Should We Be Worried About the Decline of Parliamentary Scrutiny?

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Abstract

Many concerns have been expressed in recent years about a decline in the quality of parliamentary scrutiny at Westminster, by both academics and those in the policy world. Such claims are often connected to the extraordinary events around Brexit, immediately followed by the United Kingdom's (UK's) response to the COVID-19 pandemic. But complaints about parliamentary decline are nothing new, so it is important to assess such claims objectively. This article uses parliamentary data and examples, supplemented by findings from earlier academic studies, to explore whether there is clear evidence of decline. Importantly, it asks whether changes seen during the Brexit and COVID-19 years were isolated, or whether they hastened a more lasting, and therefore worrying, downturn. The data examined covers rushed government bills, government amendments to its own bills in Parliament, publication of bills in draft form, and non-legislative forms of scrutiny such as government engagement with select committees. Several of these indicators do point to a decline, which appears to have strikingly accelerated during the premiership of Rishi Sunak. The problems encountered over Brexit and COVID-19 were therefore far from a one off, and some of the worst problems have occurred subsequently. The later part of the article explores the reasons for decline, noting that there has been important cultural change both inside government and Parliament. It calls for concerted action to reverse this, including by the new 2024 government. It also proposes collection of more systematic parliamentary data, in order that trends in the future can be better monitored by both government and Parliament.

Recent years have seen numerous concerns expressed about the decline of parliamentary scrutiny, particularly in the House of Commons. In 2021, Professor David Judge suggested that the Johnson Government was "walking on the dark

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side" and that its "default position appeared … to be to shield itself from parliamentary scrutiny".[1] In March 2023, Hannah White, Director of the Institute for Government, suggested that "expectations of legislative scrutiny have plummeted", and shortly afterwards her colleague Alice Lilly warned of "the slow death of parliamentary scrutiny".[2] Then in late 2023, former Clerk of the House of Commons Lord Lisvane suggested that the chamber had "virtually resigned" from scrutinising legislation.[3]

These are serious claims, which were all fuelled to an extent by concerns during the extraordinary circumstances of the Brexit process, followed by the COVID-19 pandemic. But how can such claims be objectively assessed? And if the problems stemmed from these unusual circumstances, can we relax, on the basis that they are now behind us?

Complaints about the decline of parliament are hardly new. An analysis published in 2011 traced the "parliamentary decline thesis" back over a century.[4] As its authors demonstrated, critics often seemed to hark back to a golden age that never was. This makes it important that we evaluate recent claims very carefully. Credible suggestions of decline require taking a long view, and deploying reliable data by which we can objectively compare the present to the past. Such data is not always easy to obtain; but without it, claims remain contested, and alarmism might needlessly set in.

This piece draws on official records, and previous detailed academic research, to provide that longer view. To an extent I also draw on personal anecdotal experience, from a period (2001–03) spent working for Leader of the House of Commons Robin Cook, including supporting the government's legislative programme. My subsequent academic work went on to benefit greatly from the insights gained during that time.

What follows is structured in three main parts. First, some brief context on why scrutiny matters, and the troubles of the Brexit and the COVID-19 years. Secondly, an analysis of the data currently available regarding various aspects of parliamentary scrutiny in the House of Commons—putting those years into longer context, and exploring particularly what has happened since. The analysis focuses primarily on the legislative process, which is where many claims arise, and measurement is potentially easiest, but it also touches upon select committees and other government accountability mechanisms.

In summary, this analysis suggests that there are some serious problems of decline to worry about, though some claims (usually more journalistic ones) must be treated with caution. But often adequate data does not readily exist. Notably, far from recovering post-COVID-19 and Johnson, the analysis finds subsequent performance under Rishi Sunak's government to be noticeably poor.

[1] D. Judge, "Walking the Dark Side: Evading Parliamentary Scrutiny" (2021) 92(2) *Political Quarterly* 283.

[2] H. White, "Illegal Migration Bill highlights how expectations of legislative scrutiny have plummeted" (13 March 2023), I*nstitute for Government blog*, *https://www.instituteforgovernment.org.uk/comment/illegal-migration-bill-legislative-scrutiny*; A. Lilly, "The Slow Death of Parliamentary Scrutiny" (15 May 2023), *The House*, *https://www.politicshome.com/thehouse/article/scrutiny-scarcity-parliament-commons-lords*.

[3] "Parliament Matters—Is Parliament a decaying organism? Lord Lisvane on our crumbling constitution" (Hansard Society, December 2023), *Parliament Matters podcast episode 10*, *https://www.hansardsociety.org.uk/news/parliament-matters-podcast-e10*.

[4] M. Flinders and A. Kelso, "Mind the Gap: Political Analysis, Public Expectations and the Parliamentary Decline Thesis" (2011) 13(2) *British Journal of Politics and International Relations* 249.

The third part of the article then asks what the drivers of decline are, and what can be done. It warns that there is a risk of a culture of bypassing Parliament becoming established, which is bad for Parliament, government and the quality of policy. The change of government in 2024, and election of a new House of Commons containing many new members, provides both opportunities and risks—each of which must be taken seriously.

Context

Why does scrutiny matter?

The merits of parliamentary scrutiny are not spelt out as often as they should be, though some exceptions exist.[5] Scrutiny brings multiple benefits, most obviously the possibility of highlighting problems in government policy, and avoiding the danger of policy mistakes. Parliamentarians, and outside groups and experts interacting with Parliament, can bring evidence to bear, and different perspectives, to point out risks and opportunities that the government may not adequately have thought about.

Scrutiny may result in policy being changed during its passage through Parliament. But perhaps more importantly, it can have a less visible preventative effect. The knowledge inside government that proposals will be rigorously examined in the public arena of Parliament causes both ministers and civil servants to think through their proposals carefully and whether they will be able to withstand such scrutiny. This is why, for example, even select committees (which have no power themselves to amend policy) can nonetheless engender change and more rigorous processes inside government departments. Study of these committees has identified various interconnected forms of policy influence, drawing particularly on interviews with government insiders—including the power of "exposure" to public and media scrutiny, and "generating fear".[6] This last role, often referred to as "anticipated reactions", is widely recognised in the legislative studies literature.[7] It clearly applies in the legislative process, but even to softer and seemingly more powerless mechanisms inside Parliament, such as question times and debates—all of which must be responded to by ministers on the record. Preparation for tough questioning can result in careful thinking, and sometimes changes of heart, inside government. In a phrase often used by Robin Cook, "good scrutiny leads to good government".[8]

Scrutiny also has wider benefits for the political system. Crucially, it contributes to Parliament's legitimation function—helping to reassure the public that they can trust the government's decision-making, and that a wide range of opinions have been heard. It can also help encourage a less partisan and more evidence-based culture inside both Parliament and government.

[5] e.g. H. White, *Parliamentary Scrutiny of Government* (Institute for Government, 2015); K. Dewsnip, "The purpose of legislative scrutiny" (21 April 2023), *Constitution Society blog*, *https://consoc.org.uk/the-purpose-of-legislative-scrutiny/*.

[6] M. Russell and M. Benton, *Selective Influence: The Policy Impact of House of Commons Select Committees* (London: Constitution Unit, 2011).

[7] As summarised in M. Russell and D. Gover, *Legislation at Westminster: Parliamentary Actors and Influence in the Making of British Law* (Oxford: Oxford University Press, 2017).

[8] R. Cook, "A Modern Parliament in a Modern Democracy" (2003) 74(1) *Political Quarterly* 76, 77.

The roots of recent concerns: Brexit and COVID-19

In recent years, Parliament has lived through extraordinary times. The impact of both Brexit and the COVID-19 pandemic have been well documented elsewhere, so do not need detailed description, but are essential to the story. Changes to procedures, practice and attitudes during these two unique periods helped cause much of the recent concern that we have seen. A central question is whether or not these left a lasting impact.

The impact on Parliament of the Brexit referendum result, and its aftermath in terms of the need to agree the terms of the United Kingdom's (UK's) exit from the European Union (EU), were the focus of my most recent (co-authored) book and have attracted the attention of various other authors.[9] In short, the holding of the referendum handed power away from Parliament—directly to the people—to take a major national decision. But this left the government and Parliament to decide how to interpret and implement the controversial result, notwithstanding that there had been no detailed preparation, and no prior majority support in Parliament. Tense arguments ensued about Parliament's role, played out in part through two Supreme Court cases.[10] The governing Conservatives were split, and governed as a minority following the 2017 general election. Parliament was seen as a threat, making ministers resistant to scrutiny, and the government sought to maximise use of prerogative powers. The complexity of amending the statute book spawned unprecedented delegated legislation, which receives little parliamentary scrutiny. Anti-parliamentary rhetoric increased, including from Prime Minister Theresa May and her successor Boris Johnson.[11] He attempted an unlawful prorogation of Parliament, threatened not to comply with an Act of Parliament, and attempted to rush his European Union (Withdrawal Agreement) Bill—approving a newly-secured deal with the EU—through the House of Commons in just three days. When MPs rejected this timetable, he demanded—and ultimately secured—a general election, fought in December 2019 on a manifesto stating that the UK had been "paralysed by a broken Parliament".[12] Having won that election with a large majority, his new European Union (Withdrawal) Bill passed through the House of Commons in four days—facilitating the UK's formal exit from the EU on 31 January 2020.

That same day, the UK's first COVID-19 cases were confirmed. The global pandemic had a significant effect on the functioning of legislative institutions around the world.[13] This resulted partly from the need for emergency legislation, with quick responses often implemented via delegated powers, and also the

[9] M. Russell and L. James, *The Parliamentary Battle over Brexit* (Oxford: Oxford University Press, 2023); T. Bale, A. Cygan and M. Russell (eds), *Parliament and Brexit* (London: UK in a Changing Europe, 2020); L. Thompson, "From Minority Government to Parliamentary Stalemate: Why Election 2019 was Needed to Break the Brexit Logjam" (2020) 73 (Supplement 1) *Parliamentary Affairs* 48.

[10] *R. (on the application of Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5; [2018] A.C. 61; *R. (on the application of Miller) v Prime Minister* [2019] UKSC 41; [2020] A.C. 373.

[11] See e.g. Russell and James, *The Parliamentary Battle over Brexit* (2023), pp.104, 213–215, 274–276. Notably, Johnson brought in as his chief adviser Dominic Cummings, who had been found in contempt of Parliament for failing to give evidence to a select committee about his experience as Campaign Director of Vote Leave. See Committee of Privileges, *Conduct of Mr Dominic Cummings: First Report of Session 2017–19* (London: House of Commons, 2019), HC 1490.

[12] Russell and James, *The Parliamentary Battle over Brexit* (2023), p.296.

[13] R. Cormacain and I. Bar-Siman-Tov, "Legislatures in the Time of COVID-19" (2020) 8(1-2) *Theory and Practice of Legislation* 3.

pandemic restrictions on the ability of such bodies physically to meet. In the UK, the 348-page Coronavirus Act passed through the House of Commons in a single day on 23 March 2020. The extensive use of delegated legislation during the pandemic received increasing criticism.[14] One study reported that by the end of the 2019–21 parliamentary session there had been 425 COVID-related regulations, which followed the 622 Brexit-related statutory instruments laid by exit day.[15] Many received very little scrutiny.

During the pandemic Boris Johnson's European Union (Future Relationship) Bill was approved by Parliament, giving legal effect to the agreements reached between the UK and EU after exit day. It was, remarkably, rushed through both parliamentary chambers in a single day on 30 December 2020—less than a week after the 1,200-page Trade and Cooperation Agreement itself had been agreed.[16] In the House of Commons, procedural changes were made to allow many MPs to contribute to debate remotely, following months when this had been impossible.[17] Notably the European Parliament delayed its approval until the spring, allowing the agreement to apply provisionally on an interim basis.[18] Some argued that Westminster should have done the same.[19]

Due to the COVID-19 pandemic, the 140 MPs elected for the first time in December 2019 were not immediately socialised into the usual dynamics and expectations at Westminster. Although Parliament sat briefly in its usual form, proceedings were switched online in spring 2020, and this continued until July 2021, with the great majority of MPs remaining based in their constituencies. Even the 60+ MPs first elected in 2017 had not witnessed anything that could properly be described as "Parliament as usual". And the shift in practices established during the parliamentary battles over Brexit—the government's aversion to scrutiny and the extensive use of delegated powers—were intensified during the pandemic.

But these were both one-off events. The UK departed the EU, and the pandemic was weathered, with Westminster and other parliaments returning to standard patterns of meetings. So a key question is whether the changes established during this period really give cause for worry and had lasting effects, or if their effects were merely short-term, and the concerns that they sparked can be left behind.

Analysing the available data

To explore such questions, this part of the article seeks to evaluate complaints about the recent decline of parliamentary scrutiny using both systematic data and examples. It begins by considering primary legislation, including bills formally

[14] D. Lock, F. de Londras and P. Grez Hidalgo, "Delegated Legislation in the Pandemic: Further Limits of a Constitutional Bargain Revealed" (2023) 43(4) *Legal Studies* 695.

[15] A. Horne and M. Torrance, "Parliament as scrutineer: parliamentary oversight of the law-making process" in Carol Harlow (ed.), *A Research Agenda for Administrative Law* (Northampton: Edward Elgar Publishing, 2023), p.99.

[16] B. Fowler, "Parliament's role in scrutinising the UK-EU Trade and Cooperation Agreement is a farce" (29 December 2020), *Hansard Society blog*, *https://www.hansardsociety.org.uk/blog/parliaments-role-in-scrutinising-the-uk-eu-trade-and-cooperation-agreement*.

[17] On procedure during the pandemic see D. Natzler "COVID-19 and Commons Procedure: Back to the Future?" (30 March 2021), T*he Constitution Unit Blog*, *https://constitution-unit.com/2021/03/30/covid-19-and-commons-procedure-back-to-the-future/*.]

[18] Horne and Torrance, "Parliament as scrutineer" in Harlow (ed.), *A Research Agenda for Administrative Law* (2023).

[19] J. King, "Looking Back At The EU Future Relationship Act" (11 January 2021), *UCL European Institute blog*, *https://ucleuropeblog.com/2021/01/11/looking-back-at-the-eu-future-relationship-act/*.

"fast-tracked" through the House of Commons in a day, others subject only to a few days' scrutiny, and government amendments to its own legislation. It then briefly considers secondary legislation, and other legislative matters, before discussing select committees and other executive oversight mechanisms. The time periods explored vary according to data availability, but span where possible the last 20–25 years.

Rushed legislation: formal fast-tracking

A good deal of recent attention has focused on the rushed nature of government legislation. This was widely noted over Boris Johnson's Brexit bills, as well as the Coronavirus Act 2020.

Concerns about rushed legislation are nothing new. Notably, in 2009 the House of Lords Constitution Committee published a report on *Fast-track Legislation*—which it defined as bills taking their Commons second and third readings on the same day—expressing concerns about the practice.[20] As already noted, both the Coronavirus Act and the European Union (Future Relationship) Act fell into this category.[21] The Committee's report recommended various changes, including that the government should set out in the explanatory notes for any bill subject to the procedure why fast-tracking was necessary. The Labour Government accepted these recommendations, and the *Cabinet Office Guide to Making Legislation*—which sets out the standards in the legislative process for government—now states this as a requirement for all fast-tracked bills.[22]

In terms of systematic data, the House of Commons Library collects figures on the number of fast-tracked bills, summarised in Table 1.[23] This shows that for most of the last 25 years there have been just one or two such bills per parliamentary session (excluding certain types of bill to which the process routinely applies).[24] But in the 2017–19 session there were nine, and there were again nine in the session 2019–21.

Notably, both of these were two-year sessions, making at least some increase unsurprising. In 2017–19, seven of the bills related to Northern Ireland, given the suspension of devolved institutions (the Constitution Committee noted in 2019 that fast-tracking of Northern Ireland bills had become routine, which it judged "unacceptable"[25]), and the other two to Brexit. Two further Northern Ireland bills were fast-tracked in the intervening short October-November 2019 session, along with Johnson's early general election bill. Then in 2019–21, four of the nine fast-tracked bills, again unsurprisingly, included explanatory notes connecting this to COVID-19, and one (the EU (Future Relationship) Bill) connecting to Brexit.

[20] Constitution Committee, *Fast-track Legislation: Constitutional Implications and Safeguards, 15th Report of Session 2008–09, Volume I* (London: House of Lords, 2009), HL 116-I.

[21] In the case of the Coronavirus Act the House of Lords continued scrutiny in the subsequent two days; in contrast the European Union (Future Relationship) Bill completed its entire parliamentary passage within 24 hours.

[22] Cabinet Office, Guide to Making Legislation (2022), para.10.43.

[23] Data from S. Priddy, J. Bosworth and C. Searle, *Expedited legislation: Public bills receiving their second and third readings on the same day in the House of Commons* (House of Commons Library, 2024), *https://commonslibrary.parliament.uk/research-briefings/sn04974/*.]

[24] Does not include Consolidation Bills, Consolidated Fund Bills or Finance Bills that took all their stages in one day.

[25] Constitution Committee, *The Legislative Process: the Passage of Bills through Parliament, 24th Report of Session 2017-19* (London: House of Lords, 2019), HL 393, p.2.

But there were subsequently five such bills in 2021–22 and, more remarkably, 11 in 2022–23.[26]

Table 1: Number of government bills fast tracked in the House of Commons by session, 1997–2023

Session	Number of bills	Session	Number of bills
1997–98	6	2009–10	2
1998–99	2	2010–12	4
1999–00	1	2012–13	4
2000–01	2	2013–14	0
2001–02	1	2014–15	3
2002-03	3	2015–16	1
2003–04	1	2016–17	1
2004–05	2	2017–19	9
2005–06	0	2019–19	3
2006–07	4	2019–21	9
2007–08	2	2021–22	5
2008–09	1	2022–23	11

By 2021–22, no such bill related to Brexit or COVID-19. One notable example was the Health and Social Care Levy Bill, which the explanatory notes said was needed quickly in order for new national insurance rates "to be in place for the 2022-23 tax year … [and] to give HMRC and employers as much time as possible".[27] This was a Treasury bill—but far from the usual expedited kind.

The bill was rushed through all of its House of Commons stages in one day on 14 September 2021, following a one-off announcement a week earlier by Prime Minister Boris Johnson that national insurance rates would be increased by 1.25% to deliver on his bold pledge to solve the social care crisis.[28] Experts immediately expressed scepticism that the funds raised would be sufficient.[29] Stories emerged that Johnson had clashed with his chancellor, Rishi Sunak, who had insisted—reasonably enough—that he could not announce increased spending without finding the money somewhere.[30] Many Conservative backbenchers were clearly uncomfortable with the increase, but were bounced into voting for it at short notice, and just a handful rebelled.[31] As a financial bill, the House of Lords gave it no detailed consideration.

[26] Four of the 2022–23 bills related to Northern Ireland, and none in 2021–22.

[27] Health and Social Care Levy Bill, Explanatory notes (as introduced 8 September 2021).

[28] R. Fox and D. Vangimalla "The Health and Social Care Levy Bill: Four Questions About Scrutiny and Accountability" (13 September 2021), *Hansard Society blog*, *https://www.hansardsociety.org.uk/blog/the-health-and-social-care-levy-bill-four-questions-about-scrutiny-and*.

[29] "Boris Johnson outlines new 1.25% health and social care tax to pay for reforms" (7 September 2021), *BBC News*, *https://www.bbc.co.uk/news/uk-politics-58476632*.

[30] C. Wheeler, "Johnson and Sunak clash over 'health tax'" (18 July 2021), *The Times*, *https://www.thetimes.com/uk/healthcare/article/johnson-and-sunak-clash-over-health-tax-8ckhjm06f*.

[31] A. Allegretti, "Boris Johnson wins Commons vote on national insurance hike" (8 September 2021), *The Guardian*, *https://www.theguardian.com/society/2021/sep/08/boris-johnson-wins-commons-vote-on-national-insurance-hike*.

But this was far from the end of the matter. The policy became increasingly controversial inside the Conservative Party, featuring heavily in the leadership contest of summer 2022. Liz Truss pledged to reverse it. One of the few concrete achievements of her premiership was the Health and Social Care Levy (Repeal) Bill, which was one of the 11 fast tracked bills in 2022–23—completing all its House of Commons stages in a day on 11 October 2022, and passing the House of Lords (again after minimal review) six days later. The explanatory notes simply stated that it was "required to be in place from 6 November 2022 so that people aren't overtaxed".[32] On both bills, these explanations distinctly understated what was going on, demonstrating that requirements for transparency over fast-tracking are insufficient to prevent bad practice.

This is an unusual case, but very firmly demonstrates the benefits of scrutiny. Had Johnson not rushed the bill in, and sought to rush it through, it might never have passed. Discussion and reflection about the plan's viability, coupled with pressure from backbench rebels, might have stopped it.[33]

So what can we conclude about fast-tracked bills? The Lords Constitution Committee has noted that there may sometimes be reasons for rushing something onto the statute book, but has been uneasy about the practice for a long time. The statistics collected by the authorities show clearly that there has been a sharp recent increase, and this does not just relate to Brexit and COVID-19. Boris Johnson's behaviour was problematic, but actually the 2022–23 session under Rishi Sunak fared rather worse.

Other rushed legislation

Not all rushed bills are formally expedited in this way. Others that do not fit this definition may still have relatively few days of scrutiny. Here, data is not published in summary form as it is for expedited bills—instead it must be pieced together from stage-by-stage, bill-by-bill, information on the parliamentary website.

Table 2 presents data from four parliamentary sessions—all of them roughly year-long and in nonelection years—one under Labour, one under the 2010–15 coalition, and two more recent. It focuses only on government bills starting in the House of Commons, presenting the number of sitting days on which the different stages from second to third reading took place in that chamber.[34]

The number of formally fast-tracked bills has already been noted, but the recent sessions also include markedly higher numbers of other bills rushed through the House of Commons in fewer than five days, versus declining numbers given a lengthier passage. This is only a sample of sessions, so figures must be used with caution, and it is of course unwise to draw definitive judgements based on numbers alone without looking at the bills themselves—some bills are clearly more major than others. But there does seem to be a quite clear pattern, and the figures for the

[32] Health and Social Care Levy (Repeal) Bill, Explanatory Notes (as introduced 22 September 2022).

[33] Although unfortunately scrutiny of financial measures is often poor—e.g. see Jill Rutter, George Crozier, John Cullinane, Bill Dodwell, Paul Johnson, Alice Lilly and Euan McCarthy, *Better Budgets: Making Tax Policy Better* (London: Institute for Government, 2017).

[34] That is, second reading, committee stage, report stage (in most cases) and third reading. Note that the committee stage uses days rather than "sittings". In some cases more than one committee sitting will take place on a single day. Only days on which scrutiny took place are counted within the total.

2022–23 session, under Rishi Sunak, are again particularly striking—in that session two thirds of government bills were rushed through in fewer than five days.

Table 2: Number of government bills starting in the House of Commons and number of days' scrutiny received in that chamber[35]

Session	1 day	2–4 days	5–9 days	10+ days	Total bills	% 1–4 days
2007–08	2	4	2	9	17	35%
2013–14	0	3	7	5	15	20%
2021–22	4	6	9	4	19	53%
2022–23	9	11	7	3	30	67%

One bill which had a remarkably rapid passage in 2021–22 given its significant implications was the Dissolution and Calling of Parliament Bill. It repealed the 2011 Fixed-term Parliaments Act, and returned the personal power to dissolve Parliament for a general election to the Prime Minister. This followed Boris Johnson's frustration at being unable to call an early general election in 2019, which he eventually achieved through passing a one-off bill (which, as noted above, was expedited). The Dissolution and Calling of Parliament Bill was of course in itself a deliberate removal of power from Parliament.

The bill wasn't formally expedited, as its second and third readings were on different days; but it did pass the Commons in just two days, with its committee stage held on the floor on the same day as its third reading (contrary to the *Cabinet Office Guide*, which indicates that at least a week should normally elapse between these stages[36]). Because it was subject to the committee of the whole house procedure—which conventionally applies to bills of first-class constitutional importance—no evidence was taken. Given that no election was imminent, the bill clearly was not urgent. Within weeks of it passing, Conservative MPs were expressing concerns that Johnson might use his new powers to call a general election if they sought to force him out as party leader.[37]

In the 2022–23 parliamentary session, much attention focused on the government's Illegal Migration Bill. This was the first attempt to legislate to remove some migrants to Rwanda. The bill as introduced was 66 pages, comprising 58 clauses and one schedule. Various aspects, including its standing in relation to international law, were highly controversial.[38]

The bill was allocated just four days in the House of Commons, with two days in a committee of the whole house. Hannah White compared this timing unfavourably with that for the Criminal Justice and Immigration Act 2008 (16 committee sittings over eight days), the Immigration Act 2014 (11 over six days),

[35] Excludes the same categories of fast-tracked bills as Table 1 (as well as some fast-tracked bills that began in the House of Lords), one hybrid bill and any carried over from one session to another.

[36] Cabinet Office, *Guide to Making Legislation* (2022), para.24.7.

[37] e.g. O. Wright, C. Smyth and M. Dathan, "Tories fear snap election in 'Trumpian' survival attempt" (7 July 2022), *The Times*, *https://www.thetimes.com/uk/politics/article/tories-fear-snap-election-in-trumpian-survival-attempt-wf3wmsjnk*.

[38] P. Birkinshaw, "The Rwanda Bill, Boat People and International Law" (2024) 30(2) *European Public Law* 77.

and the Immigration Act 2016 (15 over eight days).[39] The committee of the whole house procedure may be high-profile but, as already indicated, means that no expert evidence is taken, as this occurs only in a smaller public bill committee.

The bill's publication occurred less than a week before its Commons second reading. This also breached the usual convention set out in the *Cabinet Office Guide* that there should be two weekends between these stages.[40] Such treatment clearly makes it more difficult for both parliamentarians and outside groups to familiarise themselves with a bill and spot potential flaws before it is debated.

Ultimately, of course, the Rwanda scheme was subject to a government defeat in the Supreme Court.[41] This resulted in a follow-up bill in the 2023–24 parliamentary session, the Safety of Rwanda (Asylum and Immigration) Bill, intended to deal with the court ruling by declaring Rwanda safe. Much else could be said on this bill—which former Conservative Solicitor General Lord Garnier compared to one "that has decided that all dogs are cats".[42] But my focus is the timetable.

The bill was introduced into the Commons on 7 December 2023, and had its second reading less than a week later on 12 December. It spent two days in committee on 16 and 17 January, and its third reading was on the second of those days. So it had three days' Commons consideration in total, and breached the intervals set out in the Cabinet Office Guide in both of the aforementioned ways.

The Prime Minister was keen to emphasise the bill's urgency, and the priority he attached to it. After it left the Commons (unamended), he held a press conference, to warn the House of Lords that the legislation represented the "will of the people", boasting that it had gone through the Commons "in a matter of weeks", and urging peers to "move as quickly as we have". The speed, he said, was a sign that "we're not messing around here".[43]

The need to respond to a court judgment was one of the classic reasons identified for fast-tracking a bill by the Constitution Committee in its 2009 report, and it expressed some scepticism that this was always justified. But compared to previous cases—such as the Blair Government's controversial rushing through of its "control orders" bill in the Commons in two days in 2005, because the court decision might have allowed terrorist suspects imminently to be freed from detention—Sunak's bill looked a lot less like "emergency legislation". Nonetheless this was how the government described it on introduction.[44]

The bill better reflects what the Constitution Committee called the "something must be done" syndrome, which is closely connected to the committee's observation

[39] White, "Illegal Migration Bill highlights how expectations of legislative scrutiny have plummeted" (2023), *Institute for Government blog*, *https://www.instituteforgovernment.org.uk/comment/illegal-migration-bill-legislative-scrutiny*.

[40] Cabinet Office, *Guide to Making Legislation* (2022), para.24.4.

[41] *R. (on the application of AAA (Syria)) v Secretary of State for the Home Department* [2023] UKSC 42; 1 W.L.R. 4433.

[42] J. Nevett, I. Wells and L. Nathoo, "Rishi Sunak's Rwanda law at mercy of Tory factions" (7 December 2023), *BBC News*, *https://www.bbc.co.uk/news/uk-politics-67655718*.

[43] D. McGrath, "Rishi Sunak urges Lords to 'do the right thing' and back Rwanda plan" (18 January 2024), *The Standard*, *https://www.standard.co.uk/news/politics/rishi-sunak-house-of-lords-prime-minister-downing-street-supreme-court-b1133171.html*.

[44] Home Office, The Rt Hon James Cleverly MP, The Rt Hon Robert Jenrick MP and The Rt Hon Rishi Sunak MP, "Bill to make clear Rwanda is a safe country and stop the boats" (6 December 2023), *https://www.gov.uk/government/news/bill-to-make-clear-rwanda-is-a-safe-country-and-stop-the-boats#:~:text=The%20government%20intends%20to%20fast,removed%20to%20an%20unsafe%20country*.

that you may "act in haste and repent at leisure".[45] Although in the case of Johnson's national insurance increase, the repentance came round pretty swiftly as well.

The rhetoric around the Rwanda bills—and before that the social care levy—is symptomatic of a form of macho politics that suggests scrutiny is for ninnies, and ministers who are really "not messing around" shouldn't waste their time on it. Showing you are serious means pushing for haste, which means departing from any principle of "good scrutiny". It is no coincidence that in the case of these bills, there was some departure from "good government" as well.

This kind of behaviour of course is not entirely new. Legislation has long been used by governments as a signalling device and a way of drawing attention to the fact that they are doing something. Examples of extreme haste can be found from earlier times.[46] But the figures above, plus recent examples, do suggest that things have got worse. Nonetheless, the relevant data is not available systematically. It would be fairly straightforward, and quite enlightening, for the parliamentary authorities to publish annual data on the total days devoted to scrutiny for each bill in the House of Commons *Sessional Return*. Likewise, the government might publish annual figures on how often the expectations in the *Cabinet Office Guide* are breached. Or if it fails to do so, Parliament could do this too. That would make reliable assessment far easier.

Late government amendments to legislation

A further important concern, beyond the rushing of whole bills, is the phenomenon of multiple late amendments by the government to its own legislation. This is even more difficult to explore systematically, and has received rather less attention.

In terms of data, Parliament does record the number and source of amendments in both chambers, and this data has recently been made available on the parliamentary website—but only for the last few years. And it is published only on an individual bill basis, again making compilation quite a lot of work.

Looking solely at the lower chamber, a compilation of such figures provided by the House of Commons Library reproduced in Table 3 shows that between the start of the 2013–14 session and the end of the 2022–23 session, there were a total of 8,539 government amendments proposed to government bills in the House of Commons—or about 800 per year.[47] That is a lot—raising the obvious question of why the government seeks so often to amend its own legislation, which is discussed below.

[45] Constitution Committee, *Fast-track Legislation* (2009), paras 47–49, 55.

[46] e.g. see Horne and Torrance, "Parliament as scrutineer" in Harlow (ed.), *A Research Agenda for Administrative Law* (2023).

[47] The short session 2019–19 (which lasted three weeks) is clearly an exception, and data has been added by the author to that provided by the Library in a way which may inconsistent with treatment of other sessions. In total, 16 government bills were introduced, but nine did not reach second reading, and a further two did not reach committee stage (the remaining two were carryover bills). Some government amendments which were tabled but not considered may therefore be omitted from the figures for that session.

Table 3: Number of government bills and government amendments to those bills in the House of Commons per session 2013–23

Session	Number of government bills	Government amendments proposed	Average (mean) per bill
2013–14	28	1,356	48
2014–15	21	829	41
2015–16	19	1,281	67
2016-17	18	805	45
2017–19	34	1,026	31
2019–19	3	1	0
2019–21	24	849	35
2021–22	28	537	19
2022–23	32	1,856	80

But first, the 2022–23 session under Sunak is again striking for having more than double the average number of government amendments, and by far the largest number per bill. Of course, as already seen, these amendments did not result from bills getting longer consideration—indeed the reverse was true.

Nonetheless, these are not figures that can necessarily and straightforwardly be traced over time to learn something about whether the government is amending its own bills willy-nilly. To be sure about that you need more than numbers—you need actually to consider the nature and circumstances of the government amendments, which is much more difficult.

My previous research on the legislative process traced all 4,361 amendments proposed to 12 government bills over the period 2005–2012, exploring their content, origin, and ultimate success.[48] Of these 4,361 amendments, 886 were proposed by the government in both chambers (of which 95% were agreed). But more than half (55%) of government amendments were essentially technical tidying up changes—either because minor errors had been spotted, or because they were consequential on other amendments with more substance. A further 13% were judged clarificatory, and only 32% to be truly substantive.

The results also shed light on why the government was amending its legislation. A key finding was that ministers were often responsive to Parliament. If parliamentarians, or outside groups, are urging changes to improve legislation, it is healthy for the government to respond with amendments—this shows scrutiny having an impact.[49] Among the government amendments that were substantive in our study, 60% responded to pressure from Parliament, and only a minority did not. Some of these others responded to external events, and just a few reflected genuine government changes of heart. Crucially, in the latter instance, we noted that bills were amended "usually in minor ways" and that "such changes … were

[48] *Russell and Gover*, Legislation at Westminster (2017).

[49] Non-government amendments are very rarely accepted directly, because government prefers to control the drafting, and also needs to consult internally before changes are agreed. Consequently, in this study, only 4% of non-government amendments were passed.

generally pre-planned", for example responding to ongoing public consultations.[50] In only a couple of cases were these particularly controversial.

We explicitly drew a comparison with a study of the legislative process in the 1980s,[51] which had found "some bills being largely rewritten in Parliament", and concluded that there was "little evidence of this kind of activity on the case study bills", instead commenting that "in the intervening years, the legislative process has become far more rigorous", with ministers forced "to introduce bills in a better state".[52]

So how does this compare to more recent practice? Without repeating our highly detailed study, it is impossible to fully know. But various episodes suggest that some of the bad habits of the 1980s have returned. I illustrate with two examples from the House of Commons, and two from the House of Lords.

Prime Minister Boris Johnson's Elections Bill was introduced in the 2021–22 session. It became controversial for introducing photographic voter ID, and a "strategy and policy" statement for the Electoral Commission.[53] Less noticed was that it changed the electoral system for mayoral and police and crime commissioner elections, from the supplementary vote to first past the post. This applied to numerous elections in England and Wales in May 2024 and went on (as electoral experts had predicted from the outset) to significantly benefit the Conservatives.[54]

These changes were not in the bill as introduced in July 2021, and were not subject to consultation. They were not discussed at its second reading on 7 September. The Commons Public Administration and Constitutional Affairs Committee (PACAC) then took evidence on the bill from the Minister, Chloe Smith, on 14 September, and they were not mentioned.[55] They were not part of the bill during its first four committee sittings on 15 and 16 September, when evidence from witnesses was taken.[56]

But four days later, a government motion was proposed to allow these clauses to be added to the bill in committee. This was procedurally necessary because they changed the scope of the bill. The Minister argued that "supporting first past the post is a long-standing Conservative commitment" which was "in our manifesto".[57] But the manifesto merely stated support for the Westminster status quo, rather than mentioning future change, or the subnational level.[58]

Despite protestations, the government refused to countenance reopening evidence taking on the new clauses, and they were voted through. This changed the voting

[50] Russell and Gover, *Legislation at Westminster* (2017), p.74.

[51] D. Miers and J. Brock, "Government Legislation: Case Studies" in *The House of Lords at Work: A Study Based on the 1988-1989 Session* (Oxford: Clarendon, 1993).

[52] Russell and Gover, *Legislation at Westminster* (2017), p.74.

[53] E. Cieslak, "The Elections Bill: examining the evidence" (23 September 2021), *The Constitution Unit Blog*, *https://constitution-unit.com/2021/09/23/the-elections-bill-examining-the-evidence/*.

[54] S. Fisher, "Reverse electoral reform: Why the government wants to scrap the 'supplementary vote'", *Prospect*, 18 May 2021, *https://www.prospectmagazine.co.uk/politics/37637/reverse-electoral-reform-why-the-government-wants-to-scrap-the-supplementary-vote*; A. Renwick, "The new voting system for mayors and PCCs: how it changed the results" (23 May 2024), *The Constitution Unit Blog*, *https://constitution-unit.com/2024/05/23/the-new-voting-system-for-mayors-and-pccs-how-it-changed-the-results/*.

[55] PACAC, *Oral evidence: The Elections Bill, HC 597* (London: House of Commons, 14 September 2021), *https://committees.parliament.uk/oralevidence/2703/pdf/*.

[56] Elections Bill Committee (House of Commons, 2021), *https://bills.parliament.uk/bills/3020/stages/15714*.

[57] *Hansard*, HC Deb., Vol.701, col.107 (20 September 2021) (Chris Pincher MP).

[58] Conservative Party, *Get Brexit Done: Unleash Britain's Potential. The Conservative and Unionist Party Manifesto 2019* (London: Conservative Party, 2019), p.48.

system with no warning, evidence taking, consultation, or—partly as a result—media attention.

A second example occurred in the Commons in the 2023-24 session on the Data Protection and Digital Information Bill. At its report stage in November 2023 the minister brought forward around 240 amendments, totalling more than 100 pages. Some did pick up topics raised during the previous committee stage, but the volume was extreme, and their lateness meant little opportunity for MPs to consider the amendments or hear from outside groups. Labour's Chris Bryant argued for a "recommittal" motion, so that the bill could return to committee for the new matter to be considered, but the government refused.[59] The report stage finished that same day, along with third reading, and the government amendments were voted through.

But at least both these bills would have further consideration in the House of Lords. An even worse problem occurs if the government seeks to add new matter to bills in that chamber, after they have passed through the Commons. There have been at least two recent occurrences of this.

The Police, Crime, Sentencing and Courts Bill was introduced in session 2021–22, with its Commons second reading on 15 March. It passed to the House of Lords in the summer, and had its second reading there in September, followed by 10 days of committee stage.

But at Lords report stage in January 2022 the government brought forward a raft of new amendments, including proposed new criminal offences limiting public protest—which in no way responded to previous debates. Procedurally, had peers accepted these amendments they would have had virtually no scrutiny in Parliament—with essentially no chance for MPs to debate the merits when the bill returned to the Commons, and peers barely having considered them. This resulted in 14 government defeats.[60]

Such treatment by the House of Lords might reasonably have been expected to cause ministers to think again before repeating such a tactic. But in the 2022–23 session something similar happened on the Levelling-up and Regeneration Bill—a huge and sprawling bill, subject to 153 government amendments in the Commons, and over 400 in the Lords. Some of these responded constructively to points made in debate, but others did not.[61]

In particular, ministers proposed amendments at Lords report stage on environmental limits on water pollution, known as "nutrient neutrality", questionably claiming that it was holding back housebuilding. The amendments seemed intended to trap Labour into an "anti-housebuilding" position. They were again rejected by the Lords.[62] Former Conservative Cabinet minister Lord Deben (John Gummer), chair of the UK's Climate Change Committee, commented that "the number of houses built has nothing to do with this at all".[63] Again, it fell to the Lords to ensure that a matter not previously considered, which could not be considered fully by the Commons, was prevented from being added to the bill.

[59] *Hansard*, HC Deb., Vol.741, col.848 (29 November 2023).

[60] "Crime bill: Lords defeats for government's protest clamp-down plans" (18 January 2022), *BBC News*, *https://www.bbc.co.uk/news/uk-politics-60032465*.

[61] M. Russell, forthcoming.

[62] "Lords sink plan to axe homebuilding pollution rules", (14 September 2023), *BBC News*, *https://www.bbc.co.uk/news/uk-politics-66804160*.

[63] *Hansard*, HL Deb., Vol.832, col.1044 (13 September 2023).

In its 2009 report on fast-tracked legislation, the Constitution Committee had noted that late government amendments, in the words of the then Clerk of the Parliaments, "may, in effect, amount to emergency legislation, particularly if tabled in the second House", calling for this practice to be minimised.[64]

A connected topic which makes these habits very explicit is the government's recent use of so-called "placeholder clauses", which indicate right from the start that the bill as introduced is incomplete. For example, the explanatory notes to the Levelling-up and Regeneration Bill stated that cl.96 was "designed as a placeholder for a substantive clause which will make provision for a system that permits residents of a street to propose development on their street …" The initial provision was in the form of a delegated power, but the notes stated that "the Government does not intend to use the power as drafted, but to replace it with substantive provisions".[65] The placeholder was indeed replaced with 11 pages of material at Commons report. The Lords Constitution Committee has raised concerns about this practice on several bills, including the Nationality and Borders Bill 2021–22, on which it deemed the practice "unacceptable", noting that it "must not become a normal way of legislating".[66]

Taking the long view here, including comparing with the study of the legislative process 2005–12, suggests that addition of new government-inspired material was previously nothing on the scale of what has been seen more recently—including under Rishi Sunak. The government's behaviour to an extent appears a throwback to earlier times, aided by a new invidious use of "placeholder clauses" on some bills. All of this clearly indicates that legislation is being introduced before it is ready, as discussed below.

Overuse of delegated legislation

The nature of placeholder clauses in their original form is a reminder of another common complaint in recent years—the overuse of delegated legislation. Space constraints prevent a detailed discussion of this topic, which has been well covered by others. But worrying about scrutiny of primary legislation clearly becomes increasingly irrelevant if legal change is being made by other means.

The heavy use of delegated legislation during Brexit and COVID-19 has already been mentioned, and is well documented.[67] While there may have been some fair justifications for legislating in this way in such exceptional circumstances, serious concerns were also raised.

Two House of Lords select committees raised the alarm about the more general trend, in reports published on the same day in 2021: the Secondary Legislation Scrutiny Committee's *Government by Diktat*, and the Delegated Powers and Regulatory Reform Committee's (DPRRC's) *Democracy Denied?*[68] These

[64] Constitution Committee, *Fast-track Legislation* (2009), p.25.

[65] Levelling-Up and Regeneration Bill, Explanatory Notes (as introduced 11 May 2022).

[66] Constitution Committee, *Illegal Migration Bill, 16th Report of Session 2022–23* (London: House of Lords, 2023), HL 200; Constitution Committee, *Nationality and Borders Bill, 11th Report of Session 2021-22* (London: House of Lords, 2022), HL 149, p.6.

[67] e.g. A. Sinclair and J. Tomlinson, *Plus ça change? Brexit and the flaws of the delegated legislation system* (London: Public Law Project, 2020); K. Lines, *18 Months of COVID-19 Legislation in England: A Rule of Law Analysis* (London: Bingham Centre on the Rule of Law, 2021).

[68] Secondary Legislation Scrutiny Committee, *Government by Diktat: A Call to Return Power to Parliament, Twentieth Report of Session 2021-22* (London: House of Lords, 2021), HL 105; Delegated Powers and Regulatory

committees were not chaired by obvious critics, but by Conservative peers, in the latter case former Commons Chief Whip Lord Blencathra. The committees raised serious concerns about issues such as Henry VIII powers, and skeleton (or "framework") legislation.

But controversy did not stop there. Subsequently came the government's Retained EU Law (Revocation and Reform) Bill, described by the DPRRC as "hyper-skeletal", and raising protests from all three Lords committees already mentioned.[69] Criticisms did lead to some substantial changes to the bill. In 2023 there was also an extraordinary case of the government using delegated powers to reintroduce provisions—again on the right to protest—which had recently explicitly been rejected in primary legislation by the House of Lords.[70] These regulations were subsequently ruled unlawful in the High Court.[71]

From outside Parliament, the Hansard Society has taken a significant lead in monitoring the situation, and will shortly publish the report of its Delegated Legislation Review.[72]

But how much of this is new? Leaving aside the seemingly unique 2023 episode, complaints about the overuse of delegated legislation are long-standing. The Hansard Society published a report on this 10 years ago, which noted that "the use of delegated legislation by successive governments has increasingly drifted into areas of principle and policy" rather than merely filling out technical detail.[73] The Legislative and Regulatory Reform Bill (referred to at the time by campaigners as the "abolition of Parliament bill") passed in the 2005–06 session amid great consternation.[74] Among the 12 case study bills in the 2005–12 study of the legislative process, the Public Bodies Bill 2010–12 was also particularly problematic on the grounds of delegated powers.[75] Backlash against both these bills led them to be significantly amended.

At a hearing held by the two House of Lords committees that published the highly critical 2021 reports, First Parliamentary Counsel Elizabeth Gardiner commented that "I do not think any of these things are new" and "I take issue that [they] are new or novel". Asked by Lord Blencathra whether she accepted that "there has been a huge increase in them over the last 30 years", she responded "I

Reform Committee, *Democracy Denied? The Urgent Need to Rebalance Power Between Parliament and the Executive, Twelfth Report of Session 2021-22* (London: House of Lords, 2021), HL 106.

[69] Delegated Powers and Regulatory Reform Committee, *Retained EU Law (Revocation and Reform) Bill, Northern Ireland Budget Bill, Neonatal Care (Leave and Pay) Bill, Employment (Allocation of Tips) Bill, 25th Report of Session 2022–23* (London: House of Lords, 2023), HL 147, paras 4 and 63; Constitution Committee, *Retained EU Law (Revocation and Reform) Bill, 13th Report of Session 2022–23* (London: House of Lords, 2023), HL 151; Secondary Legislation Scrutiny Committee, *Losing Control?: The Implications for Parliament of the Retained EU Law (Revocation and Reform) Bill, 28th Report of Session 2022–23* (London: House of Lords, 2023), HL 145.

[70] T. Hickman and G. Tan, "Reversing Parliamentary Defeat by Delegated Legislation: The Case of the Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023" (22 May 2023), *UK Constitutional Law blog*.

[71] *R. (on the application of National Council for Civil Liberties) v Secretary of State for the Home Department* [2024] EWHC 1181 (Admin); [2024] 2 Cr. App. R. 11.

[72] Hansard Society, *Proposals for a New System for Delegated Legislation: A Working Paper* (2023).

[73] R. Fox and J. Blackwell, *The Devil is in the Detail: Parliament and Delegated Legislation* (London: Hansard Society, 2014), p.4. Indeed, a book dedicated to the alarming growth in delegated legislation and executive power, lamenting that "the tendency to the 'skeleton' form of legislation has undoubtedly grown in recent years" was published seven decades earlier: C. K. Allen, *Law and Orders* (London: Stevens and Sons, 1945), p.122.

[74] A. Brazier, S. Kalitowski and G. Rosenblatt with M. Korris, *Law in the Making: Influence and Change in the Legislative Process* (London: Hansard Society, 2008).

[75] Russell and Gover, *Legislation at Westminster* (2017).

have not done the research, so I do not know".[76] This does appear to highlight that such research is needed. However, while much is measurable about delegated legislation—the number of instruments and days of scrutiny, for example—qualitative questions such as whether the policy scope of instruments is widening are harder to assess.

An important part of the landscape worth noting is that committees such as the three aforementioned did not previously exist. While the DPRRC is traceable to 1992, the Lords Constitution Committee dates only to 2001, and the Secondary Legislation Scrutiny Committee to 2004. So we have new bodies monitoring these developments, which is welcome. But their own memories are fairly short. They themselves could perhaps do more to collate systematic data allowing changes to be assessed.

Other legislative complaints

There are some other things in the legislative process about which concerns could be raised. One is pre-legislative scrutiny of draft bills. Robin Cook tried very hard to promote this when he was Leader of the House of Commons.[77] There have been some interesting and positive studies of its effects.[78] The Institute for Government has recently pressed for efforts in this area to be increased.[79]

Table 4: Number of government bills published in draft per parliamentary session 1997–2022

Session	Number of draft bills	Session	Number of draft bills
1997–98	3	2008–09	4
1998–99	6	2009–10	4
1999–2000	6	2010–12	11
2000–01	2	2012–13	15
2001–02	7	2013–14	5
2002–03	9	2014–15	4
2003–04	12	2015–16	3
2004–05	5	2016–17	3
2005–06	4	2017–19	10
2006–07	4	2019–21	2
2007–08	9	2021–22	2

[76] Secondary Legislation Scrutiny Committee, Delegated Powers and Regulatory Reform Committee, *Oral evidence: Government responses to the DPRRC and SLSC's special reports* (London: House of Lords, 20 July 2022), Q6, *https://committees.parliament.uk/oralevidence/10623/html/*.

[77] Some of these ambitions were set out in Cook, "A Modern Parliament in a Modern Democracy" (2003) 74(1) *Political Quarterly* 76.

[78] J. Mulley and H. Kinghorn, "Pre-legislative Scrutiny in Parliament" in *Parliament: Legislation and Accountability* (Oxford: Hart Publishing, 2016); J. Smookler, "Making a Difference? The Effectiveness of Pre-Legislative Scrutiny" (2006) 59(3) *Parliamentary Affairs* 522.

[79] J. Sargeant and J. Pannell, *The legislative process: How to empower Parliament* (Institute for Government, 2022), *https://www.instituteforgovernment.org.uk/publication/legislative-process-empower-parliament*.

Can we argue that there has been a decline in publication of draft bills? Not entirely definitively. The figures for the last 25 years, which are published by the House of Commons but mostly not in collated form, are summarised in Table 4.[80]

In the majority of parliamentary sessions since 1997 no more than half a dozen bills have been published in draft. This rose when Robin Cook became Leader of the House of Commons in 2001, but then dropped back again until picking up at the start of the coalition period, dropping again, and rising under Theresa May's Government. So the pattern has always been patchy. But most recently just two draft bills were published in the long 2019–21 session, and again two in 2021–22—the smallest number in any year since 1997, aside from the short pre-election session 2000–01.

The Institute for Government has also collected data showing that only 27% of bills from sessions 2015–16 to 2019–21 were subject to any evidence taking in the House of Commons.[81] The procedure for evidence-taking in public bill committees was introduced, following recommendations from the House of Commons Modernisation Committee, in 2006.[82] Since evidence-taking was intended to be standard practice, these figures are plainly disappointing.

In both these areas it is clear that expectations are not being met. But these are also notably expectations set only during the last roughly 20 years. This resulted in a definite improvement on previous practice, and what has been seen in recent years appears to be a slipping back.

Avoidance of select committees

That same pattern is seen in other areas of scrutiny, beyond the legislative process. The second area of concern noted by David Judge in 2021 was the treatment of select committees.[83] These committees, of course, are seen as having been one of the great achievements of the House of Commons in recent years.[84]

The full set of departmental committees was first established in 1979, and they have gradually been boosted since. They gained more resources post-2001 (another initiative of Robin Cook), and their membership was reformed following the recommendations of the "Wright Committee" in 2010 (formally the Committee on the Reform of the House of Commons)—which was seen as making them more challenging and independent.[85]

Judge draws attention in particular to ministers failing to appear in front of select committees when requested, or even more strikingly, cancelling after they had agreed to appear. Most obviously in 2019, Prime Minister Boris Johnson was publicly admonished by Sarah Wollaston, the chair of the Liaison Committee

[80] Sessional lists are published at UK Parliament, *Draft Bills in previous sessions*, *https://www.parliament.uk/business/bills-and-legislation/draft-bills/previous-sessions/*. Collated figures appear for the pre-2010 period in R. Kelly, *Pre-legislative scrutiny* (House of Commons Library, 2010), SN/PC/2822.

[81] Sargeant and Pannell, *The legislative process: How to empower Parliament* (2022), *https://www.instituteforgovernment.org.uk/publication/legislative-process-empower-parliament*.

[82] J. Levy, "Public Bill Committees: An Assessment Scrutiny Sought; Scrutiny Gained" (2010) 63(3) *Parliamentary Affairs* 534.

[83] Judge, "Walking the Dark Side: Evading Parliamentary Scrutiny" (2021) 92(2) *Political Quarterly* 283, 286.

[84] P. Norton, "Departmental Select Committees: The Reform of the Century?" (2019) 72(4) *Parliamentary Affairs* 727.

[85] L. Maer, "Select Committee Reform: Shifting the Balance and Pushing the Boundaries" (2019) 72(4) *Parliamentary Affairs* 761.

(which itself is made up of select committee chairs), for failing to appear on three different occasions in front of her committee.[86]

Judge reports a comment from veteran BBC Parliamentary Correspondent Mark D'Arcy in December 2020 that "the hot new Westminster trend seems to be cabinet ministers declining to appear before Select Committees".[87] A small number of further cases arose subsequent to this claim. The Home Affairs Committee expressed repeated frustration over Home Secretary Priti Patel's failure to appear, including her stated preference that they should hold private meetings, rather than a public hearing.[88] She also cancelled an advertised appearance at very short notice in July 2022, as did Justice Secretary Dominic Raab.[89] Nonetheless, this does not subsequently seem to have become a persistent problem, though no central register of cancelled appearances is kept.

There is likewise no central record to document another alleged trend, regarding slow government replies to select committee reports. Formally such replies should come within two months of the committee issuing a report. In September 2023 the Levelling Up, Housing and Communities Committee published a special report, complaining that government responses in the parliamentary session 2022–23 had been late by an average of six months.[90] This matter more broadly, alongside concerns about the quality of government replies, has been taken up with government by the Chair of the Liaison Committee.[91] But the lack of systematic data on this question makes it difficult to assess whether the government's performance is declining or not. The gap is surprising since the data would be easy to gather, and other statistics, such as the government's record on answering written questions, or responding to MPs' constituency-related correspondence, are regularly published.[92]

There are also clearly far higher expectations regarding accountability to select committees than there were 20 or so years ago. The Prime Minister only began appearing in front of the Liaison Committee in 2002. The low point under Boris Johnson's premiership was perhaps a one off. But collation and publishing of more systematic data by Parliament would greatly help to clarify matters, allowing it to hold government to account, and incentivising good government behaviour.

[86] "Johnson accused of avoiding scrutiny after postponing committee appearance" (23 October 2019), *BBC News*, *https://www.bbc.co.uk/news/uk-politics-50160505*.

[87] Judge, "Walking the Dark Side: Evading Parliamentary Scrutiny" (2021) 92(2) *Political Quarterly* 283.

[88] J. Grierson, "Priti Patel accused of avoiding MPs' scrutiny during national crisis" (8 April 2020), *The Guardian*, *https://www.theguardian.com/politics/2020/apr/08/priti-patel-accused-of-avoiding-mps-scrutiny-during-national-crisis*.

[89] J. Scott, "Dominic Raab and Priti Patel anger MPs by ditching committee appearances" (14 July 2022), *Sky News*, *https://news.sky.com/story/dominic-raab-and-priti-patel-anger-mps-by-ditching-committee-appearances-12652014*.

[90] UK Parliament, "Levelling Up Committee criticises 'repeat offender' DLUHC for delayed Government responses to Committee reports" (19 September 2023), *https://committees.parliament.uk/committee/17/levelling-up-housing-and-communities-committee/news/197483/levelling-up-committee-criticises-repeat-offender-dluhc-for-delayed-government-responses-to-committee-reports/*.

[91] Letter from Sir Bernard Jenkin to Rt Hon Mark Spencer (30 March 2022); letter from Sir Bernard Jenkin to Rt Hon Mark Spencer (20 May 2022).

[92] e.g. Procedure Committee, *Written Parliamentary Questions: Departmental Performance in Session 2022–23, Second Report of Session 2023–24* (London: House of Commons, 2024), HC 676; *Data on responses to correspondence from MPs and Peers in 2022* (London: Cabinet Office, 2023).

Other forms of scrutiny

Allegations against the government have also been made in other areas of nonlegislative scrutiny.

One obvious one concerns announcements outside Parliament. This has been a major bugbear of the current Speaker, Lindsay Hoyle, who has frequently admonished the government for not—as the Ministerial Code requires—making major announcements to MPs first.[93]

But such complaints have been heard for decades, and whether they have worsened would be hard to catalogue reliably. Nonetheless, the COVID-19 pandemic, with its daily Downing Street press conferences, clearly did get the government into the habit of making key announcements to an external audience instead of MPs.

Fairly egregious recent examples include Rishi Sunak announcing the dropping of various net zero policies at a press conference in October 2023, on the day after the Commons had gone into recess, shortly followed by his announcement at the Conservative Party conference about cancellation of the HS2 rail project.[94] Likewise, as the Constitution Society has highlighted, announcement of the government's climbdown over the Retained EU Law (Revocation and Reform) Bill came through a newspaper article by then Secretary of State Kemi Badenoch, rather than a statement to Parliament.[95]

Another change in recent years that is seen to have strengthened Parliament is the growth in use of "Urgent Questions", which call ministers before the House of Commons for an extended question period at the discretion of the Speaker. Urgent Questions were significantly boosted by John Bercow and their level maintained by Lindsay Hoyle. They can offer some comeback to Parliament in cases such as those above, when ministers fail to volunteer an announcement.

In October 2022, the *Independent* reported the "mystery absence" of Prime Minister Liz Truss when faced with an Urgent Question on the sacking of Kwasi Kwarteng.[96] That same year another newspaper reported that Prime Minister Boris Johnson had "dodged" an Urgent Question.[97] Such claims illustrate how some complaints, perhaps particularly from journalists and opposition parties, should be treated with caution. Published data on Urgent Questions is minimal, but an analysis of the 1,000+ such questions since 1992 shows only two to have been answered by the Prime Minister. With little data to measure claims against, expectations can be unreasonably heightened, and an impression of decline be created, even when it is not there.

[93] Cabinet Office, *Ministerial Code* (2022), para.9.1.

[94] Z. Crowther, "Lords Accuse Rishi Sunak of Dodging Scrutiny on Net Zero Delays" (20 September 2023), *Politics Home*, *https://www.politicshome.com/news/article/lords-accuse-rishi-sunak-avoiding-parliamentary-scrutiny-delaying-net-zero-policies*; M. England and R. Fox, "HS2 fiasco: What does it mean for Parliament?" (15 October 2023), *Hansard Society blog*, *https://www.hansardsociety.org.uk/blog/hs2-fiasco-what-does-it-mean-for-parliament*.

[95] A. Blick and D. Govan, *The Constitution in Review: Fifth Report from the United Kingdom Constitution Monitoring Group* (London: Constitution Society, 2023).

[96] O. Browning, "Watch MPs ask 17 times why Liz Truss didn't turn up to urgent questions in Commons" (17 October 2022), *The Independent*, *https://www.independent.co.uk/tv/news/liz-truss-resigned-where-today-b2204733.html*.

[97] X. Richards, "Boris Johnson dodges SNP's urgent question in Westminster over India trip" (26 April 2022), *The National*, *https://www.thenational.scot/news/20094621.boris-johnson-dodges-snps-urgent-question-westminster-india-trip/*.]

While many concerns have been associated with "decline", others exist regarding new areas deserving of scrutiny. Notably there has been concern about Parliament's lack of oversight of international agreements since Brexit, with proposals for strengthening made by several committees.[98] On this, as on various other things mentioned above, the government's control of the House of Commons agenda is very important.[99] It can decide whether treaties are brought to the floor. In January 2024, the Home Affairs Committee sought a Commons debate on the Rwanda treaty, which was very unlikely in practice to result in MPs voting it down; but the government simply ignored the request.[100] This did appear to be a remarkably dismissive way to treat a select committee.

Discussion

Initial conclusions on decline based on data

So, summing up, what can be concluded about decline or otherwise, based on the available data?

First, it must be noted that analysing the quality of parliamentary scrutiny quantitatively is difficult. Some bills have a quick passage, but it is hard to draw conclusions straightforwardly from that, given that some bills are more important than others. Likewise, some amendments have greater substance than others, as do some statutory instruments. If we want government to be responsive to Parliament, we might welcome some government amendments, but condemn others. So simple data cannot tell us everything, and more sophisticated data can be very time-consuming to collect.

Secondly, some fairly straightforward data that might help us understand better is nonetheless often missing, and might usefully be provided by Parliament.

Thirdly, we must always ask ourselves "when was the golden age?" Expectations of scrutiny have risen, and rightly so. Alongside this, mechanisms to police the system have improved—particularly via key select committees. Sometimes allegations made by the media and opposition parties may even be spurious.

All of this makes historical rigour really important: we must be rigorous in tracing decline, but also rigorous in not overstating it. And that often means getting beneath the surface of simple statistics.

Nonetheless, the data which is available—particularly when added up across multiple variables—seems to indicate some quite worrying trends. Practice in a number of areas seems to have declined, and—far from improving after Brexit and the COVID-19 pandemic were over—there are numerous indications that things may have got worse since.

Having reached this conclusion it is important to reflect on why a decline in scrutiny might be happening, and what we can do about it.

[98] PACAC, *Parliamentary Scrutiny of International Agreements in the 21st Century: Second Report of Session 2023-24* (London: House of Commons, 2024), HC 204; International Agreements Committee, *Working Practices: One Year On: Seventh Report of Session 2021-22* (London: House of Lords, 2021), HL 75; International Trade Committee, *UK Trade Negotiations: Parliamentary Scrutiny of Free Trade Agreements: Fourth Session of Report 2022-23* (London: House of Commons, 2022), HC 815.

[99] For a general recent review of House of Commons agenda control, see M. Russell and D. Gover, *Taking Back Control: Why the House of Commons Should Govern its Own Time* (London: Constitution Unit, 2021).

[100] Home Affairs Committee, "Government Response: UK-Rwanda Treaty" (26 January 2024), *UK Parliament website*.

Contributors to decline

The government

The most obvious place to start in terms of contributors to decline is with the government. The government has crucial roles, which constrain how parliamentarians can respond: particularly through preparing legislation, and determining the House of Commons timetable.

It might be tempting to blame all this on Boris Johnson, and poor quality ministers appointed by him, who preferred to hide from awkward questions. But while Johnson is clearly culpable, the problems did not begin with him, and clearly have not ended since he left. As indicated above, Theresa May dabbled in anti-parliamentary rhetoric and avoidance over Brexit, and Johnson built upon this—including during the pandemic. Nonetheless many of the worst examples cited above were under Rishi Sunak.

But government is not just ministers. I was surprised when I went to work in government (which clearly represented naivety on my part) that civil servants were not instinctively defenders of Parliament. As good public servants, that possibility had not occurred to me before. Such attitudes were very visible for example in interviews for our book on Brexit. One senior official commented that there's a "sort of rule of thumb … the less done with Parliament, the better".[101]

At a recent Constitution Unit event, Helen MacNamara, former Deputy Cabinet Secretary echoed this, saying that "it's totally fair to say that there's scepticism amongst the civil service of thinking that legislation or Parliament is a good idea". She admitted that "it's obviously a slight confession … [but] for a policy civil servant with a background like mine your kind of heart slightly sinks at the notion … [that] if you want to get something done quickly you think great the thing we'll do is take it to Parliament". But she added that "my strong rejoinder to myself … is if I think back to all of the times when I was involved in in supporting ministers putting legislation before Parliament, there's not a single occasion where it wasn't improved by the process".[102]

On the government side there is therefore a strong suspicion that needs to be overcome, and it does not just come from ministers. But doing so promises improvement all round.

The House of Commons

However, the problem does not just lie with government, it also lies with Parliament. As David Judge suggests, a culture of scrutiny "assumes a dual willingness—a willingness of government to be scrutinised and a willingness of Parliament to scrutinise'.[103] In recent years this latter willingness also appears to have declined.

One contributory factor was Boris Johnson's treatment of his parliamentary party—including the completely unprecedented stripping of the whip from 21

[101] Russell and James, The Parliamentary Battle over Brexit (2023), p.72.

[102] Constitution Unit webinar, "UK Governance Project: Proposals for reform" (21 February 2024), *https://www.ucl.ac.uk/constitution-unit/events/2024/feb/uk-governance-project-proposals-reform*.

[103] Judge, "Walking the Dark Side: Evading Parliamentary Scrutiny" (2021) 92(2) *Political Quarterly* 283, 283.

Conservative MPs, most of whom had rarely if ever voted against the government before, because they opposed a no deal Brexit.[104] This not only removed key opponents, and broke with convention, which has long been more tolerant of dissent; it created a culture of fear on the backbenches. This highlights the centrality of political parties and party organisation to the operation of our constitution.

Johnson's clear 2019 victory also created a tremendous risk of complacency—that with an 80-seat majority, the opposition cannot win, hence with an election coming MPs might be better off campaigning or focusing on the growing pressures that come from constituency work. That can apply to both sides in Parliament, and was to an extent enforced during the pandemic.

Another indicator of decline reported in the 2019 Parliament, but on which solid data is missing, is the number of select committee meetings that had to be cancelled due to inquoracy. Those absent were on the opposition, just as much as the government, side.

In terms of lack of enthusiasm to fight back, and demand a say, one striking indicator was how MPs of all parties gave up their votes with barely a whimper to party whips to wield on their behalf during the pandemic. Astonishingly, a single government whip became responsible for casting 329 votes, and a single opposition whip for casting 173; yet few complaints were heard from MPs about it, and the media barely reported it at all—meaning that it gained very little public comment.[105]

The House of Lords

When it comes to difficult legislative problems, MPs sometimes prefer to leave matters to the House of Lords to sort out. The faint hope is that such problems might be smoothed out in that chamber, away from the public eye—without causing all the embarrassment of a Commons rebellion and possible defeat.

But the House of Lords has also suffered. The volume, and sometimes dubious quality, of appointments in recent years, and fears that the chamber might upset Brexit, have driven relentless attacks on it, particularly in the right-leaning press. This makes it harder for peers to stand up to the government than it used to be.

Crucially, the perceived threat from the Lords to the incoming 1997 Labour Government, coupled with its new confidence after most hereditary peers had departed the chamber in 1999, was absolutely central to that government improving its internal processes, and ensuring that bills were well prepared for introduction.[106] If the Lords cannot challenge the government to the same extent, this allows such standards to slip. It certainly means that backbenchers cannot rely on the Lords to fight their battles for them.

Another very measurable indicator is the number of government defeats in the House of Lords. This has risen in recent years—reaching a new high of 128 the 2021–22 session.[107] Such actions demonstrate frustration with the government, but may achieve little in terms of policy impact. Analysis of the period 1999–2012

[104] Russell and James, *The Parliamentary Battle over Brexit* (2023), p.265.

[105] M. Russell, R. Fox, R. Cormacain and J. Tomlinson, "The marginalisation of the House of Commons under COVID has been shocking; a year on, Parliament's role must urgently be restored" (21 April 2021), *The Constitution Unit Blog*, *https://constitution-unit.com/2021/04/21/covid-and-parliament-one-year-on/*.

[106] Russell and Gover, *Legislation at Westminster* (2017).

[107] *Government defeats in the House of Lords* (UK Parliament, 2024), *https://www.parliament.uk/about/faqs/house-of-lords-faqs/lords-govtdefeats/*.

found that defeats in the House of Lords ultimately resulted in a change of government policy around 40% of the time.[108] But a key factor in whether the Lords won or lost in a dispute was the extent to which dissent was visible among government backbench MPs. Hence a mixture of fear and complacency among backbenchers threatens that dynamic. In recent years there has been less ping-pong, in terms of peers insisting on their case, and it seems likely that repeating the 1999–2012 analysis would find government and House of Commons acceptance of Lords defeats to be significantly down. Governments, particularly from Johnson onwards, have been remarkably intransigent about their legislation.

One example under Johnson was the Lords defeat over voter ID provisions in the Elections Bill. This was in line with recommendations previously made by Commons PACAC.[109] When the bill returned to that chamber, the chair of PACAC, William Wragg, was the only Conservative to rebel on the Lords amendments—not even other Conservative members of the committee did so.[110] At that point, understandably, the Lords gave up.

Of course it is hard to argue that under Sunak Conservative MPs remained frightened to rebel—with Johnson gone, that instinct certainly revived, at least on the right of the party. But moderates seemed to find it harder. On the Safety of Rwanda Bill, Sunak was threatened by rebels from both the left and the right. A large group of moderates, led by former Justice Secretary Robert Buckland, tabled amendments at Commons committee stage on which they could have defeated the government with Labour support, but which served primarily as a threat to dissuade Sunak from giving in to his right-wing rebels (who voted against the government, but lacked the necessary allies to defeat it). The moderates' amendments were not pressed to the vote. But the Lords subsequently defeated the government on 10 different amendments, some of which echoed the moderates' concerns. Nonetheless on the bill's initial return to the Commons, Buckland was again the only Conservative backbencher to support the Lords' position. Peers stood firm for some time, forcing several rounds of ping-pong. But they ultimately backed down, in the absence of support from concerned MPs.

Culture and institutional memory

Collectively, the problem set out in these different spheres is one of culture. As Hannah White has said, "our current generation of ministers have got used to the apparent benefits of legislating at speed. They have forgotten the downsides. And MPs … have lost institutional memory of what used to count as adequate scrutiny".[111] As Alice Lilly alleged, Brexit and COVID-19 do indeed seem to have left "a lingering cultural effect".[112] That effect exists inside both government and Parliament.

[108] M. Russell, *The Contemporary House of Lords: Westminster Bicameralism Revived* (Oxford: Oxford University Press, 2013).

[109] PACAC, *The Elections Bill: Fifth Report of Session 2021-22* (London: House of Commons, 2021), HC 597, para.101.

[110] Hansard, HC Deb., Vol.712 cols 839–841 (27 April 2022).

[111] White, "Illegal Migration Bill highlights how expectations of legislative scrutiny have plummeted" (2023), *Institute for Government blog*, *https://www.instituteforgovernment.org.uk/comment/illegal-migration-bill-legislative-scrutiny*.

[112] A. Lilly, "The Slow Death of Parliamentary Scrutiny" (15 May 2023) *The House*, *https://www.politicshome.com/thehouse/article/scrutiny-scarcity-parliament-commons-lords*.

There is a key Cabinet committee chaired by the Leader of the House of Commons with responsibility for ensuring that government bills are ready for introduction into Parliament, supported by a secretariat in the Cabinet Office. It is currently called Parliamentary Business and Legislation, or PBL.[113]

When then Leader of the House of Commons Mark Spencer appeared in front of the two Lords committees that jointly complained about delegated powers, he was asked "how tough is the PBL Committee on wanting to see a fully worked-out policy before it will approve a Bill for introduction?" He responded, "I think it is very robust and very tough".[114] But that simply cannot be true.[115] These are not remotely the standards that were being adhered to when Robin Cook chaired the committee around 20 years ago.

A lot has been heard about the harmful effects of "churn" in recent years—it applies to ministers and civil servants, and also to MPs.[116] There were nine Leaders of the House of Commons in the 10 years 2012–22. Mark Spencer took over in February 2022 from Jacob Rees-Mogg, and was replaced seven months later by Penny Mordaunt. Meanwhile civil service churn risks destroying the institutional memory that might encourage officials in this area to defend those standards—so countering the more dominant civil service culture mentioned above.

A number of lessons, many quite uncomfortable, can be found in a recent book on how to strengthen parliaments in less developed democracies. Its central point was that cultures matter more than structures, and take time to develop. But clearly cultures can also unwind. The book talked of the "tragedy" of parliamentary turnover, and of how "for parliamentary institutions to matter, politicians have to believe they are worth fighting for".[117] Many of the messages of the last few years have been the reverse of that.

So what can be done?

So what is needed to end this malaise, and rebuild a culture of parliamentary scrutiny? Such a question is particularly pertinent in the context of a new government and Parliament.

The first step must be to recognise the problem. And not to see it as a blip, which we left behind with Brexit and COVID-19.

Following the July 2024 general election, there is a new generation of ministers. In addition, more than half of MPs—335—are new. This new intake, unlike their predecessors, should be encouraged to take scrutiny seriously. Both they and the new crop of ministers need to reject the bad behaviour of the last few years.

On the positive side, Labour's new Leader of the House of Commons Lucy Powell has indicated that she understands some of the problems. In a speech in

[113] Discussed in Constitution Committee, *The Legislative Process: Preparing Legislation for Parliament (Fourth Report of Session 2017–19)* (London: House of Lords, 2017), HL 27.

[114] Secondary Legislation Scrutiny Committee, Delegated Powers and Regulatory Reform Committee, *Oral evidence*, Q2.

[115] It should perhaps be taken about as seriously as what Spencer said in his next sentence, that "There are some Ministers who have literally been munched up and spat out in PBL". One would hope not!

[116] E. Norris and T. Sasse, *Moving On: The Cost of High Staff Turnover in the Civil Service* (London: Institute for Government, 2019); E. Norris, T. Sasse, T. Durrant, and K. Zodgekar, *Government Reshuffles: The Case for Keeping Ministers in Post Longer* (London: Institute for Government, 2020).

[117] G. Power, *Inside the Political Mind: The Human Side of Politics and How It Shapes Development* (London: Hurst, 2024), p.170.

May 2024, when still in opposition, she spoke out against the overuse of delegated legislation, of rushed government bills and late government amendments, promising to strengthen the PBL committee.[118] She also pledged to hold colleagues to the Ministerial Code regarding announcements inside Parliament. She repeated some of these commitments after entering government, but there can still be temptations to back away from them. Notably, before the 2024 summer recess, two Labour manifesto bills—the Passenger Railway Services (Public Ownership) Bill and Budget Responsibility Bill—were programmed to take their committee and remaining stages all on the floor in a single day, and the same applied in the autumn to the House of Lords (Hereditary Peers) Bill. This continued Sunak's poor practice, immediately breaching the guidelines in the *Cabinet Office Guide*. Less than three weeks after the election, Prime Minister Keir Starmer also stripped seven Labour MPs of the whip, for casting a single vote against the new government—which was worryingly resonant of Johnson's behaviour in 2019.[119]

Labour's manifesto promised a House of Commons Modernisation Committee, which may or may not focus on improving scrutiny. It should be encouraged to do so. The manifesto also promised House of Lords reform: not just removing the remaining hereditary peers but also and improving the appointments process. As indicated above, reputational problems have damaged that chamber's ability to hold the government to account. A more defensible appointments process would boost its reputation, and thereby its ability to challenge government, as occurred in the 1990s.[120] At that time, this played an important part in incentivising good government behaviour.

Crucial to all of this is shifting the culture inside government, including among civil servants, about the importance of parliamentary scrutiny. External voices like Helen MacNamara's are very important. Internally, Lucy Powell must be held to her words, and the pledges she made in opposition implemented. While temptations to govern with poor scrutiny undoubtedly always exist, the Johnson, Truss and Sunak years—swept away by Labour's landslide victory—do also seem to amply demonstrate the risks.

Finally, in an era of churn, with declining institutional memory, historical analysis and reliable data are crucially important. When norms are slipping, careful monitoring becomes more necessary than we assumed in the past. While clear limits exist to evaluating the quality of parliamentary scrutiny quantitatively, the current lack of data is a hindrance. To facilitate this, Parliament and government should publish, and allow monitoring of, annual figures such as:

- the number of fast-tracked bills;
- the days spent on each bill at each stage in the House of Commons;
- the number of government amendments to bills;
- the use of "placeholder" clauses;
- the number of bills published in draft;

[118] "Keynote speech: Lucy Powell MP, Shadow Leader of the Commons How would a future Labour government work with Parliament?" (Institute for Government, 2024), *https://www.instituteforgovernment.org.uk/event/lucy-powell-shadow-leader-commons*.

[119] J. Elgot, "Labour suspends seven rebels who voted to scrap two-child benefit cap" (23 July 2024), *The Guardian*, *https://www.theguardian.com/politics/article/2024/jul/23/labour-mps-vote-to-scrap-two-child-benefit-cap-in-first-rebellion-for-starmer*.

[120] M. Russell, *The Contemporary House of Lords: Westminster Bicameralism Revived* (Oxford: Oxford University Press, 2013).

- the number denied an evidence-taking stage;
- how often intervals set out in the Cabinet Office *Guide to Making Legislation* are breached;
- the number of "skeleton" bills;
- cancelled select committee appearances by ministers;
- speed of government responses to select committee reports; and
- problematic ministerial announcements made outside Parliament.

These figures would all be easy to gather internally, and might usefully be published in the House of Commons *Sessional Return*. Their collection, and that of less straightforward data such as the frequency with which delegated legislation is used to deal with substantive policy matters, would likely involve input from key specialist committees. There should then be a process for annual review of such data, involving these committees, or possibly a new Legislative Standards Committee, as has long been advocated by the Hansard Society.[121] Just as good scrutiny leads to good government, better scrutiny of the scrutiny process itself seems essential to improving practice.

A new government, and a new Parliament, is a time when the bad habits of recent years could either get cemented for the long term, or be reversed. The Parliament that recently ended began with Brexit, and was then hit by COVID-19. The hangover from the preceding Parliament had been damaging, and the new intake was barely socialised at all. It would be complacent to assume that the 2024 Parliament will be better. But it badly needs to be; and it potentially can be if these challenges are taken seriously.

[121] See, e.g. Constitution Committee, *The Legislative Process: Preparing Legislation for Parliament* (2017).