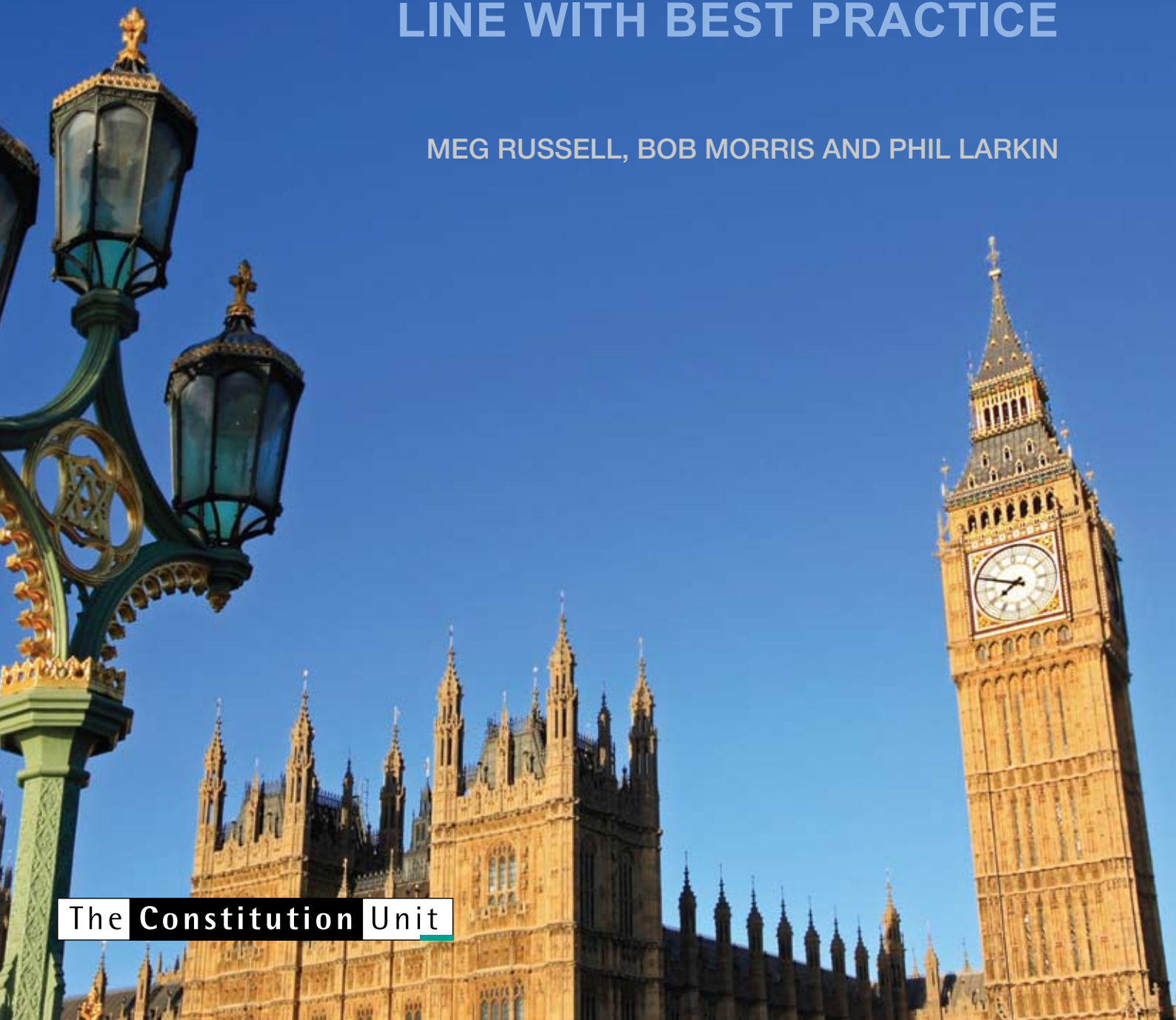
DEPARTMENT OF POLITICAL SCIENCE

UCL

FITTING THE BILL

BRINGING COMMONS LEGISLATION COMMITTEES INTO LINE WITH BEST PRACTICE

MEG RUSSELL, BOB MORRIS AND PHIL LARKIN



The Constitution Unit

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Bringing Commons legislation committees into line with best practice

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Constitution Unit
June 2013

UCL
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ISBN: 978-1-903903-64-3
Published by The Constitution Unit
School of Public Policy
UCL (University College London)
29/30 Tavistock Square
London
WC1H 9QU

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First Published June 2013

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Acknowledgements

This study was funded by the Joseph Rowntree Charitable Trust. Our first thanks are to them for their financial support, and for their tolerance when this report was delivered somewhat later than originally planned.

We have received a huge amount of help in terms of background research for the report from Eimear O'Casey at the Constitution Unit. We are very grateful to her for all of her work and useful ideas. Others at the Unit who helped to bring this project to completion include Robert Hazell, Simon Kaye, Vicki Spence, Tom Semlyen and Ben Webb.

We have also tried the patience of various parliamentarians and parliamentary officials in researching and drafting the report. Numerous officials in other parliaments helped with the provision and verification of information provided in Part II. Various people at Westminster also provided input, in the form of ideas, comments and feedback on drafts. We are immensely grateful to them for this help, and for their continued commitment to building a more effective parliament. We do not name them here, both to protect their modesty and also to avoid any risk of them being blamed for things that we have got wrong. Any remaining errors in the report are of course our own.

Executive summary

- Parliamentary scrutiny of bills is arguably where the House of Commons is at its weakest – and the committee stage is central to that weakness. Commons legislation committees have long been criticised for failing to deliver adequate scrutiny of government bills. Despite the introduction of new evidence gathering powers in 2007, many long-standing problems remain.
- Crucially, public bill committees (PBCs) are nonspecialist and temporary, being created for the duration of every bill, and then disbanded. Their members have little opportunity to develop expertise in the subject area, or effective working relationships with each other, particularly across party lines. Another key concern is that their members are effectively chosen by the whips, with no accountability to the House as a whole.
- This is all in stark contrast to the House of Commons select committees, which are permanent, specialist, and valued for their consensual cross-party working. Over recent years these committees have gained in resources, strength and reputation. Since 2010, their members have also been elected. These and other changes make the public bill committees appear increasingly out of step.
- The UK is conspicuous in international terms for not referring bills to permanent, specialist committees. Most comparator parliaments use bodies constructed more like our departmental select committees to consider legislation. Bills in the UK are also referred to committees later in the legislative process than in many other parliaments. Proposals that we should follow international best practice in these regards can be traced back over at least 80 years.
- More recently, there have been many calls for the reform of Commons legislation committees. Some have been heeded, but others have not. The introduction of evidence-taking was an improvement, though concerns have been expressed about its detail. But notably demands for greater permanence, expertise or transparency in selection of members have failed to be addressed. Changes such as scrutiny of more draft bills by select committees are positive, but are to an extent papering over the weaknesses in the formal bill committee process.
- Based on recent reviews of the UK system, and examination of the international evidence, we recommend a number of changes to the public bill committees.
- One thing we do not recommend is amalgamation of the bill committee process with the departmental select committees. This would risk overloading the select committees, crowding out their investigative work, and perhaps damaging their ethos. But we do recommend other changes which would introduce greater stability, and expertise. We are drawn to the Australian Senate model, where there are two sets of permanent, specialist committees – one dealing with legislation, and the other with investigations and executive oversight. Yet this would be hard to implement, due to the very uneven legislative load of different government departments.
- We therefore set out three potential models of legislation committees for piloting, suited to departments with different loads. These include new permanent committees in heavy-legislating departments, and select committee consideration of bills from departments where legislation is rare. In most departments the existing PBC system could be reformed, through formalising overlap with the select committee, democratising membership, and some reorganisation on the staffing side. There should also be experiments with sending some bills to committees for evidence taking before second reading.
- Some changes should be introduced straight away, without the need for pilots. These include greater accountability for how members of public bill committees are chosen, as recommended in 2009 by the 'Wright committee'. The Panel of Chairs could also become a stronger voice for the legislation committees, as the Liaison Committee has done for the select committees. We hope that this group, and the Procedure Committee, will consider our recommendations.

Introduction

'The manner of our legislation is indeed detestable, and the machinery for settling that manner odious.'
(Bagehot 1928 [1867]: 147)

Much has changed since Bagehot wrote, but concerns continue frequently to be expressed about Westminster's legislative process. This report deals with just one part of that process: the consideration of bills at committee stage in the House of Commons. We have chosen to focus on this for a number of reasons. First, and most obviously, because it is subject to particularly widespread criticism. As the Hansard Society put it a few years ago, Commons legislation committees 'receive an extraordinary level of opprobrium' (Modernisation Committee 2006b: Ev 108). Numerous such criticisms are cited later in this report. But another reason for focusing on public bill committees in the Commons is that they look increasingly out of step with other committees at Westminster. Most notably, while the Commons select committees have gradually grown in reputation, the public bill committees seem to have been left behind.

These committees are not only out of step with their near neighbours, the select committees – they also look distinctly odd when compared to legislation committees in other parliaments. One function of this report is to compare the Commons committee system with that in other legislatures, in the EU, the Commonwealth and the US. Here the norm is for legislation to be considered in permanent, specialist committees shadowing government departments, rather than the kind of ad hoc, temporary committees that exist in the Commons. One central question in the report is therefore whether lessons can be learnt from the operation of legislation committees in other parliaments, and from our own select committees, in order to introduce more permanence and specialism into the public bill committees.

The House of Commons legislative process has been subject to significant changes in recent decades. But these have largely fitted the model of what some academics refer to as *efficiency* rather than *effectiveness* reforms (Kelso 2007, 2009). Efficiency reforms 'are those which seek to streamline the workings of parliament' and to 'maximise the use made of scarce parliamentary resources' (Kelso 2009: 4). These may smooth the way for implementing governments' legislative programmes, and are therefore sometimes criticised as serving the interests of the executive. A key example here in terms of recent changes is the introduction of legislative programming. Effectiveness reforms, on the other hand, 'are those which seek to enhance the ability of parliament hold the government to account, and to rebalance executive-legislative relations at Westminster' (ibid). Historically, such changes have been more unusual, because they are more difficult to achieve. A classic example was the select committee reforms of 1979, and a more recent one was the so-called 'Wright committee' reforms of 2009-10 (discussed further below). In terms of the legislative process, one of the only unarguable effectiveness reforms has been the introduction of evidence taking in public bill committees in 2007. This was a welcome development. But many other problems remain, and many of the complaints made about legislation committees over decades remain answered.

This report is structured in three parts. The first sets out some basic details about the current system of public bill committees, and also provides a chronology of some of the key reform proposals made over the last 20 years (some of which succeeded, and many of which were not achieved). By way of background, this part of the report also provides a summary of the workings of the departmental select committees in the House of Commons, which create an increasingly stark contrast to the public bill committees. It also gives a brief history of the committee system in the House of Commons since late 19th century, which demonstrates the longevity of both some of the complaints about the system, and some of the reform ideas. The second part of the report

surveys the practice in 20 other advanced democracies, and how they organise their legislation committees. This also includes a more detailed look at the committee systems in four other legislatures: in the US, Germany, Australia and the Scottish Parliament. These examples are intended to provide some inspiration for possible reform, but also some indications of the potential pitfalls. The third and final part of the report reviews the options for reform, and sets out proposals for changes to the structure, membership, staffing and organisation of public bill committees. But this section also conveys some of the political realities, and the constraints within which reform must operate. Some recommendations are made for immediate change across all public bill committees, while in other respects we propose a more incremental approach, and the piloting of different options.

The key objective of any reform of parliament must be to achieve better policy outcomes. Parliament acts as a scrutineer of government, and a forum of national debate – where ministers must explain themselves in public, and important political arguments can be aired and settled. Not all of this involves legislation by any means, and legislation may indeed not even be the most important part. But the scrutiny of government bills is nonetheless one of parliament's central functions, and one which is widely recognised – even if not particularly well understood. Most of the time parliament's role is not to make the law, as such, but to subject government bills to effective scrutiny. Reforms should not aim at making parliament dominate the process, but at ensuring that it carries out its scrutiny role as well as possible. At present, there are clearly concerns that it does not do so. Whereas the select committees have clearly sharpened the Commons' *retrospective* review of government performance, the same organisation and bite has not been displayed in the case of reviewing *prospective* government action in the case of government bills. Despite the occasional and welcome publication of bills in draft, and their scrutiny by select committees, there remain concerns that the public bill committees are too dominated by partisan point-scoring, and not enough focused on constructive and well-informed examination of policy. There are also severe concerns that their make-up, as well as their function, is too dominated by the party whips. Close examination of some public bill committees shows that these stereotypes are not always borne out, and the system may well be more constructive and consensual than it was 20 or 30 years ago. But more can clearly be done.

In addition, the reputation of the public bill committees does parliament reputational damage. Both parliamentarians and the public must have confidence that the system is fit for purpose, and this is clearly not currently the case. Introducing further improvements into the Commons committee system could therefore have benefits not only for the quality of government legislation, but also for the reputation of parliament. We hope that the recommendations in this report can help in that process.

Part I: The current system

This section concentrates on the process for detailed, line-by-line examination of government bills at the Commons committee stage, indicating some of the frustrations with the current system, and the possible directions for change.

We begin with a brief summary of the wider legislative process, of which Commons committee stage examination is part. We then set out how the committee stage currently works. Next we contrast the public bill committees (PBCs) with the highly-regarded select committees, which have oversight of government non-legislative action, and conduct investigations. A short section then explains the history of the committee system in the Commons. This is followed by a review of proposals for change over the last 20 years.

The Westminster legislative process in brief

The legislative process does not normally begin at the door of parliament but in government departments. Projects for government bills have many sources. A bill may follow for example from a pledge in a party manifesto, the results of a Whitehall review, the recommendations of a public inquiry, or the need to implement an EU Directive. In all of these cases the bill's content will initially have been worked out by ministers and their civil servants. Often before bills are drafted by Parliamentary Counsel (the specialist government lawyers responsible for this task), there will have been consultative 'green papers' and/or 'white papers' where views were invited, and numerous outside interest groups and experts may have given their input. Increasingly, but still in a minority of cases (as further discussed below), a draft bill may also have been published to show the full character of legislative intentions, with further input invited from those both inside and outside parliament, providing an opportunity for ministers to reflect before its formal introduction.

The focus of this report is on bills that originate from government, which make up the great majority of those that pass. (Members of both chambers of parliament may also propose their own 'Private Members' Bills', but far fewer of these succeed.[1]) All bills, whatever their origin, must normally pass through both the House of Commons and the House of Lords before becoming law. The majority begin their passage in the Commons and then go to the Lords, but for around a third this process is reversed. In each chamber the bill is subjected to a first reading, second reading, committee stage, report stage and third reading – each of which has a distinct character. These are further explained for a typical Commons bill in Box 1.1. Once the process is complete, the bill will pass for consideration to the other chamber, and if it succeeds it will then receive Royal Assent.

As discussed in more detail later in the report, virtually all government bills are now subject to 'programming' in the Commons, which begins with a programme motion being agreed immediately after second reading. This motion specifies the 'out-date' by which the bill is to emerge from its committee, and may indicate the amount of time that will be spent on its 'remaining stages' (i.e. report stage and third reading). The committee stage is therefore framed by the programme motion. This is usually subject to negotiation between the main parties through the 'usual channels' before second reading takes place.[2]

Box 1.1: The legislative process for a bill introduced in the House of Commons

A bill introduced in the Commons goes through the following stages:

First Reading: On introduction, bills are subjected to first reading, largely a formality where the bill's title is announced and a date given for second reading.

Second Reading: This is the major plenary debate on the principles of the bill. The responsible minister introduces the bill, explains the need for it and justifies its form. Their shadow puts the opposition's position on the bill. Thereafter, backbenchers can intervene in the debate and give their views, before the winding up speeches from the minister and their shadow. As the second reading establishes the principle of the bill, it sets the parameters for amendments made at the subsequent stages.

Committee Stage: After second reading, the bill proceeds to the committee stage for more detailed consideration. For a minority of particularly major or controversial bills the committee stage is taken in plenary, sitting as a 'committee of the whole'. But for most bills, it takes place in a public bill committee (PBC). Such committees are appointed in order to consider a specific bill (and take their name from it), existing only for as long as they are processing the bill and being dissolved once they have reported. The PBCs are described in detail in the next section.

Report Stage: Following the committee stage, the whole House again has the opportunity to consider the bill in the light of its report from committee, and any amendments made at that stage. Further amendments are possible at the report stage, but their selection is more stringent than in committee, and issues that were the subject of unsuccessful committee amendments are unlikely to be debated.

Third Reading: Before proceeding to the Lords, this is a final opportunity for the Commons to consider the bill as a whole. It is generally brief, and no amendments can be made. The opposition may flag issues that they think the Lords ought to consider.

Lords stages: The Lords stages are similar to those in the Commons, except that the committee stage is taken either on the floor of the chamber or a 'grand committee' (which is open to all members), and amendments can be made at third reading.

Commons Consideration of Lords amendments: The bill must be passed in the same form by both Houses, so if the Lords has amended it, the Commons must agree to these amendments, or propose a compromise, or their removal. The Lords must likewise consider the Commons amendments, if its own are not accepted. The bill 'ping pongs' between the chambers until there is agreement (except in very rare cases where the Parliament Acts are used).[3]

The public bill committee system

Concerns have been raised in recent years about a number of aspects of the legislative process. For example, there have long been complaints about the operation of Private Members' Bills – which are currently the subject of an inquiry by the House of Commons Procedure Committee.[4] The 'Wright committee' which recently considered various reforms to the Commons – some of which are discussed in more detail below – expressed particular concern about the timing of report stages on some government bills (Reform of the House of Commons Select Committee 2009: 35-38). But some of the greatest concerns have been expressed over the committee stage of government bills in the Commons. This section sets out in greater detail who sits on these committees, how the committee stage works, and what some of the problems are.

Although the public bill committees were known until 2007 as 'standing committees', in fact they are ad hoc bodies appointed to consider individual bills. Their membership always includes the responsible government minister and the equivalent opposition spokesperson, party whips, usually these frontbenchers' Parliamentary Private Secretaries (PPSs), plus backbench members. Standing

orders specify that such committees must have a minimum of 16 and a maximum of 50 members, though in practice they generally have around 20.

Members of public bill committees are notionally chosen by the Committee of Selection (see Box 1.2), which is in practice dominated by party whips. As Blackburn and Kennon (2003: 387) note, '[i]n practice, for government bills, the Committee of Selection accepts the teams nominated by the whips on either side'. It is required 'to have regard to the qualifications of those Members nominated and to the *composition* of the House' (Standing Order 86(2): emphasis added), and the reference to composition is taken to refer particularly to party balance, and used to ensure that committee membership roughly mirrors that in the chamber. But notably there is no requirement to respect the balance of *opinion* in the House on any particular bill. An analysis from a few years ago showed how unlikely it was for government rebels at second reading to be selected to sit on the relevant bill committee. For example, there were 72 rebels at the second reading of the Higher Education Bill 2004 (17% of the entire Parliamentary Labour Party), yet just one was chosen to serve on the committee. The Gambling Bill of the same year saw 30 Labour rebels, none of whom sat on the committee (Russell and Paun 2007: 93).

Box 1.2: The Committee of Selection

Members of public bill committees are chosen by the Committee of Selection. In practice, this body is comprised largely of party whips, with a government majority. The committee's current membership (which standing orders set at nine) consists of four Labour whips, three Conservative whips, one Liberal Democrat whip and a senior Conservative backbencher (Geoffrey Clifton-Brown) in the chair. The membership of the committee is agreed between the 'usual channels' at the start of each parliament, and formally moved as private business not to be debated. Hence backbench MPs ordinarily have no control over who sits on the committee, though they can *in extremis* object to the motion and force a debate. In turn, the Committee of Selection's choice of members to sit on public bill committees is completely final. The names are published in the daily Votes and Proceedings, but not subject to approval by the chamber itself. The Committee of Selection previously also proposed members of departmental select committees, until the Wright committee reforms of 2010. It retains a role in choosing Commons members of joint committees (i.e. committees made up of both MPs and peers), though these names – like those of select committee members pre-2010 – must be put to the chamber in an amendable motion which can potentially be voted upon.

Despite the wording in Standing Order 86(2) on 'qualifications', there is no firm requirement to appoint people with a subject interest, such as members of the relevant select committee. Indeed one of the key allegations made about public bill committees is that whips at times actively avoid expertise, for fear that this will encourage MPs to stray from the party line. A recent high-profile example was the case of Sarah Wollaston who, before becoming a Conservative MP, was a GP. Yet, in spite of her experience, she found her request in 2011 to serve on the public bill committee for the Health and Social Care Bill rejected by the Conservative whips. She blamed this on her unwillingness to guarantee unconditional support for the bill, and her capacity to question its provisions from a position of expertise. This led her to claim that '…there's no sense that [MPs'] talents and experiences are used or recognised…We all want the NHS to operate in an open and honest way, and if you say someone can only be on a bill committee if they are prepared to vote with the government, then that is fundamentally in conflict'.[5] The incident led to a rash of criticism in the media. For example Labour MP Diane Abbott suggested that:

> Any government MP who goes on a committee with the genuine intention of scrutinising legislation knows they risk their career. As a further refinement, government whips do their best to ensure that anyone who knows or cares about the legislation does not get on the committee in the first place. Anyone who thinks this is

> an exaggeration is welcome to go and look at any bill committee any day in the House of Commons. They are open to the public. There they will see the MPs on the government side industriously working through their correspondence, oblivious of what is actually going on. They do not have to pay any attention, because they are not supposed to speak (Abbott 2011).

Abbott concluded that consequently '[b]ad legislation goes through the House of Commons not properly scrutinised'. Whether or not such claims are true, they clearly damage the image of the public bill committees, and the legislative process as a whole. A particular frustration for MPs comes from the fact that the names proposed by the Committee of Selection are not put to the chamber for approval, so there is no way that they can be formally challenged or overturned. This is a stark contrast to the arrangements for select committees, described in the next section.

The chairing arrangements for public bill committees are less controversial. PBCs are chaired by members of the Panel of Chairs (see Box 1.3), which operates under the authority of the Speaker. The role of the chair is to act as a neutral arbiter in debate, to ensure that parliamentary procedure is properly applied, and to oversee the selection and grouping of amendments for debate. Members of the Panel of Chairs are experienced MPs, who are allocated to public bill committees largely on the basis of rotation, though the more senior and experienced members are usually appointed to the more contentious bills. Bills usually have two chairs, one from the government and one from the non-government side, who share the work.

Box 1.3: The Panel of Chairs

The Panel of Chairs is a group of senior MPs, who can chair public bill committees (as well as other general committees and debates in Westminster Hall). Standing orders specify that they should include the Chairman of Ways and Means (Deputy Speaker), and his or her two deputies, alongside not fewer than ten other members. In practice the Panel significantly exceeds this, currently having 41 members (18 Conservative, 18 Labour, two Liberal Democrat, one DUP, one Plaid Cymru and one SNP). Individual members are then chosen by the Speaker to chair each committee. In addition to their standard MP salary, Panel members have since 2002 received an additional sum, which now has a maximum of £14,582 a year according to seniority. This same sum is paid to the chairs of departmental select committees. The Panel is officially chaired by the Chairman of Ways and Means.

Table 1.1 gives a breakdown of the membership for three recent public bill committees, and demonstrates the balance between frontbench and backbench members, and between the parties. It also shows that such committees often include few if any members of the relevant departmental select committee.

For most bills introduced in the Commons, the scheduling of the committee stage is a two part process. The first programme motion, agreed at the end of second reading, only establishes the 'out-date' and gives no detail about how the committee should use its time. Responsibility for setting the committee's own schedule – when and for how long it sits, the balance between evidence gathering and consideration of amendments, and the sitting time apportioned to the different parts of the bill – falls to the committee's 'programming sub-committee'. This is a seven member body appointed in advance of the committee's first meeting, which ordinarily comprises the minister and their opposition shadow, the lead minister's PPS, the government and opposition whips, a government backbencher and a further member of the opposition. This body puts its timetable to the whole committee at its first meeting. The committee can choose to reject this, but doing so would require a further meeting to agree a revised schedule, and with the out-date already decided, this would cut the time for scrutiny. [6] Approval is anyway likely to be forthcoming because of the government's inbuilt majority.

Table 1.1: Membership of three public bill committees, 2010-12 session

	Education Bill	Health and Social Care (Recommitted) Bill	Terrorism Prevention and Investigation Measures Bill
Evidence sessions - line-by-line scrutiny sittings	4 - 18	4 - 24 0 - 12 (upon recommittal)	2 - 8
Chairs	Charles Walker, Hywel Williams	Roger Gale, Mike Hancock, Jim Hood, William McCrea	Martin Caton, Lee Scott
Conservative members-Frontbench	4 Nick Boles, James Duddridge (W), Nick Gibb, John Hayes	3 Simon Burns, Stephen Crabb (W), Nicky Morgan (P)	2 James Brokenshire, Brooks Newmark (W)
Conservative members - Backbench	4 Richard Fuller, Sam Gyimah, Stephen McPartland, Graham Stuart	8 Steve Brine, Dan Byles, Nick de Bois, Margot James, Jeremy Lefroy, Daniel Poulter, Anna Soubry, Julian Sturdy	7 Robert Buckland, Tobias Ellwood, Ben Gummer, Rebecca Harris, Eric Ollerenshaw (P), Stephen Phillips, Bob Stewart
Lib Dem members - Frontbench	1 Tessa Munt (W)	1 Paul Burstow	0
Lib Dem members - Backbench	1 Dan Rogerson	1 John Pugh	2 Tom Brake, Julian Huppert
Labour members - Frontbench	4 Kevin Brennan, Stella Creasy, Julie Hilling (P), Iain Wright	7 Debbie Abrahams (P), Tom Blenkinsop (W), Liz Kendall, Fiona O'Donnell (P), Owen Smith, Emily Thornberry, Phil Wilson (W)	3 Shabana Mahmood, Gerry Sutcliffe, Mark Tami (W)
Labour members - Backbench	3 Pat Glass, Mark Hendrick, Meg Munn	3 Kevin Barron, Grahame Morris, Karl Turner	4 Hazel Blears, Paul Goggins, Jessica Morden, John Robertson
Other Backbench	1 Mark Durkan (SDLP)	1 Jim Shannon (DUP)	1 Jeffrey M Donaldson (DUP)
Total Frontbench	9	11	5
Total Backbench	9	13	14
Total Members	18	24	19
Members also sitting on relevant select committee*	3	1	1

P= Parliamentary Private Secretary
W= Whip
* Education, Health and Home Affairs Committees respectively (these members' names are underlined).

A key difference between the public bill committees and their pre-2007 predecessors, is the ability – derived from the example of the select committees – to take oral and written evidence. This applies to most government bills starting in the Commons, but not those starting in the Lords.[7] However, evidence-taking was largely bolted onto the old standing committee procedure, and the process has defaulted to control by the whips. Hence they draw up a list of witnesses ahead of the first programming sub-committee meeting, and officials schedule hearings based on that list. The whole process is arranged in just a few days, leaving minimal time for witnesses to prepare, for briefing material to be produced, or for the committee members to digest any briefing or written

submissions.[8] The committee must approve the list of witnesses, but again failure to do so can cause problems and delay. Indeed, the first witnesses are usually waiting outside the committee room for the committee to ratify the timetable and witness list.

Public bill committees can hold oral evidence sessions at any point during the committee stage. However, the norm is for this to be scheduled for the first sessions, followed by the clause-by-clause consideration and amendment of the bill. Nor is the amount of time spent on evidence or amendment rigidly fixed. There is an expectation that some oral evidence is taken, but the proportion of time spent on each phase can vary. Since the time available to the PBC is predetermined by the out-date, the longer the evidence taking, the less time there is for line-by-line scrutiny. During the latter, amendments can be tabled by any MP, though each must be moved by a member of the committee. The chair, assisted by a clerk from the Public Bill Office, omits any amendments that are deemed 'out of order', then selects from the remainder those that are to be debated (most are) and groups them for debate. The committee then works through the bill, voting when necessary. After this, the amended bill returns to the floor of the Commons to complete its remaining stages.

The two different phases of committee work retain important differences. While the evidence-taking sessions tend to be collaborative between members of the committee regardless of party, subsequent detailed scrutiny is far more adversarial. The very layout of the rooms for the two different stages of consideration emphasise the different modes of behaviour. Oral evidence is taken in rooms where MPs sit in a horseshoe configuration, but the detailed line-by-line argument is conducted from confrontational opposed seating on the model of the main chamber. The majority of amendments are generally moved by the opposition frontbench, and set piece speeches are made. However, very few non-government amendments are agreed in committee, as the proceedings are tightly whipped. Thompson (2012) has shown that during the entire period 2000 - 2010, only 88 non-government amendments in committee succeeded, out of a total 17,468 proposed (i.e. 0.5%). In contrast almost all government amendments (of which in this period there were 7322) succeed. As indicated above, backbench MPs – particularly on the government side – can feel under pressure to remain silent, not propose amendments, and simply vote 'the line'.

The two types of scrutiny are also aided by separate groups of Commons staff. The evidence-gathering work is supported by a Scrutiny Unit, now numbering around 20 and originally established in 2002 to assist the select committees. These staff assist with the arrangements for soliciting oral and written evidence, and inviting witnesses. They also process any written evidence submitted, and coordinate with specialists in the Commons Library and in the select committee secretariats to provide briefing material ahead of the oral evidence sessions. The line-by-line scrutiny is then supported by a clerk from the Public Bill Office (which numbers only around 10), who advises the chair on selection and grouping of amendments, and on procedure. Members of the Public Bill Office are also responsible for advising MPs on the tabling of amendments, checking the admissibility of those amendments, and supporting the Speaker or Deputy Speaker at the subsequent report stage.

A stark contrast: the departmental select committees

While the process for bill consideration in committee is subject to considerable criticism, other aspects of Commons procedure are considered far more satisfactory. Over recent decades there have been some important procedural changes. One of the most obvious has been the growth of the select committee system. The select committees were established broadly in their current form in 1979 (see next section), and from then on have grown in strength, influence and reputation. In comparison, the legislation committees appear to have been left behind.

The Commons has 19 departmental select committees, which oversee the work of all government departments. In addition there are a number of crosscutting committees, such as the Public Accounts Committee, and Environmental Audit Committee. The role of the departmental committees is to examine 'the expenditure, administration and policy' of the relevant department and its 'associated public bodies' (e.g. regulators and quangos). They are empowered to determine their own subjects for inquiry, to gather written and oral evidence (including sometimes through visits in the UK or overseas) and to employ outside specialist advisers. They make reports to the House which are printed and made available online. The government is normally expected to reply to these reports within 60 days. Recent evaluations of the committees have been largely positive. Constitution Unit research shows that many of their recommendations go on to be taken up by government (Russell and Benton 2011). The committees also have a high media profile (Kubala 2011), most recently demonstrated through inquiries such as that into the *News of the World* phone hacking scandal. It is now not unusual for two or three committee inquiries to reach the news in a single day.

In many important respects the select committees create a stark contrast to the public bill committees (see Table 1.2). With a maximum of 11 members in most cases and with ministers, PPSs and whips ineligible for membership, they are established on a permanent basis at the beginning of each parliament. MPs who sit on the committees therefore have an ability to build up working relationships with each other, and to develop expertise in the department's policy area.

Until 2010, the means for choosing members of the select committees was similar to that for the PBCs, though there was always more democratic accountability to the chamber. Members were nominally chosen by the whip-dominated Committee of Selection, though these names were put to the chamber for approval afterwards, in an amendable motion. In 2001, controversy arose when the whips left off the names of two committee chairs (Donald Anderson and Gwyneth Dunwoody) from membership of their committees. This led MPs to reject the Committee of Selection's proposals, and the two chairs were subsequently reinstated (see Kelso 2003, 2009). But it also led to calls for the system of nominations to be reformed. Changes were argued about for many years, but a new system recommended by the 'Wright committee' (see Box 1.4) was put in place at the start of the current parliament. Committee members are now elected in secret ballots in their party groups, and their chairs are elected in a cross-party secret ballot by all MPs (with the names still put formally to the chamber for final approval). Hence the select committees are not only permanent, and specialist, they now enjoy significant institutional independence from the whips.

Box 1.4: The 'Wright committee' reforms

The Select Committee on Reform of the House of Commons was established in 2009, following the MPs' expenses crisis.[9] It was chaired by Labour MP (and chair of the Public Administration Committee) Tony Wright. There was a clear mood at the time that parliament needed to restore its reputation, and that long overdue reforms (particularly with respect to the select committees) should be put into effect. The 'Wright committee' proposed the establishment of a new Backbench Business Committee, and new category of backbench business, in order to give MPs better control over the Commons agenda. With respect to select committees, it recommended limiting membership to 11 MPs (to improve cohesiveness and attendance), enforcing clearer rules about frontbenchers and PPSs not serving on the committees, and introducing elections for committee members and chairs. All of these recommendations were implemented at the start of the 2010 parliament.

Elected chairs of the select committees can serve for whichever is the longer of two parliaments or eight years, and since 2002 have been paid an additional salary. Collectively, the select committee chairs make up the Liaison Committee, which has long operated as an effective champion for

select committee interests, and now holds evidence sessions with the Prime Minister three times a year. More than 10 years ago this committee called for a reform of select committee membership (Liaison Committee 2000b), and helped keep up pressure on the issue thereafter. It has also pressed for more resources for the committees (which have since included the establishment of the Scrutiny Unit), and set down standards such as the select committees' list of 'core tasks'. It recently undertook a review of select committee activity, recommending some further improvements (Liaison Committee 2012a), that were informed by both Constitution Unit (Russell and Benton 2011) and Hansard Society (Brazier and Fox 2011b) research. But such changes are to an extent fine-tuning, as the select committees are widely seen to work well. Indeed, given their dedicated focus on investigative and scrutiny work, they may be more effective at this than their equivalent counterparts in other parliaments (Benton and Russell 2012).

Table 1.2: Public bill committees and departmental select committees compared

Characteristic	Public Bill Committees	Select Committees
Primary role	Legislative scrutiny.	Investigations and executive oversight.
Specialist	No.	Yes: correspond to government departments.
Permanent	No: appointed ad hoc for each bill.	Yes: established for whole parliament.
Composition	Includes frontbenchers (and whips) as well as backbenchers.	Backbenchers only.
Method of selection: Chairs	Selected by Speaker from Panel of Chairs.	Elected by secret ballot of the whole House.
Method of selection: members	Chosen by Committee of Selection.	Elected by secret ballots in the parliamentary parties.
Evidence taking	Only when a bill has started in the Commons and has not been the subject of pre-legislative scrutiny.	No restrictions.
Witness selection	If applicable, arranged by whip-dominated programming sub-committee.	Selected by committee members.
Scheduling	Out-dates negotiated between party whips. Detailed control led by whip-dominated programming sub-committee.	Controlled by committee members.
Party discipline	Yes: through whips on committees.	Unwhipped.
Secretariat	Temporary, drawn from Scrutiny Unit, Library & relevant select committee (evidence-taking) and Public Bill Office (line-by-line scrutiny phase).	Largely permanent, including clerk, committee specialist and others, plus specialist advisers for inquiries.
Mode of decision making	Majoritarian.	Consensual.

As well as their members, there are important differences in terms of the arrangements for staffing the two kinds of committees. While public bill committees rely on a staff team that is drawn together temporarily for the lifetime of the committee (albeit from permanent staff at Westminster), the select committees have a team that remains together from one inquiry to the next. The departmental select committees each have a clerk, second clerk, one or two committee specialists, and normally two committee assistants. Committee specialists are hired for their

knowledge on the subject area, and while other staff are more generalist, they will tend to develop subject expertise over their time with the committee. In addition, the select committees are able to appoint specialist advisers to support particular inquiries, who may advise on matters such as the selection of witnesses and drafting of questions, as well as preparing background papers. Like the public bill committees, the select committees can sometimes benefit from additional input from specialists in the House of Commons Library. All of these individuals will not only build up a relationship with each other, and with committee members, but also with other relevant personnel in the field, such as civil servants in the department shadowed by the committee, and outside experts.[10]

Despite their primary focus on executive scrutiny, select committees are now to some extent involved in scrutinising legislation. One of their 'core tasks' is to consider departmental legislation when it is published in draft form, for 'pre-legislative scrutiny' (see Box 1.6 below). This applies to a small minority of bills only – the instances in the present parliament are illustrated in Table 1.3. Hence select committees are now fairly frequently involved in scrutinising legislation in draft.[11] On occasions, they also report on legislation during its passage, though this is not line-by-line scrutiny, and they have no power of amendment. One response to the perceived difficulties with PBCs has thus been resort to the more highly-regarded, expert select committees which are operating increasingly as pre-legislative, proto-first reading committees.

Table 1.3: Select committees and pre-legislative scrutiny, 2010-12

Draft Bill	Publication date	Department	Scrutinising Committee
Draft Groceries Code Adjudicator Bill	May 2011	DBIS	Business, Innovation and Skills Committee
Draft Individual Electoral Registration Bill	June 2011	Cabinet Office	Political and Constitutional Reform Committee
Draft Electoral Administration Provisions and Further Provisions	July and September 2011	Cabinet Office	Political and Constitutional Reform Committee
Draft Civil Aviation Bill	November 2011	Transport	Transport Committee
Draft Recall of MPs Bill	December 2011	Cabinet Office	Political and Constitutional Reform Committee
Draft Energy Bill	May 2012	DECC	Energy and Climate Change Committee
Draft legislation on family justice [Draft Children and Families Bill]	September 2012	Education	Justice Committee
Draft Legislation on Reform of provision for children and young people with Special Educational Needs	September 2012	Education	Education Committee
Draft Water Bill	10 July 2012	DEFRA	Environment, Food and Rural Affairs Committee

Source: Liaison Committee (2012a: 16).

Writing nearly 40 years ago, Anthony King (1976) noted that the House of Commons operated largely in 'inter-party mode', based on an adversarial relationship between the two main parties. Unlike other parliaments, it rarely achieved a more consensual 'cross-party mode', in which members could put party differences aside in order to work together to improve public policy. The establishment and growth of the select committee system has since changed that, at least to some

extent. These committees have a nonpartisan character and their reports are almost invariably unanimous. The fact that select committee proceedings are conducted from within a horseshoe seating plan, together with the greater permanence and specialisation of their members, all help to encourage a distinctly consensual method of working. Despite some occasional criticisms, this has contributed over the last three decades to the select committees acquiring a respected reputation, many of and their chairs emerging publicly as recognised parliamentary authorities on their subject areas. The recent Wright committee reforms further strengthened the capacity of the committees, and therefore that of the Commons as a whole, to operate constructively across party lines. In this context, the PBCs appear increasingly anomalous.

The history of the committee system in the Commons

Committees have operated within the Commons for centuries. For example Butt (1969: 353) notes that committees – with powers including the ability to draft their own bills – existed during the reign of Elizabeth I. But the seeds of the modern committee system can be most easily seen over the last century or so, and particularly in the post-war period

In 1882, under Gladstone's premiership, the Commons established two specialist standing committees to consider legislation. One focused on the law, courts and justice, and the other on trade, shipping and manufactures (Seaward and Silk 2003). These committees had a permanent membership of 60-80 MPs, with the ability to appoint up to 15 others for specific bills. Members were chosen by the Committee of Selection (Walkland 1979). In 1907 an expanded system of four committees was created, with detailed consideration of bills in committee (rather than in a 'committee of the whole') increasingly to be the norm. But despite an official expectation that 'the Committee of Selection would inter alia have regard to the "classes of bills" which were sent to each committee, and the qualifications for dealing with that kind of bill possessed by the members nominated' (ibid: 262), in practice bills came to be sent to the first available committee. Gradually, the permanent 'nucleus' membership of the standing committees declined, as did expectations that additional members nominated to them would have specialist knowledge. Walkland reports that by 1926 these additional members could number up to 35, and in 1933 any vestigial requirement of specialist knowledge was officially abandoned.

Today's structure of bill committees is generally seen as dating to 1945, when Labour entered power with a heavy legislative programme (Kelso 2009, Seaward and Silk 2003). The number of standing committees was increased, and the size of each reduced, in order that more bills could be considered. Whipping on bill committees became standard, and 'guillotines' were regularly used to curtail debate. Eventually in 1960 the system shifted to one of entirely ad hoc committees, where members were appointed on a bill-by-bill basis (Walkland 1979). Some argued at the time that this could allow more specialist members to be chosen, but any such suggestion proved to be 'more apparent than real' (Crick 1964: 82). Effectively, the commitment to permanence, as well as specialisation, had now been ended.

There were, however, countervailing pressures, both before and after these mid-century reforms. In an early proposal, Ivor Jennings (1934) advocated (based in part on practice overseas) adoption by the Commons of a set of specialist legislation committees to shadow the main legislating departments. In the 1940s, Clerk of the House Sir Gilbert Campion suggested a set of specialist committees responsible for 'legislative, financial and administrative scrutiny' (Walkland 1979: 270), but this did not find favour with the government or the Procedure Committee. Later, the cause of specialist committees was taken up in Bernard Crick's *The Reform of Parliament*. This set out various options for developing the Commons committee system, with the 'maximum position' being that 'Standing Committees on legislation should become specialized to definite areas and should be given general powers to discuss matters in these areas, and to scrutinize and investigate the work

of Departments concerned' (Crick 1964: 198). At that point both legislation committees and investigative (i.e. 'select') committees were ad hoc, and this reform would have dealt with the perceived problems that resulted for both.

Crick's proposals went on to be championed by the Study of Parliament Group (which he co-founded), and marked an important step towards the establishment of the modern select committees. In the 1964-65 session the Procedure Committee proposed strengthening the committee system, but did not go as far as Crick's 'maximum position' of dual purpose (i.e. legislative and executive scrutiny) committees (Johnson 1979, Kelso 2009). Following the 1966 election, Leader of the House Richard Crossman oversaw establishment of six specialist select committees, which notably had no legislative responsibility. A subsequent report by the Procedure Committee in 1978 proposed expanding these to a full set of departmental committees, and this recommendation was implemented in the first session of the 1979 parliament. But while a set of permanent, specialist committees now existed, and has since gone from strength to strength, the suggestion that the same principle should apply to the scrutiny of government legislation fell by the wayside.

Proposals for reform of Commons legislation committees since 1992

Since this time, dissatisfaction with perceived inadequacies of the legislative process have been made plain through numerous studies – from both inside and outside parliament. Although these reach back many decades, current discussion may be taken to start with the Hansard Society's 1992 Rippon Commission report *Making the Law*. There have been various procedural changes to Commons scrutiny of legislation since then, but few have been primarily focused on *effectiveness* (i.e. strengthening scrutiny), as opposed to *efficiency* (i.e. facilitating the passage of government bills). Consequently, many frustrations remain. Here we record the various proposals for changing the system, and the key reforms that have – and have not – taken place.

The Rippon Commission had a high-powered membership, and was chaired by an experienced parliamentarian, with a respected former Commons clerk[12] as secretary. It produced a detailed and authoritative report. With respect to legislative ('standing') committees in particular, the Commission observed that much of their time was wasted on fruitless point scoring, claiming that:

> ... many Members appear to find committee work on bills to be largely a waste of time. Government back-benchers are discouraged by their Whips from making any contribution; the Opposition side feels frustrated because it can make little impact on the bill... the public, say some Members, are alienated by the whole process. On the other hand, the importance of requiring Ministers to explain and defend their bills publicly, even if in the end no amendments are made, should not be ignored. The important question is: how can this accountability best be achieved? (Hansard Society 1992: 85).

The report's basic conclusion was that 'the present procedures in standing committees are no longer acceptable for scrutiny of many bills' (ibid: 86). The preferred solution was to refer most bills to 'special standing committees'. This form of committee had been created on an experimental basis in 1980, and put permanently into standing orders in 1986. The key distinction from regular standing committees was that an evidence-taking phase, including oral hearings, would take place before line-by-line scrutiny, drawing on the select committee model. But this mechanism had been in practice rarely used: there were only five such committees over the period 1980-86. The Rippon Commission proposed that this model should now become the norm.

In addition, the Commission recommended that bills (especially the most contentious) should be sent to a specially-convened 'first reading committee' before their second reading in the Commons. These committees would take a consensual approach to bill scrutiny – there would be no voting on policies and ministers and their shadows would not attend. The intended purpose of this new stage in the legislative process was to allow members to brief themselves on the issues, and for the government to identify contentious issues and consider alterations 'before the political concrete has set' (Hansard Society 1992: 83-84). In terms of the composition of first reading committees, the Commission considered that 'overlapping membership with the select committee that covers the department responsible would be helpful in many cases' (ibid: 82), though it stopped short of recommending that select committees should take on the role. The special standing committee should then 'comprise the members of the first reading committee (if there was one) and in any event should include members of the relevant departmentally related select committee' (ibid: 86). Subsidiary recommendations included that the circulation of notes on clauses, and on any government amendments, should be standard practice, and that informal factual briefings for committee members might take place for particularly complex bills. More consultation on draft bill clauses before formal introduction was also proposed. The Commission likewise emphasised that 'if parliamentary scrutiny of bills and delegated legislation is to be improved... much more extensive formal time-tabling of all legislation will have to be accepted' (ibid: 121-2). It proposed moving away from a one-year legislative programme, towards a two-year programme, with the possibility of carryover of bills from one session to the next.

Little of this came to pass immediately, and the scheme as a whole not at all. However, the circulation of notes on clauses became more widely practised, and some of the ideas went on to be adopted later. Even if the proposed 'first reading committees' never materialised, the subsequent patchy moves to pre-legislative scrutiny, in part conducted by the departmental select committees, achieve partially similar aims.

Following the election of 1997, the new government set up a Modernisation Committee – largely made up of backbenchers but chaired by the Leader of the House as a signal of government commitment – to explore options for Commons reform. It was asked to make a first report to the House before that year's summer adjournment on ways in which the procedure for legislative scrutiny could be improved. Its first report acknowledged the defects of the existing process, including a suggestion that '[t]he Committee stage of a Bill, which is meant to be the occasion when the details of the legislation are scrutinised, has often tended to be devoted to political partisan debate rather than constructive and systematic scrutiny' (Modernisation Committee 1997: paragraph 8). In several respects its analysis echoed that of the Rippon Commission.

The committee noted that there had been improvements to the legislative process overall, but suggested that more were possible. It welcomed the willingness indicated by the new government to submit more draft bills for pre-legislative scrutiny, and recommended experimenting with first reading committees, as proposed by the Rippon Commission, for bills not previously considered in draft. It also supported the possibility of bill carryover. It emphasised the benefit of select committee procedures, and the desirability of finding ways to build on this expertise in bill scrutiny. It agreed with the proposal – put in the government's memorandum to the committee – that there should be wider opportunities for bill committees to take oral and written evidence, including through greater use of special standing committees. Further recommendations included experimentation with the wider use of programme motions, dividing certain bills between standing committees and committees of the whole House, and providing notes on bill clauses at the time of a bill's presentation.

The immediate outcomes were fairly modest (Gay 2005: 372-75), and there was no progress at all on first reading committees or permitting bill committees to take evidence, but some fairly

tentative experimentation with programme motions ensued (for a summary of developments on programming, see Box 1.5). Another result was that the government did publish a greater number of draft bills, of which eleven were considered by select committees in the four sessions up to 2000-2001 to mixed effect (Power 2000).

Box 1.5: Programming of legislation

In its earliest 19th century form, programming meant resorting to 'guillotine' motions to force bills through the Commons against filibustering. The modern meaning is to timetable sections of bills to ensure that there is at least some opportunity to debate every part. Proposals that programming should become general were first voiced in the 1930s, and were central to the recommendations of the Hansard Society's Rippon Commission in 1992. The idea was then developed in repeated proposals by the Modernisation Committee from 1997. This committee's first report, *The Legislative Process*, set out a framework for experimentation with programme motions on a consensual basis between government and opposition (Modernisation Committee 1997). But such consensus was not always reached, and the system moved increasingly towards programme motions being agreed in whipped votes, with the government able to use its majority. Successive experimental initiatives led to the introduction of general, systematic programming from late 2004, following the acceptance of some recommendations from a critical report by the Procedure Committee (2004). Although programming has not invariably ensured full consideration of every clause of every bill, it is now accepted as permanent in principle. Nonetheless, '[o]f all the efficiency reforms proposed by the Modernisation Committee, perhaps none has provoked more criticism than has legislative programming' (Kelso 2007:149).

As applied to public bill committees, programming has two main effects. The first is that the 'out-date' is set by the motion agreed in the chamber after second reading. On occasion the committee may request a later out-date if it believes the time to be inadequate, and this may be accepted. The detail of how much time to give to each part of the bill is then discussed by the committee's programming sub-committee, and must be approved by the committee. This will often include deadlines by which the different parts of the bill must be considered. These are colloquially known as 'knives', as they are in effect mini-guillotines.

The Liaison Committee report *Shifting the Balance* of March 2000 was mainly concerned with strengthening the select committees, and is particularly noted for the recommendations which it made about how their members should be chosen. Given that the procedure for this and choosing members of legislation committees was at that time very similar, its recommendations are of some relevance. The Liaison Committee proposed that responsibility for choosing members should be taken away from the Committee of Selection, on the basis that this effectively acted on the advice of the party whips. Instead responsibility should be given to a new Select Committee Panel, comprising senior backbenchers, who would invite applications from MPs wishing to serve on the select committees and judge them according to members' qualifications. The appropriate relationship between select committees and bill committees was also discussed briefly in the report, particularly in the light of moves towards pre-legislative scrutiny. It observed that:

> At the moment there is a somewhat artificial disconnection between a select committee's consideration of a draft Bill, and a standing committee's consideration of the Bill following second reading. We hope that the Committee of Selection would put on the standing committee at least some of the select committee that had considered the Bill in draft; but a better way of using the select committee's expertise on the Bill would be to provide that any member of the select committee could attend and speak (but not vote) in the standing committee (Liaison Committee 2000b: paragraph 62).

The government rejected the recommendations about committee membership, but did express a commitment to publishing more bills in draft. The Liaison Committee responded angrily to the government's reply, claiming that '[t]hose being scrutinised should not have a say in the selection of the scrutineers. We believe that the present system does not, and should not, have the confidence of the House and the public' (Liaison Committee 2000a: paragraph 28). Although the committee's recommendations had not extended to the membership of legislation committees (which was essentially beyond its remit), the same arguments could clearly be applied. However in general, from this point on, debate became increasingly focused on reforming the membership of select committees, rather than standing committees.

Around this same time, a Conservative Party Commission chaired by Philip Norton (Professor the Lord Norton of Louth), reviewed a large number of issues under the umbrella of 'strengthening parliament'. Unsurprisingly, its recommendations included changing the way that select committee members were chosen. With respect to the legislative process, its proposals were aligned with what in retrospect may be seen as an emerging consensus about the lines of possible change. The main points were that primary legislation should normally be published in draft and, following second reading, should be referred to a special standing committee – to which the relevant departmental select committee should be able to nominate at least two of its members. Special standing committees should be given power over their proceedings, and public bills be subject to carryover from one session to another (Conservative Party 2000).

This emerging consensus can also be seen in the report of the Hansard Society's Newton Commission (Hansard Society 2001), which insisted that parliament should develop a culture of scrutiny which put it the apex of all statutory inspectorates and like national bodies. In the context of a report directed at improving parliament's effectiveness of scrutiny over the executive, and particularly a strengthening of select committees, some recommendations relevant to the legislative process were made. The Commission called for select committee expertise to be deployed much more effectively in the examination of bills – particularly in draft – though noting that earlier publication of draft bills was essential if committees were to have adequate time. It also called for active experimentation, including that:

> ... one or two dual-purpose committees, conducting departmental inquiries and scrutinising legislation, should be established on a pilot basis and their performance evaluated by the re-organised Liaison Committee (Hansard Society 2001: 45).

This was one of the first suggestions that the model previously advocated by Jennings (1934) and Crick (1964) should be returned to, as a means of bringing the benefits of permanence and specialisation – as enjoyed by the select committees – into the Commons committee stage of bills.

Following the 2001 general election Robin Cook – a keen reformer – became Leader of the House of Commons. But his most urgent challenge became reform of select committee membership, as a result of the Dunwoody/Anderson controversy. This was the subject of the Modernisation Committee's first report of the 2001-02 session (Modernisation Committee 2002b). The result was a significant boost to the resources of the select committees, the establishment of 'core tasks' and of the Scrutiny Unit. The crucial reform proposed to these committees' membership would have removed the power of nomination from the Committee of Selection and (in a change to the Liaison Committee's proposal) given this to a body largely drawn from the Panel of Chairs. But the plan was rejected by the Commons, which was widely seen as a significant setback for 'effectiveness' reforms (Kelso 2003, 2009). Although this change would not have applied to the standing committees, other proposals made in evidence to the Modernisation Committee would have had this effect. For example, the chair of the Committee of Selection proposed that its membership could be broadened, while Sir George Young (2002: paragraphs 3-4), who has since

become government Chief Whip, suggested that the number of frontbenchers on this committee should be reduced to just two out of nine.

Robin Cook's initiatives on legislation were limited principally to encouraging pre-legislative scrutiny, and carryover. The Modernisation Committee's second report under his chairmanship suggested that 'the Government continue to increase with each Session the proportion of Bills published in draft' (Modernisation Committee 2002a: 13). There was an initial increase – with seven draft bills published in 2001-02, nine in 2002-03, and 12 in 2003-04 – but since then the numbers have significantly dropped (Kelly 2013). This same Modernisation Committee report expressed support for carryover, which has likewise been fairly limited in subsequent years – reaching a recent peak of four bills in the 2010-12 session (Kelly 2012).

Box 1.6: Pre-legislative scrutiny of draft bills

In a sense all bills remain in draft form until they have been approved by parliament and reach the statute book, as parliament can obviously amend them. But the term 'draft bills' is generally used to mean bills published for consultation before their formal introduction to parliament. The Rippon Commission in 1992 noted that there had been some prior use of draft bills, but called for substantially more, in order that potential shortcomings in legislation could be pointed out at an early stage. John Major's government (1992-97) produced a number of bills in draft, and Labour came to power with a commitment to publish more. But the record since has been somewhat patchy, and while pre-legislative scrutiny is well suited to certain kinds of bills, it remains difficult for others. In particular, large government 'flagship' bills have rarely been published in draft, and the arrival of a new government in 2010 meant that many bills had to be published quickly, without prior consultation. When draft bills are published these are generally scrutinised by a parliamentary committee, which produces a report. The most common vehicles for this are a Commons departmental select committee or an ad hoc joint committee made up of MPs and peers.

In 2003 a wide-ranging investigation by the cross-party group of parliamentarians 'Parliament First' proposed some changes to the legislative process, as well as a number of other reforms. These echoed the earlier recommendations of others. The group again suggested that all bills should be referred to special standing committees, to benefit from expert witnesses, and that these could also 'draw on the expertise of the relevant select committee to ensure that Bills received a much closer level of scrutiny than under the current system of standing committees' (Parliament First 2003: 60). Like the Hansard Society in 2001, this group also went further and suggested that:

> The House should pilot some dual-purpose committees which combine standing and select committees functions... these combined committees are the norm in most other Parliaments and it is worth evaluating whether their use might improve both the quality of legislation and accountability (ibid: 61).

The next major review of the legislative process was conducted by the House of Lords Constitution Committee (then chaired by Philip Norton), and published in 2004. It received a good deal of evidence about the ineffectiveness of the standing committees. Peter Riddell (2004: paragraph 6), then political correspondent for *The Times*, and former vice chair of the Newton Commission for example claimed that '[s]tanding committees remain unproductive and ritualistic', adding that 'fortunately perhaps for all involved they receive no media attention'. Like many other bodies before it, this committee concluded that 'bills should normally be committed after Second Reading to a committee empowered to take evidence', and that 'the membership of a committee examining a bill should normally include some members who have been responsible for the pre-legislative scrutiny of the measure' (Constitution Committee 2004: 37-38). The government

response accepted the latter point, but not the committee's proposal that all bills not considered in draft should go before committees empowered to take evidence.

A further publication by the Hansard Society in 2004 looked at how the legislative process was faring. The chapter on standing committees concluded that much legislation 'is inadequately considered' and 'it is not uncommon for individual clauses, or even whole sections of a bill, to pass through a standing committee without even being read, much less subject to any detailed scrutiny' (Brazier 2004: 16), which implied that programming had not necessarily improved outcomes. It observed that '[d]espite the pivotal role of standing committees in the passage of legislation, they attract widespread, and often trenchant, criticism' (ibid: 15). Various suggestions for change were noted, such as adopting the seating plan of select committees, or allowing non-voting experts to take part, but the report concluded that 'more fundamental changes are necessary' (ibid: 18). Once again, it reiterated the demand that bills should be routinely referred to special standing committees, but also that 'one or two dual-purpose committees, which would undertake both scrutiny and legislative functions' should be trialled, suggesting that 'if they were considered to be successful, they should become more widespread' (ibid: 19).

Resolution of some of these issues finally came as a result of an important 2006 Modernisation Committee report, *The Legislative Process*, under the chairmanship of Jack Straw. The committee acknowledged that 'the work of standing committees has been one of the most criticised aspects of the legislative process' (Modernisation Committee 2006b: 23). It noted the comments of the Hansard Society – submitted in evidence – that standing committees:

> …fall badly between several stools; they fail to deliver genuine and analytical scrutiny of the provisions involved, their political functions are neutered, dominated almost exclusively by government (and this has been exacerbated by programming), 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 ibid).

In a preliminary report published that same year, the Modernisation Committee (2006a) had considered the options for the committee stage of bills. One of these was for bills to be referred after second reading to the relevant departmental select committee. The committee noted that:

> Committal to a departmental select committee would join up the House's scrutiny of the Government's expenditure, administration and policy with its scrutiny of legislation. Furthermore, it would enable the same committee which considered the bill to return to the operation of the Act at a later date, providing continuity between the passage of the bill and post-legislative scrutiny (ibid: 5-6).

This approach would also have the advantage of subjecting bills to 'the collective expertise of an established group of Members who have spent some time considering related matters together' (ibid: 6). However, on the negative side, it was suggested that this could overload the select committee. Notably, the option did not make it into the Modernisation Committee's final report some months later.

The committee – although not inclined to accept root and branch criticism of standing committees, and defending the utility of partisan debate as a way of testing bill proposals, concluded 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 (Modernisation Committee 2006b: 23).

The report's key recommendations were that:

- 'Public bill committees' with evidence-taking powers should replace standing committees for government bills originating in the Commons, and should hold at least one evidence session with the minister and officials. (In recommending such committees, the committee was concerned that the innovation did not undermine or discourage pre-legislative scrutiny, which it strongly supported.)
- Chairs of the relevant select committees should usually chair the evidence-taking stage of public bill committees' work, but the duty should be shared with other members of the relevant select committee – and perhaps members of certain other select committees – to relieve the burden where desirable.
- Following an analysis that showed how relatively few members who had participated in a bill's pre-legislative scrutiny had tended to be selected for the standing committee, that standing orders should be amended to require the Committee of Selection to have regard to this when considering members' qualification to serve on public bill committees.

There was no formal government response to this report, but it was debated in the House two months after publication. Government motions provided standing order changes to enable the establishment of evidence-taking PBCs, and these were instituted in 2007. Thus, 14 years on, a central proposal of the Rippon Commission had finally been implemented. However, little else in the Modernisation Committee's report – for example the role of departmental select committee chairs in PBCs, or the preference for those involved in the pre-legislative scrutiny – was followed up. In addition, nothing was done to moderate, still less abolish, the control by whips over membership of the committees.

The number of proposals since that time have been relatively few (though see also comments on the PBC process in the next section). But more recent Hansard Society work, including a detailed case study analysis of the legislative process, has continued to press for further experimentation. This has suggested piloting 'committees combining features of public bill and select committees' (Brazier, Kalitowski and Rosenblatt 2008: 204), and subsequently 'combining the membership of select committees and PBCs into one Legislative Committee process' (Fox and Korris 2010: 147). Expanding this latter proposal, it was suggested:

> ... that the House of Commons should review its committee system with a view to trialling the introduction of several Legislative Committees... These committees would seek, as far as possible, to combine the membership of departmental select committees and PBCs for consideration of those bills that receive pre-legislative scrutiny (ibid: 151).

How exactly this would be put into effect has not been set out in detail. Recent Hansard Society publications (including Fox and Korris 2010) also proposed the establishment of a 'Legislative Standards Committee', to manage the incoming flow of legislation. This is one of the issues being explored in a current inquiry by the Commons Political and Constitutional Reform Select Committee into *Ensuring Standards in the Quality of Legislation*.[13]

Other proposals have addressed the controversial question of whip control of PBC membership. A Constitution Unit report – *The House Rules?* – reviewed international practice as a way of identifying how the autonomy of the Commons might be enhanced (Russell and Paun 2007). It recommended a series of measures, with particular focus on enhancing backbench influence over the agenda, with the central proposal being the establishment of a Backbench Business Committee and new category of backbench business. The report also returned to the vexed question of select

committee membership, and these proposals touched on the membership of legislation committees as well. Thus it recommended that the chair of the Committee of Selection should be elected by the House by secret ballot, and that backbench membership of this committee should be extended. It also recommended that the Committee of Selection's lists of proposed public bill committee members should be put to the chamber for approval, on the model previously used for select committees.

Many of this report's recommendations were taken up in the report of the 'Wright committee' (Reform of the House of Commons Select Committee 2009). As already indicated, its proposals included the establishment of a Backbench Business Committee, and the election of select committee members and chairs. The legislative process did not fall directly within the Wright committee's terms of reference, but it did make a number of recommendations in this area. Some of these related to the report stage, but with respect to public bill committees it suggested that:

> ... it is notable that the arrangements for appointment of Members to public bill committees are markedly less transparent and democratic than those for select committees. The chairs of public bill committees are selected from the Chairman's Panel, chosen by the Speaker, and this system is widely accepted. But the members of these committees are chosen by the Committee of Selection with no reference to the House itself. We conclude that a review would be desirable of the means of selection of public bill committee members, so that it was subject to a similar level of accountability to that long applied to select committee membership (ibid: 21).

Many of the Wright committee's recommendations have now been put in place, and are operating well. But to date, no such review of public bill committee membership has taken place.

Assessing the performance of public bill committees

Since their introduction in 2007, there have been a small number of studies seeking to assess the performance of public bill committees. Three of these have had a strong practitioner focus, and made recommendations for possible improvements: two from the Hansard Society (Brazier, Kalitowski and Rosenblatt 2008, Fox and Korris 2010) and one from the Constitution Unit (Levy 2009). In addition, the public bill committees have been the focus of academic study by Louise Thompson (2012, 2013) at the University of Hull, and been touched on during a large Nuffield-funded study into the legislative process based at the Constitution Unit, whose results are as yet largely unpublished.

The three practitioner studies draw similar general conclusions and differ only on the extent to which they develop firm recommendations. They note that whips continue to control membership and determine the extent of evidence taking, and that the limited borrowing from the select committee model has not really produced less adversarial operation. Indeed, contrary to original aspirations, marked adversarial conduct continues during the line-by-line scrutiny stage. This is attributed to the fact that, unlike in select committees, members do not have a continuing, permanent relationship with each other in which camaraderie may grow – particularly across party lines. Instead, members are thrown together temporarily into what quickly becomes a conflictual situation. Regarding the evidence-taking stage, members' opinions differ. One MP complained to Hansard Society researchers that '[w]e either ended up hearing from the usual suspects or getting the same arguments, or both. We learned nothing new' (quoted in Brazier, Kalitowski and Rosenblatt 2008: 223). But other MPs have spoken positively about the impact of evidence taking (e.g. Levy 2009: 32).

All three studies considered PBCs to be an improvement on the previous system, but in need of further development. The Hansard Society recommendations have already been summarised above. These were based in part on observation of the systems in the Welsh Assembly and Scottish Parliament (the latter of which is further discussed below), and flagged the possibility of dual purpose committees conducting both legislative and executive scrutiny, in order to deal with the problems of impermanence and consequent dangers of adversarialism. Levy (2009) concluded by identifying a number of specific changes which could enlarge the role of the backbench member, diminish the absolute dominance of the whips, and give greater autonomy to the PBCs to determine their own procedure. These included ensuring that membership of PBCs reflects the balance of views across the House and is more targeted on the available expertise amongst MPs, giving more control of the programme to the PBC chair rather than the whips, giving PBC members more control over selection of witnesses, and expanding capacity of both the Scrutiny Unit and the Public Bill Office. Ultimately, however, Levy suggested that larger changes should be considered, commenting that '[t]he 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' (2009: 5).

The academic studies have not sought to make recommendations about how the system could be improved, but instead to assess things as they stand, and particularly the extent to which Commons legislation committees have an actual policy impact. Thompson's (2012) exhaustive study looked at all 139 bills included in Queen's speeches over the period 2000 - 2010, documenting every committee stage amendment and complementing this with interviews. This enabled her to consider the extent to which committee consideration resulted in legislative change – either directly or indirectly. She contrasted this with the committee work documented in the last detailed analysis of the legislative process – conducted by John Griffith (1974) nearly 40 years ago. One conclusion was that 'bill committees are working even harder than before: sitting for longer and processing a much higher number of amendments' (Thompson 2012: 9). And perhaps surprisingly – given the degree of criticism to which they are subjected – she found that this effort was not entirely wasted. While fewer non-government amendments appear to be succeeding in committee than in the past, large numbers of government amendments at report stage explicitly responded to committee members' concerns. Looking at the impact of evidence-taking specifically, Thompson (2013) has found that it is not uncommon for government amendments to respond to points that were raised during evidence sessions. Both these and the line-by-line scrutiny phase do therefore appear to bear some fruit.

These conclusions are consistent with those from the Constitution Unit's own recent research, which catalogued around 3500 amendments to 12 case study bills in the 2005 and 2010 parliaments, in both chambers, complemented by interviews with those concerned.[14] Through building legislative 'strands' comprised of similar amendments at different stages – an approach first taken by Russell and Johns (2007), though also influenced by the work of others – this showed that many ideas raised during the Commons committee stage go on to be debated at later stages, in both Commons and Lords, and often result in government concessionary amendments. However, this research also shows how not all amendments, by any means, are serious attempts to change the legislation. Other motivations by non-government parliamentarians include simply to 'probe' and get ministers to explain their intentions, to force ministers into defending controversial policies on the record, or even simply to waste time. One opposition frontbencher interviewed described the 'slightly silly charade' in which the government suggests a number of committee sessions, the opposition always asks for more, and then 'you've got to be seen using up all those sessions'. Hence:

> ... there are various tricks that you can use to string it out. So, basically, it was trying to find things in the bill that indicated that we were scrutinising it, but I wouldn't, to

> be absolutely frank, I wouldn't say they were rooted in particularly strong concerns about how it would work (interview with opposition frontbencher).

This helps to demonstrate how concerns by non-government actors about the legislative process cannot always be taken at face value. At times it may actually be more effective than many people think. But it is also clear that the introduction of public bill committees – and indeed of programming – has not ended a degree of game playing and time wasting in the process.[15] In addition, it is clear that the public bill committees have a poor reputation, which feeds negativity about the legislative process and about parliament as a whole.

Commons legislation committees now – conclusions

Recent decades have seen some very important and positive advances in the procedures of the Commons, as noted by many of those who follow the institution closely (e.g. Cowley 2006, Flinders and Kelso 2011, Ryle 2005). MPs are far better resourced than in the past, parliamentary proceedings are far more transparent and accessible (particularly online), and certain aspects of parliamentary operation – particularly the select committees – are seen as increasingly effective. Most recently the Wright committee reforms gave members a greater sense of ownership of their own institution and wrested part of the agenda from executive control. But within this changing environment, the Commons committees dealing with government legislation have been largely left behind. As Louise Thompson (2012: 1) suggests, '[a] Member of Parliament from the late nineteenth century would be quite familiar with a contemporary House of Commons bill committee'.

Unsurprisingly then, legislation committees in the Commons have been subject to strong and sustained criticism. Over decades, there have been numerous proposals to reform the system, some of which have been made repeatedly, with mixed success. The most obvious progress towards 'effectiveness' has been the move to evidence-taking on the old special standing committee model, introduced via the PBCs in 2007. This reform had been demanded consistently for at least 14 years, since the Hansard Society's highly-regarded Rippon Commission. Other calls from that Commission, notably that for more rational and predictable programming of legislation, were introduced more swiftly. Programming has been controversial, and its effects are contested, with many classing it as an 'efficiency' rather than an 'effectiveness' reform (Kelso 2007, 2009). But it has at least reduced pointless filibustering in committees and the risk of large swathes of legislation going unconsidered as a result, and to some extent reduced the inhibition on government backbenchers contributing to the debate. Alongside this, there have been some moves towards publication of government bills in draft, for pre-legislative scrutiny, and towards the carryover of bills from one parliamentary session to the next. All of these changes push in the direction of more rational, considered debate on legislation.

Yet clearly significant problems remain – most notably the temporary and nonspecialist nature of public bill committees. These shortcomings are particularly apparent in the context of the select committees, which enable members to develop ongoing professional relationships across party lines, and expertise in the subject matter at hand. In addition, the whips continue to control how members of public bill committees are chosen. The lack of accountability for their decisions was out of step with the select committees even prior to 2010, but appears glaringly inadequate following the Wright committee reforms. This – rightly or wrongly – fuels suspicions that qualified members are being intentionally kept off public bill committees. It is just one aspect that risks bringing the committees – and the wider legislative process – into disrepute.

Since the establishment of the modern-day select committees in 1979, there have been continued pressures to extend their specialist and relatively nonpartisan ethos into consideration of

government bills. These include suggestions that select committees should act as 'first reading' committees before legislation is debated in the chamber – which were never acted upon (though the departmental committees' involvement in pre-legislative scrutiny has some similar effects). There have also been consistent proposals that select committee members should have a right to representation on bill committees, in part to ensure continuity with any pre-legislative scrutiny, and in part to inject greater expertise and make connections with other committee inquiries. Although some overlap does occur between select committee and public bill committee membership, this remains patchy and has not been formally institutionalised. More recently, therefore, there have been some suggestions that the two systems should even be merged, to create dual purpose committees conducting both legislative and executive scrutiny.

It is perhaps ironic that this was the initial demand of reformers such as Jennings (1934) and Crick (1964), many decades ago. These proposals were eventually heeded only partially, through the establishment of the select committees. Creating expert committees with investigative power was seen as lower risk than applying this principle to the treatment of government legislation. Since they were created, the select committees have grown in strength, resources and reputation, and may now be among the most effective parliamentary bodies in the world in conducting executive oversight and investigations. But the trade-off for the creation of an effective set of non-legislative committees in the Commons was – for many years – the setting aside of serious reform to the legislation committees, which have remained the preserve of the whips. Attempts to sidestep this problem by involving select committees in the consideration of draft bills, or bolting on evidence sessions to committees that remain ad hoc and largely adversarial, can only achieve so much. These changes are, to an extent, simply attempts to paper over the underlying weaknesses in a system of legislative committees which looks increasingly outdated and out of step.

The question is, therefore, whether larger reforms should now be considered in order to address the weaknesses in this system. It is, of course, always easier to identify defects than to identify the right workable responses. Some proposals have been made, such as creating dual-purpose legislation and investigation committees, but these have not been spelt out in detail and their feasibility is therefore untested. Before turning to such questions, we look to one obvious place from where inspiration may be drawn: the legislative committees of other systems outside Westminster.

Part II: Legislation committees in other parliaments

The previous section reviewed the present situation regarding legislative committees in the British House of Commons, and some of the related frustrations and previous proposals for reform. In thinking through the options for the future, arrangements in other parliaments may provide a useful source of inspiration. This section therefore considers what can be learnt for the organisation of Commons legislative committees from other similar bodies elsewhere.

Comparative research must always be conducted with a degree of caution. First, there are many important institutional, political and cultural differences between countries. Some legislatures exist in federal states, and/or presidential systems (as in the US), which can have important implications for their powers and functions. Some are unicameral (i.e. comprise only one chamber), which creates a different context from the bicameralism that exists in the UK. Legislatures can also reflect multi-party or two-party democracies, be well established or relatively new, and so on. While it can be fruitful to look at experiences in other systems, one must thus appreciate that contextual factors such as these are important.

A second challenge for comparative research is that formal rules may tell only half the story. While parliamentary standing orders are public and set the framework, it is how they work in practice that really matters, which can be unpredictable. Much may depend, in particular, on how political parties behave and on the culture of party competition. So for example with respect to the membership of committees an outsider looking at the Commons select committees might conclude that these are 'government dominated' because a government with a majority will enjoy a partisan majority on all committees. But UK insiders know that the select committees operate in a relatively nonpartisan way. This is a cultural phenomenon not specified in the rules. Similarly, if the political parties have preselection procedures (either democratic or less so) for choosing committee members, this may matter far more than the chamber's formal rules.[16]

This part of the report therefore proceeds with caution, but nonetheless – we believe – demonstrates important lessons for the reform of legislative committees. It is structured in three sections. The first briefly reviews what comparative scholars have said about these committees in general, and about which factors may be important to their effectiveness. The second section considers the arrangements in 20 other legislatures in established democracies, against some of these key factors, largely drawing on individual chambers' rules. The third section then looks in a little more depth at the committee arrangements in four other comparator legislatures (the US, Germany, Scotland and Australia), and how these operate in practice.

Comparative studies of legislation committees

The number of broad comparative studies of legislative committees has been relatively few, but what exists can offer a useful starting point when considering differences between committee structures, and any factors that may aid committees' effectiveness or success.

The classic study in this area was conducted by Lees and Shaw (1979) more than 30 years ago. It included detailed individual country chapters on eight national legislatures, and drew general conclusions based on these and on wider study.[17] Longley and Davidson (1998) produced a subsequent edited volume, which included material on some newer democratic legislatures in Eastern Europe.[18] One of the only other broad comparative studies was that by Mattson and Strøm (1995, 2004), who applied a more quantitative approach to studying committees' formal powers, without the use of case studies. Their data was drawn from 18 West European states. Other volumes (e.g. Olson and Crowther 2002) have looked more specifically at committees in newly democratised states, and have less obvious immediate relevance to the UK. But it is

interesting that scholars associate presence of an effective committee system with 'institutionalisation', or the ability of a parliament to become established and develop its own identity – as separate from the executive or political parties (see for example Norton 1998). Hence the considerable attention given to parliamentary committees in newly democratising states.

Lees and Shaw (1979) were particularly interested in which features can help to improve the effectiveness of committees. Factors identified included committee permanence (i.e. appointment for the duration of a parliament, rather than on an ad hoc basis per inquiry), specialisation (particularly through shadowing government departments), size (with smaller committees generally being considered more effective than larger ones), and resources in terms of specialist support. These conclusions are generally accepted by other scholars, but the first two factors obviously run counter to experience in Commons public bill committees.[19] Another consideration is the stage of the legislative process at which committees see a bill, where they are thought to be advantaged by considering bills before rather than after discussion in plenary. Committees' ability to take independent evidence is another obvious advantage, which has now been implemented in the Commons through the creation of PBCs.

Lees and Shaw's volume also helps to illustrate some of the potential pitfalls of comparative research. This is seen in the comparison between US congressional committees and the committees of the Japanese Diet. The US committees are generally considered very strong, and were used as a model for the system established in post-war Japan. Yet despite the close similarity between the rules in the two legislatures, Japanese committees were considered to be very weak, thanks to the relative strength of the Japanese parties, and the (then) dominance of the legislature by the ruling LDP. This demonstrates that in-depth study of a country's institutions is always advisable before drawing firm conclusions, and there are limits of what can be learnt from fairly superficial 'large-n' studies that look for patterns across a wide number of countries.

Legislation committees in 20 established democracies

So we see that some of the same factors considered problematic by reformers in the UK with respect to the Commons committees are considered by comparative scholars to be important to committee strength. We therefore use these factors to structure our initial overview of other countries' committee systems. In this section we consider the arrangements in 20 other established democracies. These comprise the US Congress, the 15 other EU pre-2007 enlargement nations, three Commonwealth parliaments which share a common Westminster heritage (Australia, Canada and New Zealand), and the Scottish Parliament, which drew on this same heritage but also sought to integrate desirable features from other parliaments in mainland Europe. Of these 20 legislatures, 11 are bicameral and nine are unicameral. For bicameral parliaments we present data separately for the first and second chamber. The data are summarised in Tables 2.1 and 2.2.

Information was collected from a range of sources. We began with parliamentary websites, which often provide a quite detailed indication of a chamber's formal arrangements. But in almost all cases it was necessary to supplement this information through enquiries in the country concerned. These were pursued largely by correspondence and telephone calls with parliamentary staff. In places we also drew on secondary literature, particularly in terms of how the rules are interpreted in practice.[20] We hope that the information presented is accurate and up-to-date, but it is always possible in such an exercise that errors creep in. We are very grateful to those who helped with our enquiries.

The first and most basic question that we asked in every case was whether the chamber had a system of committees to which legislation can be sent. This is reflected in the first column of each table. In all but one case – the Irish Senate – a system of legislative committees existed. Our

further questions explored whether legislative committees were permanent (rather than ad hoc), specialist (in terms of policy area), whether they considered bills before or after the initial debate in plenary, whether they could take evidence and in particular conduct hearings, and finally whether the same set of committees were responsible for conducting non-legislative inquiries such as those conducted by the House of Commons select committees. Each of these features is considered briefly in the sections that follow.

Table 2.1: First chamber legislative committees in 21 democracies (including UK)

Country	Legislative Committees?	Permanent?	Specialist Committees?	Committee before plenary?	Evidence taking?	Hearings?	Dual purpose legislative/investigative committees?
UK	Y	N	N	N	Y	Y	N‡
Austria	Y	Y	Y	Y	Y	Y	Y
Australia	Y*	Y	Y	N	Y	Y	Y
Belgium	Y	Y	Y	Y	Y	Y	N†Ψ
Canada	Y	Y	Y	N	Y	Y	Y
Cyprus	Y	Y	Y	Y	Y	Y	Y
Denmark	Y	Y	Y	N	Y	Y	Y
Finland	Y	Y	Y	Y	Y	Y	Y
France	Y	Y	Y	Y	Y	Y	N†§
Germany	Y	Y	Y	Y**	Y	Y	Y
Greece	Y	Y	Y	Y	Y	Y	N†
Netherlands	Y	Y	Y	Y	Y	Y	Y
Ireland	Y	Y	Y	N	Y	Y	Y
Italy	Y	Y	Y	Y	Y	Y	Y
Luxembourg	Y	Y	Y	Y	Y	Y	Y
New Zealand	Y	Y	Y	N	Y	Y	Y
Portugal	Y	Y	Y	Y	Y	Y	N†
Scotland	Y	Y	Y	Y	Y	Y	Y
Spain	Y	Y	Y	N	Y	Y	N†Ψ
Sweden	Y	Y	Y	Y	Y	Y	Y
USA	Y	Y	Y	Y	Y	Y	Y
TOTAL yes	21	20	20	14	21	21	15

*In Australia bills can be referred to the House of Representatives' committees but rarely are, and most committee stages are taken on the floor (but also see Senate committees, below).
**In Germany, debate has historically taken place at first reading on major or controversial bills but it has increasingly become a formality.
‡Standing committees of enquiry exist.
†Separate committees of enquiry are convened
Ψ Legislation committees can hold hearings, but not full scale enquiries.
§ French legislative committees may also be granted committee enquiry powers for a given project for a maximum of six months.

Permanence

One of the most striking features in the table is that in every chamber that includes a set of legislative committees (i.e. all 20 first chambers, and 10 of the 11 second chambers), these

committees are permanent rather than ad hoc. The UK House of Commons is alone in using temporary committees which are established on a bill-by-bill basis. Hence the conclusion in Mattson and Strøm's (1995: 260) study of 18 European democracies that Britain was 'in many respects the most deviant case'. The norm across Europe is for legislation to be considered in permanent committees, and this arrangement has also been adopted in other 'Westminster' systems, as well as having long existed in the US. In the Australian House of Representatives a permanent set of committees exists, though many committee stages continue to be taken on the floor. But in the Australian Senate, committee consideration is the norm. When the Scottish Parliament was established in the late 1990s it too adopted the now standard model of permanent legislative committees. Both of these cases are discussed in further detail below.

As already indicated, existence of permanent committees is widely considered to be important to committee effectiveness, and consequently to the effectiveness of parliament as a whole. As Shaw (1979: 380) puts it, '[t]here tends to be a relationship between the strength of the committee structure and the utilization of permanent committees. That is, strong committee systems tend to be mainly permanent'. The temporary nature of public bill committees in the House of Commons can therefore be seen as an indicator of institutional weakness.

The reasons for this are fairly clear. In PBCs, members are drawn together for a relatively short period of time to conduct a specific task, and then disperse again. The frontbenchers concerned may have an ongoing relationship – as a result of facing each other at question time, in media settings, or occasionally conducting behind-the-scenes discussions – but it may be years before the backbench members of a PBC are asked to work together again. In these circumstances there is little incentive to cooperate, and party barriers are hard to break down. The bonds between members of a given party will always be stronger than the bonds of common interest between members of a temporary committee. In contrast in permanent committees these latter bonds can become important, and come to transcend knee-jerk party differences. We see this in Britain, where long-term working relationships contribute to the select committees' ethos and reputation as effective cross-party bodies.

Strong parties and strong committees are not necessarily in conflict, as the example of Germany below attests. Instead, a useful concept that has been recently introduced into the legislative studies lexicon is that of 'committee cohesion' (Arter 2003: 86). Just as political parties may become cohesive entities thanks to their members sharing values and working together towards a common goal, so the same may be true of committees. This cohesiveness can benefit the policy process, as well as making committee work more satisfying for members. But as Arter (2003: 76) suggests '[a)ll things being equal, the higher the stability in the membership of the committee, the greater the mutual trust is likely to be generated between members'. Ad hoc committees will clearly struggle to be cohesive. Cohesion depends in part on the kind of tolerance and 'give-and-take' that can build up within groups that regularly work together, and which can be established across party lines over time. Sartori (1987: 230) termed this 'deferred, reciprocal compensation', whereby one member of a political group may compromise on their own desires in order to accommodate the wishes of others, in the expectation of the same kind of consideration from them in future. The select committees can benefit from this pattern of working, as do legislation committees in all the comparator parliaments. But it is plainly missing from the public bill committees.

Policy specialism

The other area where the House of Commons is clearly out of step with other parliaments is in the generalist nature of the PBCs. The select committees are not only permanent but also remain concentrated on a particular policy field, with the majority shadowing government departments. As shown in the tables, the same is true of legislative committees in all other countries considered

here. Among first chambers, the Commons is thus the only one not to have a set of specialist legislation committees. Among second chambers, it is only the Irish Senate which lacks a set of legislation committees structured in this way (Senators contribute to joint investigative committees, but not to legislation committees). The House of Lords (not shown in the table) also lacks legislation committees, as bills take their committee stage on the floor, or in grand committee. But specialist committees in the Lords (primarily the Delegated Powers and Regulatory Reform Committee and Constitution Committee) do consider bills from specific constitutional perspectives, reporting to the House, and are considered influential.[21]

Table 2.2: Second chamber legislative committees in 11 democracies

Country	**Legislative Committees?**	**Permanent?**	**Specialist Committees?**	**Committee stage before plenary?**	**Evidence taking?**	**Hearings?**	**Dual purpose legislative/investigative committees?**
Austria	Y	Y	Y	Y	Y	Y	Y
Australia	Y	Y	Y	N	Y	Y	N‡
Belgium	Y	Y	Y	Y	Y	Y	N†
Canada	Y	Y	Y	N	Y	Y	Y
France	Y	Y	Y	Y	Y	Y	Y
Germany	Y	Y	Y	Y	N	N	Nϕ
Ireland	N	n/a	n/a	n/a	n/a	n/a	n/a
Italy	Y	Y	Y	Y	Y	Y	Y
Netherlands	Y	Y	Y	Y	Y	N	N†Ψ
Spain	Y	Y	Y	N	Y	Y	N†Ψ
USA	Y	Y	Y	Y	Y	Y	Y
Total yes	10	10	10	7	9	8	5

‡Standing committees of enquiry exist.
†Separate committees of enquiry are convened.
ϕ No investigative committees. In Germany, the special structure of the Bundesrat means that it conducts no inquiries and committees deal only with legislation.
Ψ Can hold hearings, but not full scale enquiries.

To some extent permanence and policy specialism go together. It is easier for specialism to develop in a committee that has a long-standing and stable membership. Legislative committees in all of these comparator parliaments are indeed both permanent and specialist – like the Commons select committees.

Unsurprisingly, legislative studies scholars associate committee specialisation with effectiveness/strength. This is considered to be particularly the case when committees shadow government departments, as it allows their members and staff to understand the relevant bureaucracy and to build up relationships and bonds of trust with key players. As Olson and Mezey (1991: 15) suggest, '[w]hen the factors of permanence and bureaucratic parallelism are combined, the conditions for strong committee systems with strong policy making roles are established'. Again, while the Commons select committees benefit from such an advantage, the PBCs do not.

Timing of committee stage

The third issue on which arrangements in the House of Commons are relatively anomalous compared to those in other legislatures is the timing of the committee stage. The norm is for committees to see bills before they are considered in plenary, whereas in the Commons the plenary debate at second reading precedes a bill's committal to a PBC. A small number of other countries do use this model, but they are mostly confined to those which modelled their arrangements on Westminster: most notably the Australian, Canadian and Irish parliaments. Among other European comparators it is only Denmark and Spain that follow this pattern. Notably some parliaments with Westminster connections have moved away from it. In Scotland the designers of the new parliament again took a conscious decision to follow European practice on this point. The consideration of bills in committee before plenary is also the long-established pattern in the US.

As already indicated, this majority pattern is associated by scholars with committee strength. As Mattson and Strøm (1995: 284) suggest, it is 'reasonable to suggest that the role of committees increases if the major debate on the bill has not taken place before it is referred to them'. They hence judge that the procedure in the House of Commons 'severely constrains the committees' ability to consider bills independently of the agenda of the majority party' (ibid).

Evidence taking and hearings

One area where the House of Commons committees are no longer out of step with their comparators is with respect to evidence taking. As shown in the tables, it is the norm for legislative committees to be able to gather evidence, both in writing and through oral hearings. Until the change to PBCs in 2007, Commons legislative committees were also an outlier on this point. The reform helped to bring them into the mainstream, but only in this fairly limited way. This 'innovation' in Westminster terms has certainly not put our legislation committees ahead of those in other states.

Investigations and dual purpose committees

Another interesting point where the UK is unusual is with regard to dual-purpose committees. While most comparator parliaments have permanent, specialist committees considering legislation, in the majority of cases the same committees are responsible for executive oversight and investigations within their policy field. Instead in the Commons there is a clearly delineated set of committees – the departmental select committees – which take on the latter role.

In a minority of chambers the legislative and investigative functions are likewise kept separate. But in most of these cases investigations are conducted by ad hoc, rather than permanent, committees. Only in the Australian Senate (discussed in further detail below) is there a parallel set of permanent, specialist investigation committees. In this respect the select committees in the UK House of Commons should be celebrated, as offering more stable, expert scrutiny of nonlegislative matters. The Commons select committees may also be able to offer more dedicated attention to these functions than the kind of dual-purpose committees that exist in other parliaments. This issue is returned to below.

Case studies of legislation committees

As discussed at the start of this chapter, there are always dangers in drawing too many conclusions from a superficial reading of other parliaments' standing orders. This kind of analysis is generally all that is possible when comparing a large number of countries, as in Tables 2.1 and 2.2. But to get a better feel for how rules operate in practice, it is advisable to look at cases in more detail. We therefore now consider four cases of particular interest. First, the committees in the US Congress,

which are classically seen as among the most powerful in the world. The US is very different to the UK, being a 'separation of powers' system with an elected president who is institutionally independent of the legislature. Power relations in the US system are therefore in many ways not comparable to ours, but Congress is nonetheless often looked to with envy by those in the UK. The other three systems discussed here are all parliamentary (meaning that the government depends on the confidence of the legislature, as at Westminster). One is the German parliament, which is seen as effective, and where the lower house is of a similar size to the House of Commons. The German case is interesting for combining strong committees with strong political parties. The other two comparators display clearer Westminster influence. First, the Scottish Parliament, which sought to draw on the best traditions of the UK system, but to combine these with desirable elements from other comparators in Europe and elsewhere. Second, the Australian parliament, which has important similarities to Westminster but which has also developed a particularly innovative committee system within its Senate.

US congressional committees

The US Congress competes with Westminster as one of the best-known legislatures in the world. It too is bicameral, comprising the House of Representatives and Senate, both of which are elected. The House of Representatives has 435 members chosen by the same 'first past the post' system used for the British House of Commons. The Senate has 100 members elected by the same system, with two senators representing each state. The executive branch is separate from the legislature, with the President enjoying a fixed term in office and not being able to be removed (except in the unusual circumstances of impeachment) by Congress. Executive and legislature are therefore relatively independent. Bills must pass both chambers and be signed by the President in order to become law. Members of the executive (the equivalent of UK ministers) are appointed by the President, but may not be members of the legislature. As Katz (2007: 153-4) notes, 'many important bills are understood to be central to the president's programme and to have been drafted in the White House, [but] there are no "government bills".' Instead each bill is sponsored by a member of Congress. This also creates a very different system to that at Westminster.

Congress is commonly seen as one of the most powerful legislatures in the world, and its committees have a similar reputation. The House of Representatives and Senate each have 20 standing committees; those in the House of Representatives have around 50 members on average, and those in the Senate 20-25. In practice, much of their work is conducted through sub-committees. While committee seats are allocated between the parties in accordance with their overall strength in the chamber, all chairs are drawn from the majority party. Committees focus on broad policy areas, roughly corresponding to executive departments, over which they have legislative as well as oversight/investigatory powers. One of the most striking and widely noted aspects of congressional committees is their high level of staffing. Each hires its own staff, and in total there are around 2000 people supporting the committees and their sub-committees (Schneider 2003). This indicates the centrality that they have in the work of Congress, which was established by the 19th century. Famously Woodrow Wilson – himself a professor of political science who went on to be US President 1913-21 – claimed that 'Congress in session is Congress on public exhibition, whilst Congress in its committee-rooms is Congress at work' (quoted in Olson 1994: 57).

As already indicated, the US legislative process is quite different to that in the UK. In 2011-12 (112th Congress), there were 6729 bills introduced into the House of Representatives and 3716 introduced into the Senate.[22] In contrast the House of Commons considered just 277 bills in the long 2010-12 session (of which 47 emanated from government, and the remainder were private members' bills).[23] As is evident from the numbers, any individual member of Congress may introduce multiple bills, many of which may have a symbolic rather than substantive purpose. A

key function of the committees is therefore to filter these into the bills that have a realistic prospect of becoming law.

Bills are referred to committees (sometimes one and sometimes several) immediately on their introduction. Many proceed no further than this. Those that pass the first hurdle will then be subjected to evidence taking, often in a sub-committee. A bill may then be subjected to 'markup', when amendments can be debated and voted upon. Finally a vote will be taken on the bill as a whole, to determine whether it should be 'reported' to the chamber (with or without amendment), or 'tabled', in which case it dies. Bills that are reported are not guaranteed plenary time, but for those which do achieve this, the committee chair will take a key role in piloting the bill. Should a bill pass successfully through plenary, it will then progress to the other chamber where the same process must be repeated.

The standing committees can conduct inquiries as distinct from considering legislation, but it is clear that a good deal of their time must be given over to scrutiny of bills. In addition, they are referred many hundreds of non-legislative resolutions for consideration each year. Major inquiries are thus often conducted by 'select' or 'special' committees, which are established on a temporary basis for this purpose. There are also some permanent select committees; one in the House of Representatives on Intelligence, and four in the Senate, on Intelligence, Ageing, Ethics and Indian Affairs.

Committees in the German parliament

Arrangements in the German parliament are more similar to those at Westminster, though still with important differences – especially with regard to committee work. There are two chambers: the lower house (Bundestag) has 620 members, and the upper house (Bundesrat) has just 69. Bundestag members are elected using the 'mixed member proportional' (MMP) system similar to that in Scotland, whereby some are chosen in single member constituencies and others from party lists in order to boost proportionality. The Bundesrat, on the other hand, is a very unusual institution, strongly representative of the German federal system. Its members are ministers in state governments, with each state sending a delegation who vote as a block. It is therefore essentially an inter-governmental body, though it has a veto over those federal laws that are judged to have particular relevance to the states.

It is hence the committees of the Bundestag which are of the most interest when considering options for the House of Commons.[24] The chamber has 22 permanent committees, which correspond to government departments. Each MP can be a full member of just one committee, and the size of these bodies varies between 13 and 41, with the membership of each being proportional to the division of party seats in the chamber. Chairs of committees are also divided up proportionally between the parties. Ministers do not sit on committees, but may attend their proceedings, while frontbenchers from non-government parties can be full members. Committees have their own specialist staff, averaging around eight people, but with up to 13 for the largest committees. Relevant civil servants also regularly attend the committees, and may be questioned by their members. Where the committee requests amendments, the civil servants will carry out this task (Linn and Sobolewski 2010).

Committees have the power to conduct investigations, as well as scrutinising bills. But standing orders specify that 'committees shall be obliged to attend to matters referred to them without delay', which means in practice that their business is largely dominated by the legislation referred to them by the chamber.[25] Government bills start their passage in the Bundesrat, which can make initial recommendations before they are introduced into the Bundestag. On arrival in the lower house, the rules allow for a 'first reading' on the principles of a bill, but it is usual for this stage to

be taken formally, without debate. Instead the real bill scrutiny generally begins in committee. Bills may be referred to several committees at once, with one of these designated as the main committee and responsible for coordinating its committee passage. Miller and Stecker (2008) report that two thirds of bills are assigned to three or more committees. Committees that have been referred a bill can take evidence, and invite witnesses (including government ministers). At the end of the process the lead committee produces a report, with recommendations for decisions in plenary. While many bills originate with government, other groups of members can also make legislative proposals which are also referred for committee consideration.

Committees in the Bundestag are generally considered to be strong. Sieberer (2006: 55) for example states that 'most substantive legislative work is done in the standing committees'. Likewise Dalton (2008) suggests that '[b]y the time the committee is through working, the fate of most legislative proposals has been determined'. Bills have their second reading in plenary after detailed committee consideration, when a bill may be discussed clause by clause. But relatively few changes are made that have not been recommended by the committee.

Nonetheless, a key feature of the German committees is that they coexist with a strong party system. Indeed, the structure of party organisation in the Bundestag is closely related to the structure of committees. Each party has a lead spokesperson on the committee, who takes a role in coordinating its business with the chair. The group of party members who sit on the committee then also play a key role in party policy committees, which are structured in the same way as the committees of the Bundestag itself. These party policy committees meet weekly before the Bundestag committees, to establish a collective line. However, committee proceedings are relatively consensual, and it is not unusual for minority parties to be able to convince the majority of the case for legislative amendments.

Aside from the matters (mostly legislation) referred to them by the plenary, standing committees do have the right to initiate investigations of their own. However they have no right to demand access to the plenary agenda for the outcome of such investigations to be debated, and in practice have little time to conduct them. Own-initiative business therefore tends to be restricted to occasional question sessions with departmental ministers and the like. The Bundestag also has the power to establish temporary inquiry committees, although these are relatively rare. In the period 2005-09 only two such committees were established. Despite the strength of the Bundestag committees with respect to legislation, they therefore seem far weaker and more government-dominated than committees in the Commons when it comes to investigations.

Scottish Parliament committees

The Scottish Parliament, established in 1999, sought to blend features of Westminster tradition with practice in other parliaments in mainland Europe that were considered to be more effective and less executive-dominated. This included a desire to be a 'committee-based' parliament (Arter 2002: 97), and to import key design features from non-Westminster legislatures in the design of these committees.

The Scottish Parliament currently has eight permanent policy committees roughly shadowing government departments (and several other permanent committees on issues such as standards). As the Parliament only has 129 members, the committees are small: the average committee size being 7-9 members. Their party balance reflects that in the chamber as a whole, and chairs (known as 'conveners') are also shared out proportionally. Members include frontbenchers, though not ministers, who 'can participate in the committee's proceedings and move amendments, but cannot vote' (Winetrobe 2004: 57). One of the key innovations in the Scottish arrangements – as compared to the House of Commons – was the creation of multifunctional committees, with

responsibility for scrutiny of bills within their policy area as well as executive oversight and investigations.

Other innovations apply to the legislative process itself. Most notably, bills are sent to committees immediately upon their introduction. And unusually, committees see bills at two separate stages of the legislative process. At stage 1 the committee reports on a bill's general principles, in order to inform the initial plenary debate. Following this debate, stage 2 consideration in committee is detailed line-by-line scrutiny, when amendments may be made. After this the bill is referred back to plenary for any additional amendments and its final approval. Bills from individual MSPs, as well as bills sponsored by the Scottish Executive, follow this process. In addition, committees have the power to initiate their own bills, which are referred to the plenary for debate and (if approved) back to the committee for stage 2 consideration, then back to plenary like other bills. The number of committee-initiated bills has in practice been small – at only six so far – but all of these have passed.[26]

Particularly in their early years, the Scottish committees suffered from overload. The combination of an ambitious legislative programme and trying to balance legislative and oversight/investigatory roles led the committees to struggle in the first 1999-2003 session (Arter 2002: 104-05). In consequence the Justice Committee was split into two parallel committees, in order to share the burden. But this was considered an unsatisfactory outcome, as the two committees (known simply as Justice 1 and Justice 2) were not able to develop their own specialisms. The problems of balancing legislative scrutiny and investigative work have been recurrent, with Arter (2004: 89) commenting on the 'lack of overall consensus about their primary task'. More recently, the Conveners' Group (2011: 3) (the Scottish Parliament equivalent of the Commons' Liaison Committee) commented that it 'remains concerned that the system can lead to a lack of time for oversight of the delivery of Government policy'. It nonetheless decided, on balance, that it was better to retain the multifunctional system.

Australian parliamentary committees

The Australian parliament also has some familiar Westminster features, but has developed distinctive procedures of its own over time. It is a bicameral parliament, with the 150 members of the House of Representatives (lower house) elected by the alternative vote (AV) in single member constituencies. The Senate is also elected, and as in the US its 76 members represent the individual states in the federation. But since 1948 senators have been elected using a proportional system (a variant of STV), giving it a very different party complexion to the lower house. While single party government in the House of Representatives is the norm (the current coalition government therefore being an exception), the balance of power in the Senate is generally held by small parties and independents. This lack of a party majority means that the Senate is influential, and has enabled it to develop some quite innovative procedures.

The House of Representatives committees are generally seen as fairly weak. There are nine permanent 'standing' committees, which are subject-specialist and broadly shadow government departments, each comprising eight members. But they engage in relatively little legislative scrutiny, as the committee stage of most bills is taken either on the floor of the House or in the 'Main Committee' (which is similar to – and indeed the original inspiration for – our Westminster Hall). While the committees are multifunctional, they hence spend most of their time on investigations and executive oversight. In addition there is a capacity to set up temporary 'select' committees to conduct specific investigations, including joint select committees with the Senate.

The arrangements in the Senate used to be similar to those in the House of Representatives, but in 1994 a new system of paired committees was established, with distinct legislation and 'references'

(i.e. investigative) committees in each of eight policy areas (Laing 2011).[27] This system continues today.[28] Hence both the legislative and investigative function is carried out by a permanent, expert committee, but the problems of overload familiar from other parliaments do not apply as these two committees are separate. The Australian Senate system therefore provides an interesting model that could be considered as an option for the Commons.

As in the House of Representatives, some bills take all of their stages on the floor of the Senate, but the majority are referred to the relevant legislation committee. As in the UK, this normally happens after the second reading debate, but occasionally occurs beforehand. The Senate's Selection of Bills Committee is responsible for recommending which bills should be referred to which committee. Legislation committees invite written evidence, and also conduct hearings. After this the bill is referred back to the chamber for its remaining stages. Another feature of the Australian system, which is less attractive from a UK perspective, is that committees remain 'agents of the chamber', having limited power of initiative of their own. They cannot amend bills, but instead recommend recommendations for decision in plenary. Likewise, investigative committees can only conduct inquiries into matters referred to them by the plenary (hence the name 'references committee'). But there is no reason why these other features need go alongside the basic structure of paired legislation and investigative committees.[29]

Given the Senate's size, both sets of committees are small: each having only six members (who may include frontbenchers), although others may join as non-voting 'participating members'. Standing orders require that legislation committees have three government and three non-government party members, and are chaired by Senator from the government side. In contrast, references committees are chaired by a non-government party Senator, and the government party has only two of the six seats. Although not set down formally, in practice there is generally an overlap between the membership of the two committees in each policy field, with the chair and deputy chair (representing the government and non-government perspective) sitting on both committees. The chair of the legislation committee will be the deputy chair of the references committee and vice versa. There is also often further overlap between the members. Crucially, each pair of committees is supported by a single specialist secretariat, comprising 'a full-time committee secretary and a number of research and clerical staff' (Odgers, Evans and Laing 2012: 516). These overlaps at both the staff and the member level mean that there can be significant cross-fertilisation between the work of the investigative and legislation committees.

Comparative lessons for legislation committees – conclusions

The previous chapter indicated the extent to which the public bill committees are out of step with current practice in the Commons, particularly when compared to the select committees. This chapter has shown that they are also out of step internationally. While the public bill committees have a membership that is ad hoc and temporary, almost all comparator parliaments send bills for consideration by permanent, specialist, committees. And these features are associated by comparative scholars with committee strength, because they allow members to build up relationships over time across party boundaries, and to develop expertise in the subject matter at hand. This may enable them to focus more closely on the detail of bills in a constructive manner, rather than engaging in time wasting and partisan wrangling.

In most cases permanent, specialist committees perform dual functions: first, scrutinising legislation, and second (like the House of Commons select committees) having oversight of the executive and conducting investigations. But in many cases, it seems, it is investigative work that suffers when these two roles are combined. It is always likely to be more urgent to deal with legislation, and committee members have limited time. In Scotland and Germany, in particular, there is severe pressure on time for non-legislative investigations.

In this respect, therefore, Westminster may be ahead of other parliaments. The respected select committees dedicate their time to important investigative and executive scrutiny roles, without having to find time for legislation. They are also, of course, permanent and specialist. In some other parliaments that lack dual-purpose committees, investigative work is limited (like scrutiny of legislation is in the UK) to temporary, ad hoc committees.

But the survey in this chapter has also shown that there is not a simple either/or between effective, specialist legislation committees and effective, specialist investigatory committees (and likewise there is not necessarily a binary choice between strong parties and strong committees). Notably, the Australian Senate has a system which incorporates both. Here, since the mid-1990s, there have been two sets of linked specialist committees with overlapping membership, one dealing with legislation and the other with investigative work. The Senate is very small (at just 76 members), but still manages to sustain such a system, though its committees are necessarily small. The House of Commons, with its 650 members, should therefore have potential to develop along a similar line. This is one of the options for the future that we consider in the next and final part of this report.

Part III: Recommendations for change

This final section (i) summarises what, in the context of both continuing UK criticism and experience from other legislatures, are the main problems with Commons legislative committees; (ii) considers practical impediments to change; and (iii) proposes a set of reforms that might be introduced, including through carefully designed pilot studies.

What are the problems to be addressed?

The analysis of UK practice in Part I and the description of experience elsewhere in Part II indicate that Westminster has made some improvements, and moves towards best practice in other legislatures, but remains an outlier in important respects. Despite key changes such as the introduction of evidence-taking in 2007, and greater use of pre-legislative scrutiny, there remain five key problems with the current structure and operation of House of Commons public bill committees. These relate to permanence, policy specialism, timing, selection of committee members, and adversarialism. Here each is discussed briefly in turn, before the remainder of the chapter considers whether there are changes that could usefully be made in order to address them.

Permanence

The ad hoc character of PBCs means that they never acquire the cohesion of a group habituated to joint working. It is therefore difficult for them to develop the kind of social relationship that fosters achieving mutual goals in the public interest. If the relationship is a temporary one, then there is little if any incentive for the sort of give and take (or 'deferred reciprocal compensation') characteristic of groups that work together from one project through to others. The system does not reward and thereby encourage longer term relationships and the advantages that they can bring. The contrast with select committees could not be greater in this respect. As we have seen, the norm in other legislatures is for bills to be considered by committees with fixed memberships, and this is a factor that academics associate with committee strength.

Policy specialism

The short-termism of the PBCs also discourages the development of member specialisation and expertise. This has long been recognised as a defect, but attempts to redress the balance have thus far been limited. The introduction of an evidence-taking phase has helped to bring PBC members more up to speed on the policy issues in bills that they consider. Small numbers of select committee members are sometimes chosen to serve on PBCs, which allows some crossover with these subject-specialist committees. However such moves have been far more limited and piecemeal than many reformers have proposed. Some other MPs with a clear subject interest do get appointed to PBCs, but again this is far from systematic.

For committee members, there is clearly a strong relationship between permanence and expertise. It is difficult for expertise to develop so long as committees remain ad hoc: the investment of time needed for members to become familiar with the subject area may not seem worthwhile or productive, even where it would be feasible. Expertise without permanence is therefore difficult to achieve. In theory committees could gain permanence without expertise: through a set of members working together regularly on bills across a range of subjects. Such a system was put in place (as described in Part I) in the late 19th century. Returning to this would at least have the advantage of building up a degree of camaraderie or committee 'cohesion'. But the more obvious solution, employed in most other legislatures, is for committees to be both permanent and subject specialist.

It is important to bear in mind that committee expertise does not depend on members alone. As the Liaison Committee (2012a) points out, it is also affected by the availability of specialist

committee staff, and their familiarity with relevant networks outside parliament. While select committees have their own subject specialists, PBCs by their nature do not. The support of the Scrutiny Unit and Library specialists on a bill-by-bill basis clearly helps, but these specialists have no stable relationship with bill committee members as they do with select committees.

Timing

Part I indicated that pre-legislative scrutiny of bills is an important recent development. But the selection of bills for this treatment remains patchy, and they are always a small minority of the total. In addition, some select committees have commented on bills after their formal introduction, in ways that fulfil a similar 'first reading' function, but this is occasional and necessarily rushed. In the House of Lords there are some committees – the Delegated Powers and Regulatory Reform Committee and Constitution Committee in particular – which do take an early look at bills, and report on them to the chamber. But while these committees are specialist, their focus is quite narrow constitutional. In contrast, the common practice in other legislatures is for bills to be considered by permanent, specialist committees shadowing the relevant department, before being discussed in plenary. This allows committee members to give their considered opinion before the 'set piece' debate on the bill, at which point political dividing lines are drawn and may become difficult to shift.

There is a general consensus that more pre-legislative scrutiny is desirable, but repeated efforts to achieve this goal have largely failed. There is also some controversy about which forums should carry out such work. The Liaison Committee (2012) has commented adversely on a government preference for joint Lords/Commons pre-legislative committees, because government may control the membership of such committees (whereas select committees are elected and beyond government control). However, if all bills were routinely considered in draft by departmental select committees, overload could result.

There are also frustrations with the timing of the process once bills are formally introduced. For example, as Levy (2009) highlighted, witness sessions in PBCs have to be hastily arranged, and leave little time for reflection before line-by-line scrutiny. More broadly concerns have also been raised repeatedly about programming, and the timing of report stages, though these fall outside the scope of our study.[30]

Selection of committee members

Another major problem that has led to tensions is how members of PBCs are chosen. While the membership of select committees was reformed following the 'Wright committee' proposals in 2009, no similar changes were made to PBCs. Indeed, there is less accountability for the selection of their members than there was under the old – and partly discredited – select committee system. The Committee of Selection chooses members, with no accountability to the chamber itself, which means that control lies almost completely in the hands of party whips. This – rightly or wrongly – feeds suspicions that committee memberships are manipulated in order to block members who might prove awkward to their party leaderships, even including 'expert' members. Meanwhile, unlike select committees, the other members of PBCs are frontbenchers: ministers, shadow ministers and whips.

Chairing of PBCs is currently undertaken by MPs from the Panel of Chairs. These are senior and experienced people whose expertise is primarily procedural. Whilst it has been suggested that PBCs' evidence-taking stages might be chaired by the appropriate select committee chair, this has not happened. The current position thus values procedural over subject expertise. While there are few complaints about the role of those on the Panel of Chairs, there are questions about whether more activist and/or expert chairs could strengthen the PBCs.

Adversarialism

The PBCs largely operate along the model of adversarialism that applies to the chamber, rather than the consensual model of the select committees. The four practical, largely mechanical, problems above serve to exacerbate this. Rather than bills being considered by groups of members who know each other well, and must work together again, PBC members have few incentives to behave constructively rather than making party points. This is worsened by the fact that some members may have no particular commitment to the subject area, that they discuss the bill after a high-profile partisan debate has already taken place, and that members whose views diverge from the party line may be intentionally excluded from the committee. It is a caricature to suggest that PBCs are simply 'mini chambers', dominated by party gameplaying: some of the research discussed in Part I above indicates that they can be more constructive, and more effective, than is commonly assumed. Plus, it must be remembered, lawmaking is unlikely to always be entirely consensual, as the opposition uses PBCs (and the chamber) as a platform to get its own alternative policy approach onto the record, and is likely always to do so. But at present any consensual activity that does take place occurs despite, rather than because of, the structure of the committees, and changes could be made to encourage this more. If we wish to get the most from our parliamentarians, enhance the effectiveness of legislative scrutiny, and thus enhance the quality of legislation, the system needs to change.

Some practical issues

While it is easy to identify problems, it is always more challenging to set out solutions. In this case, some clear obstacles exist to the more obvious reforms based on experience in other legislatures. The material in Part II might suggest that the natural solution would be to send bills to a set of permanent legislative committees, shadowing all government departments. Indeed, the Commons already has a well respected set of such committees, in the form of the departmental select committees. An alternative, based on practice in the Australian Senate, would be to establish a parallel set of specialist legislation committees shadowing each department. However factors exist which militate against adopting of either of these 'off-the-shelf' reforms in full. Before considering the way forward, it is therefore important to take full and realistic account of such factors.

Combined legislation and investigative committees?

The select committees are well respected, and have grown in profile and resources. They have, as already indicated, occasionally conducted inquiries into bills once formally introduced, and fairly regularly perform a pre-legislative scrutiny role. They have an expert and well-established membership, and a specialist secretariat. In the majority of comparator countries, the work of legislative and investigative committees is combined. This arguably allows for crossover between the two roles, which could have benefits. So why not simply give the responsibility for legislative scrutiny to the existing select committees?

As discussed earlier, dual-purpose specialist committees were originally proposed by Jennings (1934) and Crick (1964), partly on the basis of their observations of other parliaments. This proposal went off the agenda for many years, following the partial victory of the select committees being established in 1979. But as dissatisfaction has continued with the PBCs, despite changes such as pre-legislative scrutiny, programming and evidence taking, it has begun to be recommended again at least on a pilot basis (e.g. Brazier, Kalitowski and Rosenblatt 2008, Fox and Korris 2010, Parliament First 2003). Nonetheless, no fully worked out scheme has yet been proposed.

There is one basic reason why merging legislative work into that of the select committees is unlikely to succeed: that those committees themselves do not want to assume this role. As the Liaison Committee put it in its report on select committee effectiveness:

> We are not in favour of select committees taking on responsibility for Committee stage scrutiny of bills (as is done in some other parliaments), as this would take so much of their time; but we do think that there is scope for select committees to do more to inform debates on legislation (Liaison Committee 2012a: 18).

The opposition of select committee chairs is in itself a serious obstacle, which would likely scupper such a reform. But more importantly, the Liaison Committee raises a fundamental point about workload – as was pointed out during the last major review by the Modernisation Committee (2006a). The select committees are seen as highly successful, but (partly as a result) have taken on significant new responsibilities over recent years. The 'core tasks' for example now include scrutiny of arm's-length bodies, of public appointments (including pre-appointment scrutiny hearings), plus pre- and post-legislative scrutiny. All of these come on top of the committees' traditional function of carrying out inquiries related to the department's role. To date, select committees have not engaged in the kind of line-by-line scrutiny of bills conducted by PBCs. Were they to take this on as well – particularly with respect to heavy legislating departments – it could well result in serious overload, and compromise their existing effectiveness. Experience in other parliaments, including Scotland and Germany as detailed above, suggests that it is inquiry work that suffers when committees with a mixed function have a heavy legislative load.

In addition, the select committees are valued for their largely nonpartisan, cross-party culture. A reform of PBCs might seek to import this kind of culture into the legislative process. But if the select committees took on the legislative scrutiny role, this could have the reverse effect. That is, regular discussion of legislation, including voting on amendments, could result in the select committees becoming far more politicised. Plus, there is a difficult question about whether frontbenchers should serve as members of such committees. For all of these reasons a merging of select committee and PBC functions across the board seems neither practical or desirable.

Departmental loadings

If Commons expertise is to be deployed more effectively in legislative committees, it is necessary first to have regard to where the legislative burdens fall. Table 3.1 shows that this burden varies greatly by department. In the period 2005-12, the most frequently legislating departments were the Treasury, with an average of 10 bills per session (many of a technical if nonetheless significant character), and the Home Office and Ministry of Justice, each with about four bills per session. Not all of these take their committee stage in a public bill committee, but most do.[31] While the 2010-12 session's unusual length increased the overall bill count and thus inflates bill per session averages, there were still 'ordinary' sessions where the Treasury and – in one case – the Home Office were coping with nine or ten bills each.

Table 3.1: Bills by department and session 2005-12

	2005/06	2006/07	2007/08	2008/09	2009/10	2010/12	Total	Average per Session
Business, Innovation and Skills (BIS)*	4	1	4	2	1	3	15	3
Cabinet Office (CO)	1	1	0	0	0	4	6	1
Communities and Local Government (DCLG)	1	3	2	2	0	3	11	2
Culture, Media and Sport (DCMS)	2	1	0	0	2	1	6	1
Defence (MoD)	1	0	0	0	0	1	2	0
Deputy PM's Office (DPMO)	2	-	-	-	-	0	2	1
Education (DfE)**	4	1	2	2	2	2	13	2
Energy and Climate Change (DECC) (2008-)	-	-	-	0	1	1	2	1
Environment, Food and Rural Affairs (Defra)	3	0	1	1	1	1	7	1
Equalities Office (EO) (2007-)	-	-	0	1	1	0	2	1
Foreign and Commonwealth Office (FCO)	2	1	1	1	1	1	7	1
Health (DoH)	2	1	2	1	1	1	8	1
Home Office (HO)	9	6	1	2	1	5	24	4
Justice (MoJ)***	7	3	4	5	3	2	24	4
Northern Ireland Office (NIO)	4	3	0	1	1	0	9	2
Scotland Office (SO)	0	0	0	0	0	1	1	0
Transport (DT)	3	1	2	0	0	1	7	1
Treasury (HMT)	8	8	10	9	10	16	61	10
Work and Pensions (DWP)	2	3	2	2	1	2	12	2
Wales Office (WO)	3	0	0	0	0	0	3	1
TOTAL	58	34	31	29	26	45	222	2

*Also includes Dept for Trade and Industry (DTI) (2005-07), Dept for Innovation, Universities and Skills (DIUS) (2007-09) and Dept for Business, Enterprise and Regulatory Reform (BERR) (2007-09).
**Also includes Dept for Education and Skills (DfES) (2001-07) and Dept for Children, Schools and Families (DCFS) (2007-10).
***Also includes Dept for Constitutional Affairs (DCA) (2003-07).

These figures clearly demonstrate that giving responsibility for scrutinising departmental bills to some departmental select committees in particular would almost certainly cripple their ability to conduct their existing work. Indeed, even a new full-time legislation committee dedicated to these departments' output might struggle at times. In contrast, departmental legislation committees in some areas (notably Defence, Scotland) would usually be unoccupied. This unevenness of workload must be taken into account in any future design.

Human resources

Clearly MPs are not available in infinite numbers. Ministers and their aides (the 'payroll vote') deplete the numbers of MPs from the governing party(ies) available for duties in the House. The Public Administration Committee (2011) recently calculated that such appointments on the government side alone accounted for 141 MPs, and many on the opposition side are also occupied with frontbench work. Additionally, pressures on backbenchers' time have increased in recent decades, as select committees have expanded, and media and constituency demands have grown.

Hence it is important to bear in mind the MP-power consequences of reform proposals. But MPs of course already provide the membership of the PBCs, so the key question is whether this existing resource could be organised more efficiently.

In terms of Commons staff and budgets the constraints are particularly serious in the current economic climate. There is little prospect of growth in the Scrutiny Unit or Commons Library, and indeed the Commons has been forced to make savings. Hence when recently reviewing the select committee system, the Liaison Committee was careful to mark some of its recent recommendations as being for implementation only when resources permitted:

> Now may not be the best time to argue for increased resources, but it should be the long term goal of the House to build up the capacity of select committees, to improve their effectiveness and status, to increase their powers to and influence, and to improve their efficiency by providing chairs and staffs with accommodation and infrastructure to enable them to hold Government to account (Liaison Committee 2012a: 45).

It is important to be sensitive to these realities, which apply equally to the public bill committees.

Political reality

Aside from being realistic in terms of loadings, personnel and the desires of the existing select committees, there are clearly other political realities to bear in mind. Parliamentary reform is rarely easy to achieve, and the legislative process is a particularly sensitive area. Government places great and understandable importance on its ability to get legislation agreed by parliament in good time and without undue obstruction. Ministers and whips will therefore naturally be resistant to changes that threaten to slow the process down, or which result in too many unwelcome changes being made to bills. Since the government normally enjoys a Commons majority, and support from a majority of MPs is necessary to agree changes to standing orders, reforms that arouse hostility from the whips will always struggle to succeed.[32]

This does not mean that changes cannot be achieved to enhance the Commons' effectiveness, as recent reforms attest. Improvements such as evidence-taking in PBCs resulted from reports by the (now defunct) Modernisation Committee, which was chaired by a Cabinet minister. Outwith standing orders, Tony Blair as Prime Minister freely volunteered to give evidence to the Liaison Committee twice a year. These changes demonstrate that members of the executive can recognise how (in the words of the former Commons Leader Robin Cook) 'good scrutiny leads to good government'. Transparency and constructive dialogue with MPs can be mutually beneficial for parliament and government. If committees are better able to spot the flaws in legislation they may save ministers from embarrassment, unnecessary expenditure, or both. But to have a practical chance of success, reform proposals must find wide support, including among MPs on the government side.

Reform options

Hence the challenge is to identify feasible models which respond to valid criticisms of the process, while avoiding the practical and political obstacles. This implies that a 'one size fits all' solution for all departmental policy areas will not work, while reforms may need to be evolutionary rather than revolutionary in order to succeed. In practice, piloting different models in a few policy areas may be the most practical way forward. Here we set out three basic models, followed by a number of thematic recommendations applying to all three. We suggest that at least one pilot is set up using each of these designs as a first step. In the short term such pilots would exist alongside the current PBCs. But we propose that the standard model of PBC should change as well, particularly in terms

of how committee members are chosen. First, there is one basic principle which guides our recommendations.

Central principle

We believe that the evidence from the Commons select committees, from other parliaments, and from the frustrations long expressed about the system all points in one direction. **The public bill committee system should be reformed to inject greater permanence and specialisation among both members and staff, and to make the selection of members more transparent and legitimate.**

Three models of legislation committee

The primary driver of the three alternative models is the variation in departmental legislative loads.

Model A: *Heavy legislating departments*

It is in departments with the heaviest burden of legislation where establishment of permanent, specialist legislation committees makes most sense. Here we propose adoption of the Australian Senate model: creation of a parallel specialist committee to the departmental select committee, with an overlapping membership. In the first instance it is proposed that one trial committee of this kind should be established. The department in question should ultimately be decided in consultations between the Procedure Committee, Liaison Committee, Deputy Speaker and usual channels. But based on the historic data set out above, the most feasible candidates might be either the Home Office or Ministry of Justice.

Model B: *Medium legislating departments*

Most departments produce a far lower average number of bills per year, but several regularly have more than one per session. This would often (though dependent on the size of the bills) be insufficient to keep a permanent departmental legislation committee occupied, but could be enough to upset the work of the departmental select committee were it to take on bill scrutiny. For such departments a more pragmatic solution therefore needs to be found, based on the existing PBCs. While committees might remain ad hoc and temporary, more could be done to legitimise their membership, and build in expertise. In terms of experimentation, one or two such committees might be made sessional (or simply reappointed with an identical membership) in order to create continuity across several of a department's bills. A move back towards the pre-1960 model of a permanent 'nucleus' plus additional members bill-by-bill might also merit consideration.

Model C: *Light legislating departments*

The model of dual-purpose committees, merging legislative scrutiny into the existing select committee system, is unattractive with respect to most departments. But it would be worth trialling in those with a particularly light legislative load. As already indicated, one obvious candidate would be the Defence Committee, which normally has only one bill to consider every five years (the Armed Forces Bill). Although this can be large, it is so infrequent that it would not significantly upset the committee's investigative work, and recent Armed Forces Bill committees have included at least some membership overlap with the select committee.[33] But the next such bill is several years away. Other candidate departments might include the Foreign Office or Department for Energy and Climate Change. Should such a pilot succeed, the model might be extended to a small number of other departments. However, it presents particular challenges with respect to committee membership, as discussed below.

We recommend that at least one pilot of each of these three models be established, and kept under review by the Procedure Committee:

- **Model A – a new permanent, specialist committee parallel to the select committee for heavy legislating departments;**
- **Model B – reformed PBCs with more continuity of membership for medium-legislating departments;**
- **Model C – occasional legislative scrutiny by the relevant select committee for light legislating departments.**

Model B might in practice become the norm almost immediately for all PBCs aside from pilots of Model A or C.

Committee membership

The implications of each of these three models for committee membership are slightly different, but one core principle should apply to all three: that of greater transparency, and democratic accountability in the choice of members. Even before the Wright committee reforms the closed process for choosing PBC members looked outdated. Now it appears positively anachronistic. While members of select committees are elected inside their parties, PBC members are effectively chosen by a cabal of whips, with no oversight by the chamber. For so long as this continues, the committees will lack legitimacy among both members and the wider public.

Two clear options exist for how ordinary backbench members of future PBCs could be chosen:

1. These committees could be brought into line with the select committees, and see their members elected by secret ballot inside the party groups.
2. More modestly, the pre-2010 system for select committee members could be used, whereby names proposed by the Committee of Selection are put before the chamber in an amendable motion before a new committee is established. Under this model, the membership of the Committee of Selection could also be reformed.

Issues of practicality can be raised over both of these options. The first is relatively onerous for the parties, and could result in uncontested elections and frequent unfilled vacancies if applied across the board. The second allows for a more proactive role by the whips in seeking volunteers, which is sometimes necessary, but is less obviously 'democratic'. It could be argued that the new oversight by the chamber would risk cluttering up its agenda with frequent lists of names to be agreed, given the number of PBCs established each session. However, lists of names can simply be taken formally if no objections are raised. Lists of select committees members were previously moved in the form of an amendable motion, but only if the Committee of Selection's proposal was problematic would amendments be moved. This system therefore provides a fallback should members feel that the Committee of Selection has acted inappropriately, whereas in normal circumstances the names could be expected to be passed without debate. This ultimate accountability to the chamber would simply act to keep the Committee of Selection in check, and ensure that its lists did not exclude candidates with a particularly strong claim to sit on a committee. The fact that such a system can work *in extremis* was demonstrated in the case of Dunwoody and Anderson in 2001. Both systems should make it harder for MPs with a clear subject specialism or relevant expertise to be kept off legislative committees, enhancing both their expertise and their reputation.

The requirements in the case of the three models seem to merit a different response in this respect. **We recommend that ordinary backbench members of Model A committees should be elected in party groups on the select committee model; members of Model C committees would be drawn directly from the select committee itself; members of all other**

legislation committees should be chosen by the model previously applying to departmental select committees: i.e. the Committee of Selection's list should be put to the chamber for approval, in the form of an amendable motion. Such motions might in practice usually be agreed formally, without division, but should be debatable in the case of controversy.

Even if greater accountability to the chamber is introduced, a continuing role for the Committee of Selection would best be coupled with a reform of that committee's membership, perhaps along the lines of that suggested by Sir George Young (2002) to the Modernisation Committee a decade ago. While an argument can be made for at least some whips to serve on this committee – in order to persuade members to serve on less popular bill committees – the current extent of whip-dominance is hard to defend. There is also currently no true accountability for the choice of members of this committee to the chamber itself. **If the Committee of Selection continues to have a role, its membership should be reformed, so that whips make up a minority and backbench representation is significantly strengthened. The chair of this committee might be elected by the whole chamber on the select committee model, and its backbench members likewise be elected in party groups.**

Not all of those serving on PBCs are ordinary backbench members, however. Currently they also include frontbenchers. In addition, it has long been argued that the relevant departmental select committee should have the right to representation on PBCs.

The argument for including select committee members is the more straightforward. This has been called for repeatedly by reform groups, and would help ensure that work between the two sets of committees was 'joined up'. It would also introduce a greater degree of expertise into the legislation committees. Such members have the potential to improve communications between the two committees, including drawing in experience from previous select committees inquiries.

Despite frequent recommendations that this kind of coordination should be introduced, it has failed to happen consistently. The next step is therefore to formalise such an arrangement in standing orders, so that it becomes a requirement. **We recommend that for all PBCs (not just pilots) standing orders are amended to state that each time a new legislation committee is set up, the relevant departmental select committee should be invited to nominate at least two members onto the committee (and a larger number for large PBCs).** This should apply to future PBCs, and any pilots set up under Model A or B. Such an arrangement would clearly be unnecessary under Model C, where all select committee members form part of the legislation committee. This change should be made in a way that does not upset the proportional party balance of the PBC. Where a select committee chooses not to nominate, or to nominate a smaller number of members than it is offered, these positions should be opened up to other backbench MPs.

One of the reasons why these kinds of connections have not been made in the past, despite repeated suggestions, is the rather prosaic one of timing. Standing orders set some limitations on when PBCs can meet, in order to avoid clashes with key business in the chamber. But there is no restriction on a PBC being scheduled to avoid clashes with the relevant select committee. At present it may be difficult to avoid clashes, as members of several select committees (including those with no obvious connection to the topic of the bill) may potentially be required to serve on a PBC. But if membership overlap is more targeted at the most relevant departmental select committee, it should be possible to avoid timetable clashes. Most select committees have a regular slot, which could be avoided. **We recommend that there should be an expectation that meetings of a legislation committee considering a departmental bill should not be scheduled to clash with the regular meeting slot for the relevant departmental select**

committee, to allow for overlapping membership without compromising the select committee.

Frontbench membership of legislation committees is a more difficult and contestable question. In many overseas legislatures it would be considered odd for frontbenchers – and particularly government ministers – to be formally included among committee members. It is natural for ministers to attend committees to defend their bills, to answer questions and maybe participate in debate, but this clearly does not require that they be voting members. Likewise, the inclusion of whips as committee members can be seen as problematic, and as encouraging a culture of adversarialism. Nonetheless, any proposals which sought to remove the right of whips and other frontbenchers from membership of legislation committees would be likely to meet fierce resistance from those groups. In the interests of practicality, more incremental changes seem advisable. One small step would be to make more transparent the arrangement that exists now, to both formalise and limit the number of frontbench members on legislation committees, and draw a clear boundary between them and backbench members. **In the interests of practicality, we recommend no immediate change to frontbenchers' membership of PBCs. Longer term, this aspect of PBC membership should be kept under review, particularly in the light of the pilots on Models A and C.**

This arrangement, however, raises difficult questions with respect to Model C. If an existing select committee is to carry out line-by-line scrutiny of a bill, its ethos could be lost if frontbenchers were added temporarily to its membership. Select committees members would probably resist this, fearing that it could damage longer term relationships on the committee. **We recommend that committees set up on Model C (i.e. comprising members of the departmental select committee) should not include frontbench members or whips as voting members, though standing orders should allow these members to attend, and engage in debate with the committee.** Pilots on this model would clearly be limited, but would provide some indication of how the dynamics in legislation committees could work without frontbench members. Over time, consideration might be given to extending this practice more widely.

Chairing legislation committees

At present, PBCs are chaired by members of the Panel of Chairs rather than by MPs who are specialists in the policy at hand. Moves to introduce greater permanence and expertise into legislation committees therefore require consideration of their chairing arrangements as well as membership.

While many aspects of the operation of legislation committees have been controversial in recent years, few have expressed unhappiness about the performance of their chairs. These senior parliamentarians are seen to chair the committees in a neutral, evenhanded way, and their selection lies in the hands of the Speaker, rather than the whips. We therefore see no urgent need for change in this area. However, it could be that more visible chairs, who are able to build up a reputation in a given subject area, and networks with key individuals and organisations working in the policy field, could strengthen the legislation committees. The chairs of select committees have become important figures, and also provide a lead (and a layer of political protection) for their staff team. Some experimentation could therefore be beneficial.

Should new pilot committees be set up on Models A and C, these would require slightly different arrangements to the status quo. Model C simply gives consideration of the bill to the relevant departmental select committee, so it would naturally follow that the select committee chair should preside. Model A committees would be new, permanent, specialist legislation committees, so deserve a different treatment. **We recommend that in the case of Model A committees,**

including at the pilot stage, the chair of the committee should be elected by the whole House on the select committee model. Model C committees would be chaired by the select committee chair, while members of the Panel of Chairs would continue to chair other legislation committees. Members of the Panel of Chairs would obviously be eligible to stand in any elections to chair Model A committees, but would presumably give up other chairing duties for the duration of their tenure if elected. **As in the Australian system, there could be benefits in the chair of a Model A committee becoming ex officio vice-chair of the relevant select committee, and that committee's chair being vice-chair of the legislation committee, with the two drawn from different parties.**

Within the confines of the current system, there may also be room for more specialisation. Currently members of the Panel of Chairs are not allocated to committees primarily on the basis of policy expertise, but based on availability, and experience (with more experienced chairs tending to handle more complex/controversial bills). While both of these factors are clearly important, greater effort could perhaps be put into encouraging a degree of subject specialism by chairs, so that there is greater continuity from one departmental bill to the next. This would be particularly valuable in terms of chairing the evidence-taking stage. **We recommend that greater efforts be put into allocating chairs to PBCs in a way that allows a degree of policy specialisation to be built up. Over time this might result in one or two chairs being particularly familiar with each department's business, and with the associated officials and outside networks.**

It is also striking that the Panel of Chairs, unlike the Liaison Committee, rarely operates as a collective body (publicly, at least). The Liaison Committee has often been outspoken in defending select committee rights, and calling for modifications and improvements to these committees. It also report annually on the work of select committees. If the role of legislation committees is to develop successfully, it would seem useful for the Panel of Chairs to take a slightly more active and visible role in ensuring that this happens. However, it would be unlikely to operate effectively on a collective basis at its current size. **We recommend that the Panel of Chairs should organise itself more explicitly as a voice for the legislation committees. In particular it should establish a sub-committee to oversee and report annually on the work of legislation committees, including any recommendations for improvement. This same sub-committee should play a role in assessing the changes recommended in this report, both before and after implementation.**

Summing up on the composition of different forms of committee:

- Model A committees would have a chair elected by the chamber as a whole, and the bulk of their members elected in party groups (on the current select committee model). Following the pilot studies, if these are judged successful, these members would be elected for the duration of a parliament. In addition there should be at least two members nominated by the departmental select committee, and frontbenchers as required.
- Model B committees, and all other PBCs not following Model A or C, would be similar to the current PBCs, and chaired by a member of the Panel of Chairs. The key changes would be threefold. First, their membership would continue to be recommended by the Committee of Selection, but lists of names be put to the chamber for approval, as under the old select committee model (ideally with a Committee of Selection membership having been reformed as well). Second, they should have at least two members nominated by the departmental select committee. Third, insofar as possible, there should be attempts to maintain a stable membership across different committees dealing with a department's bills, at least in some pilot areas. This would be a move back towards the pre-1960 model of a permanent committee 'nucleus' plus additional members.

- Model C committees would simply be made up of members of the departmental select committee, and chaired by the select committee chair. They would have no frontbench members.

Staffing

We have suggested that, at least in the short-term, it is not feasible to set up a structure of permanent, specialist legislation committees across the board (primarily because of the unevenness of departmental loadings). However, it seems desirable to do more to create stability and expertise in terms of staffing, both within the current structure and particularly during the proposed pilot studies.

At present, the select committees benefit from a specialist secretariat, including a dedicated clerk, a committee specialist and support staff. This kind of formation is also the norm in overseas parliaments (and in Scotland), with staff normally supporting both legislative scrutiny and investigations in a given policy area. In contrast, PBCs are clerked by a procedural expert from the Public Bill Office, although they also draw on specialist support from the House of Commons Library, the Scrutiny Unit, and often even the select committees, during evidence taking. While this works fairly well, these relationships are necessarily short-term, and do not allow a cohesive team to build up in the same way as applies in the case of specialist committees. Importantly, arrangements are also distinctly opaque from the perspective of those outside parliament who may want to engage with the process – and indeed even to MPs themselves. While PBCs now set up their own websites and invite evidence, there is little opportunity for outside specialists to build up long-term contacts from one bill for the next, and relationships instead tend to be fleeting. Present arrangements could therefore perhaps be made both more transparent, and more stable. **Even where committees themselves remain ad hoc, attention should be given to building up more stable specialist support teams on the staffing side.**

In terms of the pilots, clearly Model A and C committees create an immediate opportunity for more stability. The latter would simply comprise select committee members, so could be serviced to a large extent by the existing select committee secretariat, with some support from the Public Bill Office. This would provide one form of experimentation. Other opportunities exist with respect to Model A committees. **We recommend that specialist committees on Models A and C should be supported by the specialist secretariat of the relevant departmental select committee, supplemented to allow for the extra workload involved. In the case of Model C, some temporary supplementation should be provided by the Public Bill Office. In the case of Model A, the committee secretariat should be expanded to include at least one further specialist, who might most readily be taken on secondment from the House of Commons Library.** In reality, this would be largely a 'rebadging' of existing arrangements, but would provide greater transparency for MPs, the public and outside groups. It would also result in a temporary change to line management responsibilities, as secondees would be managed by the select committee clerk. This slightly greater concentration of staff around the committees would be a small move towards a more committee-based (rather than chamber-based) parliament, of the kind that many have long proposed should exist, and that exists in many other countries.

With relation to future PBCs, and Model B committees, there is also some scope for creating more stable and transparent specialist teams. Already a small degree of specialisation occurs within the Public Bill Office regarding which clerk services which PBC, but this is difficult to achieve while introduction of government bills is unpredictable. If a department is taking through several bills at once this requires the pressure on clerks to be spread (as well as putting high pressure on departmental officials and ministers). Present practice gives insufficient priority to the convenience and effectiveness of parliament. More careful management of the flow of bills could therefore

produce better mutual outcomes. Likewise, the ability to draw on other specialists within parliament is dependent on the competing pressures on their time. **In order to allow greater specialisation by parliamentary staff, government business managers should aim wherever possible to have only one bill from a department undergoing Commons consideration (and particularly committee stage) at any one time.**

This should help to facilitate a greater degree of specialisation on the staff side. **There should ideally be no more than one or two members of the Public Bill Office assigned to shadow bills from each particular department, and likewise no more than one or two from both the Commons Library and the Scrutiny Unit. Even with standard PBCs, experimentation might be tried (within existing resources) by, for example, seconding such specialists to the select committee secretariat, with these expanded secretariats supporting scrutiny work on the department's bills.** If responsibilities can be made clearer (with or without such secondments), this should facilitate greater transparency. **It should be made as transparent as possible who the assigned specialist staff supporting work on a department's legislation are, for the benefit of both MPs and outside groups. For example, lists of the relevant specialist staff should be provided in an area of the parliamentary website dedicated to legislation.**

Timing

This discussion clearly leads to the issue of timing, which is one of the causes of frequent complaint with the current process. There are various ways in which such frustrations can be dealt with: some requiring quite radical change, and others more incremental adjustments.

A major issue when comparing the Westminster process with that in other parliaments is that committees elsewhere tend to see bills before they have been discussed in plenary, not afterwards. The benefits of this have already been indicated above (and indeed have been one of the key drivers of the somewhat patchy moves towards a pre-legislative scrutiny stage). A formal change to the order of Commons stages of the legislative process would be a quite a radical move, which could have unforeseen consequences, and hence face considerable resistance. Nonetheless, some experimentation seems desirable.

One frustration with the present process (which is largely outwith the scope of this report) is the lack of time available at report stage for some bills. A potential benefit of sending some bills straight to committee could be the freeing up of more time for report. **We recommend that at least some pilots on Models A, B and C start a bill in committee, rather than on the floor (a change that could be achieved within existing standing orders by moving second reading formally, without debate). In such cases, it would be natural for the first session of the committee to be a question-and-answer session with the minister, who might also be invited to give a short introductory statement about the bill. However, the purpose of this session should not be to re-enact a second reading stage in miniature. The time saved on plenary second reading stage should instead be allocated to report stage of the bill. In the longer term, this arrangement might become the norm for any bill that had not already had a pre-legislative scrutiny stage.**

Another form of experimentation would be to finally make progress towards 'first reading' committees, as recommended by the Rippon Commission (Hansard Society 1992) and various others since. Where permanent, specialist committees exist, a more rational process could perhaps be created whereby the committee reported on the bill before second reading. Indeed, this same model could potentially be followed by all public bill committees, with evidence-taking being timetabled before the second reading debate, and line-by-line scrutiny taken afterwards. The

Scottish Parliament offers an example of the kind of two-stage committee consideration. **There should also be experimentation with 'first reading' committees, as has long been recommended by various groups. Permanent, specialist legislation committees on Model A or C could produce an initial report before second reading, which might be preceded by the evidence-taking phase. This initial report would inform the second reading, and line-by-line scrutiny in committee could be taken afterwards. Some moves in this direction might even be possible under Model B committees, if greater stability of membership is achieved.**

At least in the short-term, most bills will continue to have a second reading stage as now, and to be committed to a committee for evidence-taking afterwards. Here too there are some opportunities for improvements. Jessica Levy (2009) set out some of the frustrations with the timetabling of evidence taking, and many of these have still not been dealt with. **In any review of the public bill committee procedure, consideration should be given to the detailed recommendations made by Levy (2009) about timetabling and other matters. These include giving backbench committee members – rather than whips – more genuine control over the witnesses called. This might also encourage a slight rebalancing towards evidence-taking, with less time spent on time-wasting amendments.**

As already touched on under 'staffing' above, particular difficulties can occur when a department has more than one bill going through the committee stage at once. If the Commons is to move to a greater level of permanence and expertise in its legislation committees, such instances will become even more problematic. In particular, a permanent legislation committee to shadow a department (Model A) will struggle if it has to deal with more than one bill at once, and certainly if it has to deal with more than two. Likewise, pilots on Model B (where there is an attempt to maintain some continuity of membership across a department's bills over time) will suffer if this practice continues. We have already recommended that such situations should be avoided as far as possible. This need not create bottlenecks or difficulties for government if greater use is made of carryover arrangements. **We recommend that greater use is made of carryover of bills from one session to the next, in order to create a smoother legislative workload throughout the session, and in particular to avoid departments having more than one bill in Commons committee at any one time.**

The business of legislation committees

Clearly the primary role of legislation committees will be to consider government bills. But experiments, particularly with a permanent, specialist Model A-type committees could also allow for innovations in what business is taken. Notably legislation committees in other comparator parliaments consider all legislative proposals within their policy field, including those from backbench members. Indeed in the Scottish Parliament committees themselves have the explicit right to sponsor bills. There have long been frustrations with the Private Members' Bill (PMB) process at Westminster, and this has been the subject of many inquiries, including a current one by the Procedure Committee.[34] This topic falls outside the scope of the present report, and has been the subject of detailed studies by others (e.g. Brazier and Fox 2010). But a reform of the PBCs might open up new opportunities. Currently those Private Members' Bills that successfully pass their second reading – i.e. the minority – follow the same pattern as government bills, by being sent to a specially convened PBC (although the committee stage tends to be brief, with no evidence taking). Under all three pilot models (but particularly Model A), it might be appropriate to experiment with sending some PMBs to a relatively more specialist committee. Likewise, specialist legislation committees could come to play some role in scrutiny of European legislation (which is currently referred to one of three European Committees, if this is recommended by the European Scrutiny Committee). Once these other forms of legislation are taken into account, the

creation of permanent, specialist legislation committees shadowing a number of government departments may become more feasible. **We recommend that part of the piloting for Model A committees might include experiments with scrutinising Private Members' Bills and/or European legislation. Should this grouping of responsibilities prove to work, it might make establishment of such committees for departments that produce relatively few government bills far more feasible in the longer term.**

Setup and piloting

The arrangements that we have suggested would allow for significant experimentation, as well as some immediate improvements to the PBC system. PBCs would be legitimised, and subject to a degree of more specialist membership and support, with greater transparency. The Panel of Chairs might develop into a stronger body, to take ownership of development of the system and help guide further developments over time. There would be experiments with new mechanisms for selecting committee members (through ballots in their parties), new chairing arrangements (through chairs elected by the chamber, or drawn from the relevant select committee), and new timing (through dispensing with the second reading stage of some bills or deploying first reading committees). But all of the most radical changes would be introduced on a piecemeal basis, allowing parliamentarians to use takes stock of how they have worked, make adjustments as necessary, and draw conclusions for the future.

If the Model A committee (permanent, specialist) in one department succeeds, further ones might be established, and if it is considered a particular success consideration might even be given to creating committees that are permanent and shadow more than one department (as another means of dealing with uneven departmental loads). If a more stable committee membership under Model B succeeds, it might become the norm that members of one committee are automatically invited to join the next scrutinising a bill from the same department, or that there is an explicit return to pre-1960 the model of a permanent nucleus of members, plus others added for particular bills. If Model C succeeds, other select committees might consider conducting formal scrutiny of bills, where the legislative load in their departments is light. This pilot would also show the potential for future legislation committees made up entirely of backbenchers. The range of options presented here, if tested, would thus provide a menu for future innovation in the Commons.

We recommend that pilots as set out above should be established in the current parliamentary session, and kept under review by the Procedure Committee and the Panel of Chairs, who should report on their success at the end of the session. Sessional standing orders might then be extended for a second experimental period, after which permanent changes could be made.

While many of the recommendations made here would be experimental, and agreed on only a sessional basis, certain of them should be made on an immediate permanent basis: in particular, with respect to the selection of backbench members to serve on PBCs.

The future of Commons legislation committees – conclusions

This final part of this report has set out some of the possible ways forward for improving the public bill committee process in the Commons, to deal with the complaints that have existed over many years. However, it has also identified some significant challenges. Any changes must recognise political realities, if they are to have a chance of success. These include the need for the government to get it legislation considered without undue delay or obstruction. But there are other challenges as well, most notably the uneven distribution of legislation between different

government departments. This report has therefore not suggested a one-size-fits-all solution, and has also proposed an incremental approach.

We have expressed scepticism about the suggestion that the select committees and legislation committees might be merged. Although this model – as seen in the previous chapter – applies in many other countries, it is quite problematic. First, because those countries show that nonlegislative work, such as committee investigations, can suffer when committees have legislation to deal with as well. And second, because the select committees themselves do not want to take on this role. There are also concerns that this could overly politicise the select committees. For all of these reasons – although this might look like a neat solution – we do not think it would be advisable in most cases.

We are therefore far more drawn to the model that applies in the Australian Senate, where there are separate sets of permanent, specialist committees dealing with executive scrutiny and investigations versus legislation. However, the unevenness of departmental loads means that this could not easily apply across the board. If permanent, specialist legislation committees were set up to shadow all government departments, some of them would lie idle most of the time. We have therefore recommended experimentation with different models, which might suit light, medium and heavy legislating departments respectively.

We hope that this report will prove useful to those in the Commons who are keen to enhance both the performance and the reputation of the public bill committees. The ultimate aim should be to improve the quality of scrutiny of government legislation, in order to improve that legislation. But reforms of this kind are also likely to be beneficial to parliament, both in terms of MPs' job satisfaction, and how the Commons is viewed from outside. The Wright committee reforms of 2010 began this process, and we hope that the proposals in this report may provide the next step.

List of recommendations

Central principle

- The public bill committee system should be reformed to inject greater permanence and specialisation among both members and staff, and to make the selection of members more transparent and legitimate.

Three models of legislative committee

- At least one pilot of each of these three models should be established, and kept under review by the Procedure Committee:
  - Model A – a new permanent, specialist committee parallel to the select committee for heavy legislating departments;
  - Model B – reformed PBCs with more continuity of membership for medium-legislating departments;
  - Model C – occasional legislative scrutiny by the relevant select committee for light legislating departments.

  Model B might in practice become the norm almost immediately for all PBCs aside from pilots of Model A or C.

Committee membership

- Ordinary backbench members of Model A committees should be elected in party groups on the select committee model; members of Model C committees would be drawn directly from the select committee itself; members of all other legislation committees should be chosen by the model previously applying to departmental select committees: i.e. the Committee of Selection's list should be put to the chamber for approval, in the form of an amendable motion. Such motions might in practice usually be agreed formally, without division, but should be debatable in the case of controversy.

- If the Committee of Selection continues to have a role, its membership should be reformed, so that whips make up a minority and backbench representation is significantly strengthened. The chair of this committee might be elected by the whole chamber on the select committee model, and its backbench members likewise be elected in party groups.

- For all PBCs (not just pilots) standing orders should be amended to state that each time a new legislation committee is set up, the relevant departmental select committee should be invited to nominate at least two members onto the committee (and a larger number for large PBCs).

- There should be an expectation that meetings of a legislation committee considering a departmental bill should not be scheduled to clash with the regular meeting slot for the relevant departmental select committee, to allow for overlapping membership without compromising the select committee.

- In the interests of practicality, we recommend no immediate change to frontbenchers' membership of PBCs. Longer term, this aspect of PBC membership should be kept under review, particularly in the light of the pilots on Models A and C.

- Committees set up on Model C (i.e. comprising members of the departmental select committee) should not include frontbench members or whips as voting members, though standing orders should allow these members to attend, and engage in debate with the committee.

Chairing legislation committees

- In the case of Model A committees, including at the pilot stage, the chair of the committee should be elected by the whole House on the select committee model. Model C committees would be chaired by the select committee chair, while members of the Panel of Chairs would continue to chair other legislation committees.

- As in the Australian system, there could be benefits in the chair of a Model A committee becoming ex officio vice-chair of the relevant select committee, and that committee's chair being vice-chair of the legislation committee, with the two drawn from different parties.

- Greater efforts should be put into allocating chairs to PBCs in a way that allows a degree of policy specialisation to be built up. Over time this might result in one or two chairs being particularly familiar with each department's business, and with the associated officials and outside networks.

- The Panel of Chairs should organise itself more explicitly as a voice for the legislation committees. In particular it should establish a sub-committee to oversee and report annually on the work of legislation committees, including any recommendations for improvement. This same sub-committee should play a role in assessing the changes recommended in this report, both before and after implementation.

Staffing

- Even where committees themselves remain ad hoc, attention should be given to building up more stable specialist support teams on the staffing side.

- Specialist committees on Models A and C should be supported by the specialist secretariat of the relevant departmental select committee, supplemented to allow for the extra workload involved. In the case of Model C, some temporary supplementation should be provided by the Public Bill Office. In the case of Model A, the committee secretariat should be expanded to include at least one further specialist, who might most readily be taken on secondment from the House of Commons Library.

- In order to allow greater specialisation by parliamentary staff, government business managers should aim wherever possible to have only one bill from a department undergoing Commons consideration (and particularly committee stage) at any one time.

- There should ideally be no more than one or two members of the Public Bill Office assigned to shadow bills from each particular department, and likewise no more than one or two from both the Commons Library and the Scrutiny Unit. Even with standard PBCs, experimentation might be tried (within existing resources) by, for example, seconding such specialists to the select committee secretariat, with these expanded secretariats supporting scrutiny work on the department's bills.

- It should be made as transparent as possible who the assigned specialist staff supporting work on a department's legislation are, for the benefit of both MPs and outside groups. For example, lists of the relevant specialist staff should be provided in an area of the parliamentary website dedicated to legislation.

Timing

- At least some pilots on Models A, B or C should start a bill in committee, rather than on the floor (a change that could be achieved within existing standing orders by moving second reading formally, without debate). In such cases, it would be natural for the first session of the committee to be a question-and-answer session with the minister, who might also be invited to give a short introductory statement about the bill. However, the purpose of this session should not be to re-enact a second reading stage in miniature. The time saved on plenary second reading stage should instead be allocated to report stage of the bill. In the longer term, this arrangement might become the norm for any bill that had not already had a pre-legislative scrutiny stage.

- There should also be experimentation with 'first reading' committees, as has long been recommended by various groups. Permanent, specialist legislation committees on Model A or C could produce an initial report before second reading, which might be preceded by the evidence-taking phase. This initial report would inform the second reading, and line-by-line scrutiny in committee could be taken afterwards. Some moves in this direction might even be possible under Model B committees, if greater stability of membership is achieved.

- In any review of the public bill committee procedure, consideration should be given to the detailed recommendations made by Levy (2009) about timetabling and other matters. These include giving backbench committee members – rather than whips – more genuine control over the witnesses called. This might also encourage a slight rebalancing towards evidence-taking, with less time spent on time-wasting amendments.

- Greater use should be made of carryover of bills from one session to the next, in order to create a smoother legislative workload throughout the session, and in particular to avoid departments having more than one bill in Commons committee at any one time.

The business of legislation committees

- Part of the piloting for Model A committees might include experiments with scrutinising Private Members' Bills and/or European legislation. Should this grouping of responsibilities prove to work, it might make establishment of such committees for departments that produce relatively few government bills far more feasible in the longer term.

Setup and piloting

- Pilots as set out above should be established in the current parliamentary session, and kept under review by the Procedure Committee and the Panel of Chairs, who should report on their success at the end of the session. Sessional standing orders might then be extended for a second experimental period, after which permanent changes could be made.

- While many of the recommendations made here would be experimental, and agreed on only a sessional basis, certain of them should be made on an immediate permanent basis: in particular, with respect to the selection of backbench members to serve on PBCs.

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[1] Private Members' Bills are largely outside the scope of this report. For a fuller discussion see Brazier and Fox (2010, 2011a), Hansard Society (2003).
[2] The usual channels are the informal behind-the-scenes negotiations between the government and opposition whips. For a discussion see Rush and Ettinghausen (2002)
[3] The Parliament Acts (1911 and 1949) allow the House of Commons in extremis to pass a Commons bill without Lords' consent. But generally a compromise is found.
[4] See http://www.parliament.uk/business/committees/committees-a-z/commons-select/procedure-committee/inquiries/parliament-2010/private-members-bills/ (accessed 13 March 2013).
[5] In Sam Macrory, 'Just What the Leader Ordered?', *The House Magazine*, 21 February 2011, p.25.
[6] The opening deliberations of the committee on the Health and Social Care (Recommitted) Bill provide a recent instance where the opposition challenged the programming sub-committee's timetable. Their proposed amendment to the timetable was defeated and it cost time from the first oral evidence session (28 June 2011, c1-7).
[7] These bills have clearly already been subjected to detailed scrutiny, but it should be noted that there is no evidence-taking phase during committee stage in the Lords.
[8] Levy gives as an example the Local Government and Public Involvement in Health Bill 2006-07. Second Reading took place on a Monday, the public bill committee was appointed on the Wednesday, the programming sub-committee met on the Thursday to decide witnesses ahead of the first meeting of the full committee on the following Tuesday morning.
[9] For more detail see Russell (2011), Reform of the House of Commons Committee (2009).
[10] For a recent discussion of select committee staffing see Liaison Committee (2012b).
[11] Though the Liaison Committee (2012a) has expressed concern about the extent to which government has chosen to resort to joint committees (where membership is more controlled by the whips) for this work instead.
[12] Michael Ryle, co-founder (with Bernard Crick) of the Study of Parliament Group.
[13] At

http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/writev/ensuringstandards/mem09.htm, (accessed 29 October 2012).

[14] See http://www.ucl.ac.uk/constitution-unit/research/parliament/legislation.

[15] Griffith (1974: 20-22) provides an indication of how well established these kinds of games are.

[16] Partly for this reason, and partly because we already have good models to draw from in terms of the select committees, this section does not consider mechanisms for choosing committee members in other parliaments. This topic received some attention in the earlier Constitution Unit report by Russell and Paun (2007).

[17] The US, Italy, Germany, Philippines, Canada, UK, India and Japan.

[18] Individual chapters dealt with Norway, Eastern Europe (broadly), Poland, the US, the UK, Israel, Russia and Korea.

[19] The size of public bill committees has been relatively uncontroversial, and is not further considered here. Mattson and Strøm (1995: 269) found a 'quite astonishing' variation in size between committees in different West European parliaments, from seven members in Iceland to 145 in France. In this respect House of Commons committees may be considered moderate or mainstream.

[20] Secondary sources referred to included Deschouwer (2009), Leston-Bandeira (2004), Linn and Sobolewski (2010), Martin (2010), McLeay (2006).

[21] The same is true of the Joint Committee on Human Rights (JCHR), which is influential in Lords debates. For a discussion of these matters see Russell (forthcoming 2013).

[22] Figures taken from the Government Printing Office website: http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=BILLS (accessed 5 March 2013).

[23] Figures taken from the 2010-12 Sessional Return: http://www.publications.parliament.uk/pa/cm/cmsesret.htm (accessed 5 March 2013).

[24] Bundesrat committees are composed of one member representing each state, and in practice their meetings are largely attended by state civil servants rather than ministers themselves. For a discussion see Russell (2000).

[25] Rules of Procedure, 62 (1): https://www.btg-bestellservice.de/pdf/80060000.pdf (accessed 5 March 2013).

[26] Protection from Abuse (Scotland) Act 2001, Scottish Parliamentary Standards Commissioner Act 2002, Commissioner for Children and Young People (Scotland) Act 2003, Interests of Members of the Scottish Parliament Act 2006, Scottish Parliamentary Pensions Act 2009, and Scottish Parliamentary Commissions and Commissioners etc Act 2010.

[27] As in the House of Representatives, these may span several government departments. In March 2013 the committees were Community Affairs; Economics; Education, Employment and Workplace Relations; Environment and Communications; Finance and Public Administration; Foreign Affairs, Defence and Trade; Legal and Constitutional Affairs; Rural and Regional Affairs and Transport. Taken from Australian Senate Brief Number 4 January 2013 http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/briefs/brief04#select (accessed 5 March 2013).

[28] It was briefly dismantled from 2006-09 during a period of government control of the Senate. Once government lost control, it was quickly reintroduced.

[29] Likewise committees in both the Senate and the House of Representatives are far more highly politicised than those in the UK (with the references committees often producing strongly critical reports, and minority reports being relatively common). But this is essentially a cultural factor about Australian politics, and not obviously connected to the structure of the committee system.

[30] For a discussion see Reform of the House of Commons Select Committee (2009).

[31] Hence, for example, despite the convention that major constitutional bills are taken on the floor of the chamber, this applied to only five of the 24 Ministry of Justice bills.

[32] For discussion on this point see Power (2007) and Wright (2004). The Wright committee reforms were also only achieved with significant difficulties, as documented by Russell (2011).

[33] In 2011 this committee was chaired by James Arbuthnot, the chair of the Defence Select Committee, and included two other members of that committee. In 2006 there was likewise an overlap of three members.

[34] See http://www.parliament.uk/business/committees/committees-a-z/commons-select/procedure-committee/inquiries/parliament-2010/private-members-bills/

House of Commons procedures have changed significantly in recent years, including as a result of the 'Wright committee' reforms of 2009-10. But while the select committees, in particular, have grown in strength and reputation, similar changes have not extended to the public bill committees assigned the crucial task of scrutinising government legislation. Despite the introduction of evidence taking in 2007, public bill committees continue to attract criticism, including for their temporary, ad hoc membership, and the lack of transparency over how their members are selected. This report reviews the complaints about public bill committees, looks at what we can learn from legislation committees in other parliaments, and makes recommendations about how the committees should be reformed.

The Constitution Unit is an independent and non-partisan research centre based in the Department of Political Science at University College London. It is the UK's foremost independent research body on constitutional change. The Unit conducts academic research on current and future policy issues, organises regular programmes of seminars and conferences, and conducts consultancy work for government and other public bodies. We work closely with government, parliament and the judiciary. All of our work aims to have a sharply practical focus and to be clearly written, timely and relevant to policy makers and practitioners.

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This research project was funded by the Joseph Rowntree Charitable Trust

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