

Customer	Book Title	Stage	Supplier	Date
OUP	Exploring Parliament	First Proof	Thomson Digital	20 Sep 2017

12

Private Members' Bills

Robert Hazell and Fergus Reid

INTRODUCTION

This chapter explores the ways backbenchers in both Houses exploit their right to introduce legislation—known as private members' bills (PMBs). The PMB process has been heavily criticized as being opaque, misleading, and virtually discredited inside and outside Parliament. Yet, each session, over 450 backbenchers enter the Commons PMB ballot for a priority slot and over 100 more introduce a PMB subsequently through other routes. In the Lords, between 40 and 50 peers pursue a PMB each session. This chapter, and the associated Case Study 12, seek to explain why, despite flaws and frustrations, many Members of both Houses see PMBs as a useful tool for advancing their agendas and campaigns—and, occasionally, for changing the law of the land.

What's in a name?

Parliamentary jargon can be confusing. Members of either House who are not Ministers of the Crown, and so not part of the government (no matter which party they belong to), are known as 'private' Members. This is an awkward phrase but perhaps better than 'Unofficial Members' which was in vogue for the first half of the last century. To complicate matters further, the 'p' word is also used in distinguishing between bills which affect everybody by proposing changes to the general law ('public bills') and bills which affect only the rights or interests of identifiable individuals or organizations ('private bills')—and there are rare bills which do both, of which HS2 is an example ('hybrid bills'). Confusingly, *private* Members can only bring forward *public* bills, as the time available for PMBs would not fit with the additional procedures that private and hybrid bills need to follow. One can see why the term 'backbench bill' has been recommended as an alternative to simplify matters. To reduce confusion, *in this chapter*, the term 'PMB' will be used for a non-government public bill in either House.



Parliamentary terms Hybrid bill

A government bill which affects the general public but which may also have a significant impact for specific individuals or groups. The procedure for considering these bills is complex, as individuals and companies specifically affected are able to submit petitions which are considered by committees in either House.

Customer	Book Title	Stage	Supplier	Date
OUP	Exploring Parliament	First Proof	Thomson Digital	20 Sep 2017



Parliamentary terms Private bill

A bill put forward by those outside Parliament, typically companies or local authorities. These types of bills affect only a specific group of people or a particular area, e.g. Faversham Oyster Fishery Company Act 2017. Procedures for scrutinizing private bills are different from those for public bills.



Parliamentary terms Public bill

General bills which affect the whole population. They comprise the majority of primary legislation considered by Parliament in each session. They can be government bills or private members' bills.

The existence of different types of PMBs often causes confusion. There are three *routes* for a backbencher to get their PMB in front of the House—the 'ballot', 'presentation', and the 'ten-minute rule' (the process and implications of each are explained in detail in the section 'The three routes to a PMB in the Commons')—but once on the books all PMBs are substantively the same *type*: short, public bills seeking to add to or amend the UK statute book.

How do PMBs differ from government bills?

PMBs are invariably public bills (i.e. aimed at changing the law as it applies to everybody). The majority of government bills are also public bills. The key differences between a government bill and a PMB arise out of a mix of practical, political, and procedural considerations, and they create an environment in which the passage of PMBs is much more challenging.

Government has a national mandate, specialist resources for legislative drafting, a Commons majority, and means with which to marshal support for its proposals. The government also controls the public finances with sole discretion for the initiation of spending and taxation measures. This last point means that the House must separately agree an authorizing motion for any PMB whose implementation would incur more than incidental increases in public spending or changes in taxation. Such a motion can only be proposed by ministers, giving the government a further 'brake pedal' over the progress of some PMBs (see our suggested further case studies). Also, in the Commons, the rules complement a government's majority with some heavy-duty procedural advantages in making progress with its legislation. First, government business has priority most of the time. Secondly, the government can set dates and times for the conclusion of stages of their bills after second reading through 'programming' (see Chapter 7).

Private Members have none of these comforts. Due to limited time for debate, constrained resources, and restrictions on spending and tax measures, a typical PMB is likely to: be short, with a narrow scope and limited main purpose(s); have only indirect public expenditure implications at most; and be drafted in a relatively simple style. Due to PMBs' vulnerability to opposition, sponsoring Members effectively have a binary decision to make about their bill. They will either choose: a ground-breaking, partisan, or otherwise controversial proposal that is unlikely to make progress but will attract attention to the issue and achieve 'a day in the sun'; or a government-drafted or otherwise uncontroversial, non-partisan matter, which will attract no opposition from government, opposition, or those backbenchers who take a particular interest in PMBs, and will therefore be likely to progress.

Customer	Book Title	Stage	Supplier	Date
OUP	Exploring Parliament	First Proof	Thomson Digital	20 Sep 2017

The importance of time when considering PMBs

The time allocated to PMBs varies between the two Houses. In the Lords, there is no formal concept of government or private Members' time, nor are there any specific periods when government bills or PMBs are taken. Stages of PMBs are often taken as 'dinner break' business, Monday to Thursday, and on sitting Fridays.

In the Commons, only 13 Fridays are allocated for PMBs in each session and these are scheduled by the government. For MPs this presents difficulties. Fridays have become days for constituency business, creating a dilemma for PMB supporters and opponents alike, as well as inequity in terms of juggling competing commitments which may be far away from Westminster. From a government whip's perspective, one can understand the attraction of quarantining less favourable PMBs to their own special days.

The first seven Commons PMB Fridays are effectively reserved for second readings. On the last six Fridays, priority is given to bills that have made the most progress. For example, a bill returning to the Floor of the House from committee will be considered ahead of a bill waiting for its second reading. The bill's place in the queue (or the list of Future Business) is thus an important factor in its chances of being debated.

The three routes to a PMB in the Commons

The most well-known route to a PMB is through the private members' bill ballot in the Commons, 'an event' enjoyed by many MPs. The vast majority of eligible backbenchers put their names in, variously *inspired* by the opportunity to sponsor a bill and change the law and *encouraged* by their whips (to reduce the chances of the other parties dominating the outcome).

The ballot winners introduce their bills on the fifth Wednesday of the session. Conventionally, the first seven winners each take number one spot on one of the first seven Fridays—they cannot be usurped as first item of business, and thus are virtually guaranteed a full day's debate. They will have about four weeks to settle on the subject matter of their PMB (described and circumscribed by short and long titles). Table 12.1 shows results of these ballots broken down by party. After these slots have been taken, ballot winners 8–20 have various tactical choices to make. They may gamble on going first on a later Friday (hoping not to be trumped by a bill coming out of committee or derailed by running out of days to make further progress). They may take a chance on going down as a second or third item of business on an earlier Friday (looking for *some* airtime after the first bill or hoping to get a second reading without any debate, i.e. 'on the nod').

The second and third routes to a PMB can be used by MPs who were unsuccessful in the ballot. On the day *after* ballot winners have introduced their bills, other backbenchers are allowed to start giving notice of PMBs. Members may give notice, on a sitting day, of their intention to introduce one or more PMBs on any future sitting day (it is rare for a Member to introduce more than one at a time). These are known as presentation bills. They are

Table 12.1 PMB ballot dividends (1997/98–2015/16)

<i>Position in ballot</i>	<i>Conservative</i>	<i>Labour</i>	<i>Other parties</i>
1st place	6	9	3
2nd to 7th place	55	58	13
8th to 20th place	161	150	49

Customer	Book Title	Stage	Supplier	Date
OUP	Exploring Parliament	First Proof	Thomson Digital	20 Sep 2017

much more low-key; the bill titles simply appear on the published Order Paper on the day and the short title is read out in the Chamber by the clerk.

Another option available to MPs at this time is the 'ten-minute rule' mechanism. Each sitting Tuesday and Wednesday after the PMB ballot, one MP can make a ten-minute speech asking the permission of the House to introduce a PMB. This can be opposed by another MP for a further ten minutes. Sometimes there is a vote, though this is relatively infrequent. For MPs selecting this route, the ten-minute speech, rather than the bill, is often their primary objective. The bill itself is incidental and rarely pursued.

Competition to be successful in the PMB ballot, or to get the first ten-minute rule slot, is fierce. MPs have often queued overnight to be the first in the PMB 'queue' after the 20 ballot winners and/or to get the first ten-minute rule slot. The practice appears to be lapsing, but very early morning attendance outside the relevant clerk's office is commonplace. After the initial excitement, the ten-minute rule slots are allocated according to an informal rota based on the composition of the House. All the conceivable opportunities for debate of a PMB on any of the 13 available Fridays will invariably be filled up very quickly.

Deals and arrangements on which PMBs get taken on which days will have been sought between MPs of the same party, between backbenchers and whips on all sides, and with relevant departmental ministers. This wheeler-dealing process continues throughout the session, getting more and more complicated as PMBs at different stages of progress begin to pile up on the later Fridays. Deals may be commonplace, but they aren't always effective.

A typical Commons second reading Friday

On the first seven PMB Fridays there may be any number of PMBs on the Order Paper, but typically only the first two bills are 'in play' until 2.30pm when the time for debate runs out. One common event is that straight after the initial daily prayers (around 9.35 a.m.), before any business is started, a *supporter* of the first bill moves a procedural motion 'That the House sit in private.' A vote like this is the only way to test whether the House has enough MPs present (a quorum), but this motion can only be used once per sitting. This premature calling of a vote thus prevents an *opposer* of the bill doing so once consideration of the bill has started, and potentially stopping its further consideration.

Debate on the first bill would be expected to last for all, or the vast majority, of the available time (9.35 a.m. until 2.30 p.m.). In the absence of rules or any other provision to bring matters to a close, debate on a question in the Commons will continue until there is nobody left wishing to speak or the available time runs out. If time runs out, and an MP is still speaking, the debate is adjourned until the existing business, on whatever future day the sponsoring Member picks, is finished. This effectively means that the bill is dead as all the future PMB Fridays will be crowded.

Another possibility is that the sponsoring MP of the first bill will seek to conclude the debate and get a decision, using a motion called the 'Closure': 'That the question be now put.' However, there are hurdles to such a proposal: enough debating time must have passed for the Chair to allow the Closure to be moved at all (and about four hours is the minimum); 100 or more MPs must vote in its favour (if it is opposed); *and*, of course, the MP must win the vote! If all those conditions are met, then the question on second reading is immediately put and the bill would move successfully to its next stage. The House would then move on to consider a second bill.

Customer	Book Title	Stage	Supplier	Date
OUP	Exploring Parliament	First Proof	Thomson Digital	20 Sep 2017

At 2.30 p.m., any debate in progress is adjourned and the titles of the remaining bills down for that day will be read out. If one of these PMBs is uncontroversial, popular, and nobody objects to it 'on principle', then it may go through 'on the nod'. The vast majority of PMBs, however, are objected to at this stage and will have to be moved to the bottom of the queue on a future day named by their sponsoring MP. Another tactic used by MPs is to try to extend the debate of the first bill of the day, in order to prevent a later objectionable bill ever getting started. If a PMB passes its second reading and moves to committee stage, opposers of the bill can table large numbers of amendments in committee or during its report stage to try to delay proceedings further.

Lords PMB ballot

The PMB ballot in the Lords serves a very different purpose. The Lords ballot is for prioritizing all those who enter it to determine the order in which all the relevant PMBs will be introduced (and, in practice, the order of second readings). It does not make a *selection* from those entries. The qualification for the Lords version of the PMB ballot is also different from that of the Commons ballot, in which MPs need only submit their names. After the ballot, other private Lords Members may give notice of bills but they will only be introduced after the original Lords ballot bills. Again, unlike in the Commons, a fully drafted text of the bill must have been written.

Counting by numbers?

The presence of several different routes for PMBs means that the number put forward is large. Success rates, however, are low. The headline figure for the last 19 years was that 108 out of 2,138 PMBs became law, a success rate of about 5 per cent. Performance has varied from no success in 2000–1, to 13 successful PMBs in 2002–3 (Priddy 2016, 5). However, drawing meaningful conclusions from the proportion of PMBs passing into law is bedevilled by a number of factors. Firstly, not all 'PMBs' are actually bills. A substantial proportion of PMBs are never developed beyond their short and long titles, acting as little more than 'legislative press releases'. Secondly, not all PMBs are actually designed and written by private Members. Some originate in the government. These 'hand-out' bills are typically modest departmental bills that did not make it into the government's legislative programme. Although government departments are but one voice among many suitors for the attention of an MP who has a good chance of having a PMB debated—including constituency organizations, charities, businesses, industry and professional federations, trade unions, and campaign groups of all sorts—they are an important one.

There can also be added complexities. For instance, in 2015–16, an unprinted PMB was negotiated into effect via a government amendment to one of its own bills. This meant that the Events and Festivals (Control of Flares, Fireworks and Smoke Bombs Etc.) PMB became section 134 of the Policing and Crime Act 2017 without ever actually being printed. Any successful privately drafted PMB is also likely to have been heavily amended during its committee stage, sometimes almost entirely rewritten, by the government. Such changes, agreed with the sponsoring MP, must be made to ensure that any measure heading for the statute book is technically effective. Some hand-out bills may have been asked for, inspired by, or tailored to suit sponsoring MPs and, finally, by no means do all government-drafted PMBs succeed.

Customer	Book Title	Stage	Supplier	Date
OUP	Exploring Parliament	First Proof	Thomson Digital	20 Sep 2017

Reforming the private members' bill procedures

The Commons Procedure Committee, responsible for monitoring the effectiveness of Commons rules, has had a running battle with government over reform of the PMB process since 2013 (see Procedure Committee 2013, 2014, 2016a, 2016b). The Committee has recommended substantial changes aimed, it argues, at retaining (perhaps regaining) the engagement of Members and making the system easier to understand outside Parliament. The Committee wanted, in particular, an end to filibustering and a far clearer distinction between PMBs introduced simply to highlight an issue and PMBs genuinely seeking a specific legislative change (e.g. Procedure Committee 2016, 20). The Committee's reforms seemed to be aimed at a stronger focus on fewer, better developed, and more widely supported proposals on which the Commons in particular would be enabled to have genuine debate and a guaranteed vote.

From the government's perspective, one can imagine how unattractive would be propositions designed to require government to make more explicit its formal decisions to support, or not, a range of potentially popular or populist measures that it may regard as unbudgeted for, in conflict with other policies, or technically unworkable. Whatever the reason, the government has yet to schedule debate and decisions on any of the various evolutions of the Committee's recommendations. This run of reports, and the relevant government replies (see Procedure Committee 2014, 2016b), is an excellent exposition of the process, its strengths and weaknesses.

Conclusion

On the face of it, the list of sociopolitically significant changes with their roots in a private members' bill is startling: the abolition of slavery, abolition of capital punishment, de-criminalization of homosexuality, the availability of abortion on certain grounds, same-sex marriage. On further consideration, it is far less surprising that such matters would be first put forward by individual campaigners, then reflected, assayed, or brokered via these procedures. After all, Parliament is the forum where such debates focus and the crucible where they are tested—sometimes for many years before society as a whole is 'ready for change' and an effective legislative vehicle is found or developed for technically viable implementation.

Much of the discussion and guidance around PMBs refers to the complicated parliamentary procedures that come with them. To the extent that parliamentary procedure—in calibrating and balancing the rights of the majority to make progress, and of the minority to make trouble—is always going to look complicated to the uninitiated, there is some truth in this. However, with regard specifically to PMBs, the procedures could be said to remain in their historically simplest and purest form (no guillotines, no programming, no EVEL) and, of necessity, bills are shorter and far less complicated. Second readings, amendments at all stages, and third readings simply require the exhaustion of debate, the acquiescence of the House or committee, or a majority of Members voting in support. The complexities arise out of the behaviours of supporters and opposers, as the clock counts down the limited time available and more business is on the agenda than could ever be accommodated. Complexity and confusion then arises from two factors: the efforts made, and deals sought, by the few with some expectations of seeing their bills making progress; and the exploitation of the opportunities for exposure and airtime by the many whose bills have no realistic chance.

Customer	Book Title	Stage	Supplier	Date
OUP	Exploring Parliament	First Proof	Thomson Digital	20 Sep 2017

Further Reading

- BOWLER, S. (2010) 'Private Members' Bills in the UK Parliament: Is there an "Electoral Connection"?', *Journal of Legislative Studies*, Vol. 16 (4), pp. 476–94.
- BRAZIER, A. and FOX, R. (2011) *Enhancing the Role of Backbench MPs: Proposals for Reform of Private Members' Bills*, London: The Hansard Society. Online at: https://assets.contentful.com/u1rlvvbs33ri/VbMtf24V66WAYUAYM02IM/64e33886657c6c24e90239d67ecfd944/Publication__Enhancing-the-role-of-Backbench-MPs-Proposals-for-reform-of-Private-Members-Bills-2011.pdf [accessed 25 June 2017].
- KELLY, R. (2016) *Private Members' Bills*, House of Commons Library Briefing Paper Number 7554, 11 April. Online at: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7554#fullreport> [accessed 25 June 2017].
- MARSH, H. and MARSH, D. (2002) 'Tories in the Killing Fields? The Fate of Private Members' Bills in the 1997 Parliament', *Journal of Legislative Studies*, Vol. 8 (1), pp. 91–112.
- SCOTT, E. (2016) *Private Member's Bills in the House of Lords*, House of Lords Library Note 28, 24 May. Online at: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/LLN-2016-0028> [accessed 25 June 2017].

Case Study 12: The Assisted Dying (No. 2) Bill of Session 2015–16

In 2015, Rob Marris, Labour MP for Wolverhampton South West, introduced a PMB to clarify and liberalize the law around helping someone with a painful terminal illness to end their own life. The bill became a rare example of a PMB debated on its merits and subject to a clear decision of the House in being rejected at second reading on a vote.

BACKGROUND

Under the Suicide Act 1961 it is a criminal offence deliberately to perform 'an act capable of encouraging or assisting the suicide or attempted suicide of another person'. The law is strict: if A assists B to take B's own life, then A may face prosecution. English law bans helping someone who wishes to end their life but cannot do so unaided because of the crippling effects of their illness. This blanket ban is regularly challenged in court and in Parliament.

Previous attempts to change the law on assisted suicide had failed due to procedural obstacles in the Lords. In 2003, Lord Joffe's Patient (Assisted Dying) Bill ran out of time after its second reading in the Lords. Another attempt in 2006 failed after a motion was passed to defer consideration of the bill for six months. In 2015, Lord Falconer introduced a similar bill and it passed second reading. However, Parliament was then prorogued for the 2015 general election. The progress of Lord Falconer's bill indicated that the Lords might favour legislative change. Against this background, Rob Marris MP, winner of the Commons PMB ballot for 2015–16, introduced his Assisted Dying (No. 2) Bill.

The Bill sought to allow those of sound mind with a medical prognosis of less than six months to be given aid to take their own lives following approval by two doctors and a High Court judge. It had the hallmarks of the larger ethical 'society-shaping' PMBs of the past—on slavery, capital punishment, the banning of abortion, and the criminality of homosexual behaviour—that started debates leading to substantial change.

THE DEBATE ON THE BILL

In the lead-up to the debate there was considerable public campaigning on both sides. MPs' inboxes and postbags ballooned and some MPs ran specific constituency polls. The second

Customer	Book Title	Stage	Supplier	Date
OUP	Exploring Parliament	First Proof	Thomson Digital	20 Sep 2017

reading debate lasted for nearly five hours and 76 MPs contributed out of an unprecedented 85 who had applied to do so. This is more than double the average number of participants on equivalent previous occasions.

Unlike previous occasions on which this type of bill had been considered in the Commons, there was no filibustering, nor any other procedural tricks. Natascha Engel, the Deputy Speaker, had made huge efforts during the week beforehand to gain a picture of those broadly in favour or against to ensure that her calling of MPs would be fair. And the debate—as with a mainstream government bill—was allowed to draw to a close in time to hold a division. This was effected by an unopposed Closure motion ('That the Question be now put'), which enabled the House to express and record an unequivocal decision that the public could see and inspect (overall and in the case of each MP attending); 448 out of a possible 638 MPs voted. This is in contrast to the fate of so many PMBs, which are simply 'talked out' and thereby halted without a specific and accountable decision. In a free vote, 118 MPs voted in favour, and 330 against, so the bill was defeated by three to one.

Rob Marris told us that 'opinion polls consistently show that about 75 per cent of the public support this type of legislation, whereas about 75 per cent of current MPs oppose it. In a mature democracy, this imbalance cannot continue indefinitely. Either the public changes its view, or the MPs do. I know which my money is on' (Marris 2016). It might be hard to see the law shifting any time soon. But in the world of PMBs no debate is ever settled, and in June 2016 Lord Hayward introduced a new Assisted Dying Bill into the Lords.

By way of contrast, it is worth considering a PMB from the other end of the scale. On 27 January 2016, Sir David Amess MP received the leave of the House, after a short explanatory speech under Standing Order No. 23 (the ten-minute rule), to introduce a bill 'to make provision about the registration of driving instructors'. The background is that there was no simple way of leaving nor rejoining the list of approved instructors to reflect life circumstances such as caring responsibilities or a long-term illness. Sir David's bill proposed—in seven clauses and less than 2,000 words—an uncontroversial solution which the government supported and nobody objected to. The bill received a second reading without debate on 5 February; was examined in committee on 1 March and not amended; received its third reading on 4 March; and went through its Lords stages between 7 March and 5 May without being amended; it received royal assent on 12 May 2016. In total, this bill received 60 minutes of substantive parliamentary attention and became law.

CONCLUSION

This case study and the latter example illustrate two classic uses of PMBs. On the one hand, providing the opportunity for debate of a substantial issue concerning what kind of society we want to be (in the tradition of the abolition of slavery, of capital punishment, and of the criminality of homosexual behaviour); on the other hand, effecting small, uncontroversial legislative tweaks. What was unusual about Rob Marris' bill was the consensus that emerged—likely to be the result of the depth and breadth of public campaigning—that here was an issue to be debated and decided rather than just obstructed or exhausted by procedural means.

Primary sources

- Assisted Dying (No. 2) Bill, Session 2015–16, Bill No. 7. Online at: <https://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0007/16007.pdf> [accessed 27 June 2017].
- Barber, S., Lipscombe, S., and Dawson, J. (2015) *The Assisted Dying (No. 2) Bill 2015*, House of Commons Library Briefing Paper No. 7292, 4 September. Online at: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7292> [accessed 27 June 2017].

Customer	Book Title	Stage	Supplier	Date
OUP	Exploring Parliament	First Proof	Thomson Digital	20 Sep 2017

- Second reading of the Assisted Dying (No. 2) Bill (HC Debates, 11 September 2015, cc. 656–725). Online at: <https://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150911/debtext/150911-0001.htm> [accessed 27 June 2017].



FURTHER CASE STUDIES

- Homelessness Reduction Act 2017.
- The failed Parliamentary Constituencies (Amendment Bill) (2016–17).
- Access to Medical Treatments (Innovation) Act 2016.

References

MARRIS, R. (2016) Email correspondence with the author.

PRIDDY, S. (2016) *Successful Private Members' Bills Since 1983*, House of Commons Library Paper Number 04568, 5 July. Online at: <http://researchbriefings.files.parliament.uk/documents/SN04568/SN04568.pdf> [accessed 5 August 2017].

PROCEDURE COMMITTEE (2013) *Private Members' bills: Second Report of Session 2013–14*, London: The Stationery Office, HC 188-1. Online at: <https://www.publications.parliament.uk/pa/cm201314/cmselect/cmproced/188/188.pdf> [accessed 5 August 2017].

PROCEDURE COMMITTEE (2014) *Private Members' bills: Government response and revised proposals: Fifth Report of Session 2013–14*, HC 1171. Online at: <https://www.publications.parliament.uk/pa/cm201314/cmselect/cmproced/1171/1171.pdf> [accessed 24 June 2017].

PROCEDURE COMMITTEE (2016a) *Private Members' bills: Third Report of Session 2015–16*, London: The Stationery Office, HC 684. Online at: <https://www.publications.parliament.uk/pa/cm201516/cmselect/cmproced/684/684.pdf> [accessed 24 June 2017].

PROCEDURE COMMITTEE (2016b) *Private Members' bills: Observations on the Government response to the Committee's Third Report of Session 2015–16 HC 684: Second Report of Session 2016–17*, HC 701. Online at: <https://publications.parliament.uk/pa/cm201617/cmselect/cmproced/701/701.pdf> [accessed 24 June 2017].