



Modernisation: Programming of Legislation

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Programming motions provide a timetable which indicates the amount of time provided for a bill to be considered in Committee and when the remaining stages of the bill will be taken.

Programming was introduced on an experimental basis in 1997-98. Since the beginning of the 2004-05 Session, permanent Standing Orders relating to programming have operated.

In its first report, in 1997, the Modernisation Committee recommended the programming of legislation. The House agreed to the Modernisation Committee's report and arrangements for the programming of bills were introduced – these required agreement to be reached by the usual channels.

Following a review of these arrangements in 2000, the Modernisation Committee proposed new Sessional Orders, which were agreed on 7 November 2000 and then subsequently revised on 28 June 2001. The Sessional Orders agreed on 28 June 2001 applied to Session 2001-02. They were renewed for subsequent Sessions on 29 October 2002 (for 2002-03) and on 6 November 2003 (for 2003-04).

During the 2003-04 Session, the Procedure Committee conducted a review of the Sessional Orders. In its response to the Committee's report, the Government recommended that programming should become permanent, and that the existing Sessional Orders should become Standing Orders of the House of Commons.

On 26 October 2004, the House agreed to the Government's proposal to introduce permanent Standing Orders on the programming of legislation.

This note describes these developments and the background to them in more detail. It then describes earlier proposals for the timetabling of legislation. Finally, it reviews some recent comments on the programming of legislation.

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A. The current position

1. Programming of bills – Standing Orders Nos 83A- 83I

On 26 October 2004, the House agreed to replace the Sessional Orders relating to the Programming of Bills with Standing Orders, by 261 votes to 173.¹ This decision followed a review of the operation of the Sessional Orders by the Procedure Committee. Whilst the Standing Orders broadly reflected the Sessional Orders, the Government did not accept all of the recommendations made by the Procedure Committee in its review (see below). In the debate, Peter Hain, the Leader of the House of Commons, outlined the Government's proposals:

We propose that the programming Sessional Orders be made permanent. There is little to be gained from continued annual debates on the matter. Programming is now an established part of our procedures and that should be reflected in our Standing Orders.

...

We acknowledge, however, that certain improvements to programming could be made. Perhaps most significantly, we propose to implement the Procedure Committee's recommendation that where everyone is content the Standing Committee should be able to make decisions to vary the programme without need for the Programming Sub-Committee to meet. I understand that there is some disappointment that the Government did not go further in agreeing to the Procedure Committee's other recommendations, but I can assure the House that they were given very careful consideration.²

The nine Standing Orders relating to the programming of bills cover:

SO No	Title
83A	Programme motions
83B	Programming committees
83C	Programming sub-committees
83D	Programme orders: conclusions of proceedings in public bill committee or in committee of the whole House
83E	Programme orders: conclusions of proceedings on consideration or third reading
83F	Programme orders: conclusions of proceedings on consideration of Lords amendments
83G	Programme orders: conclusions of proceedings on further messages from the Lords
83H	Programme orders: reasons committee
83I	Programme orders: supplementary provisions ³

¹ HC Deb 26 October 2004 c1391

² HC Deb 26 October 2004 c1312

³ House of Commons, *Standing Orders of the House of Commons – Public Business*, March 2007, HC 405 2006-07

Since agreeing to the make the programming arrangements permanent on 26 October 2004, some minor changes have been made to the Standing Orders.⁴

2. The Procedure Committee's 2004 review of the programming of legislation

a. The Committee's report

Following the debate on the Modernisation Committee's 2003 review of the programming of legislation, the Procedure Committee decided to hold its own inquiry into programming, as:

It was ... clear to us that considerable disquiet remained about the way the system operated—and how this differed from what had been initially intended.⁵

It took evidence from the Chairman of Ways and Means, Sir Alan Haselhurst, and two members of the Chairmen's Panel, from seven Members who had spoken in the House on the subject, and from the Leader, Deputy Leader and Shadow Leader of the House, and from the Clerk of the House and his colleagues.⁶

The Clerks described the background to programming and the current procedures. They noted that “the House has applied timetable motions (known as “guillotines”) to the stages of bills since 1887”.⁷ They suggested a number of questions that the committee might wish to consider and also proposed some “minor amendments to the Sessional Orders ... [to] clarify the wording in particular instances”.⁸

The Chairman of Ways and Means considered that programming would not work without the political will to make it succeed.⁹ In oral evidence, he, and his colleagues, re-emphasised the need for consensus.¹⁰

The Leader of the House told the Committee that programming was working well, but again emphasised the importance of consensus:

I think it is working, I think it is working well and I think it is being improved, not least as a result of the Modernisation Committee's report which recommended a series of changes and I will perhaps explain the progress on those. That does not mean that there is not always room for improvement and I think it is valuable to monitor it. When it works well, it is of benefit to the Government in terms of getting their business through, of benefit to the Opposition because it can focus on the key issues that concern members of the Opposition and it is of benefit to the public because they

⁴ On 2 December 2004, changes were made to the rules relating to the debating of programme motions in Standing Order No 83A [HC Deb 2 December 2004 c876]. On 26 January 2005, changes were made to reflect the House's sitting times [HC Deb 26 January 2005 cc327-386]. On 1 November 2006, changes were made to Standing Order Nos 83A, 83C and 83D consequential on the establishment of general committees [HC Deb 1 November 2006 cc304-407]

⁵ Procedure Committee, *Programming of Legislation*, 14 July 2004, HC 325 2003-04, para 8

⁶ *Ibid*, para 9

⁷ *Ibid*, Ev 1, para 2

⁸ *Ibid*, Ev 4, para 23

⁹ *Ibid*, Ev 21, para 14

¹⁰ *Ibid*, Ev21-22, Qq47-50

know which particular parts of the bill will be discussed on a particular day or at a particular time of the day and therefore can make arrangements in their diaries accordingly. As you will recall, in the report last year, the Modernisation Committee firmly endorsed the principle of programming, believing that some measures could be taken to improve the operation of the system, and of course programming came in as a result of a long history of independent reports which indicated that the House's business ought to be managed in a more systematic fashion. I think we made some considerable progress in this session to remedy some of the problems that the Modernisation Committee identified. We, for example, made renewed efforts to engage with the Opposition as a Government to try and achieve a consensual approach. One third of the programme motions moved this session have been approved without division, which indicates a greater consensus than there was before.¹¹

The Procedure Committee concluded that:

We believe that, if programming were used as originally envisaged by the Modernisation Committee, namely only when there is cross-party agreement, it would have the potential to be a more effective way of considering, and improving, legislation, and we regret that it has come to be seen as the same as the guillotine, though more widely applied.¹²

However, it went on to make a number of detailed recommendations about the operation of programming. In particular it suggested that initial programme motions should not be put to the House less than 48 hours after second reading, and that there should be subsequent flexibility in adjusting the "out-date" (the date by which a committee must complete its consideration of a bill). It also called for a report of any clauses and schedules that were not considered in committee to be available at a bill's report stage. The Committee provided the following summary of its report:

A system of programming of bills by agreement between the parties was introduced in 1997, but had broken down by 2000, and has been replaced by the current system governed by a set of sessional orders which do not require any cross-party agreement (although such agreement was envisaged by the Select Committee on Modernisation of the House of Commons in its 2000 report). Since then, the great majority of Government bills have been programmed. The system is the subject of a good deal of controversy, and programme motions are often divided on.

We recommend that programming motions should be decided without debate only where there is cross-party support; on other occasions the Government would, if necessary, have to justify such a motion in a one-hour debate. In exchange, we would expect parties to adopt a constructive approach to programming.

The initial programme motion for a bill should be taken not less than 48 hours after second reading, to allow the proposed date for the end of committee stage (the "out-date") to take account of the second reading debate and any representations made; there should also be the possibility of a vote (without debate) on an amendment to the programme motion before the vote on the motion itself.

¹¹ *Ibid*, Ev 72, Q231

¹² *Ibid*, para 18

In standing committees, chairmen already have the power to intervene and suggest a meeting of a programming sub-committee to change the programme; we believe that this is a suitable activity to assist with orderly consideration of the bill. If no member objects, the standing committee should be able to dispense with a meeting of the sub-committee and itself make any arrangements which the sub-committee could have proposed. We believe that it is usually best for programmes in standing committee to specify as few intermediate deadlines ("internal knives") as possible, and that chairmen should have discretion to postpone a deadline by up to 15 minutes when it would be for the general convenience of the committee (during which time amendments to a programme motion could be considered if necessary); and any deadline should be delayed by the length of any suspensions earlier in the same sitting caused by divisions in the House. If time is insufficient, longer afternoon sittings may sometimes be a reasonable alternative to a later out-date.

We do not recommend speech limits in standing committee, but expect all concerned to use good sense in deciding the length of their speeches.

For report stage and third reading, we recommend that the Government should table its amendments in good time and that the House should be provided with a factual statement of which clauses and schedules were not considered in committee because of the operation of the programme; and we believe that the House will usually want to spend most of the time available on report stage rather than third reading.

As with programming, we believe that the introduction of carry-over of bills to the next session, which has the potential to lessen bottlenecks in the legislative process, should proceed with cross-party agreement.¹³

b. *The Government's response and proposals for programming*

On 21 October 2004, the Procedure Committee published the Government's response to its report.¹⁴ Despite acknowledging both the Modernisation Committee's observation that programming was not operating perfectly and the Procedure Committee's concern about Members' disquiet over programming and its conclusion that programming was not working as originally envisaged, the Government noted that neither Committee was opposed to programming in principle and believed that programming should become permanent:

The Government—mindful that neither the Modernisation Committee nor the Procedure Committee has opposed the principle of programming—believes that it is time to make the sessional orders permanent. The Leader of the House intends to table a motion proposing that the sessional orders be made permanent Standing Orders of the House ...¹⁵

The then Chairman of the Procedure Committee, Sir Nicholas Winterton's, question to the Leader of the House during Business Questions, after the report had been published, suggested that he felt that the Government's response had not reflected the Committee's attempt to steer a more consensual course through the principles of programming:

¹³ *Ibid*, Summary, p3

¹⁴ Procedure Committee, *Programming of Legislation: The Government's Response to the Committee's Fourth Report*, 21 October 2004, HC 1169 2003-04

¹⁵ *Ibid*, para 2

On next week's debate on programming, which will include the subject of short speeches, does the right hon. Gentleman accept that, following what the hon. Member for North Cornwall (Mr. Tyler) said, the Committee is dominated by Labour Members and we agreed the report that we thought produced a balance on programming which would make it more acceptable to the House as a whole and all the political parties within it? Even if he will not change his mind at this stage on his response to it and the motions that he has tabled, will he guarantee that the matter will be decided on a genuinely free vote? The Procedure Committee, which I chair with great honour, is deeply concerned about the way in which the House can do the job that people elect it to do.¹⁶

In its response to the Procedure Committee's report, the Government said it was "very willing to engage with the Opposition to try and establish a cross-party approach to the programming of future bills", although it acknowledged the pressures the Opposition faced to oppose programming in principle in many instances.¹⁷

The Government opposed delaying consideration of programming motions: it argued that it would be flexible about "out-dates" and that programming sub-committees could recommend changes where necessary. It agreed to the Procedure Committee's recommendation to allow changes to standing committee programme motions without the need for the meeting of the programming sub-committee, in cases where all members of the standing committee agreed.¹⁸

The Government accepted that in practice it was better to avoid having too many internal knives (times specified for the completion of debate on specific parts of the bill by a committee). But it disagreed with allowing internal knives to be delayed by up to 15 minutes when debate on a subject was almost finished – it would prefer the timetable to be amended as outlined above. Neither did it see the need for "injury time" when committees had been disrupted by divisions in the House.¹⁹

The Government accepted the technical amendments to the Sessional Orders proposed by the Clerk of the House and recommended by the Procedure Committee. The motion tabled by the Leader of the House would permit these and other changes necessary to make the Sessional Orders a permanent Standing Order to be made.

The Office of the Leader of House produced an explanatory memorandum detailing the changes. The explanatory memorandum also showed how the Sessional Orders would be amended by the motion.

3. Debate on the Procedure Committee's report

During the debate on 26 October 2004, Peter Hain argued that the Sessional Orders should be made permanent. He acknowledged that there were ways in which improvements could

¹⁶ HC Deb 21 October 2004 c1030

¹⁷ Procedure Committee, *Programming of Legislation: The Government's Response to the Committee's Fourth Report*, 21 October 2004, HC 1169 2003-04, para 3

¹⁸ *Ibid*, paras 4-5

¹⁹ *Ibid*, paras 8-10

be made to programming and reported that a number of the recommendations made by the Procedure Committee had been accepted by the Government. He explained why other recommendations had not been accepted. Sir Nicholas Winteron, then the Chairman of the Procedure Committee, tabled five amendments that reflected recommendations made by the Committee but they were rejected by the House.

During the debate, Oliver Heald, the Conservative shadow Leader of the House, reflected on the case for and against programming. He pointed out that "Programming affects the scrutiny that this House and its Committees can exert over Government proposals". He recollected that programming had proceeded by consensus in the 1990s but argued that the consensus had since broken down, and the result was that "We lost patience with the system, agreed programming died and we ended up with routine guillotining". He acknowledged that the Government was entitled to get its legislation through "without inordinate delay" but he expressed concern that not all the significant aspects of bills were examined and debated under programming.²⁰

Gwyneth Dunwoody expressed concerns about the effect that the rules would have on "the role of every Back Bencher". Whilst acknowledging that there was never a golden era she contended that

... certain methods were open to Back Benchers to delay legislation, to inspect its true content or to negotiate with the Government of the day to secure changes that were tremendously important. Whichever way one looks at it, programming does away with that.

She went on to say that that would not provide sufficient reason to oppose programming if "it led to close examination of every part of legislation". But that was not the reality. She continued that:

We should make it absolutely clear that if we allow these measures to go permanently into our Standing Orders, we will be giving away the right not only to debate legislation properly, but to alter the way in which the House of Commons organises its business in future.²¹

She concluded her speech by saying that:

I do not necessarily want to go back to filibustering or to abandon programming, but I want something much more important. I want the Government to understand that we are not elected to the House simply to agree every bit of legislation that is put forward. Proposals are often unfinished, inadequate and insufficiently debated. I want the Government to agree that I came here to help produce good laws, not bad ones. The Procedure Committee has made some very mild suggestions; if the Government persist in not accepting them, I shall begin to have very grave doubts.²²

²⁰ HC Deb 24 October 2004 cc1318-1319

²¹ HC Deb 24 October 2004 c1329

²² HC Deb 24 October 2004 c1332

4. Recent developments

a. 2005-06

During the 2005-06 Session, the Modernisation Committee undertook an inquiry into *The Legislative Process*. Although it did not undertake a major review of programming, it felt that there was “one area where ... the operation of programming might be improved, and that is in the timing of the programme motion”. The Committee said that as the programming motion was considered immediately after second reading, “there is no opportunity to take account of what might be said during the second reading debate when determining the 'out-date' for the bill”.

It noted that the Procedure Committee, in 2004, and witnesses to its inquiry had suggested a delay between the second reading and considering the programme motion, “in order to take account of the second reading debate”; and that the Modernisation Committee had previously recommended that “the government should be sympathetic to requests from standing committees to extend the time available to consider the bill, and that the programming sub-committee should not normally make detailed proposals about the allocation of time in standing committee until several sittings of the standing committee had taken place”.

It recommended that:

... the initial Programme Motion moved after second reading should contain only a provision for committal and a provision that proceedings on the bill may be programmed. The out-date should be established by a second Programme Motion, moved one or two days later.²³

When the report was debated on 1 November 2006, the Government did not bring forward proposals to allow a second programme motion.²⁴

b. 2006-07

The Modernisation Committee also briefly considered the subject of programming in its report *Revitalising the Chamber: the role of the back bencher*. The Committee reported evidence from Members and from Professor Philip Cowley that argued that programming caused problems. But it then countered that “Programming has become much less prescriptive and is used to ensure full debate”, before presenting various statistics to show that there had been a reduction in the groups of amendments not reached or debated in committee and at report stage. It also cited a decrease in the number of divisions on programme motions, both in the Chamber and in committee, in arguing that “The Government works hard to make Programming consensual and opposition to Programming has decreased”. However, it accepted that “In using programming there is a potential

²³ Modernisation Committee, *The Legislative Process*, 7 September 2006, HC 1097 2005-06, paras 46-49

²⁴ HC Deb 1 November 2006 c304

tension between facilitating business and protecting the rights of opposition parties”, and then recommended that “the operation of programming is kept under review”.²⁵

The House debated the Report on 25 October 2007. Sir Nicholas Winterton argued that programming was unacceptable. He sought a commitment that the remaining stages of bills would not be programmed so that Members who wished it had the opportunity to speak.²⁶ In her winding-up speech, Helen Goodman, the Deputy Leader of the House, referred Sir Nicholas to paragraph 122 of the Report, “where the evidence shows that programming has not had the dire effects that he described”.²⁷ The House “welcomed” the Modernisation Committee’s report.²⁸

B. Timetabling of legislation since 1997

Before the establishment of the Modernisation Committee, in a short debate early in the 1997 Parliament on the modernisation of procedure and practice, the then Leader of the House, Ann Taylor, had said that the most important theme for a Modernisation Committee to examine was “the production of better legislation”. As part of that aim, she hoped that the proposed committee would look at programming.²⁹

1. The Modernisation Committee’s original recommendations

The first report of the Modernisation Committee, published in July 1997, dealt with the legislative process and set out various proposals on how the process could be improved.³⁰ One of the key aspects of that report concerned what it called the ‘programming of legislation’, which, in earlier parliamentary and other reports, had been known as ‘timetabling’.

In a memorandum to the Modernisation Committee, the Government indicated its support for the programming of legislation:

21. 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. If new ways of programming legislation effectively could be found then it might be possible for Opposition Members to be more constructive and for government ministers to be more receptive to constructive criticism.

...

²⁵ Modernisation Committee, *Revitalising the Chamber: the role of the back bencher*, 20 June 2007, HC 337 2006-07, paras 120-123

²⁶ HC Deb 25 October 2007 c497

²⁷ *Ibid*, c500

²⁸ *Ibid*, c502

²⁹ HC Deb 22 May 1997 Vol 294 c907

³⁰ Select Committee on Modernisation of the House of Commons, *The legislative process*, HC 190 1997-98, July 1997

24. The Committee may wish to explore the possibility of programming legislation through arrangements which are more formal than usual channels agreements but more flexible than the guillotine. The Government would seek to assist by indicating at the outset its preferred programme for the consideration of a Bill or draft Bill, including the proposed balance between proceedings on and off the floor.³¹

In its first report, the Committee set out its essential criteria for a reformed legislation process:

- (a) The Government of the day must be assured of getting its legislation through in reasonable time (providing it obtains the approval of the House).
- (b) The Opposition in particular and Members in general must have a full opportunity to discuss and seek to change provisions to which they attach importance.
- (c) All parts of a Bill must be properly considered.
- (d) The time and expertise of Members must be used to better effect.
- (e) The House as a whole, and its legislative committees in particular, must be given full and direct information on the meaning and effect of the proposed legislation from those most directly concerned, and full published explanations from the Government on the detailed provisions of its Bill.
- (f) Throughout the legislative process there must be greater accessibility to the public, and legislation should, so far as possible, be readily understandable and in plain English.
- (g) The legislative programme needs to be spread as evenly as possible throughout the session in both Houses.
- (h) There must be sufficient flexibility in any procedures to cope with, for example, emergency legislation.
- (i) Monitoring and, if necessary, amending legislation which has come into force should become a vital part of the role of Parliament.³²

It went on to recommend an approach for the timetabling of legislation that was “more formal than the usual channels but more flexible than the guillotine”.³³ Its recommended approach was:

... for a trial period, and in respect only of some bills, the House adopt an alternative approach as set out below -

- (i) The Bills to be selected for programming during this trial period should be agreed through the usual channels, and should include some Bills of real substance, including at least one Bill against which the Opposition proposes to divide on Second Reading.
- (ii) As soon as possible after formal presentation of such a Bill or its receipt from the House of Lords, discussions on a programme should take place between the usual channels, taking account of representations from all sides of the House, including backbenchers.
- (iii) In the light of these discussions the Government should move an amendable programme motion directly after Second Reading, which could include-
 - (a) the Committee option to be followed:

³¹ *Ibid*, appendix 1, paras 21-24

³² *Ibid*, para 14

³³ *Ibid*, para 89

- (b) the date by which the Bill should be reported from committee. The Committee itself would then decide how its time should be used to consider all sections of the bill within this timetable:
 - (c) the amount of time proposed for Report Stage and Third Reading:
 - (d) in defined circumstances, provisions for carry-over to a subsequent session.
- (iv) The questions necessary to dispose of proceedings on a programme motion shall be put not later than 45 minutes after the commencement of such proceedings.
 - (v) The question on any subsequent motion to modify the original programme should be put forthwith, provided that a motion proposing to reduce the time agreed in the original programme motion or to bring forward the date for reporting the bill from committee should be treated as a programme motion.
 - (vi) A Bill subject to the terms of a programme motion shall not subsequently be made subject to an allocation of time motion in respect of those stages referred to in the programme motion.
 - (vii) For any such Bill committed to a Standing Committee or Special Standing Committee a programming sub-committee would be appointed by the Committee of Selection, to be chaired by the Chairman of the Standing Committee.
 - (viii) Programming sub-committees would have power to meet before the first meeting of the Committee to agree a programme for consideration of the Bill within the limits agreed by the House.
 - (ix) In drawing up a programme the sub-committee should take into account the need for all parts of the Bill to receive proper consideration and the rights of the Opposition and other parties and Members to be given adequate time to discuss matters to which they attach particular importance.
 - (x) Sufficient time should also be allowed in the programme for consultation with those outside Parliament.
 - (xi) The conclusions of the sub-committee should be embodied in a committee programming motion to be moved at the beginning of the first sitting, and proceedings on that motion should be concluded no later than one hour after it is moved, together with any amendments selected: the question on any subsequent such motions should be put forthwith.
 - (xii) The Chairman of a Standing Committee on a Bill subject to a programme should be given discretion to extend the time for debate on a particular Question for up to one hour where it appears to him or her to be necessary to ensure that all parts of the Bill are properly considered, within the overall limits agreed by the House.³⁴

Unusually, the Chairmen's Panel issued a report commenting on the Modernisation Committee's proposals. It made its report for two reasons: first, because its experience in overseeing committee work was "directly relevant to the House's consideration of those proposals"; and second, because the proposals would "impinge directly on the role of the chairman of standing a committee, requiring the chairman to exercise judgement on a wider range of issues than hitherto".³⁵

The Chairmen's Panel did not think it appropriate to express a collective view on the merits or demerits of the proposals. Nevertheless, it welcomed the main thrust of the proposals – earlier involvement in the legislative process for the House, and improved organisation of

³⁴ *Ibid*

³⁵ Chairmen's Panel, The Modernisation Committee's proposals concerning the legislative process, November 1997, HC 296 1997-98, para 3

standing committee debates. It also welcomed the experimental nature of the proposals.³⁶ Its report concentrated on how the chairmen interpreted the additional or enhanced responsibilities that the Modernisation Committee's recommendations would give them.³⁷

The House debated the Modernisation Committee's first report on a motion

That this House approves the First Report of the Select Committee on Modernisation of the House of Commons: The Legislative Process (HC 190).³⁸

The motion was agreed to without a division,³⁹ and with little discussion on programming. The comments that were made were predominantly supportive. Helen Jackson said that "it is important properly to programme, by agreement through the usual channels, rather than to filibuster";⁴⁰ Phyllis Starkey considered programming of legislation to be "extremely important" but stressed that it should be tailored to each bill;⁴¹ and Bob Laxton argued that the House needed "to try to ensure some certainty in the legislative process and its timing".⁴² However, David Trimble expressed the concern that minor parties might get less time to express their views, and that the minority parties were not represented on the Modernisation Committee:

Far too many changes made in the past few decades have diminished the role of the House and of individual Members, both Government and Opposition. The right hon. Gentleman [Robert Sheldon] concluded that legislative programming would be necessary to remedy that problem. He suggested that the trade-off would be that the Government get their legislation and the Opposition get their time.

I must qualify that point: the official Opposition may get their time, but what about the minority parties? Their number has increased, and is likely to increase still more if the electoral changes favoured by Labour Members are introduced. Unless I am mistaken, the composition of the Modernisation Committee follows the usual pattern: Government and Conservative Members and two token Liberal Democrats--Liberal Democrats are usually tokens in such circumstances.⁴³

2. The Modernisation Committee's first review of programming

In 2000, the Modernisation Committee reviewed the operation of its 1997 recommendations on programming. It analysed the proceedings on the bills which had been programmed or guillotined and sought the views of both the Speaker and the Chairman of Ways and Means specifically to draw on their experience to date of the use of programme motions.⁴⁴

³⁶ *Ibid*, paras 4-5

³⁷ *Ibid*, paras 6-27

³⁸ HC Deb 13 November 1997 cc1061-1129

³⁹ *Ibid*, c1129

⁴⁰ *Ibid*, c1093

⁴¹ *Ibid*, c1104

⁴² *Ibid*, c1108

⁴³ *Ibid*, c1088

⁴⁴ Select Committee on Modernisation of the House of Commons, *Programming of Legislation and Timing of Votes*, 6 July 2000, HC 589 1999-2000, para 9

Its analysis confirmed that “even with programme motions the third of our aims – scrutiny of all parts of a bill – is hardest to deliver”.⁴⁵ Despite its acknowledgement of the deficiencies, the Modernisation Committee’s support for programming continued:

... it remains our firm judgement that, whilst voluntary informal agreements will continue to have a role to play, agreed programming of legislation can have a role to play in ensuring a more effective and efficient use of Parliamentary time and improvement in the scrutiny of legislation. Its benefits extend across the range of interests in Parliament and beyond:

- It allows the Government to know when it can obtain approval of each piece of its programme.
- It offers the Opposition the opportunity to determine the structure and focus of the debate.
- Backbenchers from all parties may be given more certainty of voting times.
- In the longer term legislation will be better drafted because of the pressure on the Government to reduce the number of amendments which are tabled at the last minute.⁴⁶

The Committee offered a critique of the argument that time was the Opposition’s main weapon in the scrutiny of legislation. It argued that it was ineffective in preventing legislation reaching the statute book; and that time was used most effectively when the Opposition focussed on issues, especially those were difficult for the Government.⁴⁷

The Committee underlined its argument that programming should benefit everyone, not just the Government:

Fundamental to our approach is the view that change is not a "zero sum" game in which gains by one participant are inevitably matched by losses by others. Properly constructed it should bring benefits for all participants in the legislative process, including those outside the House with legitimate interests, the Government, Opposition, and backbenchers in all parties.⁴⁸

The Modernisation Committee then recommended changes so that programming of legislation would better meet the criteria it set in 1997. It recommended (only the Committee’s emboldened text is shown):

18. There should be discussions at the earliest possible stage of the Government’s legislative proposals as a whole. We propose therefore that the Government should begin informal talks with all parties just after the Queen’s Speech. ...

19. The House should also commission new Sessional Orders to provide a framework which facilitates all the decisions which need to be made when any motion is tabled to structure debate. These Sessional Orders would be designed to be capable of being applied to a particular bill by a motion or motions specific to that bill.

⁴⁵ *Ibid*, para 12

⁴⁶ *Ibid*, para 13

⁴⁷ *Ibid*, paras 14-15

⁴⁸ *Ibid*, para 16

...

22. Once the bill was committed to a Standing Committee a designated Programming Sub-committee, consisting of the Chairman of the Committee and both frontbench and backbench members of the Committee, should meet as necessary to consider the Committee's programme. ... The Committee itself could give an indication of the length of time it considered appropriate for remaining stages.⁴⁹

Sir George Young tabled a minority report, which the Committee rejected in its consideration of its report on *Programming of Legislation and Timing of Votes*. On the programming of legislation, Sir George argued, in his summary, that:

The proposals on the programming of legislation do not recognise that the Government has a role to play in improving the operation of the House by reducing the sheer volume of often badly-drafted legislation. Instead of this, they promote an acceleration of the current process, making it easier for Government to get its legislative programme through the House and, in so doing, lessen the prospect of adequate scrutiny and making the constitutional duty of Opposition more difficult. We make some proposals of our own which are more in keeping with the House's traditions of evolutionary change.⁵⁰

He proposed an alternative approach to timetabling bills, that involved elements of the Modernisation Committee's proposed Sessional Orders and greater openness in the way in which the 'usual channels' had previously agreed timetables:

30. We believe, as an alternative, that the Opposition should continue to agree programme motions for the remaining stages of controversial bills, as with the Local Government Bill [Lords] on July 4th and 5th, and the Transport Bill last month. This can ensure that debates on the important issues take place in prime time and give the House more experience of agreed programme motions.

31. We have no objection to a Standing Committee Business Sub-committee deciding how a Standing Committee stage of a Bill should be organised, if it sets out to ensure that all parts of the bill are able to be considered.

32. We also suggest that, where agreements on progress of the business of the House are arrived at through the usual channels, these should be more widely known and at the earliest possible moment. This will bring benefit both to those inside and outside the House, and keep the flexibility that these arrangements have over the rigidity of a time-table motion.⁵¹

The Modernisation Committee's report was agreed without the support of the Conservative Members of the Committee.⁵²

The House debated the Modernisation Committee's report, *Programming of Legislation and Timing of Votes*, and a motion to introduce a series of new Sessional Orders to give effect to

⁴⁹ *Ibid*, paras 18, 19 and 22

⁵⁰ *Ibid*, Proceedings of the Committee relating to the Report, Sir George Young's draft report, para 5

⁵¹ *Ibid*, Proceedings of the Committee relating to the Report, Sir George Young's draft report, paras 30-32

⁵² *Ibid*, Proceedings of the Committee relating to the Report

its recommendations (and a motion to introduce a Sessional Order to allow deferred divisions) on 7 November 2000.⁵³ The arguments in the debate reflected those in the Committee. Margaret Beckett, then the Leader of the House, said that the effect of programming would be “a proper programme for debating all legislation that is brought before [the House]”.⁵⁴ However, Angela Browning, who had recently been appointed Shadow Leader of the House, opened her speech by saying:

I am a new member of the Modernisation Committee and I begin by repeating that any proposal it makes should seek to strengthen the House and its Members in order to enable them to hold the Government of the day to account, yet the proposals on the Order Paper tonight would not strengthen Parliament--they would weaken it. They would give the Government more power to get their business through more quickly. I shall oppose both motions tonight because they fail that crucial test.⁵⁵

Although there was a free vote on the Labour side,⁵⁶ the House divided almost along party lines with the Conservatives and a few Liberal Democrats and Labour Members opposing the new Sessional Orders, whilst the Labour Party and several Liberal Democrats supported them. The House agreed to introduce the Sessional Orders, for the Session 2000-01, by 296 votes to 137.⁵⁷

3. The Modernisation Committee’s second review of programming

Towards the end of the 2000-01 Session, the Modernisation Committee published a review of the operation of the Sessional Orders.⁵⁸ The Committee recommended a series of changes to the Sessional Orders:

- In the interests of transparency the date, by which each bill should be reported from the standing committee, should be made known to the House during the debate on second reading by a motion to be taken forthwith.
- “The Programming Sub-committee should enable amendments and all parts of the bill to be debated by the date the bill is due to be reported from the standing committee. If during the committee stage the Programming Sub-committee believed the out date announced by the Government was impracticable, for reasons which were not apparent at second reading, it should be able to recommend an out date which was later than the one which had been announced. If the Government wished to change the out date it would be able to table an amendable motion to specify a new date which could be debated for up to 45 minutes”.
- “At the conclusion of the committee stage the Programming Sub-committee should give guidance on the time required and its allocation to cover the issues which were likely to be raised at the report stage and the amount of time needed for report and

⁵³ HC Deb 7 November 2000 cc209-288

⁵⁴ *Ibid*, c214

⁵⁵ *Ibid*, cc225-226

⁵⁶ *Ibid*, c217

⁵⁷ *Ibid*, c276

⁵⁸ Select Committee on the Modernisation of the House of Commons, *Programming of Legislation*, 2 April 2001, HC 382 2000-01

third reading. We believe the Programming Sub-committee's advice should normally be accepted by the House and the Government, but if that is not the case the Government should be able to table an amendable motion which could be debated for up to 45 minutes".⁵⁹

Angela Browning and Richard Shepherd submitted a memorandum to the Modernisation Committee, which expressed concern about the operation of the Sessional Orders:

As many feared, the Sessional Order has increased the power of the Executive over the timetable of bills in Standing Committee and denied the House the ability to cover shortfalls on consideration.⁶⁰

They argued that programming legislation had not benefited everyone in the House as it had been intended:

We reject the view that it improves the 'terms of trade' for everyone. It is clearly to the disadvantage of the Official Opposition, to the expressed disadvantage of backbenchers and minorities and to the balance between the majority and the minority within the House. It has strengthened the Government's control over procedures with no discernible concession to the Opposition. It is true that the Government will get greater certainty for this legislative timetable. The proposition that Opposition parties and backbenchers will get greater opportunities to debate and vote on the issues of most concern to them simply has not been borne out by experience in this Session of the experiment of systematic guillotining of all bills.⁶¹

Richard Shepherd went on to vote against the Modernisation Committee making its report to the House.⁶²

Following the General Election, on 28 June 2001, the House debated the Modernisation Committee's report and a motion to approve the Sessional Orders on programming (and those on deferred divisions). A full day's debate was allowed, and at the end of the debate the motion to approve the Sessional Orders was agreed by 265 votes to 125.⁶³ The Sessional Orders differed from those agreed on 7 November 2000, to reflect the changes proposed by the Modernisation Committee. However, they remained experimental, Robin Cook, the Leader of the House promised that they would be reviewed at the end of the Session.⁶⁴

4. Programming legislation – an element of a Reform Programme for Modernisation

The next review of the programming of legislation took place within the Modernisation Committee's detailed report *Modernisation of the House of Commons: A Reform*

⁵⁹ *Ibid*, paras 4-6

⁶⁰ *Ibid*, Appendix – Memorandum from Mrs Angela Browning MP and Mr Richard Shepherd MP

⁶¹ *Ibid*, Appendix – Memorandum from Mrs Angela Browning MP and Mr Richard Shepherd MP

⁶² *Ibid*, Proceedings of the Committee Relating to the Report

⁶³ HC Deb 28 June 2001 cc812-878

⁶⁴ *Ibid* c819

Programme.⁶⁵ The Committee's inquiry followed the submission of a memorandum, *Modernisation of the House of Commons: A Reform Programme for Consultation*,⁶⁶ by Robin Cook, the then Leader of the House. In his memorandum, Mr Cook said:

Programming Bills has made the hours of scrutiny more predictable, and has enabled the House, including Government backbenchers to focus on the main issues for debate.⁶⁷

In its report, the Modernisation Committee considered “the future of programming”. It noted that the Chairman of Ways and Means submitted a memorandum which had set out how programme motions had worked in practice.⁶⁸ He made the following assessment:

22. If the basic idea behind the concept of programming has been to achieve balanced consideration of legislation, progress to date can frankly and brutally be described as nil. The impartial observer, comparing the situation now with the situation 10 years ago, would be bound to ask what had changed. Except by chance or where an unusual degree of cordiality has existed, bills are scrutinised no more comprehensively than hitherto. In its supposed main purpose programming itself has made not an iota of difference. What has happened as a result of recent changes is that the Government gets its legislation with less delay and Members go home earlier. It would be hard to claim on this evidence that scrutiny has become more rigorous.

23. In truth discussion of this subject over the years has been mixed with a liberal measure of hokum. It is rare for a Government which commands a majority in the House of Commons not to be able to obtain its legislation within the bounds of a normal session and usually by the dates it has set (although not always published). If delay is the Opposition's main weapon, the evidence of history shows it to be a pretty ineffective instrument. In general a Government is entitled to get its legislative programme through the House, but only after justification in the face of challenge and scrutiny from the Opposition and, sometimes, backbench sources. Equally an Opposition cannot routinely expect to defeat bills, but it is entitled to have an adequacy of time to test them in debate.

24. There is little difference between a programme and a guillotine if there is no shred of agreement between the two sides of the House. Programming without consensus (reluctant or otherwise) could be argued to be meaningless. If at the same time there has been no increase in the proportion of a bill which actually receives detailed scrutiny, the benefits of the previous deliberations of the Modernisation Committee appear extremely meagre when measured against stated purpose.⁶⁹

⁶⁵ Select Committee on Modernisation of the House of Commons, *Modernisation of the House of Commons: A Reform Programme*, 5 September 2002, HC 1168 2001-02

⁶⁶ Select Committee on Modernisation of the House of Commons, *Modernisation of the House of Commons: A Reform Programme for Consultation*, Memorandum submitted by the Leader of the House of Commons, 12 December 2001, HC 440 2001-02

⁶⁷ *Ibid*, para 8

⁶⁸ Select Committee on Modernisation of the House of Commons, *Modernisation of the House of Commons: A Reform Programme*, 5 September 2002, HC 1168 2001-02, para 46

⁶⁹ *Ibid*, Memorandum submitted by the Chairman of Ways and Means, Ev 50-54

The Committee noted that the initial broad agreement for programming had given way to “a process secured on a majority vote”.⁷⁰ However, the Committee maintained that a consensus was needed for programming to work, concluding that “These though are matters of political culture. They cannot be resolved by amending the rules of procedure”.⁷¹ It hoped that the introduction of a procedure to allow the carry-over of bills from one Session of Parliament to the next would be a means to achieving that consensus:

Fortunately the introduction of carry-over for Bills that are published after Easter will reduce some of the congestion in the parliamentary timetable. **We recommend that if carry-over is adopted by the House the longer timetable which it will permit should be used to provide more flexibility in programming motions. We further recommend that if the Government demonstrates this additional flexibility in programme motions, the Opposition should be willing to engage constructively in agreeing to such motions.**⁷²

The Modernisation Committee proposed no changes to the Sessional Orders agreed in June 2001, and undertook to keep them under review.⁷³

During the debate on the Modernisation Committee’s report, few Members dwelt on the issue of programming. Angela Browning expressed concerns about the way in which programming was being justified:

I wish to move on to matters in which I was involved in a previous incarnation that are before us again tonight: guillotines, programme motions and deferred voting. I must tell the Leader of the House that I am very concerned to hear flexibility in programme motions used as a bargaining chip. I stood at the Dispatch Box opposite the right hon. Member for Derby, South (Margaret Beckett) when she forced programme motions and deferred voting on the House, and my clear understanding was that there would be flexibility.

We were given many assurances—they are all in the record of the House—and the Government promised in introducing those proposals that there would be automatic flexibility and that they would listen to the official Opposition in arranging programme motions for each Bill. So it is a matter of concern that, somehow, that flexibility is promised only if others are prepared to go along with other proposals before the House tonight, and I ask the Leader of the House to reflect very seriously on that. I shall regard it as a broken promise if the promise that he is now making, which was not honoured by his predecessor, is used as a bargaining chip for other matters.⁷⁴

From the Labour back benches, Gwyneth Dunwoody was also critical of timetabling, which she considered limited “the opportunity of the Opposition to comment on legislation in an effective way”. She left the question “who benefits from the changes? Is it the House of Commons?” hanging in the air.⁷⁵

⁷⁰ *Ibid*, para 47

⁷¹ *Ibid*, para 48

⁷² *Ibid*, para 49

⁷³ *Ibid*, para 50

⁷⁴ *Ibid* c750

⁷⁵ *Ibid* c757

In his winding-up speech for the Opposition, Eric Forth, then the Shadow Leader of the House, highlighted Angela Browning's comments and argued:

... We have gone badly wrong with the systematic timetabling or programming of Bills. Many Members have argued that one of our prime duties is the scrutiny of legislation. The Conservatives contend—I think I speak for most, if not all, of my colleagues in this—that the Government's ruthless approach to restricting the time available for the scrutiny of Bills both in Standing Committee and on Report has diminished our effectiveness as a House of Commons and the opportunities that we as Members of Parliament have properly to scrutinise legislation. That is why I will ask my hon. Friends to vote against the motion to validate systematic timetabling of Bills. It has ill served the House as a legislature and we should reconsider it.⁷⁶

However, the House divided (Ayes 309, Noes 153) on the motion:

That Orders A to I relating to the Programming of Bills, made by the House on 28th June 2001, shall continue to have effect in the next session of Parliament.⁷⁷

5. The Modernisation Committee's 2003 review of the programming of legislation

In 2003, the Modernisation Committee reviewed the development of programming bills since its 1997 report.⁷⁸ The Committee accepted that the system was not operating perfectly:

While we endorse the continued use of programme motions, governed by the Sessional Orders, we believe that some measures could be taken to improve the operation of the system.⁷⁹

The Committee discussed the benefits and drawbacks of programming and provided a good and a bad example of programming. It concluded that it would keep the operation of the Sessional Orders under review.⁸⁰

It then outlined the measures that it believed could improve the operation of the system. It described the responsibilities of both the Government and the Opposition in the operation of timetabling, and then went on to urge the Government to take account of any timetable in submitting amendments and to avoid delays between the end of the Committee stage and subsequent stages of a Bill. It recommended that timetabling should be kept under review throughout a Bill's progress and that more time may need to be allocated for the report stage of large and complex bills.⁸¹

Evidence received from Sir Alan Haselhurst, the Chairman of Ways and Means, and the publication of a minority report, tabled by Richard Shepherd, indicated that programming

⁷⁶ *Ibid* c787

⁷⁷ HC Deb 29 October 2002 c839

⁷⁸ Select Committee on Modernisation of the House of Commons, *Programming of Bills*, 3 November 2003, HC 1222 2002-03

⁷⁹ *Ibid*, para 10

⁸⁰ *Ibid*, paras 12-27

⁸¹ *Ibid*, paras 28-34

remained a contentious issue. Sir Alan, after consulting with members of the Chairman's Panel, submitted the following review of programming in the current session:

In general the process is still attended by recrimination. This does not appear to have been in any way dissipated by occasional concessions of extra time by the Government. On the negative side I have noted that ministers, whether in the House or standing committee, often have no regard to programmes, making speeches which are wholly out of proportion to the allocated time available. This is especially aggravating to other potential contributors when time for debate in the chamber has been further foreshortened by statements. Equally it has to be said that Opposition members sometimes show no appreciation of time, offering lengthy speeches on one group of amendments which deny debate on others. It should also be noted that programmed business in standing committees can be adversely affected by divisions in the House.

As I noted in my previous memorandum, the Committee has set out to achieve "a process which is more open and formal than the usual channels but is equally less rigid and structured than a Legislative Business Committee". We are currently well short of realising this aim.⁸²

Richard Shepherd's minority report concluded that:

The efficient working of the House is dependent on a degree of tolerance and forbearance by the majority towards Opposition and minority opinion. The present Sessional Order, brought in contrary to the expressed principled opposition of the Opposition and minorities, has denied the House its central role of properly examining Government legislation. We are concerned that if the majority does not permit proper scrutiny of its bills the relevance of Parliament to the citizen will continue to decline.⁸³

The minority report recommended that:

The Government should revert to the use of Standing Orders 82 and 83 which provide for both a Business Committee and an allocation of time to bills where it finds that delay in the scrutiny of bills by the House is unreasonable.⁸⁴

The Modernisation Committee's 2003 review was debated on 6 November 2003. Peter Hain, the Leader of the House, summarised the Committee's assessment of the programming of bills:

⁸² *Ibid*, pp Ev 1-Ev 2. Sir Alan Haselhurst's previous memorandum was published with the Committee's previous report, Select Committee on Modernisation of the House of Commons, *Modernisation of the House of Commons: A Reform Programme* HC 1168-II 2001-02, pp Ev 50–Ev 54

⁸³ *Ibid*, p13

⁸⁴ *Ibid*, p13

... We accept that the programming of parliamentary business does not always work as well as we might wish, but properly enacted, programming is a positive development, allowing more effective scrutiny of legislation. The notion that the scrutiny of Bills should be subject to a parliamentary timetable has been a staple recommendation of parliamentary and independent reports for the past 20 years. In 1985, the Procedure Committee recommended that Bills be timetabled. In 1992, the Jopling Committee reiterated that proposal and in the same year the independent Hansard Society Commission on the Legislative Process regarded it as a central feature of any reforms to improve scrutiny. And in 1997, the Modernisation Committee's first report highlighted the importance of programming legislation, stating that other proposals for improving the legislative process—such as the scrutiny of draft Bills—could not be seen in isolation from the legislative timetable.⁸⁵

Eric Forth, the then Shadow Leader of the House remained critical of programming. He argued that:

... The entire purpose of programming is precisely to curtail debate and to facilitate the Government's legislation.

I say that with some confidence because it is half hinted at, or half admitted, in the report that the Government believe that at the time of Second Reading—the in-principle debate on a Bill—they can foretell how much time a Standing Committee will require to consider a Bill. That indicates that they have no wish to allow the Committee to deliberate properly or even to decide how much time it should take. Before the process even starts, the Government say, "We think the Bill should take three weeks." How can they possibly know that about Bills with a large number of clauses and schedules and many complexities?⁸⁶

Later in the debate, Sir George Young pointed out that programming failed to meet three of the four criteria that the Modernisation Committee believed it should achieve.⁸⁷

Paul Tyler, the Liberal Democrat's Shadow Leader of the House, considered that programming had not worked. However, he supported the principle of programming and wanted to ensure that the procedure worked better.⁸⁸ Mark Fisher echoed Paul Tyler and suggested that rather than prescribing the committee's timetable immediately after the second reading of the bill a standing committee should determine how much time it needed complete its consideration of a bill.⁸⁹

Richard Shepherd, whose minority report was mentioned above, reiterated his criticisms in the Chamber.⁹⁰

In summing up for the Opposition, David Cameron told the House that he opposed programming for three reasons. Firstly, he argued that "routine programming should not be necessary"; secondly, that "current system is simply not working"; and thirdly, that the

⁸⁵ HC Deb 6 November 2003 c949

⁸⁶ *Ibid*, c956

⁸⁷ *Ibid*, c976

⁸⁸ *Ibid*, c962

⁸⁹ *Ibid*, c973; c965

⁹⁰ *Ibid*, c979

evidence from the Chairman of Ways and Means indicated that the system was not working.⁹¹ However, he was not completely dismissive of the concept of programming: he called for more flexibility – not all bills should be programmed; when bills were programmed, consideration should be given to the timetable between second reading and the committee stage and the committee should have greater control over its timetable; and for debateable programme motions.⁹²

Phil Woolas, the Deputy Leader of House, argued that the Modernisation Committee's report was "helpful in setting out how we can improve programming for our benefit in the House". He continued that it was on that basis that the motion, that would continue existing practice, had been put before the House.⁹³

On a division, the House agreed that the Orders relating to the Programming of Bills, originally made on 28 June 2001, should continue to have effect in 2003-04 Session, by 232 votes to 87.⁹⁴

C. Earlier proposals for the timetabling of legislation

1. Introduction

The problem of ensuring that time was available to a Government to secure its legislative programme is not new, as the then Clerk of the House acknowledged in 1908:

Meanwhile the main problems of parliamentary procedure under existing conditions are two: on the one hand, how to find time within limited parliamentary hours for disposing of the growing mass of business which devolves on the Government; and on the other hand, how to reconcile the legitimate demands of the Government with the legitimate rights of the minority, the despatch of business with the duties of Parliament as a grand inquest of the nation at which all public questions of real importance find opportunity for adequate discussion. It is the difficulty and urgency of these problems that has brought the subject of parliamentary procedure so often to the front since 1832.⁹⁵

A number of approaches to limit the time required on the floor of the House have developed. In 1882, standing committees were established for the first time, one on law, justice and legal procedure, the other on trade, manufactures and shipping, and a few bills were considered by them. In 1906, four lettered committees replaced the previous two.⁹⁶ And as noted above, "guillotine" motions were first used in 1887.

Information on the number of guillotine and programme motions from 1946-47 to 2001-02 is available in the appendix of HCIO Factsheet No. 10, which is entitled *Programming of*

⁹¹ *Ibid*, cc983-984

⁹² *Ibid*, c985

⁹³ *Ibid*, c990

⁹⁴ *Ibid*, cc993-996

⁹⁵ J Redlich, *The Procedure of the House of Commons*, 1908, preface by Sir Courtney Ilbert, Clerk of the House, p xxi.

⁹⁶ Further details on the development of Standing Committees are given in the House of Commons Information Office Factsheet L6, *Standing Committees*, <http://www.parliament.uk/documents/upload/l06.pdf>

Government Bills, and is available on the internet.⁹⁷ An Information List (No 20) entitled *Allocation of Time/Programme Motions since 1992* is available on request. Details of programme motions are also given in the *Sessional Return*.

2. Timetabling: Procedure Committee proposals in the 1980s

The Procedure Committee reported on public bill procedure in 1985; it noted that change to timetabling arrangements was the reform most strongly and frequently advocated. Its recommendations were:

(9) Timetables on controversial bills should be introduced much earlier than at present. To this end there should be a Legislative Business Committee (LBC) of thirteen Members appointed by the Committee of Selection (paragraph 36(a)).

(10) The LBC should consider all Government Bills committed to a Standing Committee. If it considers that a bill is likely to require more than twenty five hours in standing committee the LBC should recommend a maximum number of hours for consideration of the bill by the standing committee (paragraph 36(b)).

(11) Such recommendations from the LBC should be implemented without debate (paragraph 36(b)).

(12) Business Sub-Committees, nominated by the Committee of Selection from the Members of the standing committee and larger than at present, should lay down the detailed allocation of time within the total time proposed by the LBC (paragraph 36(c)).

(13) The LBC should be able to make revised proposals to take account of new factors (paragraph 39).

(14) Present timetabling procedures should continue to apply in respect of any bill in committee of the whole House or not previously timetabled by the LBC (paragraph 43).

(15) Where, however, a bill has already been timetabled by the LBC and where there appears to be no informal agreement about the length of time to be given for the remaining stages the LBC should be free to propose a timetable for these stages (including consideration of Lords Amendments). The motion to agree with a report from the LBC in these circumstances should be decided without debate (paragraph 44).

(16) Proceedings in standing committees should not continue beyond 10pm (paragraph 45).⁹⁸

When the House debated the Procedure Committee's proposals, as part of a wider package of procedural changes, on 27 February 1986, the Leader of the House, John Biffen, was clearly sceptical of the report's rationale for its timetabling plan.⁹⁹ While sharing the

⁹⁷ See: http://www.parliament.uk/parliamentary_publications_and_archives/factsheets/p10.cfm

⁹⁸ Procedure Committee, *Public bill procedure*, 2nd report of 1984-85, HC 49, 1985, chap III, para 46

⁹⁹ HC Deb 27 February 1986 Vol 92 cc1083-1136

Committee's concern that legislation be fully and carefully considered, he did not agree with their view that delay was not a particularly potent weapon of opposition, and believed that the scheme would be advantageous to governments.¹⁰⁰

3. Timetabling: Sittings of the House ("Jopling") Committee and after

The Select Committee on Sittings of the House, chaired by the former Conservative Government Chief Whip, Michael Jopling, was appointed in July 1991 to look at a number of issues on the order and timing of sittings and business.¹⁰¹ The Committee reported in February 1992,¹⁰² allowing the 1987 Parliament in its final weeks to have an opportunity of expressing its view on these matters. The House did so on 2 March 1992, shortly before the dissolution,¹⁰³ and the new Parliament returned to the subject in July 1992.¹⁰⁴ However agreement on substantive progress was not made until the end of 1994, when a package of changes, to be implemented (many by sessional order) as an experiment for the remainder of the 1994-95 Session, was agreed in December 1994.¹⁰⁵ Following a review of the experiment by the Procedure Committee, the package was made 'permanent' (in some cases by incorporation into Standing Orders) in November 1995.¹⁰⁶

Timetabling of bills was an important part of the Jopling plan. The Committee reviewed the earlier suggestions of the Procedure Committee, and made its own proposals:

67. The evidence given to us on timetabling of bills was almost without exception in favour of its more general use. [.....]. The use of timetables should be a normal part of the way the House proceeds about its business.¹⁰⁷

68. The weight of opinion is probably in favour of the greater use of timetables for public legislation. The arguments in favour of the proper scrutiny of all parts of a bill are compelling; and timetables applied from an early stage after second reading are probably the best way to avoid the capricious effects of a guillotine being imposed at a later stage. On the other hand timetables on all bills would tilt the balance of advantage in favour of the Government and in spite of the best intentions in arranging timetables important clauses and amendments will still fail to be debated. There is moreover always a danger that the Government will be tempted to use the time saved by timetabling to introduce more legislation. This we would deplore.

69. On balance we are persuaded that timetabling should be introduced after second reading for all Government bills which are committed to a standing committee. [.....] We recommend that the House should take steps to apply timetable provisions to all

¹⁰⁰ *Ibid* c1087

¹⁰¹ HC Deb 9 July 1991 Vol 194 cc893-920. On Jopling generally see the series of Research Papers on the report and its implementation: Research Note 92/69, *Sittings of the House: the Jopling Report*, 6 July 1992; Research Paper 94/96, *Sittings reform and the Jopling Report*, 8 September 1994; Research Paper 95/6, *Implementing Jopling: the 1994-95 sittings reform*, 17 January 1995, and Research Paper 95/108, *Making Jopling permanent: the 1994-95 sittings experiment*, 1. November 1995.

¹⁰² HC 20 1991-92, February 1992, 2 vols ('Jopling Report')

¹⁰³ HC Deb 2 March 1992 Vol 205 cc74-118

¹⁰⁴ HC Deb 13 July 1992 Vol 211 cc833-907

¹⁰⁵ HC Deb 19 December 1994 Vol 251 cc1458-1510

¹⁰⁶ Respectively *Sittings hours reform*, 8th report of the Procedure Committee, HC 491 1994-95, and HC Deb 2 November 1995 Vol 265 cc. 405-449

¹⁰⁷ Q.226-35; Evidence, p.53

stages of Government bills after second reading either by setting up a new committee to deal with the allocation of time to all bills when they are committed to a standing committee or by making arrangements for the standing committee to which each bill is committed to allot the time for its further consideration by the committee and for its remaining stages. The detailed arrangements could well be based on the recommendations of the Procedure Committee's earlier reports (see paragraphs 64-65 above).¹⁰⁸

The Committee had emphasised the idea that its overall proposals, of which timetabling was a key component, were a balanced package. The Government were also keen on the idea of a balanced package, as it would deliver some form of timetabling, but as time passed it became clear that timetabling was proving to be a stumbling block to substantial progress (the 'Maastricht Bill' was then before the House¹⁰⁹). For example, when the Shadow Leader, Margaret Beckett, claimed that a large number of backbenchers on both sides of the House had reservations about automatic timetabling of all Government legislation, the Leader of the House, Tony Newton, said:

Whatever phrase is used to describe it – whether automatic timetabling or programming – there is no doubt that the report was essentially a balanced package between, on the one hand, changes to improve and in many ways to reduce the working hours of the House, against on the other hand a degree of greater certainty on the progress of Bills. It is difficult to understand how the one can proceed without the other.¹¹⁰

Discussions resumed in the spring of 1994.¹¹¹ Ministers emphasised that much of the Jopling package (reduction of late sittings, for example) was being informally implemented.

In the debate to approve the package of measures the Jopling Committee eventually agreed, including voluntary timetabling of Bills, Mr Newton admitted that it achieved the “main strategic objectives” of the Jopling plan “although not necessarily in precisely the way proposed”.¹¹²

The Procedure Committee reviewed the experiment (including a survey of Members on their views of the changes) and published its report in July 1995:

11. We have received no evidence that the voluntary arrangements for timetabling bills has not worked satisfactorily. 80.8% of respondents to the questionnaire feel that the voluntary timetabling of bill has been a success. The Shadow Leader of the House presented us with a convincing argument for the current arrangement, emphasising the unpredictability and the need for flexibility in the progress of bills through their various stages. Several respondents to the questionnaire noted that the

¹⁰⁸ Jopling Report, pp xx-xxii.

¹⁰⁹ For details of the passage of the European Communities (Amendment) Bill 1992-93, see chap IV of Research Paper 97/97, *Time spent on Government Bills of constitutional importance*, 1 August 1997. The breakdown in relations between the usual channels for some months from December 1993 following the imposition of guillotines on two social security bills also delayed progress.

¹¹⁰ HC Deb 22 February 1993 Vol 219 c680

¹¹¹ The sudden death of John Smith in May 1994 may well have been a factor in highlighting the need to revise the pattern of sittings.

¹¹² HC Deb 19 December 1994 Vol 251 c1458

arrangements had not been tested under the pressure of a particularly heavy and contentious legislative programme.

12. Despite the acknowledged success of the voluntary timetabling of bills, our survey of Members reveals considerable support (64.9% of Members) for the encapsulation of the timetabling of bills within the Standing Orders. It is our opinion that this is the result of a lingering doubt over the durability of voluntary timetabling; for the present, **we recommend no change in the arrangements under the Jopling reforms for voluntary timetabling of bills.**¹¹³

In the debate in November 1995 to make the experimental package permanent, Mr Newton said that:

... voluntary timetabling of Bills, which is of fundamental importance to the success of the reforms as a whole, has worked well in practice. My perception ... is that the Opposition have had the time they felt appropriate to debate the issues to which they attached importance – at least in general terms. At the same time, the Government's legislative programme has made progress without the House being kept up late and without the use of measures such as the guillotine.¹¹⁴

He did not propose to formalise the scheme by way of Standing Orders because experience of the experiment had confirmed his view that “there is no sustainable halfway house between a voluntary agreement reached through the usual channels and something which, to all intents and purposes, is a guillotine”.¹¹⁵

4. The 1992 Hansard Society Commission Report, *Making the law*

The Report of the Hansard Society Commission on the legislative process, *Making the Law*, chaired by Lord Rippon of Hexham, was published in November 1992, and was an ambitious, and, to some extent, influential, attempt to review the whole process of the creation and production of legislation. It was critical of the traditional Parliamentary legislative process in a number of ways, including programming and timing. In this context its overall view was that “Preparation and scrutiny of legislation should be improved, but its passage in reasonable time should also be assured” (conclusions, para 96). In particular it recommended changes to the sessional pattern of legislative programming (p 147) and urged more formal timetabling of all legislation, suggesting a system to achieve this (p148). It set out a detailed scheme in its Annex B (p 150).

D. Assessments of programming

a. *Reviewing Making the Law*

As part of its review of *Making the Law*, the Hansard Society has produced a series of briefing papers (“Issues in Law Making”). In 2004, one of these reviewed the programming

¹¹³ *Sittings hours reform*, HC 491 1994-95, paras 11 and 12

¹¹⁴ HC Deb 2 November 1995 Vol 265 cc405-450, 410

¹¹⁵ *Ibid*

of legislation. It reviewed developments since 1997, including the implementation of the Modernisation Committee's reports on programming, and considered that "increasing controversy" had surrounded the issue:

The tensions between oppositionalism and effective scrutiny, and between duties to Parliament versus partisanship, have had an enormous impact on programming in practice. The Opposition routinely votes against programme motions and the Government imposes its programming orders through the use of its majority. According to Blackburn and Kennon, "there is suspicion that this important procedural innovation has fallen foul of party politicking".¹¹⁶

However, the Hansard Society argued that in practice programming had "brought greater certainty, even rationality" to the legislative process; that committee proceedings were "more brisk"; and that filibustering and delaying progress may have been inhibited.¹¹⁷

The Hansard Society believed that "programming appears to be here to stay" but there were operational problems. It proposed the creation of a "Business Committee or Legislative Steering committee to allow greater input and agreement between all interested parties in the Commons about the shape and timing of the legislative programme".¹¹⁸

Its conclusions called for all parties to reach a consensus on the way forward:

The objective of rational, measured and full consideration of proposed legislation is one that all parties in Parliament should share. The timetabling of legislation is a change which has been supported by reformers of all political complexions for many years in order to achieve that goal. That goal should not be seen as the property of one party, or as having benefits only for the Government of the day and should be supported by all who wish to see an effective Parliament.¹¹⁹

b. Hansard Society's review of parliamentary modernisation

In 2005, the Hansard Society published *New Politics, New Parliament? A review of parliamentary modernisation since 1997*. It described programming as "perhaps the most far reaching and certainly the most controversial" of the changes made to the legislative process since 1997.¹²⁰ After reviewing earlier calls for programming and its development since 1997, it concluded that:

It was hoped that programming would allow more effective and consistent scrutiny of proposed legislation while recognizing both the need for the government to get its legislation through, and for the opposition to hold debates and votes on the parts of a Bill that it considered important. However, the breadth and depth of criticisms from across the political spectrum suggest that these hopes have not been realized.¹²¹

¹¹⁶ Hansard Society, "Programming of Legislation", *Issues in Law Making*, No 4, April 2004, p4

¹¹⁷ *Ibid*, p5

¹¹⁸ *Ibid*, p6

¹¹⁹ *Ibid*, p7

¹²⁰ Alex Brazier, Matthew Flinders and Declan McHugh, *New Politics, New Parliament? A review of parliamentary modernisation since 1997*, Hansard Society, p14

¹²¹ *Ibid*, p17

It argued that programming had disappointed because it had been “detached from other reform proposals, most particularly the introduction of some form of Business Committee in the Commons”, which it was argued would have delivered “greater transparency and independence in the allocation of time for the legislative programme”.¹²²

c. The Study of Parliament Group

In 2005, the Study of Parliament Group published *The Future of Parliament*. In its comments on programming, it traced the history of proposals for programming and noted that after its initial consensual introduction there had been a great deal of dispute over the process:

... Since then, programming has passed through distinct stages: while in 1998 the opposition were prepared to consent to even the devolution Bills being programmed, the consensus broke down as the Government sought to widen its application. By 2004, the process has been refined and was applied routinely to virtually every government bill, but the opposition invariably divided the House on the matter, and so far as the motions remained debatable, they were subject to ritual denunciation. The Lords have not yet found it necessary to adopt any formal approach to timetabling, relying on their tradition of self-regulation.¹²³

d. Lord Biffen

Lord Biffen, a former Leader of the House of Commons, commented on the legislative process in *Parliament in the 21st Century*. He regarded programming as “admirable”. He acknowledged that it had resulted in “a great deal of legislation being undiscussed until it reaches the Lords” and considered this a “serious blemish” but he believed that:

... the Conservatives, when eventually back in office, would see the merit of seeking predictability for law-making and ensuring a reasonable allocation of time for debates. Ironically the ‘usual channels’ – government and opposition – are ambivalent about the measure. It deprives them of powers of bargaining which they like to have across all aspects of parliamentary procedure. They live in the world of compromise which can best be secured over the widest political fronts.¹²⁴

¹²² *Ibid*, pp17-18

¹²³ Dawn Oliver, Paul Evans, Colin Lee and Philip Norton, “Parliament’s Role and the Modernisation Agenda”, in Philip Giddings (ed), *The Future of Parliament: Issues for a New Century*, 2005, p122

¹²⁴ Lord Biffen, “The Legislative Process- An Inside View”, in Nicolas Baldwin (ed), *Parliament in the 21st Century*, 2005, p221

Appendix – Committee reports on the programming of legislation

a. Select Committee on Modernisation of the House of Commons

The Legislative Process - First Report 1997-98 [HC190];
Debated: HC Deb 13 Nov 1997 cc1061-1130

Programming of Legislation and Timing of Votes - Second Report 1999-00 [HC 589];
Debated: HC Deb 7 Nov 2000 cc208-288

Programming of Legislation - First Report 2000-01 [HC 382];
Not debated

Modernisation of the House of Commons: A Reform Programme - Second Report 2001-02 [HC1168]
Debated: HC Deb 29 Oct 2002 cc689-844

Programming of Bills - First Report 2002-03 [HC 1222];
Debated: HC Deb 6 Nov 2003 cc949-999

The Legislative Process - First Report 2005-06 [HC 1097 paras 46-49]
Debated: HC Deb 1 Nov 2006 cc304-421

Revitalising the Chamber: the role of the back bencher - First Report 2006-07 [HC 337 paras 120-123]
Debated: HC Deb 25 Oct 2007 cc441-504

b. Procedure Committee

Programming of Legislation - Fourth Report 2003-04 [HC 325]

Programming of Legislation: The Government's Response to the Committee's Fourth Report, - Fifth Special Report 2003-04 [HC 1169]