact oral evidence was likely to have on the information available to MPs: ‘...with the oral evidence you have the advantage of the give and take and the ability to listen to others and formulate your ideas. It is a much more well-rounded procedure.’

It is clear that there is a particular benefit in terms of the information gained from oral evidence. While in his previous role<sup>15</sup> as a PBC chair, John Bercow MP (Conservative) told me, ‘there’s all the difference in the world between written submissions and putting somebody on the spot...It’s far more valuable. It’s a rich tapestry of quotable material and relevant matter.’ Neil Carberry, head of Pensions and Employment Policy at the CBI, was adamant that he was able to provide far more detailed and higher quality evidence by appearing as a witness to the Pensions Bill Committee than he would have been able to with a traditional written parliamentary briefing. There seems also to be a psychological impact that

The terms of the reforms place no requirement on a public bill committee to hear evidence from anyone other than the relevant minister and officials (Modernisation Committee 2006a

submission of written evidence could both enhance the transparency of the committee stage by bringing much of the briefing and consultation by outside interests onto the public record, and secondly increase access to, and engagement in, the law making process for those organisations and individuals. During its own evidence sessions in advance of publishing the Modernisation Committee had learnt that pressure groups would welcome an additional opportunity to contribute, even if they had been involved in any pre-legislative consultation conducted by the government (2006a: para 54).

The reforms to the committee stage have unequivocally made the process more transparent. Openness, in this sense, is considered valuable in itself, and politicians and officials alike welcomed this effect of the changes. Justice Minister Michael Wills MP thought that 'more transparency must be a good thing.' One clerk commented that the reformed situation 'must be better because it brings out into the open a practice which was clearly taking place covertly.' Another clerk explained that with the old standing committee process, lots of people would be briefing the committee members, but sometimes only some of them, and all below the radar. He commented, 'There was this hidden agenda going on beneath the surface, and I think it's very good that that has come out into the public domain, and things are clearly on the record.' (Despite this advance it must be acknowledged that informal lobbying continues.) All public bill committee proceedings are recorded in Hansard, the official report. Transcripts of committee sessions appear on the Hansard pages of the parliamentary website within a few days of sitting. All written submissions accepted by the chair of a PBC are similarly printed in full and accessible via this website. PBC sessions are recorded, some in video and some just in audio, and these too are accessible in real time and on the website's audio archive.

The Conservative Party's immigration spokesman, Damian Green MP, explained how openness

old standing committee stage was described by representatives from the TUC and CBI, two of the most experienced and well-resourced lobby organisations, as 'not always...easy to influence' (Modernisation Committee 2006a: para 55), one can conclude that reformed PBCs have opened up the legislative process to more widespread participation.

But not all organisations enjoy the privilege of increased access to the legislative process. The Hansard Society has argued that it is easy to predict who will be invited; that witnesses are likely to be the 'usual suspects' (2008: 223). Liberal Democrat MP David Heath agreed. From his experience of two PBCs, he noticed little change in the accessibility of the committee stage to outside interests following the reforms under investigation. David Heath said, 'It was simply the

the least engaging and enjoyable duties of MPs. Reformers hoped that beginning the committee stage with evidence-taking, which from select committee experience was seen to be a



benefit the public's understanding of the legislative process, as well as make the business of law making more accessible.

### **Improved debate**

Another positive consequence of the reforms is that with enhanced availability of information and greater member engagement, the quality of debate in committee has improved. As the Modernisation Committee intended, the approach to the committee stage is now more evidence-based. The introduction of evidence sessions, which allow questions to be posed directly to witnesses, has produced a more fruitful process. In particular, the ability of members to ask questions of the minister, who for one session sits before the committee as a witness, has added value. Gone is the need to peg questions to so-called 'probing' amendments, which before the reform afforded the only means available to air such queries. (While the need to use these amendments has been removed, they are still occasionally tabled by members.)

The improved debate has continued into the clause-by-clause phase of the process. Damian Green MP reflected on the committee sessions attended by witnesses during consideration of the UK Borders Bill: '...it is an extremely good innovation, for which I am happy to commend the Leader of the House. Some of my remarks on...amendments arise from the evidence we heard. It would be extremely use



## **Section 4: How Can the Public Bill Committee Process be Improved?**

The public bill committee experience is now into its third parliamentary session. Enhanced scrutiny was badly needed, and the reforms have received widespread praise. Assessed against the aims of the Modernisation Committee, the committee stage has become more informed, engaging and transparent. Evidence sessions with expert witnesses have provided material to support the process of scrutiny and have the potential to introduce a more consensual approach to what was previously a highly politicised process. However, very few interviewees were without some criticism of the new committee procedure. While the broad principle of the reform has been welcomed, calls have been made for further modifications. These calls take two forms: those which fall within the terms of ; and those that seek to overcome weaknesses which persist despite the changes made, forming part of wider-reaching aspirations for reform of legislative scrutiny.

The problems with PBCs are examined below, starting with the two most fundamental areas of weakness –





deciding on how much time will be needed for the PBC before the principles of the bill have even been debated at second reading. Moving a second programme motion informed by discussion on the themes of the bill could lead to a more suitable timetable, for example with regards to sharing time between evidence and scrutiny, and knowing which witnesses associated with more contentious elements of the bill may perhaps require more time to offer and be quizzed on their views. However, this would imply a reliance on the detail of second reading debate, which some interviewees thought unrealistic. Front bench spokespeople asserted that the parties are likely to have an idea of who they might wish to invite as witnesses long before second

Loans Bill, and one for the Channel Tunnel Rail Link (Supplementary) Bill, the committee members were given no time at all to reflect on witnesses' statements and weave these into amendments and debate.

In the interests of reflecting on what is learnt through evidence-taking, and fully realising the influence expert evidence can have on amending (with the intention of imp

affairs. Ideally, the whips of all parties will consult, and individually seek the views of their own party's committee members. But because this will occur behind closed doors, there is no way of



rather than (as currently) officials in the whips' office and government department sponsoring the bill. Formal ownership should then be with the PBC chair. The programme motion should be tabled in the name of the PBC chair, who should have responsibility for determining the committee's programme. Shifting the balance of decision-making power to the chair (and thus to parliament) would formalise the negotiations over witnesses, ensure consultation with all committee members who wish to propose a witness, and therefore enhance PBC members' ownership and engagement with the process.

The second worry with the arrangements for witness appearances before PBCs is whether the right people are called. Because of the strict timetable of these committees, not everybody can be heard from. The need to strike a balance makes selecting the correct witnesses even more important. This begs the question, who are the 'correct' witnesses? In its 2004 report

the Modernisation Committee said the legislative process should become more accessible and understandable, especially to those outside parliament (2004). But there is doubt about who the targets 'outside' parliament were. Were they organised interests or

they can present and thus enhances the committee process. Other interviewees expressed confidence that PBCs were hearing from a fair representation of those willing to speak who did add to the knowledge of the members charged with examining the bill.

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projects which preceded

demonstrate the value of permanent membership of committees in developing the knowledge and expertise of individual members, and thus enhancing their capacity to perform effective scrutiny. But interviewees did not support a permanent legislative committee system even when asked to ignore the organisational and resource implications that such a move would incur. This hints perhaps at the continued parochialism of the House of Commons but also at fears that the independence and effectiveness of the select committee system would be damaged if these committees also took on bill scrutiny. This may be true, but it is not the only way of achieving permanent legislative committees. The suggestion of this investigation is that in the longer term Westminster moves towards establishing a parallel system of permanent legislation committees to complement and work alongside the select committees. This development would allow expertise and knowledge to be accumulated and applied to the vital task of legislative scrutiny, likely improving the quality of that scrutiny. There would be other benefits as well, such as providing an alternative career path for backbenchers and introducing independent leadership positions, which would contribute to strengthening the position of parliament vis-à-vis the executive (Norton 1998b: 144). Parliament has a large enough supply of backbenchers for permanent bill committees to become a reality, especially if the number of PPSs and ministers were cut. There could be some, probably quite minimal, overlap between select committee and legislative committee membership if numbers required this. Moving to a system of permanent legislative scrutiny committees, separate from the existing select committee system, would further strengthen parliament's powers of scrutiny. Its adoption should be kept under review.

## **Resources and Administration**

There are a few modest resource improvements which could be applied to PBCs to increase their effectiveness.

At present the Scrutiny Unit is stretched, juggling its existing duties with respect to select committees and pre-legislative scrutiny with new responsibilities for the co-ordination of evidence-gathering by PBCs. The need to invite witnesses and prepare committee members' questions, coordinate the production of briefing material for the committee with the House of Commons Library and select committee staff, and process all written submissions, has left the Scrutiny Unit under pressure. In 2007 it appointed two extra members of staff in response to this pressure. The Head of the Unit, Matthew Hamlyn, has described the creation of a new administrative post as 'essential in handling the extra workload arising from public bill committees.'<sup>34</sup> The problems for the Scrutiny Unit, however, are most significantly due to the current mismatch between the people selecting the witnesses (bill teams, whips and, formally, the programming sub-committee) and the people briefing on the committee sessions (the Scrutiny Unit, the select committee specialists). The recommendations above would help correct this, as would the encouragement that all parties liaise with each other from as early on in the process as possible.

PBCs have no single administrative body. They lack the permanent, committee-specific staff of select committees, and the concern of the Public Bill Office clerk who sits on each PBC is the conduct of the proceedings alone. Due to their ad hoc nature, it is hard to argue that PBCs warrant a secretariat similar to select committees, but greater assistance than is available at present would lead to impr

with drawing up the witness programme if the initial planning meeting is adopted. Non-government and backbench members of PBCs in particular suffer from a lack of resources to aid their preparedness for bill scrutiny.

The innovations in the amount of supporting material available to PBC members introduced as a result of [redacted] are to be welcomed. The imminent availability of an online version of a bill comparing it as amended in PBC with how it was as it went into committee, showing deletions struck out in red and insertions underlined in blue, is a positive change.

press release (including a call for evidence) at the end of this meeting. This may help, but to have







## **Conclusion**

Philip Cowley has argued that the reforms to create PBCs have 'the potential to do more to improve the quality of the parliamentary scrutiny of bills than any other Commons reform in the last twenty...years' (2007: 22). This investigation's findings agree with his hopeful assessment. As a result of the introduction of evidence-gathering legislative committees, the Commons committee stage has become more informed, more transparent, and characterised by improved debate. Oral evidence sessions in particular have provided interested organisations and individuals outside parliamen

prepare for these committees and to reflect on what is learnt through evidence-taking before progressing to line-by-line scrutiny. Both of these problems have the potential to dim





# Summary of Recommendations

## On timing

- 1.

## **On resources and administration**

10. Two or three extra members of staff should be hired in the Scrutiny Unit to help the administration of PBCs with the briefing but also with drawing up the witness programme if the initial planning meeting is adopted.
11. The introduction of explanatory statements to accompany amendments should be made mandatory. This might necessitate increasing the staff of Public Bill Office (by one or two), so that more dedicated support during the course of the committee stage can be provided.

## **On publicity**

12. Parliament itself must promote PBCs more widely. The parliamentary website should make it clearer how and when individuals and organisations can submit written evidence or put themselves forward to be considered as witnesses. Even as early as at the first reading of a bill, appeals for evidence shouldde54Tm [(e)-2.ngPargamentardeesseoduct

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