

# **Strengthening Parliament's Powers of Scrutiny?**

**An assessment of the introduction of  
Public Bill Committees**

**Jessica Levy**

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Department of Political Science  
UCL (University College London)  
29-30 Tavistock Square  
London WC1H 9QU  
Tel: 020 7679 4977 Fax: 020 7679 4978  
Email: [constitution@ucl.ac.uk](mailto:constitution@ucl.ac.uk)  
Web: [www.ucl.ac.uk/constitution-unit/](http://www.ucl.ac.uk/constitution-unit/)  
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## Executive Summary

- The old standing committee system, though vital to the legislative process, was deemed ineffective by numerous commentators on parliament and had long faced pressure for reform. Ad hoc and unspecialised, standing committees lacked many of the features characteristic of effective committees found in other parliaments around the world.
- In November 2006, under the chairmanship of Jack Straw, the Modernisation Committee published a report on *The Legislative Process*, which proposed that most government bills beginning their parliamentary passage in the House of Commons would be sent to a ‘public bill committee’ (PBC). Such committees would be empowered to receive oral and written evidence, in addition to holding traditional line-by-line scrutiny sittings, thus bringing potential to better inform members, involve the public, and improve the quality of parliamentary scrutiny.
- This report reviews the experience of PBCs in the 2006-07 and 2007-08 parliamentary sessions, and concludes that the reforms have been successful in adding value to the legislative process, but that more could be done.
- The appearance of expert witnesses before PBCs has increased the quality and quantity of information available to committee members. The reforms have enhanced transparency of briefing by outside organisations, providing an official platform to inform and influence parliament’s consideration of legislation.
- Members of PBCs are (perhaps compelled to be) more engaged with the task of legislative scrutiny, and backbenchers are becoming more confident participants in the committee stage. Debate is more fruitful, and the flexibility of each PBC to divide its time between witness and detailed scrutiny sessions as it sees appropriate, is welcome.
- PBCs nonetheless suffer from problems that require addressing if their benefits are to be maximised. Their timetabling limits members’ ability to deliver effective scrutiny, with insufficient time to prepare for the committee stage, or to reflect on what is learnt through evidence-taking before moving to line-by-line scrutiny. It is proposed that adequate fixed gaps need to be built into the process to correct this.
- A lack of committee ownership over witness selection, at present an opaque process orchestrated via the usual channels, is a key grievance. This report recommends that the committee itself should determine its timetable and list of witnesses.
- Concerns that committee memberships fail to reflect the balance of opinion in the House of Commons also need to be addressed. One possible reform would be to alter the composition of the Committee of Selection to diminish whip influence.
- Some of this report’s recommendations are simple and easily achievable. For example an increase in resources to facilitate the running of PBCs, and better publicity for the new committees. Other changes, such as those with respect to the timing of PBCs, require a change in attitudes towards scrutiny which may be harder to achieve. The most radical, and potentially most beneficial, reform would be to move to a system of permanent expert legislation committees to parallel the well-respected select committees.
- Although some of the more ambitious proposals suggested here may not happen quickly, the innovation of PBCs has the potential to encourage a significant shift in culture towards legislation in the Commons, which may in time lead to further reforms. In the meantime, the new committees should certainly be welcomed and encouraged.



## **Preface**

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

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

The report draws on a series of almost 30 interviews with many of the key players in public bill committees to date – government and opposition spokespersons, backbenchers, clerks and witnesses – and an examination of documents relating to all such committees in the 2006-07 and 2007-08 sessions. It is the first comprehensive study to review the work of the new committees.

Public bill committees have been described as ‘a step and a half in the right direction.’ In this report Jessica sets out many of their benefits, and also recommends a series of further improvements. If her recommendations are accepted, these important new committees will be moving more strongly in the right direction and making a real contribution to the scrutiny of legislation.

**Professor Robert Hazell**  
**Director, The Constitution Unit**

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

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

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



## Methodology

This investigation developed from an initial 10 000 word dissertation completed as part of a Masters course. The methodology began with a detailed study of all the PBCs held during the 2006-07 and 2007-08 sessions. Via the parliamentary internet and intranet data was gathered on the size, chairmanship, clerkship, dates and number of sittings, number of evidence sessions, amount of written evidence, number and identity of witnesses and host government department for each PBC. These statistics were collated and are presented in summary in *Table 2*. The Hansard reports of the initial debates on the programme motions in each PBC were read in detail, and many of the subsequent witness sessions and line-by-line scrutiny sittings of the committees were skimmed for relevant information. The debates on the programme motion were often when members took the opportunity to raise concerns they had with the procedure of these committees. In addition to this desk research, a handful of committees were attended – both witness and line-by-line scrutiny sessions.

The research was given context through study of past parliamentary reforms and inquiries on the subject of parliamentary modernisation, both those conducted within and external to parliament. All printed information about the process of bringing these reforms into practice and how the new system operates was sought. As this report is the first comprehensive study on the introduction of PBCs to be published, the only information available was official output, either from the Modernisation Committee, the Scrutiny Unit, the Commons Library, or in Hansard.

The principal methodology, however, was a series of 29 in-depth interviews. Interviews were conducted with members of the Chairmen's Panel, government ministers, Conservative and Liberal Democrat front bench spokespeople, backbenchers, clerks and other parliamentary officials, witnesses who had appeared before PBCs, civil servants, and the media. All interviews were recorded for accuracy and permission was sought to use referenced quotations in the report. The request of those interviewees who wished to remain anonymous has been respected. Where quotations appear from an interview, no reference is included in the text. Where a quotation is from Hansard, a reference is given in a footnote.



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

### The old standing committee process and its critics

Standing committees were introduced to the British political system by William Gladstone in 1882, though they had been proposed as early as the 1850s by the Commons' most famous Clerk of the House, Sir Thomas Erskine May (Seaward & Silk 2003: 157). The committees were provided for by standing order in 1888, but it was not until 1906 that it became standard practice for all public bills, except money bills and those of the highest constitutional importance, to be examined in detail by a standing committee following second reading in the House of Commons. Though procedure in these committees was originally to be 'as in Select Committee, unless the House shall otherwise order', it soon came to resemble that in committee of the whole House. In other words, standing committees operated as mini representations of the Commons chamber, adversarial in nature, and presided over by a chair in a role comparable to that of the Commons Speaker. As with other committee types, and in other parliaments around the world, standing committees were introduced in the interests of alleviating pressure on time on the floor of the House. Dividing the membership of the House of Commons into smaller groups that could share some of the legislative and scrutiny tasks between them allowed more time for other business to be taken in plenary. Criticised though it has been, the standing committee system came to be regarded as 'an indispensable part of parliamentary machinery' (Walkland 1979: 254). With regards to parliament's legislative capacity, standing committees were described, even recently, as 'the most important part of the House's consideration of bills' (Blackburn & Kennon 2003: 6-131).

The basic structure of standing committees was formulated during the period of the Liberal government of 1906-14. The original two standing committees of the late nineteenth century, which had specialised in legal and trade bills, were replaced by four committees, each dealing with bills irrespective of their subject. These standing committees were identified by letters of the alphabet – standing committee A, B, C etc. – a practice which continued until the 2006 reforms under investigation in this paper. The number of standing committees grew to five in 1945, and to 'as many as...necessary' in 1948 (House of Commons Information Office 2008). Before the most recent changes there were often up to ten standing committees convened each parliamentary session.

Standing committee membership in the first half of the twentieth century was large and divided into two parts – a substantial permanent membership topped up with up to 15 additional members for particular bills. Several changes were made to reduce the size of these committees, from 80 to 40 members by 1919 and then to a more familiar average of 20 members by 1945. The committees had earned their 'standing' prefix on account of each having a large permanent nucleus of members. In 1960 this feature was scrapped, however, following recommendations by the House of Commons Procedure Committee, which argued that committees should be constituted afresh for each new bill<sup>1</sup>. As a result, while the ten or so committees formed each session in recent years existed for the entire session, each new bill that was brought before a particular committee prompted the reconstitution of the committee's membership. Hence despite the persistence of the name 'standing', these committees were in fact entirely ad hoc. An additional change to the membership of standing committees had a lasting effect on their operation and effectiveness. In 1947, party whips were appointed to standing committees thus, in the opinion of Seaward and Silk, marking 'the end of [standing committees'] relative independence from the party battle in the House' (2003: 159).

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<sup>1</sup> See Procedure Committee 1995, quoting HC 92 of Session 1958-59.

The inconsistency between the committees' nomenclature and how they were constituted is just one unusual feature of British standing committees that contributed to them being considered atypical of comparative committees overseas. Legislative committees elsewhere differ according to their status, powers and structure, with the most active and effective committees characteristically being permanent, specialised, and with jurisdictions mirroring government departments. A strong committee system, able to have 'a significant independent impact on public affairs' (Shaw 1998b: 237), is more likely if committees are cohesive, a feature associated with a permanent membership (Arter 2003: 73); if political parties play a small role in who is chosen to sit; if the committees are able to consider bills before they are discussed in plenary (Shaw 1998a: 789); and if they are supported by generous staffing. The power to receive oral and written evidence boosts a committee's expertise, although it is recognised that this is likely to be naturally fostered as permanent committee members accumulate knowledge over time. In some parliaments, legislative committees double up with executive oversight functions conducted by our select committees, with the same members responsible for both bill and departmental scrutiny. The UK's standing committee system displayed none of these features and has consequently long been regarded as an oddity. Though UK standing committees were more in line with the Commonwealth experience, their difference from the US and European equivalent, significantly their lack of specialisation and permanence, has stymied their effectiveness. The urgency for reform is understandable if one considers the opinion of Mattson and Strøm, that 'strong committees...are at least a necessary condition for effective parliamentary influence' (1995: 250).

The UK's standing committee procedure, which was deemed ripe for reform in 2006, was adversarial, often obstructive, and at times inefficient. A bill would enter its committee stage and be debated, clause-by-clause, in a manner which followed the adversarial procedure of the plenary chamber. At the end of debate on each clause a vote would be taken to decide whether that clause (possibly in an amended form) 'stand part of the bill.' While second reading provided the opportunity to discuss the principle of the proposed legislation, the theory was that committee stage should focus on how to apply the government's proposals to that principle. In practice, this was not always achieved. Attitudes developed which declared that the government's duty was to defend their bill and that their backbenchers were there to vote and keep quiet. For the opposition, members favoured tactics of delay and obstruction. The consequence was that the later clauses and sometimes whole parts of some bills were passed without any examination, with unsatisfactory consequences; for example in the case of the Child Support Act 1991, which introduced the Child Support Agency. The introduction of programming in 1997 reduced the opposition's ability to obstruct progress and prevent the end of a bill ever being reached. The tone of proceedings nonetheless remained adversarial, very different from the more consensual approach of select committees.

Standing committees before the 2006 reforms were procedurally supported by the Public Bill Office, which mainly provided procedural (and not analytical) guidance for the committee chair and some assistance with amendments tabled by opposition and backbench members. Again, unlike select committees, standing committees had no other permanent staff or resources to help their members with briefings and preparation, making effective scrutiny a particularly challenging task for opposition and backbench members unsupported by the research muscle of the civil service. When aspects of a bill were not clear to a member, no direct mechanism existed for questions to be asked of the government side. Instead, all points of query had to be presented in the form of amendments to the bill. These so-called 'probing' amendments came to dominate standing committee proceedings (Modernisation Committee 2006a: summary).

Probing amendments, described as a 'complete waste of time' by one individual interviewed for this investigation, sparked just some of the criticism of the old standing committee process which

prompted its reform. In their evidence to the Modernisation Committee's inquiry which recommended the changes under examination here, the Hansard Society summarised the criticisms of the work of standing committees as follows: '[standing committees] fail to deliver genuine and analytical scrutiny of [bills], their political functions are neutered, dominated almost exclusively by government..., they fail to engage with the public and the media (in contrast to select committees) and they do not adequately utilise the evidence of experts or interested parties' (quoted in Modernisation Committee 2006a: para 50). Standing committees were a toothless scrutiny mechanism. Professor (and now member of the House of Lords) Philip Norton wrote, '[standing committees] are poorly equipped for the purpose for which they are appointed, achieve relatively little in terms of policy effect, and are usually the subject of recommendations for reform' (1998a: 36). Writing a few years later for the Hansard Society, Declan McHugh concluded that the UK's ineffective legislative committee system required 'radical surgery' (2004: 118). Just after the Modernisation Committee reported with its recommendations for reform, Professor Robert Hazell wrote that 'inadequate scrutiny of legislation [remains] the greatest single scandal in the House of Commons' (2007: 12).

Commentators and parliamentary practitioners alike criticised the government-dominated nature of standing committees, which left the impact they could make in terms of scrutiny 'sporadic' (Norton 2005: 93) or 'frequently patchy and haphazard' (Brazier 2004: 19-20). The presence of whips on standing committees and whip influence over membership selection made these committees inflexible both in terms of timing and cross-party cooperation. It became accepted that the government's backbench members would more likely be chosen because of their loyalty to the party than due to any particular interest in the bill. Instead of engaging in debate and scrutiny, these members could be relied upon to toe the line.

Often adversarial, if not acrimonious, standing committees also received criticism for their inability to engage parliamentarians and the wider public in the procedures of legislative scrutiny. Richard Crossman noted the boredom of standing committees, describing them as 'inane' and a waste of time (1975: 561; 1977: 903). J.A.G. Griffith agreed that 'standing committee work, except for the main protagonists, can be tedious' (1974: 52) and Bernard Crick described membership as 'a thankless task' (1970: 88). Andrew Tyrie MP (Conservative) reported reactions from colleagues on both sides of the House to a 'desperate' and 'dire' standing committee process; a 'pointless ritual' that disfigured the legislative process (2000: 11).

Standing committees' ad hoc membership compounded all the difficulties caused by the features of their status and procedure described above. Membership which exists only for the course of one bill (which is likely to spend at most a couple of months going through committee) provides little chance for the creation of camaraderie between members or a cohesive committee spirit. What is essentially a fleeting commitment to scrutiny neither engenders the accumulation of knowledge about particular policy areas in MPs, nor a habit of scrutinising, which has implications for the culture within parliament (to be discussed at the close of this paper). As Philip Norton has commented, 'there is still a long way to go in the institutionalisation' of the UK's legislative committees (1998b: 153).

Calls to reform standing committees have featured in numerous inquiries on parliamentary reform. In its seminal investigation into the British legislative process, *Making the Law*, the Hansard Society concluded that parliament, especially the Commons, fails in its role of effective scrutiny, suggesting that the 'whole process is inefficient and highly unsatisfactory' (1992: 78-79& 85). The Conservative Party's Commission to Strengthen Parliament reported in July 2000 and recommended adding a degree of specialisation to the committee process through careful selection of committee members (Norton Commission 2000: 41). In 2001 the Hansard Society's Newton Commission found that parliamentary scrutiny was 'neither systematic nor rigorous'

(Power 2001: 1). From within parliament, the Lords Constitution Committee and the Commons Procedure and Modernisation Committees have produced numerous recommendations of changes designed to make parliament more effective. Members of parliament such as Dr Tony Wright (2004) have urged ‘relentless pressure and ingenuity’ on the part of reformers seeking to change the culture within parliament to one where a strengthened legislature is considered a good thing; to accept, in the words of the late Robin Cook, that ‘good scrutiny makes for good government.’

## **Other models: special standing committees and select committees**

### *Special standing committees – the precursor to public bill committees*

Evidence-gathering legislative committees as recommended by the reforms under investigation here are not a new phenomenon. It was that bills were to be examined in detail by such committees ‘[a]s a matter of routine’ (Modernisation Committee 2006a: summary), which proved to be the novelty of the 2006 reforms. Public bill committees (‘PBCs’ – the name given to the new committees) were explicitly modelled on existing special standing committees (‘SSCs’) (ibid: para 58). Used only intermittently since their introduction in 1980, SSCs provided a hybrid approach to the committee stage of legislation, grafting up to three evidence sessions on to the start of traditional line-by-line scrutiny. A median was sought between the perceived benefits for effective parliamentary scrutiny of measured, consensual evidence-gathering and the traditional adversarial approach of Westminster party politics characteristic of the existing standing committee system.

Suggestions to combine the advantages of input by expert witnesses and fine detail scrutiny were first mooted in the early 1970s. J.A.G Griffith’s *Parliamentary Scrutiny of Government Bills* (1974) proposed a new format to the committee stage, one influenced by the recommendations of the Procedure Committee (1971) to use select committees to scrutinise public bills, as is the practice in some overseas parliaments (see above). Griffith suggested a committee that would operate in two stages – first as an inquisitorial select committee taking evidence on the bill, and second as a traditional standing committee (1974: 249-51). The Procedure Committee report (1978), famous for leading to the development of departmental select committees, also recommended the establishment of what it called ‘public bill committees.’

These proposals for an adapted committee stage were accepted by the government as a means to improve bill scrutiny. The new committees, which came to be called special standing committees, were introduced on an experimental basis in 1980. They were endowed with the capacity to hold an initial private meeting to deliberate on how much evidence was to be held and which witnesses would be asked to appear. SSCs could hold up to three investigatory sessions, and had the ability to question the minister in charge of the bill if the committee so decided. The evidence-gathering phase of special standing committee would have to be completed within 28 days of the end of a bill’s second reading. After this time, the committee would proceed to line-by-line bill scrutiny as usual practice. During the evidence-taking phase the chair of the relevant departmental select committee would preside over proceedings, bringing his or her accumulated knowledge of the subject area and familiarity with investigative enquiry to the questioning of witnesses. When the SSC turned into a regular standing committee, the select committee chair was replaced by a member of the Chairmen’s Panel (a group of senior backbenchers appointed by the Speaker).

The SSCs were accepted only as an experiment in 1980. The Standing Order changes lapsed after one session but were renewed for an additional single session experiment in 1983. Over this two year period only five bills were committed to the new variety of standing committee. All were

relatively uncontroversial, and provoked little inter-party tension. On the advice of a further Procedure Committee report (1985), the temporary Standing Orders governing SSCs were made permanent in 1986 (Winetrobe 1996: 13). The Procedure Committee had received evidence which was ‘virtually all...enthusiastic’ about the special committee procedure (1985: para 12). Yet it was not until 1994 that a bill was again committed to a special standing committee.

In the quarter century that special standing committees had been available to be used, just nine had been convened. The reticence to use the SSC procedure, as Rogers and Walters noted, likely stemmed from ‘the government’s point of view...that the process [would] take more time and that the party with the majority [would have] less control’ (2006: 223). However, close observers of these committees (including some who contributed to this investigation) note that almost no one who has actually sat on an SSC has expressed anything but praise for them. Indeed, Jack Straw MP’s positive experience of giving evidence to the Immigration and Asylum Bill SSC in 1998-99 when he was Home Secretary can be seen as an important contributing factor to his endorsement of the 2006 reforms and therefore their agreement by the House. Jack Straw was Leader of the House and Chair of the Modernisation Committee in 2006 and responsible for persuading his colleagues in government and parliament to adopt the committee’s recommendations. Jacqui Smith MP (Chief Whip at the time the introduction of PBCs was agreed, and the second crucial player in achieving a reform package which would be accepted by the government and the House) had sat on the Adoption and Children Bill SSC in 2000-01 in a previous role as Minister for Health. Her experience of a SSC is also thought to have played a substantial part in agreeing the content of *The Legislative Process* reforms.

#### *Select committees – superior scrutinisers*

Select committees, in the opinion of Philip Norton, ‘constitute the most important parliamentary reform of the [twentieth] century’ (1998a: 34). The Liaison Committee, commenting on the success of the select committee system in its March 2000 report *Shifting the Balance* wrote:

...it has provided independent scrutiny of government... It has been a source of unbiased information, rational debate, and constructive ideas. It has made the political process less remote, and more accessible to the citizen who is affected by that process...It has also shown the House of Commons at its best: working on the basis of fact, not supposition or prejudice; and with constructive co-operation rather than routine disagreement. (2000: paras 4-5)

Select committees have demonstrated that evidence-gathering can add to the effectiveness of scrutiny. Witness sessions add value in the form of increasing the quantity and quality of information available to MPs; they are a way of enhancing the collective knowledge of the committee members. In addition, select committees are staffed by clerks, administrators and committee experts, who organise their inquiries, advise on witness selection, and prepare and publish their reports. Select committees are also able to employ special advisers to particular inquiries to further add to the volume of expertise at their disposal. Committee output is considered to be authoritative, and can be influential. This is boosted by the position of the chairs of select committees who act as spokespeople for their committees, promoting committee findings to parliament and to the media.

It is the permanent membership of select committees, however, which makes them stand out as superior scrutinisers. In common with most legislative committees overseas, UK select committees enable their members to specialise in a particular field of public policy. Members are elected at the start of a parliament and sit as part of their committee for its duration. The ability to specialise makes MPs more likely to be interested and engaged with their specific duties of

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

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

When Robin Cook was its chair (2001-03) the Commons Modernisation Committee was at its most engaged in suggesting reforms that would foster an effective legislature. Despite introducing headline measures like devolution, Freedom of Information, and a Human Rights Act, New Labour in office was not as committed to wholesale *parliamentary* reform as it had professed to be in advance of the 1997 general election (Flinders 2002: 27). But as Leader of the House, Robin Cook had succeeded in enthusing parliament of the need for change, encouraging the publication of more bills in draft, orders relating to the carry-over of business, and reforms designed to empower select committees. When Jack Straw became Leader of the House in 2006, he also brought this modernising initiative to the role. A politician with a genuine interest in the position of parliament, Jack Straw oversaw the publication of a report infused with the experience of past inquiries and recommendations. Most of the recommended changes to standing committees contained in *The Legislative Process* (Modernisation Committee 2006a) were not new ideas. However, while most previous proposals to inform members, involve the public, and improve parliamentary output did not reach the point of being put formally to parliament, the majority of the Modernisation Committee's 2006 proposals were accepted and implemented.

In *The Legislative Process*, the Modernisation Committee sought to respond to some of the criticisms of the way the House of Commons scrutinises legislation. The recommendations concerning standing committees aimed at not only increasing access to, and understanding of, the legislative process, by starting committees with evidence-gathering sessions, but also recommended changes to the traditional clause-by-clause deliberation in the interests of better scrutiny. It was hoped that through increased communication between those within and outside parliament, informed, engaging and effective scrutiny would occur, resulting in better legislation.

The Modernisation Committee's report recognised the importance of the legislative process as a whole. It began with the words, 'It is in making, or giving effect to the law that parliament impinges most directly on individuals, by conferring on them a wide range of rights and duties' (Modernisation Committee 2006a: para 1). Expressing a desire to make parliament as open and democratic as possible in carrying out this key function, the Committee claimed that:

Members of parliament have no monopoly on wisdom; the government has no monopoly on effective consultation. A system which allows the individual or organisation who has spotted a way in which a pending piece of legislation might affect them to bring this readily to the attention of the legislature is less likely to produce laws which are defective or redundant or which lead to unintended (even unforeseen) consequences. (ibid: para 2)

The committee made clear its intention to seek reforms which would help evoke a culture of openness, where scrutiny was to be regarded as a benefit, not a hindrance, to good government. This reforming attitude was to be applied throughout the legislative process, with the report



calling for increased use of pre-legislative scrutiny and a longer lasting report stage, amongst other recommendations. However, the Modernisation Committee acknowledged early on in its investigation that the committee stage, much criticised and of particular importance due to its responsibility for much of the substantive consideration of bills, warranted particular attention.

While not explicitly summarised by the Committee itself, the aims and intentions of the report's proposed changes to standing committees can be deduced as being as follows:

### **Figure 1: Aims of the Modernisation Committee's Report (HC 1097)**

*General aim:*

- Make clause-by-clause scrutiny of bills more **effective** (para 74).

*Specific aims:*

- Increase the amount, quality and accessibility of **information** available to members who sit on PBCs (summary, paras 53, 75).
- Increase the **access** to and influence of outsider stakeholders over parliament's consideration of bills. The legislative process should be as **open** as possible:
  - the public should be able to observe every aspect of it
  - they should have the opportunity to become involved in it as active citizens (summary, paras 1, 2, 54, 55).
- Introduce a more **collaborative**, evidence-based approach to the legislative process (para 51).
- Introduce a more **flexible** approach to the timetabling of bills
  - remove restrictions on the timing and number of committee sessions (summary, paras 46, 71).

The Modernisation Committee acknowledged much of the criticism of standing committees as valid, but urged that it was 'important not to over-state the weaknesses of the system' (ibid: para 51). Unable to disregard the adversarial tradition of British politics and the utility of partisan debate in teasing out weaknesses in bills, the committee argued the importance of retaining elements of the old system. The report stated, 'We do believe that there is a strong case for introducing a more collaborative, evidence-based approach to the legislative process...but it should supplement, rather than supplant, traditional standing committee debates' (ibid). As a result, the proposed new system involved a hybrid of measures which would both add to the existing system while retaining and improving elements of this system.

The case for including an element of evidence-gathering in the committee process – the headline change of the 2006 reforms – was made through consultation on *The Legislative Process*, as well as with reference to existing positive experience of holding witness sessions in select committees. The Modernisation Committee had issued a consultation document (2006b) intended to canvass opinion on options for an altered committee stage, but it received little attention. In its own evidence sessions, however, conducted during the inquiry that would eventually produce *The Legislative Process*, the committee heard calls from witnesses for the introduction of evidence-taking. Groups including the TUC, CBI and The Law Society viewed evidence-taking as an effective way of engaging the wider public and organised interests in the legislative process (Modernisation Committee 2006a: paras 54-55). Academics, politicians and parliamentary officials also had similar views. In addition to hearing from witnesses, the new committees would be able

to receive written evidence from interested and expert bodies and individuals during the course of scrutiny of the bill.

The Modernisation Committee's report urged the retention of the detailed scrutiny sessions which had comprised the existing standing committee stage. 'Partisan debates can be a useful way of testing the provisions of a bill', the committee argued (2006a: para 51). But the report also proposed that evidence-taking be made standard and recommended that the new committees be given the freedom to decide how much of their time would be devoted to hearing from witnesses. Select committee chairs familiar with the process of evidence-taking would preside over the first part of the committee stage, with members of the Chairmen's Panel assuming control for line-by-line scrutiny. More notice was to be given for amendments, and innovations in the availability and digestibility of committee papers were called for. To remove the long-standing ambiguity surrounding the standing committees' title, they were to be collectively renamed "public bill committees", with each committee named after the bill it was scrutinising, for example the Pensions Bill Committee. The nomenclature changes unveiled in *The Legislative Process* introduced the umbrella term 'general committees' to refer to PBCs, delegated legislation, European, grand, and second reading committees. However, it is only PBCs to which the powers to take evidence apply. (See *Table 1* for details of the Modernisation Committee's recommendations.)

## **The House of Commons debates the recommendations**

*The Legislative Process* was published on September 7, 2006, and debated by the House of Commons two months later<sup>2</sup>. Its recommendations received cross-party support, as illustrated by their acceptance without a vote<sup>3</sup>. Then Leader of the House Jack Straw MP, despite not being in the post at the time the topic of the report was decided upon, championed its proposals (and is credited with having a prime role in the success of these reforms). In the debate he said: 'The motions before the House have the potential to deliver significant improvements to the business of the Commons and the effectiveness of the legislative process. In so doing, they will help Members to carry out their work and to strengthen their bond, and that of parliament more generally, with the public, who we are here to serve'<sup>4</sup>. Theresa May MP, then Shadow Leader of the House, described the proposed changes to standing committees as 'entirely sensible'<sup>5</sup>. For the Liberal Democrats, David Howarth MP welcomed changes which 'will help to focus minds on the purposes of bills'<sup>6</sup>, and David Heath MP was confident the proposals for public bill committees would commend themselves to the House<sup>7</sup>.

It is important to note that in some respects the changes approved by the House of Commons differed from the exact recommendations of *The Legislative Process*. When Jack Straw presented the reform proposals to the House he was moving the motion on behalf of the government, rather than as chair of the Modernisation Committee. It therefore reflected the government's judgements on what had been presented to it by *The Legislative Process*. The motion put before the Commons was as follows:

That this House welcomes the First Report from the Select Committee on Modernisation of the House of Commons on the Legislative Process (HC 1097); approves in particular

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<sup>2</sup> House of Commons Hansard, 1 November 2006: cols. 304-407.

<sup>3</sup> While the main question passed without division, a vote was called on the issue of extending the notice period for amendments. This was carried by 223 votes to 172 (House of Commons Hansard, 1 November 2006: col. 407).

<sup>4</sup> *ibid.*: col. 304.

<sup>5</sup> *ibid.*: col. 322.

<sup>6</sup> *ibid.*: col. 306.

<sup>7</sup> *ibid.*: col. 336.

the proposals for the committal of bills to committees with powers to take evidence to become the normal practice for programmed government bills which start in this House; agrees that this be achieved by Standing Orders through the programming process, with such committees having freedom to decide how many evidence sessions should be held; agrees that the notice period for amendments to bills to be selected for debate in standing committee should, subject to the discretion of the Chair, be extended from two days to three days; supports the renaming of the various kinds of standing committee along the lines proposed by the committee; and endorses the proposals for the gradual development of improved documentation and explanatory processes relating to bills.<sup>8</sup>

In contrast to the Modernisation Committee's recommendations however, the government proposed that instead of a change of chair as the committee stage moved from evidence-taking to detailed scrutiny, PBCs would be chaired throughout by a member of the Chairmen's Panel. The government rejected the report's recommendation that the programme motion moved at the end of second reading should not contain the bill's out-date (the date by which the committee sessions have to be completed). In addition, while the government endorsed the proposals for the development of improved documentation and explanatory processes relating to bills, it emphasised a more gradualist approach to these changes than that suggested by the Modernisation Committee. It is also important to note that the way in which the Standing Orders were revised to accommodate the changes to committee procedure went against the recommendations of the Modernisation Committee. Standing Order changes did not turn all standing committees into SSCs, but kept standing committees and bolted onto them a bit of select committee procedure. This inconsistency has been the root of many of the problems encountered by the new committees, as discussed in Section 4.

In the debate on *The Legislative Process* the government attached several conditions to the acceptance of the reforms. While both government and private members' bills pass through a public bill committee, only the former would be allowed to receive written and oral evidence. Of these government bills, to qualify to call witnesses a bill would have to satisfy three conditions: it must be programmed, it must have started its passage in the Commons, and it must not have received pre-legislative scrutiny. All programmed bills before a PBC were allowed to receive written evidence. This meant that while a bill which started in the House of Lords could receive written evidence, a private member's bill could not.

*Table 1* provides a more detailed comparison between the committee's recommendations, and the changes which were agreed by the House of Commons.

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<sup>8</sup> *ibid*: col. 304.

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

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

Table 1 (continued)

<p><i>Information about bills</i></p>	<ul style="list-style-type: none"> <li>- The government should make available, to MPs and the public, copies of the ministerial briefing on how the bill would look if amendments were agreed – a so-called ‘alternative text.’</li> <li>- That guidance be produced on providing explanatory statements (‘ES’) to amendments, and that a pilot scheme on ES be conducted. Government is expected to provide ES as a matter of course.</li> <li>- Introduce ‘legislation gateways’ and improve access to and clarity of information in general</li> </ul>	<p>No mention during the debate on the report. In practice this has not yet happened, but interviewees indicated progress in this area is imminent.</p> <p><b>Accepted.</b> Pilots on explanatory statements have been held. However, only some government departments have complied with calls to produce these for their amendments.</p> <p><b>Accepted</b></p>
<p><i>Amendments</i></p>	<ul style="list-style-type: none"> <li>- That the notice period for amendments be extended by one day, to allow the committee time to consider implications of amendments.</li> </ul>	<p><b>Accepted</b></p>
<p><i>Chairmanship</i></p>	<ul style="list-style-type: none"> <li>- That the evidence-taking phase of PBCs be chaired by a select committee chair; and the line-by-line scrutiny by a member of the Chairmen’s Panel.</li> </ul>	<p><b>Rejected.</b> A member of the Chairmen’s Panel would preside throughout, on account of the scrutiny being of proposed legislation, and not policy.</p>



## Section 2: Public Bill Committees So Far

### How do they work?

The committee stage is the third formal phase of the legislative process in the House of Commons; it follows the introduction of a bill at first reading and a second reading debate on the bill's broad principles. At the end of second reading (if it is agreed to take the bill forward) a motion is put to commit the bill to a public bill committee under Standing Order 83(A). A date by which the PBC must complete its deliberations is announced<sup>9</sup>, but no other procedural restrictions are placed on the committee. For example, in contrast to procedure for special standing committees, a PBC's out-date is not determined by the need to complete its evidence-gathering within a set number of days after second reading, nor do PBCs have to meet just in morning sessions. The committal of a bill to a PBC allows the committee to 'send for persons, papers and records' in the manner of a select committee, as stipulated under changes to Standing Orders (see Standing Order 84(A)) secured when these reforms were agreed. As recommended by the Modernisation Committee, the PBC is free to decide how often it sits, and what proportion of sittings will be devoted to evidence-taking, beyond the requirement to hold one evidence session with the relevant minister and departmental officials.

As with the old standing committee process, each public bill committee is appointed solely for the bill it is going to consider. There is no permanent membership, and PBCs disband once the bill finishes its committee stage. The method of membership selection also remains consistent with the pre-reform committee stage. The Committee of Selection<sup>10</sup> will formally choose who will sit on a PBC, and it will meet on the Wednesday afternoon following the end of second reading. The Speaker nominates seven members of the PBC (the minister, the Conservative and Lib Dem spokespersons, two party whips, the minister's PPS and one other government backbencher) to form the Programming Sub-Committee (see Cabinet Office 2009). These members have responsibility for setting the PBC's internal timetable, and formally selecting which witnesses will be invited to give evidence. When filling the places on a PBC, the Committee of Selection keep in mind the need for the party balance in committee to mirror the composition of the House of Commons itself. PBC membership can range from 16 to 50 MPs, but the norm is a committee of around 17. Arrangements for chairing PBCs again follow the same lines as those of standing committees. (As discussed above, this is in contrast to the recommendations of the Modernisation Committee.) A member of the Chairmen's Panel will be chosen to preside in an impartial manner over committee proceedings, much as the Speaker does in the House of Commons. To share the work-load often more than one chair is appointed. In this case they will be from different parties.

Public bill committees on government bills meet on Tuesdays and Thursdays in morning and afternoon sessions. If the Committee of Selection met on the Wednesday after second reading, the first PBC meeting will tend to be the following Tuesday. During this intervening time the programming sub-committee will meet to agree the timetable of the committee sessions, and, in a crucial departure from the old standing committees, decide which witnesses will be invited to give evidence. All parties will have a list of desired witnesses and attempts are made by the government's representatives to accommodate the wishes of the opposition. In the first instance the whips will consult the civil servants in the department working on the bill (the 'bill team') for a list of witness names. Subsequent negotiations take place through the mechanism of the usual

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<sup>9</sup> This out-date is arrived at following negotiations between the 'usual channels', the term used to refer to the informal and secretive negotiations between the government and opposition whips.

<sup>10</sup> A body of nine members – mainly whips – which meets weekly to select MPs to serve on PBCs, other general committees, and select committees at the start of each parliament (Rogers & Walters 2006: 355).

channels, effectively giving the government the upper hand. The decision reached at the programming sub-committee is in effect the formal acceptance of a settled programme.

From an administrative point of view, the evidence-gathering undertaken by a PBC is organised by the Scrutiny Unit, the specialist section of the Committee Office otherwise responsible for providing help to select committees with financial and performance scrutiny of government and for supporting committees scrutinising draft bills. Under the terms of the reforms, the Scrutiny Unit, once given the list of proposed witnesses by the programming sub-committee, must contact these individuals and arrange their attendance. Also a new feature of the PBC process, the Scrutiny Unit provides briefing material on the bill for PBC members, coordinating with select committee specialists and staff in the House of Commons Library. The Scrutiny Unit administers all written evidence received throughout the committee stage.

At its first meeting the PBC first debates and agrees a programme motion tabled by the minister, which is in the same terms as the resolution agreed by the programming sub-committee, including the timetable for oral evidence sessions. It is then permitted up to half an hour to sit in private. This period is intended as an organisational session for the committee members to discuss and divide up lines of questioning. It is the first time that the members will have sat as a full committee. On reconvening in public session, the PBC proceeds with evidence-taking, where all members are able to take part in questioning. Written evidence can be accepted at the discretion of the chair throughout the committee stage. Amongst the witnesses called, the minister leading the bill (who is a member of the committee) along with departmental officials will for one session be formally questioned by his or her committee colleagues. The minister and officials usually appear as either the first or last witnesses of the evidence-gathering period, although there is no protocol governing this. Some witnesses will appear alone, while others appear alongside representatives from other bodies and organisations. Again, how this is organised is down to the deliberations of the programming sub-committee (as well as witnesses' availability to appear at particular dates and times).

The committees can take oral evidence at any point, although witnesses tend to appear during the first week of the committee stage. Once witness hearings are completed the PBC progresses to traditional line-by-line scrutiny. This shift is likely to involve not just a change in the mood of proceedings, as consensual questioning is replaced with adversarial debate, but also a change of location. PBCs usually conduct evidence-taking in a committee room in Portcullis House, with its furniture arranged, as in select committee, in the shape of a horseshoe; and line-by-line analysis in a room along the committee corridor in the Palace of Westminster, resembling a mini version of the House of Commons chamber. It is during the detailed scrutiny phase of the committee process that amendments to the bill can be suggested and debated. Amendments need to be tabled three days before they can be raised in committee. During the second part of PBC members will take an in-depth look at the entire bill, often debating clauses in sequence, as was the practice of standing committees. A clerk from the Public Bill Office will sit with the chair throughout both the evidence-taking and line-by-line stages of the PBC. The clerk is there to give advice on procedure, not substance, and they will help with the drafting, grouping and selection of amendments. Their role is therefore mostly focused on the second phase of the committee stage.

In terms of information available to members of a PBC, *The Legislative Process* brought about several innovations. The House of Commons Library now produces a report on the committee stage which is published in time for the report stage, in addition to that which it already produced in advance of second reading. Explanatory statements on amendments, which were introduced as a pilot during the passage of a handful of bills in the 2007-08 session are set to become standard practice. So-called 'legislation gateways' now exist on the parliamentary internet and intranet,



providing a single, easily accessible location for all the information which members, witnesses, and the public may need about a bill. The use of laptops in committee, enabling access to this as well as other briefing material during committee sessions is being trialled. The publication of ‘alternative texts’ of the bill showing the impact of particular amendments is an innovation that has had a slower introduction. While there is enthusiasm that these may soon appear, I understand that the software that would provide them still lags behind the technology that would be needed.

Once the PBC has completed clause-by-clause scrutiny, it reports the bill – in its amended form, if changes have been made – back to the House of Commons.

### **Statistics on the 2006-07 & 2007-08 sessions**

The nomenclature changes contained in the 2006 reforms meant that all bills not examined in detail by a committee of the whole House, were sent to a ‘public bill committee’ for their committee stage. Though only certain ones have the power to call both written and oral evidence, bills which are subject to programme motions can receive written submissions. Programmed bills that in addition start in the Commons and have not received pre-legislative scrutiny can also take oral evidence from witnesses (Modernisation Committee 2006a: paras 58, 62, 73)<sup>11</sup>.

In the first two sessions of their operation, 55 bills were sent to a PBC for detailed scrutiny at the Commons committee stage. Of these, 29 were in the 2006-07 session, and 26 in the 2007-08 session. The majority of these (22 and 21, respectively) were on government bills and the remainder on private members’ bills (plus one hybrid bill). This investigation focuses just on the government bills, as these are the only category of bills covered by the new evidence-taking powers. From 15 November 2006, all public bill committees on bills subject to a programme motion could receive written evidence. The Leader of the House announced that, in order to allow time for arrangements for the new system to be made, PBCs on bills introduced before Christmas 2006 would not make use of their new oral evidence-gathering powers.<sup>12</sup> This meant that just four bills were able to send for witnesses in this first session.

In practice, the first bill committee to put into use the power to seek ‘oral evidence at such meetings as the committee may appoint’ (Standing Order 84(A)) was convened for scrutiny of the Local Government and Public Involvement in Health Bill. (This was despite this bill having had its first reading on 12 December 2006.) In the first session to use the new committee format, the Child Maintenance and Other Payments Bill, Criminal Justice and Immigration Bill, and UK Borders Bill also took written *and oral* evidence. Between them the first four committees to sit under full public bill committee procedure held a total of 52 sittings, 14 of which were devoted to evidence-taking. Altogether 70 witnesses appeared before a PBC in the 2006-07 session, and 221 pieces of written evidence were received and published as part of the committee consideration of these bills. (The bills for this and the subsequent session are listed in *Table 2*.)

With the new procedure acting as standard practice by the 2007-08 session, all government bills meeting the relevant criteria were sent to a PBC with the power to request witness appearances. While bills which started in the House of Lords were scrutinised by a PBC they did not hold oral

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<sup>11</sup> While the context of this sub-section should make it clear where I am referring to PBCs collectively, or PBCs with full evidence-taking powers, throughout the rest of the report PBCs, which can take both written and oral evidence, are considered.

<sup>12</sup> House of Commons Hansard, 1 November 2006: col. 308.

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

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

Committee Name	Date of 1 <sup>st</sup> committee sitting	No. of sittings (no. with witnesses)	No. of witnesses	Items of written evidence accepted
<b>Session 2006-07</b>				
Child Maintenance & Other Payments Bill	17/07/2007	12 (2)	6	6
Criminal Justice & Immigration Bill (carried over to 2007-08)	16/10/2007	8 (4)	24	183
Local Government and Public Involvement in Health Bill	30/01/2007	18 (4)	18	17
UK Borders Bill	27/02/2007	14 (4)	22	15
<b>Total</b>		<b>52 (14)</b>	<b>70</b>	<b>221</b>
<b>Session 2007-08</b>				
Banking Bill	21/10/2008	17 (2)	12	4
Channel Tunnel Rail Link (Supplementary) Bill	04/12/2007	1 (1)	3	0
Counter-Terrorism Bill	22/04/2008	14 (4)	15	8
Criminal Justice & Immigration Bill (carried over from 2006-07)	20/11/2007	8 (0)	0	31
Education & Skills Bill	22/01/2008	20 (6)	41	18
Energy Bill	05/02/2008	15 (3)	37	14
Health & Social Care Bill	08/01/2008	12 (3)	24	35
Housing & Regeneration Bill	11/12/2007	17 (4)	24	13
National Insurance Contributions Bill	15/01/2008	2 (1)	4	0
Pensions Bill	15/01/2008	10 (4)	21	27
Planning Bill	08/01/2008	18 (4)	31	34
Political Parties & Elections Bill	04/11/2008	11 (3)	15	6
Sale of Student Loans Bill	04/12/2008	2 (1)	2	0
<b>Total</b>		<b>147 (36)</b>	<b>229</b>	<b>190</b>

(Source: constructed from information found via [www.publications.parliament.uk/pa/cm/s](http://www.publications.parliament.uk/pa/cm/s))

<sup>13</sup> The Leader of the House had proposed to the Commons that such bills were unlikely to require oral evidence sessions, or at any rate no more than one such session (House of Commons Hansard, 1 November 2006: col. 308). In practice no bill which has started in the Lords has held even this single evidence session.

## Section 3: What Value is Added by the New Public Bill Committee Process?

It is logical to assess any success of, or value added by, these reforms against the original objectives set out by the Modernisation Committee. As explained in Section 1 above, *The Legislative Process* did not include an explicit statement of the aims of the reform proposals for the committee stage of legislation. These are, however, to be found scattered throughout the report and were summarised in *Figure 1*. The first objective – to make clause-by-clause scrutiny of bills more effective – can be considered a general aim of instigating changes to the legislative committee system. Whether or not the reforms were successful in achieving this aim is a question to be considered in the conclusion to this report.

This section assesses the other four broad aims of the reforms: the amount of information available to MPs, access to the committee stage for outside stakeholders (as well as questions of transparency), the impact of introducing a more collaborative, evidence-based process, and greater flexibility with regards to the committee timetable. It identifies areas in which value has been added by the changes. Section 4 below will then discuss the problems with the new committee stage, and suggest some improvements.

### More information

In *The Legislative Process*, the Modernisation Committee sought changes to improve the amount, quality and accessibility of information available at the committee stage (2006a: summary). The report envisaged that the introduction of evidence-taking sessions would ‘first and foremost [provide] a mechanism for ensuring that Members are informed about the subject of the bill’ (ibid: para 53). The Modernisation Committee also advised changes to the format of committee papers to make these more user-friendly; that additional, clearly worded explanatory documents be produced; and that as many documents as possible be computerised for ease of access (ibid: para 75).

The appearance of expert witnesses before PBCs, and to a lesser extent their submissions of informed and concise written evidence, have significantly enhanced both the quality and quantity of information available to committee members. This is a view which was supported, for example, by Liberal Democrat MP Andrew Stunell, who sat on the first PBC to have both written and oral evidence-gathering powers at its disposal. He commented, ‘It is clearly sensible that we have access to expert and practitioner advice on...key elements of the bill’<sup>14</sup>. Roger Gale MP (Conservative), a member of the Chairmen’s Panel who has presided over a number of public bill committees, developed this view of the informational advantage resulting from the reforms to the committee stage. When interviewed he described evidence-taking as ‘a worthwhile exercise’ because ‘it added to the information that the opposition was able to use against the government and that the government was able to use in support of its legislation.’

The pre-reform standing committees were not bereft of access to information about the bills they were charged to examine. As Anne Pinney, Assistant Director of Policy and Research at Barnado’s, explained, producing a written briefing for MPs setting out the organisation’s position on the bill was something that she would have done anyway. Being asked to appear as a witness on the Education and Skills Bill was in one sense just another opportunity to put Barnado’s message across. But she explained that oral evidence gave her a chance to expand on her points in a way that enabled more information to be presented to the committee than by a written

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<sup>14</sup> Local Government & Public Involvement in Health Bill Committee, 30 January 2007: col. 7.

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

It is clear that there is a particular benefit in terms of the information gained from *oral* evidence. While in his previous role<sup>15</sup> as a PBC chair, John Bercow MP (Conservative) told me, ‘there’s all the difference in the world between written submissions and putting somebody on the spot...It’s far more valuable. It’s a rich tapestry of quotable material and relevant matter.’ Neil Carberry, head of Pensions and Employment Policy at the CBI, was adamant that he was able to provide far more detailed and higher quality evidence by appearing as a witness to the Pensions Bill Committee than he would have been able to with a traditional written parliamentary briefing. There seems also to be a psychological impact that results from members being able to question witnesses face-to-face. Several contributors to this investigation supported the view that engaging in questioning was likely to leave one more informed about and alert to the terms of a bill than leafing through a pile of briefing papers. Nick Gibb MP, who led for the Conservatives on the Education and Skills Bill, was one who was unequivocal about this particular benefit: ‘It is one thing to read a dry brief...but seeing somebody give evidence, deliver their case, will inevitably have a bigger impact on your brain, on your understanding of an issue...one knows that from one’s life generally.’

John Healey MP, Minister of State for Communities and Local Government, saw evidence-taking as enabling everyone, especially those less informed, ‘to find a way into [the scrutiny of] the bill.’ For those PBC members hard pressed for time to digest briefings on bills received from lobby organisations, oral evidence sessions are a valuable source of information. This was particularly apparent to backbench members of PBCs. Phil Wilson MP (Labour) spoke about his experience as a backbencher on four PBCs – the Criminal Justice & Immigration Bill, Banking Bill, Counter-Terrorism Bill, and Education & Skills Bill. ‘For me, being a new MP, it is a positive experience because you learn more... [E]vidence-taking at the beginning can help add a bit more depth for backbench MPs who are perhaps not thoroughly engaged with it all.’ Unless a member is particularly interested in the field, ‘backbenchers just don’t have the time or the research power.’ Sir Peter Soulsby MP, a Labour backbencher who has experienced evidence-taking on the Local Government and Public Involvement in Health Bill, agreed that the role of backbenchers had been strengthened, ‘It’s much easier to enter into the argument if you’ve also heard the evidence.’ Sir Peter felt he better understood the purpose and the impact of the bills he examined as a result of hearing expert evidence.

As well as identifying the content of a government bill, the innovation of evidence-taking at committee stage has provided information to members on what might be missing from a bill. This was thought to have been the case with the Energy Bill, and points were raised to this effect by Liberal Democrat and Conservative spokespersons.<sup>16</sup> The exchanges between committee members who can now directly ask questions of the witnesses, and especially of the minister and officials, instead of tagging queries to amendments, have provided a more natural and fruitful method of information gathering. In committees covering more adversarial bills, members do sometimes use witnesses as conduits for arguments with other parties, not so much seeking information as confirmation of their views. In general, however, committees have become more functional, with points made more crisply.

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<sup>15</sup> John Bercow was elected as the Speaker of the House of Commons on 22 June 2009. Where mentioned in this report he will be referred to as a member of the Chairmen’s Panel as it was in this capacity that he was interviewed.

<sup>16</sup> See Energy Bill Committee, 21 February 2008: col. 28.

The terms of the reforms place no requirement on a public bill committee to hear evidence from anyone other than the relevant minister and officials (Modernisation Committee 2006a: para 71). Not all those interviewed, including one minister, saw the value in requiring the minister to give evidence. Some, such as John Healey MP, disagreed. Giving evidence meant he was more informed for the later stages of the bill: ‘for me as the minister managing the bill, it was extremely useful because it made it clear where the greatest elements of concern and controversy were before we got into the scrutiny.’ It is clearly advantageous to be able to engage in a direct dialogue on elements of the bill. It is a practical way for all sides to gain a clear idea of the government’s thinking.

One way of ensuring that evidence-taking maximises the amount of additional information made available to the committee is by inviting as wide a range of witnesses as possible. While there were concerns that whip control over the PBC process would lead to few witnesses being called, analysis of the statistics in Section 2 indicates that this was far from the case. However, the quantity of witness submissions will not necessarily directly reflect the amount of information available to MPs at the committee stage. Some PBCs did succeed in inviting a wide spread of witnesses. The Minister in charge of the Housing and Regeneration Bill, Iain Wright MP, commented, ‘We have a good and diverse range of witnesses...a good balance...the committee will be able to hear and probe different views and perspectives on housing, regulation and regeneration.’<sup>17</sup> Other individuals interviewed developed the notion of ensuring the witnesses were chosen carefully. Liberal Democrat MP David Heath spoke of his success in adding the Advocate General for Scotland to the witness list for the Counter-Terrorism Bill. He explained that not being a member for a Scottish constituency, and having no one else on the committee who was either a Scottish minister or representative of the Scotland Office, left all committee members speaking from a position of ignorance with regards to the impact of the bill on Scotland. David Heath thought ‘having the Advocate General expressing her view directly and candidly was enormously useful.’ He admitted, ‘it changed my position on that part of the bill.’ (For more on witness selection and the potential problems involved, see Section 4 below.)

It is clear that value has also been added due to resource innovations contained in the 2006 reforms. The introduction of ‘legislation gateways’ provided by the House of Commons Library on the parliamentary intranet has brought together all the papers a committee member is likely to need to access during PBC proceedings. As identified in *The Legislative Process*, a participant in a PBC typically needs to refer to the bill, the explanatory notes, the amendment paper, and the chair’s provisional selection of amendments for that sitting (Modernisation Committee 2006a: para 75). Additional resources including bill papers from the House of Commons Library, briefing notes from outside organisations, and other background material may also prove useful in facilitating the member’s scrutiny of the bill. All are now accessible in the same location. Explanatory statements – plain English notes clarifying the meaning and intention of amendments – are an innovation proposed by the 2006 reforms which have so far only occurred as trials in selected committees. While in principle explanatory statements seem capable of adding to the information available to members sitting on these committees, they have only been sporadically embraced by government departments and opposition members. As suggested below, they need to be made compulsory.

## **Openness and access**

The Modernisation Committee had envisaged evidence-taking public bill committees as a way to bring greater openness to the legislative process. It was thought that witness sessions and the

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<sup>17</sup> Housing & Regeneration Bill Committee, 11 December 2007: col. 3.

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

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

The Conservative Party’s immigration spokesman, Damian Green MP, explained how openness in terms of transparency could garner additional benefits in terms of capturing the interest and trust of the public in parliament and the legislative process. ‘Committee stages of bills usually pass by and very rarely impact on anyone, and I think having a committee take evidence...engaged the committee with the outside world and the outside world with the committee.’ His comments align well with the reputation benefits of making the committee stage more transparent which the Modernisation Committee hoped would result from their suggested reforms. Consultation with outside stakeholders is placed on the public record.

Aiming for an open legislative process also entails ensuring that the public and organised interests have the opportunity to become actively involved in law making. The Modernisation Committee opened its report by calling for the House of Commons to ‘revise its procedures so that it is easier for the general public, as well as lobby groups, representative organisations and other stakeholders to influence parliament’s consideration of bills’ (2006a: summary). The committee saw this not only as a democratically sound method of approach to the legislative process, but also a prudent strategy likely to be able to point out defects in proposed legislation (*ibid*: 2).

Compared to the old standing committee system where there was no forum for official contact with outside stakeholders, the reformed PBCs have opened up the legislative process to participation by these groups and individuals. In the opinion of parliamentary officials the reforms to standing committees have increased stakeholder access to the legislative process. *Table 2* shows that in the two parliamentary sessions under investigation, there were a total of 299 witness appearances before PBCs. Discounting ministers and civil servants, as well as repeat witness appearances, 219 individuals were heard from. Broken down by organisation, 129 separate bodies represented their views. This is from a population of 16 committees which were able to call witnesses. These figures clearly show the value added to the committee stage as a result of the reforms – many organisations are given an official platform from which they can seek to inform and to influence parliament’s consideration of legislation. If one considers that the

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

But not all organisations enjoy the privilege of increased access to the legislative process. The Hansard Society has argued that it is easy to predict who will be invited; that witnesses are likely to be the ‘usual suspects’ (2008: 223). Liberal Democrat MP David Heath agreed. From his experience of two PBCs, he noticed little change in the accessibility of the committee stage to outside interests following the reforms under investigation. David Heath said, ‘It was simply the obvious candidates for giving evidence, rehearsing their views, which they would have done before in written briefs or direct lobbying anyway.’ Conservative Education spokesman Nick Gibb MP suggested similar scepticism about the impact of these reforms on access to the legislative process. From the perspective of the front bench, at least, ‘you can’t do the job without talking to the key bodies that are affected...so that happened under the old system.’

Anne Pinney of Barnado’s who herself appeared as a witness to the Education and Skills Bill was adamant that the PBC process is in fact ‘quite closed.’ She explained: ‘Your name has to be put forward [to give evidence], so you already have to have been building up contacts and briefing people and have made clear that you want to be appearing before the committee.’ She referred to one fellow organisation which she thought had valuable things to contribute, but they had not been lobbying as hard as Barnado’s. ‘They didn’t know to put their name forward’, Pinney explained, and so they were not called. ‘That can easily happen to anyone. You have to push...contacts matter hugely. So in that way I don’t think the system is that transparent and open.’ At the other end of the scale, Neil Carberry of the CBI believed there was an expectation on the part of his organisation and the government that the CBI would be involved when it came to the committee stage. Knowing when to submit written evidence was also considered unclear by some interviewees (see discussion of this in Section 4).

All of those interviewed who represented outside stakeholders made clear that while a chance to appear in an oral evidence session was greatly welcomed, the real work was in persuading committee members to adopt an organisation’s amendments. This involved the same level of unofficial briefing and lobbying that the old standing committee system had relied on. Both the representatives from Barnado’s and Gingerbread told of additional events and meetings they had held with MPs and peers in an attempt to influence parliament’s consideration of legislation. However, the CBI thought that *by giving evidence* they had been able to build links with MPs who, in being able to put names to faces, were more at ease to call representatives of the CBI at subsequent stages of the bill to raise questions and discuss what had been said in committee. It appears that while there have been positive steps towards opening up the committee stage to the participation of outside groups, informal action by these bodies continues below the surface. This means that, as PBC chair Roger Gale MP observed, ‘The fact that someone doesn’t get invited in doesn’t mean they don’t get heard.’

## **Members’ engagement**

One aim of the Modernisation Committee was to introduce a more collaborative approach to the legislative process prompted by the members’ shared participation in the evidence-gathering stage of the public bill committee (Modernisation Committee 2006a: para 51). It was hoped that this change to the committee stage would address the sterile nature of the old system, which had negatively affected members’ engagement. Lengthy, adversarial debate on the minutiae of the clauses and schedules of bills had succeeded in making standing committee membership one of

the least engaging and enjoyable duties of MPs. Reformers hoped that beginning the committee stage with evidence-taking, which from select committee experience was seen to be a more consensual and collective activity (ibid: para 53), would help ignite the interests of the members chosen to sit on PBCs.

To a large extent, the reforms were successful in this aim. Damian Green MP described evidence-taking as ‘significantly the most interesting part of the committee stage.’ Asked whether he thought evidence-taking provided an incentive for committee members to engage in the procedure of the PBC, he acknowledged that the reforms had ‘raised the tone and the level of activity on the bill.’ Sir Peter Soulsby MP reported hearing members of all parties speak positively about the chance to hear evidence. Phil Wilson MP admitted that for backbenchers, who he said would not ordinarily be quite so engaged, evidence-taking was a bonus. Wilson noted that it was ‘useful and easier talking about the issues than sifting through all the documents you get from outside stakeholders.’

It was not just the collective activity of evidence-gathering that sparked the engagement of members. With more information at their disposal, the members of PBCs felt that they better understood what was being discussed in committee, and so paid more attention as a result. Janet Allbeson of Gingerbread felt evidence-taking meant the MPs *had* to engage more. ‘I think it does ingrain in them a greater responsibility for what the task [at hand] is’, she said. At a more cynical level, one parliamentary official observed that engagement was bound to increase with evidence-taking because in a committee of 17 members, if all the questioning is done by three or four members of the opposition, lack of involvement on the part of the other committee members is more exposed. If nothing else, members would be shamed into becoming more engaged with their duties of scrutiny.

While this report argues that the 2006 reforms have been a success in terms of members’ engagement, this was not always the case, especially in the early PBCs. The lack of engagement on the part of the Labour members of the UK Borders Bill Committee had registered with its chair, Eric Illsley MP (Labour). He recalled how in the first evidence session ‘the government side didn’t ask a question.’ Another committee chair pointed to the burden placed on the Scrutiny Unit to suggest lines of questioning because the members did not want to engage sufficiently with the process to do their own work on the bill. Both chairs were referring to experience on committees that were amongst the first to use the new powers. It is possible that on these committees, members new to the process were still stuck to the old way of doing the committee stage – keeping quiet and letting the front bench spokespeople lead proceedings. There is the hope that with time, members’ engagement will increase further.

Although members engage more than on the old standing committees, engagement has not developed to the extent found in select committees. Because membership is not permanent, members of PBCs do not develop a close working relationship nor act with the same camaraderie displayed by select committees. Moreover, the more modest aspiration that beginning PBCs with a method of scrutiny based on consensus would inform the mood of the later line-by-line scrutiny of the bill does not seem to have occurred in practice either. Roger Gale MP revealed that he ‘had hoped it was going to, but I got the feeling it didn’t.’

One resource innovation which has the potential to enhance the engagement of members of PBCs is the introduction of legislation gateways. These ought to save MPs time, aid their understanding of the bill and increase accessibility to it, thus breaking down some of the traditional barriers to members’ full engagement with the committee stage. Members are said to like the resource, but it is hard to tell how much it is used. The legislation gateways should also



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

## **Improved debate**

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

The improved debate has continued into the clause-by-clause phase of the process. Damian Green MP reflected on the committee sessions attended by witnesses during consideration of the UK Borders Bill: '...it is an extremely good innovation, for which I am happy to commend the Leader of the House. Some of my remarks on...amendments arise from the evidence we heard. It would be extremely useful to show that taking expert witness evidence helps us to have better debates during the scrutiny stage of the bill.'<sup>18</sup> He proceeded to mention the evidence given by Liberty and a barrister from the Immigration Law Practitioners' Association.

Andrew Selous MP (Conservative) made similar remarks as the Child Maintenance and Other Payments Bill moved from evidence-taking sessions to detailed scrutiny. He commented, 'I believe that we obtained some very useful evidence from our witnesses, some of which I shall refer to during our deliberations today.'<sup>19</sup> Labour backbencher Sir Peter Soulsby MP was another who noted the impact of hearing evidence: '...right from the very start it was interesting the extent to which in the debate on subsequent clauses members referred back to "As so and so told us" etc.' Greater interest has spawned greater engagement and led to improved debate.

Whether improved debate leads to different or better legislation is harder to assess. One view is that the effectiveness of these reforms can only be judged by measuring the extent to which information from witnesses is fed into discussion in later stages of a bill. But the impact of legislative reform is not easily quantifiable, and there can be less tangible effects that indicate success. This issue was discussed with John Bercow MP, who chaired the Counter-Terrorism Bill and Education and Skills Bill. He suggested that evidence-taking 'doesn't necessarily change the outcome but it can make the discussion more meaningful.' How one judges the success of the PBC reforms is discussed further in the Conclusion to this report.

## **Flexibility**

The final aim of the reforms was to make the committee stage more flexible, part of a wider aim to introduce a more flexible approach generally to the timetabling of bills.

Compared to the special standing committee procedure on which the PBCs were based, the reformed committee stage is more flexible. PBCs have not followed the procedure of SSCs,

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<sup>18</sup> UK Borders Bill Committee, 6 March 2007: col. 137.

<sup>19</sup> Child Maintenance & Other Payments Bill Committee, 19 July 2007: col. 87.

which were limited to just three public evidence-gathering sessions. In the period under investigation, with the exception of the simplest bills which sped through committee, the majority of PBCs held four complete sittings with witnesses.

But there are strict limits to this flexibility. Whip presence and a government majority combine to make the programming sub-committee resistant to changes, which they fear might affect control over the timetabling of the committee. There have only been occasional successes in adding witnesses to the evidence-taking programme through successful amendments to the programme motion as decided by the programming sub-committee. For example, the Criminal Justice and Immigration Bill Committee succeeded in adding the Evangelical Alliance to the witness list during debate on the programme motion.<sup>20</sup> While such examples are good in terms of outcome, it is noted that demanding a new witness with only two days' notice can be highly disruptive in terms of practicality. Amendments sought to the programme motion for the UK Borders Bill so as to enable Migration Watch to appear a week later than the whips desired is a notable example of the inflexibility of PBCs as well as of the persistence of party political spats at committee stage.<sup>21</sup>

All PBCs began with evidence-taking and progressed to detailed scrutiny. There is nothing in the rules governing the committee stage, however, to prevent a PBC from returning to evidence-taking once clause-by-clause analysis has started. That just one committee (on the UK Borders Bill) has yet used this capacity perhaps suggests some residual inflexibility in the committee process. The flexibility of a PBC to divide its time between evidence and scrutiny sessions is to be welcomed, however. Different balances will be appropriate to different bills, and a system which allows this to be decided on a bill-by-bill basis is ideal. Furthermore, the Modernisation Committee should be praised for deciding to retain the traditional clause-by-clause scrutiny sessions instead of basing all scrutiny on evidence-taking. Putting the government on the spot by debate on clauses and amendments is an effective way of making ministers justify their bills.

While it is possible to identify changes which have added value to the committee stage in terms of greater flexibility, the government's rejection of the Modernisation Committee's recommendations regarding programming has left some of the restrictions on the timing and number of committee sessions in place (contrary to the aims of *The Legislative Process*, see Modernisation Committee 2006a: paras 46, 71). That a single programme motion, which defines the date by which a bill must leave PBC immediately, continues to be moved at the end of second reading sets restrictions on what the committee can achieve. It may be able to define its timetable and the division of sittings between evidence-gathering and line-by-line scrutiny, but it still has an inflexible amount of time at its disposal. Injecting further flexibility into the committee stage of the legislative process would require a willingness to address these issues surrounding programming and timetabling of legislation. These can be associated with the culture of doing politics in Westminster (to be raised in the Conclusion).

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<sup>20</sup> Criminal Justice & Immigration Bill Committee, 16 October 2007: col. 9.

<sup>21</sup> See UK Borders Bill Committee, 27 February 2007: cols. 1-11.

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

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

The problems with PBCs are examined below, starting with the two most fundamental areas of weakness – the timing of these committees, and the decisions about witnesses. For each problem, suggested improvements are offered. These appear in bold type, and are summarised in the Recommendations section at the end of this report.

### Timing

As discussed in Section 3 above, the reforms to the committee stage have in some respects injected more flexibility into this part of the legislative process. PBCs are free to set their own timetable, dividing time available between evidence and scrutiny sessions as they see fit. As a result, when compared to special standing committees on which PBCs were modelled, the new committees are blessed with significantly greater autonomy over the timetabling of their proceedings. Compared to regular standing committees, however, the PBC reforms have made no obvious impact on the timing of the committee stage and have even added to pressure on time with the need now to accommodate evidence and scrutiny sessions. Residual inflexibility and other issues surrounding the timing of PBCs continue to cause problems for the effectiveness of scrutiny at this part of the legislative process. Problems raised by the timing of PBCs are fundamental to many aspects of the other concerns with the new process.

In some areas, the 2006 reforms have failed to address timing problems which already existed with the old standing committee system. But additional concerns about timing have also been created as a direct result of adopting the new committee procedure. The continued practice of setting a bill's out-date from committee in the motions moved at the end of second reading places a straitjacket around the committee's timetable. It means that from the moment a bill enters a PBC, one eye must be kept firmly on the clock. This nervousness about time is in part a result of the government's rejection of the Modernisation Committee's recommendation to split the programme motion in two – one declaring that the bill is to be programmed, the other setting an out-date and moved a few days later, allowing time to reflect on any impact of what was said at second reading. Because of the notice required to be given before a programme motion is tabled, its details, including the out-date, must in fact be settled in advance of the second reading debate. This arrangement was far from ideal in the pre-reform days of standing committees. The consequence of too short a time in committee meant that some bills were not adequately scrutinised. While the introduction of programming in 1997 made it more likely that all clauses of a bill would receive attention, the tendency remained to place most consideration on the early clauses and rush through the later ones. That the same timing structure was maintained for public bill committees is a significant problem. This fault is not with the contents of the Modernisation Committee's report, but with the way in which it was accepted.

The problems with the timetabling of the committee stage are part of wider issues concerning timing in parliament. It is, as one clerk commented, ‘a problem which haunts everything we do.’ The perennial conflict between parliament’s need to scrutinise legislation, and the government’s need to get its legislation through feeds tensions over the time available for a legislative process that, even with carry-over of bills, is not infinite. The timetabling straitjacket placed on bills is a symptom of this conflict. A timetable which was fairly unsuited to the old committee stage is, with public bill committees, now under added strain. Starting the committee stage with evidence-gathering, while maintaining the standing committee timetable, has led to four pressure points in terms of timing:

- There is insufficient time for officials, witnesses and members to prepare for the committee stage.
- The balance between evidence-taking and detailed scrutiny is under strain, prompting concern that there is not enough time to do both well.
- Members are not given the time to reflect on what has been learnt during the witness sessions.
- In some cases there is not sufficient time available to give the required notice for informed amendments.

The first of these concerns – the pressure that everyone involved is placed under to prepare for committee – was raised by all those interviewed for this inquiry and was aired in the very first committee to hear from outside witnesses under the changed Standing Orders. The Local Government and Public Involvement in Health Bill had received its second reading on a Monday. The committee membership was decided on the Wednesday, and the programming sub-committee met on the Thursday. At this meeting it was agreed that the first committee session to hear evidence would be the following Tuesday. In the days immediately prior to the meeting of the programming sub-committee, consultation among the usual channels had resulted in a list of witnesses being given to the Scrutiny Unit to check the availability of witnesses, with the aim of agreeing a programme at the programming sub-committee. This timetable, which was similar to that followed by many PBCs, left the Scrutiny Unit little time to contact those the programming sub-committee wished to give evidence. The Scrutiny Unit must track down the witnesses, make sure they are who the programming sub-committee think they are (there has been a case of a mis-identified local councillor), ensure they have the correct job titles, and see if they can attend often less than a week later. If members seek to change the programme at the first official meeting of the PBC (which they are allowed to do), this can cause even more stress for both the Scrutiny Unit and the witnesses, who may well have had to devote significant effort to reorganising their schedules to be there in the first place.

The pressure on time worried Conservative MP Alistair Burt: ‘In order for there to be sensible consideration of who ought to give evidence and to give witnesses time to rearrange their diaries accordingly, a certain amount of time is necessary. We are concerned that that has not been given.’<sup>22</sup> From the potential witnesses’ points of view the timing of committees has been problematic. It is not just that witnesses need to have time in their diaries to appear, but they also need time to prepare. In interviews, Neil Carberry of the CBI spoke of the need to produce a written submission and prepare for oral evidence ‘in a bit of a rush.’ Anne Pinney of Barnardo’s explained that her organisation had declined to give expert evidence to a recent bill having only been told two days before they were scheduled to appear. ‘The timescale was impossible’, she said. Time constraints were blamed for the concerns of some interviewees about who the witnesses were (a problem expanded on in the following sub-section). One chair thought that the quality of evidence was damaged by the rushed process of deciding who to call as a witness. ‘[I]f

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<sup>22</sup> Local Government & Public Involvement in Health Bill Committee, 30 January 2007: col. 4.

there isn't sufficient time for people to be invited to come along to give evidence...the quality of the evidence-giving is less likely to be incisive.' Eric Illsley MP, another member of the Chairmen's Panel, said, 'Because you're doing this in a condensed time scale...sometimes you can bring a witness who is probably going to be inappropriate.' It can happen that a witness suggested by the programming sub-committee, when contacted, feels they have little to contribute, or even that they are unaware of the bill.

To provide effective scrutiny, members of public bill committees must also be given enough time to prepare. The hasty progress to committee from the end of second reading, and the rush to begin evidence-gathering straight away means that members have no initial private committee session to meet as a committee and discuss witnesses and approaches to questioning. The absence of this private meeting is in contrast to the practice of special standing committees. This, argued one official, had not been the intention of the Modernisation Committee. The lack of time for a planning meeting crucially excludes most members from involvement in deciding who to call to give evidence (the substantial problems arising from this will be discussed below). The current arrangements for the start of the committee stage do not encourage members to be prepared. There is no chance to foster a collective approach to the questioning of witnesses, which, from select committee experience, would likely make these sessions more fruitful. Logistically it can be hard for members (and chairs) of committees to absorb all the written material they receive from witnesses and from the Scrutiny Unit and Commons Library. Some members spoke of being 'overwhelmed' by the large numbers of pieces of paper arriving at short notice.<sup>23</sup> The speed with which some bills enter committee even prevents some members from attending the initial meetings, a problem carried over from the old system that needs to be addressed.

All involved in the new committee system would benefit from a longer lead-in time to facilitate the preparatory work required. This improvement was overlooked by *The Legislative Process*. It is recommended that **the programme motion moved at the end of second reading should acknowledge this need to prepare for PBCs by including a gap of at minimum two weeks between the end of second reading and the first evidence-taking session.** But this should not be achieved by shaving two weeks off the time available for the committee stage – whether evidence-taking or line-by-line scrutiny time. The two week gap to enable the Scrutiny Unit to organise the evidence sessions, the witnesses to find time to be able to appear and to be prepared, and the members to inform themselves about the bill, should be extra time. A pause before the committee stage had been advised by Sir Alan Haselhurst, the deputy Speaker of the House of Commons, in a memo on the new process referred to during the first PBC.<sup>24</sup>

The second pressure point about timing is a symptom of the programming straitjacket described above. The introduction of evidence sessions, it was argued (Modernisation Committee 2006a: para 69), would not necessarily extend the committee stage, and in fact had the potential to decrease the amount of time needed for scrutinising debate. However, this investigation found that tension exists over the balance between the two phases of PBCs. With some interviewees favouring more evidence-taking and others keen to ensure sufficient energy was devoted to traditional scrutiny, the lack of elasticity in the committee timetable is still an issue.<sup>25</sup>

What then can be done about this? One option is to adopt the Modernisation Committee's original advice of moving two programme motions. This would remove the current absurdity of

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<sup>23</sup> Alun Michael, Planning Bill Committee, 8 January 2008: cols. 1-2.

<sup>24</sup> Local Government and Public Involvement in Health Bill Committee, 30 January 2007: col. 6.

<sup>25</sup> See a comparison of the debates in committee on the programme motions for the Pensions Bill and Local Government and Public Involvement in Health Bill for illustration (15 January 2008: col. 4, and 30 January 2007: col. 4 respectively).

deciding on how much time will be needed for the PBC before the principles of the bill have even been debated at second reading. Moving a second programme motion informed by discussion on the themes of the bill could lead to a more suitable timetable, for example with regards to sharing time between evidence and scrutiny, and knowing which witnesses associated with more contentious elements of the bill may perhaps require more time to offer and be quizzed on their views. However, this would imply a reliance on the detail of second reading debate, which some interviewees thought unrealistic. Front bench spokespeople asserted that the parties are likely to have an idea of who they might wish to invite as witnesses long before second reading; for those leading on a bill it is necessary to be sufficiently prepared and engaged. Yet even if it were decided that following the Modernisation Committee's recommendations on the programme motion would constitute an improvement to the PBC process, the committee stage would still acquire a bounded timetable, just one decided upon a few days later than current practice. This is a natural result of the demands on parliamentary time, of the ever-present conflict between parliament's duty to scrutinise government bills, and a government's wish to get its legislative business passed. Addressing this requires wholesale reform prompted by a radical change in the culture of parliamentary politics in Britain.

The third problem to arise due to the timing of PBCs is that the speed with which bills progress from evidence-taking to scrutiny within the committee stage does not allow members time to reflect on what has been learnt during the witness sessions. This third pressure point is associated with the fourth – the need for sufficient time to table amendments. **In order to make evidence-taking worthwhile, time needs to be put aside for members to absorb the information received.** The Modernisation Committee failed to suggest such an arrangement. The call for a period of reflection was mentioned in several interviews, and has been raised repeatedly during committee proceedings. For example, Andrew Tyrie MP (Conservative) stated, 'It strikes me that the crucial issue, if we are to make sense of the evidence sitting, is to be given enough time to think through [what we have learnt]<sup>26</sup>. In informing committee members about the bill, part of the purpose of evidence-taking is to facilitate and (it is hoped) enhance the line-by-line scrutiny stage. In taking time to reflect on what has been learnt from witnesses, members must also reflect, "Now that I have learnt things I didn't know at the start of the operation, how does that affect my view on the bill and the amendments I want to put down?"

Under the terms of the reforms accepted by the House of Commons, the notice period for amendments tabled during the committee stage was extended from two to three days. It was intended that this would allow government and opposition members alike more time to reflect on the implications of amendments before they were debated (Modernisation Committee 2006a: para 79). This was a sensible change but, combined with the speed of the committee timetable, has resulted in procedures which are in clear need of further reform.

The tight timetabling of many PBCs has meant that members are unable to table amendments informed by the evidence received in time for the first line-by-line scrutiny session. An official on the Banking Bill Committee explained: 'The first evidence session was on the Tuesday, the first traditional scrutiny of clauses was on the Thursday. The cut off for the tabling of amendments to be raised on the Thursday was the rise of the House on the Monday. Therefore nothing said on Tuesday could influence any amendment debated on Thursday because the text would have already had to be handed in.' David Heath MP described his experience of this effect of the compressed timetable as 'a clear flaw in the procedure.' Many other bills suffered in this way from tight timetabling. In the 2007-08 session, the Health and Social Care Bill began its line-by-line scrutiny the afternoon of the same day it heard from its final witness. Because there were only two committee sittings of the National Insurance Contributions Bill and Sale of Student

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<sup>26</sup> Political Parties & Elections Bill Committee, 4 November 2008: col. 3. See also Edward Garnier in the Criminal Justice & Immigration Bill Committee, 16 October 2007: col. 8.

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

In the interests of reflecting on what is learnt through evidence-taking, and fully realising the influence expert evidence can have on amending (with the intention of improving) legislation, **there should be a full week's gap between the final witness appearance and the start of line-by-line scrutiny.** If the last evidence sitting is on Thursday afternoon, the committee should not reconvene until at least the following Thursday. Once again, this extra week should be new time.

Adding three weeks to the committee stage of the legislative process is unlikely to be welcomed by all. The achievability of this change will be viewed differently depending on an individual's role in the PBC and the wider legislative process. Its acceptance as a method to tackle the problems of timing will also be linked to the wider question of accepting a culture of scrutiny. In defence of these proposals this section on timing concludes with the observations of one interviewee on the inflexibility of the timetabling of the Education and Skills Bill:

I don't really know why we have to curtail it. There is a big gap after the committee stage, and there is a huge gap coming back from the Lords. I mean we only looked at the Lords amendments last week [mid-November], and [the committee sat] in January. And now we have a change in procedure so you can carry over from one session to the next, so I don't see why there has to be any rush in the Commons.

## **Witnesses and evidence**

In addition to the problems associated with the strict timetabling of PBCs, concerns were repeatedly raised about the witnesses appearing before these committees. While the principle of evidence-taking has been welcomed as an improvement to the committee stage (see discussion in previous sections of this report) the problems caused by the organisation of the witness process are substantial. These fall under two main headings: firstly, who decides who will be invited to give evidence; and secondly, are the right people heard from?

PBCs suffer from a lack of committee ownership over their proceedings. This is particularly evident with the issue of witness selection. While recommending that evidence-gathering powers be granted to PBCs, the Modernisation Committee's report lacked detail on how this process would operate. At present the witness list does not emerge in a transparent way. The responsibility for drawing it up is formally vested in the programming sub-committee, which consists of the party spokespeople, a government and an opposition whip, and two backbenchers who are always from the governing party and are usually not entirely free agents (for example, the PPS to the minister). The sub-committee is dominated by the whips, and the programme motion they are charged to arrive at is in fact formulated through the bi-lateral mechanisms of the usual channels. In theory each party's representatives will present a list of their favoured witnesses and either everyone's views will be accommodated or a compromise will be reached. However, the Cabinet Office's detailed guide to law making for ministers and civil servants suggests substantial involvement by the government department in this process (2009). In reality, the officials in the whips' office will ask the bill team for suggestions and then draw up a proposed programme to give to the government whips. Since the whips are not subject specialists, it is perhaps unsurprising that they turn to the bill teams for ideas about witness selection. Nonetheless, the secretive nature of these deliberations, the government's majority on the sub-committee, and crucially the exclusion of the other PBC members, has resulted in an unsatisfactory state of

affairs. Ideally, the whips of all parties will consult, and individually seek the views of their own party's committee members. But because this will occur behind closed doors, there is no way of knowing if it in fact takes place. Witness selection is one area of the reformed process over which the influence of the usual channels has proved problematic.

Tensions resulting from the opaque nature of these decisions were raised in several PBCs during the 2006-07 and 2007-08 sessions. While various ministers have spoken in favour of the programming sub-committee's ability to deliver a good range of witnesses, backbench and opposition members have been far from reassured. As David Heath MP explained: 'When we take evidence, the committee does not act as a hierarchy but as a select committee. Therefore, it should be open for all hon. members to suggest who might usefully give evidence.'<sup>27</sup> In the Local Government and Public Involvement in Health Bill Committee, Labour backbencher Patrick Hall MP questioned the overrepresentation of local government spokespersons amongst the committee's witnesses, especially considering that other committee members had referred to 'a huge list of possible witnesses' who had not been invited.<sup>28</sup> Conservative Edward Garnier MP, in the Criminal Justice and Immigration Bill Committee, alleged that suggestions of possible witnesses had been ignored by the government.<sup>29</sup> Liam Byrne MP, the Minister who led the UK Borders Bill tried to stress the integrity of the witness selection procedures.<sup>30</sup> The committee's chair, however, had a different impression. Eric Illsley MP told me, 'The government whips really were not 100 per cent behind the system and you could see that there was some reluctance on their part to call witnesses who would be antagonistic towards the government's position.'

In contrast to the PBC procedure, the selection of witnesses by select committees is a collaborative process. Select committees usually hold a deliberative meeting early in an inquiry to decide which witnesses to invite, where an initial list prepared by committee staff is considered and members can propose alternative or additional witnesses to call. If legislative scrutiny evidence sessions are to be used to maximum benefit, the decision over who PBCs hear from cannot be in the hands of a government-dominated minority of committee members. Nor can the process be whip-owned. The Modernisation Committee seem to have assumed that PBCs would follow the SSC format and hold a private meeting of the whole committee to decide on witnesses. But their report on *The Legislative Process* did not state this recommendation explicitly, and it needs to be made explicit now. **An initial, private meeting of all committee members should be held to decide on the witness list and the committee's timetable. This planning session would replace the need for a programming sub-committee. A week after this planning meeting the whole committee should reconvene to formally agree the programme motion.** In the intervening time the Scrutiny Unit will have made enquiries about the availability of the desired witnesses. These meetings can be held during the advised two week gap between second reading and the first evidence-gathering session, still leaving more time than is currently available to prepare for the committee stage. There would then be no need to approve the programme motion in the first 30 minutes of the first committee sitting, as currently, so this period could instead be used solely for discussion and dividing up of questions. This would mirror practice in select committees, and leave more time for questioning the first witnesses.

The administration of the witness selection process needs to change so that the authority to determine the terms of the programme motion (including the list of witnesses) moves from the executive to parliament. At the staff level, members of the Scrutiny Unit and the committee clerk from the Public Bill Office should facilitate decisions regarding witnesses and programming

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<sup>27</sup> Criminal Justice & Immigration Bill Committee, 16 October 2007: col. 7.

<sup>28</sup> Local Government & Public Involvement in Health Bill Committee, 30 January 2007: col. 7.

<sup>29</sup> Criminal Justice & Immigration Bill Committee, 16 October 2007: col. 5.

<sup>30</sup> UK Borders Bill Committee, 27 February 2007: col. 3.



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

The second worry with the arrangements for witness appearances before PBCs is whether the right people are called. Because of the strict timetable of these committees, not everybody can be heard from. The need to strike a balance makes selecting the correct witnesses even more important. This begs the question, who are the 'correct' witnesses? In its 2004 report *Connecting Parliament with the Public* the Modernisation Committee said the legislative process should become more accessible and understandable, especially to those outside parliament (2004). But there is doubt about who the targets 'outside' parliament were. Were they organised interests or unaffiliated members of the public? Of the 219 individual witnesses heard from in the sessions under investigation just one declared himself to be there 'as an individual.'<sup>31</sup> David Heath MP was critical of the identity of the witnesses convened for the PBCs he sat on, and he advised that committees need to be more adventurous in where they gather evidence from. When interviewed he recommended hearing from the end users, those affected by the new pieces of legislation, rather than focusing on organised interests. This would help to open up the participation in evidence-taking sessions. However, identifying and accessing suitable individuals beyond the 'usual suspects' would not necessarily be easy.

PBCs lack the capacity of select committees to ask for responses to an 'Issues and Questions paper' as part of the evidence-gathering process. Adopting this mechanism could be one way that PBCs could attract a wider spread of interested outside parties, and potential witnesses. Because submitting written evidence may be a more realistic way for members of the public to take part, **a PBC should be encouraged to use their power formally to invite individuals or organisations to submit written evidence.** The PBC currently does not make use of this power because by the time it first meets it is essentially too late to start appealing for evidence. If the recommended initial planning meeting is adopted however, **the PBC should issue a call for evidence in a press release immediately after the first planning meeting.** Members of the PBCs should be encouraged to suggest people who might be asked to provide written evidence, either because they have particular knowledge or expertise or because they can relate experiences that might have a bearing on the formulation of the proposed piece of legislation. This would enable the committee to gain a clearer idea of the impact the legislation they are examining will have on the public. **To maximise the potential impact of written evidence it needs to be received by the PBC in time for its members to consider its contents and apply what is learnt to their scrutiny of the bill.** The need for written evidence to arrive far enough in advance of line-by-line scrutiny links to the recommendations below about greater publicity.

Several interviewees expressed the view that witness lists were by and large expected: that those who were asked to give oral representations to PBCs were 'the usual suspects.' Anne Pinney of Barnado's was one who argued that there is a degree of predictability in who will appear. There is a danger that the organisations that are not called can feel disenfranchised and demoralised if the same people appear again and again. But there can be good reason for inviting the 'usual suspects', as these groups and individuals have gained status and recognition as experts in their fields. Even if the candidates heard from in PBC are obvious, the fact that they are appearing in person, rather than through written memo alone, enhances the amount and depth of evidence

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<sup>31</sup> Witness Tom Burke claimed, "I would like to make it very clear that I am here in my own right." Energy Bill Committee, 5 February 2008: col. 66.

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

There are a couple of interim changes to the administration of the witness selection process that can be made immediately, even if the programming sub-committee retains control of determining who will be called to appear before a PBC. Considering PBCs' lack of staffing support and inability to develop their own expertise in the bill area due to their ad hoc nature, better links could be fostered with the select committees who are experienced at choosing appropriate witnesses to aid scrutiny. Developing a link at the staff level with the clerk of the relevant select committee would fulfill this recommendation, but this would be a relationship without an accountability trail (and there is little input by the clerks currently in this process). Instead, **the whips on the programming sub-committee should be encouraged to consult with the chair of the relevant select committee about witness choices, with the aim of producing a more informed and valuable witness list.** Of course, if the recommendation to replace the programming sub-committee with a planning meeting of the whole committee is accepted, and if clerks in the Scrutiny Unit and Public Bill Office are involved in the decision-making processes, they will be able to make use of their existing strong links with the select committee staff to this effect.

To provide greater clarity about *why* specific witnesses are chosen, and to avoid scenarios of witnesses being put forward on the strength of the minister meeting them at a party (which did happen in one case), the Scrutiny Unit need to be better briefed than they currently are on why they are asking particular witnesses to appear. It is important that the Scrutiny Unit are able to give these reasons to the witnesses themselves. Greater involvement of the Scrutiny Unit in the decisions taken when formulating the PBC's witness list will help achieve this. Being a part of these discussions would benefit the staff at the Scrutiny Unit by providing a clearer idea of why it is people are being called to give evidence, and what is expected of them. The need to approach someone from National Car Parks for the UK Borders Bill is an example of a witness choice which was not clear *prima facie*.

## Membership

A much criticised element of standing committees was that their membership, especially on the government's side, tended to be comprised solely of MPs congenial to the minister leading the bill through committee, and to the party line on that particular policy area (see, for example, Walkland 1979: 254). Loyal 'lobby-fodder', would be favoured for standing committee duty over members known to take opposing views to those of government – the serial rebels, or even those regarded as a bit temperamental. Russell and Paun describe these as the 'unreliable' members (2007: 22). Figures from only a few years before the PBC reforms show how unlikely it was for a Labour rebel at second reading to be selected to sit on the standing committee. For example, there were 72 rebels at the second reading of the Higher Education Bill 2004, yet just one was chosen to contribute to the committee stage. The Gambling Bill of the same year had 30 Labour rebels, none of whom sat on the standing committee (ibid: Appendix C). There was also no firm requirement to appoint people with a subject interest to standing committees, such as those who were also members of relevant select committees, or even All Party Parliamentary Groups.

It is surprising that the Modernisation Committee gave no detail about the membership arrangements for PBCs beyond urging that members who served on pre-legislative committees be included in the membership of the bill committee at the committee stage (2006a: summary). The committee would have been aware of the criticisms of the old standing committees. Reform

projects which preceded *The Legislative Process* had included membership amongst their targeted criticism of standing committees (see for example, Hansard Society 1992, 2001; Lords Constitution Committee, 2004). Indeed, recalling evidence that he gave to the Modernisation Committee (2006a: Ev.26-33), John Bercow MP said: 'I remember objecting very strongly...that the troublemakers are kept away, and these voices should be heard....They are serious people with serious objections and arguments and they ought to be on bills where they take a dissenting view.'<sup>32</sup> Yet no proposal to alter the way in which members of these committees are chosen was suggested as part of the 2006 reform package.

Formal authority to choose members to sit on public bill committees rests, as was the case with standing committees, with the Committee of Selection. Comprised of nine members, seven of whom are whips, this Committee has long been criticised as a rubber-stamp for the pre-prepared lists presented by the party business managers (Russell & Paun 2007: 21). Attempts were sometimes made to find members with knowledge and interest in the bill subject. Sir Peter Soulsby MP spoke of his membership of the Local Government and Public Involvement in Health Bill having been influenced by his many years in charge of Leicester City Council. Members of the Political Parties and Elections Bill Committee were considered to be knowledgeable about the issues covered by that piece of legislation. Surprised by the composition of the Energy Bill Committee, and its associated potential for effectiveness, Charles Hendry MP (Conservative) commented, 'it is very encouraging that it is actually a committee full of members who understand energy, who care passionately about different aspects of it, and that is very good.'<sup>33</sup> But for all those who were pleasantly surprised by PBC membership, there were many, including witnesses, who lamented the continued habit of filling committees with loyal voices. A study of the membership lists of committees shows that the names of specialists and occasional rebels rarely appear.

**Membership of PBCs must reflect the balance of views across the House on the subject of the bill in question, with additional efforts made to seek members with relevant interest or expertise.** In their report, *The House Rules?*, Russell and Paun similarly stressed the importance of ensuring that the composition of bill committees reflects the balance of *opinion* in the House rather than simply party balance (2007: 79). The membership of PBCs can be improved by changing the mechanism by which they are chosen. Suggestions to alter the composition of the Committee of Selection, and even to replace this with a different body, have been made by past inquiries into parliamentary reform (see for example the Norton Commission 2000: 29). The Modernisation Committee made its own recommendations to place the selection of committee members entirely in the hands of backbenchers (2002: paras 15-17). The recommendation of this investigation **that the membership of the Committee of Selection be altered to include just three whips (one from each of the main parties), with the rest of its members to be drawn from the backbenches of each of the main parties**, follows the recommendations of Ken Clarke's Conservative Democracy Taskforce (2007) and Russell and Paun (2007: 77-78). Under this arrangement, party wishes would still be aired but would not dominate.

One issue associated with committee membership, which for international commentators would be an obvious option for further reform, is replacing ad hoc committees with a permanent legislative committee system. Lessons from select committees, as well as swathes of literature (for example, Longley & Davidson 1998; Olson 1994; Olson & Mezey 1991; Shaw 1998a, 1998b),

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<sup>32</sup> While giving evidence to the Modernisation Committee, Bercow did note, "The Higher Education Bill: I think there were over 70 rebels on the Tuition Fees Bill, something like 73 rebels, at second reading who actually voted against the Government. Only two opponents of the Bill were on standing committee which consisted, I think, of 20 Members....That seems to me to be wrong" (Modernisation Committee 2006a: Ev 28).

<sup>33</sup> Energy Bill Committee, 21 February 2008: col. 128.

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

## Resources and Administration

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

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

PBCs have no single administrative body. They lack the permanent, committee-specific staff of select committees, and the concern of the Public Bill Office clerk who sits on each PBC is the conduct of the proceedings alone. Due to their ad hoc nature, it is hard to argue that PBCs warrant a secretariat similar to select committees, but greater assistance than is available at present would lead to improvements in the running of PBCs as well as in what members and witnesses are able to gain from the process. **Two or three extra members of staff should be hired in the Scrutiny Unit to help the administration of PBCs - with briefing, but also**

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<sup>34</sup> Contained in an Appendix on the work of the Scrutiny Unit in Liaison Committee (2009).

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

The innovations in the amount of supporting material available to PBC members introduced as a result of *The Legislative Process* are to be welcomed. The imminent availability of an online version of a bill comparing it as amended in PBC with how it was as it went into committee, showing deletions struck out in red and insertions underlined in blue, is a positive change. It will enable greater understanding, and even measurement, of the impact of the committee stage. **The introduction of explanatory statements to accompany amendments needs to be made mandatory;** otherwise, their sporadic use makes their effect haphazard. Extra support may be required for backbenchers to help them draft these statements. **This might necessitate increasing the staff of Public Bill Office (by one or two) so that more dedicated support during the course of the committee stage can be provided.**

## Publicity

If public bill committees are well publicised they are more likely to open up the committee stage to observation and involvement by outside stakeholders. However, in response to a question about how the general public access information about the timing of PBCs, so that they can attend a session, or know when to submit written evidence, one official remarked: 'How does anybody find out what is going on? It is quite extraordinarily difficult.' Unlike select committees, PBCs lack their own publicity machine. They do not issue press releases announcing forthcoming witness sessions. Part of the problem is that it is unclear who would authorise such coverage. The chair of a PBC is not the same figure-head as in select committees. He or she is not a position to speak for the committee. This problem is a consequence of PBCs' ad hoc nature.

In an attempt to address the problem of publicity, the Scrutiny Unit is piloting alerts to journalists, asking select committee media officers to send programmes of PBC evidence to the press lists they have compiled for select committees. The impact of this is unclear. **Parliament itself must promote PBCs more widely. The parliamentary website must make it clearer how and when individuals and organisations can submit written evidence or put themselves forward to be considered as witnesses. Even as early as at the first reading of a bill, appeals for evidence should appear in the Parliamentary News section on the website's homepage.** Select committee reports receive publicity here. The Scrutiny Unit pages of the parliamentary website are currently the only place where information about evidence giving can be found. There is guidance on written evidence, and advice to contact the relevant government department if an individual or an organisation wants to appear as a witness. But this information does not appear alongside current bills or give any idea about when the individual should make contact. The Cabinet Office's guidance (2009) to ministers and civil service bill teams on the committee stage suggests that departments begin thinking about witnesses in advance of even introducing a bill to parliament. To gain a fair chance of accessing and influencing the legislative process, the public need to know the dates of these windows of influence. Neil Carberry of the CBI suggested that government departments should remind stakeholders a few months in advance that the opportunity to give evidence was approaching. Janet Allbeson of Gingerbread explained that on one occasion her organisation did not submit a written memorandum because they were not fully aware at the time of how to go about doing this. In the interests of opening up the legislative process, publicising how and when to submit written evidence is especially important as this form of evidence is more likely to be utilised by individuals and small groups rather than by well-funded lobbying organisations. If PBCs adopt the recommendation to hold an initial full committee planning meeting just after second reading, they would be able to issue a

press release (including a call for evidence) at the end of this meeting. This may help, but to have greater impact, publicity must be orchestrated long before this.

Despite now beginning with select committee-style evidence sessions, the legislative committee stage continues to fail to attract media attention. John Bercow MP was one interviewee who thought it would be good if BBC Parliament and some members of the specialist press could become more interested in the process of bills. He suggested holding a briefing on PBCs for the lobby journalists, at least to disseminate material about how the reformed stage operates. Media coverage could widen awareness about PBCs, but pressure on the column inches and broadcasting minutes available to journalists caused by the concentration of parliamentary business around Tuesdays to Thursdays does not guarantee that PBCs would get any greater coverage than at present. Ultimately, it must not be forgotten that publicising these committees is not everything. What matters is getting the legislation right.

## Chairmanship

The chairing of PBCs has been one of the discontinuities between what was put forward by the Modernisation Committee and what was accepted by the House. Some interviewees who had chaired PBCs expressed their frustration at not being able to intervene on committee proceedings as chairs are able to in select committees. More than one chair thought the questioning of witnesses had not been as probing as they would have liked. Having a chair simply as an umpire has had implications for publicity (as explained above) as well as for PBCs' ability to develop much of an *esprit de corps*.

If the Modernisation Committee's recommendation to have select committee chairs preside over PBC evidence-taking had been adopted, these individuals would have been able to bring experience of this procedur, and subject expertise to the process. Their presence would have the potential to make PBCs more like select committees, bringing some of the characteristics of effective committees (see Section 1) to the reformed committee stage. Despite these advantages, this report does not suggest that such a change be adopted. The involvement of select committee chairs in the legislative process would distract these individuals from their duties as departmental and policy scrutinisers. When added to all the other responsibilities these members have as MPs, it is unlikely they could chair both types of committees in the time available and do both jobs with sufficient effectiveness. It is also unlikely that a select committee chair alone would be able to inject the consensual atmosphere of his or her committee into the PBC process. Of course, in the longer term, if the recommendation of establishing permanent legislative committees were adopted, many of the advantages seen by the Modernisation Committee of having expert decisions would be achieved without putting undue pressure on the select committees.

One senior clerk thought that who chaired PBCs made little practical difference, especially considering that many MPs would have had select committee experience anyway. Another interviewee suggested that gaining the respect of fellow committee members and keeping order were the prime concerns of a PBC chair, and that achieving this was largely due to personality. From my own observations of PBCs, it is clear that some members of the Chairmen's Panel are fully engaged with their responsibilities, though others appeared to be simply going through the motions. It is the case that if clerks were to have a greater role in witness programming they would need to do so under the authority of the PBC chair. This may require the chair to take a more active role in proceedings.

## Bills which start in the House of Lords

The exclusion of bills which start in the House of Lords from powers to hear from witnesses appears to be an anomaly of the new process. The Modernisation Committee's inclusion of this condition was welcomed by the government and emphasised in the debate on *The Legislative Process*.<sup>35</sup> It was considered that such bills would have already received substantial debate in the upper house, where the presence of experts amongst its members would have enhanced the quality of discussion. The Hansard Society (2008: 222) and some interviewees, however, see the exclusion of Lords bills from full PBC powers as an oddity. A senior clerk wondered how justified this was, and another senior figure suspected the arrangement was a consequence of a concession to the whips. By the time a bill comes to the Commons from the Lords it is quite far into the parliamentary year. There will be little wish to delay things by having to hear evidence.

If the new PBC process is considered to be a good innovation, as the tone of most evidence gathered during this investigation would suggest, it is illogical not to apply full evidence-gathering powers to all programmed government bills. Therefore, **moves should be made to extend oral and written evidence-gathering powers to government bills that start in the House of Lords and are subject to a programme motion.** By contrast, the restrictions on the evidence-gathering powers of PBCs examining bills that have received pre-legislative scrutiny should remain. The investigation completed by the committee charged with pre-legislative scrutiny is likely to be more comprehensive than anything that the PBC will be able to achieve. Likewise with the Finance Bill, whose committee members can refer to the Treasury Select Committee's report on the Budget.

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<sup>35</sup> House of Commons Hansard, 1 November 2006: cols 304, 307-08.





## Conclusion

Philip Cowley has argued that the reforms to create PBCs have ‘the potential to do more to improve the quality of the parliamentary scrutiny of bills than any other Commons reform in the last twenty...years’ (2007: 22). This investigation’s findings agree with his hopeful assessment. As a result of the introduction of evidence-gathering legislative committees, the Commons committee stage has become more informed, more transparent, and characterised by improved debate. Oral evidence sessions in particular have provided interested organisations and individuals outside parliament with an additional forum in which to express their views and offer expert advice and opinions on elements of proposed government legislation. This investigation found that these groups feel that the quality of what they are able to provide for the committees is greatly enhanced by being able to expand at length in a witness session rather than rely on members choosing to read their written briefings.

Witness sessions at the start of the committee stage give committee members unfamiliar with the subject area a useful introduction to the scrutiny of the bill. The availability of more information has engaged MPs and empowered backbench members of these committees, who are becoming more confident to take part in both questioning and debate. Resource innovations in the form of online legislation gateways and explanatory statements to amendments have also increased the utility of the committee stage for MPs. Along with introducing the practice of direct questioning of witnesses (and the minister) in place of probing amendments, PBCs have proved more efficient than their standing committee predecessors.

One must ask, however, whether the combined effect of these positive changes has been to render the committee stage more effective, which was the general aim of the Modernisation Committee’s report. Has the introduction of public bill committees resulted in better scrutiny by parliament of government legislation, and is the legislation produced of a higher quality as a result? In support of the positive impact of PBCs, Damian Green MP saw evidence-taking PBCs as having boosted the standing of Commons scrutiny. Jack Straw MP pointed to a lot more criticism going towards the government at committee stage to illustrate his opinion that ‘I’m in no doubt that it is better than what was there before.’<sup>36</sup> The Hansard Society, in their recent examination of influences on the legislative process, concluded that exchanges between external actors, parliament and government, like those now provided by the PBC procedure, can make a real difference to legislative outcomes (2008: 16). Anecdotal evidence gathered for this report ranged from those who indicated particular bills where evidence of witness statements had fed its way through to debate at report and third reading<sup>37</sup>; and a minister’s assurance that a bill would alter in the Lords because of evidence gained during the PBC; to those who were doubtful ‘that bills come out of committee with the government more chastened or bills better than they would have been under the old process.’ Those sceptical of the impact of PBCs emphasised that ‘if you have got only one or two day’s evidence you are only scratching the surface.’ Others dismissed the scrutiny PBCs provide as ‘a pale shadow’ of that performed by select committees.

To fully realise the potential that Cowley writes of, problems with the current PBC system need to be recognised, and commitments made to bring about the suggested improvements. Timing problems are central to a legislative committee system that presently does not operate as effectively as it could. The timetabling straitjacket imposed on PBCs leaves insufficient time to

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<sup>36</sup> Jack Straw was speaking at the launch of the Hansard Society’s *Law in the Making*, July 2008, Westminster.

<sup>37</sup> See, for example, House of Commons Hansard, 3 December 2007: col. 585. Mike Weir MP (SNP) quoted the testimony of Hilary Reynolds, the civil servant responsible for the bill. Weir argued, “If we proceed with the Bill as drafted, no one in their right mind is likely to enter into an agreement that deviates from the child maintenance levels set out in it, despite the fact that we were clearly told in evidence sessions that many parents wish to consider alternatives.”

prepare for these committees and to reflect on what is learnt through evidence-taking before progressing to line-by-line scrutiny. Both of these problems have the potential to diminish the quality of scrutiny. The current rush risks leaving members poorly briefed in advance of scrutiny, witnesses with too little notice to prepare evidence, if they are able to rearrange their diaries to appear at all, and parliamentary officials under notable pressure. The haste to move from evidence sittings to detailed scrutiny often has implications for the ability to table informed amendments in the first session of line-by-line consideration. This report recommends the inclusion of new time at both of these points to help PBCs realise the effectiveness of the scrutiny that they have the potential to provide.

The second fundamental problem with the reformed PBC process is the opaque manner in which witness lists are decided upon. Negotiated through the secretive mechanisms of the usual channels, witness selection is neither necessarily consensual nor efficient. Witness lists have been questioned on many occasions by the wider committee, as well as privately by clerks, who worry at the lack of transparency. There is currently no ownership of PBCs, a factor linked to their ad hoc status. The whole committee must be involved in deciding whom they will question. Such a reform would also encourage further engagement on the part of committee members and might diversify the types of witnesses chosen.

PBC membership continues not to include a reflective spread of opinion and expertise from across the House of Commons. More effort needs to be made to choose experts and those who declare an interest, including some select committee members, to sit on PBCs, but changing those in charge of programming decision-making would more effectively address problems in a system which currently is made to work, rather than naturally doing so. To achieve this, ideally the composition of the Committee of Selection should change. More resources would help the Scrutiny Unit and the Public Bill Office better administer PBCs. Attention also needs to turn to improving the publicity of these committees. PBCs are an innovation of which parliament ought to be proud, and they should be promoted accordingly via the parliamentary website. In this vein, if PBCs are considered to be a good thing, their evidence-gathering powers should be extended to bills that begin in the House of Lords.

The recommendations of this report can be grouped into those which are relatively small and quickly achievable, and those that might be considered more aspirational, although no less important. Extra resources, enhanced publicity, and making explanatory statements on amendments mandatory are changes that are easily made. So, too, is the replacement of the programming sub-committee with a whole committee planning meeting, which is one of the most important reforms suggested here. Recommended changes to the timing of PBCs are no less important, but may prove more difficult. While accepting that the passage of a bill cannot run and run, the apparent reluctance to stray from the sessional boundaries adds undue pressure to the legislative process, which is hampering effective scrutiny. At a minimum, carry-over of bills ought to be embraced far more enthusiastically than it has been. The introduction of a system of permanent legislative committees is the most aspirational of the options for reform discussed. Its establishment would require a cultural shift in attitudes of Westminster politicians to scrutiny, but this report hopes it may happen in the longer term.

Measuring parliamentary influence can be very difficult. Its effect is often subtle and not readily quantifiable, but this does not mean it does not exist. This investigation concludes that the move to PBCs is probably more significant than can be readily realised. A reform such as this has the potential to alter the attitude of MPs. With encouragement and further modification, it could contribute to a changed approach to scrutiny and to the role and status of parliament as part of a wider change in culture. The Hansard Society recognises that the culture at Westminster is currently based on 'an uneasy compromise' (2008: 197) between government control of the

agenda and parliament's duty to keep the executive in check. Welcome legislative devices such as the introduction of PBCs need to be able to flourish in the arena of the party battle. Evidence-taking is a good addition to the committee stage, but ultimately it will only prove really useful if all MPs pay attention to what is said. A shift in culture and an acceptance that scrutiny is a good thing can help ensure this will happen.

It is certainly not intended for this report's conclusions to be taken as a criticism of Jack Straw and the Modernisation Committee's programme of reform. Some of their recommendations were timid, but perhaps sensibly so. *The Legislative Process* recognised the need for reform and also that anything too radical would not be accepted by the House or the whips. Its authors were rewarded by the acceptance of the vast majority of their recommendations. As a senior clerk reflected, the introduction of public bill committees has been 'a step and a half in the right direction.' It is a reform that, taken further, can bring important changes to the quality of parliament's scrutiny of government. It is a 'crack' that provides space for 'wedges' that can extend the strengthening of parliament that has already been achieved (Wright 2004: 870). It deserves to be exploited, and what better time to do so than now, when the desire to fortify the powers and standing of parliament is so widespread.



## Summary of Recommendations

### On timing

1. The programme motion moved at the end of second reading should acknowledge the need to prepare for PBCs by including a minimum gap of two weeks between the end of second reading and the first evidence-taking session.
2. In order to make evidence-taking worthwhile, time needs to be put aside for members to absorb the information received. There should be a full week's gap between the final witness appearance and the start of line-by-line scrutiny to allow for reflection and the tabling of informed amendments.

### On witnesses and the evidence-gathering process

3. An initial, private meeting of *all* committee members should be held to decide on the witness list and the committee's timetable. This planning session would replace the need for a programming sub-committee. A week after this planning meeting the whole committee should reconvene to formally agree the programme motion.
4. The programme motion should be tabled in the name of the PBC chair, who should have responsibility for determining the committee's programme.
5. PBCs should be encouraged to use their power to formally invite individuals or organisations to submit written evidence. The PBC should issue a call for evidence in a press release immediately after the first planning meeting.
6. Written evidence needs to be received by the PBC as early in the scrutiny process as possible, in order for committee members to consider its contents and apply what is learnt to their scrutiny of the bill.
7. If the recommendation to adopt a planning meeting is not accepted, at a minimum, the whips on the programming sub-committee should be encouraged to consult with the chair of the relevant select committee about witness choices with the aim of producing a more informed and valuable witness list.

### On membership

8. Membership of PBCs must reflect the balance of views across the House on the subject of the bill in question, with additional efforts made to seek members with relevant interest or expertise.
9. The membership of the Committee of Selection should be altered to three whips (one from each of the main parties), with the rest of its members to be drawn from the backbenches of each of the main parties. It should continue to be chaired by a backbencher.

## **On resources and administration**

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

## **On publicity**

12. Parliament itself must promote PBCs more widely. The parliamentary website should make it clearer how and when individuals and organisations can submit written evidence or put themselves forward to be considered as witnesses. Even as early as at the first reading of a bill, appeals for evidence should appear in the Parliamentary News section on the website's homepage.

## **On bills which start in the Lords**

13. Moves should be made to extend oral and written evidence-gathering powers to government bills that start in the House of Lords and are subject to a programme motion.

## **Adopting a permanent legislative committee system**

14. Moving to a system of permanent legislative scrutiny committees, separate from the existing select committee system, would further strengthen parliament's powers of scrutiny. Its adoption should be kept under review.

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