

# Parliamentary Scrutiny of Draft Legislation 1997-1999

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## Contents

## **Executive summary**



## List of acronyms

- Pre-legislative scrutiny
- Committee on Public Administration
- Food Standards Agency



Parliament and reduce the need for substantial amendment during their passage. This is the principal way in which draft bills improve the quality of legislation.

The evidence submitted to the Commission was overwhelmingly positive in respect of draft legislation. Organisations such as the Association of British Insurers, BBC, British Medical Association, Confederation of British Industry, Consumers' Association and Institute of Directors recommended greater consultation on Bills before they were presented to Parliament. There was a general sense that the time in Parliament could be used more effectively if some of the potential problems could be ironed out at an earlier stage.

The BBC contrasted its experience of the Broadcasting Act 1990 with that of the Copyright Designs and Patents Act 1988. The latter Bill had 'an unusually long gestation period' which started in 1973 with a Committee taking evidence, there followed two Green Papers (in 1981 and 1985) and,

the DTI made a draft Bill available to interested parties before first reading and consultation

outside consultation with experts, any flaws in the technical detail of the Bill tend not to manifest themselves until the legislation is introduced to Parliament. By which time it is often too late to constructively amend the legislation.

Although the Commission acknowledged that publication in draft was not suitable for all bills it recommended that, in general, the Government should encourage departments to follow best practice, stating that “in principle, there should be as full consultation as is practicable on draft Bills and clauses”, that “departments should offer more consultations on draft texts, especially in so far as they relate to practical questions of the implementation and enforcement of legislation”, and “where there is no great urgency for a Bill, the whole Bill might sometimes be published in draft in a Green Paper, as the basis for further consultation and possibly parliamentary scrutiny.”<sup>7</sup>

By the early 1990s a number of high-profile policy failures such as the poll tax, the Dangerous Dogs Act and the Child Support Act, as well as reports such as that of the Hansard Society, meant that there was considerable pressure on government to improve the quality of legislation. Under John Major the Conservative Government did publish a number of Bills in draft for consultation.<sup>8</sup> However, it was a tentative and unsystematic approach with bills on Sunday Trading, Reserve Forces, Arbitration and Chemical Weapons.

The Labour Party picked up on this concern in Opposition. In a lecture on constitutional reform in 1996 Tony Blair floated the possibility of greater consultation, stating,

we still need to update our legislative procedures to improve the effectiveness of  
Parli





The distinctive feature of Labour's approach to consultation was not so much that it was promising to publish more bills in draft but that it regarded Parliamentary scrutiny as integral to the process. The impetus appears to have come from Ann Taylor who clearly felt Parliament should play a role. The report of the Modernisation Committee, at that time chaired by Taylor as Leader of the House, states, "In recent years some draft Bills have been produced for prior consultation ... [but] The House itself has however made no attempt to undertake any systematic consideration of such draft Bills." In the light of the Government's commitment to publish a greater number of draft bills this "provides a real chance for the House to exercise its powers of pre-legislative scrutiny in an effective way."<sup>14</sup>

This was a new development. Although linked with the Parliamentary process the publication of bills in draft had been used as a way of overcoming the problems inherent in Parliament's scrutiny of legislation. The reason for consulting experts and practitioners in a policy area on the detail of legislation was to provide an expertise not available inside Westminster or Whitehall. Its primary purpose was thus to refine and amend legislation        it was presented

The source of this ambiguity relates to the fact that the approach to scrutiny of draft legislation fails to draw a distinction between the interests of Government and the interests of Parliament. Publishing a bill in draft serves a purpose for Government. The relevant department will have a clear idea of what the consultation exercise should achieve, and largely controls the process through the timing of publication and by identifying the key issues. Parliament may not share the same objectives toward a particular piece of legislation and may wish to focus on other issues. As such, draft legislation and its scrutiny by Parliament create a number of potential costs and benefits (for Government and Parliament) which the Modernisation Committee report fails to address.

This paper will use four draft bills as case studies to assess these costs and benefits. It starts by separating the objectives of Government from those of Parliament. Chapter two examines the Government's approach to draft legislation and starts with a cost-benefit analysis of departmental consultation on draft bills. Publication of draft legislation is a government-driven exercise and, in this context, the chapter examines the pressures on the legislative timetable and seeks to determine why the Government sought to publish certain bills in draft form.

The third chapter focuses on Parliamentary scrutiny of draft legislation. Given that Parliament may well have different objectives to Government in scrutinising a piece of legislation the chapter examines how far the Government sought to influence the process. It also assesses the specific costs and benefits for Parliament in responding to the Government initiative and how the various committees coped with their task.

One of the key objectives of pre-legislative scrutiny as set out in the Modernisation Committee report was that it 'should save time at later stages'. The fourth chapter examines the effect of scrutiny on the rest of the legislative process by looking at the influence of MPs, the impact of outside evidence, the amendments to legislation and the passage of the bills through Parliament. It attempts to distinguish between the effects of publishing a bill in draft and the parliamentary scrutiny of that draft bill.

The final chapter provides an overview on the advantages and disadvantages of pre-legislative scrutiny. It examines the success of the process from the Government's perspective and from Parliament's perspective. It concludes with recommendations for reform on the need to clarify the objectives of the process, to improve the timing and resources available and to provide greater leadership and co-ordination.

## **2 – The role of Government: The choice of legislation**

The Government's perspective on legislation is distinct from that of Parliament. The Government sets the legislative timetable to which Parliament must respond. It controls the number of bills published each year, their content and the order in which they will be presented to Parliament. However, the Government is subject to enormous internal pressure (from Ministers and their departments) and external pressure (from pressure groups and professional bodies) to introduce legislation across a broad range of policy areas. Given the limited amount of Parliamentary time for considering legislation there are always more bids for legislative slots than there are slots available. The choice of legislation for any particular year is therefore a careful process of negotiation between the Cabinet Office, Government business managers and departments. The final content of the Queen's Speech must balance these pressures and, in the

The final decision on the legislative programme involves balancing a number of competing priorities and anticipating the possible repercussions of including, or excluding, specific pieces of legislation. The content of the Queen’s Speech should show that the Government is fulfilling its manifesto commitments, but it also often reflects public pressure to act in certain areas and contains technical bills, such as where the government is obliged to legislate. At the same time the business managers must ensure that the legislation can be delivered through Parliament within the allotted time. Any unforeseen problems with bills have a knock-on effect for the rest of the Government’s legislation.

Although consultation on draft legislation has tended to be regarded as almost entirely beneficial for Government it too carries a number of potential advantages and disadvantages. The choice of draft bills therefore involves a similar process of balancing several competing objectives. Reflecting this, the Cabinet Office issued a guidance paper for departments in 1999 on the costs and benefits of all forms of government consultation.

**Figure 1 - Cabinet Office guidance to departments<sup>16</sup>**

<p><b>Benefits</b></p> <p><b>Consultation can:</b></p> <ul style="list-style-type: none"> <li>enhance the quality and effectiveness of policymaking by providing insights that are otherwise difficult to obtain – such as differing cultural perspectives, hidden costs and risks, likely winners and losers and the factors shaping entrenched positions on particular initiatives</li> <li>strengthen the legitimacy of final decisions</li> <li>increase the responsiveness of citizens and build the confidence of communities or interest groups in dealing with particular issues</li> </ul>
<p><b>Pitfalls</b></p> <p><b>Consultation can:</b></p> <ul style="list-style-type: none"> <li>create delay and administrative overload. Identifying and informing interest groups, seeking views, building the results into analysis and feeding back are all time-consuming and costly activities which can lead to policy makers being overwhelmed by the sheer volume of information generated</li> <li>provide a focus for resistance, creating difficult public presentation issues, especially if the scale of the challenge is greater than expected or comes from unforeseen quarters</li> <li>raise expectations amongst those consulted that their views will be taken into account even though decisions cannot possibly reflect every opinion expressed</li> <li>produce unrepresentative views – well-organised lobby groups and sectoral interests can dominate a consultation giving a distorted view of relevant opinion</li> </ul>

<sup>16</sup> Taken from \_\_\_\_\_, published by the Cabinet Office and available at [www.cabinet-office.gov.uk/moderngov/1999/policy/policy.pdf](http://www.cabinet-office.gov.uk/moderngov/1999/policy/policy.pdf)



legislation should, in theory, be ready by the time of the Queen's Speech, but negotiations continue until the bill is published, which can be as late as February or March of the following year. Once the bill has been published the draftsmen track the bill through Parliament and draft any amendments. The resources of Parliamentary Counsel are thus stretched taut across the legislative year with the preparation of government bills and the revision of those bills as they are amended during their passage.

Given the other pressures faced by Parliamentary Counsel it is not surprising that the preparation of draft legislation is a secondary concern. In theory counsel has longer to develop draft bills. Approval for draft bills is given in about May of year one in the hope that they will be introduced to Parliament in October of year two. This is the same time that bills to be included in the Queen's Speech of year one are given approval. However, departments are not obliged to provide detailed instructions for those draft bills until the end of January in year two, some eight months later. Despite the early approval of advance drafting there is little spare capacity within Parliamentary Counsel for the production of 'extra' bills.

One of the most important motivations for consulting on draft legislation is the desire to improve the quality of the legislation. In this respect the Child Support Act (CSA) casts an extremely long shadow. The CSA aimed to ensure that absent



pensions, and was a sign of the government's intention. Another Minister acknowledged that the department had bid for a legislative slot in the first year but had been unsuccessful, and the draft bill was the next best thing. Moreover, by publishing the bill in draft it increased the chances of it being included in the following Queen's Speech.

The combination of public consultation, professional agreement, departmental preparation and political suitability meant that it was regarded as a suitable candidate for piloting the PLS process. was published on 8 June 1998 by the Department of Social Security.<sup>18</sup>

The second bill to be published in draft, that pertaining to Limited Liability Partnerships (LLPs), had a similar history. The issue of liability had been touched upon in previous government consultations but was forced onto the political agenda in 1995 when two large accountancy firms raised the prospect of large professional partnerships registering in Jersey or other offshore locations to avoid British liability law. As a result in 1996 the President of the Board of Trade undertook to introduce legislation at the 'earliest opportunity' to bring UK law relating to LLP into line with that of Jersey and the USA.

A first consultation paper was published by the DTI in February 1997 which set out the Government's proposals and contained detailed legislative drafts. The new Government confirmed their intention of proceeding with the legislation and promised to publish a draft Bill. The motivation for draft publication was partly due to the highly technical nature of the legislation (reflected in the fact that although the draft Bill contained only 17 clauses the attached regulations were contained in five schedules which ran to 75 pages). However, as with the pension-sharing legislation, there was also a great deal of professional interest in the Bill from lawyers and city accountants, and the DTI believed it was important that their advice

The genesis of the draft bill on Food Standards, which would set up the Food Standards Agency, like the previous two draft bills straddled the election, although its history is shorter. The Labour Party had commissioned a report from an independent expert, Professor Philip James about the possible establishment of a Food Standards Agency (FSA) before the election. The Government was keen to legislate quickly in this area and the draft legislation followed closely the recommendations made in Professor James' report.

The bill was unusual in that it cut across the work of the Department of Health and the Ministry of Agriculture, Fisheries and Food. There was some strong resistance within MAFF to the idea of the FSA, and some feeling in that department that it should be solely responsible for the FSA. The civil servants who formed the bill team were drawn from both departments, although day

The switch of responsibility to the Home Office and the slippage on the original timetable led many to believe that the White Paper's proposals would be watered down. Jack Straw was known to be less inclined towards a wide-ranging Freedom of Information Act than David Clark and in the period between July 1998 and publication of the draft Bill in May 1999 there were numerous press stories about disagreements in Cabinet about the scope of the proposed Freedom of Information legislation. Such stories were given validity when the draft Bill was published. Not only had the scope of the Bill diminished but also the 'harm' tests for disclosure of information had been altered so that it would be more difficult to secure certain types of information than was implied by the White Paper. Organisations such as the Campaign for Freedom of Information were deeply critical of the Bill and its perceived deficiencies generated a good deal of press coverage, with the *Independent* newspaper launching a campaign calling for greater freedom of information than was contained in the draft Bill.

The political motivations for publishing FOI in draft were perhaps greater than with the other bills. As with other draft legislation there was a vocal community outside of government pressing for action, but there was also tremendous pressure for FOI from Ministers inside government, especially so from David Clark when Chancellor of the Duchy of Lancaster. The transition of responsibility to the Home Office may have dampened some of that internal pressure but there was growing restlessness on the Labour backbenches in Parliament about the lack of activity and also from the Select Committee on Public Administration. The commitment to publish in draft was made by the Cabinet Office and it is perhaps significant that none of the Home Office officials interviewed were entirely sure why the bill had been selected, suggesting that the decision was more to do with factors other than a clear desire to consult on specific aspects of the bill.

It is evident just from the four bills above that the reasons a particular piece of legislation is chosen for draft publication will vary according to the bill at hand. From these bills it appears that there are six factors which influence the choice of legislation and the PLS process.

The belief that legislation can be improved by consulting on a draft billiefnsu0.74 Tf 1 0 6i6(e)-24occk



On all the four bills in this study there was a degree of political pressure. For PSD and LLP the pressure was primarily from the business and legal communities. FSA and FOI were higher profile manifesto commitments, which had raised the expectations of interest groups, and the Government, in these cases, perhaps felt a greater pressure to act. On FOI in particular the pressure not only came from outside organisations but from a growing restlessness on the Labour backbenches.

Internal pressure may also influence the decision on whether to publish in draft. Where a Minister has unsuccessfully bid for inclusion, as was the case with PSD and FSA, the publication of a draft bill is often the next best thing. Moreover, the preparation that has gone into the bill make it a likely candidate for the following session of Parliament.

All of the above factors will influence this assessment. However, the creation of extra work for the departments or for Parliamentary Counsel does not appear to have been an overbearing concern for the business managers who would have determined the choice of bills. The role of the business managers is to ensure that the Government's legislation successfully completes its passage through Parliament, ideally with as few amendments as possible. The appeal of draft legislation is that the most contentious issues should be solved before the bill is presented to Parliament and, if problems do remain, the business managers will be aware of them in advance. As such, the subsequent passage of the legislation through Parliament should be relatively smooth. Whether this worked in practice is the subject of the next two chapters.

### **3 – The role of Parliament: Scrutiny of draft legislation**

Consultation on draft bills is initiated by Government. It decides on the choice of bills, their content and the timing of their publication. Parliament, in contrast, as Griffith and Ryle point out, performs a responsive rather than an initiating function.<sup>20</sup> It can only react to the policy decisions made by Government. As such Parliament and Executive have distinct perspectives on the process of scrutinising draft legislation.



The Trade and Industry Committee felt a similar duty to examine the draft LLP bill. Although not formally charged with the task of examining the legislation, the Committee decided at an early stage that it would be right to conduct an investigation. However, it noted that had it not been for the Modernisation Committee's report it is unlikely that the Committee would have examined the legislation, "given the volume of other work of an apparently higher priority to which we were committed."<sup>23</sup>

In stark contrast, the Agriculture Committee had a powerful interest in the issue of Food Standards. It had previously published a report on the subject and the chair of the Committee (Peter Luff MP) approached the whips requesting that the committee be given the opportunity to scrutinise the draft bill. However, because the issue cut across Health and Agriculture Departments an ad hoc Commons Committee was established through the usual channels. The putative committee chair (Kevin Barron MP) was approached by the chief whip and agreed to put his name forward although he had no previous experience in either health or agriculture and no particular expertise in the subject. Some members of the Committee were drawn from



political reasons. One participant commented that this had not been obvious at the outset. It is unusual for party politics to intrude into Lords Committees, but during the final report it was clear that a couple of Labour peers were intent on toning down the report's criticism of government. This was, apparently, less to do with the content of the Bill than it was to do with the fear of upsetting Government on what was a clearly contentious issue.





Following Harman's comments there were high-

the Bill, but also the fundamental principles that lay behind the Bill.” There were, he argues two contrary forces operating - Home Office Ministers clearly wanted to test the Bill and were willing to accede some of its more unworkable aspects, but at the same time the Government had made a number of policy decisions and were duty-bound to defend them. Unfortunately, the two were often integrally linked.



This concern stems from the complaint common to all witnesses about the lack of time for

the key policy areas, but the extent to which they worked together was determined less by the department's overtures than it was by the content of the bill. Factors such as the level of professional and political support for the key aims of the bill and the extent to which policy was developed turned out to be the most influential factors in deciding a committee's approach to the legislation.

This is likely to remain the most important factor, even if clearer guidelines are introduced. Although Government might seek to influence the choice of Committees, the content of their work is largely beyond Government control. Parliamentary scrutiny, in that sense, might appear to be more of a potential cost, than a potential gain for the Government in deciding to publish legislation in draft. However, the risks are manageable. The danger for Government is in presenting bills which are poorly thought through or where there is disagreement about their purpose.



#### **4 – ‘Later stages’: The effect on the legislative process**

The guidelines set out in the Modernisation Committee report<sup>27</sup> could to a large extent apply either to the objectives of Government or Parliament. While there is inevitably an overlap of interests, their objectives are not identical – both seek better legislation but this may involve different methods. This chapter examines the areas of common interest and the areas where interests diverge by using four of the objectives set out in the committee report, namely, that PLS should i) allow MPs ‘a real input’ into the form of the final legislation, ii) open up Parliament to those outside affected by legislation, iii) mean that Ministers will be more receptive to suggestions for change and iv) save time at later stages in the Parliamentary process.

In terms of the technical detail I don't think the committee added or raised anything we hadn't already talked about. It didn't add any nuance to the arguments that we had already been given by other people. However, in terms of where it left us in our relationship with external organisations and in terms of taking the bill through Parliament, I think it was a bit of a letdown.

According to some members of the Committee on Public Administration this problem did arise in their examination of FOI. One participant commented “many members of the committee had almost a ‘split personality’ on the issue. They were government MPs but sympathised with the wish to make the bill more liberal.” If more legislation of the calibre of the FOI bill is put to select committees it seems likely that the party Whips will take a greater interest in the process and bring greater pressure to bear on its MPs.

In this area it is perhaps most difficult to distinguish between the effect of PLS as against the departmental consultation. For three of the four bills the government consultation ran parallel with the committee’s investigation of the issues and in all cases the substance of the evidence was similar, if not identical.

one clerk noted, although PLS was in many ways similar to other select committee investigations no other committee enquiry had generated so much evidence. As such, simply trying to assimilate the evidence was a major task for the committee staff, a problem exacerbated where there was simultaneous consultation. For instance, the ad hoc committee examining the Food Standards draft bill received 650 submissions from the department after the committee had reported.

Although it gave pressure groups a voice in Parliament, it made the lobbying process public. Pressure groups had to justify their arguments and views in discussion with the select committees. This is a vast improvement on the normal situation where opposition MPs in standing committees are desperate for information and take on trust the briefings from various lobby groups.

Overall, because the choice of witnesses by the committees often closely reflected those consulted by the department, it is unlikely they will generate much new or original evidence. Some participants suggested reforms that would improve the process. One was that the select committee took a more 'disinterested' line with witnesses so that they saw their role as simply bringing together witnesses and departmental officials in a public forum, the select committee simply acting as mediators. Another suggestion was that if the select committees were keen to pursue the logic behind the policy it might be useful for them to follow the practice of the Public Administration and Food Standards committees in having departmental officials present to offer guidance, or even representatives of Parliamentary Counsel to explain why certain clauses had been drafted in a particular way. The merits of these recommendations are moot, but the committees will need to address the duplication of evidence and their own status as part of the government consultation.

One of the main advantages of draft bills over the normal legislative process was that they allowed Ministers to amend legislation in a less confrontational setting. In this area the draft bills relating to pension sharing and limited liability partnerships worked (one assumes) almost as the government must have desired when PLS was introduced. They were highly technical bills where the key issues were identified in advance by the committee in conjunction with the department. The hearings were held in a predominantly non-adversarial fashion, the content of the legislation allowing both department and committee to co-operate in the scrutiny of the draft bill.

Although the government did not accept all the recommendations of the committee the response from the government to the committees' reports were favourable. Committee and department appear to believe, in both cases, that the legislation was improved by parliamentary scrutiny of the draft bill.

For example, the Government response to the report of the Trade and Industry Committee,

formally introduced, will be significantly better than would otherwise be the case.”<sup>31</sup> The key, according to one departmental official, is that the committee reinforced the government’s approach,

the committee looked at a particularly large policy issue, which at that stage was unresolved ... it was extremely helpful to us that the committee recommendations were going in the direction we wanted to go. ... we will make what collateral we can of it and use it to our advantage where we think its appropriate.

On both bills the committee broadly validated the thrust of the policy behind the draft bills.

The Food Standards Committee was also predominantly non-contentious. As with the other committees the key issues were identified in conjunction with the department. The Committee

proposed Information Commissioner, obligations of public authorities to disclose and information relating to health and safety.

However, the CPA felt that these changes went nowhere near far enough in amending the bill. The Committee published a further report stating that “we are disappointed that the Government has not amended the basic structure and scheme of the draft bill.”<sup>34</sup> The Committee felt that the Commissioner’s powers should be further enhanced, criticised the number of class-based exemptions in the bill and the use of ‘prejudice’ as opposed to ‘harm’ as a test of whether information should be released, stating “We hope that the Government will take note of our disappointment about these aspects of their response, and take the opportunity to look afresh at them before the Bill is introduced”<sup>35</sup>

Although the Home Office did make some further amendments the CPA took the unusual step of publishing a further report when the final bill was published, noting “with some disappointment that most of the points we found unsatisfactory in our report of a few weeks ago remain part of the Bill. We also note that some of the revisions which have been made may







means that MPs are clear as to the purpose of the bill before it reaches 2<sup>nd</sup>

conflation of Government's interests with those of Parliament, mean it is difficult to identify what effects were the result of Parliament alone.

Whereas the main impetus for publishing bills in draft is to improve the quality of legislation and to amend the legislation in the light of expert advice the purpose of parliamentary scrutiny is less definite. The status of the committee's report in relation to the government's own consultation or the rest of the legislative process has not been specified. The Public Administration Committee report remarked that the parallel consultation meant that the committee simply became another respondent to the government's own enquiry, rather than having its own distinct role within the legislative process.

For many participants it was not clear at the outset what the scrutiny committee would, or should, add to the consultation process. Many expected PLS to refine or develop the investigations undertaken by the department. However, a parliamentary committee, regardless of its expertise, is unlikely to be able to match the depth or breadth of the departmental inquiry. The committees do not have the same resources nor do they have the time. To expect the committees to match the department's grasp of technical detail is therefore unrealistic. For most MPs on a select committee a highly technical issue such as pension-sharing or LLPs is likely to be marginal to their main concerns. For the swiftly composed committees the level of expertise is likely to be lower. Select committees investigate policy issues and, it could be argued, this is where their specific value lies.

Where the scrutiny committees do provide an influential voice is by putting the draft legislation

## **5) Analysis: Balancing costs and benefits**

Although the draft bill process has tended to be regarded as a universally 'good thing', the publication of draft bills and their scrutiny by Parliament has potential costs and benefits for Government and for Parliament. For Government, the opportunity to secure greater legitimacy for a bill, broader support for Government policy and better drafted legislation has to be balanced against the possibility of providing a focus for resistance, raising expectations too high and creating extra work.

For Parliament, PLS potentially gives committees a more powerful voice, extends the influence of backbench MPs and provides the opportunity to directly influence Government policy, but it



Committee on Public Administration (CPA) amply demonstrated that Parliament, if it chose,

Reforms to the process should reflect that Parliament and Government have distinct, but often complementary interests, and should seek to clarify, co-ordinate and properly resource PLS.

Government departments conducting their own investigations seemed unsure as to what PLS would add. Both Parliament and Government seek better legislation, but their means of achieving this may differ. The department's consultation should achieve all that the department wants in terms of technically improving the bill. It is inevitable that the Committee will touch upon issues covered by the department, but it should not duplicate their approach. Parliament should add another dimension to the departmental consultation. The four following objectives are suggested as possible means of achieving this aim.

The principal function should be to inform the legislative process. Parliament does not scrutinise legislation as effectively as it might. PLS does nothing to change the problems of standing committee, but it can highlight the key issues and frame the subsequent debate. The purpose and contents of the bill should be clear to all MPs by the time the bill is presented to Parliament, so that, at a very basic level, it removes the need for time-consuming probing amendments.

The recent report from the Liaison Committee<sup>37</sup> recommended that Committee members who had been involved in the scrutiny of the draft bill should be able to speak (but not vote) in the Standing Committee stage of the bill. This sensible recommendation was rejected by the Government,<sup>38</sup> however, it is a worthwhile recommendation that deserves further consideration.

The pre-legislative committee might also indicate how much time should be spent on parts of the bill during its passage. The Modernisation Committee announced in July 2000 its proposals for programming legislation<sup>39</sup> which included the recommendation that the 'usual channels' should establish programme motions for each bill. The scrutiny committee could play a useful





investigation midway through the departmental consultation. Assuming an eight week consultation, the committee would start after four weeks and report a month after the departmental consultation had closed. The Committee could learn from the department and investigate key issues in more depth. It would produce more considered evidence from all the witnesses and enhance the quality of the final report.

The new PLS unit in the Clerks department might ease some of the burden on the Committees by providing administrative and technical support. However, even with longer warning and more resources it may be difficult for Committees to inform themselves on the details of what are often highly technical and complex bills, and which are tangential to the Committee's main interest (this was the case with Pension-Sharing and Limited Liabilities, and for different reasons Food Standards). They rely on specialist advisers, often appointed at short notice – to clarify the key issues. The FSA committee and the FOI committee had civil servants present during their hearings to advise and clarify certain points. This created extra work for the departmental officials (particularly so for the Home Office civil servants who were servicing a Commons and a Lords Committee simultaneously). However, the departmental officials have a vested interest in the outcome of the committee hearings and in ensuring that their recommendations are based on a correct interpretation of the legislation. It would therefore appear to be a worthwhile use of their time.

Many of the problems faced by the Committees in dealing with draft legislation stem from a lack of leadership. There is no one department, office or politician who is identifiably responsible for pre-legislative scrutiny. Although business managers took a firm interest up to the point when the Committees were established, once they were up and running there was little central interest. Combined with the lack of clarity surrounding its purpose, it is not surprising that there was some confusion as to the role of the Committees.

As with all other Parliamentary reform the success of PLS will rely on the political will to make it succeed. Ideally this political leadership would lie within Parliament in a Parliamentary steering committee or re-vamped Liaison Committee. As it is, the only person who could provide this leadership is the Leader of the House (in conjunction with the Leader in the Lords). The role would include co-ordinating the timing of draft bills, ensuring that the Committees are warned in advance, that ad hoc committees are established prior to publication and ensuring that both department and Committee understand the purpose. The Leader should also seek to disseminate best practice and encourage new methods of taking evidence.

The concern of many is that by putting co-ordination of the process under the control of the Leader of the House it will allow greater government influence over the process. Government already controls the timing and content of draft bills. The Leader of the House's role would be

one of co-ordination and setting down guidelines for PLS (such as those set out above). Government would still be free to advise Committees on their inquiry, but Committees would remain free to ignore that advice.

If it is to succeed then pre-legislative scrutiny needs a political sponsor, somebody who can push the process through. The danger of it falling into disuse is not because it is fundamentally detrimental to Government, but because it is poorly-managed.

### Appendix: List of draft bills published since 1992

13/07/93	, draft bill published as annex to White Paper (Cm 2300), no consultation period	Home Office	19/11/93
13/10/94	, draft bill, no consultation period	Environment	01/12/94 as part of Environment Bill
30/03/95	, consultation paper with draft bill	Defence	16/11/95
02/94	, consultation paper with draft bill	Trade and Industry	see below
07/95	, consultation paper with draft bill	Trade and Industry	18/12/95
19/07/95	, consultation paper with draft bill	Lord Chancellor's	08/02/96

19/07/95

