



Modernisation: Public Bill Committees

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On 1 November 2006, the House of Commons welcomed the Modernisation Committee's report on *The Legislative Process*, approved proposals to allow committees considering bills to take oral and written evidence, and agreed to a number of changes to standing orders to give effect to the proposals.

Although the changes were effective from the beginning of the 2006-07 Session, it was intended that the oral-evidence taking procedure would only apply to Government bills introduced in the House of Commons from the beginning of 2007 onwards. In fact, the first public bill committee to formally take oral evidence in accordance with the new standing orders was the *Local Government and Public Involvement in Health Bill*, which was introduced on 12 December 2006.

This note outlines the background to the Modernisation Committee's proposals and its proposals for public bill committees. It notes the House's reaction to the proposals and notes some exchanges on the way in which the process should work.

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A. Modernisation Committee's proposals

1. Background

On 7 September 2006, the Modernisation Committee published a report on *The Legislative Process*. At the heart of the report was a series of proposals to change the way in which standing committees consider legislation. The Committee identified three reasons for this focus. First, it is at committee stage that “a great deal of the substance of the House’s consideration of a bill takes place, and where most of the detail of the bill is settled”; secondly, there are a number of alternative ways in which a bill can be considered at this stage; and thirdly, “the work of standing committees has been one of the most criticised aspects of the legislative process”. The Modernisation Committee considered both the alternatives to standing committees and how the standing committee system might be improved.¹

The Committee identified a number of benefits that could be derived from taking evidence. These included:

- informing Members about the subject of a bill;
- a more consensual process – like select committees, which tended to be positively viewed outside Parliament;
- effective engagement with the public in the legislative process. The Committee had received evidence that it was difficult to influence the standing committee process.²

At the launch of the report, Jack Straw, the Leader of the House of Commons and chairman of the Modernisation Committee, argued that the routine programming of bills, which had been introduced following previous Modernisation Committee recommendations, had made the parliamentary process more efficient. He now wanted to make the House more effective in the way in which it scrutinised legislation.³ In its summary, the Committee argued that the revised procedures should make it “easier for the general public, as well as lobby groups, representative organisations and other stakeholders to influence Parliament’s consideration of bills”.⁴

2. Proposals

Rather than the purely adversarial standing committees, which operate like a mini version of the chamber, with the Government on one side and the Opposition on the other, the Committee recommended that public bill committees should normally receive written evidence and have the power to hold oral evidence sessions, during which they would

¹ Modernisation Committee, *The Legislative Process*, 7 September 2006, HC 1097 Session 2005-06, paras 50 and 52

² Modernisation Committee, *The Legislative Process*, 7 September 2006, HC 1097 Session 2005-06, paras 53-58

³ Modernisation Committee press notice, *Modernisation Committee publishes new proposals for the legislative process*, 7 September 2006, Session 2005-06 No 12

⁴ Modernisation Committee, *The Legislative Process*, 7 September 2006, HC 1097 Session 2005-06, p3

operate more like a cross-party select committee. In addition they would continue to consider the bill in detail in the more adversarial format of standing committees.⁵

Standing orders had already allowed for the establishment of special standing committees, which could take oral and written evidence but their use was rare and their procedures quite restrictive. The Modernisation Committee wanted the public bill committee process to be as flexible as possible:

We recommend that public bill committees should hold at least one evidence session, with the minister and officials, in all cases. Beyond that, the general restrictions on the number, duration and timing of oral evidence sessions held by public bill committees should be lifted. Appropriate out-dates should be applied instead on a case-by-case basis in the programme order. The programming sub-committee of the public bill committee should decide on how the committee uses the time available to it, including the division of time between evidence-taking and debate.⁶

It also recommended a change to the definition of a programme motion so that it required that a bill subject to a programme motion was either referred to a public bill committee with the power to take evidence, to a Committee of the whole House, or split committal between the two. The Committee considered that private Members' bills and other bills not subject to a programme motion would continue to be considered by an "ordinary" standing committee.⁷

The Committee could see no reason for "persisting with a nomenclature which is inaccurate, confusing and anachronistic" and therefore recommended that all standing committees on bills should be renamed "public bill committees" and that the other standing committees should become "general committees".⁸

The Modernisation Committee argued that "The purpose of a public bill committee is not to replicate the pre-legislative inquiry, nor should it be seen as a substitute for proper pre-legislative scrutiny".⁹

3. Reaction

On 1 November 2006, the House considered a number of "House" or procedural issues, including this report. It debated a motion which welcomed the report and approved "in particular the proposals for the committal of bills to committees with powers to take evidence to become the normal practice for *programmed government bills* which start in this House" (emphasis added). Jack Straw acknowledged that the "new procedures are being introduced – in parliamentary terms – with some speed". So he indicated that as a "transitional measure ... evidence-taking would only become the norm for Government Bills introduced ... after Christmas".¹⁰

⁵ Modernisation Committee, *The Legislative Process*, 7 September 2006, HC 1097 Session 2005-06, para 58

⁶ Modernisation Committee, *The Legislative Process*, 7 September 2006, HC 1097 Session 2005-06, para 71

⁷ Modernisation Committee, *The Legislative Process*, 7 September 2006, HC 1097 Session 2005-06, para 62

⁸ Modernisation Committee, *The Legislative Process*, 7 September 2006, HC 1097 Session 2005-06, paras 65-66

⁹ Modernisation Committee, *The Legislative Process*, 7 September 2006, HC 1097 Session 2005-06, para 73

¹⁰ HC Deb 1 November 2006 c308

Theresa May, the Conservative Shadow Leader of the House, and a member of the Modernisation Committee reiterated the point that the proposals were designed to make parliamentary processes easier to access:

... the point of the proposals is to improve the way in which we debate matters and introduce legislation in the House, not only for Members' convenience and to ensure that the work that they undertake in the House is more effective, but to improve the ability of people outside the House to access our legislative process, participate and understand the processes that we go through.¹¹

She commented specifically on Public Bill Committees:

The proposed changes to Standing Committees are entirely sensible. They will clarify the Committees' role, and enable us to provide much better legislative scrutiny. The ability to take evidence also represents a significant step forward. My hon. Friend the Member for Buckingham raised the issue of who should chair the public Bill Committees, as they will be known, assuming that the motion is passed today. I shall now perhaps put my head on the block by saying that, in my view, they will be more akin to the present Standing Committees than to Select Committees, and that it would therefore be appropriate for them to be chaired by a member of the Chairmen's Panel. There could, of course, be issues involved in taking a piece of legislation from its pre-legislative scrutiny through its scrutiny in the House, in relation to the amount of time that a Member would need to spend on the Committee. However, they will essentially be Standing Committees considering legislation, rather than Select Committees, and their chairmanship should be determined on that basis.¹²

David Heath for the Liberal Democrats opined that "the proposal on public Bill committees will commend itself to the House", he continued that:

... There is widespread support for the suggestion that we should take a more reasoned view, including taking evidence, before conducting line-by-line scrutiny, although one should not be at the expense of the other. I hope that we will not lose the capacity closely to scrutinise what is written in statute, because I am one of those old-fashioned people who thinks that it matters what we write into laws and that what we write into laws should be right. At the moment, that happens in Committee, and I do not want to lose that procedure.¹³

Ann Coffey spoke of her experience on the Joint Committee on the draft Children (Contact) and Adoption Bill. She noted that some changes were made to the Bill before it was introduced to Parliament. She also argued that the special standing committee process allowed greater access to Parliament for people with an interest in its business:

The other great advantage of special Committees is that they enable organisations with an interest to send representatives to a Committee directly rather than doing what they do now—relying on Committee members to read prepared briefs into the proceedings. The advantage for Committee members is that those people in turn can be examined on some of their evidence. An Opposition Member recently complained

¹¹ HC Deb 1 November 2006 c320

¹² HC Deb 1 November 2006 c322

¹³ HC Deb 1 November 2006 c336

bitterly about material put out by a children's organisation, saying that it was untrue and inaccurate.¹⁴

Greg Knight, the Chairman of the Procedure Committee, argued that it could be easier for Ministers to accept changes to their bills if the challenge they received was in a less confrontational arena, and Jack Straw concurred:

... Too often, when Ministers bring a Bill to this House, they are unwilling to countenance changes to it, regarding such changes as almost a personal attack on themselves or their policy. Having a pre-legislative phase to draft Bills will, I hope, mean that we get more debate and discussion, and a greater willingness on the part of Ministers to accept amendments where they are deemed appropriate.

Mr. Straw: It is precisely that characteristic that is also the advantage of the new Committee stage of Bills. Speaking from my own direct experience of asylum and immigration legislation, because there were four evidence-taking sessions, I was able to withdraw gracefully a couple of proposals that we all thought were very good ideas in opposition, but which turned out to be rather less than good on further examination. I was able to withdraw them far more easily than if they had come up in the adversarial part of the Committee stage, or on the Floor of the House.

Mr. Knight: That is a powerful point. Anything that allows a Minister to change tack without losing face should be encouraged.

Moving on to the Public Bill Committee proposals, I again fully support what is in the report. I hope that it will lead to less yah-boo politics at the Committee stage and a greater opportunity for constructive scrutiny and enlightened debate.¹⁵

In advance of the debate, the Hansard Society produced a briefing note on the Modernisation Committee's proposals. It concluded:

The Hansard Society commends the comprehensive nature of the recommendations put forward by the Modernisation Committee. It has addressed the need for reform in this crucial area of Parliament's work and has achieved a crossparty consensus in its conclusions and proposals. Taken together, we believe that the reforms have real potential to improve the legislative process which would benefit Parliament, Government and the public.¹⁶

4. Approval

The House agreed to the motion and to the necessary changes in standing orders to allow the changes to bill committee procedures to be implemented, without a division.¹⁷ The motion agreed to was:

That this House welcomes the First Report from the Select Committee on Modernisation of the House of Commons on the Legislative Process (House of

¹⁴ HC Deb 1 November 2006 cc339-340

¹⁵ HC Deb 1 November 2006 c346

¹⁶ Hansard Society, *The Modernisation Committee report on the legislative process*, Hansard Society Briefing Note, 30 October 2006, http://www.hansardsociety.org.uk/assets/Hansard_Society_Briefing_Note_Final.pdf

¹⁷ HC Deb 1 November 2006 cc304-404

Commons Paper No. 1097); approves in particular the proposals for the committal of bills to committees with powers to take evidence to become the normal practice for programmed government bills which start in this House; agrees that this be achieved by Standing Orders through the programming process, with such committees having freedom to decide how many evidence sessions should be held; agrees that the notice period for amendments to bills to be selected for debate in standing committee should, subject to the discretion of the Chair, be extended from two days to three days; supports the renaming of the various kinds of standing committee along the lines proposed by the Committee; and endorses the proposals for the gradual development of improved documentation and explanatory processes relating to bills.

The House also accepted a recommendation from the Committee to require more notice of an amendment at committee stage, this time on a division (by 223 votes to 172).¹⁸

The main results of the changes were as follows:

- From 15 November 2006 all public bill committees on bills subject to a programme motion may receive written evidence
- From 1 January 2007, with some limited exceptions, those Government bills introduced into the Commons which are subject to a programme motion will be expected to have one or more evidence sessions at the beginning of the committee stage
- From 15 November 2006 the notice period for amendments to be tabled for debate in a public bill committee (old standing committee) is increased from 2 days to 3 days (for both Government and non-Government amendments)
- From 15 November 2006 certain additional obligations began to arise in respect of documentation, in particular relating to the Delegated Powers Memorandum and to Explanatory Notes on amendments made in the second House.

B. Operation of Public Bill Committees

1. Evidence-taking powers

All public bill committees, subject to a timetable (under Standing Order No. 83A), have the power to send for persons, papers or records (receive written evidence) under Standing Order No. 84A (2). A motion can be moved to give public bill committees, not subject to a timetable the same power, under Standing Order No. 63.

Standing Order No. 84A (3) provides that all public bill committees with the power to send for persons, papers or records “*may* hear oral evidence at such meetings as the committee may appoint” (emphasis added). Standing Order No. 84A (2) and (3) now read:

(2) A public bill committee to which a bill is, or certain provisions of a bill are committed by means of a programme order under Standing Order No. 83A (Programme motions) shall have the power to send for persons, papers and records.

¹⁸ HC Deb 1 November 2006 c407

(3) A public bill committee given the power (under paragraph (2) of this order or paragraph (2) (b) of Standing Order No. 63 (Committal of bills not subject to a programme order)) to send for persons, papers and records may hear oral evidence at such meetings as the committee may appoint, and, unless the committee otherwise orders, all such evidence shall be given in public. The oral evidence shall be printed in the official report of the committee's debates and the committee shall have power to report written evidence to the House as if it were a select committee.¹⁹

However, a public bill committee with the power to take evidence will have specifically to decide to exercise the power. The decision of an individual public bill committee to hear oral evidence is taken on the basis of a resolution proposed by the programming sub-committee of the public bill committee. Standing Order No. 83C states that:

- (5) The programming sub-committee shall report to the committee any resolution which it makes about—
- (a) the number of sittings to be allotted to the consideration of the bill in the committee;
 - (b) the allocation of the proceedings to each sitting;
 - (c) the time at which any proceedings, if not previously concluded, are to be brought to a conclusion;
 - (d) the date by which the bill is to be reported to the House;
 - (e) the programming of consideration and third reading.

Evidence-taking will be the norm,²⁰ but the Government did not propose evidence sessions in three cases:

- in a transitional phase, for bills introduced before Christmas 2006 (whether or not they received Second Reading before Christmas);
- bills which were introduced in the House of Lords;
- sometimes/often²¹ for bills which have already received evidence during parliamentary pre-legislative scrutiny and are substantially unaltered.

There may be other exceptional cases where the Government does not propose oral evidence taking for a programmed bill. If the Opposition can persuade sufficient Government Members on a public bill committee, they might be able to pass an amendment overturning the timetable of the Programming Sub-committee at the first meeting of the Public Bill Committee and have more, fewer or different evidence sessions.

Private Members' bills are not subject to programme motions and therefore committees considering them do not have the general power to take written or oral evidence.

¹⁹ House of Commons, *Standing Orders of the House of Commons – Public Business*, March 2007, HC 405 2006-07, SO No 84A

²⁰ The Leader stated on the floor of the House that “it is our policy that, subject to the exceptions that I have set out, for every programmed Government Bill starting in the Commons, we will propose to the Bill Committee that it should, other than in exceptional cases, exercise its powers to take evidence”.

²¹ The Leader stated on the floor of the House that “Such a process will often not be necessary for Bills that have received parliamentary pre-legislative scrutiny: one evidence session—or, in some cases, none—would normally be appropriate”

A number of questions about the operation of public bill committees (PBCs) were raised during Business Questions as the new procedures started to be implemented. On 18 January 2007, questions about the role of the programming sub-committees of PBCs were raised;²² and, on 25 January 2007, on whether oral evidence could be taken at any time during a PBC's programme. Jack Straw confirmed that "it is for the Programming Sub-Committee to determine how many evidence sessions there are, and under Standing Orders the Committee can decide to take evidence at any stage".²³

C. Firsts

Although the changes to Standing Orders were effective from the beginning of the 2006-07 Session, it was intended that they would apply to Government bills introduced in the House of Commons from the beginning of 2007 onwards. In fact, the first public bill committee to formally take oral evidence in accordance with the new standing orders was the Local Government and Public Involvement in Health Bill Committee; the Bill it was considering was introduced on 12 December 2006.²⁴ It took evidence during its first four sessions.²⁵ The first committee to receive written evidence was the Greater London Authority Bill Committee.²⁶

The first public bill committee to take oral evidence as a matter of course was the UK Borders Bill Committee; the Bill was introduced on 25 January 2007. The UK Borders Bill Committee also became the first public bill committee both to take oral evidence at more than four sessions and to return to oral evidence-taking after moving on to line-by-line deliberation. The unavailability of a witness during the first four meetings of the public bill committee meant that the committee amended its programme motion at a later date to allow for that witness to appear before the committee further on in its considerations.²⁷

Although the Offender Management Bill Committee did not take oral evidence, some other interested Members and peers held a seminar on the Bill. The seminar was transcribed and presented to the Committee as a written memorandum.²⁸

D. An early assessment

On 11 December 2007, Helen Goodman, the Deputy Leader of the House provided the following assessment "of the effect of public bill committees on the legislative process", in response to a Parliamentary Question from Mike Hancock:

²² HC Deb 18 January 2007 cc920-921

²³ HC Deb 25 January 2007 cc1553-1555

²⁴ HC Deb 12 December 2006 c750

²⁵ Local Government and Public Involvement in Health Bill Committee 30 January 2007 cc2-35; cc36-69; and Local Government and Public Involvement in Health Bill Committee 1 February 2007 cc70-85; cc86-115. For links to the oral and written evidence, see: <http://www.publications.parliament.uk/pa/cm/cmpblocalgov.htm>

²⁶ Greater London Authority Bill Committee, see: <http://www.publications.parliament.uk/pa/cm/cmpbgla.htm>

²⁷ UK Borders Bill Committee 8 March 2007 c235

²⁸ Memorandum submitted by Rt Hon David Davis MP, Mr Crispin Blunt, MP, James Brokenshire MP, and Mr Edward Garnier QC MP, *Offender Management Bill Evidence Session hosted by the Conservative Party*, 10 January 2007, <http://www.publications.parliament.uk/pa/cm200607/cmpublic/offender/memos/m01.htm>

The changes in procedure relating to the committee stage of Bills taken off the Floor of the House, including the renaming of standing committees on Bills by the more descriptive title of 'Public Bill Committees', which were agreed by the House on 1 November 2006, have been generally welcomed.

Oral evidence taking in Public Bill Committees began in January 2007. Four Bills which began their passage in session 2006-07 took such evidence, and in the current session it will now be standard practice for all programmed Government Bills starting in the Commons to hold sessions of oral evidence. The ability of such committees to take oral evidence before proceeding to clause by clause scrutiny has brought benefits to the consideration of Bills. Good co-operation between the Government and other representatives on the committee, and the House authorities, can maximise the effectiveness of the process. The power for such committees to receive written evidence is increasingly made use of by a range of organisations and individuals. The initial view is that these processes have helped to improve the opportunities for those outside Parliament to engage with the legislative process.²⁹

²⁹ HC Deb 11 December 2007 cc353W-354W