



Pre-legislative scrutiny

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Regular consideration of draft bills is still a relatively new phenomenon at Westminster. The Conservative administrations of the late 1980s and early 1990s experimented with the pre-legislative scrutiny of draft bills but it has only become an established feature of parliamentary life since the election of the Labour Government in 1997.

This note provides a brief background to the introduction of pre-legislative scrutiny and the establishment of the Committee Office Scrutiny Unit. It then sets out the procedures followed in allocating draft bills to committees and by the committees in examining draft bills.

The extent to which draft bills have been published and subjected to pre-legislative scrutiny is summarised. Brief details of individual draft bills are given in an appendix. More details of the consideration of draft bills in the 1997-2001 and the 2001-2005 Parliaments are given in SN/PC/2908, *Draft Bills 1997-2001* and SN/PC/2914, *Draft Bills 2001-2005*, respectively.

Finally some observations from committees examining draft bills; views on pre-legislative scrutiny; recommendations of an early Constitution Unit review of pre-legislative scrutiny; conclusions relating to pre-legislative scrutiny from the Modernisation Committee's inquiry into the legislative process; and the House of Lords Constitution Committee's regular reports on pre-legislative scrutiny since 2006-07, and the Government's responses are reported.

Details of draft bills announced since the 2010 general election can be found in the Library Standard Note SN/PC/5859, [Pre-legislative scrutiny under the Coalition Government](#).

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1 Background

In 1993, the Hansard Society Commission on the Legislative Process described Parliament's main role in the legislative process as:

... to call Ministers to account for their proposals for changing the law by close and detailed scrutiny of both bills and delegated legislation.¹

It then argued for a “move away from party-political confrontation” on bills towards

a more considered approach whereby Members, from all parts of the House, could be enabled better to inform themselves and to look collectively, in a more systematic way, at the Government's legislative proposals.²

It judged that “Parliament could play a greater part by pre-legislative inquiry in the preparation of legislation”³ and went on to recommend a role for select committees:

We believe that departmentally-related select committees might helpfully examine Green and White Papers and other published consultative documents relating to proposed legislation and make reports which would assist the preparatory work on the legislation and inform parliamentary debate.⁴

Jennifer Smookler reported that “Between 1992 and 1997, 18 draft bills were published for external consultation, although none were subject to systematic parliamentary scrutiny”.⁵

The 1997 Labour Government sought to reform the way in which the House of Commons operated. It established the Select Committee on Modernisation of the House of Commons to “consider how the practices and procedures of the House should be modernised”. In its first report, the Modernisation Committee recommended a more regular and systematic use of draft bills:

There is almost universal agreement that pre-legislative scrutiny is right in principle, subject to the circumstances and nature of the legislation. It provides an opportunity for the House as a whole, for individual backbenchers, and for the Opposition to have a real input into the form of the actual legislation which subsequently emerges, not least because Ministers are likely to be far more receptive to suggestions for change before the Bill is actually published. It opens Parliament up to those outside affected by legislation. At the same time such pre-legislative scrutiny can be of real benefit to the Government. It could, and indeed should, lead to less time being needed at later stages of the legislative process; the use of the Chair's powers of selection would naturally reflect the extent and nature of previous scrutiny and debate. Above all, it should lead to better legislation and less likelihood of subsequent amending legislation.⁶

¹ Hansard Society, *Making the Law*, the report of the Hansard Society Commission on the Legislative Process, 1993, para 310

² *Ibid*, para 315

³ *Ibid*, para 316

⁴ *Ibid*, para 322

⁵ Jennifer Smookler, “Making a difference? The effectiveness of pre-legislative scrutiny”, *Parliamentary Affairs*, July 2006, Vol 59, No 3, pp522-535

⁶ Select Committee on Modernisation of the House of Commons, *The legislative process*, 23 July 1997, HC 190 1997-98, para 20

The Modernisation Committee reported that “four possible options are already available or have been advocated, which could easily be incorporated into existing practices” to allow the House to undertake pre-legislative scrutiny. The four options were:

- the existing departmentally-related select committees;
- a new permanent structure of legislative committees;
- ad hoc select committees of the House; or
- joint committees of both Houses for individual draft Bills.⁷

The Modernisation Committee examined the advantages and disadvantages of each of the above options. It expressed specific concerns about the establishment of permanent legislative committees, including the difficulty in finding members for some committees; the overlap and confusion with departmental select committees; and the variable workloads that the committees would face.⁸ It concluded that:

While the actual route to be followed for any particular draft Bill will depend on a whole range of circumstances and will in any case be a matter for consultation, we believe that in general, unless there are unusual circumstances, there are significant benefits in draft bills being considered by a committee of the House. We cannot on the one hand complain at the absence of consultation before the introduction of legislation and the unwillingness of Ministers to countenance amendment once it is introduced, while on the other hand neglecting opportunities to contribute at the consultative stage.⁹

In its report on relationships between Parliament and Government, *Shifting the Balance*, the Liaison Committee described the use of draft bills as “a major and overdue improvement in the consideration of primary legislation”;¹⁰ and in successive reports the Committee has continued to endorse them. For example, in 2001:

In *Shifting the Balance* we called for more pre-legislative scrutiny by select committees, with more notice of the arrival of draft Bills, and more time available for effective examination. The Government's Reply was more forthcoming on this subject, but pointed out that resources available to Parliamentary Counsel was the main restriction on publishing Bills in draft. We welcomed the increased resources the Government had provided over the previous three years, and hoped that this would be maintained. **We repeat our view that the benefits in terms of better thought out and properly examined legislation will be out of all proportion to the modest expenditure involved.**¹¹

and, in 2003:

One of the principal recommendations of the Modernisation Committee was for a major expansion of pre-legislative scrutiny by select committees—a priority which we strongly endorse and which builds upon proposals contained in our own earlier Reports. The former Leader of the House expressed his personal commitment to this

⁷ *Ibid*, para 21

⁸ *Ibid*, para 25

⁹ *Ibid*, para 30

¹⁰ Liaison Committee, *Shifting the Balance: Select Committees and the Executive*, 3 March 2000, HC 300 1999-2000, para 61

¹¹ Liaison Committee, *Shifting the Balance: Unfinished Business*, 25 March 2001, HC 321 2000-01, para 37

goal and there are already encouraging signs that one of the preconditions for pre-legislative scrutiny—a steady flow of draft bills—is beginning to be met.¹²

Indeed, it included as Task 3 in its “guidance on indicative objectives and tasks for select committees”:

To conduct scrutiny of any published draft bill within the Committee's responsibilities.¹³

However, the Liaison Committee has also highlighted a number of concerns about the scrutiny process for draft bills (see Section 5).

2 Scrutiny Unit

In 1998-99, the Procedure Committee examined *Procedure for debate on the Government's expenditure plans*. It considered that select committees would need additional help to examine resource accounting and budgeting, three year spending plans and departmental reports in their scrutiny of departments. It suggested that “a small corps of staff, available to all committees, would ensure committees had ready access to the expertise they need”, to assist them in their scrutiny of Estimates.¹⁴ The Liaison Committee developed this recommendation and argued that the House needed to establish a special unit to support committees in pre-legislative scrutiny work:

76. The Committee Office should establish a unit specialising in public expenditure and pre-legislative scrutiny (the skills required will be different but by no means mutually exclusive; committee staff are already required to turn their hands to a wide variety of work).

77. The unit should be of modest size to begin with; its long-term future will depend on the use made of it. Its "engine-room" should be perhaps half a dozen contract staff of the Committee Specialist type; we have been impressed by the successful way in which such staff have been employed in the support of individual select committees. These people should have a range of skills and subject experience.¹⁵

The Liaison Committee envisaged that the unit would support departmental select committees and staff committees established specifically to consider draft bills:

The draft Bill side of the unit's work would be twofold: taking some of the weight off the staff of a departmental select committee which found itself landed with a draft Bill in addition to its other commitments; and staffing ad hoc pre-legislative committees (or providing the Commons contribution in the case of joint committees).¹⁶

The Scrutiny Unit was set up in November 2003 and in its Annual Report for 2003-04, the House of Commons Commission reported:

Pre-legislative and financial scrutiny by committees has continued to receive help from the Committee Office Scrutiny Unit. ... The Unit has already established itself as a highly effective source of support to Committees in these and other areas. It has now reached the full complement of seventeen approved by the Commission. ... An

¹² Liaison Committee, *Annual Report – 2002*, 1 April 2003, HC 558 2002-03, para 30

¹³ *Ibid*, para 13

¹⁴ Procedure Committee, *Procedure for debate on the Government's expenditure plans*, 26 July 1999, HC 295 1998-99, paras 51-52

¹⁵ Liaison Committee, *Shifting the Balance: Select Committees and the Executive*, 3 March 2000, HC 300 1999-2000, paras 76-77

¹⁶ *Ibid*, para 82

increasingly significant call on the Unit's resources has been pre-legislative scrutiny, as more bills are published in draft. So far, since its inception, the Unit has provided support for five Joint Committees on draft bills, as well as for four select committees in the Commons.¹⁷

In 2006-07, following the House's decision to change the way in which legislation is considered at committee stage, the Scrutiny Unit managed the briefing of public bill committees, in co-operation with staff on departmental select committees and in the Library.¹⁸

Further information on the role of the Scrutiny unit is available on the Parliamentary website.¹⁹

3 Procedure

In 2003 the Government gave a tentative promise "to proceed on the presumption that Bills will be published in draft for pre-legislative scrutiny unless there is good reason otherwise".²⁰ The procedure for pre-legislative scrutiny of a draft bill is the same as for any other select committee inquiry – no specific Standing Order applies. In practice, decisions on how and where to refer a particular draft bill for parliamentary scrutiny are taken by the "usual channels", that is, the informal means of communication between the Government and Opposition business managers and whips. During Business Questions on 11 December 2003, the Leader of the House also reported that he had written to the Liaison Committee with details of the draft bills to be considered in the 2003-04 Session:

I wrote only recently to the Chairman of the Liaison Committee, detailing all the draft Bills that will be involved in pre-legislative scrutiny, and the likely timetables. Twelve or more draft Bills will be published in the coming legislative Session. I know that the hon. Gentleman welcomes that, as does the whole House. The degree of open consultation and transparency shown by the Government is unprecedented.²¹

Once the draft bill has been referred to a committee, it is for that committee to decide its procedures, within the rules of the House and the motion that established it. Committees can choose whether to take written and/or oral evidence from appropriate organisations. *Griffith and Ryle on Parliament* (a standard text on parliamentary procedure) provide a short summary on how draft bills have been scrutinised:

Select committees looking at draft bills seem to have steered a middle way between challenging the whole principle of the bill and minutely scrutinising the text of each clause. Substantive reports have been published, commenting on the policy of the bill and suggesting improvements. The relevant government departments have been able subsequently to point to a committee's support for particular measures. At the same time they have had to justify quite fully any decisions not to accept changes recommended by the committee. Since committee scrutiny has often been conducted in tandem with public consultation on the bill, the whole process has subjected draft bills to more thorough public examination at an earlier stage than would normally occur. Arguably, at this stage, it is easier for ministers to agree to make changes than

¹⁷ House of Commons Commission, *Twenty-sixth report of the House of Commons Commission – Financial Year 2003-04*, HC 791, July 2004, para 66

¹⁸ House of Commons, *Twenty-ninth report of the House of Commons Commission – Financial Year 2006/07*, July 2007 HC 708, para 103

¹⁹ House of Commons, *Scrutiny Unit*, http://www.parliament.uk/parliamentary_committees/scrutinyunit.cfm

²⁰ HC Deb 4 February 2003 c134W

²¹ HC Deb 11 December 2003 c1197

when the government's prestige is engaged as the bill goes through the formal legislative process.²²

After a Committee has examined the draft bill and reported, the Government responds to the Committee's report. If it decides to pursue the measures set out in the draft bill, a bill is published and goes through its normal stages in the House of Commons and House of Lords before it is enacted.

The then Leader of the House, Peter Hain, gave evidence to the Office of the Deputy Prime Minister: Housing, Planning, Local Government and the Regions Committee during its inquiry into the Draft Housing Bill. He described the purpose of pre-legislative scrutiny as being to improve a bill:

... The purpose of pre-legislative scrutiny is to improve a Bill. Obviously the strength of the argument put forward, perhaps by your Select Committee in this instance, about improving a Bill and its persuasiveness is going to have an impact on the sponsoring department.²³

He went on to confirm that, as a result of pre-legislative scrutiny, the bill that is ultimately published could differ from the draft bill:

... I am not saying that the Bill has got to be the existing number of clauses or else it does not make any progress. I come back to the point I said earlier, if a massive number of clauses was to be proposed then that is going to have an impact on the legislative programme. If we are talking about sensible amendments and – to use your phrase – tidying up, then that is a different matter entirely.²⁴

And that:

... I want to stress to this Committee that I am not putting up some strong barrier that says "You cannot change this Bill because it is going to have an impact on the legislative programme" otherwise what is the point of pre-legislative scrutiny and all the work you are doing? I think we need to see the strength of the case and the case you have made is a strong one and we need to see how we can take it forward.²⁵

When he appeared before the Liaison Committee on 19 October 2004 the Leader of the House said:

... We have ... been increasing the number of Bills that are pre-legislated over the years and want to continue that if we can, but it has been simply not possible for pressures of real world events and imperatives and needs to meet imperatives and needs, to pre-legislate every bit of legislation; but obviously pre-legislation is a very desirable practice and should make subsequent handling easier, though there is a lively debate amongst my business manager colleagues and some ministers as to whether it actually does assist with the subsequent passage of a Bill or reveal even

²² Robert Blackburn and Andrew Kennon *Griffith & Ryle on Parliament: functions, practice and procedures* (Sweet & Maxwell, 2nd ed, 2003) p624

²³ Office of the Deputy Prime Minister: Housing, Planning, Local Government and the Regions Committee, *The Draft Housing Bill*, 18 August 2003, HC 751-III 2002-03, Q821, Ev111

²⁴ *Ibid*, Q822, Ev111

²⁵ *Ibid*, Q823, Ev111

more arguments to be had around it. I am a very great fan of pre-legislative scrutiny, and the more we can do the better.²⁶

4 The extent of pre-legislative scrutiny

4.1 Sessions 1997-98 to 2009-10

In the sessions 1997-98 to 2009-10 a total of 75 draft bills or substantial sets of clauses of draft bills have been published. Table 1 reports the statistics for each session and the Appendices contains a full list of draft bills, charting the scrutiny they received and their subsequent progress. As is evident from the Appendix, most draft bills are subsequently enacted, either as standalone bills or incorporated in other bills.

Table 1 – Publication and Scrutiny of Draft Bills by Session*

	Number of draft bills published	Number of draft bills scrutinised by a committee
1997-98	3	2
1998-99	6	5
1999-2000	6	3
2000-01	2	1
2001-02	7	6
2002-03	9 **	10
2003-04	12 ***	10
2004-05	5 ****	2
2005-06	4	3
2006-07	4	3
2007-08	9	7
2008-09	4 #	2
2009-10	4	2

* Session refers to the Session in which the draft bill was published.

** includes draft clauses of the Police (Northern Ireland) Bill.

*** some clauses of the draft Gambling Bill were published in Session 2002-03.

**** includes draft clauses of the Company Law Reform Bill, further clauses were published in Session 2005-06

The draft Antarctic Bill and the draft Immigration Bill were both published in the week of prorogation

The title of and the committee scrutinising each Bill are detailed in the Appendices. Fuller details of draft bills published in the 1997 and 2001 Parliaments are provided in two further Library standard notes: SN/PC/2908, *Draft Bills 1997-2001* and SN/PC/2914, *Draft Bills 2001-2005*. Links to all draft bills published in the current session, and sessions since 2002-03, are available on the Parliamentary website.²⁷

4.2 Developments

Although the Government had made various commitments to increase the extent of pre-legislative scrutiny, it was not until the 2003-04 session that the Leader of the House made a formal announcement on the number of draft bills that the Government expected to publish.

In its report on *The Legislative Process*, the Modernisation Committee commented on the development and impact of pre-legislative scrutiny. It also suggested ways in which pre-legislative scrutiny could be made more effective. It reported that both the Government and

²⁶ Liaison Committee, *Evidence to Committees: oral and written evidence, Tuesday 19 October 2004 Rt Hon Peter Hain, MP*, HC 1180-I 2003-04, Q63

²⁷ See: <http://www.parliament.uk/bills/draftbills.cfm>

Parliament were “committed to expanding the use of pre-legislative scrutiny”. But it expressed some concern that after peaking at 12 draft bills being published in 2003-04 session the number of draft bills has “more recently dropped off”. While it recognised that it would not be possible to publish every bill in draft form it urged the Government “to increase further the proportion of legislation published in draft”.²⁸ The Modernisation Committee also recommended that the Committee on Selection should take into account Members’ participation in pre-legislative scrutiny when nominating members of public bill committees. It suggested that there should be at least four Members who were involved in pre-legislative scrutiny on the public bill committee.²⁹

The decline in the number of draft bills published since the peak in 2003-04 has been remarked upon. In response to Gordon Brown’s statement on the draft legislative programme, in July 2007, Graham Allen asked for all bills to be published in draft and for the Prime Minister to “ensure the fullest pre-legislative scrutiny”. The Prime Minister responded in the following way:

The Prime Minister: I am grateful to my hon. Friend, who takes a huge interest in those constitutional matters and has made several very good proposals about how we can improve the workings of the House. Yes, we want more draft Bills for scrutiny before they are given a Second Reading—but it is not always possible to do that, especially in relation to justice and counter-terrorism. However, I hope that the practice can become more widespread, that the House will play a bigger role in examining such matters before legislating, and that over time there will be all-party support for the procedures. My intention is to devolve power from the Executive to Parliament in some vital matters.³⁰

In its response to the House of Lords Constitution Committee report on *Pre-Legislative Scrutiny in the 2006-07 Session*, the Government said that it had been “disappointed at the lower numbers of draft bills published in recent sessions”. However, the Government said that it had already indicated that “it will not be possible to give a general undertaking to publish most bills in draft or regularly to achieve the figures reached in 2003-04”.³¹

4.3 Draft bills announced and published

During the course of Business Questions on 4 December 2003, the Leader of the House announced that:

... For the convenience of Members and following representations I have today placed a complete list of all the Bills and draft Bills that have been introduced or announced for this Session in the Library. As has always been the case, other measures will be brought forward as the Session progresses.³²

The list which Mr Hain deposited in the House of Commons Library on 4 December 2003 contained 10 draft bills.³³

²⁸ Modernisation Committee, *The Legislative Process*, 7 September 2006, HC 1097 2005-06, para 30

²⁹ Modernisation Committee, *The Legislative Process*, 7 September 2006, HC 1097 2005-06, para 35

³⁰ HC Deb 11 July 2007 c1458

³¹ Constitution Committee, *Pre-Legislative Scrutiny in the 2006-07 Session: Follow-up*, 23 June 2008, HL 129 2007-08

³² HC Deb 4 December 2003 c649

³³ *3rd Legislative Programme: Bills announced; Carried over from 2nd Session; and Draft Bills that have been announced*, Dep 03/2559

Later, in the same Session, on 5 February 2004, Mr Hain said that 13 draft bills would be introduced in the 2003-04 Session:

... We are introducing 13 draft Bills—the highest number in the history of the House of Commons. I am sure that each of those 13 measures will be improved and that as a result, greater consent will be obtained and the views of Back Bench Labour Members especially can be heard more than they have been in the recent past.³⁴

By the end of the 2003-04 session, 12 draft bills had been published. Nine of the bills in Mr Hain’s original list were published. The only bill not published – the draft Corporate Manslaughter Bill – was published in the following session. In addition, with the agreement of the House, the Welsh Affairs Committee undertook joint scrutiny of the draft Transport (Wales) Bill with the Economic Development and Transport Committee of the National Assembly. This was the first time that a House of Commons committee met formally with a Committee of a devolved legislature. The Welsh Affairs Committee considered that the joint “meetings demonstrated an innovative and progressive approach to pre-legislative scrutiny”.³⁵

Some draft bills were published in the short 2004-05 session that preceded the General Election (see Appendix 1).

Since the beginning of the 2005 Parliament, the Government has provided details of the number of draft bills that it expected to publish in each Session. In 2005-06, this was done by way of a written answer.³⁶ From 2006-07, the Leader of the House has made an announcement about the legislative programme in a written ministerial statement.³⁷ Appendix 2 lists the draft bills announced at the beginning of each session from 2005-06 onwards; along with those published; and it provides details of scrutiny and subsequent progress. Table 2 provides a summary, by Session, of draft bills announced, published and scrutinised.

Table 2 – Announcement, Publication and Scrutiny of Draft Bills by Session, since 2005-06 (at 6 January 2010)

Session	Number of draft bills announced	Number of draft bills published	Of which announced	Number of draft bills scrutinised by a committee
2005-06	6	4	3	3
2006-07	4	4	3	3
2007-08	7	9	7	7
2008-09	7	4*	4	2
2009-10	6**	4	3	2

* two draft bills were published in the week Parliament was prorogued – their titles were repeated in the written ministerial statement announcing draft bills in 2009-10

** three of these draft bill titles were included in the Leader of the House’s written ministerial statement at the beginning of the 2008-09 session

In her response to the Constitution Committee’s report on pre-legislative scrutiny in the 2007-08 Session, Baroness Royall of Blaisdon informed the Committee that two draft bills –

³⁴ HC Deb 5 February 2004 c916

³⁵ Welsh Affairs Committee, *Draft Transport (Wales) Bill*, 19 July 2004, HC 759 2003-04

³⁶ HC Deb 5 July 2005 c233W

³⁷ HC Deb 16 November 2006 cc7WS-8WS; HC Deb 7 November 2007 cc8WS-9WS; HC Deb 4 December 2008 cc12WS-13WS

on Community Empowerment and on Communications Data – that had been announced at the beginning of the 2008-09 Session had been “withdrawn, in both cases so that the Government can consult further on the underlying policy issues”.³⁸

5 Assessments of pre-legislative scrutiny

5.1 Early assessments

Griffith & Ryle on Parliament, published in 2003, made the following assessment of pre-legislative scrutiny:

Pre-legislative scrutiny is still experimental and lacks structure. Further development depends more on Government than on Parliament, and on the ability of the Cabinet and the “business managers” to decide in advance their future legislative programme, on departments’ ability to give drafting instructions, and in particular on the limited resources of Parliamentary Counsel, the legislative draftsmen and women at 36 Whitehall.³⁹

The progress of draft bills, once they have been considered, is not uniform. Some have been introduced as bills and enacted in the same session, whilst others were not introduced in the following session. Some draft bills have formed parts of bills with different titles. However, a large number of draft bills have subsequently been enacted or announced in the following Queen’s Speech. There have been examples of second draft bills being published before legislation was taken forward; and some ideas in draft bills have not been proceeded with.

In a 2000 review of the scrutiny of draft legislation, sponsored by the Constitution Unit, University of London, and the Hansard Society, it was noted that:

The use of draft bills for consultation is widely regarded as an effective way of improving the quality of legislation. It allows outside experts to comment on the detail of a bill so that it can be amended before it is presented to Parliament. The Labour government elected in 1997 promised to increase the amount of draft legislation and give Parliament a specific role in the scrutiny of draft bills.⁴⁰

The review contended that, although the Modernisation Committee set out objectives of pre-legislative scrutiny, it offered few guidelines, and consequently:

... The committees [undertaking pre-legislative scrutiny] were not clear whether they should challenge the underlying policy or concentrate on the technical detail. Nor were they clear how their own investigation fitted in with that of the department or with the subsequent legislative process in Parliament.⁴¹

The report concluded with some recommendations on the objectives of pre-legislative scrutiny, it should:

- clarify the purpose of the bill to Parliament;
- provide the “handbook” for standing committee;
- provide a political judgement on the bill; and

³⁸ Constitution Committee, *Government Response to a report on Pre-legislative Scrutiny in the 2007-08 Session*, 19 October 2009, HL 160 2008-09, Appendix 1

³⁹ Robert Blackburn and Andrew Kennon *Griffith & Ryle on Parliament: functions, practice and procedures* (Sweet & Maxwell, 2nd ed, 2003) p 727

⁴⁰ Greg Power, *Parliamentary Scrutiny of Draft Legislation 1997-1999*, Constitution Unit, 2000, p3

⁴¹ *Ibid*

- assess the impact of the bill on outside groups.⁴²

The Constitution Unit's review highlighted problems caused by timing and resources, and suggested earlier warning of the publication of draft bills; and undertaking pre-legislative scrutiny after the consultation period had closed.⁴³ It called for "leadership and co-ordination". It pointed out that

There is no one department, office or politician who is identifiably responsible for pre-legislative scrutiny.

It suggested that the political leadership could lie within Parliament, either from a steering committee or a "re-vamped Liaison Committee", rather than with the Leader of House, which would allow the Government too much influence over the process.⁴⁴

In an analysis of pre-legislative scrutiny in Public Law published in 2004, Andrew Kennon, a former Head of the Scrutiny Unit, noted that:

A simple tally of recommendations accepted or rejected does not give a full impression of how much attention has been paid to the committee's report – and the outside consultation which may also have taken place. Government replies tend to be fulsome in their praise of a report and discreet about the recommendations that have not been accepted. Nonetheless there is considerable evidence from recent replies that the Government does accept many of the recommendations.

The response to the report on the draft Communications Bill said that the Government had accepted 120 of the 148 recommendations of the Joint Committee.⁴⁵

Sir Geoffrey Bowman KCB, former First Parliamentary Counsel, that is the head of the office responsible for preparing all the Government bills that Parliament considers, told the House of Lords Constitution Committee's inquiry into the legislative process that:

Draft Bills overall probably lead to more work because there is more opportunity to scrutinise, lick them into shape, put them right. The result is that Bills that have gone through prelegislative scrutiny as well as the normal parliamentary processes end up as better Bills and better Acts. That is a good thing. The fact that it leads to more work for us is in one sense unfortunate but we are all very pleased if it ends up being a better piece of legislation. I think it does lead to fewer amendments in the House. I can almost certainly say that.⁴⁶

However, Ann Widdecombe, in a review of the Member's role, commented that:

Another limitation to the effectiveness of select committees is the introduction of prelegislative scrutiny, which at the same time both expands the role of a select committee and limits it. Where a government department has a large legislative programme the committee can become so bogged down in examination of proposed

⁴² *Ibid*, pp47-48

⁴³ Greg Power, *Parliamentary Scrutiny of Draft Legislation 1997-1999*, the Constitution Unit, 2000, pp48-49

⁴⁴ *Ibid*, p49

⁴⁵ Andrew Kennon, "Analysis: pre-legislative scrutiny of draft Bills", *Public Law*, Autumn 2004, p490

⁴⁶ Constitution Committee, *Parliament and the Legislative Process*, 29 October 2004, HL 173 2003-04, Q354, p106

Bills that it is restricted in the development of its own programme of work and finds its agenda driven by government priorities rather than its own.⁴⁷

Nick Toon, Controller of Public Affairs at ITV, who also reviewed the work of the Joint Committee on the Draft Communications Bill, said that “it seemed to me at the time that the committee and its members had a far greater impact on the bill’s passage than perhaps anyone had anticipated when it was created”. In addition, he assessed the unique use of an online forum by the committee examining a draft bill. He reported that members of the Committee “felt that the innovation of an online forum providing members of the public with direct access and input to the process of law-making as it unfolded” assisted in providing “a genuine opportunity for a broader public involvement in the law-making process than would otherwise have existed”.⁴⁸

He also reported that several parliamentarians, to whom he spoke, preferred to see *ad hoc* committees conducting pre-legislative scrutiny over existing select committees. They would ensure that “the right level of expertise and experience” was available, foster a non-partisan approach, and a membership from both Houses of Parliament would help to improve “communication between both chambers at subsequent stages of the bill’s passage”.⁴⁹

In 2004, the Hansard Society issued a series of briefing papers to mark the tenth anniversary of *Making the Law*. One of the papers focussed on pre-legislative scrutiny. It noted that while it was “advisory only”, pre-legislative scrutiny had made an impact:

- Government has accepted recommendations from committees;
- “it can stimulate and assist public and media debate on a subject”; and
- Members who participated in pre-legislative scrutiny became better informed.

It concluded its section on the impact of pre-legislative scrutiny with:

... The fundamental question is whether pre-legislative scrutiny has improved the quality of legislation. It is impossible to give a definitive answer, as there are no agreed criteria by which to judge. However, all indications would suggest that it has been an extremely positive development.⁵⁰

However, the Hansard Society called for some specific reforms “before pre-legislative scrutiny becomes more widespread”. It called for the detailed regulations that follow enactment to be published in draft as well as the bill. It also highlighted problems associated with the time allowed for pre-legislative scrutiny, particularly when committees were involved in other work.⁵¹

5.2 Liaison Committee and scrutiny committee comments

In its report on the session 2003-04 the Liaison Committee noted the Government’s commitment to pre-legislative scrutiny was reflected in the number of bills published in draft and examined by joint or select committees. The Committee observed that amongst the bills subjected to pre-legislative scrutiny were several of major importance in terms of their size

⁴⁷ Ann Widdecombe, “The Role of an MP: an Opposition view”, in Nicholas Baldwin (ed), *Parliament in the 21st Century*, Politico’s, 2005, p81

⁴⁸ Nick Toon, *Under Scrutiny – The Puttnam committee and successful pre-legislative scrutiny*, IPPR Discussion Paper

⁴⁹ *Ibid*, pp4-5

⁵⁰ Hansard Society, *Pre-legislative scrutiny*, Issues in Law Making – Briefing Paper 5, July 2004

⁵¹ *Ibid*

and complexity, significance in policy terms or both.⁵² The Committee reported substantial involvement by select committees in pre-legislative scrutiny.⁵³ But it indicated that individual select committees that had undertaken pre-legislative scrutiny had identified a number of problems which needed to be addressed before the system of pre-legislative scrutiny could be said to be working properly.⁵⁴ The main problems were: the late publication of draft bills; delays in establishing the committee itself; unreasonable deadlines for reporting; and the unavailability or lateness of key supporting documentation. The Liaison Committee commented that to some extent these difficulties were all interrelated, since they reflected the over-ambitious timetable set by the Government for the completion of the pre-legislative scrutiny stage of a bill within the overall legislative programme.⁵⁵ Other committees have highlighted the following issues:

- Late Publication of Draft Bills
- Delays in Establishing Committees
- Unreasonable Deadlines for Reporting
- Unavailability or Late Arrival of Key Supporting Documentation
- Whether a draft bill is a suitable candidate for pre-legislative scrutiny

(Fuller details of these issues were provided in the version of this Standard Note published on 26 November 2007. Contact the Library for a copy of this previous version of the Note.)

Despite these concerns, most of which were aimed to improve the pre-legislative scrutiny process, the same committees endorsed the principle of pre-legislative scrutiny, and were able to conduct inquiries and to report on the draft legislation which the Government produced.

In its report on *The work of committees in 2007*, the Liaison Committee reiterated a number of these concerns and added a further concern about the way in which the House was sometimes pre-empted by the Government over the decision about how draft bills should be scrutinised:

... While we recognise that some draft bills will be particularly suited to scrutiny by joint committees, it is for the House, not the Executive, to assess the most effective form of scrutiny, and we object strongly to the fact that the Government has sought to pre-empt the House's consideration of how to scrutinise draft bills by bringing forward motions for the appointment of joint committees without proper consultation. We reiterate the comment of our predecessor committee in 2005: there should be a presumption in favour of draft bills going to departmental select committees for pre-legislative scrutiny, where they are ready and willing to undertake this.⁵⁶

5.3 Parliamentary reviews of the legislative process

In its report on *Parliament and the Legislative Process*, the Constitution Committee of the House of Lords echoed the Hansard Society's endorsement of pre-legislative scrutiny:

We very much welcome the pre-legislative scrutiny that has been undertaken. We have already identified the value to Members, enhancing the capacity of Parliament to influence legislation at a formative stage. It is also of value to interested individuals

⁵² Liaison Committee, *Annual Report for 2004*, 15 March 2005, HC 419 2004-05, para 20

⁵³ *Ibid*, para 2

⁵⁴ *Ibid*, para 34

⁵⁵ *Ibid*, para 35

⁵⁶ Liaison Committee, *The work of committees in 2007*, 4 April 2008, HC 427 2007-08, para 25

and bodies, as they have an opportunity to contribute to the committees' deliberations. It is of value to Government, since—as the Modernisation Committee noted in 1997—it should lead to better legislation and, potentially, save some time during the later legislative stages of the bills.⁵⁷

In response to the Constitution Committee's report, the Government acknowledged that it too had benefited from pre-legislative scrutiny and went on to reaffirm its commitment to it:

10. Measuring the effectiveness of pre-legislative scrutiny is not easy. In addition to the influence of reports from the Parliamentary Committees, there are other influences on Departments as they prepare bills for introduction. But the Government believes that, overall, pre-legislative scrutiny has contributed greatly to the quality of legislation and the Government appreciates the role that Committees have played.

[...]

11. The Government continues to be committed to pre-legislative scrutiny. Whilst it will not be possible nor necessarily desirable to sustain the recent year-on-year increase for an indefinite period, we will seek at least to maintain the proportion of bills published in draft.⁵⁸

In its report on *The Legislative Process*, after reviewing the development of pre-legislative scrutiny, the Modernisation Committee examined its impact. It made its assessment against three purposes its predecessor identified in 1997:

- a) connecting with the public by involving outside bodies and individuals in the legislative process;
- b) changing the bill to produce better law; and
- c) achieving consensus so that the bill completes its passage through the House more smoothly.

It considered that pre-legislative scrutiny was “an effective way of drawing in those who have a point of view to put across in the legislative process” and noted that it allowed innovative ways of connecting with the public.

It considered that pre-legislative scrutiny did lead to better law:

There is little doubt that pre-legislative scrutiny produces better laws. As the Law Society told us, 'it would probably be difficult to prove scientifically that more pre-legislative scrutiny has improved legislation, but it would seem unarguable in practice that it has. ... Effective consultation procedures and processes such as publication and consideration of Bills in draft would appear to have greatly improved the text which is presented to Parliament or to have identified drawbacks in the draft text which require its rethinking'.

However, it argued that pre-legislative scrutiny's purpose was not to secure an easy ride for government legislation: it should make the Parliamentary process more effective. It pointed out that the carry-over of legislation could assist in this process too.⁵⁹

⁵⁷ Constitution Committee, *Parliament and the Legislative Process*, 29 October 2004, HL 173 2003-04, para 25

⁵⁸ Constitution Committee, *Parliament and the Legislative Process: The Government's Response*, 20 April 2005, HL 114 2004-05, paras 10-11

⁵⁹ Modernisation Committee, *The Legislative Process*, 7 September 2006, HC 1097 2005-06, paras 16-29

5.4 Online pre-legislative scrutiny

Online pre-legislative scrutiny was the subject of a Westminster Hall debate on 6 January 2004.⁶⁰ Graham Allen, who instigated the debate, argued that online pre-legislative scrutiny was a means for the Government to “renew their connection with Parliament and with the public”.⁶¹

Oliver Heald, the Shadow Leader of the House, thought that online pre-legislative scrutiny was something that could be developed in the future. However, he was “slightly concerned about how to frame the online forum”.⁶²

Phil Woolas, the Deputy Leader of the House, also felt that online pre-legislative scrutiny could “help Parliament reconnect”.⁶³ In setting out government policy, he said that:

... The Government are keen to explore how new communications media can enrich the relationship between Parliament, the public and us, and we welcome Parliament's work in that area. A number of Bills have already been subject to pre-legislative scrutiny, although that does not necessarily imply online scrutiny.⁶⁴

However, he concluded his speech with the caveat that scrutiny was the responsibility of the House, not the Government:

... the process of scrutiny is the property of the Committees of the House, not the Government. The Government can encourage and are encouraging it, and I heed what was said about my right hon. Friend the Leader of the House and I being in a position to influence it. ...

For their own part, the Government are using online consultation on legislative and policy proposals. The office of the e-envoy is ready to assist Parliament in the use of new communications media, and much work has already been done. As I said, draft Bills are available on the parliamentary website, and all Committees have published their e-mail addresses. It is not just or even primarily legislative scrutiny that can benefit from e-consultation. The Government are willing to consider how they can facilitate Committees wishing to carry out more pre-legislative scrutiny online.⁶⁵

5.5 Case studies

Jennifer Smookler, a former Committee Specialist in the House of Lords Committee Office, used a case study approach to examine the effect of pre-legislative scrutiny upon the Government and Parliament in shaping legislation. She provided detailed analysis of whether the recommendations of joint committees examining the draft Civil Contingencies Bill and the draft Disability Discrimination Bill were accepted by the Government and, if they were, whether the Government accepted the recommendation in its response to the joint committee or whether parliamentary pressure during the bill's passage through Parliament prompted amendment.

She reported that:

⁶⁰ HC Deb 6 January 2004 cc1WH-24WH

⁶¹ *Ibid*, c1WH

⁶² *Ibid*, c19WH

⁶³ *Ibid*, c21WH

⁶⁴ *Ibid*, c21WH

⁶⁵ *Ibid*, c24WH

- “pre-legislative scrutiny makes a significant contribution both prior to, and after, a bill has been introduced into Parliament”;
- “the way in which the work of a pre-legislative scrutiny committees exerts influence is necessarily different at each stage. At the pre-legislative phase, the target audience is the Government, who are free to accept or reject a committee’s recommendations as they choose. After introduction of the full bill, this expands to include members of Parliament, who can use pre-legislative scrutiny to inform and lend credence to their own means of seeking changes to a bill”;
- “former members of the pre-legislative scrutiny committees were also highly active in the legislative stages of the two Bills”; and
- “the case studies suggest that there is no clear answer as to whether pre-legislative scrutiny makes the journey of a bill less burdensome for the Government. Ironically, the process of pre-legislative scrutiny may cause a bill to be challenged on a greater number of issues precisely because of the level of knowledge gained as a result of pre-legislative scrutiny”.⁶⁶

5.6 Pre-Legislative Scrutiny in the 2006-07 Session

In January 2008, the House of Lords Constitution Committee reported on *Pre-Legislative Scrutiny in the 2006-07 Session*. The Committee noted its previous welcome of pre-legislative scrutiny but then commented that:

Indeed, we not only welcomed the use of pre-legislative scrutiny, but wished to see it “improved and extended”. Yet in the years following the publication of the 2004 report, the amount of pre-legislative scrutiny declined markedly.⁶⁷

The Committee had asked the Leader of the House of Lords “whether she would ‘agree to send us a letter at the end of each session setting out how many bills were published in draft (including those only partially published in draft) and giving an explanation of that figure and any trend it reveals’”. Baroness Amos rejected that request “because she was ‘not convinced that it would add any real benefit’”.⁶⁸ As a result of this, the Committee decided to “produce and publish statistics on the volume of draft bills at the end of each session, ‘along with any comment that we feel to be necessary’”.⁶⁹ The Committee set out some concerns about the gathering of information on pre-legislative scrutiny:

5. Unfortunately the Government were unable to provide figures on the number of draft clauses published because ‘no systematic records are available’. Even the figures they did provide cannot necessarily be treated as accurate since they are at variance with several other authoritative sets of figures, such as those provided by the House of Commons Liaison Committee. The disparities between the different sets of figures may be explained by the varying methodologies employed. Therefore, the only way of achieving a universally accepted figure would be for the Government to publish detailed criteria setting out exactly what should and should not be included when figures are being collated.

⁶⁶ Jennifer Smookler, “Making a difference? The effectiveness of pre-legislative scrutiny”, *Parliamentary Affairs*, July 2006, Vol 59, No 3, pp522-535

⁶⁷ Constitution Committee, *Pre-Legislative Scrutiny in the 2006-07 Session*, 28 January 2008, HL 43 2007-08, para 2

⁶⁸ *Ibid*, para 3

⁶⁹ *Ibid*, para 4

6. In order to aid parliamentary scrutiny of the legislative process, and to avoid the confusion that currently prevails, we strongly urge the Government to publish criteria on how the statistics on legislation and draft legislation—including clauses published in draft—should be collated. Moreover, we urge them to draw up comprehensive figures at the end of every session on the basis of the criteria provided.⁷⁰

After reviewing the volume of draft bills published in the 2006-07 and expected in the 2007-08 Sessions, the Committee analysed the trends in pre-legislative scrutiny. In its commentary on this analysis, it noted that “The value of pre-legislative scrutiny continues to be appreciated by Parliament” and that “Likewise, the Government continue to affirm their enthusiasm for pre-legislative scrutiny”.⁷¹

The Committee then reported that Jack Straw, the Leader of the House of Commons at the time, had “also accepted that this enthusiasm was not necessarily reflected in the number of draft bills introduced over the last few sessions”. He told the Committee that he was concerned about the fall in the number of draft bills published and that there had been practical problems.

The Committee reported that “the number of draft bills dropped by two-thirds” between the 2003-04 Session and the 2006-07 Session. It commented that “This was contrary to the Government’s 2005 commitment ‘at least to maintain the proportion of bills published in draft’”⁷².

The Committee reported that the Liaison Committee in the House of Commons had expressed similar concerns.⁷³ However, it noted some grounds for optimism:

... in light of the Government’s announcement that they expect to publish seven draft bills during the 2007-08 session. If this commitment is fulfilled, it will mark the highest number of draft bills published in a session since 2003-04. This would also alleviate the Committee’s concerns that the number of draft bills has permanently plateaued at only four or five per session.⁷⁴

The Committee reaffirmed its “strong support for pre-legislative scrutiny” and its “desire to see it used more routinely”. It called on the Government “to commit to increase the number of draft bills published per session to at least the 2003-04 level”.⁷⁵

The Committee also reviewed problems with the pre-legislative scrutiny process. It highlighted two specific problems:

- (1) “excessively tight” timetables; and
- (2) further Government consultation on matters in a draft bill at the end of a select committee’s inquiry.⁷⁶

⁷⁰ *Ibid*, paras 5-6

⁷¹ *Ibid*, paras 10-11

⁷² *Ibid*, paras 12-13

⁷³ *Ibid*, para 14; see: Liaison Committee, *Annual Report for 2005-06*, 17 April 2007, HC 406 2006-07, paras 14-17

⁷⁴ *Ibid*, para 15

⁷⁵ *Ibid*, para 16

⁷⁶ *Ibid*, paras 17-21

The Government's response, in the form of a letter from Baroness Ashton of Upholland, then the Leader of the House of Lords, was published by the Committee in June 2008.⁷⁷ The Government noted that the Committee had expressed concern that there did not appear to be a definitive list of draft bills and draft clauses. Baroness Ashton reported that this reflected requests for different information. She then provided the following information on the records of draft bills:

Figures for draft bills given by Government have been given on a consistent basis. These include all known cases where what was published was substantially a complete bill (usually, but not always, published as a Command Paper and including the additional features of a full bill such as a long title). The totals in the parliamentary answer of November last year for the numbers of draft bills published in each session reflect those published elsewhere in parliamentary answers and in such publications as the list of draft bills published by the House of Commons Library (with whom Cabinet Office officials liaise regularly). Any differences in the headline numbers or descriptions in the parliamentary answer reflect the need to avoid double counting (where parts of bills were published over more than one session) and to make clearer that where bills had sometimes been described in the past as 'draft clauses' they were nonetheless intended to be complete or substantially complete bills (rather than the partial publication of limited numbers of clauses in the sense used elsewhere in the November parliamentary question and in the Committee's report).⁷⁸

The full list of draft bills published since 1997 (to the end of the 2006-07 Session) was published as an appendix to her note. This list was used to generate the data in the table provided in response to a question on the number of draft bills published since 1997-98 asked by Lord Goodlad, the chairman of the Constitution Committee.⁷⁹

5.7 Pre-legislative scrutiny in the 2007-08 Session

The House of Lords Constitution Committee's second annual report, *Pre-Legislative Scrutiny in the 2007-08 Session*, was published on 2 April 2009. The Committee provided brief details of the nine draft bills that were published in 2007-08. It welcomed "the increase in the number of draft bills published in 2007-08" and called on the Government "to maintain this progress in 2008-09".⁸⁰

The Committee identified some specific issues that were raised about pre-legislative during the course of the Session:

- Time provided for pre-legislative scrutiny
 - It welcomed the Government's commitment to allowing three months for pre-legislative scrutiny and called on the Government to redouble efforts to ensure that this "minimum" time was allowed in all but the most exceptional circumstances.⁸¹
- "Bunching" of publication of draft bills

⁷⁷ Constitution Committee, *Pre-Legislative Scrutiny in the 2006-07 Session: Follow-up*, 23 June 2008, HL 129 2007-08

⁷⁸ *Ibid*

⁷⁹ HL Deb 29 November 2007 ccWA134-WA135

⁸⁰ House of Lords Constitution Committee, *Pre-Legislative Scrutiny in the 2007-08 Session*, 2 April 2009, HL 66 2008-09, paras 4 and 12

⁸¹ *Ibid*, paras 14-20

- It noted that Cabinet Office guidance made clear that the intention was to publish draft bills before or around Easter time but called on the Government to “spread the publication of draft bills throughout the parliamentary year”.⁸²
- Government liaison with committees
 - The Committee reviewed the House of Commons Liaison Committee’s concern that departmental select committees were not consulted about pre-legislative scrutiny. However, it argued that the House of Lords should also be consulted.⁸³
- Fate of draft bills after pre-legislative scrutiny
 - Although the Committee acknowledged that plans changed and that bills considered in draft in one session could not be guaranteed to be introduced in the following session, it expressed concern about draft bills “sinking without trace”. It suggested that the Government should notify Parliament of major changes – such as a bill not being pursued, substantial amendments or combination with other proposals – in a formal response to the relevant pre-legislative scrutiny report.⁸⁴

Baroness Royall of Blaisdon replied to the Committee on 21 July 2009, and the Committee published her response on 19 October 2009. Before addressing the four main areas of the Committee’s report, Baroness Royall commented that “The Government recognises that improvements could be made to the process of publishing bills in draft”.⁸⁵ She then turned to the issues raised by the Committee:

- Time provided for pre-legislative scrutiny
 - The Government agreed “on the importance of allowing as much time as possible for pre-legislative scrutiny, with a minimum of twelve weeks as an objective”; and it would continue to strive to do so. The Liaison Committee in the Commons and the Chairman of Committees were kept informed when slippage occurred. But sometimes delays arose in the establishing of joint committees.
- “Bunching” of publication of draft bills
 - Timing considerations affected the publication of draft bills but the Government would “continue to work to improve processes to ensure that the spread can be as even as possible”.
- Government liaison with committees
 - The Liaison Committee in the Commons was kept informed of progress of the publication of draft bills. Letters were copied to the Leader of the House of Lords and the Chairman of Committees. In future, they would also be sent to the Lords Liaison Committee.
- Fate of draft bills after pre-legislative scrutiny

⁸² *Ibid*, paras 21-23

⁸³ *Ibid*, paras 24-27

⁸⁴ *Ibid*, paras 28-32

⁸⁵ Constitution Committee, *Government Response to a report on Pre-legislative Scrutiny in the 2007-08 Session*, 19 October 2009, HL 160 2008-09, Appendix 1

- The Government provided a review of the draft bills that were published in 2007-08. Five were included among the bills published in 2008-09. The Government made the following comments on the remaining four draft bills:

Of the remaining four draft bills published last session, the draft Counter Terrorism (Temporary Provisions) Bill was intended to be introduced to Parliament only if the need arose. Of the remaining three bills, Cultural Property, Heritage Protection and Marine Navigation and Port Safety, it became clear that there would be insufficient space in the current session to take all those bills to Royal Assent. The Government remains fully committed to all of these measures and will introduce them as soon as parliamentary time allows.⁸⁶

5.8 Pre-legislative scrutiny in 2008-09 and 2009-10

The House of Lords Constitution Committee's third report on *Pre-Legislative Scrutiny in the 2008-09 and 2009-10 Sessions*, was published on 8 March 2010. The Committee followed its usual practice of reviewing draft bills that were published in 2008-09 and 2009-10 and considering trends in pre-legislative scrutiny. The Committee's report was published before the dissolution of Parliament and as it expected draft clauses on House of Lords reform to be published, they were included in its analysis.⁸⁷ However, they were never published.

The Committee also continued its practice of identifying issues relating to the pre-legislative scrutiny process:

- the Committee continued to express concern that draft bills were not published in adequate time. It recommended that "the Government should give parliamentary committees a minimum of 12 weeks for scrutiny and that the reporting deadline should take this into account"; and that delays in establishing committees should result in putting back deadlines;⁸⁸
- the Committee welcomed the publication of the draft Bribery Bill early in the parliamentary session and continued to call for the publication of draft bills to be spread throughout the year;⁸⁹
- the Committee welcomed the Government's engagement with the House of Lords Liaison Committee on the pre-legislative scrutiny programme and called on the Government to continue this consultation;⁹⁰
- the Committee recommended that the Government should explain to the House of Lords (through written statements):
 - reasons for not pursuing measures set out in draft bills;
 - the reasons why provisions in draft bills were substantially amended or combined in subsequent legislation;
 - the reasons for delays in responses to committee reports on draft bills, when responses took longer than two months;⁹¹

⁸⁶ *Ibid*

⁸⁷ House of Lords Constitution Committee, *Pre-Legislative Scrutiny in the 2008-09 and 2009-10 Sessions*, 8 March 2010, HL 78 2009-10

⁸⁸ *Ibid*, paras 11-16

⁸⁹ *Ibid*, paras 17-20

⁹⁰ *Ibid*, paras 21-24

- when a draft bill, announced at the beginning of a session, was not brought forward, the reasons why it was not proceeded with;
- further details – beyond the written statement – should be provided in the Government’s response to the Constitution Committee’s reports on pre-legislative scrutiny.⁹²

⁹¹ In the case of a joint committee that no longer existed. Otherwise, the Government should write to the relevant committee

⁹² House of Lords Constitution Committee, *Pre-Legislative Scrutiny in the 2008-09 and 2009-10 Sessions*, 8 March 2010, HL 78 2009-10, paras 25-31

Appendix 1 – Draft Bills Published by Session: Scrutiny and Subsequent Progress, to 2005

Draft Bills	Scrutiny performed by DSC or <i>HL Cttee</i>	Joint Cttee or <i>Ad hoc Cttee</i>	Subsequent progress
1997-98			
Pension Sharing on Divorce	Social Security Committee		included in <i>Welfare Reform and Pensions Act 1999</i>
Criminal Justice (Terrorism and Conspiracy) (1)			<i>Criminal Justice (Terrorism and Conspiracy) Act 1998</i>
Limited Liability Partnerships	Trade and Industry Committee		<i>Limited Liability Partnerships Act 2000</i>
1998-99			
Financial Services and Markets	<i>DPD Committee</i>	JC on Financial Services and Markets Draft Bill	<i>Financial Services and Markets Act 2000</i>
Food Standards		<i>Food Standards Committee</i>	<i>Food Standards Act 1999</i>
Local Government (Organisation and Standards)	<i>DPD Committee</i>	JC on Local Government (Organisation and Standards) Draft Bill	<i>Local Government Act 2000</i>
Electronic Communications	Trade and Industry Committee		<i>Electronic Communications Act 2000</i>
Freedom of Information	Public Administration Select Committee and <i>DPD Committee</i>	<i>SC on Draft Freedom of Information Bill</i> [HL]	<i>Freedom of Information Act 2000</i>
Political Parties, Elections and Referendums (1)			<i>Political Parties, Elections and Referendums Act 2000</i>
1999-2000			
Commonhold and Leasehold Reform (1)			<i>Commonhold and Leasehold Reform Act 2002</i> (3)
Football (2)			<i>Football (Disorder) Act 2000</i>
Insolvency	Trade and Industry Committee		<i>Insolvency Act 2000</i>
International Criminal Court (1)			<i>International Criminal Court Act 2001</i>
Regulatory Reform	Deregulation Select Committee and <i>DPD Committee</i>		<i>Regulatory Reform Act 2001</i>
Water	ETRA Committee		<i>Water Act 2003</i>

Draft Bills	Scrutiny performed by DSC or <i>HL Cttee</i>	Joint Cttee or <i>Ad hoc Cttee</i>	Subsequent progress
2000-01			
Export Control and Non-Proliferation	Quadripartite Committee and <i>DPD Committee</i>		<i>Export Control Act 2002</i>
Proceeds of Crime (1)			<i>Proceeds of Crime Act 2002</i>
2001-02			
Communications		JC on Draft Communications Bill and JC on Human Rights	<i>Communications Act 2003</i>
Companies	Trade and Industry Committee		some clauses included in Companies (Audit, Investigations and Community Enterprise) Act 2004
Extradition	Home Affairs Committee	JC on Human Rights	<i>Extradition Act 2003</i>
Justice (Northern Ireland) (4)			<i>Justice (Northern Ireland) Act 2002</i>
Local Government	TLGR Committee		<i>Local Government Act 2003</i>
Mental Health		JC on Human Rights	Further draft bill introduced 2003-04 (qv)
National Health Service (Wales)	Welsh Affairs		<i>Health (Wales) Act 2003</i>
2002-03			
Civil Contingencies	Defence Committee	JC on Civil Contingencies Bill	Civil Contingencies Act 2004
Corruption		JC on Draft Corruption Bill	
Electricity (Trading and Transmission)	Trade and Industry Committee		included in Energy Act 2004
Gender Recognition		JC on Human Rights	Gender Recognition Act 2004
Housing	ODPM Committee		Housing Act 2004
Mental Incapacity		JC on Draft Mental Incapacity Bill	Mental Capacity 2005
Nuclear Sites and Radioactive Substances	Trade and Industry Committee		included in Energy Act 2004
clauses on Police (Northern Ireland)	Northern Ireland Committee		<i>Police (Northern Ireland) Act 2003</i>
Public Audit (Wales)	Welsh Affairs Committee		Public Audit (Wales) Act 2004

Draft Bills	Scrutiny performed by DSC or <i>HL Cttee</i>	Joint Cttee or <i>Ad hoc Cttee</i>	Subsequent progress
2003-04			
Animal Welfare	EFRA Committee		Animal Welfare Act 2006
Charities		JC on Draft Charities Bill	Introduced [HL] 20.12.2004; fell at dissolution. Charities Act 2006
Civil Service (6)			Introduced 15.12.2004; fell at dissolution; Criminal Defence Service Act 2006
Criminal Defence Service	Constitutional Affairs Committee		
Disability Discrimination		JC on Draft Disability Discrimination Bill	Disability Discrimination Act 2005
Gambling		JC on Draft Gambling Bill	Gambling Act 2005
Identity Cards	Home Affairs Committee		Introduced 29.11.2004; fell at dissolution. Identity Cards Act 2006
Mental Health		JC on Draft Mental Health Bill	Mental Health Act 2006
Regional Assemblies	ODPM Committee		
School Transport	Education and Skills Committee		Introduced 14.10.2004 and carried over; fell at dissolution. Provisions were included in Education and Inspections Act 2006
Single European Currency (1)			
Transport (Wales)	Welsh Affairs Committee (5)		Introduced 15.12.2004; fell at dissolution. Transport (Wales) Act 2006
2004-05			
Children (Contact) and Adoption		JC on Children (Contact) and Adoption	Children and Adoption Act 2006
Company Law Reform (draft clauses) (8)			some provisions included in Companies Act 2006
Commissioner for Older People (Wales) (1)			Commissioner for Older People (Wales) Act 2006
Corporate Manslaughter	Corporate Manslaughter Sub- committees (9)		Corporate Manslaughter and Corporate Homicide Act 2007
Natural Environment and Rural Communities	EFRA Committee		Natural Environment and Rural Communities Act 2006

Notes (Appendix 1):

- (1) - draft bill received no formal scrutiny at Westminster
- (2) - draft bill received no formal scrutiny but was considered by an all-party meeting on 10 July 2000 [HC Deb 13 July 2000 c1181]
- (3) - the *Commonhold and Leasehold Reform [HL] Bill* was introduced in 2000-01 and re-introduced in 2001-02
- (4) - draft bill received no formal scrutiny at Westminster but was considered by an ad hoc Committee of the Northern Ireland Assembly
- (5) - the Welsh Affairs Committee scrutinised this draft bill jointly with the Economic Development and Transport Committee of the Welsh Assembly
- (6) - the draft Civil Service Bill received no formal scrutiny at Westminster; however, it is similar in form to a Bill proposed by the Public Administration Select Committee
- (7) - the draft bill was published in November 2003, some draft clauses were published in the previous session
- (8) - some clauses were published in March 2005 and further draft clauses were published in October 2005
- (9) - both the Home Affairs and Work and Pensions Committees established Draft Corporate Manslaughter Bill Sub-committees to consider the Bill in the 2005-06 Session

DPD - Delegated Powers and Deregulation

EFRA - Environment, Food and Rural Affairs

ETRA - Environment, Transport and Regional Affairs

ODPM - Office of the Deputy Prime Minister

TLGR - Transport, Local Government and the Regions

Appendix 2: Draft Bills Announced and Published by Session, since 2005-06

Draft Bills announced early in the Session	Draft Bills Published	Scrutiny performed by DSC or <i>HL Cttee</i>	Joint Cttee or <i>Ad hoc Cttee</i>	Subsequent progress
2005-06				
<i>Nigel Griffiths - WA (1)</i>				
Counter-Terrorism	Terrorism	Home Affairs Committee		Terrorism Act 2006
Coroner Reform	Coroners Bill	Constitutional Affairs Committee		Coroners and Justice Act 2009
Legal Services Bill	Legal Services Bill		JC on Draft Legal Services Bill	Legal Services Act 2007
Marine Bill				(see 2007-08)
Pensions Bill (2)				
Tourism Wales Bill				
	Tribunal, Courts and Enforcement (3)			Tribunal, Courts and Enforcement Act 2007
2006-07				
<i>Jack Straw - WMS (4)</i>				
	Climate Change	ERFA Committee (5)	JC on Draft Climate Change Bill	Climate Change Act 2008
Hague Convention (Artefacts in War)				
Human Tissues and Embryos	Human Tissues and Embryos		JC on Draft Human Tissues and Embryos Bill	Human Fertilisation and Embryology Act 2008
Local Better Regulation Office	Regulatory Enforcement and Sanctions (3)			Regulatory Enforcement and Sanctions Act 2008
Road Transport	Local Transport	Transport Committee		Local Transport Act 2008

Draft Bills announced early in the Session	Draft Bills Published	Scrutiny performed by DSC or <i>HL Cttee</i>	Joint Cttee or <i>Ad hoc Cttee</i>	Subsequent progress
2007-08				
Harriet Harman - WMS (6)				
Apprenticeship Reform	Apprenticeships	IUSS Committee; and CSF Committee		Apprenticeships, Skills, Children, Schools and Learning Act 2009
Citizenship and Immigration	(Partial) Immigration and Citizenship	Home Affairs		Borders, Citizenship and Immigration Act 2009
Constitutional Renewal	Constitutional Renewal		JC on Draft Constitutional Renewal Bill	Constitutional Reform and Governance Act 2010
Cultural Property (Armed Conflict)	Cultural Property (Armed Conflict)	CMS Committee		To be introduced when parliamentary time allows (7)
Heritage Protection	Heritage Protection	CMS Committee		To be introduced when parliamentary time allows (7)
Marine	Marine	EFRA Committee	JC on Draft Marine Bill	Marine and Coastal Access Act 2009
Marine Navigation and Port Safety	Marine Navigation	Transport Committee		To be introduced when parliamentary time allows (7)
	Construction Contracts (3)			Local Democracy, Economic Development and Construction Act 2009
	Counter Terrorism (Temporary Provisions) (3)			
2008-09				
Harriet Harman - WMS (8)				
Antarctica	Antarctic*			see 2009-10
Bribery	Bribery		JC on Draft Bribery Bill	Bribery Act 2010
Civil Law Reform				see 2009-10
Communications Data (9)				N/A
Community Empowerment (9)				N/A
Floods and Water	Flood and Water Management	EFRA Committee		Flood and Water Management Act 2010
Immigration Simplification	Immigration*			see 2009-10

* published in the week of prorogation

Draft Bills announced early in the Session	Draft Bills Published	Scrutiny performed by DSC or <i>HL Cttee</i>	Joint Cttee or <i>Ad hoc Cttee</i>	Subsequent progress
2009-10				
Harriet Harman - WMS (10)				
Animal Health Responsibility and Cost Sharing	Animal Health (3)			-
Antarctic	<i>Published in 2008-09</i>			not included in current legislative programme (11)
Civil Law Reform	Civil Law Reform	Justice Committee		not to be proceeded with (12)
House of Lords Reform				N/A
Immigration Simplification	<i>Published in 2008-09</i>			-
International Development Spending	International Development (Official Development Assistance Target)	International Development Committee		-
	Terrorist Asset-Freezing (3, 13)			Terrorist Asset-Freezing Act 2010

Notes (Appendix 2):

(1) HC Deb 5 July 2005 c233W

(2) The written answer said that publication of a draft Pensions bill depended was "subject to the outcome of the Pensions Review"

(3) draft bill received no formal scrutiny at Westminster

(4) HC Deb 16 November 2006 cc7WS-8WS

(5) The Environmental Audit Committee also referred to the draft bill in its report *Beyond Stern: From the Climate Change Programme Review to the Draft Climate Change Bill*, 30 July 2007, HC 460 2006-07

(6) HC Deb 7 November 2007 cc8WS-9WS

(7) see HL 160 2008-09

(8) HC Deb 4 December 2008 cc12WS-13WS

(9) not published to allow further consultation (see HL 160 2008-09)

(10) HC Deb 19 November 2009 cc13WS-14WS

(11) HC Deb 15 June 2010 c353W

(12) HC Deb 10 January 2011 c8WS

(13) The Terrorist Asset-Freezing (Temporary Provisions) Bill 2009-10 was introduced at the same time and enacted

CMS - Culture, Media and Sport

CSF - Children, Schools and Families

EFRA - Environment, Food and Rural Affairs

IUSS - Innovation, Universities, Science and Skills

WA - written answer

WMS - written ministerial statement