Fitting the Bill:
Bringing Commons legislation committees into line with

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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

Introduction

'The manner of our legislation is indeed detestable, and the machinery for settling that manner odious.'

(Bagehot 1928 [1867]: 147)

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

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

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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 Chairs	4 - 18	4 - 24 0 - 12 (upon recommittal)	2 - 8

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)

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		

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

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

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.

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

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

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**
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> 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:

> purpo2(()] TJ ET 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)-(ommit)3(tb8.064e3[())] TJETBT1 0 0 1 294.Tf1 0 0 1 4.

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 ge

The report's key recommendations were that:

'Public bill committees' with evidence-taking powers should

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.

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,rly 46.65 242 Tf1 0 0 1 0 1 298fmo

> 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.

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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 proposa

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 (

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)

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

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

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

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.

(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 – conclusion

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In this respect, therefore, Westminster may be ahead of other parliaments. The respected select

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 ind

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 U

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 whe(ted by)-3(P)3(B)5(C)-4(

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

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 Sen.us1n4.01 gislating departments

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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.

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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 department[.bllselcct

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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

Model C committees would simply be made up of members of the departmental select

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

Scottish Parliament offers an example of the kind of two-

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 [illegible] 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

Timing

At least some pilots on Models A, B or

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[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]

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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