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Select Committee on the Constitution

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The Legislative Process: The Passage of Bills Through Parliament

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Select Committee on the Constitution

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Evidence is published online at <https://www.parliament.uk/legislativeprocess-inquiry> and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

SUMMARY

Scrutiny of legislation is Parliament's most important function. The Government can introduce new legislation into Parliament when it wishes, but a bill can only become law if the House of Commons and the House of Lords (save for the provisions of the Parliament Acts 1911 and 1949) are satisfied with the final text, before it is sent for Royal Assent.

A bill goes through similar stages in both Houses, but the way in which the Commons and Lords approach scrutiny, and their scrutiny priorities, differ. The House of Commons usually addresses the policy and politics of bills, while the House of Lords tends to focus more of its scrutiny on the details and technicalities. This characterisation is not universal, but the complementarity of the broad approach of the two Houses is beneficial to the legislative scrutiny process. The view of our witnesses was that Parliament's scrutiny of bills is moderately effective, but there were several areas where improvements could be made. This report, following-up our 2004 report *Parliament and the Legislative Process*, explores these areas and makes recommendations to enhance Parliament's scrutiny of bills.

One of the differences between the House of Commons and the House of Lords is that the former sets time limits for the scrutiny of bills, while the latter does not. The effects of programming in the Commons can lead to some clauses going undebated due to lack of time. In order to inform Members of the House of Lords when this has happened, we recommend that the Procedure Committee considers asking the House of Lords Library, as part of their briefings on legislation, to highlight the parts of bills not debated by MPs.

Another issue concerning the amount of time available for scrutiny of bills relates to fast-track legislation. Fast-tracking bills through their stages in both Houses is tolerable only in exceptional circumstances. It is unacceptable that this process has become routine for nearly all bills relating to Northern Ireland, reducing the amount of scrutiny Parliament can give this legislation. Without an Executive, there has been a significant democratic deficit in Northern Ireland's governance for the past two years and Parliament should not exacerbate that deficit by regularly fast-tracking bills relating to Northern Ireland.

In our first report as part of this inquiry, *Preparing Legislation for Parliament*, we recommended the establishment of a Legislative Standards Committee to ensure that all bills are sufficiently prepared prior to being presented to Parliament. We reiterate our recommendation that such a committee be appointed as the Parliamentary Business and Legislation (PBL) Cabinet Committee, which is responsible for carrying out this task in Government, has not always rigorously ensured that bills are fit for purpose before introduction. Among its responsibilities a Legislative Standards Committee would enable backbench MPs to provide their views on the time needed to scrutinise a bill and the committee would subsequently be able to make a recommendation. This recommendation would not bind the usual channels, but they would be alert to the political consequences of ignoring such a request. A Legislative Standards Committee would also examine the quality of explanatory materials accompanying a bill and be able to press the Government for improvements should the materials be inadequate, defective or absent.

The addition of substantial new policy content to a bill by the Government late in its passage is problematic, as there can be insufficient time for Parliament to scrutinise it. This is a particular issue when the amendments are made in the House of Lords and the House of Commons may only have a short amount of time to consider them during ping-pong. In respect of the House of Lords, we recommend that where significant new provisions are added to a bill late in its passage there should be an expectation that the bill—or at least the new clauses—are recommitted to allow for further debate.

Select committees in both Houses play a vital role in scrutinising the Government and while they may choose to examine bills, they have no formal role in the legislative process. We believe that the strength of select committees derives from their ability to use their subject-matter expertise in a non-partisan manner. Providing them with a more formal role in the legislative process would risk undermining this by inviting adversarial debate and division, as the Government would seek to ensure its members on select committees voted to get its legislation through and opposition members would correspondingly seek to oppose it. Nevertheless, we encourage committees to continue to bring their expertise to bear on bills on a case-by-case basis where they consider it appropriate to do so.

Parliament's website is the home for information about bills as they pass through both Houses. This information, while comprehensive, is neither as integrated nor as accessible as it should be. We recommend a series of improvements to the presentation of bill information, including linking between Hansard and bill clauses and amendments, displaying bill text and the relevant sections of explanatory notes side-by-side, and utilising Hansard transcripts for subtitles of the televised proceedings of Parliament. The website should also be able to present a version of a bill which shows the effects of proposed amendments so that their impact can be more easily understood. Investing in measures such as these will help Members of Parliament and the public better understand bills and improve the quality of scrutiny applied to them.

Keeling schedules show the effect of a bill on existing statute and help the understanding of parliamentarians and the public where significant amendment to previous Acts of Parliament are proposed. Such schedules are, however, rarely included in bills. We recommend that the Government utilise improvements in technology to provide Keeling schedules (or an equivalent in explanatory notes) on a routine basis.

The biggest change to the legislative process since our 2004 report has been the introduction of evidence-taking at committee stage for bills that start in the House of Commons. This allows the public to contribute to the legislative process, in turn strengthening Parliament's scrutiny of bills. It is an oddity that the evidence-taking process is not used for bills that start in the House of Lords. We recommend that, for bills starting in the House of Lords, the Lords should routinely take evidence prior to the commencement of the normal committee stage proceedings.

The Legislative Process: The Passage of Bills Through Parliament

CHAPTER 1: INTRODUCTION

1. The Office of Parliamentary Counsel describes ‘good law’ as law that is “necessary, effective, clear, coherent and accessible.”¹ The processes by which legislation is prepared by Government and subsequently scrutinised and enacted by Parliament are key to ensuring that new law meets these criteria.
2. In 2004, this Committee published *Parliament and the Legislative Process*.² In that report we made significant recommendations about how Parliament and the Government handle legislation. Some of those recommendations were followed by now well-established changes to the legislative process, such as the public evidence stage of public bill committees (PBCs) in the Commons, and an expectation that every Act will have a post-legislative review memorandum produced by its relevant Government department within 3–6 years of its commencement. Others, such as a presumption that all bills should be published in draft ahead of their introduction to Parliament, have not been followed.
3. In 2016, we launched a further inquiry into the legislative process in which we have taken a broader view of the law-making process. Whilst the term ‘legislative process’ is commonly used to refer to the sequence of steps by which laws are passed formally by Parliament, we have considered as a whole the different stages and procedures by which laws are developed, drafted, scrutinised, agreed to and disseminated. Our inquiry is in four parts:
 - Preparing legislation for Parliament;
 - The passage of bills through Parliament;
 - The delegation of powers; and
 - After Royal Assent.
4. In October 2017 we published our report on *Preparing Legislation for Parliament*. Our recommendations included that: legislation needed to be more accessible and easier to understand; the Government should routinely publish the evidence base for policy proposals; draft bills should be published and subject to pre-legislative scrutiny more frequently; and consolidation was urgently needed in several areas of the law.³

1 Office of Parliamentary Counsel, ‘When Laws Become Too Complex’, April 2013: <https://www.gov.uk/government/publications/when-laws-become-too-complex/when-laws-become-too-complex> [accessed 1 July 2019]

2 Constitution Committee, *Parliament and the Legislative Process* (14th Report, Session 2003–04, HL Paper 173)

3 Constitution Committee, *The Legislative Process: Preparing Legislation for Parliament* (4th Report, Session 2017–19, HL Paper 27)

5. We published our second report, *The Delegation of Powers*, in November 2018.⁴ We concluded that delegated powers are a necessary part of the legislative process as they provide the Government with the flexibility to implement its policy and adjust its operation as circumstances change, through a less onerous process. We did, however, express serious concerns about governments seeking inappropriately broad powers, for the convenience of flexibility, that would permit the determination as well as the delivery of policy. We concluded that if the approach of the Government to seeking delegated powers did not change, or the situation deteriorated, the established constitutional restraint shown by the House of Lords in not rejecting secondary legislation might not be sustained.⁵
6. In this report we examine the passage of bills through Parliament, from a bill's introduction to Royal Assent. We consider the time available for scrutiny of bills, the explanatory materials accompanying bills, and the opportunities for the public and stakeholders to influence legislation.
7. We explored many of these issues in our 2004 report. Among our recommendations were:
- Guidance given by the Cabinet Office on the preparation of explanatory notes should be closely adhered to and the Cabinet Office should monitor compliance with the guidance.⁶
 - Explanatory notes to each bill should include, in their introductory section, a clear and developed explanation of the purpose of the bill, incorporating or accompanied by the criteria by which the bill, once enacted, can be judged to have met its purpose.⁷
 - Where a bill amends an earlier Act, the effects of the bill on the Act should be shown in an informal print of the amended Act and that this should be included in the explanatory notes to the bill.⁸
 - Consideration be given to establishing business committees at Westminster.⁹
 - Every bill should at some stage be subject to detailed examination by a committee empowered to take evidence. We proposed that bills should normally be committed after second reading to a committee empowered to take evidence, though that requirement could be dispensed with if the House was satisfied that the bill in that form had already been subject to detailed evidence-taking examination in the other House.¹⁰
8. The implementation of these recommendations and others has been disappointing. Many of the issues we highlighted in 2004 remain pertinent and unaddressed. This report explores these and other matters to identify how Parliament's scrutiny of bills might be improved.

4 Constitution Committee, *The Legislative Process: The Delegation of Powers* (16th Report, Session 2017–19, HL Paper 225)

5 *Ibid.*, paras 110–113

6 Constitution Committee, *Parliament and the Legislative Process* (14th Report, Session 2003–04, HL Paper 173), para 81

7 *Ibid.*, para 87

8 *Ibid.*, para 98

9 *Ibid.*, para 123

10 *Ibid.*, paras 143–145

9. As part of our inquiry into the legislative process, we have so far heard from 39 witnesses and received 62 pieces of written evidence. We are grateful to everyone who submitted written material or gave evidence to us in person. This report is also informed by the legislative scrutiny work we undertake on public bills during their passage in the House of Lords.

CHAPTER 2: BILL SCRUTINY PROCESSES

Introduction

10. For a bill to become law, it must pass through both Houses of Parliament, with each House consenting to the final text,¹¹ before it is sent for Royal Assent.
11. Over the last three decades the number of Acts passed by Parliament has decreased slightly, while the number of pages of Acts has increased.¹² Together, the data suggest that while there are slightly fewer bills each year, they may have increased a little in length on average.¹³ This does not take account of the prevalence of skeleton bills, where much of the detail is left to be filled in by secondary legislation.¹⁴

Effectiveness of Parliament's scrutiny of bills

12. It is not straightforward to assess whether Parliament's scrutiny of bills is effective. A narrow and politically simplistic interpretation of effective scrutiny might be achieving change to a bill, with amendments to the text a demonstration of Parliament's impact. This is not, however, the only way in which the scrutiny processes in each House are valuable. For example, testing whether a bill will have the intended policy effect can constitute effective scrutiny without changes being made to the text. The legislative process allows for scrutiny to have other consequences—debates on a bill may prompt changes to the implementation of its policy by ministers, perhaps in the design of secondary legislation that follows a bill or the guidance issued by ministers delivering the policy. It may highlight issues to the Government, to other Members of Parliament, or to the media and public more broadly. Such outcomes are all valid manifestations of an effective scrutiny process.
13. Daniel Gover, Research Fellow, Queen Mary University of London, said that Parliament's effectiveness was “very difficult to assess. The effectiveness of scrutiny is multifaceted. Some of the dimensions of effectiveness are subtle and hidden and, by their very nature, difficult to measure, but they are nevertheless very important.”¹⁵
14. Witnesses who had participated in the legislative process said that Parliament's scrutiny was moderately effective. Lord Newby, Leader of the Liberal Democrats in the House of Lords, gave Parliament “a beta in terms of the way it scrutinises legislation.”¹⁶ Baroness Smith of Basildon, Shadow Leader of the House of Lords, thought that the House of Lords does “a fairly good job of looking at the detail of legislation ... but there is room for improvement”.¹⁷

11 Subject to the Parliament Acts 1911 and 1949.

12 House of Commons Library, *Acts and Statutory Instruments: the Volume of UK Legislation 1850 to 2019*, 17 June 2018

13 The change in the length of legislation may also be affected by the drafting style of Parliamentary Counsel. For example, a preference for shorter sentences may make legislation easier to read, but will lead to more white space on the page and thus longer Acts in terms of page length, if not necessarily in word count. In 1999 there were changes to the format of Acts which may have resulted in a modest increase in page length.

14 Constitution Committee, *The Legislative Process: The Delegation of Powers* (16th Report, Session 2017–19, HL Paper 225), paras 51–58

15 [Q 151](#) (Daniel Gover)

16 [Q 183](#) (Lord Newby)

17 [Q 193](#) (Baroness Smith of Basildon)

15. In contrast Daniel Greenberg, a former Parliamentary Counsel, argued that scrutiny of legislation by Parliament, especially the Commons, was “high level and political”,¹⁸ and that the description of “line-by-line scrutiny” was not “anything of the kind. It is quite a false claim.”¹⁹ Lord Hope of Craighead, Convenor of the Crossbench Peers, was concerned by the level of scrutiny undertaken in the House of Commons: “Thank goodness we have a second chamber. I really feel if we were left with the House of Commons in the way it organises itself for the present we would be in serious trouble because so much is left untouched.”²⁰
16. Other witnesses considered the public’s perception of Parliament’s impact on legislation. Dr Louise Thompson, then Lecturer in British Politics at the University of Surrey, said that Parliament “generally performs legislative scrutiny well” but “its work and impact often go unseen and underestimated.”²¹ Professor Meg Russell, Director of the Constitution Unit at University College London, and Mr Gover concurred that, “Despite the relatively public nature of the process (in comparison to Government decision-making) much of this [Parliament’s] influence is barely visible, thanks to ‘anticipated reactions’, the subtle interrelationships between different groups, and the innumerable private meetings in which policy is discussed and concessions negotiated.”²² We discuss public engagement with the legislative process further in chapter 4.
17. The complexity of the legislative process and the different measures by which scrutiny may be judged preclude a definitive, objective assessment of its effectiveness. It is clear, however, that there are areas for improving the way Parliament scrutinises bills and we consider these in this report.

Scrutiny in each House

18. The approaches of the Commons and the Lords to scrutinising legislation differ. While the main stages for considering bills are formally the same in both Houses (see Figure 1), each House has its own style, mechanisms and conventions for scrutinising legislation. For example, committee stage in the House of Commons predominantly takes place in a committee room, away from the Chamber,²³ on a set timetable, with the membership of the committee chosen by the party whips and evidence sessions prior to formal scrutiny of the bill itself. In the House of Lords, committee stage, whether in the Chamber or Grand Committee, allows all members to participate and has no time limit, meaning that all amendments can be debated; but no evidence is taken. Another difference is that at third reading a bill cannot be amended in the House of Commons, while it can be in the Lords in some circumstances, such as to give effect to a commitment made by the Government at an earlier stage. These differences are the consequence of the composition of each House, the demands of and on their members, the

18 [Q 179](#) (Daniel Greenberg)

19 [Q 176](#) (Daniel Greenberg)

20 [Q 183](#) (Lord Hope of Craighead)

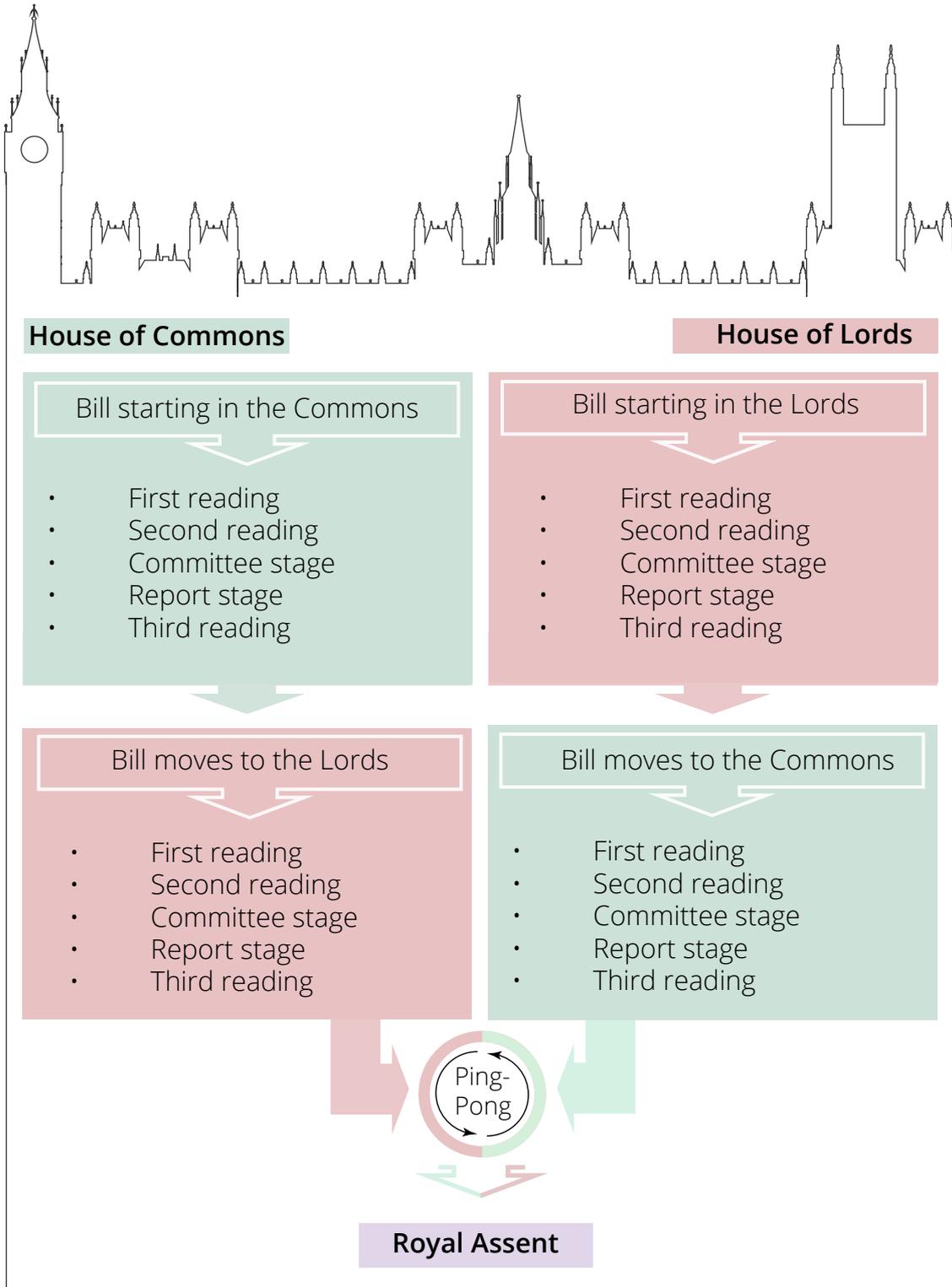
21 Written evidence from Dr Louise Thompson, University of Surrey ([LEG0058](#))

22 Written evidence from Professor Meg Russell, University College London, and Daniel Gover, Queen Mary University of London ([LEG0061](#))

23 The main exceptions being bills of major political or constitutional significance, Finance Bills, emergency bills and uncontroversial bills which are unlikely to attract amendments. Committee stage on these bills is usually taken in the Commons Chamber, in Committee of the whole House (though Finance bills are usually split between Committee of the whole House and public bill committee).

history and culture of each chamber, and how each perceives its role and priorities.

Figure 1: The Legislative Process



The graphic does not take into account the differences in the mechanics of the stages in either House, nor extra stages in the House of Commons that can apply under the requirements of the ‘English Votes for English Laws’ procedures. For an explanation of ping-pong, see paragraph 60.

19. There was broad agreement among witnesses that these different but corresponding roles were valuable in the scrutiny process. Lord Lisvane, former Clerk of the House of Commons, told us that he had “long been

an enthusiast of bicameralism in the sense of complementarity and not competition, because two chambers are doing similar things but in very different ways. The sum of parliamentary influence thereby exerted is much greater than if the two chambers were competing.”²⁴

20. Professor Meg Russell described how:

“To a large extent, they [the processes in each Houses] complement each other ... the two chambers are procedurally different in some respects; for example, on where the committee stage is taken and on whether there is selection of amendments. Their memberships are extremely different, and that is a huge complementarity ... The select committee systems in the two chambers are different and very complementary. This committee [the Constitution Committee] does not exist in the House of Commons. It and the DPRRC [Delegated Powers and Regulatory Reform Committee] play enormously important roles in the process.”²⁵

21. **While the two Houses operate superficially similar procedures for bill scrutiny, they have different, complementary roles, which contribute to the overall effectiveness of the legislative process.** In the rest of this chapter we consider how both Houses scrutinise bills and how the procedures of the House of Lords might be developed to strengthen its scrutiny role.

Time available for scrutiny

Timetabling in the Commons and its consequences for the Lords

22. A number of witnesses expressed concern about the time available for scrutinising bills in the House of Commons as a result of programming (see Box 1). Dr Ruth Fox, Director of the Hansard Society, said that the limited time available for consideration of amendments in the Commons at report stage was “particularly problematic”, especially for big bills or those which have been significantly amended during the preceding public bill committee stage: “[It] means that a significant number of amendments, groups and even schedules sometimes go entirely unconsidered ... you can see how and why members, on both sides, get very frustrated about the time available.”²⁶ Daniel Greenberg expressed similar concerns: “Programming represented a key change ... which is, ‘We will spend two hours on these clauses and, irrespective of how many technical issues there are, we will move on’.”²⁷
23. Programme motions usually determine the time at which scrutiny of a bill will conclude but they do not specify when proceedings on a bill will commence. Unless a motion is passed to set a minimum number of hours for consideration, the amount of time available for scrutiny can be reduced by other business in the Commons Chamber, as the end of the day’s sitting is a set time which is rarely varied. The growing amount of time spent on urgent questions, which have increased in number over the past decade,²⁸ and ministerial statements, has eaten into the time for scrutiny of bills and made the issues with programming more acute.

24 [Q 168](#) (Lord Lisvane)

25 [Q 156](#) (Professor Meg Russell)

26 [Q 154](#) (Dr Ruth Fox)

27 [Q 177](#) (Daniel Greenberg)

28 House of Commons Library, *Number of Urgent Questions in the House of Commons since 1997*, 22 May 2019

Box 1: Programming in the House of Commons

Programme motions are normally moved by the Government in the House of Commons after a bill has received a second reading. If the Commons agrees to the motion, then the maximum amount of time MPs have to scrutinise the bill is set, irrespective of whether new issues arise during its passage or substantial new material is added. Subsequent programme motions may be moved to amend the timetable, but only by the Government.

The House of Commons has applied timetable motions, sometimes informally known as “guillotines”, to the stages of some bills since 1887, usually when the Government considered that a bill was not progressing quickly enough.²⁹ In the first session of the 1997–2001 Parliament, programming—the timetabling of all bills—was introduced on a pilot basis. In a memorandum to the Modernisation Committee of the Commons, the then Government set out why programming was necessary: “Legislation must receive the attention and discussion it requires but the Government needs to secure the passage of its business within a reasonable time if Parliament approves it. Delay has been seen as the weapon of the Opposition and a majority the weapon of the Government.” Programming was opposed in principle by the Conservative Party as the then Official Opposition, but with some technical changes, programming was adopted in standing orders in October 2004.³⁰ Programming has not been significantly changed or replaced by subsequent governments. In practice, the Official Opposition usually agrees a proposed timetable on the basis that its amendments will be prioritised for debate.

The Reform of the House of Commons Committee, chaired by Tony Wright MP and reporting in 2009, criticised programming, particularly at report stage in the Commons: “The single greatest cause of dissatisfaction which we have detected with current scheduling of legislative business in the House arises from the handling of the report stage of government bills ... The report stage is the only opportunity for the House as a whole to engage with proposed legislation and debate and decide its principal provisions in any detail.”³¹ This led the committee to conclude that there is “often insufficient” time for debate and consideration of new material at report stage.

There is no equivalent procedure in the House of Lords. The Government is unable to constrain the amount of time for scrutiny of bills, with a suggested allocation of time usually determined through agreement between the usual channels.³²

24. In contrast to the House of Lords, where it is possible for every amendment that is tabled to be debated, in the House of Commons the Speaker selects which amendments will be considered at report stage. When deciding which and how many amendments to select, the Speaker may bear in mind the time available for debate, which in most cases will have been set by a programme motion; but he does not have to give reasons for his selection decisions. On longer or politically controversial bills it is highly unlikely that most, let alone

29 House of Commons Library, *Modernisation: Programming of Legislation*, 19 May 2008

30 House of Commons Procedure Committee, *Programming* (Third Report, Session 2013–14, HC 767)

31 Reform of the House of Commons Committee, *Rebuilding the House* (First Report, Session 2008–09, HC 1117), paras 109–110

32 “The usual channels describes the working relationship of the whips from the different parties and the leaderships of the Government and Opposition parties. The term refers to arrangements and compromises about the running of parliamentary business that are agreed behind the scenes.” <https://www.parliament.uk/site-information/glossary/usual-channels/>

all, amendments tabled by MPs at report stage in the Commons will be debated.

25. Recognising these constraints on scrutiny in the Commons, Lord Lisvane drew attention to a debate in which Lord Butler of Brockwell had asked the Government to include statistics on the time spent on parliamentary proceedings on each part of an Act in the explanatory notes on Acts of Parliament.³³ Lord Butler said:

“this is purely factual information, already gathered and easily available. The purpose of publishing it is, of course, to bring to light where parliamentary scrutiny has been inadequate and, by doing so, to encourage more effective procedures. I believe that neither Government nor Parliament would want it to be shown that legislation had been passed by Parliament with ineffective scrutiny. If the result was that more parliamentary time was given to a smaller volume of legislation, that would be no bad thing.”³⁴

26. Responding to this debate for the Government, Lord Young of Cookham said that the Government had no plans to publish such figures:

“but that does not, of course, rule out further consideration of the proposition ... The reason we do not is, first, because the explanatory notes are designed to help the readers of legislation understand its legal effect. Secondly, the notes to Acts already include the Hansard column references to debates at each stage, so the Act is permanently accompanied by a record of how each House scrutinised the legislation in its various stages.”³⁵

27. **We are not persuaded by the minister’s response. It would assist members of the House of Lords in their scrutiny of bills to know where the consideration of bills may have been truncated in the Commons. This includes clauses of or schedules to a bill that were not debated during committee stage due to lack of time and parts of a bill that MPs had sought to amend at report stage but were unable to do so due to lack of time.**
28. **We recommend that the Procedure Committee considers asking the House of Lords Library, in their briefings on bills brought from the Commons, to highlight the clauses and schedules that were not debated due to lack of time at committee and report stages. We suggest this should be trialled for a number of bills in a single session and an evaluation should be conducted of the value it provides to members.**

Self-regulation in the House of Lords

29. In contrast to the House of Commons, the House of Lords does not programme consideration of bills: every clause and amendment can be debated should members wish to do so. The Government Whips’ Office circulates a list of the parts of a bill and related amendments that are anticipated to be debated during each day’s sitting, but it is informal guidance for the House rather than the imposition of limits. Sir David Beamish, former Clerk of the Parliaments, said “A particular strength in the House of Lords is the

33 [Q 171](#) (Lord Lisvane)

34 HL Deb, 18 January 2017, [col 283](#)

35 HL Deb, 18 January 2017, [cols 293–294](#)

flexibility of the proceedings.”³⁶ He added that it meant that the availability of time “was not a big factor” in the quality of scrutiny in the Lords.³⁷

30. Both the Leader and the Shadow Leader of the Lords said that the arrangement of legislative business in the Lords worked reasonably well. Baroness Smith of Basildon suggested that the system “works quite well, but we have our moments. What is helpful, as long as it is not too rigid, is the calendar we now have, which says on which days we are likely to debate which amendments in the course of a bill. Most colleagues find that quite helpful.”³⁸

31. The Leader of the House of Lords, Baroness Evans of Bowes Park, agreed:

“Nothing is perfect, but I feel it works quite well and the flexibility that we have means that we can try to adapt and, as I say, extend hours and extend days if we wish. We try to publish business in advance. We have schedules of clauses we are looking to debate in advance. We try as well to have information available so that those backbenchers who are interested in contributing can do so.”³⁹

32. **The system of self-regulation in the House of Lords largely works well in its consideration of bills. We welcome the efforts of the usual channels to arrange business to assist the whole House.**

Intervals between stages of a bill

33. The two Houses take different approaches to the minimum amount of time that should elapse, in normal circumstances, between each stage of a bill. The House of Commons has set no specific expectations; however the Cabinet Office in its *Guide to Making Legislation* outlines a “conventional minimum timetable ... that can be expected for a bill of reasonable length and complexity.”⁴⁰ In contrast, the Lords has agreed “minimum intervals between stages of public bills [that] should be observed.”⁴¹ The timings for each House are in Table 1.

Table 1: Minimum intervals between the stages of a bill in each House

Minimum interval	House of Commons	House of Lords
Between first and second reading	Normally two weekends following publication	Two weekends
Between second reading and committee	One week if second reading is on a Monday or Tuesday, ten days if second reading is on a Wednesday, Thursday or Friday	Fourteen calendar days

36 [Q 168](#) (Sir David Beamish)

37 [Q 170](#) (Sir David Beamish)

38 [Q 196](#) (Baroness Smith of Basildon)

39 [Q 208](#) (Baroness Evans of Bowes Park)

40 Cabinet Office, *Guide to Making Legislation* (July 2017): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/645652/Guide_to_Making_Legislation_Jul_2017.pdf [accessed 1 July 2019]

41 House of Lords, *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, 2017

Minimum interval	House of Commons	House of Lords
Between committee and report	As early as a week after committee ends, but depends on urgency and parliamentary time	Fourteen calendar days—for all bills of considerable length and complexity
Between report and third reading	Usually takes place immediately after report	Three clear sitting days

Source: Cabinet Office, *Guide to Making Legislation* (July 2017): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/645652/Guide_to_Making_Legislation_Jul_2017.pdf [accessed 1 July 2019] and House of Lords, *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, 2017.

34. Witnesses suggested that there should be more time between the stages of bill scrutiny in the Commons. Daniel Greenberg said that there should be longer intervals to allow more stakeholder and public engagement with parliamentarians.⁴² Dr Thompson argued:

“the number of sitting days between stages in the Commons is too short. In particular, there may only be a few days between the end of the oral evidence sessions and the beginning of line by line scrutiny. This gives little time for MPs to digest the evidence they have heard and to table relevant amendments in time for the line by line scrutiny. The same applies to the number of sitting days between second reading and committee stage and between committee and report. The period between committee and report is an extremely important one in the Commons. Where a minister has given an undertaking in PBC to reconsider or ‘think again’ about an amendment, the author of the amendment will usually spend time lobbying the minister (formally or informally) and may meet with the minister and other interested groups. Increasing the number of days between committee and report would maximise the opportunities for this type of dialogue to take place.”⁴³

35. The then Leader of the House of Commons, Andrea Leadsom MP, said the Government was in a “no-win” situation in relation to the speed with which bills progress:

“The irony is that if you have a long period, people criticise you, ‘Where is it?’, and if you have a short period, they criticise you for having a short period. So there is no absolutely right answer, but there needs to be sufficient time for parliamentarians to properly consider the issues, and the more complex they are, the greater the tendency to give more time.”⁴⁴

36. In the Lords, the Leader of the House explained: “We do everything we can to stick to minimal intervals ... The only time we have squashed those intervals has been with agreement through the usual channels, which has been for instance talking to committees such as yours, say, on Northern Ireland, and on Article 50.”⁴⁵ Furthermore, the Leader of the House was “somewhat sceptical” about the need to change a system that in her view struck the “right balance”.⁴⁶

42 [Q 177](#) (Daniel Greenberg)

43 Written evidence from Dr Louise Thompson, University of Surrey ([LEG0058](#))

44 [Q 209](#) (Andrea Leadsom MP)

45 [Q 209](#) (Baroness Evans of Bowes Park)

46 *Ibid.*

37. **Minimum intervals provide a measure of predictability between stages of a bill, allowing the Government to take forward legislation in a timely fashion as well as provide sufficient opportunity for Members of Parliament to prepare for each stage of scrutiny. We accept that there may be occasions where the time between stages needs to be reduced, but this should happen only in exceptional circumstances and with the agreement of the usual channels.**
38. We considered the circumstances in which it may be reasonable for minimum intervals not to apply in our report, *Fast-track legislation: constitutional implications and safeguards*, in 2009. We concluded that legislation should be fast-tracked only when it was “a proportionate, justified and appropriate response to the matter in hand” and that “Fundamental constitutional rights and principles” should not be jeopardised.⁴⁷ We recommended that, for legislation subject to fast-tracking, the Government should set out its justification for fast-tracking in the explanatory notes to the bill.⁴⁸ **We welcome the fact that the Cabinet Office’s *Guide to Making Legislation* now requires the justification for fast-tracking to be included in a bill’s explanatory notes. We note that the Government has observed it in respect of most recent bills that have been fast-tracked.**
39. We observed in our 2009 report that “An analysis of fast-tracked primary legislation in recent years reveals one outstanding trend—the statistical preponderance of legislation relating to Northern Ireland.”⁴⁹ This trend has continued and, since the start of this part of our inquiry in early 2018, seven bills relating to Northern Ireland have passed through both Houses in an expedited process. **We regret that legislation relating to Northern Ireland has regularly been fast-tracked. This has become common not just for bills which might be required to address urgent or unforeseen problems, but for routine and predictable matters such as budgetary measures. The political stalemate in Northern Ireland has led to an absence of a functioning Executive and a democratic deficit. Fast-tracking bills relating to Northern Ireland reduces further the scrutiny these measures should receive. Routinely fast-tracking in this way is unacceptable, unsustainable and should only be used for urgent matters.**

Business management

40. Business in both Houses is arranged through the “usual channels”, who negotiate decisions on the timing of stages of bills and the amount of time required for debate. This is unusual in comparison to other legislatures, including the devolved legislatures in Scotland, Wales and Northern Ireland. In our 2004 report we recommended that “consideration be given to the establishment of business committees at Westminster.”⁵⁰ In 2009, the Reform of the House of Commons Committee made a similar recommendation, envisaging “a House Business Committee which would be obliged to come up with a draft agenda for the week ahead, working through consensus, with the Chairman of Ways and Means (the Deputy Speaker) in the chair. The

47 Constitution Committee, *Fast-track Legislation: Constitutional Implications and Safeguards* (15th Report, Session 2008–09, HL Paper 116), para 16

48 *Ibid.*, para 185

49 *Ibid.*, para 107

50 Constitution Committee, *Parliament and the Legislative Process* (14th Report, Session 2003–04, HL Paper 173), para 121

agenda would then be put to the House for its agreement.” This committee would comprise representatives of the Government and Opposition, as well as members of the newly-created Backbench Business Committee.⁵¹

41. A House business committee was suggested by some witnesses to this inquiry as a mechanism to ensure better management of time in each chamber for bills. Mark Ryan, Senior Lecturer in Constitutional and Administrative Law at Coventry University, said:

“The organisation of the legislative timetable is (inevitably) dominated by the Government of the day as there is a clear imbalance between the Government and the House of Commons in favour of the former. It is contended that perhaps a cross-party Commons Chamber committee (involving all elements of the House) should be established to agree and regulate the business of public bills.”⁵²

42. There was, however, scepticism from other witnesses about the efficacy of such a body, given the realities of politics, parliamentary arithmetic and the practicalities of arranging business. Dr Fox said that one risk was:

“in practice, the usual channels’ negotiations will still go on behind the scenes. The committee will then sit. You will have transparency and accountability about what decisions it has made, but not necessarily about how and why it arrived at those decisions. I do not think that opening it up in that way will necessarily solve the problem.”⁵³

Professor Russell, referencing her experience as specialist adviser to the Reform of the House of Commons Committee and her research on business committees in other legislatures, said that “these committees are largely rubber stamps.”⁵⁴

43. Dr Fox suggested that a Legislative Standards Committee might be able to make recommendations on the amount of time a bill required, giving consideration to the complexity and importance of a bill and any consultation or pre-legislative scrutiny that had been undertaken:

“We have argued for a more radical approach ... It goes back to the whole concept of trying to push the Government to do more upstream, by having a better culture of preparation of bills and better provision of explanatory information, and by thinking about the procedural approach to bills. This committee [the Constitution Committee] and other committees previously have endorsed a Legislative Standards Committee, of which we have been a big supporter. When that committee first gets the bill, it can look at the nature of the legislation, its content and scope, the nature of the materials that have been presented by the Government and the quality of the business case that has been made. It will then be well placed to make decisions about the allocation of time at the various stages to consider the legislation.”⁵⁵

51 Reform of the House of Commons Committee, *Rebuilding the House* (First Report, Session 2008–09, HC 1117), summary

52 Written evidence from Mr Mark Ryan ([LEG0059](#))

53 [Q 154](#) (Dr Ruth Fox)

54 [Q 154](#) (Professor Meg Russell)

55 [Q 154](#) (Dr Ruth Fox)

44. The concept of applying a set of legislative standards to Government bills, perhaps through establishing a legislative standards select or joint committee, is not new. The principle has been endorsed by a series of select committees and other institutions over more than a decade⁵⁶ and we recommended as much in our first report on this inquiry, *Preparing Legislation for Parliament*.⁵⁷
45. Although establishing a business committee in either House would engage a wider range of members and political groupings in the management of time, it risks being little more than a rubber stamp, with the decisions on scheduling business made in private in the usual channels beforehand.
46. **Our first report on this inquiry, *Preparing Legislation for Parliament*, recommended the establishment of a Legislative Standards Committee to ensure that all bills are sufficiently prepared prior to being presented to Parliament. We reiterate this recommendation as the Parliamentary Business and Legislation (PBL) Cabinet Committee, which is responsible for carrying out this task in Government, has not always rigorously ensured that bills are fit for purpose before introduction.⁵⁸ Such a committee would be well placed to assess the amount of time a bill might need for scrutiny and it would constitute a mechanism by which backbenchers could provide their view on the time required to the usual channels. While the recommendations of a Legislative Standards Committee on bill timetabling would not be binding, the usual channels would be cognisant of the political risks of departing from the recommendations of a cross-party committee. The existence of a Legislative Standards Committee would also encourage the Government to ensure that bills are thoroughly prepared before introduction to Parliament to avoid the risk of critical reports and potential delays.**

Amendments

47. As a bill progresses through each House amendments may be tabled to it. Dr Thompson's research showed that, since 2000, the number of amendments tabled to bills in the House of Commons had increased. This was the case both for amendments tabled by MPs (with an average of around 125 tabled per bill) and by the Government. She noted that "The likelihood of amendments drafted by opposition or backbench MPs being accepted has fallen dramatically", but the "Government is tabling more amendments to its own legislation" if it agreed with a proposition or if it risked defeat on the issue.⁵⁹
48. The Government seeking to amend its bills may be a welcome indicator of responsiveness to Parliament's scrutiny of bills; however the Government may also seek to add substantial new clauses or even policies to a bill part way through its passage—which may reflect shortcomings in the preparation

56 House of Lords Leader's Group on Working Practices, *Report* (Session 2010–12, HL Paper 136), para 97; House of Commons Political and Constitutional Reform Committee, *Ensuring standards in the quality of legislation* (First Report, Session 2013–14, HC 85), chapter 4

57 Constitution Committee, *The Legislative Process: Preparing Legislation for Parliament* (4th Report, Session 2017–19, HL Paper 27), para 182

58 The Cabinet sub-committee that considers "issues relating to the Government's parliamentary business and implementation of its legislative programme": https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/795150/20190411-CabinetCommitteesAndImplementationTaskforces.pdf [accessed 1 July 2019]

59 Written evidence from Dr Louise Thompson, University of Surrey (LEG0058)

of a bill prior to its introduction. Such additions pose a challenge for effective scrutiny as there may be few stages left in the legislative process for the issues to be considered. A stark example of this occurred during the passage of the European Union (Withdrawal) Bill (now the 2018 Act). Significant provisions relating to the transfer of competences from the EU to the devolved institutions were added as Government amendments in the Lords and received little scrutiny in the House of Commons. Similarly, during the passage of the Offensive Weapons Bill (now the 2019 Act), new provisions on Knife Crime Prevention Orders were added by the Government at report stage in the Lords and could be debated only briefly by MPs during Commons Consideration of Lords Amendments.

49. Recommitment or a fresh second reading were suggested as possible mechanisms for ensuring that new clauses received the scrutiny they required. The *Companion to the Standing Orders of the House of Lords* sets out that bills may be recommitted, if the House agrees, any time between committee and third reading. This can be done for bills in their entirety, or in respect of certain clauses or schedules. “This course is adopted when it is desirable to give further detailed consideration to the bill or certain parts of it without the constraints on speaking which apply on report and third reading; for instance:
- when substantial amendments are tabled too late in the committee stage to enable them to be properly considered;
 - where there is extensive redrafting; or
 - where amendments are tabled at a later stage on subjects which have not been considered in committee.”⁶⁰
50. Daniel Greenberg suggested “a rule that if you want to put in new material”, rather than amend existing proposals in a bill, “you have to recommit and possibly have a re-second reading ... if you do not do that, just accept that the theory that all significant policy has been debated at second reading is not true.”⁶¹
51. Lord Newby suggested recommitting a bill “if there is a policy change ... Report stage is not a time for the kind of discursive discussion that you might want if it is a big new policy development. On any one day on report, not least because of potential votes and timing of votes, there is a lot of pressure to keep debate very short. Recommitment where there is a big policy change is only sensible.”⁶²
52. The then Leader of the Commons and the Leader of the Lords did not offer a view on recommitting all or part of a bill, but emphasised the preparation that went into bills before they were introduced. On the subject of amendments, the Leader of the House of Lords said:

“Some government amendments come forward because of an identified deficiency that, frankly, we should have worked out beforehand, or, indeed, because as a result of discussions in this House we want to bring them forward to address some of the concerns. Sometimes Government

60 House of Lords, *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, 2017, para 8.124

61 [Q 178](#) (Daniel Greenberg)

62 [Q 186](#) (Lord Newby)

amendments are quite welcomed by peers because it shows that we are listening and trying to improve things or put issues in. But we all take your point about it not being acceptable that late in the day new issues arise.”⁶³

53. The addition of large numbers of Government amendments late in a bill’s passage in response to Parliament’s scrutiny is usually welcomed. It is not, however, normally appropriate to insert new or substantial policy content into a bill at a late stage, as this may result in inadequate parliamentary scrutiny. This is particularly problematic when substantial provisions are inserted by the Government in the House of Lords to a bill that has completed its Commons stages, as the new content can then be considered by the Commons only during ping-pong, with a programme motion usually allowing little time for debate.
54. **Where the House of Commons only sees substantial new policy material for the first time during consideration of Lords amendments, it may wish to consider how to ensure there is sufficient time to scrutinise those provisions.**
55. **We recommend that, where the Government adds substantial new policy material to a bill late in its passage, the bill—or at least the new provisions—should be re-committed to allow for additional debate and scrutiny.**

Split committal

56. Another option for tailored scrutiny is split committals, whereby different parts of a bill are treated to different forms of committee consideration. In the House of Commons, this might mean the consideration of politically controversial aspects of a bill in Committee of the whole House in the Chamber, while more technical provisions are considered in a public bill committee. In the Lords, this may be the consideration of part of the bill in the Chamber, while the rest of the bill is considered in Grand Committee.⁶⁴
57. Lord Lisvane suggested that split committals may ameliorate some of the constraints of programming in the Commons:
- “Earlier in the stages of programming, there was the possibility of split committals, for which I was always an enthusiast, whereby you identified the big things and dealt with them in a Committee of the whole House, leaving the Public Bill Committee to do the bulk of the Bill—but that never caught on. The classic is a Finance Bill, which is almost always a split committal.”⁶⁵
58. A variation on split committal was used for the Trade Union Bill (now the 2016 Act),⁶⁶ as the Shadow Leader of the House of Lords explained:

63 [Q 210](#) (Baroness Evans of Bowes Park)

64 House of Lords, *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, 2017, para 8.102

65 [Q 170](#) (Lord Lisvane)

66 Technically the bill was not subject to a split committal. Rather an *ad hoc* committee was established to consider clauses 10 and 11 of the bill (and surrounding issues) alongside the normal committee of the whole House which was considering the whole bill. Unlike a select committee to which a bill has been committed, this *ad hoc* committee did not have power to amend the bill.

“Clauses 10 and 11, in particular, were quite controversial. What we proposed, in my motion to the House, was that we set up an evidence-taking select committee, not to delay the bill in any way, but to run parallel to it. It was quite interesting. The House agreed, and the committee was established on a cross-party basis. Even some members who opposed it came to me later and said, ‘That worked well’. In the House, one of the Conservatives on the committee, who had a very firm view, both before and after, on the bill, said, ‘I didn’t realise how little I knew about trade unions. I have learned a lot more by having that process’. Our ability to be a bit creative in gathering information is good.”⁶⁷

59. **As part of a flexible and tailored approach to scrutiny, the Government and the other participants in the usual channels should consider the benefits of using split committals more frequently. We note that it is open to individual members of the House of Lords to propose alternative arrangements for commitment through amendments to a commitment motion.**

Ping-pong and Reasons Committees

60. Ping-pong is the informal term used to describe the process⁶⁸ for a bill passing between one House and the other until agreement is reached on amendments that have been made to it. If, during ping-pong, one House disagrees with an amendment proposed by the other House without suggesting an alternative it gives a reason for its disagreement. A Reasons Committee is temporarily established to decide what will be the reason. The rationale is that one House should, when in disagreement with the other House, always offer the other House a proposition for it to consider—whether that be an amendment or a reason.
61. Witnesses suggested that Reasons Committees seldom offered useful reasons. Lord Lisvane said: “after many years of involvement in Reasons Committees in one way and another, I cannot think of a single example of when a Reasons Committee has put together a convincing reason for anything.”⁶⁹ Baroness Smith of Basildon did not think it was “adequate”, because “It seems to me that now the reason is, basically, ‘We don’t like it’, with not much more detail.”⁷⁰ The then Leader of the House of Commons indicated that she would be open to suggestions, if the Committee “were to propose an alternative or better way”.⁷¹
62. Reasons Committees may previously have played a valuable role in facilitating communication on bills between the two Houses, but with Hansard available within hours of a debate taking place and recordings of proceedings accessible on a rolling basis, such a committee is no longer required to provide members of one House with an insight into the reasons for a decision in the other.
63. That said, under present procedures a reason provides an important mechanism for communicating Commons financial privilege—an issue we have explored previously and which has on occasion been the subject of

67 [Q 193](#) (Baroness Smith of Basildon)

68 Formally known as Commons Consideration of Lords Amendments (and Reasons) and Lords Consideration of Commons Amendments (and Reasons).

69 [Q 174](#) (Lord Lisvane)

70 [Q 194](#) (Baroness Smith of Basildon)

71 [Q 211](#) (Andrea Leadsom MP)

controversy.⁷² When the Commons considers Lords amendments to a bill the Speaker identifies which of the Lords amendments involve Commons financial privilege. If the Commons disagrees to any of those amendments, it offers a reason in standard form which alludes to its financial privilege. The practice of the Lords is then not to insist on that amendment nor to offer a further amendment which would invite the same response.⁷³ If changes are made to the reasons process, it is likely that the Commons will continue to want a straightforward way—such as citing financial privilege in the wording of the motion to disagree to Lords amendments—of communicating to the Lords when it considers a Lords amendment to which it disagrees involves financial privilege.

64. Reasons Committees serve no practical purpose and should be abolished.

Select committee involvement in the legislative process

65. Select committees in the UK Parliament, unlike in many other legislatures,⁷⁴ have no formal or routine role in the passage of a bill. Bills are not referred to them as part of the legislative process and their assent to them is not required.
66. Two committees in the House of Lords—this Committee and the Delegated Powers and Regulatory Reform Committee—and the Joint Committee on Human Rights scrutinise bills and may report on them. There is no requirement on the Government to accept the recommendations of any such reports. The Cabinet Office’s *Guide to Making Legislation* references the work of these committees and suggests, for example, that there is “benefit in departments anticipating the views of the DPRRC when drafting the bill to avoid the need for amendments.”⁷⁵ Departmental select committees in the Commons may examine and comment on bills⁷⁶ that fall within their remit separately from the formal legislative process, though this does not happen for every bill and will depend on the interest of a committee’s membership and the inquiry work with which it is currently engaged.
67. Professor Russell and Daniel Gover said that “select committee involvement can be very beneficial to the quality of legislative scrutiny ... our analysis found that around one in six changes agreed to the 12 bills [analysed in their study] involved some kind of select committee influence.”⁷⁷ Professor Russell noted that there had been calls for select committees to be formally involved in the legislative process, but suggested that this could be detrimental to the other work that they undertake:

72 Constitution Committee, *Money Bills and Commons Financial Privilege* (10th Report, Session 2010–12, HL Paper 97)

73 See Constitution Committee, *Money Bills and Commons Financial Privilege* (10th Report, Session 2010–12, HL Paper 97); Joint Committee on Conventions, *Conventions of the UK Parliament* (Report of Session 2005–06, HL Paper 265–I), para 252

74 [Q 157](#) (Professor Meg Russell)

75 Cabinet Office, *Guide to Making Legislation* (July 2017), para 16.17: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/645652/Guide_to_Making_Legislation_Jul_2017.pdf [accessed 1 July 2019]

76 Commons select committees may also undertake pre-legislative scrutiny of draft bills that relate to their remit.

77 Written evidence from Professor Meg Russell, University College London, and Daniel Gover, Queen Mary University of London ([LEG0061](#))

“In most Parliaments, where such committees are taking legislation, not only are they likely to be more politicised, but the ability of the committee to set its own agenda can be crowded out by constantly having to respond to proposals coming from the Government. One of the strengths of our select committee system is that the committees absolutely control their own agendas and can choose what topics to investigate.”⁷⁸

68. The Chartered Institute of Taxation suggested more effective liaison between departmental select committees and public bill committees in the Commons, “so that concerns identified by the former are pressed more by the latter”,⁷⁹ aiding the quality of legislative scrutiny.
69. **Select committees’ strength comes from their ability to use their subject-matter expertise in a non-partisan manner, and this gives authority to their reports. Formal involvement in the legislative process would risk undermining their ability to do this, by inviting adversarial debate and division, as the Government would seek to ensure its members on select committees voted to get its legislation through and opposition members would correspondingly seek to oppose it. The benefit select committees can bring to the legislative process is in scrutinising draft bills and, where they consider it appropriate, reporting to the House during a bill’s passage.**

78 [Q 157](#) (Professor Meg Russell)

79 Written evidence from the Chartered Institute of Taxation ([LEG0060](#))

CHAPTER 3: INFORMATION ACCOMPANYING BILLS

Explanatory materials

70. In our 2004 report we welcomed the routine publication of explanatory notes to accompany bills, which had been introduced in the 1998–99 session. We proposed further changes to assist members in their scrutiny of bills, including recommendations that explanatory notes should provide a clear and developed explanation of the purpose of the bill and how, once enacted, it could be judged to have met its purpose. We also recommended that the Cabinet Office should monitor compliance with guidance they provided on the form of explanatory notes.⁸⁰
71. Updates to the Cabinet Office’s *Guide to Making Legislation* reflected some of those proposals:
- “Explanatory notes are required for all bills introduced in either House by a Government minister with the exception of Finance Bills and consolidation bills, for which different explanatory material is provided ... Explanatory notes are not intended to be an exhaustive description of the bill or to be a substitute for it. Their purpose is to make the bill accessible to readers who may not be legally qualified or have specialised knowledge of the subject area. Explanatory notes are a vital part of the overall bill package, whether a bill is being introduced into Parliament or published in draft for consultation or pre-legislative scrutiny.”⁸¹
72. The *Guide to Making Legislation* stipulates that explanatory notes must be structured in a certain way, following a template. Sections within this template include: overview of the bill; policy and legal background; territorial extent and application; financial implications; and compatibility with the European Convention on Human Rights.⁸²
73. **Explanatory notes are to assist understanding of the legislation, but they have no legal effect and are not to be relied on for legal interpretation. During the passage of the Trade Bill 2017–19, the Government suggested initially in correspondence with this Committee that the courts could rely on the content of explanatory notes when interpreting the meaning of the Bill. Following further exchanges, the Government accepted and confirmed that this was not the case.**⁸³
74. In addition to explanatory notes, the Government is required to provide an impact assessment, comprising a full assessment of economic, social and environmental impacts, and a delegated powers memorandum.
75. We heard divided views on the quality and value of explanatory notes, with some witnesses suggesting that they did little more than repeat what the legislation said. The Chartered Institute of Taxation said: “There has been

80 Constitution Committee, *Parliament and the Legislative Process* (14th Report, Session 2003–04, HL Paper 173), para 87

81 Cabinet Office, *Guide to Making Legislation*, (July 2017) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/645652/Guide_to_Making_Legislation_Jul_2017.pdf [accessed 1 July 2019]

82 *Ibid.*

83 See: [Baroness Fairhead to the Chairman, 22 January 2019](#); [Chairman to Baroness Fairhead, 11 February 2019](#); [Baroness Fairhead to the Chairman, 19 February 2019](#); HL Deb, 6 March 2009, cols 634–640.

widespread criticism of Finance Bill explanatory notes by tax professionals for often simply repeating what the legislation itself says, without being particularly explanatory.”⁸⁴ Sir David Beamish found “Government explanatory memorandums a bit formulaic and that things such as Library briefing notes were likely to be much more helpful.”⁸⁵

76. Other witnesses were more positive. Lord Hope of Craighead, Convenor of the Crossbench Peers, thought that the drafting of explanatory materials was “as good as one can get. One does not want it too long. There could perhaps possibly be a little more policy, but it is in the hands of the department from which the bill comes. It is good.”⁸⁶ Lord Newby suggested that they “are a lot better than they were.”⁸⁷
77. The then Leader of the House of Commons recognised that the quality of explanatory materials varied from bill to bill and said that the Government sought to address issues with them prior to publication:

“It is quite clear that best practice can be shared across Whitehall and that is what we are seeking to do. At PBL we certainly have the opportunity for ministers on the PBL Committee to look at the explanatory materials, and we try to ensure that we pick up any problems there rather than waiting until they are identified by House committees or Members of Parliament.”⁸⁸

78. Dr Ruth Fox suggested that a Legislative Standards Committee could scrutinise explanatory materials in order to improve their quality and consistency:

“we [the Hansard Society] have set out the criteria that a Legislative Standards Committee would want to look at and, therefore, what would need to be in the business case, not just the explanatory notes and the delegated powers memorandum, but the range of impact assessments and the legislative account. For example, why there has not been pre-legislative scrutiny? What was the nature of the consultation? If there was no consultation, why not? Has there been legislation in the area before? When was it? Why do you need to legislate? It would look at all those kinds of issues, as well as quite technical things, such as whether we are utilising things such as Keeling schedules. If those are not included, why not? Potentially, there is a great range of information. Ideally, parliamentarians, and certainly the public, would benefit from access to that information. The Government will not do that voluntarily, so we think it could best be achieved through a legislative standards mechanism.”⁸⁹

79. The Better Government Initiative made a similar point and referred to the report of the Leader’s Group on Working Practices⁹⁰ which proposed criteria against which explanatory materials might be assessed. In the Better Government Initiative’s view, “effective parliamentary scrutiny of legislation will depend on the establishment of a code of standards agreed by Parliament

84 Written evidence from the Chartered Institute for Taxation ([LEG0060](#))

85 [Q 174](#) (Sir David Beamish)

86 [Q 189](#) (Lord Hope of Craighead)

87 [Q 189](#) (Lord Newby)

88 [Q 212](#) (Andrea Leadsom MP)

89 [Q 158](#) (Dr Ruth Fox)

90 House of Lords Leader’s Group on Working Practices, *Report* (Session 2010–12, HL Paper 136)

and Government ... and a Legislative Standards Committee to oversee the implementation of the code.”⁹¹

80. Witnesses expressed concern about the timing of the provision of some explanatory materials by the Government. Baroness Smith of Basildon pointed to the Trade Union Bill 2015–16 as an example of when explanatory materials were not provided by the Government until late in a bill’s passage. She said:

“Impact assessments of legislation are absolutely crucial, and I wonder whether we should be a bit firmer on that. I am quite staggered that bills can go through all stages in the Commons without a proper impact assessment. That is not giving proper consideration in any way, and it implies that the Government have not given proper consideration to the bill before bringing it forward.”⁹²

81. The then Leader of the House of Commons sought to reassure: “We are very clear that we expect all the explanatory materials are provided alongside the bill ... it is not perfect, but we are absolutely focused on improving quality and timeliness.”⁹³

82. **If, as we suggest, a Legislative Standards Committee is established, it would examine the explanatory materials that accompany a bill. Such a committee might develop a checklist to assess explanatory materials for quality and consistency, as is the case for the Secondary Legislation Scrutiny Committee’s scrutiny of secondary legislation. If explanatory materials were inadequate, defective or absent, a Legislative Standards Committee could press the Government for improvements.**

Keeling schedules

83. A Keeling schedule is a schedule to a bill which reproduces the provisions of an earlier Act of Parliament and shows the effect of the bill on that Act. An alternative is to provide this information in the explanatory materials to a bill rather than as a schedule to the bill itself. In our 2004 report we drew attention to the benefits of Keeling schedules. We concluded:

“it is a utility that has the potential to improve significantly Parliament’s scrutiny of legislation. It is extraordinarily difficult at times to appreciate the effect of a bill on an earlier Act without seeing the Act and how it is amended by the bill. The explanatory notes provide some help but they are no substitute for looking at the original measure and seeing how precisely the bill changes it. We recognise the cost element and this has to be taken into account, but by itself cost cannot be taken as an insurmountable barrier to enhancing Parliament’s capacity to engage in effective scrutiny of legislation.”⁹⁴

84. Witnesses mostly favoured greater use of Keeling schedules. Lord Lisvane said:

91 Written evidence from the Better Government Initiative ([LEG0063](#))

92 [Q 198](#) (Baroness Smith of Basildon)

93 [Q 212](#) (Andrea Leadsom MP)

94 Constitution Committee, *Parliament and the Legislative Process* (14th Report, Session 2003–04, HL Paper 173)

“They are brilliant, and I have been a career-long supporter of them. They are really important not just when there is legislation by reference but when there is legislation by double reference, which is hideously complex and has been a feature of legislation relating to Northern Ireland over the last 10 years or so. A Keeling schedule that operates through the medium of two referential statutes is really valuable.”⁹⁵

85. Daniel Greenberg was more sceptical: “They are of more use to lawyers than most non-legal readers ... they are of less importance in these days of electronic updated publication, because most people will go to a service that shows them what the legislation will look like. They are of less importance, but I do not say they are of no importance.”⁹⁶
86. **Bills that substantially amend prior Acts can be difficult to follow and for parliamentarians to scrutinise. Keeling schedules, or their equivalent in explanatory materials, can make a significant difference to the accessibility of a bill by setting out clearly the effects of a bill on a preceding statute.**
87. **We are disappointed that, 15 years after our earlier report, the Government does not routinely produce Keeling schedules (or their equivalent in explanatory materials). Technological improvements in the intervening period should make the production of such schedules comparatively straightforward. We recommend that the Government produces such schedules or explanatory materials for all bills that substantially amend previous legislation.**

Explanatory statements on amendments

88. During our inquiry, there were pilots on the Ivory Bill and the Offensive Weapons Bill to allow members of the House of Lords to provide an explanatory statement on amendments that they tabled—a process already established in the House of Commons. The Leader of the House of Lords acknowledged that this was a pilot to “see whether people found it useful and to better understand the additional workload and what was needed to roll this out.”⁹⁷
89. The Procedure Committee in the Lords recently evaluated the effectiveness of the pilot, concluding:
- “It is clear that members welcomed the development. Officials familiar with the bills saw particular value in statements on opposition to clause stand part, where the new procedure made it clearer why a member objected to a clause. Other users, less familiar with the intricacies of the bills, saw real value in the statements, which allowed them to understand the amendments at a glance without needing to cross-refer.”⁹⁸
90. The House agreed with the Procedure Committee’s recommendation that explanatory statements on amendments should be rolled out to all bills from the start of the next session.⁹⁹ **We welcome the use of explanatory statements on amendments to clarify the issues and improve the**

95 [Q 174](#) (Lord Lisvane)

96 [Q 180](#) (Daniel Greenberg)

97 [Q 212](#) (Baroness Evans of Bowes Park)

98 Procedure Committee, *Sixth Report* (6th Report of Session 2017–19, HL Paper 353)

99 *Ibid.*

accessibility of proceedings for members of the House of Lords and the public.

Use of technology

91. In our report *Preparing Legislation for Parliament*, we noted the potential for technology to improve the accessibility and operation of the legislative process.¹⁰⁰
92. At present, each bill introduced to Parliament has its own webpage on parliament.uk. This includes copies of the bill as it changes during the legislative process, amendment papers, explanatory materials provided by the Government, links to proceedings (Hansard records of debates in each House and minutes of proceedings) and other contextual information such as briefings provided by the Libraries of either House and letters from ministers. The pages also include general guidance on legislation and associated terminology. These pages are valuable, but for those who are not familiar with the legislative process, navigating the various documents can be a mystifying experience. Baroness Smith of Basildon said:

“For anyone looking from outside, it is a bit of a labyrinth ... The website that shows the process of the bill for parliamentarians is very good. You can get to the Hansard for the Lords debate and see the amendments that are tabled. I am not sure that the detail is particularly user-friendly for the public, other than those who are interested in the detail.”

93. Professor Cristina Leston-Bandeira, Professor of Politics at the University of Leeds, suggested integrating Parliament’s different systems—for example, between a bill’s webpage and Parliament TV—would help understanding each bill:

“For instance, Parliament TV is getting a bigger and bigger audience for debates, committee hearings, and that sort of thing. It plays a very important role in opening up what is happening in Parliament. If you want to match that with, say, a piece of legislation, or something else, you have to go to a completely different place. Some of it is the very simple thing of integrating one system with the other, and for someone to be able to click on Lord So-and-So talking about something and go from the video, which is much more about engagement and accessibility, to a bit of the website that explains what the clause is about. That integration might seem to be a simple thing, but it can be quite important.”¹⁰¹

94. **There is an opportunity to improve the accessibility and comprehensibility of the legislative process by linking up the information about bills online and presenting it more effectively.** For example:

- The Parliament website should be able to display the clauses of a bill and the relevant section of the explanatory notes side-by-side.
- The website should be able to sort bills before Parliament by: the House in which they were introduced; the House in which they are currently being considered; by the Government department or member that

100 Constitution Committee, *Parliament and the Legislative Process* (14th Report, Session 2003–04, HL Paper 173), paras 148–153

101 [Q 167](#) (Professor Cristina Leston-Bandeira)

introduced them; by the subject matter of the bill; and by the stage each bill has reached in the legislative process.

- The website should be able to present a version of the bill which shows the effects of a proposed amendment(s), so that members and the public can more easily see the effects.
- The website should allow for the sorting, presentation and printing of amendments in different ways, including: in numerical order; ordered by the part of the bill they affect; ordered by the proposing member; ordered by the grouping in which they are due to be debated at each stage of the process.
- As a bill progresses through its stages the website should identify what opportunities are available to members and to the public to seek to influence and amend it. Automated news alerts for the bill itself and for the topic(s) it relates to should also identify these opportunities.
- Online Hansard transcripts of debates should sit side-by-side with the video recordings of proceedings and, relatedly, Hansard-derived subtitles should be available when recordings of proceedings are viewed.
- Clauses referred to in Hansard online should link directly to the relevant text in the bill and, similarly, the clauses in the text of the bill should be linked to the text in Hansard where they are debated. Where amendments are debated, the amendment should be linked to along with any explanatory statement provided by the member who tabled it.
- Where a minister commits in a debate to write to a member about a point raised in debate, a link should be included in the online transcript to the copy of the letter deposited in the Library of the relevant House.¹⁰²

95. **Parliament's processes and platforms need to adapt to improve the operation and presentation of the legislative process for members and the public alike. We recommend that the necessary investment is made to deliver improvements to the integration and presentation of parliamentary data.**

96. Work is under way to allow for the delivery of some of these recommendations. One important project is the Legislation Drafting, Amending and Publishing Programme (LDAPP).¹⁰³ A single piece of software will, in future, be used by Parliamentary Counsel to draft legislation, by the Public Bill Offices of both Houses to publish and amend bills during the legislative process, and by the National Archives to publish Acts of Parliament on the legislation.gov.uk website. It will also be used for Acts of the Scottish Parliament and for Statutory Instruments.¹⁰⁴ This software should improve the efficiency of the administrative workings of the legislative process, and provide opportunities to improve the way legislation is displayed and linked to other parliamentary material.

102 [Q 189](#) (Lord Newby)

103 National Archives, 'Legislative drafting, amending and publishing tools': <http://www.legislation.gov.uk/projects/drafting-tool> [accessed 1 July 2019]; House of Lords, *Business Plan of the House of Lords Administration 2019/20*, p 14; House of Commons, *House of Commons Service Corporate Business Plan 2019/20*, pp 23 & 28

104 LDAPP is a partnership between the Parliaments and Governments of the UK and Scotland.

CHAPTER 4: PUBLIC UNDERSTANDING AND ENGAGEMENT

Public understanding of the legislative process

97. Earlier this session the Select Committee on Citizenship and Civic Engagement concluded: “Active citizens are crucial for the health of our democracy ... not only in the process of selecting who governs them but also in the continuing conversation on how they should be governed.”¹⁰⁵ One aspect of the public’s understanding and involvement in governing is engagement with the legislative process.
98. Engaging the public with the legislative process is a challenge, as many of our witnesses suggested it was opaque to those not closely involved. Professor Russell said that even though legislative proceedings were easily and widely available, they were hard to follow as much of Parliament’s influence cannot be seen because it happens in private.¹⁰⁶ Dr Thompson agreed: “Reading Hansard accounts of debates in either chamber does not necessarily convey to outsiders the degree of dialogue which has taken place between Parliament and Government.”¹⁰⁷ Mark Ryan suggested that “One of the barriers is the inherent complexity of parliamentary legislation, which to some extent is inevitable. The 2017–18 European Union (Withdrawal) Bill is a case in point, as its complexity and legal nuances are without doubt largely unfathomable to the general public.”¹⁰⁸
99. Professor Leston-Bandeira said that Parliament’s educational resources were good, but were geared towards general teaching of the legislative process rather than assisting with engagement in bills under consideration.¹⁰⁹
100. Lord Newby suggested that Parliament should rethink how issues are publicised, from a technical to a thematic approach:
- “Young people who are interested in an issue, such as the environment, think, ‘I want to follow what Parliament is doing on the environment’, because that is the way people get engaged, is it not? Very few people are interested in everything we do, so with a bit of luck they might be interested in one thing we do, or one area—animal welfare or whatever ... it would be perfectly possible to have a Parliament environment stream and a Parliament animal welfare stream, so that people just know what is going on, even if they are not at all interested in the technicalities of how we do stuff.”¹¹⁰
101. The Leader of the House of Lords was positive about how the House promotes itself:
- “we should give credit to the improvement in our social media output. The work of the committees is much more accessible and we have made great strides. The parliamentary website now has much better information, with SI trackers and those sorts of things ... There is no

105 Select Committee on Citizenship and Civic Engagement, *The Ties that Bind: Citizenship and Civic Engagement in the 21st Century* (Session 2017–19, HL Paper 118)

106 Written evidence from Professor Meg Russell, University College London, and Daniel Gover, Queen Mary University of London ([LEG0061](#))

107 Written evidence from Dr Louise Thompson, University of Surrey ([LEG0058](#))

108 Written evidence from Mr Mark Ryan ([LEG0059](#))

109 [Q 161](#) (Professor Cristina Leston-Bandeira)

110 [Q 191](#) (Lord Newby)

question that there is more we can do, but I guess part of it is about harnessing social media in particular. I think the teams in both Houses are doing a good job in making sure that we get more people engaged. Obviously we have the Peers in Schools initiative, which is excellent. A lot of work is done to try to help expand the public's understanding of what happens in here."¹¹¹

102. **It is essential for Parliament to communicate its scrutiny of legislation effectively to improve understanding of, and engagement with, the legislative process. A bill's passage through Parliament will inevitably have many technical aspects, but there are opportunities to inform and engage the public with the policy content of legislation.**
103. Following discussions with members of both Houses, we believe there is scope to improve the communication of Parliament's scrutiny of legislation to the public. Parliament needs to present all of its work, not just its scrutiny of legislation, coherently and effectively through topics and subject areas that have wide resonance and appeal. Communicating Parliament's work by theme rather than process is likely to be more compelling for both the public and the media.
104. **We recommend that the House of Lords takes a more proactive approach to promoting its work on legislative scrutiny. The most newsworthy issues—and therefore the issues that would benefit from a balanced and factual explanation—are likely to be those involving some controversy. We recognise that the House's communications staff may feel constrained in what they feel able to do in such circumstances. We suggest that establishing a more explicit line of accountability for the communications staff would assist them when engaging on controversial issues. We are aware that the Lords Liaison Committee has appointed a working group to explore how the House communicates its committee work; we look forward to its conclusions.**

Public engagement mechanisms

105. As representatives rather than delegates Members of Parliament must take the decisions on supporting, opposing or amending bills. These decisions and their work scrutinising legislation are supported by their engagement with the public and stakeholders on individual bills. The main method of engagement with the legislative process for many individuals and organisations is by contacting parliamentarians to brief or lobby them about bills. Sir David Beamish observed that “most members already have pretty big postbags or, should I say, full email inboxes” from the public and stakeholders on legislation.¹¹² Professor Russell and Mr Gover suggested that “engagement in the parliamentary legislative process by external groups is both extensive and important to that process. Opposition frontbenchers, plus backbenchers in general, are very dependent on such groups for briefing material.”¹¹³

111 [Q 215](#) (Baroness Evans of Bowes Park)

112 [Q 175](#) (Sir David Beamish)

113 Written evidence from Professor Meg Russell, University College London, and Daniel Gover, Queen Mary University of London ([LEG0061](#))

106. Some witnesses suggested that such engagement favoured larger organisations over smaller ones and individuals.¹¹⁴ The Law Society of Scotland argued:

“It is relatively easy for professional organisations, campaigning bodies, experts in the relevant fields, and those accustomed to civil service and political structures to respond ... It is less easy for those whose interaction with Government or legislative authorities is sporadic. There are issues concerning the language used ... the assumptions made of prior knowledge and understanding of the constitutional and legislative backdrop militate against a broad range of participation from a broad range of people.”¹¹⁵

107. To broaden engagement opportunities, Professor Leston-Bandeira and Dr Thompson suggested piloting new mechanisms for public engagement. As possible options they pointed to online forums or a facility for the public to propose amendments to bills:

“Technology is key to encouraging public participation in legislative scrutiny. Participants in the public reading pilot were clear that they were more likely to take part in an online discussion because ‘you can express yourself online’ in ways which would be more difficult in another public forum. The ‘public reading stage’ pilot ... demonstrated the real value which the public scrutiny of legislation can bring to Parliament. Participants were able to submit genuine accounts of the difficulties they faced, highlighting how the proposed legislation would affect their everyday lives.”¹¹⁶

108. Daniel Greenberg proposed giving members of the public or organisations ‘intervener status’ as bills are considered:

“There was an experiment by the Government at one stage to have comments on a website about legislation. You can guess that it was not desperately successful, for reasonably obvious reasons. The first thing I would do in moving towards intervener status, if we were doing that, would be to allow non-Members of Parliament to table amendments to bills in the same way as people who are not members of a Public Bill Committee can table amendments, and if a member of the Committee wants to take them up, they can. Let everybody table amendments.”¹¹⁷

109. In our 2004 report we said: “Parliament does not act in a vacuum and ... it is crucial that the views of informed opinion and those affected by a bill—categories that are not mutually exclusive—are heard when the measure is being considered, rather than simply after it has taken effect.”¹¹⁸ We remain of this view.

110. **The existing engagement mechanisms provide opportunities for the public and external organisations to give parliamentarians their views on legislation. These opportunities are more likely to be used by professional organisations, as they tend to have greater knowledge**

114 [Q 161](#) (Professor Cristina Leston-Bandeira)

115 Written evidence from the Law Society of Scotland ([LEG0064](#))

116 Written evidence from Professor Cristina Leston-Bandeira, University of Leeds, and Dr Louise Thompson, University of Surrey ([LEG0057](#))

117 [Q 181](#) (Daniel Greenberg)

118 Constitution Committee, *Parliament and the Legislative Process* (14th Report, Session 2003–04, HL Paper 173)

of the law and the legislative process, more resources and more awareness of the opportunities to influence legislation. Parliament’s engagement and outreach work has grown and improved significantly in recent years, and this is expected to continue to enable a more diverse range of voices to be heard.

111. In our report on *Preparing Legislation for Parliament*, we concluded that pre-legislative scrutiny of draft bills “should be considered an integral part of the wider legislative process.”¹¹⁹ A committee undertaking pre-legislative scrutiny has more time to take a range of evidence than public bill committees in the House of Commons are usually afforded and the Government may be more willing to amend a draft bill than one it has introduced. **We reiterate our recommendation that pre-legislative scrutiny should be the norm rather than the exception and that it offers the most effective opportunity for the public and interested groups to influence bills.**
112. **We emphasise that in the UK’s representative democracy it will be Members of Parliament who determine the final content of any bill, and so any public engagement opportunities must set realistic expectations about potential influence. That said, we encourage greater public engagement in the legislative process and welcome consideration of ideas for new engagement mechanisms.**

Evidence-taking on bills

113. In our 2004 report we recommended that every bill should at some stage be subject to detailed examination by a committee empowered to take evidence.¹²⁰ In 2007, the House of Commons reformed its committee stage process, replacing Standing Committees with public bill committees (PBCs). PBCs are empowered to receive written evidence and hold oral hearings before considering the bill clause by clause. Evidence-taking takes place in PBCs only on bills starting in the Commons—no evidence is taken on Lords starters. While processes exist in the House of Lords for taking evidence on a bill at committee stage,¹²¹ they are rarely used.
114. The introduction of public bill committees in the Commons was viewed by witnesses as a positive change to the legislative process. Dr Louise Thompson said that it had:
- “strengthened the scrutiny of legislation with regards to the policy knowledge of members and has helped to place MPs on a more equal footing with well-resourced and informed ministers. It has changed the behaviour of MPs and Government in committee ... Oral evidence in particular can aid MPs in the drafting of amendments, helping them to identify areas of the bill which require improvement.”¹²²
115. This position was shared by the then Leader of the House of Commons. Reflecting on her time as a backbencher, she said:

119 Constitution Committee, *The Legislative Process: Preparing Legislation for Parliament* (4th Report, Session 2017–19, HL Paper 27), para 87

120 Constitution Committee, *Parliament and the Legislative Process* (14th Report, Session 2003–04, HL Paper 173), para 143

121 House of Lords, *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, 2017, paras 8.111–8.122

122 Written evidence from Dr Louise Thompson, University of Surrey ([LEG0058](#))

“how incredibly valuable it was for a Member of Parliament to actually hear that public evidence session before getting into the nitty-gritty of a bill. Quite often a Member of Parliament will be asked to sit on a bill that they do not necessarily have any expertise in, so to hear from people in that area of expertise is incredibly valuable to them.”¹²³

116. A weakness of the current system, Dr Thompson argued, was the selection of witnesses to provide oral evidence to the PBC:

“Those selected to appear before committees are usually Government-approved witnesses, often described by MPs as ‘the usual suspects’. There is often a degree of repetition, with organisations or individuals giving evidence during a bill’s pre-legislative scrutiny or consultation phase being asked to give further evidence to the bill committee. Written evidence is not always extensive and is again often dominated by well-known organisations. Publicising these calls for evidence further and seeking out a broader pool of witnesses would boost the value of evidence taking and provide alternative perspectives on legislation.”¹²⁴

117. Witnesses suggested that the House of Lords should take evidence on bills, or at least on those bills which start in the House of Lords and which will therefore not have evidence-taking sessions in the Commons. Dr Ruth Fox suggested that the asymmetry of the current system created a “potential incentive for the Government to put into the Lords certain bills where they do not want public evidence to be taken early. I cannot think of an obvious example, but arguably the incentive is there.”¹²⁵ She said that, if the Lords were to adopt evidence-taking, it would be an opportunity to:

“look quite carefully at the flaws in the Commons approach to those sessions, to ensure that they are not replicated in this House. There are some significant problems with the amount of time that you get in advance to give the evidence, the amount of time between the evidence sessions and the scrutiny by members directly.”¹²⁶

118. The Leader of the House of Lords was sceptical about introducing an evidence-taking process in the Lords:

“I believe that only a small number of MPs sit on a public bill committee, and in our House it might curtail the number of peers who are able to get involved ... With the expertise and involvement of the Lords, we have a very good voice and the ability to interact with stakeholder and lobby groups. Many of their views get brought to the floor of the House by peers already. It is an idea to consider, but I feel that part of the complementarity between the two Houses is that we have different skill sets within each House and we approach legislation in slightly different ways.”¹²⁷

119. Remitting a bill to an evidence-taking committee in the House of Lords does not preclude all members of the House taking part in the usual committee stage debate. For example, in 2004 the House of Lords committed the Constitutional Reform Bill (which became the 2005 Act) to a select committee

123 [Q 216](#) (Andrea Leadsom MP)

124 Written evidence from Dr Louise Thompson, University of Surrey ([LEG0058](#))

125 [Q 159](#) (Dr Ruth Fox)

126 *Ibid.*

127 [Q 216](#) (Baroness Evans of Bowes Park)

in order that evidence could be taken on it.¹²⁸ After the select committee reported, the bill began its committee stage debate in the Chamber in the usual manner.

120. **Evidence-taking on bills has strengthened Parliament's scrutiny of bills. It has increased the knowledge of MPs serving on public bill committees and provided an opportunity for the public and external organisations to contribute directly to the legislative process.**
121. **It is an oddity that for bills starting in the House of Lords there is no evidence-taking in either House. This should be addressed. We recommend that there should be a presumption that evidence is taken at the beginning of committee stage on bills starting in the Lords. There will be exceptions to the presumption of evidence-taking. For example, it might be dispensed with for short, technical bills, or bills which have been subject to pre-legislative scrutiny by a committee of one or both Houses. Procedures already exist in the Lords to allow for evidence-taking,¹²⁹ however the Procedure Committee may wish to review them to ensure they are suited to more frequent use.**
122. **If a Legislative Standards Committee is established, as we recommend, it would be well-placed to assess the value of evidence-taking on each bill starting in the Lords.**

128 HL Deb, 8 March 2004, cols [979–1006](#) & [1023–1112](#); HL Deb, 22 March 2004, cols [468–472](#)

129 House of Lords, *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, 2017, paras 8.106–8.122

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Bill scrutiny processes

1. While the two Houses operate superficially similar procedures for bill scrutiny, they have different, complementary roles, which contribute to the overall effectiveness of the legislative process. (Paragraph 21)
2. It would assist members of the House of Lords in their scrutiny of bills to know where the consideration of bills may have been truncated in the Commons. This includes clauses of or schedules to a bill that were not debated during committee stage due to lack of time and parts of a bill that MPs had sought to amend at report stage but were unable to do so due to lack of time. (Paragraph 27)
3. We recommend that the Procedure Committee considers asking the House of Lords Library, in their briefings on bills brought from the Commons, to highlight the clauses and schedules that were not debated due to lack of time at committee and report stages. We suggest this should be trialled for a number of bills in a single session and an evaluation should be conducted of the value it provides to members. (Paragraph 28)
4. The system of self-regulation in the House of Lords largely works well in its consideration of bills. We welcome the efforts of the usual channels to arrange business to assist the whole House. (Paragraph 32)
5. Minimum intervals provide a measure of predictability between stages of a bill, allowing the Government to take forward legislation in a timely fashion as well as provide sufficient opportunity for Members of Parliament to prepare for each stage of scrutiny. We accept that there may be occasions where the time between stages needs to be reduced, but this should happen only in exceptional circumstances and with the agreement of the usual channels. (Paragraph 37)
6. We welcome the fact that the Cabinet Office's *Guide to Making Legislation* now requires the justification for fast-tracking to be included in a bill's explanatory notes. We note that the Government has observed it in respect of most recent bills that have been fast-tracked. (Paragraph 38)
7. We regret that legislation relating to Northern Ireland has regularly been fast-tracked. This has become common not just for bills which might be required to address urgent or unforeseen problems, but for routine and predictable matters such as budgetary measures. The political stalemate in Northern Ireland has led to an absence of a functioning Executive and a democratic deficit. Fast-tracking bills relating to Northern Ireland reduces further the scrutiny these measures should receive. Routinely fast-tracking in this way is unacceptable, unsustainable and should only be used for urgent matters. (Paragraph 39)
8. Our first report on this inquiry, *Preparing Legislation for Parliament*, recommended the establishment of a Legislative Standards Committee to ensure that all bills are sufficiently prepared prior to being presented to Parliament. We reiterate this recommendation as the Parliamentary Business and Legislation (PBL) Cabinet Committee, which is responsible for carrying out this task in Government, has not always rigorously ensured that bills

are fit for purpose before introduction.¹³⁰ Such a committee would be well placed to assess the amount of time a bill might need for scrutiny and it would constitute a mechanism by which backbenchers could provide their view on the time required to the usual channels. While the recommendations of a Legislative Standards Committee on bill timetabling would not be binding, the usual channels would be cognisant of the political risks of departing from the recommendations of a cross-party committee. The existence of a Legislative Standards Committee would also encourage the Government to ensure that bills are thoroughly prepared before introduction to Parliament to avoid the risk of critical reports and potential delays. (Paragraph 46)

9. Where the House of Commons only sees substantial new policy material for the first time during consideration of Lords amendments, it may wish to consider how to ensure there is sufficient time to scrutinise those provisions. (Paragraph 54)
10. We recommend that, where the Government adds substantial new policy material to a bill late in its passage, the bill—or at least the new provisions—should be re-committed to allow for additional debate and scrutiny. (Paragraph 55)
11. As part of a flexible and tailored approach to scrutiny, the Government and the other participants in the usual channels should consider the benefits of using split committals more frequently. We note that it is open to individual members of the House of Lords to propose alternative arrangements for commitment through amendments to a commitment motion. (Paragraph 59)
12. Reasons Committees serve no practical purpose and should be abolished. (Paragraph 64)
13. Select committees' strength comes from their ability to use their subject-matter expertise in a non-partisan manner, and this gives authority to their reports. Formal involvement in the legislative process would risk undermining their ability to do this, by inviting adversarial debate and division, as the Government would seek to ensure its members on select committees voted to get its legislation through and opposition members would correspondingly seek to oppose it. The benefit select committees can bring to the legislative process is in scrutinising draft bills and, where they consider it appropriate, reporting to the House during a bill's passage. (Paragraph 69)

Information accompanying bills

14. Explanatory notes are to assist understanding of the legislation, but they have no legal effect and are not to be relied on for legal interpretation. During the passage of the Trade Bill 2017–19, the Government suggested initially in correspondence with this Committee that the courts could rely on the content of explanatory notes when interpreting the meaning of the Bill. Following further exchanges, the Government accepted and confirmed that this was not the case. (Paragraph 73)
15. If, as we suggest, a Legislative Standards Committee is established, it would examine the explanatory materials that accompany a bill. Such a

¹³⁰ The Cabinet sub-committee that considers “issues relating to the Government’s parliamentary business and implementation of its legislative programme”: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/795150/20190411-CabinetCommitteesAndImplementationTaskforces.pdf [accessed 1 July 2019]

committee might develop a checklist to assess explanatory materials for quality and consistency, as is the case for the Secondary Legislation Scrutiny Committee's scrutiny of secondary legislation. If explanatory materials were inadequate, defective or absent, a Legislative Standards Committee could press the Government for improvements. (Paragraph 82)

16. Bills that substantially amend prior Acts can be difficult to follow and for parliamentarians to scrutinise. Keeling schedules, or their equivalent in explanatory materials, can make a significant difference to the accessibility of a bill by setting out clearly the effects of a bill on a preceding statute. (Paragraph 86)
17. We are disappointed that, 15 years after our earlier report, the Government does not routinely produce Keeling schedules (or their equivalent in explanatory materials). Technological improvements in the intervening period should make the production of such schedules comparatively straightforward. We recommend that the Government produces such schedules or explanatory materials for all bills that substantially amend previous legislation. (Paragraph 87)
18. We welcome the use of explanatory statements on amendments to clarify the issues and improve the accessibility of proceedings for members of the House of Lords and the public. (Paragraph 90)
19. There is an opportunity to improve the accessibility and comprehensibility of the legislative process by linking up the information about bills online and presenting it more effectively. (Paragraph 94)
20. Parliament's processes and platforms need to adapt to improve the operation and presentation of the legislative process for members and the public alike. We recommend that the necessary investment is made to deliver improvements to the integration and presentation of parliamentary data. (Paragraph 95)

Public understanding and engagement

21. It is essential for Parliament to communicate its scrutiny of legislation effectively to improve understanding of, and engagement with, the legislative process. A bill's passage through Parliament will inevitably have many technical aspects, but there are opportunities to inform and engage the public with the policy content of legislation. (Paragraph 102)
22. We recommend that the House of Lords takes a more proactive approach to promoting its work on legislative scrutiny. The most newsworthy issues—and therefore the issues that would benefit from a balanced and factual explanation—are likely to be those involving some controversy. We recognise that the House's communications staff may feel constrained in what they feel able to do in such circumstances. We suggest that establishing a more explicit line of accountability for the communications staff would assist them when engaging on controversial issues. We are aware that the Lords Liaison Committee has appointed a working group to explore how the House communicates its committee work; we look forward to its conclusions. (Paragraph 104)
23. The existing engagement mechanisms provide opportunities for the public and external organisations to give parliamentarians their views on legislation. These opportunities are more likely to be used by professional organisations,

as they tend to have greater knowledge of the law and the legislative process, more resources and more awareness of the opportunities to influence legislation. Parliament's engagement and outreach work has grown and improved significantly in recent years, and this is expected to continue to enable a more diverse range of voices to be heard. (Paragraph 110)

24. We reiterate our recommendation that pre-legislative scrutiny should be the norm rather than the exception and that it offers the most effective opportunity for the public and interested groups to influence bills. (Paragraph 111)
25. We emphasise that in the UK's representative democracy it will be Members of Parliament who determine the final content of any bill, and so any public engagement opportunities must set realistic expectations about potential influence. That said, we encourage greater public engagement in the legislative process and welcome consideration of ideas for new engagement mechanisms. (Paragraph 112)
26. Evidence-taking on bills has strengthened Parliament's scrutiny of bills. It has increased the knowledge of MPs serving on public bill committees and provided an opportunity for the public and external organisations to contribute directly to the legislative process. (Paragraph 120)
27. It is an oddity that for bills starting in the House of Lords there is no evidence-taking in either House. This should be addressed. We recommend that there should be a presumption that evidence is taken at the beginning of committee stage on bills starting in the Lords. There will be exceptions to the presumption of evidence-taking. For example, it might be dispensed with for short, technical bills, or bills which have been subject to pre-legislative scrutiny by a committee of one or both Houses. Procedures already exist in the Lords to allow for evidence-taking, however the Procedure Committee may wish to review them to ensure they are suited to more frequent use. (Paragraph 121)
28. If a Legislative Standards Committee is established, as we recommend, it would be well-placed to assess the value of evidence-taking on each bill starting in the Lords. (Paragraph 122)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Beith
 Baroness Corston
 Baroness Drake
 Lord Dunlop
 Lord Hunt of Wirral
 Lord Judge
 Lord MacGregor of Pulham Market
 Lord Morgan
 Lord Norton of Louth
 Lord Pannick
 Baroness Taylor of Bolton
 Lord Wallace of Tankerness

Declarations of interest

Lord Beith
Honorary Bencher of the Middle Temple

Baroness Corston
No relevant interests

Baroness Drake
No relevant interests

Lord Dunlop
No relevant interests

Lord Hunt of Wirral
Partner DAC Beachcroft LLP
Co-Chair, All Party Parliamentary Group on Legal and Constitutional Affairs

Lord Judge
Former Lord Chief Justice of England and Wales (2008–2013)

Lord MacGregor of Pulham Market
No relevant interests

Lord Morgan
No relevant interests

Lord Norton of Louth
No relevant interests

Lord Pannick
No relevant interests

Baroness Taylor of Bolton (Chairman)
No relevant interests

Lord Wallace of Tankerness
No relevant interests

A full list of members' interests can be found in the Register of Lords' Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

Professor Mark Elliott, Professor of Public Law at the University of Cambridge, and Professor Stephen Tierney, Professor of Constitutional Theory at the

University of Edinburgh, acted as specialist advisers for the inquiry. They both declared no relevant interests

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <https://www.parliament.uk/legislative-process-inquiry> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with * gave both oral evidence and written evidence. Those witnesses marked ** gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

The following list includes only the evidence taken for this part of the legislative process inquiry.

Oral evidence in chronological order

- | | | |
|----|---|----------------------------|
| * | Professor Meg Russell; Director, UCL Constitution Unit, University College London | QQ 151–160 |
| ** | Dr Ruth Fox, Director and Head of Research, Hansard Society | QQ 151–160 |
| * | Mr Daniel Gover, Research Fellow, Mile End Institute, Queen Mary University of London | QQ 151–160 |
| * | Professor Cristina Leston-Bandeira, Co-director, Centre for Democratic Engagement, University of Leeds; | QQ 161–167 |
| * | Dr Louise Thompson, Lecturer in British Politics, University of Surrey. | QQ 161–167 |
| ** | Sir David Beamish, Former Clerk of the Parliaments | QQ 168–175 |
| ** | Lord Lisvane, Former Clerk of the Commons | QQ 168–175 |
| ** | Daniel Greenberg, Former Parliamentary Counsel | QQ 176–182 |
| ** | The Rt Hon Lord Newby, Leader of Liberal Democrat Peers | QQ 183–192 |
| * | The Rt Hon Lord Hope of Craighead, Convenor of Crossbench Peers | QQ 183–192 |
| ** | Baroness Smith of Basildon, Shadow Leader of the House of Lords | QQ 193–201 |
| ** | Rt Hon Andrea Leadsom MP, Leader of the House of Commons | QQ 202–219 |
| ** | Rt Hon Baroness Evans of Bowes Park, Leader of the House of Lords | QQ 202–219 |

Alphabetical list of all witnesses

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| ** | Sir David Beamish, Former Clerk of the Parliaments
(QQ 168–175)
The Better Government Initiative | LEG0063 |
|----|--|-------------------------|

	The Chartered institute of Taxation	LEG0060
	Dr Ruth Dixon	LEG0055
**	Rt Hon Baroness Evans of Bowes Park, Leader of the House of Lords (QQ 202–219)	
**	Dr Ruth Fox, Director and Head of Research, Hansard Society (QQ 151–160)	
**	Daniel Greenberg, Former Parliamentary Counsel (QQ 176–182)	
*	Mr Daniel Gover (QQ 151–160)	LEG0061 LEG0056
**	The Rt Hon Lord Hope of Craighead, Convenor of the Crossbench Peers (QQ 183–192)	
	Professor Michael Kennny	LEG0056
	The Law Society of Scotland	LEG0064
**	Rt Hon Andrea Leadsom MP, Leader of the House of Commons (QQ 202–219)	
*	Professor Cristina Leston-Bandeira (QQ 161–167)	LEG0062 LEG0057
**	Lord Lisvane, Former Clerk of the Commons (QQ 168–175)	
**	The Rt Hon Lord Newby, Leader of Liberal Democrat Peers (QQ 183–192)	
*	Professor Meg Russell (QQ 151–160)	LEG0061
	Mr Mark Ryan	LEG0059
**	Baroness Smith of Basildon, Shadow Leader of the House of Lords (QQ 193–201)	
*	Dr Louise Thompson (QQ 161–167)	LEG0062 LEG0057 LEG0058
	Professor Helen Xanthaki	LEG0054

APPENDIX 3: CALL FOR EVIDENCE

The Constitution Committee is conducting a large-scale inquiry into the legislative process. This follows its major 2004 report on *Parliament and the Legislative Process*.¹³¹ The Committee is interested in how bills are prepared by Government and scrutinised in Parliament; whether and how outside organisations and the public are involved in the process; and how the legislative process is, or could be, affected by new technology and by the UK's withdrawal from the EU.

The inquiry began in October 2016 and will continue in this parliamentary session. It is split into four distinct parts:

- (1) Preparing legislation for introduction in Parliament;
- (2) The passage of legislation through Parliament;
- (3) The delegation of powers; and
- (4) The period after Royal Assent.

The Committee published its report on stage 1, preparing legislation for Parliament, in October 2017.¹³² The Committee took evidence on stage 3, the delegation of powers, between October 2016 and February 2017 and will report on it in the coming months.

The Committee is now seeking evidence on stage 2 of its inquiry: the passage of legislation through Parliament. The Committee is focusing on Parliament's scrutiny of bills and the use of parliamentary time for legislation. It will examine how bills are considered at each stage of the process, the use of parliamentary time for legislative scrutiny, and the quality of the explanatory materials that accompany bills. The inquiry will also explore the extent to which the public and stakeholders can get involved in the legislative process and the scope for new technologies to improve the scrutiny of legislation.

The Committee welcomes written submissions on any aspect of this topic, and particularly on the issues and questions set out below. Submissions need not address all the questions. We welcome contributions from all interested individuals and organisations.

Questions:

Parliamentary scrutiny processes

- How effectively does Parliament scrutinise bills at the various stages of the legislative process, in both the House of Commons and the House of Lords?
- To what extent does each House have a separate role in the legislative process? How well understood are these roles?
- What has been the impact of changes to the legislative process since 2004, such as the introduction in the House of Commons of public bill committees and the 'English votes for English laws' procedures?
- Should there be greater select committee involvement in legislative scrutiny?

131 Constitution Committee, *Parliament and the Legislative Process* (14th Report of Session 2003–04, HL Paper 173)

132 Constitution Committee, *The Legislative Process: Preparing Legislation for Parliament* (4th Report of Session 2017–19, HL Paper 27)

- To what extent does the UK's withdrawal from the European Union pose challenges for Parliament's scrutiny of bills?

Timetabling of legislative scrutiny

- Does the legislative process appropriately balance time spent considering bills in the Chamber of each House with time in public bill committee/ Grand Committee?
- Does the arrangement and timetabling of legislative business work effectively?
- What is the impact on the legislative process of having annual sessions of Parliament? What difference does a two-year session, such as 2010–12 and 2017–19, make?

Explanatory materials

- How useful are the explanatory materials accompanying bills for parliamentarians and the public? What could be done to improve the accessibility and understanding of legislation?
- How effective is Parliament's scrutiny of impact assessments and other Government documents accompanying legislation?

Public engagement

- To what extent, and how effectively, are the public and stakeholders involved in the scrutiny of legislation as it passes through Parliament?
- To what extent does stakeholder involvement prior to the introduction of a bill have an impact during the legislative process?
- What could be done to increase or improve engagement with the public and stakeholders?

Technology

- How might Parliament's website be improved to communicate the workings of the legislative process more effectively? Are there opportunities to display more clearly the way bills change through the process and the impact of proposed amendments at each stage?
- How can new technologies enhance the quality of bill scrutiny and understanding of the legislative process?