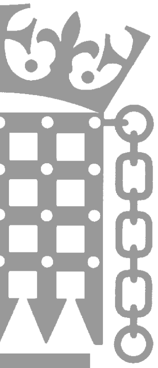

HOUSE OF LORDS

Leader's Group on Working Practices

Report, Session 2010–12

Report of the Leader's Group on Working Practices

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The Leader's Group on Working Practices

The Leader's Group was appointed on 27 July 2010 "to consider the working practices of the House and the operation of self-regulation; and to make recommendations".

Membership

The members of the Leader's Group were:

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Lord Bichard
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Lord Filkin
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FOREWORD

The Group was appointed by the Leader of the House "to consider the working practices of the House and the operation of self-regulation; and to make recommendations". The Leader indicated that he wished us to have a "wide-ranging remit".

We have reviewed the House's working practices so as to prepare a comprehensive set of recommendations for the future.

We have structured the review around the House's three core functions: holding the executive to account; scrutinising legislation; and providing a forum for debate and inquiry. We have also taken full account of the relationship between the two Houses. Our recommendations seek to enhance the ability of the House and its committees to scrutinise the executive, to test out, improve and review legislation, and to debate important and topical issues.

The House has unique strengths and resources, including the accumulated skills and experience, across many walks of life, of its Members, and a tested tradition of self-regulation, giving Members freedom to contribute to its work. But the House is under strain, physically and procedurally. The many new Members of the House may find that they have few opportunities to contribute in the Chamber or in committees.

We have sought to enhance the opportunity for Members to contribute. We have also reaffirmed the fundamental principle of self-regulation so as to maintain the freedom of Members of the House to contribute to the work of Parliament.

We make this report to the Leader of the House, and look to him to put our report before the House as a whole and to take forward our recommendations.

Report of the Leader's Group on Working Practices

CHAPTER 1: INTRODUCTION

Overview of the report

1. We were appointed by the Leader of the House "to consider the working practices of the House and the operation of self-regulation; and to make recommendations". Our appointment was announced in a Written Statement on 27 July 2010.[1]

2. The Leader of the House had previously indicated, in a debate on working practices on 12 July, that he intended us to have a "wide-ranging remit".[2] He made it clear, for instance, that he expected us to "examine all sorts of matters which are not strictly speaking procedural".

3. The breadth of our remit has involved an extensive review of the House's working practices, and preparation of a comprehensive set of recommendations for the House's future performance of its work.

4. The House has great strengths and resources. It possesses the accumulated skills and experience, across many walks of life, of its Members. It also has a long tradition of self-regulation, giving those Members freedom to contribute to the work of the House.

5. The influx of new Members since the 2010 general election, while adding to the range of expertise in the House, has contributed to growing tensions. The House is under strain both physically and procedurally. New Members may find that they have few opportunities to contribute in committees or in the Chamber. Frustration has been evident in recent months and the efficacy of self-regulation challenged.

6. Figures 1–5 on the following pages compare a number of "activity indicators" for the current session up to 6 April 2011 with figures for recent sessions. They show a marked increase in the level of participation by Members in the current session to date.[3]

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1 HL Deb., WS 147.

2 HL Deb., 12 July 2010, col. 517.

3 Source: House of Lords Journal Office. Averages are rounded to the nearest whole number (Figures 1–3) or to one decimal point (Figures 4–5).

FIGURE 1

Average daily attendance

FIGURE 2

Average number of votes cast per division

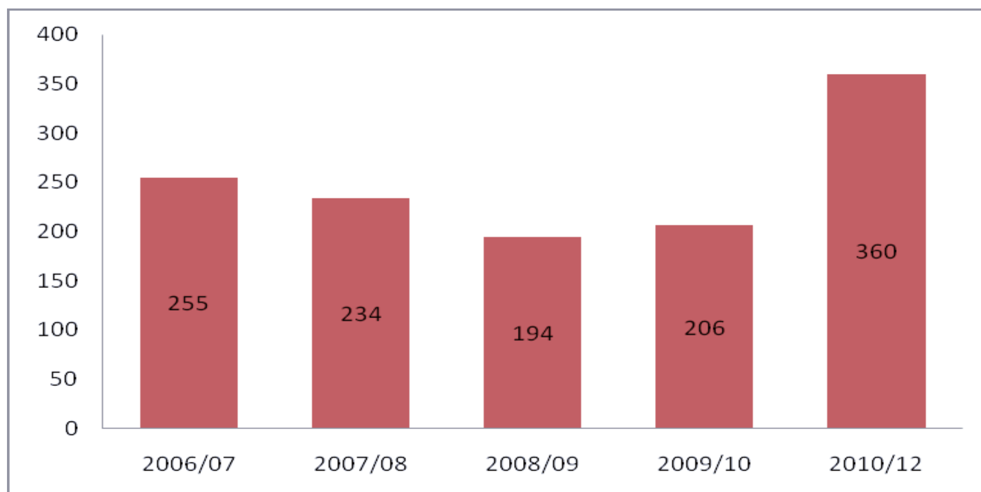


FIGURE 3

Average number of questions for written answer tabled each sitting day

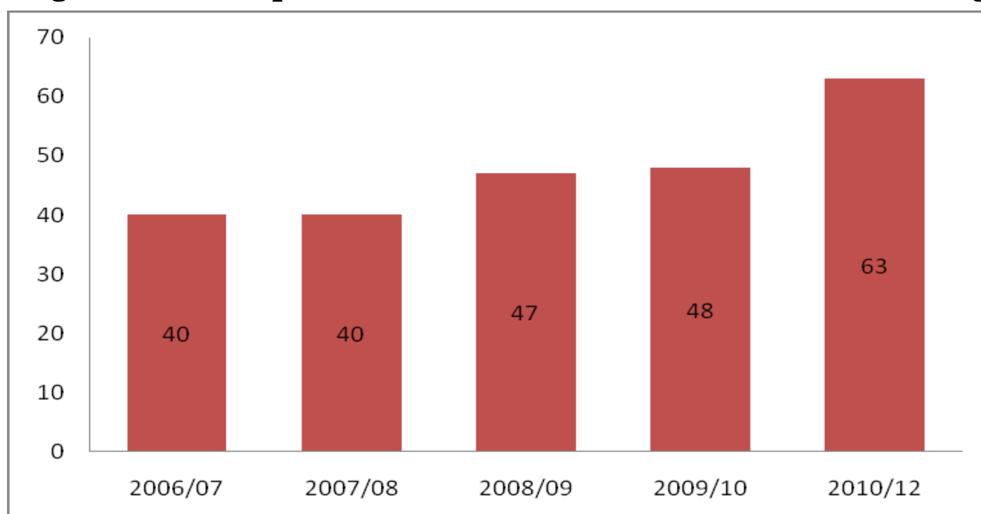
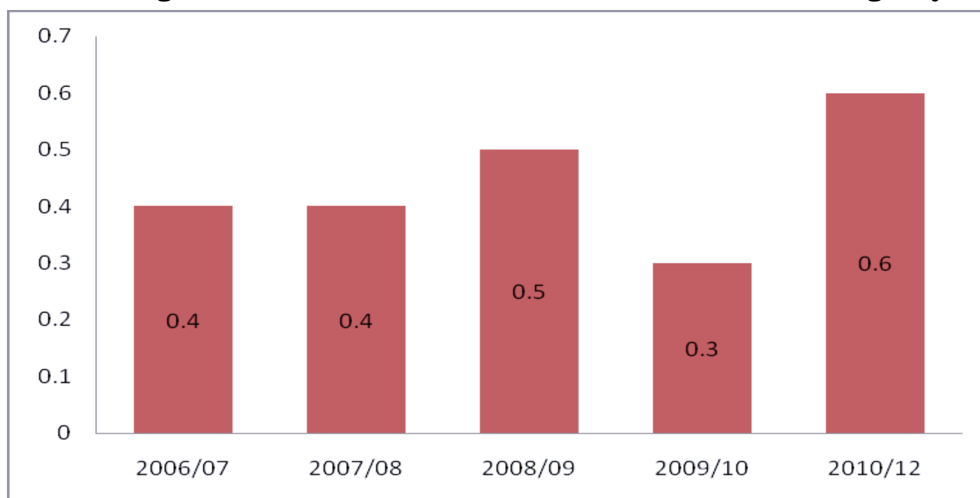


FIGURE 4

Average number of questions for short debate tabled each sitting day

FIGURE 5

Average number of oral statements taken each sitting day



7. The House should make the best possible use of all its available resources—of the range and depth of expertise of its Members, of staff, money, time, accommodation, information technology—so as to serve the public interest better. There is intense pressure, in the current economic climate, to bear down on the House's expenditure. But as the graphs show, there is also pressure from a growing number of Members to find ways in which they can contribute to the work of the House and promote the interests of the public. Our aim has been to find ways in which the House can best use its resources to deliver benefits to the public, such as better legislation, and more accountable and transparent government. In some areas the House may wish to spend more in order to make best use of resources. In such circumstances we have sought, where possible, to cost our recommendations; these costs are set out in Appendix 1.

8. We have limited our consideration to the working practices of the present House. Our remit does not extend to possible reform of the composition of the House of Lords. It would have been fruitless for us to make

recommendations for a reformed or even a transitional House, in ignorance of what such a House might look like.

9. Our recommendations, some of which could be implemented with immediate effect, would themselves represent a reform of the House. They would enhance the ability of the House to hold the executive to account, and to debate matters of importance and of current public interest; would create a more accountable and transparent process for scheduling backbench business; and they would create new opportunities for backbench Members to contribute to the work of Parliament.

10. We believe that our recommendations would, if implemented, deliver significant benefits. They would enable the House to scrutinise legislation more effectively, in particular by requiring higher standards of Government in policy formation and explanation, consultation, and implementation. They would lead to better law—more workable, more comprehensible, more responsive to the public interest—and subject those laws to parliamentary review. They would enable the House to draw further upon the unique pool of talent, knowledge and experience it possesses, and apply the expertise of its Members more efficiently to serving the public. Our recommendations would also enhance the accountability of Government to Parliament, improving the transparency of decision-making, and creating more opportunities for the public to engage with and influence the work of Parliament.

The structure of the report

11. The following three chapters are structured around the House's three core functions:

- To hold the executive to account;
- To scrutinise legislation;
- To provide a forum for public debate and inquiry.

12. For each of these core functions we have sought to identify how best it might be fulfilled. Inevitably, this analysis has identified existing shortcomings and opportunities for improvement.

13. There is also a fundamental, over-arching issue facing the House, mentioned in our terms of appointment, namely "the operation of self-regulation". Self-regulation and the accompanying freedoms enjoyed by individual Members are essential to the conduct of business in the House of Lords. They underpin all aspects of business management and the role of the "usual channels". They also underpin key constitutional conventions, such as the convention that the House will consider Government legislation in "reasonable time". Chapter 5 addresses reasonable time and self-regulation.

Conduct of the inquiry

14. We have met 19 times. In order to facilitate frank discussion, our meetings have been held in private. Our Chairman wrote to every Member of the House, inviting views, as well as to outside organisations and individuals. A similar request for views was also circulated via internal newsletters, and posted on the Internet.

15. We received 74 responses, including 68 from Members of the House. We also received responses from staff of the House, as well as from outside organisations. Finally, the House of Lords Library supplied helpful briefing notes, in particular on working practices in the devolved bodies.

16. As indicated in our request for views, we have not published submissions received from Members of the House. Instead an anonymised summary of such responses is included in Appendix 3. Submissions from outside organisations are published in Appendix 4. We wish to express our gratitude to all who submitted views or who have helped us in our inquiry.

CHAPTER 2: HOLDING THE EXECUTIVE TO ACCOUNT

Overview

17. Parliament holds the executive to account by questioning and challenging the executive's policies and actions, and requiring ministers and senior officials, in person, to account publicly for their decisions.

18. Primary responsibility for scrutiny of the executive rests with the House of Commons, as the elected chamber. In certain areas, notably public expenditure, the special responsibility of the Commons for scrutiny of the executive is a long-standing constitutional convention. While *Erskine May* states that "the Lords also express their opinion upon public expenditure",[4] the House's exercise of such scrutiny functions is limited and, where it occurs, likely to be controversial. More generally, the authority of the Government of the day depends on its ability to command a majority in the elected chamber: only the House of Commons can bring down the Government by passing a motion of no confidence. Nevertheless, while accepting that the role of the House of Lords in scrutinising the executive is secondary to that of the Commons, we believe that the House can add considerable value to Parliament's fulfilment of this task.

19. Such scrutiny should, we believe, be—

- Transparent: parliamentary questions and debates ensure that government does not happen behind closed doors.
- Thorough and evidence-based: scrutiny should encourage and push the Government to consider all the options and, at times, to think again.
- Political, but not to the exclusion of non-partisan, constructive exchange of views.
- Focused, addressing key areas of government action and policy, whether these are topical or of long-term importance.
- A two-way process, encouraging dialogue between Members and the executive.
- Continuous—good scrutiny is not a matter of one-off set-piece displays, but of on-going debate and argument.

20. The House of Lords can make a valuable contribution to achieving these high standards by using its particular strengths: the expertise and experience of its Members, its less partisan character, and the time that its Members, without constituencies to attend to, can devote to probing the detail of policy using the House's less constrained procedures.

21. The principal means of scrutinising the executive available to the House are:

- Oral questions (including balloted topical questions and urgent Private Notice Questions);
- Written questions;
- Consideration of oral statements in the Chamber;

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4 *Erskine May*, 2004 edition, p. 918.

- Publication of written statements in Hansard;
- The holding of debates (though sometimes serving an important scrutiny function, debates are considered in the chapter 4);
- Scrutiny by select committees;
- The laying by the Government of papers before Parliament.

22. There is a distinction between what might be called "active" scrutiny (involving question and answer, taking place in the Chamber, committee rooms, or, in the case of written questions, in the pages of Hansard) and "passive" scrutiny—the publication of written statements, and the laying of papers, as required by statute, before Parliament. We have concentrated on the first, and more visible, aspect of scrutiny, with particular emphasis, in this chapter, on oral questions and statements.

23. A balance also has to be struck between the House's responsibility to hold the executive to account, and a further core function, namely to provide a forum for public debate and inquiry. Some debates may contribute to scrutiny of the executive—the debate on the Queen's Speech, for example, is an opportunity to interrogate and challenge the Government on its legislative programme. Other debates are less focused on scrutiny, and instead allow Members to discuss matters of general importance with relatively little direct challenge to or exchange of views with the executive. Similar considerations apply to much committee work. The question of whether the House has currently got the balance between its scrutiny and debating functions right is addressed in chapter 4.

Oral questions

24. The most prominent way in which the Government is held to account is through oral questions, which occupy the first thirty minutes of all sitting days except sitting Fridays. Four such questions are taken each day, but whereas oral questions may normally be tabled up to one month[5] in advance, on Tuesdays, Wednesdays and Thursdays the fourth slot is given to a topical question drawn from a ballot two working days beforehand.

25. In addition to regular oral questions, Private Notice Questions, which are an "opportunity to raise urgent matters on any sitting day",[6] are allowed by the Lord Speaker if they meet narrowly defined criteria. Up to 10 minutes is allowed.

26. Finally, Members can also table up to six Questions for Written Answer every sitting day: the Government's reply is expected within 10 working days and is printed in Hansard.

27. First we consider oral questions. The problems currently being encountered in respect of oral questions, including topical questions, fall under two headings: the conduct of question time itself, and the process whereby questions are tabled. The recent large increase in the size of the House, and increasingly active membership, has added to the difficulties being experienced in both areas.

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5 The Procedure Committee has recently recommended that this notice period be reduced to four weeks: see Procedure Committee, 4th Report, 2010–11 (HL Paper 127).

6 *Companion to the Standing Orders*, 2010 edition, p. 100.

Question time

28. The conduct of oral questions is the topic which, to judge by the responses to our invitation for views, concerns Members of the House more than any other at present. The procedure is, in outline, that when an oral question has been asked and answered, the questioner and then any other Member can put supplementary questions. There is no selection of these questions. Members wishing to raise a supplementary question stand and begin putting their question. If more than one Member stands, they give way to each other; if there is a dispute about who should give way, the sense of the House determines which Member should speak, interpreted through the Government front bench if necessary.

BOX 1

Question Time: History

The procedure for oral (formerly "starred") questions began in 1919, following a Committee recommendation that "it shall be in the power of any Peer who asks a question for the purpose of information only, and not with a view to making a speech or to raising a debate, to indicate his intention by prefixing an asterisk to his question when he hands it in".[7] At this stage it was envisaged that proceedings on a starred question would be broadly equivalent to those on a written question: no supplementary questions would be asked, and certainly no debate would ensue. Nor did such questions have a fixed place on the Order Paper (business being tabled in the order in which it was sent in to the Table); nor was there any limit on numbers or time taken.

However, by the 1940s there was pressure to give precedence on the Order Paper to starred questions and to limit their numbers, both to avoid keeping ministers waiting for hours while other business was being conducted, and to prevent possible abuse. These led to a recommendation by the Procedure Committee, in April 1943, that starred questions be limited to Tuesdays and to one per Member; that they take precedence over other business; and that they be time-limited to 15 minutes in total.[8]

Though this particular recommendation was not adopted by the House, from the 1940s onwards the House's procedures for asking oral questions were gradually formalised. Oral questions in their current form date from as recently as 1991, when a firm time-limit of 30 minutes, for four questions, was established; other rules, for instance limiting Members to one oral question on the Order Paper at any one time, were adopted as recently as 1998, following a recommendation from the Leader's Group chaired by Baroness Hilton of Eggardon.[9]

Thus for almost a century the House has struggled with the need, during question time, to strike a balance between the freedoms enjoyed by Members, the orderly conduct of business, and the principles of self-regulation.

7 See the House of Lords Journal, vol. 151 (1919), p. 113.

8 Procedure Committee, 1st Report, 1942–43, debated and referred back to the Committee on 5 May 1943.

9 See Procedure Committee, 1st Report, 1998–99 (HL Paper 33).

29. The outcome is widely regarded as unsatisfactory. As the brief history of oral questions in Box 1 shows, the House has for almost a century sought to balance self-regulation with the need for orderly conduct of business. But the adoption of a rigid allocation of time to each question, combined with the increasing size and level of activity of the House, militates against effective self-regulation. With an average of only seven and a half minutes available for the question, answer and supplementary questions and answers, there is, instead of self-regulation, regulation by clock. Time is short; opportunities to intervene are few. The convention that supplementary questions come from the different parties/groups in a rough rotation adds to the difficulty, meaning that a Member who thinks it likely that his or her party/group will not have time to come in again has no incentive to give way in the hope of intervening later. When the political character of question time is combined with the larger size of the House, the result is an increasingly fractious and at times aggressive atmosphere at question time.

30. The result is that many Members, from whom the House might wish to hear, and whose knowledge and experience would be particularly valuable in contributing to informed scrutiny of the Government, are discouraged from participating in question time. The unique contribution of the Lords—the breadth of knowledge and experience of its Members—is wasted, and the Government is less effectively held to account.

31. There will always be a political component to question time. But it should not be exclusively political or partisan. In an environment where only members willing to seize the floor are able to ask questions, less partisan, evidence-based and constructive questions are likely to be lost. This in turns militates against the establishment of a productive dialogue, which might prompt ministers to give more considered, informative and helpful replies.

32. As the *Companion* states, "the role of assisting the House at question time rests with the Leader of the House".[10] In practice this means that when the House reaches a stalemate, with two or more Members competing to ask a supplementary question, and none of them being willing to give way, it is for the Leader (or another Government minister) to rise and seek to give expression to the sense of the House. This may be by indicating that it is the turn of one particular party or group, or that the House may wish to hear from the Lords Spiritual (bishops), or, where two or more Members from the same party are in competition, by suggesting which should be heard.

33. Some Members suggested that it was inappropriate for the Leader of the House, as a member of the Government, to assist the House in this way; that it gives the impression that the Government's own front bench chooses the questions that the Government would best like to answer. Several Members also noted that, while trying to observe and interpret the mood of the House, the Leader has his back to almost half its Members. The Leader's role as a senior minister has to be combined with that of expressing the sense of the House and advising the House on matters of procedure and order, including at question time: statistics show that successive Leaders have acted in the latter role with complete impartiality. At the same time, performing this role has become increasingly difficult.

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[10] *Companion*, p. 61.

34. How do we address the decline in standards of behaviour at question time? There are four main options, which could be pursued either singly or in combination:

- To leave the procedure at question time unchanged, but to reinforce the House's tradition of self-regulation, for instance by encouraging senior members of the House (including the Leader and Chief Whip) to intervene more frequently, with what one Member called "a clear recital, reminder and underlining of the rule or rules".
- To change the procedure by introducing a greater measure of self-regulation, for instance by removing time limits, and placing the responsibility for orderly conduct of question time firmly on the House as a whole.
- To transfer the responsibility currently exercised by the Leader of the House to the Lord Speaker.
- To limit self-regulation during question time, by conferring upon the Lord Speaker the power to "call" supplementary questions, and determine when the House should move on to the next question.

35. We believe that in the current circumstances, and with a view to encouraging the greatest range of the House's Members to participate in question time, asking the greatest range of questions in an atmosphere more conducive to dialogue and to effective scrutiny of Government, it is time to consider adopting the third of these options, on a trial basis. We accept that simply transferring to the Lord Speaker the reactive role currently performed by the Leader may not, in itself, address the fundamental problem. However, it is worth an experiment—we trust that the force of interventions from the Woolsack, rather than from the Government front bench, may be such as to foster greater self-restraint across the House, so making such interventions less frequent. The Lord Speaker is also physically better placed to interpret the will of the House.

36. If, on the other hand, there is no improvement in behaviour after a trial period, which we suggest should be set at one year, it would be for the Procedure Committee to review the options set out above, with a view either to abandoning the experiment and reverting to the *status quo*, or looking again at the more radical fourth option.

37. Irrespective of whether the procedure at question time is changed, in a self-regulating House all Members—and particularly the front benches—remain responsible for good order, and in particular for calling to order those who transgress the rules of the House.

38. **We recommend that consideration be given to conferring upon the Lord Speaker the role currently performed during question time by the Leader of the House, for a one-year trial period in the first instance, beginning no sooner than 5 September 2011. In the event of the Lord Speaker's unavoidable absence from the House, we recommend that the same task be performed by the Chairman of Committees.**

Questions to ministers

39. At the end of the last Parliament, with a view to enhancing the House's scrutiny of the two Secretaries of State then sitting in the House of Lords, the

Procedure Committee recommended, on a trial basis, that those Secretaries of State should, on one Thursday each month, answer three oral questions addressed to them in their ministerial capacity. Fifteen minutes were set aside for such questions.

40. This experiment was, in our view, a success. Although it has been discontinued, as no Secretaries of State now sit in the Lords, we believe that the principle established, of oral questions directed to specific senior ministers, enhances the House's scrutiny of Government, and should be developed further, in particular by introducing a regular question time for the Leader of the House. Such questions should focus on matters for which the Leader is responsible as Leader.

41. **We recommend that the procedure adopted in early 2010, whereby Secretaries of State sitting in the Lords should answer three oral questions, on one Thursday each month, directed to them in their ministerial capacity, should be made permanent, with a view to its revival as appropriate.**

42. **We further recommend that there should be a monthly question time dedicated to questions on House of Lords matters addressed to the Leader of the House.**

Private Notice Questions

43. A member wishing to ask a Private Notice Question submits it in writing to the Lord Speaker by noon (or 10am if the House is sitting in the morning). The Lord Speaker, after consultation, decides whether the question "is of sufficient urgency and importance to justify an immediate reply".[11] The Lord Speaker's decision is final.

44. Private Notice Questions are rare. Since the start of the present session only 2 out of 17 applications have been accepted, reflecting a long-standing reluctance to grant Private Notice Questions and thereby delay the start of the main business of the day. In contrast, the new Speaker of the House of Commons announced early in his term in office that he would allow more Urgent Questions. He fulfilled this undertaking by allowing no fewer than 17 Urgent Questions between the start of the present session and the end of 2010. Although many of these have been repeated as oral statements in the House of Lords, the growing disparity between the two Houses reduces this House's ability to hold the Government to account.

45. **We recommend that the Lord Speaker interpret the criteria for allowing Private Notice Questions more liberally. We believe that the presumption should be that if an issue is an urgent matter of national importance, the application should be granted.**

Saving time

46. The confusion of question time is compounded by the use of wordy and unnecessarily obscure procedures. Oral questions are all but impossible to follow unless the observer is equipped with the Order Paper, as the Member putting the question, having been called by the Clerk, simply stands to say "My Lords, I beg leave to ask the question standing in my name on the

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[11] *Companion*, p. 100.

Order Paper", without reference to the text, before the minister stands to answer. The process of asking supplementary questions is equally bewildering to the uninitiated, with Members on all sides standing, speaking and even shouting, and with sedentary Members calling out the name of the Member they wish to hear. It is often hard for an outsider to discern the purpose of the spectacle.

47. Members also on occasion make unnecessarily time-consuming interventions. Too much time is spent on introductory remarks, for instance thanks to the minister or unnecessary declarations of trivial non-financial (and non-registrable) interests. There is a tendency of Members from all sides, including the Government front bench, to ignore the clear guidance in the *Companion* that "supplementary questions ... should be short and confined to not more than two points ... should be confined to the subject of the original question ... ministers should not respond to irrelevant questions."[12]

48. **We recommend that instead of Members seeking leave to ask the questions "standing in their name on the Order Paper", Members should read out the text of the question, using the formula "My Lords, I beg leave to ask Her Majesty's Government ...." To ensure that this does not take up too much time, we further recommend a mandatory limit of 40 words for oral questions (excluding the introductory formula given above).**

49. **To ensure best use of question time, we re-affirm the existing guidance in the *Companion* on the conduct of question time, while recommending that it be supplemented by the following guidance, based on that already found in the *Guide to the Code of Conduct*:**

- **Members should not take up the time of the House making trivial declarations of non-financial and non-registrable interests.**

50. **Finally, we recommend the addition of the following new guidance in the *Companion*:**

- **Questioners should not thank the Government for its answers, nor ministers thank questioners for their questions.**

Statements

51. The Government makes both oral and written statements to the House on matters of public importance. Most oral statements taken in the Lords are repetitions of statements made first in the Commons. The statement is read out by a Government minister or spokesperson, which is followed by up to 20 minutes of questions from the Opposition front bench and Government answers, and then a further 20 minutes of questions from the backbenches and Government answers.

52. Written ministerial statements are printed in Hansard, and are not discussed in the Chamber.

53. While questioning the Government on oral statements is an essential part of holding the Government to account, the timing of statements is problematic. If a statement is made first in the Lords, it will be taken straight after oral

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[12] *Companion*, p. 98.

questions, but if, as is almost always the case, it is repeated from the Commons, it will be taken "at a convenient moment" at which the House's business can be interrupted, after the Commons minister has begun speaking.

54. Moreover, as the *Companion* states, "Ministerial statements made in the Commons are repeated in the Lords if the usual channels so wish".[13] In practice, this means that the decision as to whether or not to repeat a statement is taken by the Opposition front bench. Nor is there any limit on the number of ministerial statements that can be made in one day. The *Companion* states that "lengthy interruption of the business of the House is not desirable", but if three statements are repeated on the same day they can interrupt the day's main business (for instance, consideration of Government legislation), in prime time, for two hours or more.

55. However important as an element of scrutiny, statements can significantly hold up the business that the House was expected to conduct. Important debates and votes may be deferred late into the evening or even a subsequent day. The impact on the scheduling of business is further compounded by the increasing numbers of Urgent Questions being allowed in the Commons (see above, paragraph 44), which are often repeated as statements in the Lords. The resulting increase in the frequency of oral statements is illustrated in Figure 5 above; more precise figures are given in the table below:

Session	*Number of oral statements*	*Average per sitting day*
2004–05	23	0.37
2005–06	71	0.34
2006–07	59	0.42
2007–08	63	0.38
2008–09	66	0.49
2009–10	23	0.34
2010–12 (up to 6 April 2011)	84	0.62

56. When a statement is repeated in the Lords, the entire text of the Commons minister's statement is read out by a Government spokesperson before questioning begins. This does not normally present any difficulty—such statements typically take between five and ten minutes to read. But occasionally such repetition does not represent a good use of the House's time: reading the entire Comprehensive Spending Review statement on 20 October 2010, for example, took over an hour, and even though the statement had been read in full in the Commons three hours beforehand (where members of the Lords may watch from the galleries), broadcast on live television, and made available in print from the Lords Printed Paper Office.

[13] *Companion*, p. 91.

57. **We recommend that the usual channels should, in deciding whether to repeat a statement in the Lords, also consider whether it would be a good use of the House's time for the statement to be read out. In exceptional cases (for instance a long statement, which has been publicly available for some hours) it may be appropriate for the text of the statement to be reproduced in the Official Report without being read out; the remaining oral exchanges would take place in the Chamber as at present.**

58. A balance needs to be struck between the House's core functions. Some statements will be of critical importance, and should certainly be discussed in the Chamber, in "prime time". But in general we do not consider that devoting two or more hours of prime time to statements, and thereby interrupting the House's vital work of legislative scrutiny, always represents the best use of the House's resources.

59. **We recommend that, on days when more than one oral statement needs to be taken, the option should be available to take the second and subsequent statements in the Moses Room. Such statements would take precedence over other business scheduled in the Moses Room.**

60. Nor do proceedings on statements necessarily make best use of the House's time or the skills and knowledge of Members. The *Companion* is clear that statements "should not be made an occasion for immediate debate". But this is qualified by the statement that "brief comments and questions from all quarters of the House are allowed". Members have differing views on what constitutes brevity—some Members may make contributions lasting three or four minutes, significantly reducing the number of Members able to intervene. This leads to increasingly intense competition, with Members refusing to give way, with similar problems being experienced during oral statements as during question time.

61. Where two or more Members wish to intervene during proceedings on an oral statement, the same procedure is followed as during oral questions—it is the task of the Leader (or another Government minister) to rise and seek to give expression to the sense of the House as to who should be heard. The same considerations apply to oral statements as to oral questions, and for the same reasons we believe that the Leader's role during oral statements should, for a trial period, be transferred to the Lord Speaker.

62. **We recommend that the guidance on backbench contributions on oral statements be clarified, by removing the reference to "brief comments". To avoid speech-making, and with a view to increasing the number of Members who can intervene on statements, we recommend that backbench contributions should be limited to questions to the minister.**

63. **We support the practice of increasing the time available for backbench questions to 30 or 40 minutes in exceptional circumstances.**

64. **We recommend that consideration be given to conferring upon the Lord Speaker the role currently performed during oral statements by the Leader of the House or the Government front bench, for a one-year trial period in the first instance, beginning no sooner than 5 September 2011. In the event of the Lord Speaker's unavoidable**

absence from the House, this task would be performed by the Chairman of Committees or by another Deputy Speaker.

Who speaks for the executive?

65. Finally we address an over-arching issue affecting the way the House scrutinises the executive. For such scrutiny to be effective, it is important that those engaging with the House on behalf of the Government are ministers and officials with specific policy responsibility in the area being scrutinised, rather than those whips who are not ministers or junior officials who cannot fully represent decision-makers and answer for them. The Royal Commission on Reform of the House of Lords, chaired by Lord Wakeham, recommended in 2000 that ministers should continue to be drawn from and directly accountable to the second chamber, and suggested that "it would be desirable if the second chamber were to continue to furnish several ministers of State and at least two members of the Cabinet."[14]

66. However, whereas the end of the previous Parliament saw no fewer than three members of the Cabinet, including two Secretaries of State, in addition to the Attorney General, sitting in the House of Lords, in the current Parliament there are no Lords-based Secretaries of State, and only two members of Cabinet in the Lords.[15] The number of Ministers of State in the Lords has fallen from four to three.[16] This dilution of Government representation in the House undermines the ability of the House to assist the Commons in holding the Government to account.

67. Nor have alternative means to enable Members to scrutinise the Government been proposed. Towards the end of the last Parliament, concern in the House of Commons over the presence of two Secretaries of State in the Lords, and the resulting perceived shortfall in accountability, led the Commons Procedure Committee to look at ways in which Lords ministers could answer questions in the other House.[17] The problem has now been reversed, as Members of the House of Lords find themselves unable to challenge responsible ministers across the spectrum of Government policy.

68. As long ago as 2000 the Royal Commission pointed out that the lack of ministerial accountability to the second chamber meant that "the wider perspectives and relevant expertise of members of the House of Lords cannot be brought to bear directly and regularly on those senior members of the Government with the lead responsibility for most major areas of public policy". The current lack of direct accountability to the House of Lords is contributing to a reduction in the level of scrutiny by Parliament as a whole, and is therefore contrary to the public interest. The Royal Commission recommended that "a mechanism should be developed which would require Commons ministers to make statements to and deal with questions from members of the second chamber".[18]

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[14] *A House for the Future*, report of the Royal Commission on House of Lords Reform, Cm 4534 (2000), p. 81, recommendation 44.

[15] The Leader of the House and Baroness Warsi, the Minister without Portfolio.

[16] Lord McNally, Lord Howell of Guildford and Baroness Neville-Jones.

[17] House of Commons Procedure Committee, *Accountability to the House of Commons of Secretaries of State in the House of Lords*, 3rd Report, 2009–10 (HC 496).

[18] *Op. cit.*, p. 81.

69. **We recommend that renewed consideration be given, possibly by the Procedure Committees of the two Houses, to the means whereby ministers sitting in either House may be enabled to make statements to and answer questions in the other House.**

CHAPTER 3: SCRUTINY OF LEGISLATION

What constitutes good scrutiny of legislation?

70. Scrutiny of legislation is arguably the most important task of the House of Lords. It is here that the House exercises the most direct influence over the Government, promoting and defending the interests of the public.

71. It is also the single most time-consuming task of the House of Lords. Over the last four complete sessions, an average of just under 53% of time in the House has been spent considering primary legislation. Of the time taken on primary legislation, 93% (49% of total time) was spent on Government legislation.[19] A further 5% of time in the House was spent debating secondary legislation. In Grand Committee, over the same period, just under 63% of time was spent debating primary legislation (exclusively Government legislation), and another 21% of time on delegated legislation.

72. In conducting its scrutiny of legislation, the House of Lords is commonly described as a "revising chamber" (see Box 2), a concept which, while subject to qualification, remains useful: in a bicameral system, in which legislation is scrutinised at varying length in both Houses, it is helpful to distinguish between the scrutiny roles of the primary and elected chamber, in which the Government, and its legislative programme, stand or fall, and the secondary, revising chamber, where much of the essential detailed analysis of proposed legislation takes place. Both Houses perform ostensibly similar tasks in respect of legislation, but they perform them in different ways, and with different consequences. Our aim has been to suggest ways in which the House of Lords may improve its scrutiny of legislation, while respecting the existing relationship between the two Houses.

73. Scrutiny of legislation by the House of Lords can be characterised as an exercise in "quality control". The House can improve legislation, can contribute to better outcomes from legislation, but cannot itself guarantee good legislation. If the policy underlying legislation is bad, but is insisted upon by the Government and backed by the House of Commons, no amount of scrutiny by the Lords can turn it into good policy. It is therefore difficult either to define, still less measure, "good scrutiny". In 1974 J.A.G. Griffith wrote "that Parliament makes an impact on legislative proposals of the Government is undeniable … but the language which is used to describe the … impact is imprecise".[20] This is particularly true of scrutiny in the Lords, where the key tasks are to probe the policy and test the drafting.

74. What constitutes good, effective scrutiny of legislation by the House of Lords? We believe that it should:

- Address both points of principle and detail, balancing informed, evidence-based challenge to the policy underpinning legislation with technical scrutiny of the text itself;
- Be conducted transparently and accountably;
- Ensure that clear and authoritative explanations of the purpose and meaning of legislative provisions are placed on the public record;

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19 Source: Sessional Statistics (see http://www.publications.parliament.uk/pa/ld/ldstat.htm).

20 J.A.G. Griffith, *Parliamentary Scrutiny of Government Bills* (1974), p. 13.

- Be accessible, in order to enable the public and others to engage in and influence the process;
- Draw on the relevant knowledge and experience of Members of the House of Lords, and facilitate dialogue with ministers with specific policy responsibility for the legislation;
- Be conducted in reasonable time, so as to enable the Government of the day to implement its legislative programme;
- Pay particular attention to those parts of Commons bills which may not have been subject to detailed scrutiny in that House.

BOX 2

The House of Lords as a "revising chamber"

The House of Lords has extensive powers to amend or reject legislation, but these powers are subject to both statutory and conventional limitations. The formal statutory limitations are set out in the Parliament Acts 1911 and 1949. The effect of the Parliament Acts is that if the House of Lords either rejects a Commons bill outright, or if the two Houses are unable to agree on a final text, the same bill may be reintroduced and passed the following session without the agreement of the Lords. However, up to a third of Government bills are introduced in the House of Lords, and the Parliament Acts do not apply to such bills, which therefore cannot become law unless agreed by the Lords as well as the Commons.

There are also long-standing constitutional conventions governing Lords consideration of Government legislation, which apply regardless of whether bills are introduced in the Lords or Commons. One is the convention that the Government is entitled to have its business considered by the Lords in "reasonable time". A second is the "Salisbury-Addison convention" that a "manifesto bill" should be accorded a second reading in the House of Lords. Finally, there are conventions (reinforced by statute in the case of bills certified by the Speaker as "money bills" in accordance with section 1 of the Parliament Act 1911) concerning House of Commons financial privilege.

More generally, the Government is responsible for developing policy, and convention dictates that votes in the elected House determine whether or not that policy has the support of Parliament. As the Royal Commission on Reform of the House of Lords stated in 2000: "The House of Commons, as the principal political forum, should have the final say in respect of all major public policy issues, including those expressed in the form of proposed legislation."[21] The role of the Lords, according to the Royal Commission, is "to require the Government and the House of Commons to reconsider proposed legislation and take account of any cogent objections to it."

Where the two Houses disagree on legislation, and no compromise is reached, the House of Lords normally gives way. There have been major policy issues on which the House has stood firm, but in broad terms the conventions, taken together with the Parliament Acts, justify the description of the role of the House of Lords in scrutinising legislation as that of a "revising chamber".

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21 Report of the Royal Commission on House of Lords Reform (2000), p. 33.

Pre-legislative scrutiny

75. There is general agreement that the introduction of pre-legislative scrutiny by parliamentary committees, following a recommendation of the Modernisation Committee in 1997,[22] has been a helpful innovation. Pre-legislative scrutiny should help Government, Parliament and the public: ministers and officials are receptive to argument and amendment; the informality of select committee procedures assists in detailed, non-partisan scrutiny; stakeholders, expert witnesses and the general public are given an opportunity, in a public and impartial forum, to comment on and influence the legislation.

76. Firm evidence for the benefits of pre-legislative scrutiny is scarce. In 2009 Lord Bach, on behalf of the Government, paid tribute to the work of the Joint Committee on the Draft Bribery Bill earlier that year: "It is a testament to the Joint Committee's cogent analysis that the Government could accept, either wholly or in part, all but one of the committee's 39 conclusions and recommendations." Yet as Lord Bach continued, this did not necessarily mean that scrutiny of the bill itself would be less thorough:

> "The fact that this Bill has had the benefit of pre-legislative scrutiny does not, of course, mean that your Lordships will not want to scrutinise it in their usual thorough and forensic manner. I trust, however, that we have reached the stage where that examination can be about the finer details of the Bill rather than its core purpose and basic structure."[23]

77. It is clear from Lord Bach's remarks that the benefit of pre-legislative scrutiny, from the Government's point of view, lies in the detailed analysis of the policy underpinning a draft bill, and in the opportunity given to the Government to think again about specific policy issues in light of cross-party committee recommendations. Pre-legislative scrutiny is not, as a rule, about detailed technical scrutiny of the drafting; nor does it necessarily lead to savings of time later in the bill's progress. For example, of 148 recommendations made by the Joint Committee on the Draft Communications Bill in 2002, 120 were accepted by the Government. This did not, however, prevent the House from taking six days to consider the Communications Bill in Committee of the Whole House, and three more days on Report.

78. From the public's point of view, the benefits of pre-legislative scrutiny lie in enhanced public engagement in the legislative process and in improvements in the quality of the final Act—for instance, in clarity of drafting and the extent to which it is likely to achieve its intended outcomes. The latter benefits are difficult to measure, though the recommendations on legislative standards and post-legislative scrutiny contained in this report might help develop such measures. But it is evident that pre-legislative scrutiny provides opportunities for fuller public engagement in the legislative process, and thereby improves accountability and transparency.

79. Since a short-lived increase in 2002–04 the number of bills published in draft has remained low, and the number scrutinised by select committees, either Joint or Commons, still lower:

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22 House of Commons Modernisation Committee, *The Legislative Process*, First Report, 1997–98 (HC 190), paragraph 91.

23 HL Deb., 9 December 2009, col. 1086.

Session in which published	*Draft bills or clauses of bills published*	*Draft bills scrutinised by a parliamentary committee (of which scrutinised by a joint committee)*[24]
2002–03	9	10 (4)
2003–04	12	10 (4)
2004–05	5	2 (1)
2005–06	4	3 (1)
2006–07	4	3 (2)
2007–08	9	7 (2)
2008–09	4	2 (1)
2009–10	4	2 (0)

80. These figures, when compared with the number of Government bills overall (see paragraph 88 below) demonstrate the reluctance of departments to publish bills in draft. Many committees and groups over the years have recommended an increase in the amount of pre-legislative scrutiny, but such recommendations have had little effect in overcoming Government resistance. In contrast, if a bill is only published upon introduction, so much political capital is invested in the bill that, in the words of the Constitution Committee in its 2004 report on *Parliament and the Legislative Process*, officials and ministers "often consider it their task to defend their legislation, as drafted, regardless of the merits of arguments for improvement."[25]

81. The figures reveal the inconsistency in the way in which draft bills are handled, with some not being subjected to parliamentary scrutiny at all, others being considered by Commons departmental select committees, and only a small (and diminishing) minority being considered by Joint Committees. Decisions as to which bills are to be published in draft rest with the Government. It is to a large extent left to departmental select committees in the Commons to "bid" to conduct pre-legislative scrutiny on draft bills falling within their remit, but there is little consultation with the House of Lords and little consistency in decision-making on the establishment of joint committees. Parliament, and the House of Lords in particular, is not contributing as effectively as it might to pre-legislative scrutiny.

82. We do not consider that it would be feasible for all bills be published in draft. But we agree with the recommendation of the Constitution Committee that it should be the norm, rather than the exception, for the Government to publish bills in draft.[26] There will always be exceptions, including emergency legislation, Finance Bills, and possibly some technical legislation. But there should be a clear presumption that bills embodying important changes of policy (particularly constitutional bills) should be subject to pre-legislative scrutiny. Where such bills have not previously been the subject of wide

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[24] Source: House of Lords Committee Office.

[25] Constitution Committee, 14th Report, 2003–04, *Parliament and the Legislative Process* (HL 173), paragraph 26.

[26] *Ibid*, paragraph 28.

consultation, by means of green and white papers, this presumption should be a requirement. If the Government does not publish a bill in draft, it should formally explain and justify its approach to the House.

83. We further believe that the process whereby decisions are made on which draft bills should be subject to pre-legislative scrutiny should be more transparent. The Constitution Committee in 2004 recommended that such decisions should be "negotiated between the Government and the Liaison Committee of the House of Commons".[27] We accept that in many cases the appropriate body to scrutinise draft legislation may be the appropriate departmental select committee. However, in light of the widespread perception that the knowledge and experience of Members of the House of Lords are being under-used, we do not consider that the process for taking such decisions recommended by the Constitution Committee is now adequate.

84. **We recommend that there should be a presumption that all bills embodying important changes of policy (particularly constitutional bills) should be subject to pre-legislative scrutiny. Where such bills have not previously been the subject of wide consultation, by means of green and white papers, this presumption should be a requirement. If the Government does not publish a bill in draft, it should formally explain and justify its approach to the House.**

85. **We recommend that the Leader of the House, along with the Leader of the House of Commons, explore ways in which the process for reaching decisions on pre-legislative scrutiny can be improved, so as to make best use of the knowledge and experience of Members of the House of Lords.**

Legislative standards

86. Parliamentary scrutiny of legislation is only one stage of a lengthy process which extends far beyond Parliament. Policy formation, which may include green and white papers, consultation and stakeholder engagement, takes place largely independently of Parliament. Drafting by Parliamentary Counsel, consideration by Cabinet committees and inclusion within the legislative programme follow, until the point at which a bill is ready for introduction. Pre-legislative scrutiny by committees of one or both Houses may extend the process still further. Within this complex process, Government officials may sometimes be tempted to see Parliament as just another "consultee", legislative scrutiny as only a box to be ticked along the way to delivering policy outcomes.

87. The last quarter century has seen a huge increase in the volume of legislation, primary and secondary, put before Parliament by Government. The reasons for this increase in volume of legislation, and the perceived corresponding drop in its quality, fall outside the scope of this Report. But they have been repeatedly analysed, most recently in the Hansard Society report *Making Better Law*, which noted that legislation is increasingly perceived as "a sign of action and therefore ... a powerful public relations measure and communications tool; a heavy legislative programme suggests a breathless pace of reform, energy and endeavour." The result is that Parliament, and

[27] *Ibid*, paragraph 41.

parliamentarians, find themselves "struggling with a near impossible workload."[28]

88. These problems are compounded by the imbalance in the legislative programme between the two Houses. Up to a third of Government bills in any session are introduced in the Lords. Figures for the last Parliament are as follows:

Session	*Total Government bills*	*Introduced in Commons (percentage of total)*	*Introduced in Lords (percentage of total)*
2005–06	53	35 (66)	18 (34)
2006–07	30	21 (70)	9 (30)
2007–08	30	22 (73)	8 (27)
2008–09	24	16 (67)	8 (33)
2009–10	23	18 (78)	5 (22)
Total	160	112 (70)	48 (30)

89. Most major bills begin in the Commons and only reach the Lords half way through the session, until which point the Lords is relatively less occupied by legislation. Although increased use of programming motions in the Commons means that some Commons bills now reach the Lords earlier in the session, such programming may in turn mean that they have been subject to less thorough scrutiny. Rational and effective use of time and resources is thus made more difficult. The "spill-over", between the summer recess and the end of the session, has typically been hectic in the Lords, as too much legislative scrutiny is crammed into a short period. It remains to be seen whether the recent change in the sessional timetable will improve the position.

90. Time pressure necessarily affects the quality of legislative scrutiny. Time, against the backdrop of imminent prorogation, and in the absence of extensive use of carry-over, is an important consideration for the Government. In the last Parliament the Government tended to avoid confrontation in the spill-over, preferring to accept Lords amendments rather than risking loss of an entire bill. This House's power to extract concessions from the Government was increased, but the results were not necessarily in the public interest—amendments should be accepted in response to argument and evidence, not under pressure of time.

91. Parliament, still less the House of Lords alone, cannot put the deficiencies in the legislative process right by itself. There need to be changes within Government as well, for instance in the operation of the Cabinet Parliamentary Business and Legislation Committee. But there is scope for Parliament to be more active. In the words of the Hansard Society, Parliament should: "at least be a partner in the process of setting the standards of what constitutes a validly prepared piece of legislation … If parliamentarians are serious about checking the duplication of law and the

[28] Ruth Fox and Matt Korris, *Making Better Law: Reform of the legislative process from policy to Act* (Hansard Society, 2010), pp. 31, 34.

growth of the statute book they must be both more imaginative and muscular in asserting their role and function *vis-à-vis* the executive."[29]

92. In order both to make its own scrutiny of legislation more effective, and to improve the outcomes from that legislation, Parliament should be more assertive in ensuring that Government legislation meets minimum standards. There is already a degree of consensus on what such standards should be—the Better Government Initiative, for example, has published a list of "principles of good legislation", covering such issues as clarity and proportionality.[30] Our view is that, in the interests of transparency and accountability, it should be for Parliament, through a "Legislative Standards" Committee, to assess all Government legislation against agreed criteria, and to makes its findings available to both Parliament and the public.

93. It would not be the role of the Legislative Standards Committee to consider either the underlying policies or the drafting of the legislation, which are properly matters for debate and scrutiny in the two Houses. Instead the job of the Committee would be to ensure bills' technical and procedural compliance with agreed standards of best practice in bill preparation. This would be best done by developing a legislative standards form, which departments would be required to complete and present at the same time as publishing a bill. Much of the required information is already available, but across a range of places and formats. The form would bring the key information together in one place, forming a reference point—in essence, a "business case"—for the proposed legislation.

94. The exact content of the legislative standards form would be for further discussion. However, we expect it to include:

- A clear and unambiguous statement of the policy intention or intentions of the legislation, and of the desired outcomes;
- An explanation of why legislation, rather than other means, was necessary to fulfil the policy intention, and why such legislation is being brought forward at this time;
- A summary of the Government's response to pre-legislative scrutiny on the bill, and, in cases where a bill was not published in draft, an explanation of why it was not (see paragraph 84 above);
- An outline of how the bill relates to existing Acts, and whether opportunities to consolidate such legislation have been considered;
- An informal Keeling Schedule (not part of the bill) showing in greater detail the effect of amendments to earlier Acts;
- A list of any new criminal offences created by the bill, and a summary of how they relate to existing offences;
- A summary of any consultation undertaken in preparing the bill;
- An estimate of the costs of preparing and implementing the policy set out in the bill (including a regulatory impact assessment);
- An indication, where appropriate, of targets and performance measures for implementation.

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[29] *Ibid.*, p. 35.

[30] Better Government Initiative, *Good Government: Reforming Parliament and the Executive* (2010), pp. 20–21.

95. Wherever possible the Committee would review the form and certify compliance (or not) after introduction and before second reading. This might be difficult in some cases, and so the Committee should have power to waive some of the requirements in specified circumstances. Bills also change substantially in the course of their passage through Parliament. Just as best practice requires a business case to be amended to reflect the changing scope of a project, so we would expect the Government to update the legislative standards form to reflect amendments to the bill. The Committee would review the updated form in the event of major amendments being made to the bill.

96. We believe that a Legislative Standards Committee would be most effective as a Joint Committee of both Houses, assessing all Government bills for compliance with the agreed standards. However, failing this, we believe that a House of Lords Legislative Standards Committee considering only Lords Government bills would significantly add value to parliamentary scrutiny of legislation.

97. **We recommend the establishment of a Legislative Standards Committee, either as a Joint Committee or as a Select Committee of the House of Lords, to assess, immediately after introduction and before second reading, the technical and procedural compliance of Government bills with standards of best practice in bill preparation, on which we have made proposals in paragraph 94 of this Report. We recommend that the Committee be appointed for the remainder of the current Parliament in the first instance, and that its effectiveness be reviewed towards the end of the Parliament.**

98. **We recommend that the Legislative Standards Committee should report on all Government bills before second reading. If the Committee were set up as a Lords-only Committee, it would report only on bills introduced in this House. If the Committee reported that a bill was not compliant without good reason, it would be for the House to decide whether or not to grant a second reading.**

Taking evidence on Lords bills

99. Among the criteria for good legislative scrutiny which we have adopted in this chapter are requirements that it be evidence-based and accessible to the public. While large volumes of material on proposed legislation are sent to Members by non-governmental organisations, pressure groups, and members of the general public, there is currently no formal mechanism whereby the House, or a committee of the House, can gather evidence on a bill. Nor is there any process whereby such groups, or the general public, can submit views, on the record, to inform the House's scrutiny.

100. In contrast, House of Commons Public Bill Committees, appointed since 2006 by the Commons Committee of Selection to consider particular bills, are empowered to take oral and written evidence. After taking such evidence, they proceed to conventional clause-by-clause consideration of the bill. Amendments may be made, if necessary on division. Once the committee's consideration is complete, the bill is reported to the House, and a normal Report stage follows.

101. The main limitation of the Commons Public Bill Committee procedure is that its use is confined to bills introduced in the Commons. There is

therefore no evidence-taking stage on Lords starters. A further limitation is created by the strict time-limits imposed on Public Bill Committee scrutiny of those bills (the majority) which have previously been the subject of a programming motion. In practice, the evidence-taking stage is typically limited to the first two days, and the Public Bill Committee itself has little or no opportunity to select witnesses or determine its own timetable.

102. The nearest equivalents in the House of Lords are Special Public Bill Committees, described in the *Companion* as "public bill committees that are empowered to take written and oral evidence on bills before considering them clause by clause in the usual way." Such committees are appointed by the Committee of Selection; the Government has a majority over the other party or parties, with the balance held by the Crossbenchers. Ministers and opposition frontbench spokesmen are typically members of the committee. The committee takes evidence, beginning with the minister, over a 28-day period, before considering the bill and amendments in the usual way.[31] Members of the House who are not appointed to the committee are free to attend meetings held in public, speak and move amendments, but may not vote in the event of a division.

103. The Special Public Bill Committee procedure remained unused for several years, until it was revived in 2008, on a trial basis, for the scrutiny of Law Commission Bills.[32] The procedure proved a success, and was made permanent in 2010.[33] The related "Public Bill Committee" procedure, similar except for the fact that there is no evidence-taking stage, is described in the *Companion* as suitable for "mainly technical and non-controversial government bills".[34] Public Bill Committees have fallen into disuse since the 1990s, their place largely taken by Grand Committees.

104. While we would not wish to duplicate the work of the Commons Public Bill Committees by subjecting Commons bills to an evidence-taking stage, we believe that there could be significant benefits in introducing an evidence-taking stage for Lords bills. It would facilitate thorough, evidence-based consideration and ongoing dialogue, giving the Government (including Commons ministers and senior officials) an opportunity to explain policy in a less formal environment than that of the Chamber or Grand Committee; it could also be used to encourage public engagement in the legislative process.

105. At the same time, we acknowledge that the existing Special Public Bill Committee procedure, while suitable for technical and largely uncontroversial Law Commission bills, would be too time-consuming for most Government bills, potentially disrupting the Government's legislative programme. Nor do we believe that one size necessarily fits all. Bills vary hugely in size, scope and importance; some may have been subject to extensive consultation or pre-legislative scrutiny, others to little or no consultation.

106. We therefore consider that any procedure for taking evidence on bills in the Lords should allow some flexibility to vary the procedure according to the particular bill. In some cases, where the policy underlying a bill is

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31 *Companion*, pp. 146-47.

32 Procedure Committee, 1st Report, 2007-08 (HL Paper 63).

33 Procedure Committee, 2nd Report, 2010-11 (HL Paper 30).

34 *Companion*, p. 145.

uncontroversial, and there has been extensive public consultation and pre-legislative scrutiny, it may be that no further evidence-taking stage is necessary. More often, however, for instance where there is significant interest across the House in the policy, Members will wish to have an opportunity to question ministers and officials in advance of the normal committee stage. But in some cases, if the Government's consultation has been inadequate, or if major and controversial elements of policy, and their impact upon the public, have not been fully explained, a more detailed enquiry, bringing in expert witnesses from outside the House, would be appropriate.

107. Decisions on the appropriate procedure to be followed in each case should, we believe, be taken by the Legislative Standards Committee, as part of its consideration of bill preparation and presentation. The Committee will have a full history of the bill, of policy development and consultation, before it; the power to decide the appropriate evidence-taking procedure would add substantially to the Committee's authority—it would, from the Government's point of view, become a force to be reckoned with.

108. We suggest that the options open to the Legislative Standards Committee should be as follows:

- **No evidence-taking stage**. Typically for bills which are uncontroversial, and which have been subject to full consultation and pre-legislative scrutiny.
- **Evidence to be taken from the Government**. This would be a hearing lasting up to one day, conducted by an evidence-taking Grand Committee in the Moses Room, and open to all Members, to be completed after second reading, and prior to the normal commitment to either a Grand Committee or a Committee of the Whole House. It would give Members an opportunity to challenge senior ministers and officials on the preparation of the bill and the level of engagement with stakeholders, as well as on the underlying policy.
- If the Legislative Standards Committee felt that the Government's consultation had been inadequate, or that major elements of policy were not fully explained, it could recommend **committal to an evidence-taking Public Bill Committee**. This would be a committee of named Members, including Members of the Government and Opposition front benches, and backbench volunteers who had expressed an interest in the bill. The committee would be appointed on the recommendation of the Committee of Selection, and would be given the power to take evidence and to publish its evidence; its proceedings would be time-limited to 14 days. The committee would meet on the committee corridor, and would have a genuine opportunity to examine a range of witnesses over a series of meetings. All Members of the House would be free to participate fully in the meetings of the committee. After the set time had elapsed, the evidence would be reported and the bill re-committed to either a Grand Committee or a Committee of the Whole House.

109. **We recommend that the Legislative Standards Committee be tasked with advising the House, in respect of each Government bill introduced in the Lords, whether an evidence-taking stage is required, and, if so, whether it should be in the form of a one-day hearing with the Government or committal to a Public Bill**

Committee. We suggest that the last option should be used only on those occasions where consultation has been inadequate, or major elements of policy have not been fully explained.

110. **We have used the term "Public Bill Committee" to describe a 14-day evidence-taking procedure, as this term is familiar both in the Commons and beyond Parliament. We recommend that, with a view to simplifying the House's procedures, the existing, obsolete Public Bill Committee procedure be abolished and replaced by the procedure outlined above. The Special Public Bill Committee procedure would continue to be used for consideration of Law Commission bills.**

Grand Committee

111. As well as recommending the introduction of an evidence-taking stage for Government bills introduced in the Lords, we see considerable scope for extending the use already made of Grand Committees on bills. As long ago as 1994 a group chaired by Lord Rippon of Hexham recommended that the committee stage of all bills except the most important or controversial Government bills should be taken in Grand Committee.[35] In 2002 the Leader's Group chaired by Lord Williams of Mostyn also recommended greater use of Grand Committees for the kind of bills considered suitable by the Rippon group.[36] But despite these successive recommendations, and a surge in 2002 and the following years, the number of bills taken in Grand Committee has fallen back more recently:

Session	*Number of bills committed to a Grand Committee*
2000-01	2
2001-02	5
2002-03	12
2003-04	18
2004-05	8
2005-06	23
2006-07	12
2007-08	14
2008-09	6
2009-10	5

112. The reason for the failure to implement successive recommendations to make greater use of Grand Committees lies in the absence of political will and co-operation. Scheduling decisions are made by the usual channels; within the usual channels the Opposition often, no doubt, see benefit in

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35 Report to the Leader of the House from the Group on Sittings of the House, 1993–94, HL Paper 83.

36 Report by the Group appointed to consider how the working practices of the House can be improved, and to make recommendations, 2001–02, HL Paper 111.

taking as many Government bills as possible to Committee of the Whole House.

113. The fall in the number of bills going to Grand Committee comes at a price. More time on the floor of the House in Committee means less time for other types of business. As the number of bills going to Grand Committee fell, so the proportion of time in the Moses Room spent considering public bills fell, from just under 98% in 2003-04 to 61% in the last completed normal length session, 2008-09. Over the same period, the proportion of time spent in the Chamber on Committee stages of public bills rose from 18% in 2003-04 to just under 28% in 2008-09. In the current session so far, in which a series of key Government bills have been committed to a Committee of the Whole House, 24% of time in the Chamber has been spent on Committee stages.

114. One obvious result of the recent increase in the time taken in Committee of the Whole House has been to reduce the amount of time in the Chamber available for other types of business. Increasingly, such business is itself being taken in Grand Committee, so filling the gap left by the reduction in the number of Committee stages held there. The vast majority of affirmative instruments are now debated in Grand Committee; since 2007 it has been possible to take four one-hour Questions for Short Debate back-to-back in the Moses Room; also taking place in the Moses Room are debates on select committee reports, second reading debates on Law Commission bills (since 2008) and debates on National Policy Statements (since 2009).

115. There is widespread, though not unanimous, agreement that Grand Committee procedure leads to better scrutiny of primary legislation. Members' submissions referred to the greater informality of the Grand Committee and the better communications between ministers and officials, leading to better quality responses—all features of Grand Committee proceedings that are particularly helpful during the detailed exchanges typifying Committee stage scrutiny. We acknowledge that some Members deplore the loss of the opportunity to vote at Committee. But divisions in Committee of the Whole House on most bills are now rare, and the House continues to have chances to vote on amendments at Report and Third Reading. On balance, we have no hesitation in affirming that bills benefit from Grand Committee scrutiny.

116. On the other hand, it is doubtful whether, say, Questions for Short Debate or debates on select committee reports, which are subject to speakers' lists and time limits, benefit from being taken in the Moses Room. They are being taken in Grand Committee not because they are particularly appropriate for that forum, but because time in the Chamber is finite, and with the increasing amount of time being spent in Committee of the Whole House, something has to give.

117. In conclusion, reducing the time taken in Committee of the Whole House, and proportionally increasing the amount of time taken on bills in Grand Committee, would on the one hand release time in the Chamber, which could be used to debate topical or other important issues of the day, and on the other would improve the quality of the House's scrutiny of legislation. Such changes could also be implemented in a balanced way, without inflicting unreasonable hours upon Members and staff.

118. To achieve the best results, longer sitting hours in Grand Committee would be needed. In a typical one-year session the House sits on around 140 days,

for a total of around 1,000 hours, around a quarter of which is spent in Committee of the Whole House (though the proportion in the present session will be considerably higher). The Grand Committee sits on around 60 days, for around 200 hours in total. If the number of Grand Committee sitting days could be increased by, say, 50%, accompanied by longer sitting hours, it would be possible to double the amount of time spent in Grand Committee, taking the majority of Committee stages off the floor of the House.

119. This would mean more regular, and longer, Grand Committee sittings—we believe that there should be a presumption that the Grand Committee sit three days a week, Tuesday to Thursday, every week, apart from the opening and closing weeks of the session, when no Committee stages are held. Sittings should be longer, starting at 10.30 am, adjourning at lunch, and resuming at 2.30pm, continuing until 6.30pm. With 80-90 Grand Committees held during a typical session, this would allow for around 500 hours of Grand Committee sittings, certainly enough to absorb the additional workload created by taking committee stages off the floor of the House.

120. These changes could potentially free up enough time to allow the House to abandon or at least to reduce the frequency of Friday sittings. This would mean taking private Members' bills on week-days (with committee stages in the Moses Room). The saving generated would go some way to offsetting the cost of more and longer Grand Committees.

121. As well as considering more Government bills, we believe it is time to extend the use of Grand Committee to private Members' bills. According to the *Companion*, bills which are "unlikely to attract amendments" (in which case the order of commitment is likely to be discharged), are not committed to Grand Committee. This is a necessary consequence of the rule that "only one bill per day may be considered in Grand Committee"[37]—it would be wasteful to schedule a Grand Committee to consider one bill, if at short notice the order for commitment could be discharged and the Grand Committee cancelled. It follows that private Members' bills are normally committed to Committee of the Whole House. These rules are, we believe, unnecessarily rigid. If longer Grand Committee sittings are instituted, it will be vital to introduce greater flexibility in scheduling business, with different bills being considered before and after lunch, and other types of business, such as Questions for Short Debate or consideration of delegated legislation, being tabled for the end of business.

122. **We recommend that a rule be established, and included in the *Companion*, that all Government bills introduced in the Commons should be considered in Grand Committee, apart from major constitutional bills and emergency legislation and other exceptionally controversial bills. In the case of such bills, the minister in charge of the bill should, when moving the committal motion to Committee of the Whole House, make a brief statement explaining to the House why the bill was deemed unsuitable for Grand Committee.**

123. **We recommend also that all private Members' bills be committed to Grand Committee. At the same time, the rule that only one bill per day may be considered in Grand Committee should be lifted, allowing**

[37] *Companion*, pp. 143-44.

private Members' bills to be scheduled after other business, which might include Government bills. If no amendments were tabled by the deadline of 5pm the previous day, it would be open to the Member in charge of the bill to move a motion in the Chamber to discharge the order of commitment.

124. **We recommend that the sitting hours of the Grand Committee should in future be more predictable and longer. We propose that, with the exception of a period of around two weeks at the start and end of each session, there should be a presumption that the Grand Committee will sit on Tuesday, Wednesday and Thursday of each sitting week, from 10.30am to 12.30pm, and from 2.30 until 6.30pm.**

Clauses not considered by the Commons

125. It has often been suggested that clauses in Commons bills which have not been debated by the Commons should be highlighted when the bill reaches the Lords, in order that the House may prioritise its own scrutiny work. For instance, the cross-party group on legislative scrutiny, in its report in March 2010, recommended that "When a bill passes from the Commons to the Lords it should be flagged to identify any clauses that have not been debated".[38] Similar points were made by several speakers in the debate on working practices on 12 July 2010.

126. The House of Commons is master of its own procedures, including the way in which it uses the time allocated to scrutinise legislation. It is out of order for Members of the House of Lords to criticise Commons proceedings or Speaker's rulings.[39] It would not be permissible therefore to use the flagging of clauses not debated in the Commons as the basis even for implied criticism of that House. Nevertheless, if the House of Lords were to be informed which parts of a bill had not been debated, we believe that it would allow for more focused and better prioritised debate in this House.

127. The reason why clauses or parts of a Government bill have not been debated in the Commons is frequently because the Government has tabled a programming motion. Even though such motions are debated and agreed by the House of Commons as a whole, the responsibility for any restriction placed upon Commons scrutiny is shared by the Government. We therefore believe that it should be for the Government to flag up these clauses, to assist the House of Lords in its work as a revising chamber. The Government could present such information in a memorandum to the Legislative Standards Committee upon the bill's introduction, and the Committee could in turn report it to the House. This would be an exception to our previous proposal that the Legislative Standards Committee, if established as a Lords-only committee, should consider only bills introduced in this House.

128. **We recommend that, in cases where clauses or parts of a Government bill are not debated in the Commons, the Government should submit a memorandum to the Legislative Standards Committee, flagging up which clauses have been affected. The Legislative Standards Committee should review the Government's memorandum, and**

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[38] Improving Scrutiny of Primary Legislation in the House of Lords (March 2010), recommendation 5.

[39] *Companion*, p. 68.

report its findings to the House in order to assist Members in subsequent scrutiny of the bill.

Speaking times

129. We have also considered speaking times on legislation. The *Companion* does not currently set a time-limit for speeches made during consideration of legislation. Instead it notes that "long speeches can create boredom and tend to kill debate", and states a general presumption that "in debates where there are no formal time limits, members opening or winding up, from either side, are expected to keep within 20 minutes. Other speakers are expected to keep within 15 minutes."[40] This general advisory time limit clearly applies to speeches at second reading, where there is a speakers' list, and individual speeches are timed using the Chamber clocks. But it is more difficult to apply at later stages, partly because debates on amendments (rather than individual speeches) are timed, and partly because there is no speakers' list, interruptions are relatively frequent, and, at Committee stage, Members may speak more than once.

130. It follows that Members addressing the subject-matter of the whole bill, at second reading, are expected to limit themselves to a maximum of 15 minutes; Members addressing individual amendments at later stages may speak for as long as they see fit, and the House as a whole allows them. This is anomalous. It means that there is no effective means of preventing Members from making "second reading speeches" at later stages of consideration. It can lead to long debates which range broadly over the subject of the bill rather than focusing on particular amendments.

131. We do not believe that the imposition of mandatory speaking limits at Committee or later stages would be appropriate. However, we do consider that the existing guidance in the *Companion*, which currently relates only to "debates", should apply unambiguously to proceedings on legislation.

132. **We recommend that the guidance in Chapter 4 of the *Companion* on speaking limits should be repeated in Chapter 8, and thereby extended unambiguously to proceedings on legislation.**

133. **We further recommend, as the Chamber clocks are currently used to time debates on amendments rather than individual speeches, that consideration be given to improving the number and visibility of annunciator screens in the Chamber, so that Members can more easily keep track of the length of individual contributions.**[41]

Post-legislative scrutiny

134. The case for more post-legislative scrutiny is widely acknowledged, and has been called "compelling" by the Constitution Committee.[42] The Law Commission, in a 2006 report, listed the benefits as follows:

"To see whether legislation is working out in practice as intended;

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40 *Companion*, p. 66.

41 We note that changing the Chamber clocks so that they indicated both the length of individual speeches and the time taken on each amendment would involve considerable expense, as would any other changes to the clock mechanism.

42 Constitution Committee, *Parliament and the Legislative Process*, paragraph 173.

To contribute to better regulation;

To improve the focus on implementation and delivery of policy aims;

To identify and disseminate good practice so that lessons may be drawn from the successes and failures revealed by the scrutiny work."[43]

135. The Government, in response, proposed that "henceforth the department currently responsible for a particular Act should in most cases—generally [when] between 3 and 5 years have elapsed after Royal Assent—publish a Memorandum, for submission to the relevant [Commons] departmental select committee."[44] This would establish "a formal and automatic process" so the committee "could assess the state of play in relation to the Act and could decide on what further action to take or propose".

136. The Government rejected the Law Commission's recommendation of a new Parliamentary joint committee on post-legislative scrutiny, arguing that it would be "difficult to give proper systematic recognition" to the "key and leading role" of Commons departmental committees in "monitoring the policies and activities of government departments" if there was a permanent Lords or Joint Committee responsible for post-legislative scrutiny.[45] The Government therefore concluded that it would be for the relevant Commons departmental select committee to decide whether to involve a Lords or Joint Committee in any review.

137. The Government's response to the Law Commission report was disappointing. Although Commons departmental select committees have reviewed a number of recent Acts, they have not undertaken systematic post-legislative review, and do not have the resources to do so. In the words of the Hansard Society, "the current *ad hoc* approach to post-legislative scrutiny, although valuable for what it may reveal about specific pieces of legislation, is insufficiently embedded into formal procedures in Westminster and Whitehall to truly make an impact".[46]

138. Moreover, the Government's premise, that post-legislative review should be seen as part of departmental select committees' monitoring of the policies and activities of departments, is puzzling. Both Houses are responsible for scrutinising and passing legislation; if the process of legislative scrutiny is to be seen holistically, then it should be for both Houses to review that legislation in order to learn lessons and disseminate best practice. It is difficult to understand the logic of a position which states that once legislation has been passed it should be for the Commons alone, and within the Commons individual departmental select committees, to review it. This approach also ignores the very considerable experience (and continuity of experience) that Members of the House of Lords could bring to post-legislative review.

139. As the Constitution Committee said in 2004, post-legislative review is "similar to motherhood and apple pie in that everyone appears to be in favour of it". But neither Parliament nor the Government has yet committed the resources necessary to make systematic post-legislative review a reality.

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43 Law Commission, *Post-Legislative Scrutiny* (Cm 6956), October 2006, p. 13.

44 *Post-legislative scrutiny: the Government's approach* (Cm 7320), March 2008, p. 15.

45 *Ibid.*, p. 17

46 Ruth Fox and Matt Korris, *Making better law*, p. 152.

Like the Law Commission and the Hansard Society, we see merit in post-legislative review being undertaken by a Joint Committee. However, in the absence of Government support and bicameral agreement, no progress has been made towards this goal. We therefore believe that it is time for the House of Lords to establish its own Post-Legislative Scrutiny Committee. This could lead to the establishment of a joint committee in due course—but the desirability of joint action must not be a brake on progress.

140. We envisage a small, standing Post-Legislative Scrutiny Committee with up to eight members. This standing Committee would manage the process, sifting Acts around three to five years after enactment, and identifying those most suitable for post-legislative review. It would take into account memoranda published by the Government, and seek to co-ordinate its work with the relevant Commons departmental select committees. Once the Committee had identified appropriate Acts for review (up to three or four each year) it would co-opt Members with particular interest in the subject-matter of the legislation to assist in conducting short inquiries, taking evidence from stakeholders, legal experts and others.

141. **We recommend that the House of Lords appoint a Post-Legislative Scrutiny Committee, to manage the process of reviewing up to four selected Acts of Parliament each year.**

Delegated legislation

142. The House of Lords has good reason to be proud of the quality of its scrutiny of delegated legislation. The Delegated Powers and Regulatory Reform Committee scrutinises the creation of delegated powers in primary legislation, while the Merits of Statutory Instruments Committee, established in 2003, has proved to be an increasingly effective sifting mechanism, drawing important or controversial statutory instruments (SIs) to the House's attention.

143. But notwithstanding the work of these committees, both the volume (with 2010 representing a new peak[47]) and importance of delegated legislation continues to grow. The Public Bodies Bill has highlighted the long-standing problems faced by Parliament in scrutinising such legislation effectively. The Delegated Powers Committee commented that the powers contained in six clauses of the bill, as then drafted, "would grant to ministers unacceptable discretion to rewrite the statute book, with inadequate parliamentary scrutiny of, and control over, the process"[48].

144. Neither House can amend SIs[49]: Parliament, in delegating specific legislative powers to ministers in the parent Act, accepts that it is the responsibility of ministers to determine how precisely they are used. A minister who used such powers unreasonably would be open to challenge in the courts, by means of judicial review. But it is not for Parliament, having made the initial delegation, to second-guess the actions of ministers.

145. Instead, SIs laid before Parliament by ministers may be subject either to no parliamentary procedure; to negative procedure (it comes into force unless

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[47] For 2010 a total of 2,969 statutory instruments is given on www.legislation.gov.uk, compared with a previous peak of 2,288 in 2001.

[48] Delegated Powers and Regulatory Reform Committee, 5th Report, 2010-11 (HL Paper 57).

[49] There is a very small number of exceptions to this rule: see *Companion*, p. 191, footnote 1.

annulled by either House within 40 days of laying); to affirmative procedure (normally a draft is laid before each House, which must approve it by resolution); or the rare super-affirmative procedure (proposals are normally subject to public consultation and scrutiny by parliamentary committees before a draft is brought forward for approval).

146. However, in respect of both negative and affirmative procedures, the use by Parliament of its statutory power either to annul or to decline to approve SIs is seen as a "nuclear option", to be used rarely or not at all. The last time the House of Commons rejected a SI was in 1979; it appears from the Hansard record that the rejection of this SI may have been a mistake.[50] The House of Lords, despite a 1994 resolution affirming its "unfettered freedom to vote on any subordinate legislation", has voted down secondary legislation on only three occasions in the last half-century.[51]

147. The Leader of the House has gone further, arguing that there is a "convention that the House of Lords does not reject statutory instruments by voting them down where the House of Commons has, or would have, approved them".[52] We note that such a convention, linked as it is to the decisions of the House of Commons, which has not rejected a SI in over 30 years, would be tantamount to a convention that Parliament as a whole does not reject statutory instruments. This would defeat the purpose of subjecting SIs to parliamentary control in the first place. The Joint Committee on Conventions, in contrast, concluded in 2007 that "the House of Lords should not regularly reject Statutory Instruments, but that in exceptional circumstances it may be appropriate for it to do so".[53]

148. In the 1980s and early 1990s the House hardly ever voted on motions fatal to SIs. Indeed, Lord McCarthy, for the Opposition front bench, stated in 1983 that "it is not our policy to invite the House to cancel, defy or reject regulations of this kind which are passed by the Lower House."[54] Although the 1994 resolution asserting the House's "unfettered freedom" to vote on SIs was adopted without a vote, the two main parties, when in opposition, continued to observe self-restraint until 1999. This was never a House-wide convention, but a political agreement between the two main parties, as was acknowledged by Lord Strathclyde himself when, in a 1999 lecture, he described the convention as having been "agreed between the front benches of the major parties 20 years and more ago—but, it is important to note, never accepted by the Liberal Democrats or the Cross-benchers".[55]

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50 See HC Deb, 24 October 1979, volume 972, cols. 561–88.

51 On 18 June 1968 (Southern Rhodesia (United Sanctions) Order 1968, an affirmative instrument); 22 February 2000 (Greater London Authority (Election Expenses) Order 2000, an affirmative instrument, and Greater London Authority Elections Rules 2000, a negative instrument); and 28 March 2007 (Gambling (Geographical Distribution of Casino Premises Licences) Order 2007, an affirmative instrument).

52 Letter to Lord Scott of Foscote dated 29 July 2010, reprinted in Merits Committee, 8th Report, 2010-11 (HL Paper 40). In a subsequent letter, the Leader accepted the Joint Committee's conclusion that the House "does have power to vote on secondary legislation, and, indeed, to reject it". He also noted that the House has shown "the utmost restraint in using its power to reject". See Merits Committee, 11th Report, 2010–11 (HL Paper 52).

53 Joint Committee on Conventions, *Conventions of the UK Parliament*, 2005–06 (HL Paper 265, HC 1212), paragraph 227.

54 HC Deb., 5 December 1983, col. 929.

55 Quoted in the Joint Committee's report, paragraphs 197–98.

149. Following the House of Lords Act 1999, the agreement broke down, and Lord Strathclyde, in the same lecture, said that "I declare this convention dead". The House's rejection of an affirmative and a negative instrument on 22 February 2000 confirmed this new approach. However, although since 2000 the House has continued to divide regularly on fatal motions, it appears that there has rarely been a serious intention to defeat the Government.[56]

150. It is clear to us, however, that there are occasions when a vote against a statutory instrument, as a means of forcing the Government to think again—since there is nothing to prevent the Government bringing an identical or similar instrument back again—would be an efficient and valuable form of scrutiny. In 1968, when the House voted down the Southern Rhodesia (United Nations Sanctions) Order 1968, the Leader of the Opposition, Lord Carrington, clearly stated that his intention was to give the Government "a period of reflection". If the Government re-laid the Order, and the Commons approved it, the Lords would back down, as happened four weeks later.

151. In contrast, in 2010 the House rejected two fatal amendments to motions to approve two affirmative instruments on division[57]—the Opposition abstaining, despite their stated intention to repeal the Orders were they to win the imminent general election. After the election, a bill was introduced to reverse the effect of the affirmatives. If, in the days leading up to the dissolution of Parliament in April 2010, the House had been in a position to force a "period of reflection" upon the outgoing Government, considerable time and resources would have been saved. But the House's hands appear to be tied, by the inflexibility of the statutory framework for delegated legislation, and its own reluctance to pass ostensibly "fatal" motions.

152. The Royal Commission in 2000 noted the House's reluctance to use its "too drastic" powers. It recommended that a reformed second chamber should possess a non-fatal, delaying power in respect of SIs—a power which it might use more often, and to better effect.[58] We entirely endorse the spirit of this proposal. If the House's powers over secondary legislation were less draconian, the House might be encouraged to use them more often, forcing the Government to rethink its policy and possibly to amend the proposed legislation. An apparent sacrifice of the House's powers might lead to more effective scrutiny. We also consider that such an approach would be more consistent with the House's role as a revising chamber ultimately respecting the primacy of the House of Commons.

153. Implementing the change recommended by the Royal Commission would require primary legislation. But, as Lord Carrington pointed out in 1968, even without such legislation votes against SIs could be used to give the Government an opportunity to think again. We therefore believe that the House should adopt a resolution setting out a new convention: that in defeating an affirmative instrument, the House's intention would be to invite the Government to "think again". If the Government were then to re-lay a

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[56] One exception, the vote in 2007 on the Gambling (Geographical Distribution of Casino Premises Licences) Order 2007, was treated as a free vote by the Opposition.

[57] The Norwich and Norfolk (Structural Changes) Order 2010 and the Exeter and Devon (Structural Changes) Order 2010, considered on 22 March 2010. After the election (and after the completion of judicial review proceedings in the High Court), the Local Government Bill was introduced, which halted the restructuring in Norfolk and Devon, and received Royal Assent on 16 December 2010.

[58] See Royal Commission on the Reform of the House of Lords, *op cit.*, pp. 76-78.

substantially similar instrument, and the Commons, having considered the issues raised in the Lords, were to approve the instrument (or, in the case of a negative instrument, no prayer to annul the instrument were to be passed in the Commons), the House would undertake not to vote it down a second time. As a safeguard, we suggest that a minimum time interval be built into the process—we suggest at least one month should pass between the House rejecting an instrument and the Government inviting the House a second time to agree it.

154. We accept that delay could in some circumstances seriously inconvenience the Government, and that even a delaying power should be used sparingly. But even with this limitation, we believe that adoption of such a convention would significantly improve scrutiny of delegated legislation by the House and Parliament. It would also build on the success of the Merits Committee, giving additional force to that Committee's scrutiny.

155. **We recommend that the House should adopt a resolution asserting its freedom to vote on delegated legislation, and affirming its intention to use such votes to delay, rather than finally to defeat, such legislation. Such a resolution would establish the House's role as a revising chamber in respect of delegated as well as primary legislation.**

156. **We recommend that the resolution should contain the following elements:**

- **That the House asserts its freedom to decline to approve any draft affirmative instrument, or to pass a prayer to annul any negative instrument, laid before it by the Government;**
- **That the purpose of the House's use of this power is to enable the Government of the day to reconsider the policy set out in the instrument;**
- **That in the event that the House has declined to approve an affirmative instrument, and the Government has laid a substantially similar draft instrument, and this instrument has been approved by the House of Commons, the House will agree to the approval motion without amendment;**
- **That in the event that the House has passed a prayer to annul a negative instrument, and the Government has laid a substantially similar instrument, the House will not vote on a prayer to annul the second instrument.**

CHAPTER 4: PROVIDING A FORUM FOR DEBATE AND INQUIRY

Introduction

157. The origins of Parliament are as a place of debate or conference—a "parlement"—and the House of Lords remains a key forum for public debate on matters of public policy. For such debate to be effective, the active participation or engagement of three distinct groups is necessary:

- Members of the House, speaking in many cases from personal experience and expertise;
- The Government, listening to, taking part in and responding to parliamentary debate;
- The public—individuals, interest groups, voluntary organisations, business—who use parliamentary debate as a way to influence and clarify public policy.

158. For debate to be effective it must be:

- Timely and relevant. There is no single test of timeliness—some debates will be topical, addressing matters of urgent current interest, while others will address issues of longer-term importance, or may raise neglected topics of intense concern to particular groups within society.
- Informed. A good debate needs the participation of knowledgeable Members, good quality input from outside organisations or experts, and well briefed ministers with relevant policy responsibility.
- Influential. Participants (particularly, but not exclusively, the Government) should sometimes be seen to have changed their minds.
- Varied. Debating the same topic repeatedly can be fruitless and wasteful.
- Accessible. Debates should encourage public engagement and interest; the language used should be transparent, the outcomes clearly visible and widely communicated.

159. These are exacting standards, which are not always met by debates in the House of Lords. There are of course some outstanding debates, in which eminent and expert Members of the House take part, which are widely reported and which influence Government policy. But these are exceptions, not the rule. Too many debates take place in an empty Chamber, are ignored by the media and the public, and have no discernible impact upon Government. Subjects for debate are chosen largely either by the parties and groups, or by ballot, with the result that some topics recur on a regular basis, and others are simply ignored. Our recommendations on the tabling of debates, and on the process of debate, are contained in the first part of this chapter.

160. Different issues arise in respect of the House's select committees, which also provide a forum for more detailed debate and inquiry. The House has good reason to be proud of its select committees: the quality of their work, deriving both from the expertise of their members and their measured, non-partisan working methods, is widely respected. They meet several of the criteria set out above: their work is well-informed; it is often (though not always) influential; it is also accessible, thanks both to committees'

willingness to listen to and engage with witnesses, and to effective management of media relations.

161. At the same time, there are shortcomings to the House's committee structure. Committees have emerged haphazardly, over a period of almost 40 years. Do the House's committees still reflect the concerns of the public? Do they make the best possible use of the skills and experience of Members of the House? And are the House's committees influencing Government as effectively as they could? We address these questions, along with the balance in committee work between on the one hand debate and inquiry, and on the other scrutiny of the executive, towards the end of this chapter.

The tabling and scheduling of debates

162. Debates can be initiated in various ways, by the Government, by Members representing their party or group, or by individual backbench Members.

163. The Government may schedule a debate at any time, following consultation with the usual channels, in order to allow the House to debate a topic of particular importance or urgency. Such debates take place on a "take note" motion,[59] which is agreed to at the end of the debate.

164. Most general debates take place on Thursdays, and the House has recently agreed that, according to the new sessional cycle proposed by the Government, such general debate days should run from the start of the session until the end of January the following year.[60] Of these Thursdays, one Thursday in each calendar month when the House sits is set aside for two 2½-hour debates drawn from a ballot entered by individual backbench Members. The usual channels agree an allocation of the remaining Thursdays to the three main parties and the Crossbenchers. The effect of these arrangements in the current session, up to the end of May 2011, will be as follows:

Category of debate	*Number of Thursdays allocated*
Balloted	10
Conservative	6
Crossbench	5
Labour	8
Liberal Democrat	3
Total	32

165. All Members of the House wishing to speak in a debate may sign a speakers' list in the Government Whips' Office. The list closes the day before the debates are held, and Business of the House motions are then tabled on the day itself, setting time-limits for the debates which reflect the number of

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59 For instance, the appointment of this Group was announced during the debate on 12 July 2010, in which the Leader of the House moved "that this House takes note of the case for reviewing the working practices of the House of Lords".

60 Procedure Committee, 3rd Report, 2010-11 (HL Paper 71).

speakers, and usually totalling five hours. Balloted debates, in contrast, are fixed at 2½ hours, regardless of the number of speakers.

166. General Thursday debates take place on a "motion for papers"—that is to say, the Member initiating the debate "calls attention to" the subject-matter; a formal motion, "to move for papers", is annexed to the text appearing on the Order Paper. The motion is withdrawn at the end of the debate. Members may put down such motions for debate at any time, under "Other Motions for Debate" in *House of Lords Business*, but there is no mechanism which transfers such motions onto the Order Paper other than by arrangement with the Member's party or group.

167. The only way individual or non-affiliated backbench Members may secure a Thursday debate is by means of the ballot. On the day the most recent ballot was drawn (4 April 2011) there were 46 "Motions for Balloted Debate" listed in *House of Lords Business*, compared with 18 "Other Motions for Debate". By custom, when the last ballot of the session has been drawn, all balloted debates (unless the Member concerned indicates otherwise) are transferred to the limbo of "Other Motions for Debate", where they languish until prorogation.

168. Shorter debates may be initiated by any Member of the House, at any point in the session, on a "Question for Short Debate" (QSD), lasting one or 1½ hours. QSDs are not motions—the questioner has no right of reply at the end of the debate, which simply ends when the minister sits down. QSDs are allocated by the Government Whips' Office on a first-come-first-served basis, from a list in *House of Lords Business*, and are slotted into dinner or lunch breaks or at the end of business in the Chamber—often at short notice. Days may also be set aside for up to four QSDs, lasting one hour each, in Grand Committee. The published list is added to throughout the session, but QSDs tabled early in the session, if for any reason they are not debated, remain listed until the slate is wiped clean at prorogation. The list soon becomes very long—at the time of writing (6 April 2011) 70 QSDs were listed in *House of Lords Business*, compared with a total of 56 debated either in the Chamber or Grand Committee in the whole of the last full-length session, 2008-09.

169. Finally, the House has agreed that there should be regular debates on select committee reports in prime time,[61] and debates to take note of or agree to Committee reports are scheduled for the Chamber or the Grand Committee once the Government's written response has been received.

170. The Government Whips' Office (GWO) is pivotal in co-ordinating this complex process of timetabling business, liaising between the parties and groups, individual Members, and the clerks. The results of the GWO's labours are pulled together and published in the weekly *Forthcoming Business*, before being formally tabled in *House of Lords Business*.

Strengths and weaknesses

171. One of the significant strengths of the House is that, in the words of the Royal Commission on the Reform of the House of Lords, "there are virtually no formal restrictions on the ability of members to raise issues of concern". Any Member of the House can, in principle, table a question or initiate a debate, either by getting to the front of the queue in the Table Office,

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61 Procedure Committee, 5th Report, 2001–02 (HL Paper 148).

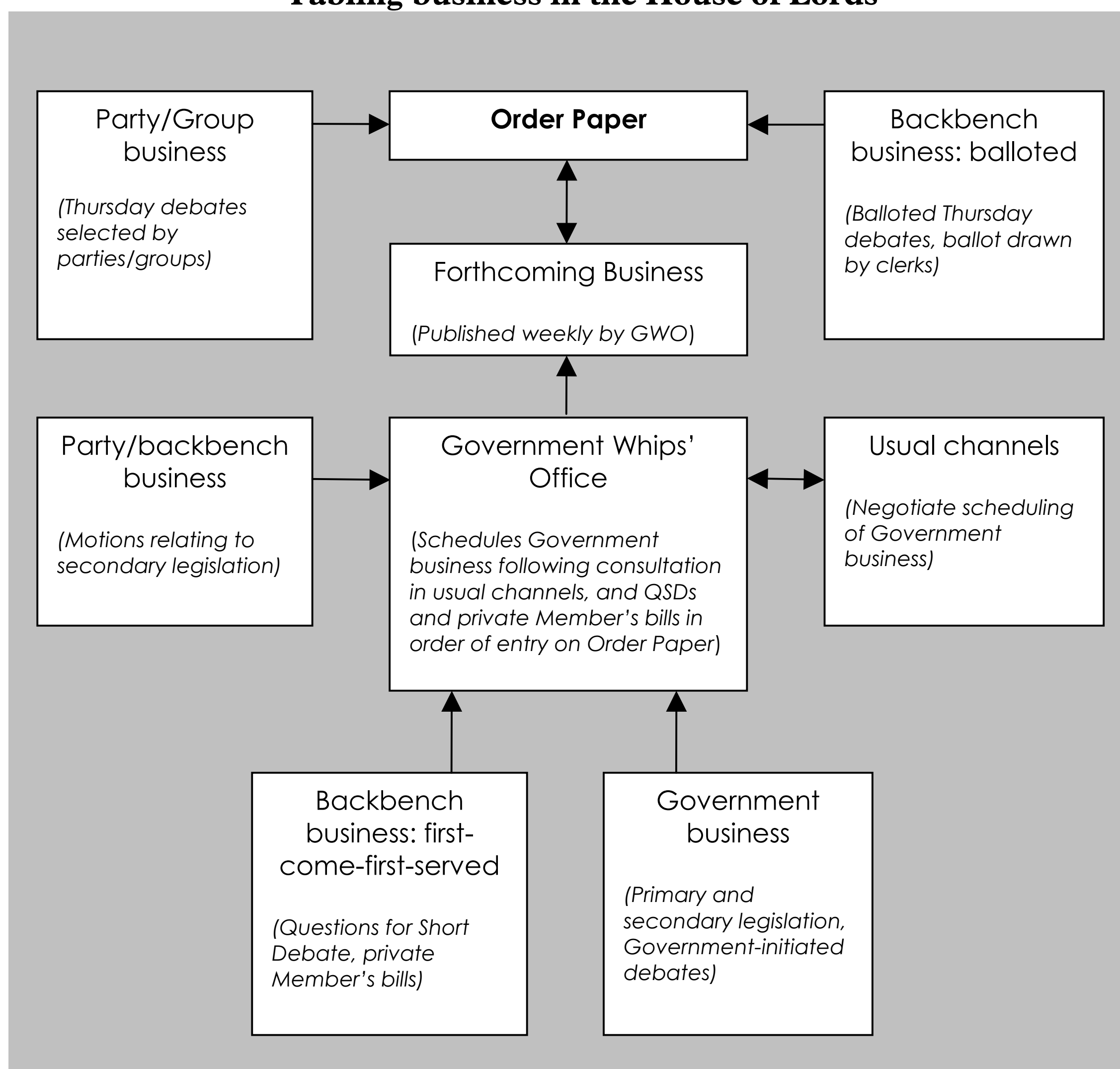
entering a ballot, or in negotiation with their party or group and discussion with the GWO. By comparison with most legislatures, backbench Members of the House of Lords who wish to initiate business have an extraordinary range of possibilities open to them.

172. On the other hand, the process for tabling and scheduling debates is complex and confusing. There are many different processes whereby business is tabled, and no formal distinction between Government business, party/group business (that is to say, business which is chosen by the parties or the Crossbench Peers), and backbench business (business available to all backbenchers irrespective or party or group). There may be overlap or repetition, with similar subjects being tabled in close proximity. Many Members do not understand all the options available to them, and those Members who do understand the rules may be significantly advantaged. Perhaps more important still, there is no means of ensuring that issues of interest either to Members or the public are addressed in debates in the House.

173. A simplified illustration of the process is given in Figure 6 below.

FIGURE 6

Tabling business in the House of Lords



174. What is lacking from Figure 6 is a process of what might be called "intelligent selection"—that is to say, a process whereby representatives of all parties and groups can select subjects for debate or decision which are important, timely, and likely to be of interest to Members and the public. Instead, the scheduling of business in the Lords is a mixture of usual channels negotiation, party choice, chance and "first-come-first-served".

175. In the House of Commons, the Committee on Reform of the House of Commons, which reported in late 2009,[62] sought to establish an accountable, transparent system whereby backbench business could be selected for debate. This led to the establishment, at the start of the new Parliament, of a "Backbench Business Committee" of eight backbench members, elected by the House as a whole. The committee's task is to schedule debate on those days (35 in the current session) set aside for backbench business. In so doing, the committee considers competing claims from select committees and backbenchers, either individually or in groups, for time-slots falling within that protected backbench time.

176. We believe that a Backbench Business Committee is also needed in the House of Lords. Its purpose would be to—

- Bring greater transparency and accountability to the tabling of backbench business;
- Establish a non-partisan forum for selecting subjects for debate which are varied and timely, addressing issues that are either topical or of long-term national importance;
- Identify subjects for debate that make best use of the knowledge and experience of Members of the House.

177. The committee would not usurp the role of the opposition party or parties, or the Crossbench Peers, which would continue to dispose of their allocated debate days. However, we believe it should take responsibility for those days currently assigned to non-party backbench business—that is, the one Thursday each month currently allocated to balloted debates. It should also have specific responsibilities in selecting some Questions for Short Debate.

178. **We recommend the establishment of a House of Lords Backbench Business Committee. We recommend that the committee be charged with selecting specific types of backbench business, which are set out in detail below.**

179. **We recommend that the Committee be made up of 12 Members, all sitting on the backbenches. It would be for the parties and the Crossbenchers to determine the mode of appointment, though we see merit in parties and groups electing representatives, as they have done to the House Committee. Membership should be subject to regular rotation (or re-election).**

180. **We believe that the Committee will strengthen self-regulation, by bringing greater transparency and accountability to the process whereby backbench business is scheduled. The aim of the Committee would be to take account of the views of all Members, as well as the concerns of the public, in selecting topical or important subjects for**

62 House of Commons Reform Committee, *Rebuilding the House*, 1st Report, session 2008–09 (HC 1117).

debate. In so doing, it would consider applications from any Member or Members of the House, and might invite those Members to present their applications in person.

181. **In particular, we recommend that the Backbench Business Committee should initially be tasked with selecting:**

- **Subjects for debate on those Thursdays (from autumn 2011, one each calendar month up until the end of January in any given session) currently set aside for balloted debates.**
- **A one hour topical Question for Short Debate each week. We suggest that the Committee should select the Question for Short Debate on Thursday, from a list of suggestions submitted to the Committee by Members in the course of that week. The question would be asked the following Tuesday or Wednesday.**
- **Questions for Short Debate to be taken in Grand Committee on a predictable day set aside for such debates (for instance, the first Monday each month).**

182. It will be for the Backbench Business Committee itself to consider the process whereby such debates should be selected, for instance whether they should be tabled in *House of Lords Business*, or whether Members should be invited to appear before the Committee to put forward their proposal in person.

183. However, the establishment of the Backbench Business Committee should go hand-in-hand with a number of changes to the existing procedures for tabling and scheduling debates, which are intended to widen opportunity, encourage participation, and improve the topicality and interest of the House's debates.

184. **We recommend that Members be limited to one Question for Short Debate in *House of Lords Business* at any one time. We further recommend that each Question for Short Debate should indicate the date on which it was tabled; after six months it should be removed from the list.**

185. **We recommend that, in allocating those Questions for Short Debate for which it is responsible, the Backbench Business Committee should give priority to Members who have not previously asked a Question for Short Debate in the current session.**

186. **We recommend that a ballot, on the day of State Opening, should be conducted to determine the order of priority of those Questions for Short Debate tabled at the start of the session.**

Neutral wording

187. The House observes a strict convention that all motions for debate and QSDs should be worded neutrally. In the words of the *Companion*:

> "6.51 The wording of [motions for papers] should be short and neutrally phrased to avoid provocative or tendentious language, although members are not prevented from advancing controversial points of view in the course of debate. A motion for papers should not include a statement of opinion or demonstrate a point of view. By custom, no amendments are tabled to such motions."

Similar rules apply to "take note" motions (*Companion*, paragraph 6.54) and to all questions (including QSDs—*Companion*, paragraph 6.17).

188. The benefit of neutral wording is that it encourages a balanced, non-partisan approach to debates, facilitating dialogue between Members and Government. The disadvantages are, first, that the subjects of debate are often, at least on the surface, anodyne. Moreover, debates in the House of Lords lead to no clear outcome: motions don't express a point of view and they don't invite the House to reach a decision. Whether the motion before the House is finally agreed to (a "take note" motion) or withdrawn (a "motion for papers") is academic—agreement or withdrawal are equally formal, meaningless gestures. The reaction from onlookers, the public and the media, can sometimes be a bemused "so what?"

189. Although motions for debate are required to be neutrally worded, the House does allow expressions of opinion to be included in a separate class of motions, namely "resolutions". These are described in the *Companion* as follows:

> "6.52 Resolutions may be put down in cases where a member wishes the House to make a definite decision on a subject, if necessary on a vote. A resolution, if passed, constitutes the formal opinion or decision of the House on the matter.
>
> 6.53 Resolutions begin with the words 'To move to resolve …' or 'To move that this House …', and it is in order to incorporate statements of opinion or the demonstration of a point of view."

190. In practice, resolutions most commonly take the form of a motion that the House agree a report from a domestic select committee; in other recent cases, the House agreed resolutions to adopt a new Code of Conduct, and to implement the new system of Members' Allowances. There is no formal barrier to Members tabling free-standing motions for resolution, inviting the House to express an opinion on a particular issue. However, in practice they are very rare. An example already cited in this report was the resolution "that this House affirms its unfettered freedom to vote on any subordinate legislation submitted for its consideration", which was agreed to without a division on 20 October 1994.

191. We see no reason in principle why resolutions should not be debated more frequently. The interest that such resolutions can generate is demonstrated by the recent debate in the House of Commons on prisoners' voting rights,[63] initiated by Mr Jack Straw and Mr David Davis. After a debate of almost five and a half hours, the House agreed the motion by a margin of 234:22. There was a clear, easily communicated outcome: the media and the public clearly understood it to be an expression of the view of the House of Commons on a matter of considerable public interest.[64] At the same time, we are conscious that the introduction of divisible business on days currently set aside for

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63 HC Deb (10 February 2011), cols. 493-586.

64 The full motion was as follows: "That this House notes the ruling of the European Court of Human Rights in Hirst v the United Kingdom in which it held that there had been no substantive debate by members of the legislature on the continued justification for maintaining a general restriction on the right of prisoners to vote; acknowledges the treaty obligations of the UK; is of the opinion that legislative decisions of this nature should be a matter for democratically-elected lawmakers; and supports the current situation in which no prisoner is able to vote except those imprisoned for contempt, default or on remand."

general debates would raise significant practical concerns for the parties and for individual Members.

192. **We endorse the principle that motions for debate should normally be worded neutrally. However, we note that substantive motions for resolution, incorporating statements of opinion, are already admissible, and therefore recommend that, in selecting topics for debate, the Backbench Business Committee should also consider proposals for such motions, whose purpose would be to allow the House to express an opinion on important issues of the day.**

193. **We suggest that initially short debates on motions for resolution, held either in the dinner break or at the end of business on Mondays, Tuesdays or Wednesdays, might be appropriate. It would be for the Committee, in discussion with the usual channels, to consider this matter further.**

Time-limits and speakers' lists

194. As we have already noted, most debates in the House of Lords are time-limited. At the same time, there is no restriction on the number of speakers who may take part. Time is allocated to individual speakers according to various rules set out in the *Companion*:

- For general Thursday debates scheduled by a party or group, the mover, opposition front bench, and minister, have a minimum time allocation, varying according to the overall length of the debate; the remaining time is allocated equally to backbenchers who have signed up to speak;
- When there are two such debates, the total time allocation (normally five hours) is divided between the debates, in proportion to the number of speakers;
- For balloted Thursday debates, the mover, opposition front bench and minister still have a guaranteed time allocation; the remaining time is allocated to backbench speakers, within an unvarying total time limit of 2½ hours;
- For QSDs, the questioner is guaranteed 10 minutes, and the minister 12 minutes. The remaining time is divided equally among speakers (including the opposition front bench), up to a maximum of 10 minutes.

195. These rules can have unfortunate effects in respect of both balloted debates and QSDs—in other words, where there is a fixed overall time-limit, and therefore no discretion to vary the length of the debate according to the number of speakers. In such circumstances, it may happen that successive debates, each scheduled for the same length of time, have widely different numbers of speakers, to whom very different speaking limits have been assigned. For instance, on 11 October 2010 there were three QSDs, each limited to 1½ hours. The first, on House of Lords Reform, had 25 speakers, and backbench speakers were limited to two minutes; the second and third QSDs, on the Olympic Truce and on Neurological Conditions, each had seven speakers, with backbench speeches limited to 10 minutes, the maximum for a QSD. On 3 February 2010, a one-hour QSD in Grand Committee on Assisted Dying attracted 23 speakers (not including the Member asking the Question and the minister replying), who were time-limited to one minute each.

196. We have already recommended that balloted debates be replaced by debates selected by the Backbench Business Committee; we therefore make no recommendation on the timing of balloted debates.

197. For QSDs, one solution would be to tighten the rules on wording and subject-matter. At present, the *Companion* states only that "questions for short debate taken in the lunch or dinner break last for a maximum of one hour and should therefore be limited in scope" (paragraph 6.44). There are two peculiar features to this guidance: first, it implies that no such restriction applies to a QSD taken at the end of business, even though common sense suggests that there are limits to what can usefully be debated in 90 minutes. Secondly, when members table a QSD—in other words, when the scope of the QSD is fixed—they have no way of knowing whether it will end up being taken in the dinner hour or at the end of business. In other words, the guidance, such as it is, cannot be enforced by the clerks in the Table Office.

198. An alternative solution would be to allow longer than 1½ hours for a QSD. For instance, it is clear that a debate on, for instance, assisted dying, will always attract a long list of speakers. A QSD, whether lasting an hour or 1½ hours, is simply not an appropriate vehicle for such a debate. But if latitude were to be given to increase the length of a QSD to, say, two or three hours, then the distinction between QSDs and general debates would disappear—indeed, the term "question for short debate" could quickly become a misnomer.

199. In summary, any system of time limits represents a compromise between competing interests. In many cases, the current system works well. However, we consider that a modest tightening of the rules on the scope of QSDs should now be made.

200. **We recommend that the guidance in the *Companion* on the wording of Questions for Short Debate should be clarified as follows: "Questions for short debate last for a maximum of 1½ hours and should therefore be limited in scope."**

Simple language

201. In all its work, the House seeks to serve the public—to act in the public interest and to facilitate public engagement in its work. Whether holding the executive to account, scrutinising legislation, or engaging in debate, the House cannot do its job effectively if the procedures it uses are not open, transparent and accessible. There are several areas for improvement.

202. First, there is the House's use of what might now be regarded as obscure or archaic circumlocution. There have been significant changes in recent years, as amendments declining to give bills a second reading have replaced amendments giving them a second reading "this day six months"; "oral questions" have replaced "starred questions"; "questions for short debate" have replaced "unstarred questions"; and (in *House of Lords Business*) various self-explanatory types of motion for debate have replaced the catch-all "No Day Named".

203. But there is still scope for improvement. The House of Commons is referred to not as the House of Commons, but as "the other place". More importantly, we believe that the House's use of appellations is in urgent need of review. The range of possible appellations inevitably confuses new (and some more experienced) Members, many of whom make elementary

mistakes. More generally, the use of appellations (including the basic formula "the noble Lord, Lord ...") takes up time and adds an unnecessary layer of quaintness to the House's proceedings.

204. The underlying purpose of appellations, in our view, is to help ensure that certain courtesies are observed during exchanges in the Chamber. It is right, for instance, that Members should address the House as a whole, and that they should never use the second person when referring to other Members. But these objectives could be achieved more simply than they are at present.

205. We are also conscious of the obscurity of the formula for backbench debates, or "motions for papers". The form of such motions is, first, that the mover seeks "to call attention to" the subject of the debate; and then, after a semi-colon, comes the formal motion itself, namely "to move for papers". These last words are added purely "so that the mover of the motion has the right to reply to the debate".[65] In other words, rather than the Member individually calling attention to an issue (in which case he or she, having spoken, would not be able to speak a second time), there is a motion on which the House could ostensibly decide. But it is a pointless and meaningless motion, and there is no advantage in pressing it—it exists solely in order to give the mover an opportunity to withdraw it at the end of the debate.

206. In short, motions for papers are a source of confusion, both for Members and the public. Given that the House regularly debates neutral motions in the form, "to move that this House takes note of" a particular subject or report, we see no reason why this formula, already used for select committee reports and motions moved from the Government front bench, should not be used for all general debates.

207. **We recommend that the next edition of the *Companion* incorporate guidance confirming that the House of Commons may be referred to by name rather than as "the other place".**

208. **We recommend that the current convention on appellations be discontinued. Instead, we recommend that Members should refer to other Members by title ("Baroness xxx", "Lord xxx", "the Bishop of xxx"); where Members do not know or choose not to use the title, they should refer simply to "the noble Lord", "the noble Baroness", "the right reverend Bishop" or "the minister". Members of the same party or group could still be referred to as "my noble friend".**

209. **We recommend that the practice of debating "motions for papers" be discontinued, and that in future all general debates not inviting the House to reach a positive decision take place on "take note" motions.**

Measuring influence

210. The influence of the House's debates on the Government is all but impossible to measure. However, when the minister replying to a debate is a whip, without policy responsibility, unable to make commitments or stray from his or her brief, it may be hard to avoid the conclusion that the influence on Government thinking is negligible.

211. The House has a right, at the very least, to be assured that points made in debate have been considered by a minister with policy responsibility and by

[65] *Companion*, p. 105.

senior officials. If it is not possible for ministers to give this assurance in the debate itself, then an alternative procedure is needed.

212. Many ministers already give assurances that they will respond to points made in debate in writing, circulating their responses to all participants. Such good practice should be encouraged, but still falls short of complete transparency. In particular, documents placed in the Library of the House are not only inaccessible to the general public, but are often almost impossible to find for Members of the House.

213. **We recommend that, instead of ministers offering to write to participants in debate and to place copies of such letters in the Library of the House, there should be an obligation on ministers to publish written responses to all substantial points raised in House of Lords debates (and not answered orally) in Hansard, as Written Ministerial Statements. Such responses should be signed by the minister who replied to the debate.**

Public initiation of debate: petitions

214. There has been considerable discussion in recent years of means whereby public engagement in the work of Parliament could be enhanced.[66] The House of Commons Reform Committee addressed the ancient procedure of public petitions, recommending that the Commons Procedure Committee should become for a trial period a 'Procedure and Petitions' Committee, proposing petitions for debate in the House, should petitions of sufficient significance be tabled. The Reform Committee also urged that further work on an e-petitioning system be taken forward as a matter of urgency. In so doing, it built on earlier work undertaken by the Commons Procedure Committee, which was halted in late 2008 on cost grounds.[67]

215. Then in May 2010 the Coalition Agreement stated that the Government would "ensure that any petition that secures 100,000 signatures will be eligible for formal debate in Parliament. The petition with the most signatures will enable members of the public to table a bill eligible to be voted on in Parliament." Although we understand that the House of Commons Procedure Committee has yet to take this proposal forward, it is clear that there is a predominant view that ways should be found to enable the public to influence Parliament more directly.

216. It is understandable that the emphasis hitherto has been on public involvement with the work of the elected chamber, rather than the House of Lords. But the diversity and range of interests of Members of the House of Lords, as well as their active involvement in the world beyond Parliament, mean that for many outside organisations and groups it is easier to establish relationships with Members of this House than with MPs. Such relationships do not undermine the relationship between MPs and their constituents, but complement them.

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[66] See for example Information Committee, *Are the Lords Listening? Creating connections between people and Parliament*, 1st Report, 2008–09 (HL Paper 138).

[67] See the report of the House of Commons Reform Committee, paragraph 250; also House of Commons Procedure Committee, *e-Petitions*, 1st Report, 2007-08 (HC 136).

217. There is already a procedure for public petitions to the House of Lords.[68] However, no petition has been received since 2000. Several factors have contributed to this desuetude: the archaic complexity of the procedure itself; the availability of other, simpler means of raising issues publicly; the fact that petitions to the House of Lords lead nowhere, other than to the generation of an entry in the Minutes of Proceedings; and confusion between public petitions and the process of petitioning the House in its now defunct judicial capacity. In light of these factors, we believe that the existing petitioning procedure should now be abolished.

218. In considering whether a new petitioning procedure should be put in its place, we have considered not only the work underway in the House of Commons, but the success of the devolved bodies, which have developed innovative methods of facilitating public engagement. The Welsh Assembly, for instance, has since 2008 had an easy-to-use e-petitions website, where the public can view and sign "open" petitions. Admissible petitions are considered by a Petitions Committee, and petitions have led to questions, committee inquiries and debates in the Assembly.[69] The Reform Committee drew attention to experience in the Scottish Parliament, and noted that the Australian House of Representatives established a Petitions Committee in 2008.

219. The Welsh example shows that an effective system of public petitions is highly resource intensive. It demands significant web development to enable e-petitioning; it requires an effective scrutiny system, including, in all probability, a full-time sifting committee; and if a petition is then to be taken forward by means of, say, an inquiry, further costs will be incurred. We are also conscious of the risk of duplicating or cutting across the continuing work of the Commons. We therefore believe that, as an interim measure, and pending a further review, a less formal arrangement, building on Members' already close relationships with non-governmental organisations and the voluntary sector, would be appropriate.

220. **We recommend the abolition of the procedure for public petitions to the House of Lords, which is archaic and has fallen into disuse. We consider that in the longer term it may be desirable to introduce a more effective procedure for public initiation of business in the House of Lords, but, in view of recent developments in the Commons, we make no recommendation in that regard.**

221. **In the interim, we recommend that evidence of support from outside bodies, such as non-governmental organisations and the voluntary sector, be adopted by the Backbench Business Committee as one of its criteria in selecting subjects for debate in the House.**

Committees

222. The House's select committees not only contribute to the House's scrutiny of Government, but also assist the House in providing a forum for public debate and inquiry. Their work embraces both the first and third core functions identified in chapter 1 of this report. We consider their work in this

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68 See *Companion*, pp. 58-59.

69 See http://www.assemblywales.org/gethome/e-petitions.htm.

chapter, under the heading of debate and inquiry—but could equally have done so in chapter 2, when we considered scrutiny of the executive.

223. Committees such as the Science and Technology Committee, Communications Committee, Economic Affairs Committee and most *ad hoc* committees, focus primarily, though not exclusively, on debate and inquiry. Other committees focus on scrutiny, particularly of legislation. These include the Delegated Powers and Regulatory Reform Committee, the Merits of Statutory Instruments Committee and the Joint Committee on Statutory Instruments. The European Union Select Committee and its seven sub-committees scrutinise the Government's actions, negotiations and decisions within the European Council and Council of Ministers, but also conduct wide-ranging inquiries. The Constitution Committee and the Joint Committee on Human Rights also combine investigative and scrutiny functions.

224. A key question, therefore, is whether the House's select committee work strikes the right balance between scrutiny, debate and inquiry. Other questions flow from this. For instance, should the work of Lords committees complement or duplicate the work of Commons committees?

225. It is a long-standing principle that Lords committees should not duplicate the work of House of Commons select committees: the Select Committee on the Committee Work of the House, chaired by Lord Jellicoe, recommended in 1992 that: "One of the major strengths of the two [existing] sessional committees is that they have sought to complement and not duplicate the work of select committees in the House of Commons. We, like the majority of our witnesses, are opposed to such duplication."[70] The Liaison Committee has applied similar criteria to proposals for new committees ever since, restating them in 2006 as follows:

> "The Committee ensures that the subject matter of any new committee will be of significance and of wider interest to the House; that there will be no major overlap with the Commons, nor potential for duplication with the remit of existing Lords committees; and that sufficient members are likely to be available to sit on it. Where the proposal is for a sessional (or parliament-long) committee, it will also be necessary to take into account the extra cost and staffing and accommodation requirements ... and to establish that the committee would be of long term value. The Liaison Committee will also usually satisfy itself that the subject matter is complementary to the work of the Commons and cuts across departmental boundaries."[71]

226. We believe that it is now time, almost 20 years after the Jellicoe Committee, to reconsider these criteria. We accept that the availability of sufficient Members to serve on a committee must be a fundamental criterion; however, this needs to be qualified by acknowledgement of the clear public interest in making best use of the expertise of the House's Members. Moreover, the requirement that there should be "no major overlap" with the Commons does not stand up to examination. In many respects—not least in the scrutiny of legislation—there is extensive overlap between the two Houses. Such overlap is inevitable in any bicameral legislature. There is also marked

70 Select Committee on the Committee Work of the House, 1991-92 (HL Paper 35-I), paragraph 120.

71 Liaison Committee, 3rd Report, 2005-06 (HL Paper 251), paragraph 4.

overlap in committee work—not only do both Houses have European Committees, but there are also two Science and Technology Committees.

227. The essential point is not that the two Houses should not overlap, but that they should work in a complementary fashion, the elected chamber providing the primary means of holding the executive, particularly ministers and senior officials, to account, while the revising chamber brings to bear the expertise and experience of its Members, its less partisan nature, and the time that its Members, without constituencies to attend to or re-election to worry about, can devote to analysing government policy and action. Co-ordination is of course vital—the real danger of overlap is that if committees of the two Houses reach different conclusions on the same subjects, the Government has an opportunity to pick and choose, to play off one committee against another. In reality, however, this has rarely happened, even though the two Houses have for many years both had committees operating in the two areas mentioned above.

228. Instead, the effect of the House's policy of avoiding overlap with the Commons has been, as Lord Rooker commented in a debate in early 2010, "huge areas of public policy are not scrutinised and not debated".[72] This point was echoed by several Members in their written submissions. Several in particular expressed support for the views of Lord Adonis, who, in an article in the *House Magazine* on 25 October 2010, noted that in his entire ministerial career he had never once been called to give evidence to a Lords committee, and argued that the Lords should enhance its scrutiny of domestic policy.

229. We do not question the work of the House's existing investigative select committees, which produce excellent reports, based on the contributions of dedicated and expert Members. However, we consider that there are steps that could be taken to strengthen the House's Committee system, to make more use of Members' expertise, and to make committees more responsive and accountable. In particular, we agree with those who point out that there are major areas of Government activity which are currently not considered at all by Lords committees, and that there is scope for the House significantly to increase its use of committees to hold the Government to account.

230. It is also important to recognise that the House has changed dramatically since 1992. For instance, the Jellicoe Committee was told "that the 'Peer resource' for committee work was distinctly limited", and concluded that "the number of Lords available ... precludes any great net increase in select committee activity".[73] We do not believe that this is any longer an issue—insofar as it is, the difficulty we face is the shortage of select committee vacancies, given the number of active Members.

231. The House should build on existing strengths. The House's committees produce reports that are expert, evidence-based, and consensual, giving their recommendations particular weight. Typically their reports are unanimous. Committees may take evidence not only from Lords ministers, but Commons ministers and officials, but their questioning tends to be analytical and constructive rather than partisan. Nor is the work of Lords committees constrained by departmental structures: they see Government as a whole,

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72 HL Deb., 25 February 2010, col. 1102.

73 *Op. cit.*, paragraphs 35, 121.

and wherever possible choose subjects of inquiry that cross departmental boundaries, identifying gaps and promoting "joined up" thinking. Moreover, the continuity of Lords committee membership ensures consistency, helping committees to track issues, holding the Government to account over months and years.

232. In conclusion, we believe that it is time for a thorough review of committee work, with a view to enhancing the House's ability to scrutinise the Government. As part of this review, it is essential that the criteria first established by the Jellicoe Committee in 1992, and since endorsed by the Liaison Committee, be revisited. The focus should now be on establishing committees that:

- Make best use of the expertise of Members of the House;
- Complement the work of Commons departmental select committees;
- Address areas of policy that cross departmental boundaries.

233. New committees are expensive: the typical marginal cost of establishing a new sessional investigative committee is of the order of £225,000 per annum. But the value added by the House's select committees justifies, in our view, a limited, one-off increase in expenditure in this area. We therefore recommend the appointment of two new sessional committees. Thereafter, further committees should only be appointed to replace existing committees, without creating extra demands on resources.

234. Various areas of policy were suggested to us as appropriate for Lords select committee work, including:

- Public services;
- National infrastructure;
- Welfare;
- Social policy;
- Education and culture;
- Health;
- Regulators;[74]
- Security and foreign affairs.

235. We see merit in all these suggestions, while acknowledging that other suggestions of equal merit may be made in coming months.

236. **We recommend that the House establish two additional sessional select committees, with the intention of enhancing its capacity to scrutinise Government policy. In determining the remit of these committees, we recommend that particular regard be paid to the need for Lords committees to:**

- **Make best use of the knowledge and experience of Members of the House;**
- **Complement the work of Commons departmental select committees;**

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[74] The House appointed an *ad hoc* Committee on Regulators in 2006–07.

- **Address areas of policy that cross departmental boundaries.**

237. **We recommend that in future the work of all investigative select committees of the House should be subject to regular and systematic review, and that, following the appointment of the two additional committees recommended above, any further sessional committees should only be appointed to replace existing committees, without creating extra demands on resources.**

Committee chairmen: mode of appointment

238. As a further step to improving accountability, we also favour enabling select committees to elect their own chairmen, in order to ensure that chairmen are accountable to and command the confidence of their committees. Such elections would not be party-political, and we recognise that the system may need to be reviewed if it becomes apparent that the fair distribution of chairmanships between the parties and groups is significantly affected. Chairmen would be elected for three sessions without the need for re-election in subsequent sessions, unless the Chairman either resigned or the Committee passed a formal vote of no confidence.

239. The rotation rule, which limits all members of select committees to four successive sessions on a committee, would be maintained. A Chairman, once elected, would be deemed eligible, as at present, to serve a full three-session term.

240. **We recommend that House of Lords select committees be charged with electing their own chairmen. Chairmen of sessional select committees would be elected for three sessions, unless before completion of that term they either resigned or the Committee passed a formal vote of no confidence.**

Chairman of Committees and Principal Deputy Chairman of Committees

241. Different considerations apply to the mode of appointment of the Chairman of Committees, who chairs most of the House's domestic committees, oversees the conduct of private business, and speaks on administrative matters in the House, and the Principal Deputy Chairman of Committees, who chairs the European Union Committee. Both are salaried office-holders, appointed by the whole House at the start of each session. In some respects (the fact that they are salaried, expected to lay aside party allegiance on appointment, and subject to specific rules on outside interests) their position is closer to that of the Lord Speaker than to that of other select committee chairmen.

242. Although appointed formally by the whole House, in reality the two posts are in the gift of the usual channels. Names are agreed in private, and motions appointing the two office-holders for the remainder of the session are moved without notice on the day of the Queen's Speech. The motions are not debated, and are always agreed to *nemine dissentiente*.

243. The holders of the two offices, and that of Lord Speaker, give up their party allegiance upon appointment, but the usual channels have in practice maintained an informal party balance: when there were two office-holders, one was typically allocated to each of the main parties, with occasional opportunities for Members belonging to the Liberal Democrats. Following the election of the Lord Speaker in 2006 there were three salaried offices,

which have since 2008 been held by Members who previously belonged one to each of the three main parties.

244. There is no fixed term of office for either the Chairman or Principal Deputy Chairman. Although appointed for one session at a time, they are not subject to the rotation rule, and in practice the term of office is indefinite. The present Chairman of Committees has held his office since 2002; the Principal Deputy Chairman since 2008.

245. The arrangements for the appointment of the Chairman and Principal Deputy Chairman of Committees have worked well hitherto, and we pay tribute to the work of successive holders of those offices. However, we believe that it is now time to introduce greater accountability into the appointment process. It is not appropriate that salaried offices, pivotal to the working of the House, and by their nature non-political, should be conferred by decision of the usual channels.

246. We therefore consider that the Chairman and Principal Deputy Chairman of Committees should in future, like the Lord Speaker, be elected by secret ballot of the whole House. The detailed arrangements for such elections should be embodied in Standing Orders. Appointments should be for a defined term, which should mirror the term in office of the Lord Speaker (five years). We suggest that the first elections be held at the start of the next session of Parliament, in spring 2012.

247. We acknowledge that further thought may have to be given to the means whereby a system of election can be reconciled with achieving party balance among the House's three elected office-holders. We note also that the position of Principal Deputy Chairman of Committees, which carries with it the chairmanship of the European Union Committee, requires particular skills and knowledge, and that, as part of the process of election, candidates should be given an opportunity to demonstrate that they possess such qualifications.

248. **We recommend that the Chairman of Committees and Principal Deputy Chairman of Committees should in future be elected by secret ballot of the whole House. The detailed rules governing such elections should be embodied in Standing Orders.**

Debates on committee reports

249. However good the reports published by the House's select committees, however thorough and well-informed their inquiries, the final stage of the process, the debating of reports in the House, can be disappointing. Committees face several problems:

- Timeliness: reports are often not debated until up to a year after their publication. Members who did not serve on the Committee, even if they were aware of media interest in the report at the time of publication, will have forgotten it by the time of the debate.
- Topicality: by the time reports are debated, events and policies may have moved on.
- Influence: while committees may take oral evidence from Commons ministers with policy responsibility, they may find that when it comes to a debate, the minister responding is a whip, without any policy

responsibility—making it difficult for committees to engage in debate and influence thinking.

- Scheduling: debates on reports compete with many other types of business. Opportunities may be made available at very short notice, or at unfavourable times (late on a Thursday, or on a Friday).

250. As a result of these factors, attendance at and participation in debates on committee reports is often poor, failing to do any justice to the amount of work that goes into an inquiry, on the part of Members, staff, officials and witnesses.

251. There are many ways in which these problems could be ameliorated. First, more advance notice of debates on Committee reports would be helpful, to enable Committees to make best use of the slots that the Government offers. Such opportunities will inevitably be subject to the vagaries of business management—but several committees have now made use of the opportunity to debate their reports in the Moses Room, where there is normally less pressure of business than in the Chamber, allowing debates to be held in prime time. We welcome this development, which could be taken a step further, for instance by setting aside a specific day each month (for instance, the first Wednesday) for debates on select committee reports.

252. Committees could also indicate, when publishing their reports, the timescale within which a debate would be desirable. Where reports are shorter and less complex, an early debate could be secured by turning the conventional take note motion into a Question for Short Debate, limited to 1 or 1½ hours; if committees adopt this approach, they might be given preferential treatment, instead of waiting their turn in the queue. It would be for the Backbench Business Committee, in discussion with committee chairmen, to discuss this and other options to facilitate timely debate on select committee reports.

253. Wider participation in such debates might also be assisted if the publication of Committee reports was given more publicity in the House. One suggestion made to us was that Chairmen should be given a slot of five minutes at the end of oral questions as a "trailer" for newly published reports. The risk is that "trailers" immediately after oral questions would be drowned out as Members left the Chamber—but we nevertheless consider that this is worth the experiment. It would give chairmen an opportunity to highlight the publication of a report, mention its main conclusions, and encourage Members to get copies from the Printed Paper Office. The effect would be enhanced if advance notice of publication was printed on the Order Paper.

254. **We welcome the willingness of committees to hold debates on committee reports in the Moses Room, and recommend that, in order to assist in planning timely debates, one day a month in Grand Committee be set aside for such debates.**

255. **We recommend that, in order to promote wider Member interest in select committee work, the scheduled publication of committee reports be listed on the Order Paper, and that, for a trial period, up to five minutes after the end of oral questions should be made available for committee chairmen to draw Members' attention to newly published reports.**

CHAPTER 5: BUSINESS MANAGEMENT AND SELF-REGULATION

The meaning of self-regulation

256. We were appointed to consider not only the working practices of the House, but "the operation of self-regulation". These open-ended, neutral terms of reference may be contrasted with those of the 1998–99 Leader's Group, chaired by Baroness Hilton of Eggardon, which was appointed to "consider how the procedures of the House can be improved within the existing framework of self-regulation; and to make proposals for ensuring that Lords are better informed of procedure so that self-regulation can work".

257. The report of the 1998-99 Leader's Group began with the following helpful summary of self-regulation:

> "First, the House is 'self-regulating': it has never delegated its power to regulate its own proceedings (which it enjoys as an aspect of parliamentary privilege) to any other authority. The Lord on the Woolsack or in the Chair, the Leader of the House and other front-benchers, and the Clerks, all have important roles in matters of procedure; but, with exceptions which are few and minor, any discretionary ruling which they may make can be over-ruled, by either an individual Lord or the House as a whole."[75]

258. The House's procedures have moved on in some respects since 1999, notably with the appointment of a Lord Speaker in 2006, but the paragraph is still broadly accurate, and its interpretation of self-regulation is confirmed by the *Companion to the Standing Orders*:

> "The House is self-regulating: the Lord Speaker has no power to rule on matters of order. In practice this means that the preservation of order and the maintenance of the rules of debate are the responsibility of the House itself, that is, of all the members who are present, and any member may draw attention to breaches of order or failures to observe customs."[76]

259. Closely linked to the House's tradition of self-regulation are the unique freedoms enjoyed by its Members:

- any Member of the House of Lords may initiate or participate in the business of the House;
- any Member may table questions or debates, or introduce a bill;
- any Member may speak on any item of business before the House; and
- any Member may table an amendment to a bill in the certainty that that amendment will be called in sequence.

260. These freedoms demonstrate both the value and the danger of self-regulation. On the one hand, self-regulation means that the House is

[75] *Freedom and Function: Report to the Leader of the House from the Group on Procedure in the Chamber*, March 1999, HL Paper 34, paragraph 3.

[76] *Companion*, p. 60. The reference to self-regulation in the *Companion* was added only in 2000, following publication of the Leader's Group report the previous year.

exceptionally well placed to draw on the skills and knowledge of its Members, any of whom is free to bring issues before the House, initiate debates or introduce legislation. On the other hand, in a House of over 800 Members, demand may exceed supply: if every Member were to introduce a private Member's bill, in the absence of any formal process for selecting or prioritising particular items of business the Order Paper would sink under its own weight; if every Member were to claim his or her right to speak on every amendment or on every motion, business would grind to a halt.

261. Most legislatures avoid such dangers by adopting comprehensive Standing Orders, and by delegating the power to rule on matters of order to a Speaker. The House of Lords, uniquely, has avoided these by embracing, in the words of the 1998-99 Leader's Group, a culture of "courtesy, good manners and good will across the various political divides". Indeed, it could be argued that the best definition of "self-regulation", insofar as it relates to the behaviour of individual Members, is "self-restraint".

Business management and self-regulation

262. One consequence of self-regulation is that in the House of Lords, in contrast to most other legislatures, there is no protected "government time". Instead, there is a long-standing rule that notices of business are entered on the Order Paper in the order in which they are received at the Table (or Table Office). This rule, encapsulated in Standing Order 40(1), is now subject to many qualifications. But it follows that any Member of the House is in principle free to table, say, the second reading of a private Member's bill, as first business on a Tuesday, and it would, barring suspension of the Standing Order, be taken ahead of any Government business tabled later.

263. Not only does Government business have no protected status on the Order Paper, but in the House of Lords, unlike the Commons, the Government has no formal means of timetabling business. The Government has never "guillotined" proceedings; nor does it set binding targets for a day's business. The progress of business is in the hands ultimately of the House as a whole—on the one hand the House may take as long as it sees fit to consider an item of business,[77] and on the other hand any Member may, at any time, move to adjourn consideration of an item[78] or adjourn the House.

264. Thus the freedoms enjoyed by Members mean that the Government, which of course has the most to lose if business is not conducted in an orderly way, relies upon good-will and co-operation to secure its business. It follows that these freedoms are, as our predecessor Leader's Group stated, "wide open to abuse; and even non-vexatious use of the many opportunities open to the Opposition of the day can make it difficult for the Government to get its business through the House."[79]

265. The usual channels, to which we have referred throughout this report, are critical in ensuring the orderly conduct of business. The usual channels,

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77 This is not a universal rule: certain categories of business (questions for short debate, balloted debates, oral questions) are in fact time-limited, and the House may also, on a business of the House motion, impose time-limits on other types of debate. However, proceedings on legislation, which take up the bulk of the House's time, are not time-limited.

78 A recent example occurred on 21 December 2010, when the House agreed, on division, to adjourn debate on a Commons reason in respect of the Identity Documents Bill.

79 *Op. cit.*, paragraph 6.

made up of the Leaders and Chief Whips, and, for certain purposes, the Convenor of the Crossbench Peers, negotiate the timetabling of business, seeking constantly to balance and reconcile the competing interests of parties, groups and individual Members. Without the work of the usual channels, and in particular effective co-operation between the Government and the main opposition party or parties, self-regulation could quickly degenerate into a free-for-all.

266. It follows that the usual channels have a particular responsibility for ensuring that the House observes a number of long-standing and deeply-rooted conventions, such as the Salisbury-Addison convention, which governs the House's handling of "manifesto bills". Equally important is the convention that the House should consider Government business in "reasonable time"—though as the Joint Committee on Conventions noted, "there is no conventional definition of 'reasonable'".[80] Recent events, during the passage of the Parliamentary Voting System and Constituencies Bill, have highlighted the uncertainty surrounding this key convention, with accusations and counter-accusations of unreasonable behaviour.

267. We do not attempt to define "reasonable time"—like the Joint Committee on Conventions, we do not consider that it is desirable to do so. We are, however, clear that "reasonableness" creates obligations for all. The Government should, except in the case of emergency legislation, allow the House a "reasonable" time to consider any bill—that is to say, an amount of time proportionate to the complexity and importance of the bill, so that the House can scrutinise it thoroughly. In exchange the House, in particular the main opposition party or parties, should respect the convention that the Government is entitled to have its business considered in reasonable time.

268. The Joint Committee on Conventions noted that "Self-regulation makes the reasonable time convention work, with difficulties being resolved by the usual channels." It is their task to plan the business of the House, and resolve difficulties when the inherent tensions between self-regulation and the timely conduct of Government business threaten to get out of hand. The usual channels are, in essence, the means by which a self-regulating House of over 800 Members is able to perform its legislative functions and manage its affairs in an orderly manner. As the Joint Committee said, there are differing views about what constitutes "reasonable time". In practice the views of the usual channels are likely to be the best guide.

269. The system for scheduling business in the Lords has served the House well, and we see no practical alternative to a continuing and vital role for the usual channels in planning Government business. At the same time, we are conscious that the usual channels failed to reach agreement on the passage of the Parliamentary Voting System and Constituencies Bill.

270. Admittedly the worst potential consequences of this failure were in fact averted: the Government did not table a "guillotine" motion; the Bill was passed in time to allow a referendum to be held in May 2011; there was no constitutional crisis. But we are conscious that the House as a whole has suffered: debate was often acrimonious; the closure motion was twice used to curtail debate; the recommended minimum intervals between stages of bills[81]

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[80] Report of the Joint Committee on Conventions, paragraph 154.

[81] The minimum intervals between stages are set out in the *Companion*, pp. 121-22. They were agreed by the House in 1977: see Procedure Committee, 2nd Report, session 1976–77.

were ignored; the "firm convention" that the House normally rises by about 10pm[82] was, in effect, suspended without notice.

271. More generally, the lack of transparency in the system for scheduling business has been exposed. Many Members of the House, particularly on the Crossbenches, as well as outside groups, the media and the public, have little idea of how business is scheduled. We believe that greater transparency and predictability is needed—the usual channels should, without prejudicing the confidentiality of their political discussions, engage more widely and disseminate more information about their work and their decisions. The firm convention that the House normally rises by 10pm, which assists Members and staff, and contributes to effective scrutiny of legislation, should be reaffirmed. We suggest also that it is time to align and bring forward sitting times on Monday to Wednesday, creating a more predictable sitting day and allowing more time for the work of the House.

272. **We reaffirm the longstanding convention that the House should consider Government business in "reasonable time". This convention creates obligations for all. The Government should allow the House a "reasonable" time to consider any bill—that is to say, an amount of time proportionate to the complexity and importance of the bill, so that the House can scrutinise it thoroughly. In so doing they should respect the minimum intervals between stages of legislation. In exchange the House, in particular the main opposition parties, should respect the convention that the Government is entitled to have its business considered in reasonable time.**

273. **We urge the Leader of the House to consider ways in which the work of the usual channels could be made more accessible to the House as a whole. There should be a more clearly defined role for the Convenor of the Crossbench Peers, and also a role for the Chairman of the Backbench Business Committee.**

274. **We recommend that the usual channels communicate information on business scheduling more widely. They could do so, for instance, by indicating in *Forthcoming Business* the number of days (possibly within a range discussed by the usual channels) anticipated for stages of Government bills. Such indications would not be binding, but would assist the House in judging what, in the context of each bill, constituted "reasonable time".**

275. **We remind all Members of the "firm convention" that the House should normally rise by around 10pm on Mondays, Tuesdays and Wednesdays; target rising times should reflect this convention. Whenever there is a reasonable expectation that the House will sit significantly later, we recommend that the Government Chief Whip should make a business statement, explaining the reason for the late sitting, after oral questions.**

276. **We recommend also that the House should in future sit at 2pm on Mondays, Tuesdays and Wednesdays, so allowing up to an additional two hours sitting time each week.**

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[82] See *Companion*, p. 38.

Conclusion

277. **We make this report to the Leader of the House, and look to him to put our report before the House as a whole and to take forward our recommendations.**

CHAPTER 6: LIST OF RECOMMENDATIONS

Oral questions

1. We recommend that consideration be given to conferring upon the Lord Speaker the role currently performed during question time by the Leader of the House, for a one-year trial period in the first instance, beginning no sooner than 5 September 2011. In the event of the Lord Speaker's unavoidable absence from the House, we recommend that the same task be performed by the Chairman of Committees. [*Paragraph 38*]
2. We recommend that the procedure adopted in early 2010, whereby Secretaries of State sitting in the Lords should answer three oral questions, on one Thursday each month, directed to them in their ministerial capacity, should be made permanent, with a view to its revival as appropriate. [*Paragraph 41*]
3. We further recommend that there should be a monthly question time dedicated to questions on House of Lords matters addressed to the Leader of the House. [*Paragraph 42*]

Private notice questions

4. We recommend that the Lord Speaker interpret the criteria for allowing Private Notice Questions more liberally. We believe that the presumption should be that if an issue is an urgent matter of national importance, the application should be granted. [*Paragraph 45*]

Saving time

5. We recommend that instead of Members seeking leave to ask the questions "standing in their name on the Order Paper", Members should read out the text of the question, using the formula "My Lords, I beg leave to ask Her Majesty's Government ...." To ensure that this does not take up too much time, we further recommend a mandatory limit of 40 words for oral questions (excluding the introductory formula given above). [*Paragraph 48*]
6. To ensure best use of question time, we re-affirm the existing guidance in the *Companion* on the conduct of question time, while recommending that it be supplemented by the following guidance, based on that already found in the *Guide to the Code of Conduct*:
   - Members should not take up the time of the House making trivial declarations of non-financial and non-registrable interests. [*Paragraph 49*]
7. Finally, we recommend the addition of the following new guidance:
   - Questioners should not thank the Government for its answers, nor ministers thank questioners for their questions. [*Paragraph 50*]

Statements

8. We recommend that the usual channels should, in deciding whether to repeat a statement in the Lords, also consider whether it would be a good use of the House's time for the statement to be read out. In exceptional cases (for instance a long statement, which has been publicly available for some hours) it may be appropriate for the text of the statement to be reproduced in the

Official Report without being read out; the remaining oral exchanges would take place in the Chamber as at present. [*Paragraph 57*]

9. We recommend that, on days when more than one oral statement needs to be taken, the option should be available to take the second and subsequent statements in the Moses Room. Such statements would take precedence over other business scheduled in the Moses Room. [*Paragraph 59*]

10. We recommend that the guidance on backbench contributions on oral statements be clarified, by removing the reference to "brief comments". To avoid speech-making, and with a view to increasing the number of Members who can intervene on statements, we recommend that backbench contributions should be limited to questions to the minister. [*Paragraph 62*]

11. We support the practice of increasing the time available for backbench questions to 30 or 40 minutes in exceptional circumstances. [*Paragraph 63*]

12. We recommend that consideration be given to conferring upon the Lord Speaker the role currently performed during oral statements by the Leader of the House or the Government front bench, for a one-year trial period in the first instance, beginning no sooner than 5 September 2011. In the event of the Lord Speaker's unavoidable absence from the House, this task would be performed by the Chairman of Committees or by another Deputy Speaker. [*Paragraph 64*]

Who speaks for the executive?

13. We recommend that renewed consideration be given, possibly by the Procedure Committees of the two Houses, to the means whereby ministers sitting in either House may be enabled to make statements to and answer questions in the other House. [*Paragraph 69*]

Pre-legislative scrutiny

14. We recommend that there should be a presumption that all bills embodying important changes of policy (particularly constitutional bills) should be subject to pre-legislative scrutiny. Where such bills have not previously been the subject of wide consultation, by means of green and white papers, this presumption should be a requirement. If the Government does not publish a bill in draft, it should formally explain and justify its approach to the House. [*Paragraph 84*]

15. We recommend that the Leader of the House, along with the Leader of the House of Commons, explore ways in which the process for reaching decisions on pre-legislative scrutiny can be improved, so as to make best use of the knowledge and experience of Members of the House of Lords. [*Paragraph 85*]

Legislative standards

16. We recommend the establishment of a Legislative Standards Committee, either as a Joint Committee or as a Select Committee of the House of Lords, to assess, immediately after introduction and before second reading, the technical and procedural compliance of Government bills with standards of best practice in bill preparation, on which we have made proposals in paragraph 94 of this Report. We recommend that the Committee be appointed for the remainder of the current Parliament in the first instance,

and that its effectiveness be reviewed towards the end of the Parliament. [*Paragraph 97*]

17. We recommend that the Legislative Standards Committee should report on all Government bills before second reading. If the Committee were set up as a Lords-only Committee, it would report only on bills introduced in this House. If the Committee reported that a bill was not compliant without good reason, it would be for the House to decide whether or not to grant a second reading. [*Paragraph 98*]

Taking evidence on Lords bills

18. We recommend that the Legislative Standards Committee be tasked with advising the House, in respect of each Government bill introduced in the Lords, whether an evidence-taking stage is required, and, if so, whether it should be in the form of a one-day hearing with the Government or committal to a Public Bill Committee. We suggest that the last option should be used only on those occasions where consultation has been inadequate, or major elements of policy have not been fully explained. [*Paragraph 109*]

19. We have used the term "Public Bill Committee" to describe a 14-day evidence-taking procedure, as this term is familiar both in the Commons and beyond Parliament. We recommend that, with a view to simplifying the House's procedures, the existing, obsolete Public Bill Committee procedure be abolished and replaced by the procedure outlined above. The Special Public Bill Committee procedure would continue to be used for consideration of Law Commission bills. [*Paragraph 110*]

Grand Committee

20. We recommend that a rule be established, and included in the *Companion*, that all Government bills introduced in the Commons should be considered in Grand Committee, apart from major constitutional bills and emergency legislation and other exceptionally controversial bills. In the case of such bills, the minister in charge of the bill should, when moving the committal motion to Committee of the Whole House, make a brief statement explaining to the House why the bill was deemed unsuitable for Grand Committee. [*Paragraph 122*]

21. We recommend also that all private Members' bills be committed to Grand Committee. At the same time, the rule that only one bill per day may be considered in Grand Committee should be lifted, allowing private Members' bills to be scheduled after other business, which might include Government bills. If no amendments were tabled by the deadline of 5pm the previous day, it would be open to the Member in charge of the bill to move a motion in the Chamber to discharge the order of commitment. [*Paragraph 123*]

22. We recommend that the sitting hours of the Grand Committee should in future be more predictable and longer. We propose that, with the exception of a period of around two weeks at the start and end of each session, there should be a presumption that the Grand Committee will sit on Tuesday, Wednesday and Thursday of each sitting week, from 10.30am to 12.30pm, and from 2.30 until 6.30pm. [*Paragraph 124*]

Clauses not considered by the Commons

23. We recommend that, in cases where clauses or parts of a Government bill are not debated in the Commons, the Government should submit a memorandum to the Legislative Standards Committee, flagging up which clauses have been affected. The Legislative Standards Committee should review the Government's memorandum, and report its findings to the House in order to assist Members in subsequent scrutiny of the bill. [*Paragraph 128*]

Speaking times

24. We recommend that the guidance in Chapter 4 of the *Companion* on speaking limits should be repeated in Chapter 8, and thereby extended unambiguously to proceedings on legislation. [*Paragraph 132*]

25. We further recommend, as the Chamber clocks are currently used to time debates on amendments rather than individual speeches, that consideration be given to improving the number and visibility of annunciator screens in the Chamber, so that Members can more easily keep track of the length of individual contributions. [*Paragraph 133*]

Post-legislative scrutiny

26. We recommend that the House of Lords appoint a Post-Legislative Scrutiny Committee, to manage the process of reviewing up to four selected Acts of Parliament each year. [*Paragraph 141*]

Delegated legislation

27. We recommend that the House should adopt a resolution asserting its freedom to vote on delegated legislation, and affirming its intention to use such votes to delay, rather than finally to defeat, such legislation. Such a resolution would establish the House's role as a revising chamber in respect of delegated as well as primary legislation. [*Paragraph 155*]

28. We recommend that the resolution should contain the following elements:

    - That the House asserts its freedom to decline to approve any draft affirmative instrument, or to pass a prayer to annul any negative instrument, laid before it by the Government;
    - That the purpose of the House's use of this power is to enable the Government of the day to reconsider the policy set out in the instrument;
    - That in the event that the House has declined to approve an affirmative instrument, and the Government has laid a substantially similar draft instrument, and this instrument has been approved by the House of Commons, the House will agree to the approval motion without amendment;
    - That in the event that the House has passed a prayer to annul a negative instrument, and the Government has laid a substantially similar instrument, the House will not vote on a prayer to annul the second instrument. [*Paragraph 156*]

The tabling and scheduling of debates

29. We recommend the establishment of a House of Lords Backbench Business Committee. We recommend that the committee be charged with selecting specific types of backbench business, which are set out in detail below. [*Paragraph 178*]

30. We recommend that the Committee be made up of 12 Members, all sitting on the backbenches. It would be for the parties and the Crossbenchers to determine the mode of appointment, though we see merit in parties and groups electing representatives, as they have done to the House Committee. Membership should be subject to regular rotation (or re-election). [*Paragraph 179*]

31. We believe that the Committee will strengthen self-regulation, by bringing greater transparency and accountability to the process whereby backbench business is scheduled. The aim of the Committee would be to take account of the views of all Members, as well as the concerns of the public, in selecting topical or important subjects for debate. In so doing, it would consider applications from any Member or Members of the House, and might invite those Members to present their applications in person. [*Paragraph 180*]

32. In particular, we recommend that the Backbench Business Committee should, initially, be tasked with selecting:

    - Subjects for debate on those Thursdays (from autumn 2011, one each calendar month up until the end of January in any given session) currently set aside for balloted debates.
    - A one hour topical Question for Short Debate each week. We suggest that the Committee should select the Question for Short Debate on Thursday, from a list of suggestions submitted to the Committee by Members in the course of that week. The question would be asked the following Tuesday or Wednesday.
    - Questions for Short Debate to be taken in Grand Committee on a predictable day set aside for such debates (for instance, the first Monday each month). [*Paragraph 181*]

33. We recommend that Members be limited to one Question for Short Debate in *House of Lords Business* at any one time. We further recommend that each Question for Short Debate should indicate the date on which it was tabled; after six months it should be removed from the list. [*Paragraph 184*]

34. We recommend that, in allocating those Questions for Short Debate for which it is responsible, the Backbench Business Committee should give priority to Members who have not previously asked a Question for Short Debate in the current session. [*Paragraph 185*]

35. We recommend that a ballot, on the day of State Opening, should be conducted to determine the order of priority of those Questions for Short Debate tabled at the start of the session. [*Paragraph 186*]

Neutral wording

36. We endorse the principle that motions for debate should normally be worded neutrally. However, we note that substantive motions for resolution, incorporating statements of opinion, are already admissible, and therefore recommend that, in selecting topics for debate, the Backbench Business

Committee should also consider proposals for such motions, whose purpose would be to allow the House to express an opinion on important issues of the day. [*Paragraph 192*]

37. We suggest that during the trial period short debates on motions for resolution, held either in the dinner break or at the end of business on Mondays, Tuesdays or Wednesdays, might be appropriate. It would be for the Committee, in discussion with the usual channels, to consider this matter further. [*Paragraph 193*]

Time-limits and speakers' lists

38. We recommend that the guidance in the *Companion* on the wording of Questions for Short Debate should be clarified as follows: "Questions for short debate last for a maximum of 1½ hours and should therefore be limited in scope." [*Paragraph 200*]

Simple language

39. We recommend that the next edition of the Companion incorporate guidance confirming that the House of Commons may be referred to by name rather than as "the other place". [*Paragraph 207*]

40. We recommend that the current convention on appellations be discontinued. Instead, we recommend that Members should refer to other Members by title ("Baroness xxx", "Lord xxx", "the Bishop of xxx"); where Members do not know or choose not to use the title, they should refer simply to "the noble Lord", "the noble Baroness", "the right reverend Bishop" or "the minister". Members of the same party or group could still be referred to as "my noble friend". [*Paragraph 208*]

41. We recommend that the practice of debating "motions for papers" be discontinued, and that in future all general debates not inviting the House to reach a positive decision take place on "take note" motions. [*Paragraph 209*]

Measuring influence

42. We recommend that, instead of ministers offering to write to participants in debate and to place copies of such letters in the Library of the House, there should be an obligation on ministers to publish written responses to all substantial points raised in House of Lords debates (and not answered orally) in Hansard, as Written Ministerial Statements. Such responses should be signed by the minister who replied to the debate. [*Paragraph 213*]

Public initiation of debate: petitions

43. We recommend the abolition of the procedure for public petitions to the House of Lords, which is archaic and has fallen into disuse. We consider that in the longer term it may be desirable to introduce a more effective procedure for public initiation of business in the House of Lords, but, in view of recent developments in the Commons, we make no recommendation in that regard. [*Paragraph 220*]

44. In the interim, we recommend that evidence of support from outside bodies, such as non-governmental organisations and the voluntary sector, be adopted by the Backbench Business Committee as one of its criteria in selecting subjects for debate in the House. [*Paragraph 221*]

Committees

45. We recommend that the House establish two additional sessional select committees, with the intention of enhancing its capacity to scrutinise Government policy. In determining the remit of these committees, we recommend that particular regard be paid to the need for Lords committees to:

- Make best use of the knowledge and experience of Members of the House;
- Complement the work of Commons departmental select committees;
- Address areas of policy that cross departmental boundaries. [*Paragraph 236*]

46. We recommend that in future the work of all investigative select committees of the House should be subject to regular and systematic review, and that, following the appointment of the two additional committees recommended above, any further sessional committees should only be appointed to replace existing committees, without creating extra demands on resources. [*Paragraph 237*]

Committee chairmen: mode of appointment

47. We recommend that House of Lords select committees be charged with electing their own chairmen. Chairmen of sessional select committees would be elected for three sessions, unless before completion of that term they either resigned or the Committee passed a formal vote of no confidence. [*Paragraph 240*]

Chairman of Committees and Principal Deputy Chairman of Committees

48. We recommend that the Chairman of Committees and Principal Deputy Chairman of Committees should in future be elected by secret ballot of the whole House. The detailed rules governing such elections should be embodied in Standing Orders. [*Paragraph 248*]

Debates on committee reports

49. We welcome the willingness of committees to hold debates on committee reports in the Moses Room, and recommend that, in order to assist in planning timely debates, one day a month in Grand Committee be set aside for such debates. [*Paragraph 254*]

50. We recommend that, in order to promote wider Member interest in select committee work, the scheduled publication of committee reports be listed on the Order Paper, and that, for a trial period, up to five minutes after the end of oral questions should be made available for committee chairmen to draw Members' attention to newly published reports. [*Paragraph 255*]

Business management and self-regulation

51. We reaffirm the longstanding convention that the House should consider Government business in "reasonable time". This convention creates obligations for all. The Government should allow the House a "reasonable" time to consider any bill—that is to say, an amount of time proportionate to

the complexity and importance of the bill, so that the House can scrutinise it thoroughly. In so doing they should respect the minimum intervals between stages of legislation, In exchange the House, in particular the main opposition parties, should respect the convention that the Government is entitled to have its business considered in reasonable time. [*Paragraph 272*]

52. We urge the Leader of the House to consider ways in which the work of the usual channels could be made more accessible to the House as a whole. There should be a more clearly defined role for the Convenor of the Crossbench Peers, and also a role for the Chairman of the Backbench Business Committee. [*Paragraph 273*]

53. We recommend that the usual channels communicate information on business scheduling more widely. They could do so, for instance, by indicating in Forthcoming Business the number of days (possibly within a range discussed by the usual channels) anticipated for stages of Government bills. Such indications would not be binding, but would assist the House in judging what, in the context of each bill, constituted "reasonable time". [*Paragraph 274*]

54. We remind all Members of the "firm convention" that the House should normally rise by around 10pm on Mondays, Tuesdays and Wednesdays; target rising times should reflect this convention. Whenever there is a reasonable expectation that the House will sit significantly later, we recommend that the Government Chief Whip should make a business statement, explaining the reason for the late sitting, after oral questions. [*Paragraph 275*]

55. We recommend also that the House should in future sit at 2pm on Mondays, Tuesdays and Wednesdays, so allowing up to an additional two hours sitting time each week. [*Paragraph 276*]

APPENDIX 1: NOTE ON COSTS

Overview

1. We have summarised in this appendix those recommendations with significant cost implications. We have sought to cost these recommendations, with the assistance of the Clerk of the Parliaments and senior staff.

2. The figures given are only estimates, and we acknowledge that they do not reflect substantial costs (for example, heating, security, or the provision of accommodation to Members, staff and committees) which may be hidden in the general cost of administering and maintaining the House. Nor is it possible to provide accurate figures until the exact remit and level of activity of, for example, new committees, has been established.

3. We also acknowledge that the House Committee has, in the context of the current planning round (up to 2014/15), endorsed the following savings strategy for the administration:

> We will aim not to increase our resource costs in real terms throughout the period of the plan, despite the increased size of the House, and will reduce them where possible by reviewing what we do and how we do it.

The administration accordingly achieved a 10% reduction in its budget in financial year 2010/11 and the budget estimate to the Treasury agreed by the House Committee on 7 December 2010 included a further 10% reduction for financial year 2012/13.

4. The net operating cost of the House of Lords in 2009/10 was just under £112 million. **Our recommendations, if implemented, would be likely to add between £1.2 million and £1.4 million to the House's annual expenditure—just over one percent of current total operating costs.** This modest additional expenditure would, we believe, deliver significant benefits to the public, improving the quality of the House's work, its scrutiny of the executive and of legislation.

5. The remainder of this note summarises relevant recommendations, and then provides brief commentary on likely costs.

Pre-legislative scrutiny

> "We recommend that there should be a presumption that all bills embodying important changes of policy (particularly constitutional bills) should be subject to pre-legislative scrutiny." [*Paragraph 84*]

6. Implementation of this recommendation would be subject to the Government's willingness and ability to publish bills in draft, so the cost to Parliament is correspondingly difficult to estimate. We have made our calculations on the basis that there will be a relatively modest increase of between two and six in the number of bills published in draft and scrutinised by Joint Committees each year. This would equate to the creation of one to two additional units of committee activity.

Estimated cost per annum: £225,000-450,000

Legislative standards

> "We recommend the establishment of a Legislative Standards Committee, either as a Joint Committee or as a Select Committee of the House of Lords, to assess, immediately after introduction and before second reading, the technical and procedural compliance of Government bills with standards of best practice in bill preparation." [*Paragraph 97*]

7. Assuming that this is a Lords Committee, dealing only with Lords bills, it could probably be supported in part from existing resources. However, there would be a need for additional administrative support; there would also be charges for recording evidence and publishing reports.

Estimated cost per annum: £50,000

Taking evidence on Lords bills

> "We recommend that the Legislative Standards Committee be tasked with advising the House, in respect of each Government bill introduced in the Lords, whether an evidence-taking stage is required, and, if so, whether it should be in the form of a one-day hearing with the Government or committal to a Public Bill Committee." [*Paragraph 109*]

8. One-off hearings could largely be supported from existing resources, though there would be additional costs for transcription and publishing. A "public bill committee" procedure, used perhaps two or three times a year, would require significant support. The extent to which such support could be combined with support for other new committees (e.g. Legislative Standards) would be for further consideration.

Estimated cost per annum: £100,000

Grand Committee

> "We recommend that the sitting hours of the Grand Committee should in future be more predictable and longer. We propose that, with the exception of a period of around two weeks at the start and end of each session, there should be a presumption that the Grand Committee will sit on Tuesday, Wednesday and Thursday of each sitting week, from 10.30am to 12.30pm, and from 2.30 until 6.30pm." [*Paragraph 124*]

9. A requirement to staff three Grand Committees each week, for six hours a day, 30 weeks a year, could cost an additional £80,000 per annum for staffing. There would also be printing costs, of the order of £30,000 per annum.

Estimated cost per annum: £110,000

Post-legislative scrutiny

> "We recommend that the House of Lords appoint a Post-Legislative Scrutiny Committee, to manage the process of reviewing up to four selected Acts of Parliament each year." [*Paragraph 141*]

10. Four reviews a year, each lasting around two months, would equate to a whole unit of committee activity.

Estimated cost per annum: £225,000

Backbench Business Committee

> "We recommend the establishment of a House of Lords Backbench Business Committee." [*Paragraph 178*]

11. The Backbench Business Committee would meet regularly, possibly weekly. However, it could probably be clerked from existing resources, and would not require significant research support; nor would it travel. It would need administrative support, and there would be some printing and publishing costs.

Estimated cost per annum: £50,000

Committees

> "We recommend that the House establish two additional sessional select committees, with the intention of enhancing its capacity to scrutinise Government policy." [*Paragraph 236*]

12. This recommendation would require establishment of two new units of select committee activity, with power to publish reports and evidence, appoint specialist advisers, and travel.

Estimated cost per annum: £450,000

Sitting times

> "We remind all Members of the 'firm convention' that the House should normally rise by around 10pm on Mondays, Tuesdays and Wednesdays; target rising times should reflect this convention." [*Paragraph 275*]

> "We recommend also that the House should in future sit at 2pm on Mondays, Tuesdays and Wednesdays, so allowing up to an additional two hours sitting time each week." [*Paragraph 276*]

13. If the House were to rise routinely at 10pm Monday, Tuesday and Wednesday, there would be significant savings in late-night payments to staff and the provision of transport. An earlier sitting time would impose some additional cost, but overall, a significant net saving would be expected.

Estimated net saving per annum: £50,000

APPENDIX 2: LIST OF MEMBERS SUBMITTING WRITTEN EVIDENCE

Submissions were received from the following Members of the House:

Lord Adonis
Lord Barnett
Lord Bowness
Lord Bradshaw
Lord Campbell-Savours
The Bishop of Chester
Lord Brabazon of Tara
Lord Christopher
The Earl of Clancarty
Baroness Deech
Baroness D'Souza
Lord Dubs
Lord Fellowes
Earl Ferrers
Baroness Finlay of Llandaff
Lord Foulkes of Cumnock
Lord Fowler
Baroness Gardner of Parkes
Lord German
Lord Gilbert
Lord Goodhart
Baroness Gould of Potternewton
Baroness Greengross
Lord Hannay of Chiswick
Lord Harris of Peckham
Baroness Harris of Richmond
Baroness Hayter of Kentish Town
Lord Higgins
Lord Hodgson of Astley Abbotts
Baroness Hollis of Heigham
Lord Howe of Aberavon
Lord Howie of Troon
Lord Hoyle of Warrington
Lord Hunt of Kings Heath
Lord Jenkin of Roding
Lord Jopling
Lord King of Bridgwater
Lord Kinnock
Lord Knight of Weymouth
The Bishop of Leicester
Lord Lloyd of Berwick
Lord Low of Dalston
Lord Luce
Earl of Mar and Kellie
Baroness Masham of Ilton
Baroness Murphy
Baroness Nicholson of Winterbourne
Lord Northbourne
Lord Peston

Lord Phillips of Sudbury
Lord Quirk
Lord Richard
Lord Rooker
Lord Rodgers of Quarry Bank
Lord Roper
Lord Smith of Clifton
Lord Swinfen
Lord Teverson
Lord Thomas of Swynnerton
Lord Trefgarne
Lord Tyler
Lord Waddington
Lord Wakeham
Baroness Wall of New Barnet
Baroness Whitaker
Lord Whitty
Lord Williams of Elvel
Lord Younger of Leckie

APPENDIX 3: SUMMARY OF SUBMISSIONS FROM MEMBERS OF THE HOUSE

14. The Group received submissions from the 68 Members of the House whose names are listed in Appendix 2. We also received two submissions from staff of the House (in the names of the Clerk of the Parliaments and the Principal Doorkeeper). We also received five submissions from outside organisations, which are reprinted in full in Appendix 4.

15. In requesting submissions from Members and staff, we made it clear that such submissions would be treated in confidence, and an anonymised summary published along with our report. The text below accordingly summarises the submissions made by Members of the House. We have not summarised the views of staff, given that it would be impossible to do so while maintaining anonymity.

16. Submissions were received in October and November 2010. Since that time, new issues may have arisen, and Members' views may have changed.

Question time and self-regulation

17. The issue of greatest concern to Members was, by far, the conduct of question time and self-regulation. Of the 62 Members who made submissions, 34 touched on self-regulation; 23 addressed the role of the Lord Speaker. In total, 40 Members of the House, just under two thirds of all respondents, addressed these topics.

18. There was general criticism of the way question time currently works. According to one Member, "question time is for show-offs and bear-baiters; no real work goes on there". The word "chaos" cropped up repeatedly, with respondents referring to "scenes of chaos", or to "increasingly chaotic proceedings". Other submissions, milder in tone, described "the increasing reluctance of Peers to engage in the normal courtesies of giving way to others", contrasted "the general courtesy and quality of debate" in the House with the "unseemly verbal boxing match" of question time, or regretted that "natural courtesies seem to be becoming a thing of the past".

19. More specifically, several respondents noted that participants at question time frequently ignored the existing guidance set out in the *Companion*, commenting that "supplementaries can often be long-winded, not confined to the subject of the original question and exceed the two points permitted."

20. There was also general agreement that as a result of the current atmosphere at question time many Members, particularly backbenchers, "are put off contributing". There was a clear consensus that action was needed to ensure that "less assertive or vociferous" Members can be heard.

21. Some respondents said that the problems at question time had arisen since the 2010 general election, as a result of the increase in the size of the House. One Member said, "I have the clear impression that during the weeks since the recent election (and the accompanying overcrowding of the Chamber) the scene is becoming significantly less orderly". Others went back further, arguing that conduct at question time "has deteriorated in recent years".

22. More generally, there was a perception that, with the difficulties encountered at question time, self-regulation was either no longer working or was at least under threat. It was suggested, for instance, that the lack of courtesy evident at question

time "is now creeping into other areas of work in the Chamber", leading to widespread "infringements of the normal conventions".

23. Just two Members who made submissions defended the existing operation of self-regulation. One, starting from the principle that self-regulation "is fundamental to the way we function", argued that those highlighting present difficulties "exaggerate the harm that is done". Another disagreed that there had been "a serious permanent decline in behaviour" over the last 20 years, and argued that there had always been "ups-and-downs". Notwithstanding the current "hiccups", the House should retain its "long-standing practice and convention" in handling question time.

24. Opinions were divided on the best way to improve the conduct of question time.

25. One Member, while acknowledging there were problems, agreed with the two Members who defended the status quo by arguing that any change would only make matters worse.

26. Others argued that self-regulation should be strengthened. For instance, it was suggested that senior Members of the House (including the Leader and Chief Whip) should intervene, whenever necessary, "with a clear recital, reminder and underlining of the rule or rules". Others again, while not challenging the fundamental principles of self-regulation, suggested that existing conventions on the allocation of supplementary questions to the various parties and groups should be clarified, particularly in light of the current coalition government.

27. But a clear majority of those who addressed this issue (30 in total) recommended change in the way question time is conducted. Of these, one suggested that the Leader, in order to get a better view of the Chamber, should move to a position beside or behind the Lord Speaker during question time. Ten Members favoured transferring the Leader's current role, of intervening only when two or more Members are in competition to ask a supplementary question, to the Lord Speaker.

28. But the largest number, 19, favoured the more radical change of giving the Lord Speaker power, like her opposite number in the Commons, to "call" supplementary questions. Of those who favoured this approach, some went so far as to attack the concept of self-regulation, explicitly or by implication. One described it as a "chimera", which had been "jealously—but irrationally—guarded". Another said that "self-regulation is great in theory, but only when all concerned are signed up to it".

29. Several Members highlighted the fact that almost all legislatures around the world allow some form of regulation by the presiding officer. One Member suggested that members of the public were amazed at the spectacle of question time, "because the Lord Speaker is not empowered to call speakers in the manner of virtually every other presiding officer in virtually every other parliamentary assembly in the world". Another simply said that "the best improvement would be to give the Lord Speaker or Chairman similar powers to intervene to those of the Speaker in the Commons."

30. One Member, while regretting the necessity for change, suggested that the House might have reached the point at which there was no option but to give the Lord Speaker power to call questioners:

> "We are approaching the point where we may need to have an experimental period where the Lord Speaker calls Peers to ask

supplementaries in the same way as happens in the House of Commons. I would be deeply reluctant to believe that we have to resort to this as it is the complete opposite of the principle of self-regulation on which our affairs are based. Short of entrusting the choice of questioners to the Lord Speaker, I find it very difficult to suggest changes which would improve matters other than constantly to have the House's attention drawn to the usual courtesies".

31. A crude summary of the 40 responses on this issue is given below. In some cases (such as the passage just quoted) respondents endorsed more than one option, either in combination or as either/or suggestions.

	No change	*Strengthen self-regulation*	*Clarify allocation of questions between parties*	*Move Leader to seat next to Lord Speaker*	*Transfer role of Leader to Lord Speaker*	*Lord Speaker to regulate question time*
Number in favour	3	7	4	1	10	19

Statements

32. Oral statements attracted far less attention than oral questions, though several Members addressed, from different angles, the amount of time taken up by such statements.

33. Seven Members raised the issue of time allocation. One Member argued that the allocation of 20 minutes each to front and back bench contributions should be replaced by a single allocation of 40 minutes for all exchanges. Another came to essentially the same conclusion, suggesting that "if the front benches take less than their allotted 20 minutes, the balance of available time could be used for backbench contributions." Two Members asked for greater flexibility to increase the overall time allocation in the case of statements of major importance; one suggested "giving the Lord Speaker discretion on this".

34. Three Members touched on the repetition of statements made in the Commons. One suggested that the time spent reading such statements out could be "more usefully utilised by backbench members' questions". Another described such repetition as a "frank absurdity".

Committee work

35. With the exception of self-regulation and question time, the issue that engaged most respondents was the House's committee work. A total of 14 submissions argued that new select committees on areas of Government policy should be established. Several Members cited the "wealth of talent and expertise" in the House, arguing that Members would be "queuing up" to serve on new committees. It was suggested that "not nearly enough was being done to channel such expertise productively". Another Member was "surprised to learn that we do not make use of the [great] expanse of knowledge and experience that we possess in this House" in committees on Government policy.

36. Several Members criticised the long-standing principle that the House's select committees should not duplicate those in the House of Commons. One noted that "the US Senate … has a Foreign Relations Committee and the US House of

Representatives a Foreign Affairs Committee and no problem seems to arise". Another went so far as to propose that "we should systematically set up an array of Departmental Select Committees to shadow arrangements in the other place."

37. Another Member argued that the House "ought to be able to submit all areas of policy and administration to detailed scrutiny"; while arguing against replicating existing Commons committees, he continued, "the House would do a better job of holding the Government to account … if we had another five or six permanent Select Committees covering key generic areas of Government policy".

38. Few Members addressed the process whereby decisions on committee appointments are made. It was, however, suggested that "the [Liaison] Committee could take a more proactive and robust approach to reviewing the existing select committees and seeking out ideas for new ones."

39. Other issues to do with committees were raised by smaller numbers of respondents, without any clear pattern emerging. Concern was variously expressed over the political balance within committees, particularly in light of the coalition Government; over gender balance; and over the lack of consultation of the bishops' bench regarding committee appointments. One Member argued for a more fundamental overhaul of the mode of Committee appointments: "I suggest that the Chairs of Select Committees and perhaps also the members should be elected by their fellow Peers in each party grouping".

40. We also received one submission from a Member containing detailed proposals for a new petitions system, drawing on recent experience in Wales. In particular, the paper proposed the establishment of a wide-ranging Petitions Committee, which would, it was suggested, have "great potential for improving knowledge and understanding of the work of the House of Lords, and develop[ing] democratic engagement within our country."

Tabling and scheduling business

41. Some dissatisfaction was expressed at the current arrangements for tabling business, particularly backbench business. In particular, one Member highlighted the difficulties of queuing to table business on the day of State Opening, suggesting that Members should be given an opportunity to clear the texts of questions and motions ahead of State Opening, and that on the day itself there should be a ballot to determine the order of priority.

42. There were also comments on the process by which business is scheduled for debate. Particular concern was expressed over the lack of opportunities to debate topical or urgent issues. One Member wanted to see "a procedure which allows fairly short notice of important topical debates". Another said that "there should be more thought given to making debates more topical, more engaging and more useful". Yet another said that "business should be more topical to again improve legitimacy through increased relevance. I would have thought a weekly ballot for more topical questions and debates would easily solve this."

43. Another Member went further, arguing that "There should be a Back Bench Committee responsible for the Business of the House that is not taken up by Government time. This Committee should be given a certain number of days in each Session which they could allocate according to Back Bench needs including urgent matters".

44. Other suggestions in this area included the introduction of an equivalent to House of Commons "Early Day Motions"; allowing more time for or setting a

deadline for debates on select committee reports; and providing more advance notice of debates, to assist in diary planning.

Time limits

45. Eight Members commented on time limits. There was particular concern that in very popular debates speaking times can be reduced in some cases to one or two minutes. While most of these argued for greater flexibility, the specific solutions proposed varied widely:

- One Member suggested that the number of speakers in a time-limited debate should be capped, in order to allow a minimum of five minutes per speaker.
- Another proposed a specific cap of 30 speakers, to be selected on a first-come-first-served basis.
- One Member suggested that the House should sit beyond its usual rising time of 10pm, until midnight.
- One Member proposed that the duty of determining the length of debates, and the time given to each speaker, be transferred to the Lord Speaker.

Primary legislation

46. A total of 24 Members commented on aspects of the House's scrutiny of legislation. However, the comments themselves were wide-ranging, and only a few themes emerged clearly.

47. First among these was the desire for more considered evidence-taking on bills. Six Members expressed support for an increase in the amount of pre-legislative scrutiny, one of whom drew particular attention to the desirability of using joint committees for such scrutiny. The same Members also argued the case for post-legislative review: "this would be a much more effective way of assessing the effectiveness of a Bill after it becomes law and, in particular, whether it has had unintended consequences". Two other Members made similar points.

48. There was also support from six Members for an evidence-taking stage during scrutiny of the bill itself: Committee stage "could commence … with an opportunity for outside witnesses, ministers and officials to give evidence to, and take questions from, members of the House. The aim should also be to get minor issues for clarification dealt with as quickly as possible and placed on the record in Hansard." Another argued that "the Commons' adoption of taking oral evidence at the start of the committee stage is an excellent innovation that we should consider in the Moses Room. This makes that stage in the Commons more informed and makes Parliament more interactive with the public." Yet another argued that the House should make "full use" of the procedure of committing a bill to a Select Committee, noting that this procedure "was adopted successfully in the Constitutional Reform Act 2005".

49. There was also some support for increased use of the Moses Room for Committee stages, with six Members in favour and just one against.

50. Various comments were made by individual Members on other issues affecting legislative scrutiny:

That every Government bill should be accompanied by an informal "Keeling schedule" (that is to say, an explanation of the effect of provisions in the bill on other Acts);

- That clauses not considered in the Commons should be "flagged" (supported by two Members);
- That report stage should be confined to "really important issues", and should take place in "prime time", finishing no later than 7.30pm;
- That the rules on admissibility of amendments at third reading should be relaxed in respect of bills that have been considered in Grand Committee (one Member); or that such amendments should not be admitted at all in the case of Commons bill (one Member);
- That more warning should be provided of likely votes.

51. There was almost no mention of the time taken to consider legislation—an issue which has since come into prominence, but which, at the time we invited submissions (October 2010) was clearly not regarded as a major issue. One Member drew attention to the rapid passage of the Academies Bill, arguing not only that it "broke the timing convention in the House of Lords", but that "not nearly enough time was allowed for the public or the media to debate the bill".

Delegated legislation

52. Six Members commented on the House's scrutiny of delegated legislation. All felt that the current procedures, according to which the House can only defeat such legislation outright, without any possibility of amending it, were unsatisfactory. One Member argued for a "third 'mid-way' option … a motion to delay for a period of time … thereby requiring the Commons to think again." Another said that "Parliament ought to have the opportunity to delay secondary legislation temporarily, with a suggested amendment proposed". Another described the existing debates on "non-fatal" motions as "a rather futile exercise … it should be possible to resolve that implementation be delayed for a period during which the minister could be asked to reconsider."

Courtesy in the House

53. Three Members touched on the use of appellations. One criticised the practice of "addressing a colleague directly as 'you' instead of 'the Noble Lord'". Another referred, more specifically, to incorrect use of appellations such as "the Noble Lord, Earl Smith", instead of "the Noble Earl, Lord Smith".

54. In marked contrast, one Member argued for a more fundamental overhaul of the use of appellations and other ceremonial forms of speech: "Without intending any disrespect, I think the 21st century we could dispense with 'noble', 'reverend', 'gallant' and 'learned' … in favour of plain Lord or Lady so-and-so, or the Bishop of X or just 'the minister'. I think the more direct 'you' might also be permitted".

Miscellaneous

55. Various miscellaneous suggestions were made by one or two Members on issues not strictly falling within our review of working practices. Issues raised include:

- The operation of the clocks in the Chamber;

- The use of robes at State Opening;
- The operation of the Refreshment Department;
- The funding of All-Party Groups;
- The state of the parliamentary intranet;
- The time at which the doors to the Palace open.

APPENDIX 4: WRITTEN EVIDENCE FROM OUTSIDE ORGANISATIONS

Submission from the Centre for Public Scrutiny (CfPS)

1. *About CfPS*

1.1 CfPS is a small national charity dedicated to promoting the value of scrutiny and accountability in good government. We were set up in 2003 by a number of organisations to provide independent, non-party political research and training to benefit those involved in non-executive activity across public services. To date the bulk of our work has been in local government, although we have conducted some research in other sectors, and have worked closely with MPs, peers and officers in Parliament since we were founded.

2. *Background*

2.1 In producing this submission we have made use of the HL Library Note, "House of Lords: Reform of Working Practices 2000-2010" (LLN 2010/017). We have made specific suggestions/recommendations in a couple of areas only—we have instead taken an approach which sets out some of the opportunities and challenges at the moment which, we believe, need to be at the forefront of the Group's mind as this work progresses.

2.4 <u>General overview</u>: the Lords is, first and foremost, a scrutiny body. Its role is to act as a check on the role of the Commons, suggesting amendments to legislation and bringing to bear the expert knowledge of peers in debates on Bills and matters of public importance.

2.5 With this in mind, any changes to working practice should seek to enhance, and take advantage of, the unique way in which the House can make a contribution to legislation as it passes through Parliament. Any changes should seek to ensure the House can add the most value where it has a contribution to make. In our view, this may mean focusing on a few key areas to scrutinise, thus maximising the impact and effectiveness of the House as a corporate body.

3. *Specific suggestions*

3.1 <u>Self-regulation</u>: it is open to debate whether the Lords is a self-regulating institution as it is. Its operations are circumscribed, to a greater or lesser extent, by legislation, by convention and by standing orders. In terms of self-regulation of business transacted in the chamber itself (i.e. debates and Bill readings), and the associated role of the Speaker, there is clearly a case for stronger procedural controls. Giving the Speaker a direct formal role—similar but not necessarily identical to the role of the Speaker in the Commons—would, far from hindering the House's independence, ensure that the impact that it has on the legislative process is more substantial. But we recognise that, for peers, self-regulation provides an important means for them to take individual responsibility for their contribution to debates, and helps to ensure that all such debates and discussions are approached positively.

3.2 A balance probably needs to be struck. For the Lords to maintain and enhance the impact it has on the legislative process, it may be necessary to clarify and codify some of the principles of the chamber's operation (as the Royal Commission on reform suggested in 2000). Inevitably this will mean that some of

the chamber's existing character will change, with the role of the Speaker and/or Leader being given more prominence. It is most important that this more formal approach to business management does not limit the wide remit of the Lords to investigate and discuss issues in an open, unpressured and circumspect way. It is vital that serious thought is given to this issue, and our further remarks below should be interpreted in this light.

3.3 Introduction of Bills in the Lords: the process by which a Bill can be introduced in the Lords, as well as the Commons, risks confusing the picture, introducing an unnecessary degree of duplication between the roles of both Houses (or in some instances, risking some sections of Bills or issues falling between the cracks) and failing to use the scrutiny expertise of the Lords effectively. Starting all Bills in the Commons would make the Lords more clearly a "chamber of review", commenting on amendments that had been made in the Commons and suggesting additional amendments accordingly.

3.4 Pre-legislative scrutiny: there have been a number of proposals to enhance the way that the House conducts pre-legislative scrutiny. In the main they reflect the intention that pre-legislative scrutiny in the Lords should not be necessary for all Bills but that most "major" Government Bills should be subject to such scrutiny. Work should be carried out to identify what such "major" Bills might be. It is possible that Private Members Bills in receipt of Government support in the Commons could, and should, also be subject to such scrutiny. A set of criteria should be established—with the Commons—to allow such a judgment to be quickly and simply made.

3.5 These criteria could include thresholds for the financial impact of legislation, provision for the scrutiny of major "machinery of Government" or large-scale structural change in a particular sector, and so forth. However, it should be flexible enough to allow the Lords to require that other Bills be subject to such scrutiny from time to time—or, equally, to decide that certain Bills should not be so submitted. Equally, there should be discretion to decide whether it would be more appropriate for certain Bills to be discussed on the floor of the House, or alternatively in committee. Certainly, we believe that pre-legislative scrutiny of this kind is best carried out in committee but recognise that some of the highest-quality Lords debate happen when a large number of contributors with varying levels of expertise and knowledge of the issue are able to explore the issues in the House itself.

3.6 Select committees: there is a need for continued select committee work in the Lords but care should be taken to avoid obvious duplication with business being transacted in Commons Select Committees, while recognising that committees of the two Houses provide a different level and nature of scrutiny. Often areas of duplication may be less than apparent from the terms of reference of a given investigation, so this is not necessarily an easy exercise. In the first instance there may be a need for closer joint working between the Liaison Committees of both Houses, particularly given the new powers given to the Commons Liaison Committee in the 2009/10 session. In due course it may also be prudent—to minimise duplication and to enable a cross-fertilisation of ideas and experience—to establish more joint committees on both Houses to look at general, cross-cutting non-Departmental issues. The Joint Committee on Human Rights is a good example of this in practice, but joint working needs to go further and deeper than this. Certainly, there is a case for the sharing, or even the co-ordination, of select committee work programmes across both Houses.

3.7 Links with local government: Lords select committees could also seek to share more information and evidence with local government scrutiny committees. Given that many areas of investigation will be on matters that have an impact in local communities, committees may find that a number of local authorities will have conducted similar investigations, the findings of which could be used as evidence to support select committee work. Select committees could also take active steps to bring in evidence from local authorities. Select committees in the Commons are currently investigating how they can enhance and increase the quantity and quality of evidence received from local government, and the Lords could seek to be involved in this process.

3.8 Post-legislative scrutiny: currently, neither House carries out a review and monitoring role, assessing the impact of legislation once it has been passed and using this intelligence to inform future debates in both Houses. Select Committees in both Houses do investigate the impact of some Government policies on citizens, but this work is not co-ordinated and, inevitably, some subjects and pieces of legislation garner more interest from Members and Peers than others.

3.9 If the Lords had a formal role—possibly through Grand Committees—to carry out post-legislative scrutiny on the impact of an Act (say, a year to eighteen months after it came into force) this might formalise the situation. Giving the Lords this responsibility would also serve to get around the problem in the Commons whereby work programmes are heavily disrupted by dissolution. There are other significant advantages to the process in having the Lords conduct this work—the non-partisan nature of the Chamber and the relative stability of membership before and after General Elections being notable factors. However, there would still be difficulties in putting formal steps in place to ensure that the House would, without fail, scrutinise legislation that might have been passed by a previous Parliament.

3.10 Other proposals: a great many of proposals for changing working practices in the last ten years are procedural in nature—relating to the length of sittings, the timetabling of debates and so on. These discussions have often been pursued in an ad hoc manner, bound up with more general discussions on the Lords' role. We think that the two issues should be divided—with more fundamental issues about powers and responsibilities being discussed and agreed before a more detailed discussion on operational issues is undertaken. We feel that this would lend the debate on Lords reform more coherence, and would probably make agreement easier to come by.

3.11 We have no specific comments to make on these operational issues.

Submission from Democratic Audit

Summary

This submission is focussed specifically on the role which select committees play in supporting the core functions of the House of Lords. It recommends:

(1) The creation of two additional select committees in the House of Lords: one to provide oversight and scrutiny of the Civil Service, the other to establish a Parliamentary mechanism for the ratification of treaties.

(2) That consideration should be given to the establishment of additional joint committees of the House of Lords and the House of Commons,

with a Treaties Committee, and possibly also a Civil Service Committee, being clear candidates for the extension of such arrangements.

The first set of recommendations, in particular, arise from the need for Parliament to make provisions in light of the transfer of specific Royal Prerogative powers to Parliament under the terms of the Constitutional Reform and Governance Act 2010.

Introduction

This submission is made in response to the House of Lords Leader's Group request for 'views on what changes to the working practices of the House of Lords would enable the House to perform its functions better'.

While it falls outside the terms of reference, it is important to state at the outset that Democratic Audit's view is that, as currently composed, the House of Lords is flawed from a democratic perspective. There is compelling evidence that the House of Lords has developed into a highly effective second chamber over the past decade or more, playing a key role in the legislative process, and helping to hold the government to account. However, we would argue that its members lack the legitimacy that would be derived from direct—or even indirect—election; effective performance cannot, in itself, compensate for a lack of accountability to the electorate.

The proposals which follow, or indeed any other proposals for changes to the working practices of the Lords, should not be seen as substitute for remedying this basic flaw. However, our proposals are offered in the spirit of assisting the House of Lords in performing a number of clearly valuable roles it fulfils at present, including:

- the scrutiny of legislation and policy;
- working with, and helping to support the work of, the elected component of Parliament, the House of Commons; and
- contributing to public debate about important current issues.

The recommendations we put forward here focus overwhelmingly on one of the issues mentioned in the Leader's Committee call for evidence—the role of select committees. Specifically, we advocate the creation of certain additional committees, including more joint committees of both Houses of Parliament. We make these proposals in light of the objective defined in the terms of reference for the Leader's Group on the Workings of the House, i.e. to identify changes to working practices which 'would enable the House to perform its functions better'.

Our recommendations arise partly from previous research work conducted by Democratic Audit (see e.g. S. Burall et al., *Not in our name: democracy and foreign policy in the UK*, London: Methuen, 2006), and also take into account the implications of constitutional reform enacted late in the last Parliament.

In making these proposals, we are recognising that the House of Lords has made a valuable contribution over the last decade through the work of bodies such as the European Union committees; the Constitution Committee and the Joint Committee on Human Rights. We would also envisage that our proposals would not only be applicable to the House of Lords as presently configured but, if implemented, would continue to be valuable in a democratically reformed second chamber.

Proposals for two new select committees

We propose that two new House of Lords select committees should be created in light of the provisions contained in the Constitutional Reform and Governance Act 2010.

Recommendation 1: the establishment of a Civil Service Committee

Part One of the *Constitutional Reform and Governance Act 2010* transferred most of the power to manage the Civil Service from the Royal Prerogative to a statutory basis.

Such a shift had first been recommended as long ago as 1854, in the so-called 'Northcote-Trevelyan' report. Now that Parliament has finally provided a basis for the functioning of the Civil Service, it is appropriate that a closer relationship should now develop between the two institutions.

The House of Lords could make a valuable contribution to the oversight of the Civil Service for two significant reasons:

- the House of Lords includes within it a large number of former senior civil servants; as well as ministers who have experience of working with the official machine; and academic experts on the Civil Service.
- the less partisan environment of the House of Lords—when compared with that of the Commons—could be appropriate to conducting oversight of the Civil Service (though as we suggest below, a Joint Committee of both houses could be formed).

A Civil Service Committee would have to be different from, and complementary to, the House of Commons Public Administration Select Committee (PASC) which: 'examines the quality and standards of administration within the Civil Service and scrutinises the reports of the Parliamentary and Health Service Ombudsman'.

The terms of reference of a Civil Service Committee would not refer specifically to the Ombudsman. It would be more focused on the core Civil Service than PASC (the current inquiries of which include investigations of quangos and the work of ministers). However, a Civil Service Committee would also range more widely than PASC's concentration on 'quality and standards of administration'. To some extent the Committee could follow the House of Commons Public Accounts Committee in its 'policy-neutral' approach, focusing on compliance with existing legal and other norms and performance as measured against declared objectives, rather than questioning the normative framework and the objectives of policy themselves.

The remit of a Civil Service Committee could include:

- assessing compliance with key civil service values—as contained in existing legislation and codes—including impartiality and recruitment on merit;
- Civil Service reform programmes, in particular how far they achieve the objectives set for them;
- the work and publications of the Civil Service Commission; and
- monitoring and, where deemed necessary, investigating outside appointments to the Civil Service including special advisers and others.

While some degree of overlap with PASC and other parliamentary committees would be inevitable, there is no reason to suppose that such inter-relationships would be problematic. For instance, European issues are dealt with effectively by a combination of the Lords European Union committees and Commons committees such as the Foreign Affairs Committee. Likewise, there is little evidence of unnecessary duplication on constitutional issues, where the Lords Constitution Committee and various Commons committees such as Justice, Political and Constitutional Reform and PASC all have a remit.

A close relationship between the Committee and the Civil Service Commission would be essential. It is also worth adding that, in order to emphasise and underpin its party-political impartiality, the Committee could be chaired by a cross-bench Peer.

Recommendation 2: the establishment of a Treaties Committee

Part 2 of the *Constitutional Reform and Governance Act 2010* places parliamentary scrutiny of treaty ratification on a statutory footing.

Even before this legislative change, the idea of some kind of treaties committee within Parliament had been raised. For example, in 2000 the Royal Commission on the Reform of the House of Lords recommended that consideration be given to establishing a treaties committee in the House of Lords.

However, the powers conferred upon Parliament by Part Two of the *Constitutional Reform and Governance Act* make the need for such a body more pressing. The new statutory arrangements for treaties imply a duty on the part of Parliament to oversee government treaty-making. Yet, it is unclear how Parliament should go about effectively fulfilling this new responsibility, without the creation of new structures and procedures to assist it.

In the first instance, a House of Lords treaties committee could be charged with sifting prospective international agreements negotiated by the UK government prior to ratification and identifying those of political significance. Ideally, it would then be able to seek the views of other committees in possession of relevant expertise both within the Lords and the Commons. Either the Treaties Committee or the specialist committee could then produce a report on the treaty.

A procedure should be established to enable the Treaties Committee to trigger debates and votes on particular treaties if it deemed them necessary. If the Treaties Committee was a joint committee of both Houses (see below), then it would be possible to initiate such proceedings in both Houses. (For a discussion of the difficulties involved in parliamentary oversight of treaties and the merits of a treaties committee, see: Joint Committee on the Draft Constitutional Renewal Bill, *Draft Constitutional Renewal Bill*, Session 2007-08, HL 166-I, HC 551-I, paras 233-8).

Democratic Audit has previously advocated the development of a practice of 'soft mandating' whereby parliamentary committees would hold evidence sessions with ministers in advance of their attendance at international and European negotiations, in order to establish the general approaches that UK delegations will take (see e.g. A. Blick et al., *A World of Difference: Parliamentary oversight of British foreign policy*, Democratic Audit, Federal Trust and One World Trust, 2008). By this means Parliament could become involved in treaty-making as it develops, rather than being presented with *fait accompli* near the end of the process. It is possible that a Treaties Committee could play a central part in such a system of oversight.

Proposals for Joint working with the House of Commons

Recommendation 3: the establishment of more joint committees of the House of Commons and the House of Lords

Joint committees enable the expertise present in the House of Lords to be combined with the democratic legitimacy associated with the directly elected members of the House of Commons. Successful examples of such collaboration include the Joint Committee on Human Rights; and various joint committees established to scrutinise draft legislation.

Any decision to establish more joint committees would clearly be a matter for the Commons as well as the Lords. However, assuming agreement can be reached, there would be merit in convening the Treaties Committee described above as a Joint Committee, particularly if it were to have a close relationship with the departmental select committees in the Commons. A similar rationale may also apply in the case of the proposed Civil Service Committee. If operating as a Joint Committee, the possibility of it being chaired by a cross-bench Peer would be helpful to allay any concerns about the scope to ensure party-political impartiality.

Further joint committees of both Houses that have been proposed include a joint committee to monitor the relationship between central and local government, to ensure that the former does not intervene excessively in the business of the latter (see e.g. House of Commons Communities and Local Government Committee, *The Balance of Power: Central and Local Government*, Sixth Report of 2008-09, paras 138-42 HC 33-I). To be effective, however, this committee would require statutory change to be affected, with an Act of Parliament entrenching the status of local government.

In the event that the Parliament adopts a war powers resolution (as proposed by the previous Labour government, see: *The Governance of Britain—Constitutional Renewal*, Cm 7342-I, pp.50-6) setting out the role of Parliament in UK engagement in armed combat, the formation of a joint committee to oversee and facilitate the operation of this resolution would also be appropriate.

Submission from the Hansard Society

Earlier this year the Hansard Society provided some assistance to the cross-party group of peers:

- chaired by Lord Filkin, that explored how scrutiny of primary legislation by the House of Lords might be improved; and
- chaired by Baroness Murphy that explored issues of governance in the Upper House.

On 14 July we hosted a private meeting of peers to facilitate discussion of how House of Lords procedure and governance might be reformed and published the papers produced by these two groups plus the group chaired by Lord Butler that looked at reform of non-legislative procedures.

Our recommendations in this submission broadly draw on our advisory work with the Filkin group supplemented by current work for a major new publication, *Making Better Law: Reform Of The Legislative Process From Policy To Act*, which will be published on 14 December and other work as referenced below where appropriate.

Reform of legislative scrutiny

Our recommendations are shaped by a series of principles and priorities that we believe should govern the process for reforming the House's working practices namely:

- Peers have a constitutional obligation to ensure adequate scrutiny of all legislation but equally government has a right to take forward its legislative programme in timely fashion—the goal must be to establish a judicious balance between these competing objectives.
- Parliament has a right to expect that a bill presented to Parliament for scrutiny will be of good quality: that it will be technically sound; that appropriate consultation will have taken place (including wherever possible pre-legislative scrutiny); the policy objectives will be clearly stated; and the provisions are fit for purpose. If not, Parliament should not consider itself under any automatic obligation to consider the legislation.
- The focus should be on reforming scrutiny processes such that they are both more efficient and effective.
- The best scrutiny will be done on a bi-cameral parliamentary basis in which the expertise of the Upper House is effectively deployed to augment the scrutiny that takes place in the House of Commons—this means avoiding duplication of scrutiny work and greater co-ordination with and dovetailing of scrutiny with the House of Commons. However, one size does not fit all and there will inevitably be some variation in the scrutiny methods used.
- The House should wherever possible seek to engage the public in an accessible, transparent and accountable way with its work. At present only the House of Commons, through Public Bill Committees, provides for public comment on legislation during the scrutiny process.
- Scrutiny time in the Chamber is a finite resource. Its use should therefore be maximised and prioritised, particularly for those areas of greatest public interest—for example debate of topical, relevant and controversial issues, rather than line-by-line consideration of uncontroversial legislative clauses.
- Current scrutiny processes are not easily comprehensible for the public—indeed, many peers themselves struggle to understand the scrutiny process and procedures. Wherever possible these should therefore be simplified and rationalised to foster greater accessibility and understanding.

Pre-Introduction Tests and a Committee on Legislative Standards

1. At present there is no means within the legislative process simply to evaluate and confirm the need for fresh legislation and there is no way of imposing a quality standard on the production of a bill before it is sent to Parliament. A strong case exists for establishing new ground rules to rebalance the legislative relationship between Parliament and Government, establishing a consensual approach predicated on mutual acceptance of common standards of legislative consultation, preparation and scrutiny. Parliament should at least be a partner in the process of setting the standards of what constitutes a validly prepared piece of legislation

rather than permitting the executive to determine this from bill to bill. The goal should be to build in some constraints—some checks and balances—to the legislative process at the parliamentary end such that they might restrain the executive from bringing forward hastily prepared, ill thought out legislation.

2. A limited number of benchmarks—pre-introduction tests—that have to be met before legislation can proceed through Parliament might usefully help to offset the pressures caused by the impetus to legislate that bear down heavily in Whitehall. In effect, Parliament needs a system to 'kitemark' legislative bills, establishing standards of quality and best practice to demonstrate that the legislation being delivered is, at least in technical and procedural terms, fit for purpose.

3. A Legislative Standards Committee, ideally convened on a bi-cameral basis, could provide a gateway mechanism for assessing the necessity of legislation and whether the technical quality of a bill has met those standards Parliament has a right to expect and demand from government. Empowered to call ministers to account before it and with the ultimate sanction to recommend to both Houses that they defer consideration of the bill because it does not meet mutually agreed qualifying standards of preparation, the existence of a Legislative Standards Committee would provide, over time, an important restraining influence on government and provide a further means to rebalance the relationship between Parliament and the executive.

4. Before legislation is presented to the Committee the Government should be required to certify that they believe the bill does indeed meet those qualifying standards. The committee would then judge the bill according to a narrow, tightly drawn set of objective qualifying criteria, assessing the legislation purely on the basis of whether the legislative standards of bill preparation have been met not whether they believe the policy objectives are likely to be realised or whether the principles and policies enshrined in the legislation are appropriate.

5. The Legislative Standards Committee would have the option to call ministers to appear before it to account for their department's preparation of the bill. It would submit a report before second reading and it would then be for the relevant House to decide whether or not to defer a bill if the preparation criteria were deemed not to have been met.

6. As part of the pre-introduction process, the House should require more detailed information from government regarding the bill. In Scotland, for example, Executive Bills must be accompanied not only by an explanatory note and impact assessment but also by a policy memorandum, a financial memorandum and a memorandum on delegated powers.

Pre-Legislative Scrutiny

7. At present decisions about which legislative proposals will be subject to pre-legislative scrutiny is wholly a matter for the executive. As part of the process of agreeing with government a mutually acceptable set of standards for legislative consultation, preparation and scrutiny, this decision should be agreed in consultation with Parliament.

8. A new Business Committee/Joint Business Liaison Committee (see recommendation 9) should determine whether a draft bill will be scrutinised by a House of Commons Select Committee, by a House of Lords Committee, or by a Joint Committee. Peers should agree criteria for bills they believe they are best suited to scrutinise in draft.

Committee hearings for public evidence

9. The parliamentary scrutiny process should presume that at some stage every bill should be subject to a public evidence hearing committee. At present, evidence hearing committees are held in the House of Commons through the Public Bill Committee process. However, bills originating in the House of Lords are not subject to such public evidence sessions when they reach the House of Commons. The House of Lords should therefore adopt a public evidence hearing committee approach to all bills that originate in the Upper House, unless peers determine that the nature of the bill is such that the House discharges itself from that duty (e.g. if the bill has already been subject to pre-legislative scrutiny), or that it is such that the bill should be heard by the whole House rather than in committee. In these cases the bill should be referred to a temporary Select Committee established specifically to take evidence—oral or written—on the bill after second reading.

10. Members of this temporary Committee would be appointed in accordance with the normal appointment process to committees (4:4:2:2).

11. A Chairman would be chosen by the Committee and would determine which witnesses they wished to call and the form and conduct of questioning.

12. It would be open to any member of the House to attend the evidence taking proceedings and ask a question; however, only members of the Select Committee should deliberate and vote on any final report emerging from the evidence session on the bill.

13. The Committee's report should clearly focus on highlighting those issues that the members wish to draw to the attention of the whole House to assist them in conducting later scrutiny.

14. The Committee would not have the power to amend or delay a bill—its role would be solely to facilitate the holding of public evidence hearings and the reporting back of findings from these hearings to the rest of the House.

15. The Committee members should also consider the bill at Grand Committee stage in order to ensure that the bank of knowledge about the detail of the bill generated through the temporary Select Committee stage can be maximised for the benefit of all members at this later stage of detailed consideration.

16. In establishing public evidence hearing committees the House should be mindful of the lessons to be learnt from the Public Bill Committee (PBC) process in the House of Commons. For example:

- the power of the chair of a PBC is much more circumscribed than a Select Committee chair—influence over a PBC is retained in the hands of whips;
- the whips largely determine who will be invited to give evidence, often resulting in a 'usual suspects' approach;
- too often witnesses are given only limited notice to appear (and sometimes cancelled at very short notice);
- that the time between the end of an evidence session and the detailed line-by-line scrutiny by the committee is often short—sometimes just 24 hours—giving little opportunity for members to think about and absorb what they have learnt from the evidence sessions.

17. This process will require some additional time in the legislative timetable but much if not all of this can be offset by the time-savings that can be made as a result of our proposed reforms of Committee stage (see below).

Flagging scrutiny priorities when a bill passes to the House of Lords

18. There is an ever increasing reliance on the House of Lords to conduct scrutiny of sections of bills not dealt with by the Commons (particularly the large number of new Government clauses tabled at Commons report stage and often close to the tabling deadline). However, at present there is no mechanism to alert peers to those sections of a bill that have not been scrutinised in the Commons. When a bill passes from the Commons to the Lords any clauses that have not been debated, either because there has been no amendment to a clause or no clause stand part debate, should therefore be 'flagged' either by annotation of the Order Paper or marking-up of the bill. This would help inform Peers as to the state of scrutiny of the bill, enabling them to then determine whether and how to prioritise these hitherto unscrutinised clauses.

Committee stage

19. Greater use of Grand Committee should be made in order to rationalise the scrutiny process and prioritise the use of time in the Chamber to best effect.

20. Grand Committee should be the default mechanism for consideration of all bills unless otherwise required by the House. As now, these Committee sessions would continue to be transcribed in full in Hansard, audio recorded and wherever possible televised.

21. However, alongside this reform the House should make greater use of the opportunity for split committal of bills with contentious issues continuing to be considered and voted on in the Chamber.

22. Recommendations on split committal should be made by the temporary Select Committee established for public evidence hearings—it will be in a position to determine quickly which aspects of the bill are the most contentious and report back to the House accordingly for its consideration.

Report stage

23. If the majority of bills are dealt with in Grand Committee then this will free up more time in the Chamber for consideration of bills at report stage. Given current procedures, implementation of this reform will require either a) agreement that the House should not consider a bill at report stage after the dinner hour; or b) reform of the sitting hours of the House.

Post-legislative scrutiny

24. The Government has agreed that all Acts of Parliament should be reviewed between three and five years after enactment by a House of Commons Select Committee. However, these Committees already have a heavy and growing workload and the expertise of members of the House of Lords could offer a great deal particularly in areas of very technical scrutiny—such as, for example, review of audit mechanisms, departmental memoranda, regulatory and environmental impact assessments etc.

25. In ideal circumstances a Joint Committee for Post Legislative Review should be established to examine any legislation that the relevant departmental House of Commons Select committee declines to look at. It would sift the Acts eligible for review under the three to five year rule and determine which ones or which specific aspects of the legislation it would like to review.

26. In the event that the House of Commons do not wish to partake in a Joint Committee then the House of Lords should initiate its own post-legislative scrutiny inquiries, either by existing relevant Committees or by new temporary Post-Legislative Review Committees to look at specific Acts.

27. This would of course have resource implications and an assessment will be needed to determine how the current committee arrangements can support the scrutiny demands of this process and what more occasional specialist support might also be needed.

Reform of non-legislative procedures

28. Our recommendations are shaped in recognition and appreciation of the House's commitment to self-regulation and consensus, to ensuring fair representation of all sides in proceedings, and to the fullest participation of members without the constraints of timetabling. However, we believe the proceedings of the House should also reflect a greater desire to engage the interest of the public in the work of the House by ensuring that the proceedings are topical, relevant and responsive to the issues of greatest public debate and concern; and that the most effective and efficient use of time and other resources is made, including on a bi-cameral basis wherever possible.

Business Committee / Joint Business Liaison Committee

29. The coalition government has committed itself to establish a new Business Committee in the House of Commons within three years, as recommended by the Select Committee on Reform of the House of Commons. The House of Lords should consider doing the same as the Usual Channels will no longer operate in the same way.

30. Preferably, a Joint Business Liaison Committee should be established to enable cross-chamber discussions to take place regarding how each House is to examine legislation to ensure that proper scrutiny takes place at each stage in an efficient and effective manner and that the scrutiny work of each House complements and augments rather than duplicates the work of the other.

31. In the interim, a slot for questioning the Leader of the House about the scheduling of business should be established at least on a trial basis, allowing members to raise issues and concerns for approximately 20-30 minutes each week. This would enhance transparency and accountability with regard to the management of the work of the House.

Sitting times

32. In order to facilitate improved management of time in light of a) the other reforms proposed here; and b) the need to ring-fence time for members' participation in committees, the timetable of the House should be reviewed.

Question time

33. Current procedures mean that too often question time is dominated by certain members and the conduct of the sessions can appear somewhat chaotic to the outside observer. Exaggerated courtesies expressed by the speakers towards each other also wastes time unnecessarily.

34. The Lord Speaker should, in the interests of all members of the House, select members to ask supplementary questions, ensuring that all sections of the House

and the widest possible number of members are given the opportunity to participate.

35. The allocation of oral questions should be subject to ballot up to a fortnight beforehand.

36. Consideration might be given to imposing a time limit on the length of supplementary questions and answers in order to maximise the use of question time for more members.

Statements

37. Consideration should be given to whether the reading of ministerial statements made earlier in the House of Commons is always a good use of Chamber time. Whilst the statement provides an opportunity for members to comment on it, there may be occasions when the nature of the statement is such that it could be heard in the Moses Room rather than the main Chamber.

38. However, there is a strong case for chairs of Select Committees having an opportunity to make the House aware of a report being published by their committee. A 5-10 minute statement after questions would be a useful opportunity for the chair to identify the Committee's key findings and recommendations for members.

Debates

39. The House has topical or semi-topical debates on Wednesdays and Thursdays but there remains scope for improvement. For example, to improve the topicality of the work of the House: a weekly topical debate slot should be established allowing for a one hour discussion or two shorter 30 minute debates. The timing of this might be considered as part of the wider review of sitting hours. The allocation of time might be decided either by:

- the new Business Committee/Joint Business Liaison Committee (though only the members of the Upper House would have a say on this use of time in the event of a Joint Committee); *or*
- by a ballot of the whole House.

Select Committees

40. The House Liaison Committee should, as a matter of best practice, review the organisation, structure, core tasks and resourcing of Select Committees at the start of each new Parliament and as required thereafter during the course of the Parliament in response to any significant developments that impinge upon their work.

41. The House should give consideration to the election of Select Committee chairs.

42. Where possible, as set out in these recommendations, it is in the interests of Parliament to establish Joint Committees and thereby ensure a more integrated, bi-cameral approach to legislative and non-legislative scrutiny. If necessary, the House should take a pro-active lead in approaching the House of Commons with suggestions for more joint working, clearly identifying where the House might add value to the scrutiny process, and where shared work and resources might help deliver a more effective and efficient approach.

Financial scrutiny[83]

43. Financial scrutiny and accountability issues lie at the heart of the relationship between government and Parliament. The House should look at areas where it might add value to the process in future in areas of financial scrutiny, particularly, for example, by examining past government expenditure.

44. A Joint Committee on Tax Administration should be established—currently these issues are not being scrutinised effectively because of the workload burden falling on the House of Commons Treasury Committee. The remit of the Committee should be tightly drawn around only tax administration and it should respect the principle of the financial precedence of the House of Commons.

45. The House should take a greater interest in following-up the work of the National Audit Office and the Public Accounts Committee with regard to the use and effectiveness of previous government expenditure and related accountability functions. The scrutiny functions of the Lords generally could be substantially strengthened by greater use of the specialist and expert reports of the NAO.

Assessing the need for future reform

46. The mechanisms for the House of Lords to initiate consideration of reforms to process and procedure are inchoate. Neither the Procedures Committee nor the Liaison Committee performs the same functions as the committees of the same name in the House of Commons, and there has been no House of Lords equivalent to the Commons Modernisation Committee or the Select Committee on Reform of the House of Commons. The House of Lords Constitution Committee has from time to time looked at reform of the legislative and scrutiny process and made many useful recommendations but House of Lords process and procedure is not the core focus of the Committee's work. Earlier Leader's Groups have also previously investigated procedural practices and made recommendations but this approach is ad hoc.

47. Once the Leader's Group has made its recommendations, the House should therefore establish a permanent committee to keep reforms to House process and procedure under review, to assess the outcome of any trial initiatives, and to keep a watching brief on reforms in the House of Commons to determine whether the House of Lords might need to adjust its processes and procedures in order to streamline and improve the scrutiny process in the future. Although a permanent committee, this need not necessarily sit regularly but on an 'as required' basis.

Submission from the Law Commission

We have only one small detailed suggestion to make, which relates to the procedure for Law Commission Bills, which we are very glad to see has been formally adopted by the House. Our understanding is that at the moment these Bills cannot be carried over between Parliamentary sessions without a specific resolution to that effect. Since the Law Commission procedure can only be used for Bills of an uncontroversial nature, we think that there is an argument for these being suitable for automatic 'carry over' between sessions. This may, however, be out of the scope of your work.

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[83] For detailed analysis of these recommendations regarding the role that the House of Lords might play in the area of financial scrutiny, see A. Brazier & V. Ram (2006), *The Fiscal Maze: Parliament, Government and Public Money* (London: Hansard Society).