



In Focus

Publishing Statistics on the Time Spent on Parliamentary Proceedings on Each Part of an Act QSD on 18 January 2017

Lord Butler of Brockwell (Crossbench), a former Cabinet Secretary, has tabled a question for short debate to ask what steps the Government is planning to take to include statistics on the time spent on parliamentary proceedings on each part of an act in the explanatory notes on acts of parliament. A proposal along these lines was put forward by Daniel Greenberg, a former Parliamentary Counsel, in a paper published by the Centre for Policy Studies think tank in April 2016.¹ Daniel Greenberg argued that line-by-line scrutiny of legislation in both Houses had “become diluted to such a degree that it can no longer be described as taking place”, and as a result there were “often lengthy and significant parts of a bill that receive no detailed scrutiny at all at any point in its parliamentary passage”. To address this, he proposed that publishing reports about the limitations of scrutiny of primary legislation would draw attention to the problem and “give the Government a practical incentive to solve it”. He suggested that the following information should be published in respect of each bill, in both the explanatory notes issued when the bill arrived in the second House and in those published once it received royal assent:

- The number of hours spent in committee on each part or group of clauses
- The number of hours spent at other amendable stages
- The number of amendments tabled by the Government
- The number of amendments tabled by others, and the percentage of those amendments that were given substantive consideration
- A list of those clauses on which no substantive discussion took place in committee and at each other amendable stage (whether because of the descent of a programme motion knife or for other reasons).²

Currently, the House of Commons publishes [Sessional Returns](#) and the House of Lords publishes a [Statistics on Business and Membership](#) report at the end of each session. Both documents contain information about the length of time spent debating legislation in each House, including the total length of time spent on the floor of the House (and in Grand Committee in the Lords) on each parliamentary stage (eg combined time spent on all report stages). For bills subject to a programme order in the House of Commons, the *Sessional Returns* also detail for each bill how much time was actually spent on each stage in the House and in committee of the whole House, with a caveat that the times provided “may not always be exact” and that there may be a margin of error of up to fifteen minutes. The *Sessional Returns* also show how many public bill committee sessions took place on each bill, but not how long each session lasted.

A new format for explanatory notes was introduced at the beginning of the current Parliament, following a consultation exercise run by the Office of the Parliamentary Counsel.³ The Cabinet Office has stated that the new format is intended to be simpler, easier to navigate and, for the first time, to

provide an overview of a bill's extent and whether legislative consent mentions would be required from the devolved legislatures.⁴ This format does not include information about the time spent on every stage of parliamentary proceedings during the legislative process.

Arrangements for Allocating Time to Proceedings on Bills

Different arrangements apply in the two Houses of Parliament for the timetabling of proceedings on legislation. In the House of Commons, the majority of government bills are subject to programming.⁵ Programme orders provide a timetable for the conclusion of proceedings on a bill. They may specify by what date a stage should be completed, or how long is to be spent on a stage.⁶ They are normally agreed to after second reading, although they may be amended later, for example if the Opposition persuades the Government to provide more time.⁷ A programme order may contain 'knives', or deadlines relating to business on particular parts of the bill; when a 'knife' falls, only specified decisions may be taken, and it may not be possible to debate or decide on certain clauses or amendments.⁸ The amount of time spent on proceedings on bills in the House of Commons can also be regulated by closure of debate, an allocation of time motion ('guillotine') or a business of the House motion, although these alternatives are not regularly relied on since the advent of routine programming.⁹ Programming was introduced on a pilot basis in the Commons in the 1997–98 session, and permanent standing orders relating to programming have operated in the Commons since the beginning of the 2004–05 session.¹⁰

In the House of Lords, there is no formal equivalent to programming. Informal negotiations take place through the 'usual channels' on how much time to allocate to legislative business, but their deals are not set in stone and can be altered if the House deals with business more or less quickly than expected.¹¹ The Government Whips' Office notes that the number of sessions shown for a stage of a bill in the weekly *Forthcoming Business* document it publishes "represents the Government's assessment of reasonable time given the balance of bills and remaining days to the likely end of the session".¹² Where the usual channels agree with that assessment, it is marked with a † symbol in *Forthcoming Business*, but "progress remains in the hands of the House".

The time-limited nature of proceedings on bills in the House of Commons means that not all amendments and clauses are necessarily debated. Amendments are selected and grouped for debate by the chair of the public bill committee at committee stage (or the Chairman of Ways and Means if the bill is before a committee of the whole House) and by the Speaker at report stage.¹³ In the House of Lords, all the amendments that have been tabled may be debated (provided they are admissible in accordance with paragraph 8.55 of the [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#)). The Government Whips' Office produces suggested groupings of amendments, but these are informal and non-binding—any Member may speak to an amendment in its place on the marshalled list. As Meg Russell of the University College London Constitution Unit has noted, in theory Lords proceedings on bills could "continue interminably".¹⁴ Robert Rogers (Lord Lisvane, former Clerk of the House of Commons) and Rhodri Walters (former Reading Clerk of the House of Lords) have pointed out that in practice "filibustering is rare", as most Members realise the Lords' arrangements "could not long survive persistent abuse by any one Member or any one party".¹⁵

Robert Rogers and Rhodri Walters have made the point that "for most bills, there is pressure, both from the Opposition and from Government backbenchers, for more debating time than the Government is prepared to concede".¹⁶ They note that "although programming offers the prospect of a more effective use of time, it can do nothing to increase the total time available" or "reduce the pressure of the Government's legislative programme".¹⁷ They state that programming particularly attracts criticism "when the knives of a programme order fall and large parts of a bill, and many proposed amendments, are undebated (just as with a guillotine)". For example, in the 2013–14 session, when 26 bills were subject to programming, 20 groups of amendments went undebated this way.¹⁸

In 2009, the House of Commons Reform Committee—commonly known as the Wright Committee—found that the “single greatest cause of dissatisfaction which we have detected with the current scheduling of legislative business in the House arises from the handling of the report stage of government bills”, where a typical programme motion allowed around five hours for report stage, “the only opportunity for the House as a whole to engage with proposed legislation and debate and decide its principal provisions in any detail”.¹⁹ As result, “on many report stages several groups of amendments from opposition parties or backbencher amendments selected by the chair [...] are not even reached for debate, let alone a decision”.²⁰ The Wright Committee recommended the creation of a House Business Committee to act as “a forum for agreeing the length of time to be devoted to a report stage in order to fulfil the scrutiny function adequately” and to ensure “that there should be a presumption that no major group [of amendments] should go undebated”.²¹ The Government said in July 2015 that it had no intention of bringing forward proposals to establish a House Business Committee.²²

In 2013, the House of Commons Procedure Committee raised similar concerns that “on many report stages several groups of amendments, often containing significant government amendments, are not reached for debate and scrutiny, but instead pass the elected House undebated”.²³ The Procedure Committee proposed a package of measures revising the way report stage was organised to ensure the opportunity for at least some debate on all groups of amendments and new clauses/schedules tabled to a programmed bill. In April 2014, the Coalition Government agreed with a proposal to ensure amendments were tabled earlier, but rejected the Committee’s other proposals.²⁴

The House of Lords’ procedures typically allow for more time to be spent on scrutinising bills than in the Commons. Robert Rogers and Rhodri Walters calculated that between 50 and 60 percent of the total sitting hours in the Lords are devoted to bills in the Chamber in the Lords compared to one third in the Commons.²⁵ They also pointed out that at third reading in the Commons, the opposition frontbench often expresses “hopes that the House of Lords will deal in more detail with this or that provision that they feel has had inadequate scrutiny in the Commons”.²⁶ In a recent newspaper article, Lord Fowler, the Lord Speaker, observed that while “parts of some bills can escape proper attention” in the Commons, the Lords had “more time”.²⁷ He argued that “undramatic clause-by-clause examination is our bread-and-butter work”, and that it resulted in “better legislation”.

However, in his paper Daniel Greenberg argued that the informal timings agreed through the usual channels in the Lords had a similar effect to formal programming in the Commons and that “the length of new bills and the number of clauses they include is becoming so great that Parliament is unable to scrutinise them”.²⁸ He suggested that a bill of 300 clauses would require 30–45 days in committee in each House for a proper degree of scrutiny, which was “completely unrealistic” in both Houses. He therefore concluded that “if Parliament cannot find time to allow a sensible time-per-clause average for the scrutiny of lengthy bills, it must consider limiting the size of bills”. Similarly, the [Better Government Initiative](#) recently argued that the Government “should make every effort to restrict the legislative programme to a size that can realistically be considered by Parliament without automatic guillotining”.²⁹

In its inquiry in 2013 into ensuring standards in the quality of legislation, the House of Commons Political and Constitutional Reform Committee noted that “a concern of many of our witnesses was the increasing volume of legislation” and that “a number of witnesses questioned whether all of the legislation passed by Parliament each year was necessary”.³⁰ The Committee identified some standards it suggested could be applied to legislative proposals to “minimise the risk” of “bad quality legislation”.³¹ It recommended that a Code of Legislative Standards should be agreed between Parliament and Government, and that a Joint Legislative Standards Committee with an oversight role should be created.³² The Government said that it did not believe a Code of Legislative Standards or a Legislative Standards Committee was “necessary” or “would be effective” in improving legislation.³³ In the House of Lords, a [Leader’s Group on Working Practices](#) in 2011 and an informal cross-party group of backbench peers in 2010 had also both recommended the creation of a Legislative Standards Committee.³⁴

In a recent Lords debate on the volume of legislation, Lord Young of Cookham, then a Government Whip, said that the Parliamentary Business and Legislation Committee of Cabinet worked to ensure “not just that bills were in good shape but that the totality of bills in the programme was commensurate with the capacity of Parliament to scrutinise it”.³⁵ He said that the Government was “mindful” about the amount of legislation it brought forward, and stated that “the overall numbers have decreased under a Conservative Government”.³⁶

The House of Lords Constitution Committee is currently conducting an inquiry into the legislative process, one part of which will focus specifically on the passage of legislation through Parliament.³⁷ The Committee intends to take evidence on this topic in the 2017–18 parliamentary session.

¹ Daniel Greenberg, [Dangerous Trends in Modern Legislation... And How to Reverse Them](#), Centre for Policy Studies, April 2016.

² *ibid.*

³ Office of the Parliamentary Counsel, [Explanatory Notes Pilot: Office of the Parliamentary Counsel Response to Consultation](#), April 2015.

⁴ Cabinet Office, [Written Evidence to the Constitution Committee](#), 4 December 2016, LEG0010.

⁵ Cabinet Office, [Guide to Making Legislation](#), July 2015, p 181.

⁶ House of Commons Library, [Programming of Legislation—Recent Proposals](#), 20 June 2014.

⁷ *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 2011, 24th edition, p 468; and Robert Rogers and Rhodri Walters, *How Parliament Works*, 2015, p 180.

⁸ Robert Rogers and Rhodri Walters, *How Parliament Works*, 2015, p 393.

⁹ Office of the Parliamentary Counsel, [Programming of Bills](#), 4 July 2016, p 2.

¹⁰ House of Commons Library, [Programming of Legislation—Recent Proposals](#), 20 June 2014.

¹¹ Cabinet Office, [Guide to Making Legislation](#), July 2015, pp 226–7.

¹² Government Whips' Office, '[Forthcoming Business](#)', accessed 10 January 2017.

¹³ Robert Rogers and Rhodri Walters, *How Parliament Works*, 2015, pp 191, 196 and 198.

¹⁴ Meg Russell, *The Contemporary House of Lords—Westminster Bicameralism Revived*, 2013, p 133.

¹⁵ Robert Rogers and Rhodri Walters, *How Parliament Works*, 2015, p 208.

¹⁶ *ibid.*, p 179.

¹⁷ *ibid.*, p 180.

¹⁸ *ibid.*

¹⁹ House of Commons Reform Committee, [Rebuilding the House](#), 24 November 2009, HC 1117 of session 2008–9, p 35.

²⁰ *ibid.*, p 36.

²¹ *ibid.*, p 37.

²² House of Commons Library, [House Business Committee](#), 23 October 2015, p 3.

²³ House of Commons Procedure Committee, [Programming](#), 5 December 2013, HC 767 of session 2013–14, p 3.

²⁴ House of Commons Library, [Programming of Legislation—Recent Proposals](#), 20 June 2014, p 1.

²⁵ Robert Rogers and Rhodri Walters, *How Parliament Works*, 2015, p 206.

²⁶ *ibid.*, p 199.

²⁷ Norman Fowler, '[We Lords Are Not Here to Sabotage Brexit](#)', *Daily Telegraph*, 5 January 2017.

²⁸ Daniel Greenberg, [Dangerous Trends in Modern Legislation... And How to Reverse Them](#), Centre for Policy Studies, April 2016.

²⁹ Better Government Initiative, [Written Evidence from the Better Government Initiative to the House of Lords Constitution Committee Inquiry into the Legislative Process](#), October 2016.

³⁰ House of Commons Political and Constitutional Reform Committee, [Ensuring Standards in the Quality of Legislation](#), 20 May 2013, HC 85 of session 2013–14, pp 7–8.

³¹ *ibid.*, p 15.

³² *ibid.*, p 3.

³³ House of Commons Political and Constitutional Reform Committee, [Ensuring Standards in the Quality of Legislation: Government Response to the Committee's First Report of Session 2013–14](#), 25 July 2013, HC 611 of session 2013–14, pp 2 and 4.

³⁴ House of Lords Library, [House of Lords: Reform of Working Practices, 2000–12](#), 11 October 2012, pp 18 and 24.

³⁵ [HL Hansard, 8 September 2016, col 216GC.](#)

³⁶ [ibid., col 281GC.](#)

³⁷ House of Lords Constitution Committee, '[Constitution Committee Inquiry: The Legislative Process—Call for Evidence on Delegation of Powers](#)', 13 December 2016.

Library In Focus are compiled for the benefit of Members of the House of Lords and their personal staff, to provide impartial, politically balanced briefings on a selection of topical subjects. Authors are available to discuss the contents of the Notes with the Members and their staff but cannot advise members of the general public.

Any comments on In Focus should be sent to the Head of Research Services, House of Lords Library, London, SW1A 0PW or emailed to purvism@parliament.uk.