

Opening Up

# The Usual Channels

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with **Ian Campbell** and **Andrew George**

Introduction by Peter Riddell, *The Times*

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# Foreword

Peter Riddell, *The Times*

The world of the usual channels is one of the most secretive and little discussed features of Westminster life. The usual channels consist of the relationships between the parties in both Houses, personified by the whips and, in the Commons, by long-serving and highly influential fixers working under the deceptively modest title of Private Secretary to the Chief Whip. This is a world of discretion and secrecy rather than transparency and openness.

Chief Whips are virtually alone among members of recent Cabinets not to have written their memoirs. Most have been anonymous, little remembered figures, known if anything for their later political careers like Sir Edward Heath. Perhaps the best known Chief Whip is the fictional Francis Urquhart, so memorably played by Ian Richardson in the televised version of Michael Dobbs' political novels. That is why Gyles Brandreth, a former junior whip in the late Major years, so outraged, and in some cases amused, his former colleagues in the Conservative whips' office by his revelations about their doings and tradecraft in his book *Breaking the Code*. They felt he had betrayed the undertaking to maintain lifetime confidentiality about the secrets of the whips' office. But this is much more than behind-the-scenes gossip, the whips' black book and the like. The usual channels are a mystery that matters, the whips and their private secretaries arrange the business of both Houses, determining the timing and nature of debates, and advising about what legislation can get passed.

Michael Rush and Clare Ettinghausen clearly demonstrate the importance of the usual channels – explaining what they are, who is involved and who conducts the negotiations. They also discuss their effectiveness and look at alternative ways of discussing and deciding legislative business. Westminster is instinctively inward looking, reluctant to accept that either the Commons or the Lords could possibly learn from the experience of other legislatures. Michael Rush and Clare Ettinghausen examine alternative approaches in, for example, the new devolved parliaments and assemblies as well as in the rest of Europe. There, formal Business Committees exist, consisting of representatives of all parties. Such committees openly manage the timetable. Of course, in most of these other cases, legislatures are elected by one version or other of proportional representation and no single party has a majority. So the rights of other parties have to be taken into account. That is already true in the House of Lords here, where the Liberal Democrats have a greater say in the current usual channels negotiations than they do in the Commons.

The idea of a Business or Steering Committee was recently considered by the Modernisation Committee of the Commons, but was rejected under pressure from Government Whips and some Cabinet ministers. They were reluctant to give other parties a formal say, even though the Government would still have ultimate control over parliamentary business because of its majority in the Commons.

So the door into the whips' secret garden remains closed, despite this welcome attempt by Michael Rush and Clare Ettinghausen to push it open.

*The efficient and smooth running of the parliamentary machine depends largely upon the Whips...[The Government Chief Whip] and the Chief Whip of the largest opposition party constitute the 'usual channels', through which consultations are held with other parties and members about business arrangements and other matters of concern to the House.*

*(Erskine May, 22nd ed., 1997, pp. 213–14)*

*The smooth running of the House depends largely on the Whips. They agree the arrangement of business through 'the usual channels'. The usual channels consist of the Leaders and Whips of the main political parties. For certain purposes the usual channels include the Convenor of the Crossbench Peers.*

*(The House of Lords, The Companion to Standing Orders and Guide to Proceedings of the House, 2000, 18th ed., para. 1.47)*

# ***Introduction***

One of the most distinctive features of the Westminster Parliament is the way in which parliamentary business is organised. The initiative in arranging the parliamentary agenda lies largely with the government of the day and the ultimate decision on what is debated, when and for how long rests with the government. However, in practice the government negotiates with the opposition parties, particularly the official opposition, through what are euphemistically known as the ‘usual channels’. The House of Lords and House of Commons each have their own usual channels, which operate differently in certain respects. However, few records are kept of what has been agreed and everything operates entirely informally and privately. Legislatures in many other countries arrange their business through a Business Committee and this is also the practice in the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. This report explains what the usual channels are, who is involved and which key figures secure usual channels negotiations. It also asks how effective are the usual channels, should Westminster have a Business Committee and should Parliament have greater control over its agenda?

## ***Hansard Society Research***

The Hansard Society has carried out a series of off-the-record interviews with the various *dramatis personae*, past and present, of the usual channels. We have also benefited considerably from a one-day seminar held at Nuffield College, Oxford under Chatham House Rules chaired by Dr David Butler, for whose support and encouragement we are most grateful. The seminar was attended by a number of individuals we had interviewed, together with others we had not, including representatives from the Scottish Parliament and the National Assembly for Wales.

## ***The Usual Channels***

References in most textbooks to the usual channels are decidedly perfunctory, often little more than a sentence or two. The reason is clear enough: the usual channels operate in private, few records are kept and those who have been closely involved have, for the most part, said or written little or nothing about their knowledge and experience. Without co-operation between the parties in Parliament, especially the government and the official opposition, the ability of the government of the day to secure the passage of its legislation would be significantly reduced. Under Standing Order 14 government business has precedence for a significant proportion of the time available in the House of Commons – three-fifths in 1999–2000, and with the majority in the House as is normally the case, the government can usually ‘get its business’.<sup>1</sup> (See Table 1 on page 19.)

The opposition parties, particularly the official opposition, can make life difficult for the government and miserable for government backbenchers. There is, of course, a significant amount of co-operation, for today's government knows that it could be tomorrow's opposition, and today's opposition hopes to become tomorrow's government. The House of Lords is a different case because government business does not have precedence. Arguably, the usual channels are more important in the Lords than the Commons, though this must be set against the acceptance by the upper house that the will of the lower normally prevails.

Understanding how the usual channels operate is crucial to an understanding of how the Westminster Parliament operates. On the face of it, all the usual channels consist of meetings between individuals from parliamentary parties to discuss the weekly operation of Parliament. However, in this report it becomes clear that those involved in the usual channels exercise a huge amount of power and influence. Moreover, Westminster differs from many other comparable legislatures by not even partly formalising the co-operation between parties in arranging the parliamentary agenda through some sort of Business Committee. In addition, all three devolved bodies in the UK – the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly – have Business Committees. These operate with greater transparency than in Westminster.

## ***What are the Usual Channels?***

*The usual channels are like a living chess game.*  
(Interview comment)

The usual channels is the broad term used to describe a series of meetings and discussions between the Leader of the House, the Chief Whip and parliamentary personnel in both the Commons and the Lords to decide how business will be arranged in each House. A description of the different facets of the usual channels is outlined below. The range and frequency of the meetings differs in the Commons and the Lords, as do the parliamentary personnel involved in these discussions.



# Who are the Usual Channels?

## House of Commons

Leader of the House (Cabinet member)

Chief Whip (currently a member of the Cabinet)\*

Private Secretary to the Chief Whip (Civil service appointment – no limit on time in post)

Opposition Leader(s) of the House

Opposition Chief Whip(s)

## House of Lords

Leader of the House (Cabinet member)

Chief Whip (attends but is not a member of the Cabinet)

Private Secretary to the Chief Whip and Leader of the House (Secondment from Clerk's office – three year limit on time in post)

Opposition Leader(s) of the House

Opposition Chief Whip(s)

(Consultations take place with the Convenor of crossbench peers)

\* Between 1974 and 1976 the Government Chief Whip was a member of the Cabinet, but before 1974 and between 1976 and 1997 was not a member, but attended Cabinet meetings. This practice goes back to at least 1951.

# What do the Usual Channels Do?

The usual channels operate in several different ways:

- regular weekly meetings of the key figures to discuss the arrangement of business in each of the Houses;
- daily contact among the key figures to deal with ongoing matters, agenda and timetabling issues;
- during the passage of legislation and other government business, discussions between the whips on both sides, the minister in charge of the business and his or her opposition 'shadow' may take place to resolve any difficulties that may arise with amendments or when a vote will take place and, if possible, deals will be done;
- contact between the whips over various matters, such as 'pairing' in the Commons (although because of Labour's huge majority since 1997 there has been no 'pairing'), and filling intermittent vacancies on committees;

- membership of committees, particularly select committees and the distribution between parties of select committee chairs are in practice agreed through the usual channels;
- other matters, such as proposals coming before or emanating from the Modernisation Committee in the Commons or the Procedure Committee and other domestic committees in either House may be discussed through the usual channels;
- discussions about the election of a new Speaker or the appointment of a Deputy Speaker in the Commons, or Chairman or Deputy Chairman of Committees in the Lords also take place through the usual channels.

This report concentrates on the use of the usual channels for the arrangement of parliamentary business, important as these other matters are. Those involved in the usual channels are not only crucial to the day-to-day working of both Houses but wield considerable power and influence.

## ***A History of the Usual Channels***

The whips and whipping preceded the usual channels by a long way. As governments increasingly took the parliamentary initiative and as the parliamentary parties became more pervasive, so the need for co-operation between them became more necessary.<sup>2</sup> The existence of the usual channels undoubtedly preceded the use of the term, which can be traced back to at least 1905, when Arthur Balfour said in reply to a parliamentary question:

*I have to ask [the Hon. Member] to communicate with my Rt. Hon. Friend near me through the usual channels.*<sup>3</sup>

By 1909–10 the practice of asking the government to make a statement about the following week’s business had been established and the term ‘usual channels’ was in regular use by 1914, when it was discussed in evidence to the Commons Procedure Committee.<sup>4</sup> Various examples of informal arrangements between the parties can be found in a number of 19th century sources. Donald Wade, for instance, quotes an entry in an MP’s diary referring to the government whip and the opposition whip exchanging information about the ‘prospect of a division’ and also a letter from Sir Robert Peel, then Leader of the Opposition, to Lord Althorp, Leader of the House, agreeing to an arrangement over a particular piece of business due before the House.<sup>5</sup> Sir Ivor Jennings mentions arrangements in the period 1860–66 between Lord Palmerston and Lord Derby, as leaders of their respective parties.<sup>6</sup> Alpheus Todd, in his two-volume study, *On Parliamentary Government in England*, notes that, ‘When many members desire to address the House an arrangement is sometimes made in the Commons, between the government and opposition “whippers-in”, and in the Lords, between the Leaders of both sides of the House — as to the order in which the Speaker should name those who are to take part in the debate.’<sup>7</sup> This point was reiterated by Lawrence Lowell in 1908<sup>8</sup> and later expanded upon:

*The government whips act as the aides-de-camp, and intelligence for the leader of the House. In the former capacity they arrange for him with the whips of the other side those matters in which it is a convenience to have an understanding. The membership of select committees, for example, is generally settled between the chief whips of the two sides of the House; and the time when the test vote on some great measure will take place is usually arranged beforehand in the same way.*<sup>9</sup>

The usual channels are not a new phenomenon, but in their earliest form they were almost certainly ad hoc and occasional. They developed during the 19th century and did not become fully and systematically functional until after the appointment in 1919 of Sir Charles Harris as Private Secretary to the Conservative Chief Whip in the Coalition Government, leading eventually to his becoming the permanent Private Secretary to the Government Chief Whip.<sup>10</sup>

### ***Leader of the House and Leader of the Opposition***

Until 1914 the key figures in the usual channels were the Leader of the House, the Government Chief Whip, the Leader of the Opposition and the Opposition Chief Whip. These posts, however, did not develop simultaneously, nor is it easy to pinpoint their precise origin. By the middle of the 18th century, whips or letters urging MPs to support the government of the day were sent out by the Senior (or Parliamentary) Secretary to the Treasury. However, arguably the first ‘Whip’ was the Duke of Newcastle (1693–1768), who was supremely adept not only at managing elections but at managing the House of Commons.

Until 1942 the post of Leader of the House of Commons was usually held by the Prime Minister, provided that the Prime Minister was a member of the Commons and not the Lords. If the Prime Minister was in the Lords, then a leading member of the party in the Commons was appointed Leader of the House. For example, the position was held by Sir Robert Peel when the Duke of Wellington was Prime Minister, by Lord Althorp in Earl Grey’s administration, Lord John Russell under Melbourne, Disraeli under Lord Derby, and W.H. Smith and Arthur Balfour under Lord Salisbury. However, the post was usually held in conjunction with another – for example, Lord John Russell was Secretary of State for War and the Colonies while Disraeli was Chancellor of the Exchequer. Lord Salisbury was the last prime minister to come from and remain in the Lords. Prime ministers (with the exception of Lloyd-George<sup>11</sup>) continued to hold the post of Leader of the House until 1942, when Churchill handed over this responsibility to Sir Stafford Cripps (although between 1940 and 1942 much of the work was handled by Attlee). Since 1942 the posts of Prime Minister and Leader of the House have always been separate. A similar situation prevailed in the House of Lords: if the Prime Minister was a member of the upper house, he was also Leader of the House, but after the resignation of Lord Salisbury in 1902 the post was held by a leading member of the government in the Lords.

The position of Leader of the Opposition was somewhat more amorphous, but dates from the earlier part of the 19th century. Following a change of the party in power, the immediate past Prime Minister was usually regarded as Leader of the Opposition, but as more time elapsed it was not always clear who from the opposition would be invited to form a new government if and when that became necessary. Gladstone, for example, announced his retirement on more than one occasion and the position was sometimes further complicated if a leading contender

as party leader was a member of the Lords. After Lord Salisbury this was no longer an issue and the leader of the second largest party in the Commons was designated Leader of the Opposition, even though the post was not recognised by statute until 1937. Similarly, in the Lords during the 19th century, a leading member of the opposition party would serve as ‘Shadow’ Leader of the House and this practice has continued to the present.

## *The Whips*

Far more has been written about whips and whipping in Parliament than about the usual channels.<sup>12</sup> This is partly because whipping goes back much further in time than the usual channels, but mainly because the role of the whips periodically arouses controversy and some of those involved (mostly the subjects of the whips’ activities, rather than the whips themselves) have been willing to speak out. It was no accident that the former Conservative MP and whip, Gyles Brandreth, chose to call his published diaries *Breaking the Code*. The very first sentence of his preface says, ‘A number of good people, friends and former colleagues, will regard the publication of this book as an act of betrayal.’<sup>13</sup> Nonetheless, stories about the whips’ machinations abound – of grown men reduced to tears, careers aborted or shattered, ‘pairs’ denied, office accommodation in some distant Westminster outpost (in the past it was in ‘a room more suitable for suicide’), of rewards and punishments, carrots and sticks. More sober and balanced accounts point out that the whips are in the two-way communication business, listening as well as leaning, warning party leaders of discontent among their backbench supporters (especially on the government side) and of possible rebellions.<sup>14</sup>

## *Private Secretary to the Government Chief Whip*

The modern post of Private Secretary to the Government Chief Whip dates back to the inter-war period and is a unique post within Parliament and government. The holder acts as a non-partisan deal-broker between the government and opposition parties, although officially he works for the Government. A ‘job-description’ in Appendix 2 gives more detail, but what is crucial to the usual channels is the length of service that this post allows and the knowledge the post-holder subsequently gains.

Soon after becoming Leader of the House of Commons, Richard Crossman remarked in his diary of the Private Secretary to the Government Chief Whip:

*He’s a key man because he’s a little round ball-bearing which makes the huge joint work that links the Opposition and Government Whips’ Offices.*<sup>15</sup>

There have only been four holders of this position in the last 83 years (see Appendix 1 for more detailed information), during which time there have been many Leaders of the House and Chief Whips. Ministers, of course, come and go, whereas civil servants continue in the post. However, unlike most civil servants, who move posts fairly regularly, the Private Secretary has always remained in post until retiring. The complexity of this job has been argued as one reason why it should be a long appointment. In theory, the role of Private Secretary is to negotiate on behalf of government to organise the details of the passage of legislation – not as a partisan actor but as an ‘honest broker’, trusted on both sides. However,

a number of our interviewees expressed deep concern over the amount of power that holders of this post gain over the years. The vast knowledge they have of government and opposition thinking over the parliamentary session gives them a degree of power in their position as ‘go-between’ between the two main parties. For example, records of usual channels negotiations and agreements are almost never kept by the political personnel but some interviewees suggested that the Private Secretary may well have kept records.

Crucially, those outside the usual channels suggested that they had no idea what the private secretaries did and how much power or influence they had. Furthermore, the Private Secretary often knows more than the Leader of the House because of his role as go-between. It was generally agreed that the Private Secretary has considerable influence. Essentially, the Private Secretary is a facilitator, whose task is to ensure the smooth-running of the business of the House.

*The role of Private Secretary to the Chief Whip and their office is the sewers of the system.*

*No one talks about them but without them the system would collapse.*

(Interview comment)

*The Private Secretary is “the fixer”.*

(Interview comment)

The Private Secretary to the Chief Whip has the following responsibilities:

1. provides support to the Government Chief Whip to enable her [him] to fulfil her [his] role of timetabling and securing the passage of Bills through the House of Commons and successfully completing the government’s legislative programme;
2. offers support to the Chief Whip as a Government Minister, in her [his] responsibilities to Parliament;
3. acts as a channel between government and opposition parties to arrange parliamentary business;
4. co-ordinates and monitors the proceedings in the House of Commons on a daily basis;
5. provides advice and guidance to Ministers and Departments on the government’s legislative programme and associated parliamentary procedures.<sup>16</sup>

The Private Secretary has a staff of 19. Nine are based in the Government Whips’ Office and 10 in the House of Commons, including the Opposition Whips’ as well as the Government Whips’ Offices. He is responsible for a budget of more than £1m.<sup>17</sup>

### ***Special Adviser to the Chief Whip***

In recent years it has been the practice for a House of Commons Clerk to be seconded to work with the Leader of the House and the Private Secretary to the Government Chief Whip. The individual seconded is chosen by the Leader of the House from a shortlist provided by the Clerk of the House. Their role is to advise generally on dealing with the House of Commons, but since 1997 much of this advice has centred on the work of the Commons’ Modernisation Committee. Furthermore, like most positions below very senior posts in the Department of the Clerk, the secondment is only for a limited period – about two years.

## ***Private Secretary to the Leader of the House of Lords and the Chief Whip***

There is also a Private Secretary to the Leader of the House and the Government Chief Whip in the House of Lords. For a number of years before 1935, whatever was required in terms of management of business in the Lords was undertaken by the Private Secretary to the minister who happened to be Leader of the House as part of his routine duties. In 1935 a new arrangement was made. A Private Secretary, Charles Hendricks, was appointed. Like Harris before 1939 (in the Commons), Hendricks was not a civil servant, but remained in office under successive Leaders of the House until his death in 1960. Since then the post has been held by a Clerk from the Lords and always for a relatively short period – normally three years. From 1958 the Private Secretary has formally served both the Leader of the House and the Government Chief Whip, not just the latter, as in the Commons.

The Private Secretary to the Leader of the House of Lords and the Government Chief Whip is assisted by an Assistant Private Secretary, a post held by a civil servant. The Leader of the House also has a second Private Secretary, who deals with the Leader's other ministerial responsibilities. As in the Commons, the Private Secretary is the lynchpin of the usual channels, both in dealing with business in the Lords and in relations between Lords and Commons. Thus, the Private Secretary has regular meetings with his or her counterpart in the Commons on Fridays (usually a quiet day in both Houses and sometimes a non-sitting day in one or the other). In addition, they are usually in touch daily and there are regular meetings of the two Leaders of the House, the two Government Chief Whips and the two Private Secretaries, usually attended by the First Parliamentary Counsel and the Legislation Secretary from the Cabinet Office, who is in charge of the government's legislative programme.

### ***Power Without Responsibility?***

It is clear that the Private Secretaries are central to the organisation and operation of the parliamentary agenda. What is crucial about these appointments is that both Private Secretaries are seen as politically neutral, trusted by government and opposition alike, and can remain in post when there is a change of government. However, concern was expressed over the amount of power these unelected officials have – 'power without responsibility', as one senior parliamentary official put it. The Lords' practice demonstrates that long service in the post of Private Secretary is not a necessary condition for successfully fulfilling its responsibilities. Against this, the less partisan atmosphere of the Lords may make such a task easier for a parliamentary official than would be the case in the Commons.

# ***A Week in the Life of the Usual Channels – the House of Commons***

As outlined above, the usual channels operate on several different levels and involve different personnel. The section below describes the series of typical weekly meetings.

*Monday:* In weeks when the House is due to meet, the Private Secretary has a discussion about the parliamentary agenda and timetable with the Leader of the House and the Government Chief Whip.

*Tuesday morning:* Meeting with the Opposition Chief Whip at which the government's draft programme of business for the following two weeks is discussed, usually drawing attention to any contentious matters or areas of uncertainty. This allows the opposition to raise any matters it wishes – a request or demand for a debate on something not included or a longer debate on something that is. There may also be discussions about using Opposition Days to debate a matter chosen by the opposition. Some matters may be left for further, internal or party discussion, to be subsequently agreed informally.

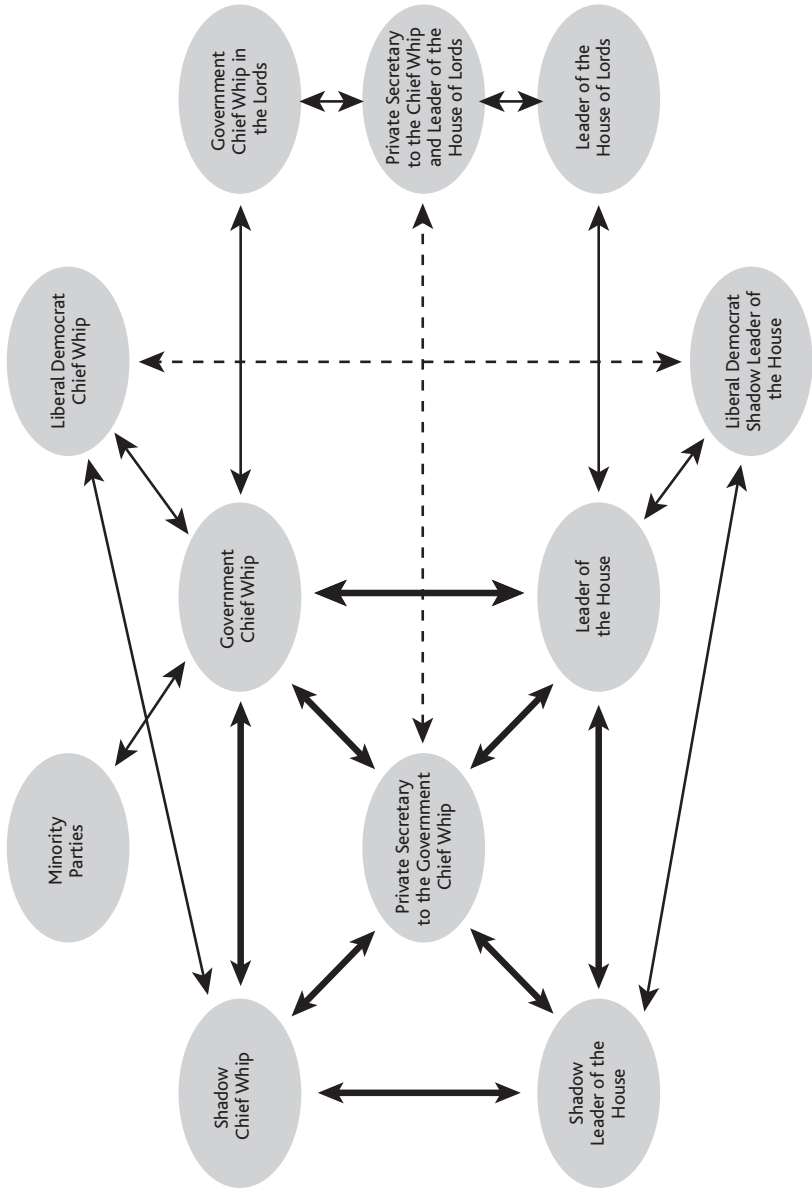
*Tuesday afternoon:* A similar meeting is held with the Liberal Democrats – tripartite meetings of all three main parties, quite apart from the minor parties, do not take place, so that there are separate usual channels between the government and the official opposition and the government and the Liberal Democrats. Recently there have also been regular meetings between the Conservative opposition and the Liberal Democrats and occasional collaboration on particular items of business. The order of business is then agreed by the Leader of the House, the Government Chief Whip and the Private Secretary.

*Wednesday morning:* Order of business shown to the Shadow Cabinet.

*Thursday morning:* A separate meeting is held with the Liberal Democrats to inform them of what has been decided. It is then approved by the Cabinet at its weekly meeting on Thursday morning, but this is largely a formality.

*Thursday afternoon:* After Question Time on Thursday, the Leader of the House makes a Business Statement in response to a Private Notice Question from the Shadow Leader. The Business Statement is the announcement of the House's programme for the following week and the Monday after. The Statement may also include announcements about business to be taken later in the second week or other matters, such as the date of prorogation. As soon as the Statement has been made, copies of it are made available to Members through the Vote Office. The Speaker permits supplementary Questions from the Shadow Leader and other Members for about 30 minutes.<sup>18</sup>

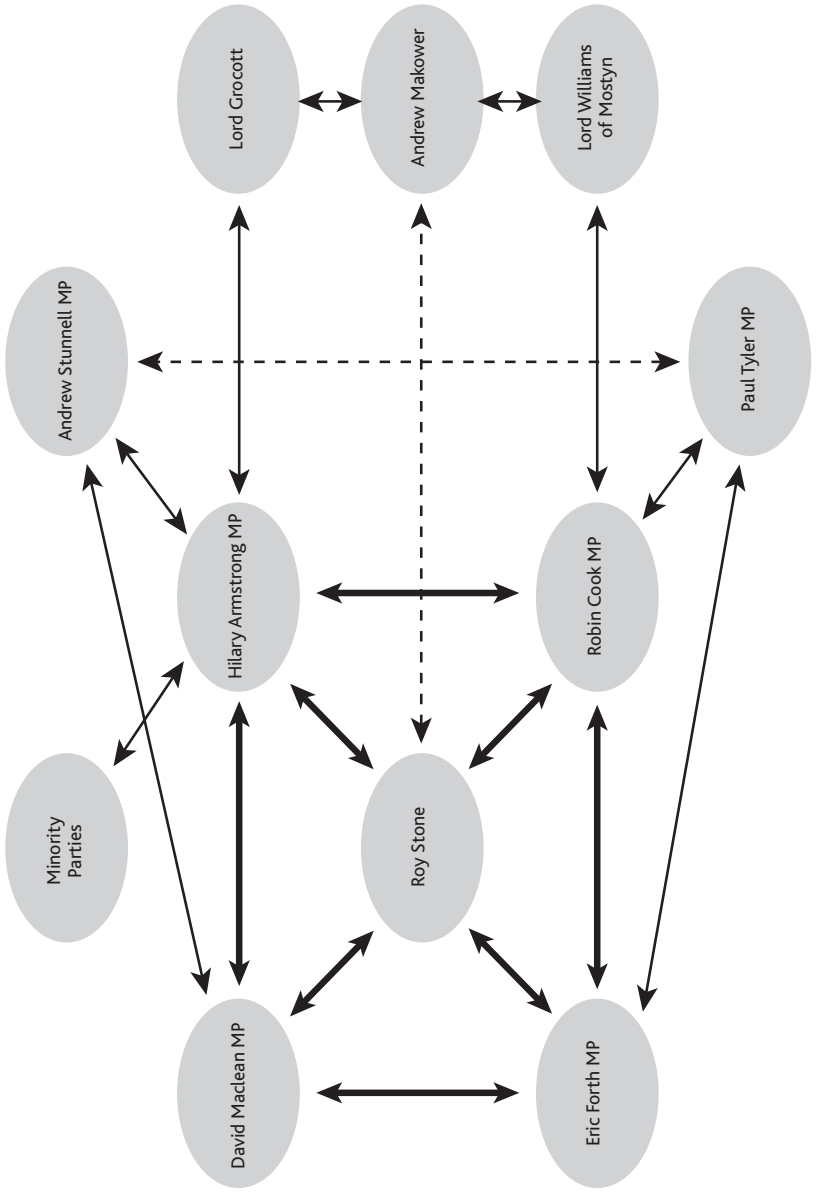
# Usual Channels Organisation Chart – House of Commons





# Usual Channels Organisation Chart – House of Commons

Occupants of Positions – December 2002



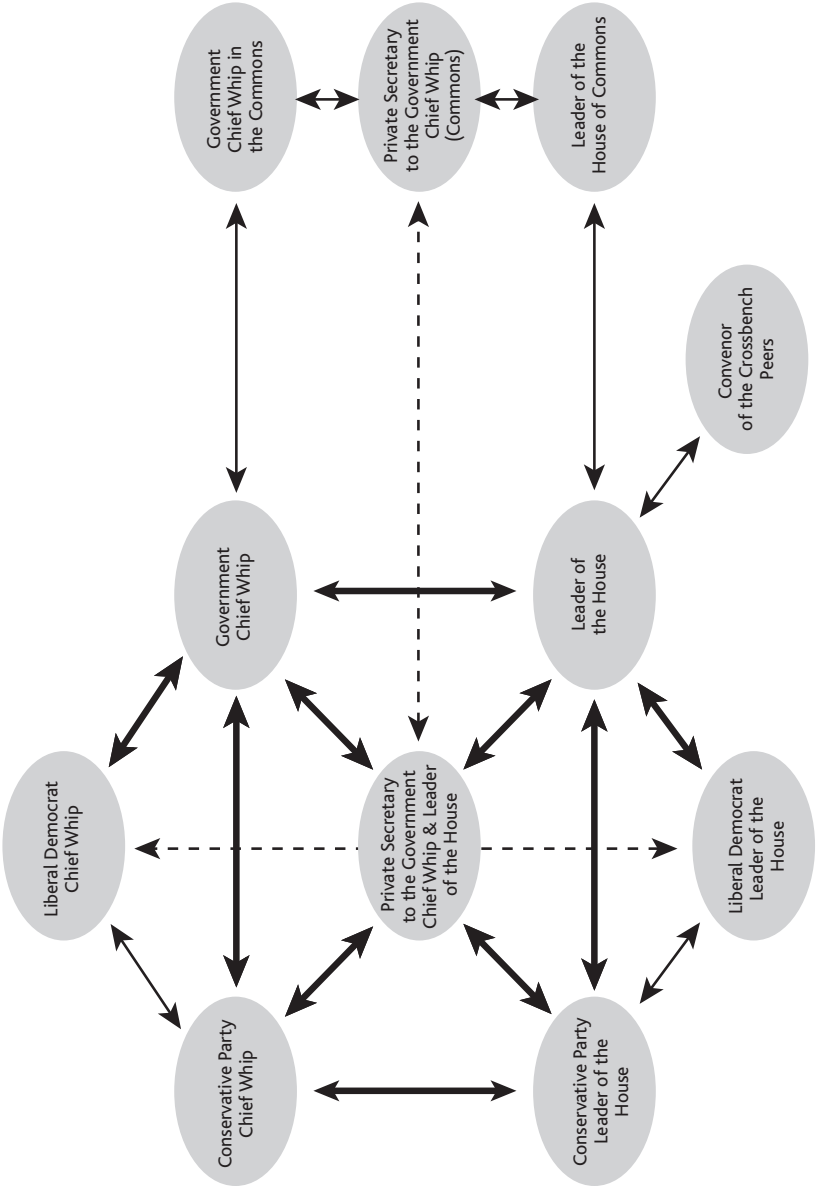
# *The Usual Channels in the House of Lords*

In the Lords, separate meetings are held with the Opposition Chief Whip and the Liberal Democrat Chief Whip, but these meetings are often preceded by discussions with individual frontbenchers, mostly from the opposition, to deal with particular items of business. Such discussions may also include imparting the information that the government wants such and such a bill by Easter and the like. There are also ad hoc meetings between ministers and opposition frontbenchers, which are sometimes attended by civil servants from the departments concerned. Under some Leaders there are regular weekly meetings of their team, under others, not. As noted in *The Companion to Standing Orders*, the list of speakers for most debates is drawn up after consultation through the usual channels,<sup>19</sup> although the party concerned decides the order of speakers.

All these discussions result in a 'Forthcoming Business' document, drawn up by the Private Secretary every Thursday. It is not published but is made available to all peers at their weekly party meetings, including crossbench peers, who have their own convenor and organisation in the House. 'Forthcoming Business' contains similar information to that contained in the Commons' Business Statement, with the addition of a list of speakers. The document typically contains the following:

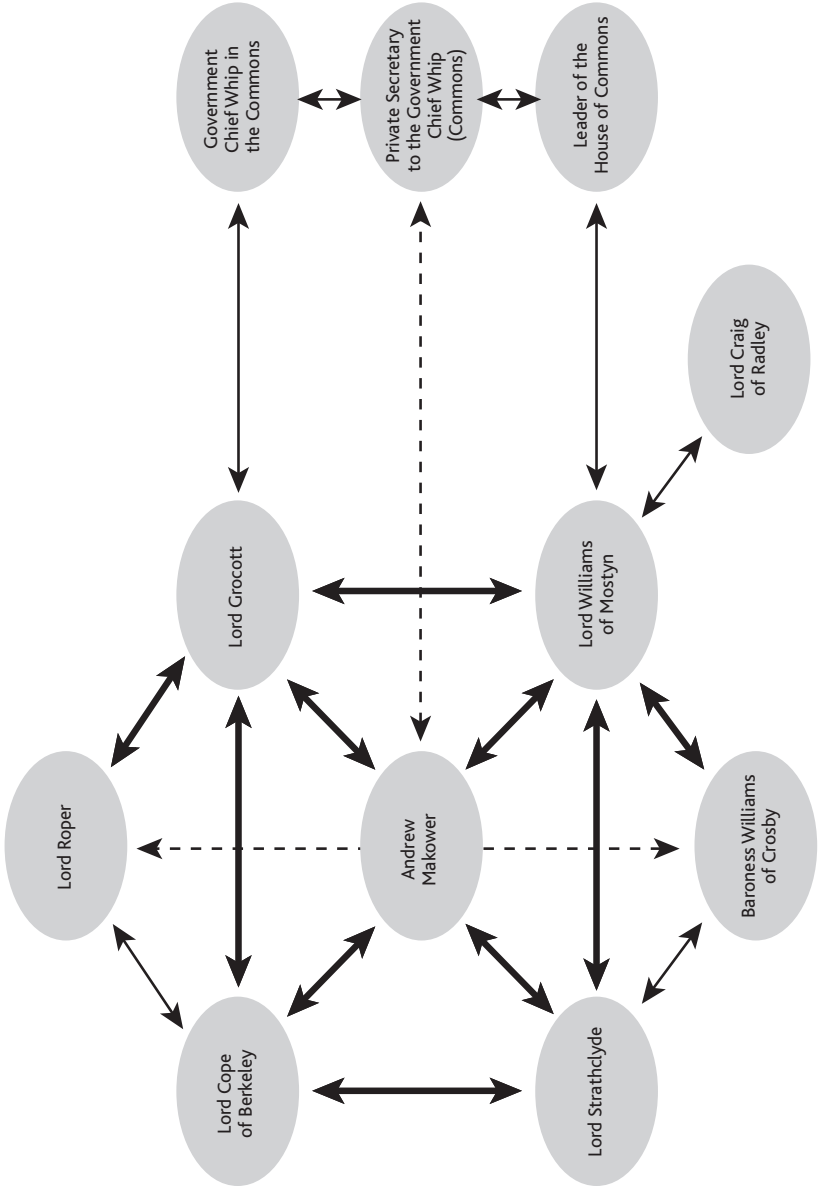
- Business for the next week, from Thursday to the Friday of the next week.
- Warnings that the House may sit late on one or more days.
- The main business for each day.
- An estimate of the amount of time each item (except the main business) will take e.g. 'brief', 'estimate: 15 minutes', '30 mins. max.' for starred Questions, '2 hours' for the stage of a bill, '7 hours' for a debate on an issue.
- Preliminary lists of speakers, where known.
- Notice of when the House is not sitting, if appropriate.
- *Provisional Future Business* for the week following and sometimes the subsequent week with the main headings and limited detail.

# Usual Channels Organisation Chart – House of Lords



# Usual Channels Organisation Chart – House of Lords

Occupants of Positions – December 2002



# Government Domination of Parliament

The initiative for organising business is almost exclusively with the government. Although some concessions may be made to the official opposition or the Liberal Democrats, it would be misleading to suggest that the Business Statement is the product of negotiation between equals: it is essentially the government's, not the House's agenda. Most major bills are now subject to programme motions setting out how much time will be spent on one or more of their stages. That said, much of the parliamentary timetable in the Commons is based on agreement rather than forced through by use, actual or threatened, of the government's majority. The opposition parties concede that the government is entitled to get its business; they may not like a good deal of that business, but most of the time they agree a timetable to secure its passage. Some measure of this can be gauged by the fact that it is by no means unusual for the government to secure the passage of all its bills and, ironically, the odd one that falls by the wayside does so, in most cases, because it has not had enough time to complete its passage.

This can be seen starkly in the success rate of government bills in 1977–78 – a period of minority government but still returned a success rate of 86.0 per cent, especially when the success rate of Private Members' or backbench bills averages one in eight and only occasionally exceeds 20 per cent. See Table 1 below.

**Table 1 • Success Rates of Government and Private Members' Bills**

Session	Government bills	Private Members' Bills	Session	Government Bills	Private Members' Bills
1977–78	86.0*	12.4	1989–90	94.4	9.2
1978–79	80.0*	5.2	1990–91	94.2	16.0
1979–80	100.0	8.1	1991–92	86.8	22.0
1980–81	98.3	17.5	1992–93	100.0	10.5
1981–82	97.8	10.8	1993–94	100.0	13.8
1982–83	100.0	11.0	1994–95	94.9	14.5
1983–84	100.0	12.4	1995–96	97.7	16.5
1984–85	96.4	21.1	1996–97	100.0	26.2
1985–86	96.1	18.4	1997–98	98.1	6.7
1986–87	92.3	17.6	1998–99	87.1	7.7
1987–88	100.0	10.9	1999–00	97.5	5.8
1988–89	100.0	6.3	2000–01	60.8	0.0

\*Minority government.

Source: House of Commons Sessional Digests.

*There is no great mystery about the usual channels. 99% of the time business gets through easily.*

(Interview comment)

Such success rates do not mean that government bills emerge unscathed from the parliamentary process. Quite apart from any amendments made by the House of Lords, some of which for various reasons the government will feel constrained to accept, some bills are heavily amended anyway. Many of these amendments will be government amendments – mostly changes that the government has been persuaded to make by agreement rather than force majeure, but some of these will have been agreed through the usual channels.

## ***The Importance of Personality in the Usual Channels***

*The usual channels operate by personal chemistry with the individuals involved at any particular time.*

(Interview comment)

*In the usual channels, personalities matter a lot.*

(Interview comment)

In practice, as a number of our interviewees pointed out, the operation of the House of Commons depends a great deal on personal chemistry, particularly between the Leader and Shadow Leader of the House and between the respective Chief Whips. Not surprisingly, from time to time the usual channels break down. They did so, for example, at the time of the Suez Crisis in 1956, over the Conservatives' Industrial Relations Bill in 1971, Labour's Aircraft and Shipbuilding Industries Bill in 1976, and the Conservatives' Statutory Sick Pay and Social Security Contributions Bills in 1993. The most common consequence of a breakdown in the usual channels is the withdrawal of co-operation by the official opposition, in particular a refusal to 'pair' in the Commons, although there are a number of other means of making life difficult for the government. Non-co-operation is sometimes in protest against policy, as it was over Suez, but it can also result from the opposition feeling that it has been refused sufficient time to debate a bill or issue or, occasionally, that the government has 'cheated' procedurally. In such circumstances the role of the Private Secretary becomes crucial and it is through him that 'peace' is normally restored.

As with the Commons, the personal chemistry of those involved in the usual channels matters. Because the government of the day does not have ultimate control over the Lords, the personalities of those involved in the usual channels may matter more in the upper house. Certainly, in the Commons the government is normally operating through the usual channels from a position of strength – procedurally because of the precedence given to government business and in practice because it usually has a majority. But in the Lords, particularly in the case of a Labour government, it is operating from a position of relative weakness – lacking an overall majority and faced with the strong ethos in the upper house of operating by co-operation rather than confrontation.

# Programme Motions

The curtailment of a debate or closure was first used by Mr Speaker Brand in the face of prolonged obstruction by Irish Nationalist MPs at the committee stage of the Protection of Persons and Property (Ireland) Bill in 1881. The Speaker took this action on his own authority, but the House swiftly amended its standing orders to allow closure. By definition, the guillotine is a timetable motion initiated by the government to impose a time limit on the stage or stages of a particular bill. Between 1881 and 1921 the guillotine was used on 36 occasions, between 1921 and 1945 14 times, and between 1945 and 1975 30 times, but thereafter its use increased considerably, particularly from 1983 onwards, as Table 2 shows:

**Table 2 • The Use of Allocation of Time Motions in the House of Commons, 1945–2001**

Parliament	Number of Bills	Guillotine	Programme Motion	Total
1945–50	3	3	–	3
1950–51	–	–	–	–
1951–55	5	6	–	6
1955–59	2	2	–	2
1959–64	8	9	–	9
1964–66	–	–	–	–
1966–70	5	5	–	5
1970–74	5	8	–	8
1974	–	–	–	–
1974–79	12	21	–	21
1979–83	13	19	–	19
1983–87	10	10	–	10
1987–92	29	38	–	38
1992–97	9	15	–	15
1997–2001	63	41	55	96

Source: House of Commons Library, Factsheet Series P No. 10: Guillotine and Timetabling Motions, 2001 and House of Commons, Sessional Information Digests.

In spite of the increased use of the guillotine, the timetabling of most bills has long been arranged through the usual channels and the tabling of a guillotine motion is the consequence of a failure to secure agreement through the usual channels. Following its election in 1997, the Labour Government set up a Select Committee on Modernisation and its first report, *The Legislative Process*<sup>20</sup>, recommended the programming of bills through programme motions, which would be agreed through the usual channels. This recommendation was accepted and

programme motions were used for an experimental period during the 1997–98 session. The Conservative Opposition was by no means enthusiastic and in the following two sessions more guillotine motions were tabled and forced through by the government majority than agreed programme motions. However, in the final session of the 1997–2001 Parliament, not only were more bills timetabled in a single session than ever before, but most programme motions outnumbered guillotine motions by nearly four to one as Table 3 shows.

**Table 3 • The Use of Allocation of Time Motions 1997–2001**

Session	No. of Bills	Guillotine	Programme Motions	Total ATMs
1997–98	13	4	15	19
1998–99	12	13	6	19
1999–2000	16	16	5	21
2000–01	22	8	29	37
Total	63	41	55	96

Source: House of Commons, *Sessional Information Digests*.

## *The Usual Channels* *Outside the Usual Channels*

*The assumption is that once something is agreed in the usual channels then it is a ‘done deal’. There is no indication of who talked about what and how a decision was arrived at.*  
(Interview comment)

Control of the agenda in both the Commons and Lords is in the hands of a few individuals, operating through a series of bilateral discussions. The secrecy surrounding these discussions means that it is difficult for other parliamentarians, let alone outside groups and individual citizens, to find out what is going on and, more importantly, influence the parliamentary agenda. Party cohesion, especially in the Commons, underpins this control of the agenda, as does the institutionalisation of government and opposition, leaving third parties in both Houses and crossbenchers in the Lords with only a limited say on the parliamentary agenda.

For those outside Parliament, the usual channels remain even more of a mystery than to those within the Palace of Westminster. For individuals, lobby groups and citizen bodies it is near impossible to uncover what is going to be on the Parliamentary agenda unless they are assisted by an ‘insider’ source – someone close to the usual channels who can leak to them when something may be debated in Parliament. In a modern democracy this appears to be an archaic way of working, which runs smoothly for insiders (of whom there are just a handful) but makes working life difficult for all others. A greater level of transparency of usual channels discussions could benefit MPs and Peers as well as those beyond the Westminster Village.



# *A Critique of the Usual Channels*

The strongest criticism of the usual channels comes from the Liberal Democrats, who feel disadvantaged compared with the official opposition. One interviewee described the relationship between the government and opposition whips as ‘cosy’ and suggested that together they constitute an obstacle to any significant change in, or reform of, the usual channels. This feeling has intensified since the 2001 election, with the Liberal Democrats claiming that British politics no longer operates on the basis of a duopoly of parties. On the other hand, because of their numbers, it was suggested that the Liberal Democrats are ‘more involved and have a bigger say’ through the usual channels in the Lords, where the current Labour government sometimes needs their support, compared with the Commons, where it does not.

There is also a sense that the minor parties feel disgruntled: infrequently consulted about the parliamentary agenda, they tend to feel marginalised, not so much squeezed between government and opposition, as largely ignored by the three main parties. Until recently the interests of the minor parties were looked after by the Liberal Democrats, but they now (by mutual agreement) have separate dealings with the government.

The crossbenchers in the House of Lords represent a different case: although they have their own convenor and a documentary whip (for the purposes of information, not cohesion), they are not usually consulted through the usual channels. As a group, they differ from the parties in being unable ‘to deliver’ their members in the sense that, to a significant degree in the Lords, the other parties can. It is also the case, however, that some party backbenchers in the Lords feel neglected by the usual channels in that they are too often presented with ‘done deals’.

We also found some criticism among the Conservatives in the Commons. One interviewee went so far as to describe the usual channels as ‘useless’ and another suggested that they had become less important now that most bills are timetabled and the main business in the Commons normally ends at 10 p.m. The same individual also said, ‘...every now and then one would feel bounced. They [the government] must know, but something is withheld.’ There was resentment, for instance, at the decision immediately after the 1997 election to reduce the number of sessions of Prime Minister’s Question Time from two to one a week, even though the actual amount of time remained the same – a change made without consultation through the usual channels.

Against these criticisms, there was a strong sense at the Nuffield seminar that the usual channels worked well and that, while some useful adjustments might be made, major change was not necessary. There was, for example, some criticism of the longevity of the appointment of the Private Secretary to the Government Chief Whip in the Commons, on the grounds that the individuals concerned became too powerful or influential. It was pointed out that civil servants and parliamentary officials generally move from post to post at fairly regular intervals. There was also some support for providing a larger forward agenda in the Commons. Nonetheless, the ‘if it ain’t broke, don’t fix it’ school was strongly represented in the seminar and among our interviewees. However, this was not a simple negative reaction; it was based on the view that the usual channels work precisely because they operate in private. Operating in a more public way would, it was argued, make the life of the party business managers impossible.

Although there was strong feeling among the majority of those individuals we talked to who had been involved in the usual channels that the present system worked, there was recognition that it could be opened up in some ways. For example, there is scope for acknowledging what sorts of decisions are made in the usual channels. In this vein, the Hansard Society's research has been very positively received and the general sentiment is that an explanation and full and frank discussion of the usual channels is long overdue. At the same time, recommendations have been made by a number of individuals and organisations that the usual channels should be opened up and a number favour a formal Business Committee at Westminster.

## ***A Westminster Business Committee?***

*If the House of Commons wants to retrieve control of its agenda, a Business Committee would be the obvious way forward.*

(Interview comment)

The House of Commons Modernisation Committee report, *Modernisation of the House of Commons: A Reform Programme* recommended that:

*... there should be collective consultations with other parties in the House on the broad shape of the legislative year, those Bills intended to be published in draft, those Bills intended to be carried over and which Bills are expected to be introduced in the Commons, including discussion on the likely dates of recesses and related matters such as Friday sittings and Opposition days.<sup>21</sup>*

On 29 October 2002 the House of Commons approved a number of the Modernisation Committee proposals including the greater use of pre-legislative scrutiny of Bills, provision for carry-over of Bills, and changes to the parliamentary timetable including announcement of recess dates for the following year. The Motion moved by the Leader of the House, Rt Hon Robin Cook MP, stated:

*That this House approves the Second Report from the Select Committee on Modernisation of the House of Commons, and endorses its proposals, in particular for more effective law making by more routine publication of bills in draft for pre-legislative scrutiny, for consultation with Opposition parties on the broad shape of the legislative year and more flexibility in programming, for an annual House of Commons calendar which would allow honourable Members to plan work in their constituencies more effectively and provide sittings in September balanced by an earlier recess in July, for more effective use of the Chamber including more regular use of time limits on speeches, and a Parliament that is more accessible to the public that it serves.<sup>22</sup>*

All these reforms involve a greater role for the usual channels. The Modernisation Committee report was explicit that modernisation of the legislative timetable and associated reforms were dependant on discussions between the parties at all stages. For example, there will be further discussions about the shape and priorities in the legislative timetable and which Bills might be candidates for carry-over.

In some respects the move to make the parliamentary timetable more predictable and the need for discussion through the usual channels on the legislative process, gives the opposition parties greater input on the shape of the year ahead. This move may provide opportunities to reassess the workings of the usual channels themselves. It should be noted, however, that the Official Opposition were opposed to some elements of the Modernisation Committee package, most notably the carry-over of Bills. Shadow Leader of the House, Rt Hon Eric Forth MP, believed that both the Opposition in the Commons and the House of Lords as a body would lose the power to delay or kill off government legislation. Nonetheless, the reformed system of timetabling and carry-over, and the many consequences that will flow from the decision, will have a significant impact on the Commons and the way it decides on and organises its business. As such it represents one of the most significant changes in this area in recent times.

Charter 88, the Conservative Party Commission on the Strengthening of Parliament, and the Hansard Society Commission on Parliamentary Scrutiny have all recommended the adoption of a Business Committee at Westminster, as have the Liberal Democrats.<sup>23</sup> All of these recommendations make the same point – that as long as secret discussions take place between a few individuals, with no record of how decisions are made, then parliamentarians will have limited influence and control over the agenda. This in turn has a negative effect on their ability to be effective scrutinisers of government.

*The Commission believes that Parliament should have a steering committee responsible for the management of the parliamentary timetable.*

*The Commission believes that a steering committee at Westminster should be made up of representatives of all parties with more than 10 MPs. Votes on the steering committee would be weighted to reflect the strength of the parties in Parliament. The Government would therefore be assured of getting its business. However, the system would put the management of business on a formal footing and overcome many of the problems inherent in the informal agreements of the 'usual channels'.<sup>24</sup>*

Formalising the usual channels raises issues at two distinct levels: at one level is the question of whether a Business Committee would make the setting of the parliamentary agenda fairer and more effective; at another level it raises the question of who should control the parliamentary agenda.

# Opening Up the Usual Channels

*There is no argument for opening up the usual channels. The Commons works because of confidential discussions.*

(Interview comment)

*The usual channels are pretty marginal although formalities do exist. In reality they do not matter at all because of the government's majority.*

(Interview comment)

*The usual channels operate in secret rather than in private and the whole system would collapse if it was opened up.*

(Interview comment)

The usual channels vary in importance to the arrangements in Parliament depending on the personalities of those involved and on the size of the government's majority. At times they are much more important than at others.

For many insiders, the usual channels in their present closed form operate well because they rely on opaqueness and limited information. For others, this system works well for some at the top of the parliamentary party hierarchy, but is not in the best interests of Parliament as a whole.

There have been suggestions for a formal Business Committee during the wider discussions of the agenda of the Modernisation Committee, but these met strong resistance from some members of the Cabinet and from the whips, so that no proposal emerged. And this, perhaps, illustrates the nub of the problem, certainly as far as the Commons is concerned. The government and, to a lesser extent, the official opposition, control the agenda of the Modernisation Committee and until such time as these two players want changes in the usual channels openly discussed by the House, formal consideration of proposals for a Business Committee are unlikely. The House of Lords may present a different perspective. The absence of a government majority in the upper house and its different ethos could lead to changes in the operation of the usual channels in the Lords before the Commons. If this were to happen, it would not be the first time that the Lords had shown the Commons the way.

The aim of our research has been to open up the usual channels by explaining what they are, who is involved, and what decisions are made. Ultimately, it is for Parliament itself to decide if the usual channels should be opened up in a formalised fashion or remain a system that works in private. No doubt discussions on this issue will continue to take place within and outside the usual channels.

## Appendix 1

# *Private Secretaries to the Chief Whip*

### *1919–1958*

**Charles Harris**, though not a civil service post until 1939, the position has its origins in 1919 when Harris (the holder of a clerical post in the Government Whips' Office from October 1917) began to work for the Conservative Chief Whip in the Coalition Government. In 1922, following the collapse of the Coalition, Harris became Private Secretary to the Government but reverted to Private Secretary to the Conservative Chief Whip when the Conservatives went briefly into opposition in 1924 and again in 1929–31. From 1931, with the formation of the National Government, Harris again became Private Secretary to the Government Chief Whip and continued in that post until his retirement in 1961, having been knighted in 1952.<sup>25</sup>

### *1958–1978*

**A.H. (Freddie) Warren**, (subsequently knighted) a career civil servant who had been Harris' deputy.

### *1978–2000*

**Murdo Maclean** (subsequently knighted), who was Private Secretary until 2000.

### *2000–present*

**Roy Stone**, who was Maclean's deputy. Unlike his predecessors, Stone was appointed only after the post had been advertised through the Cabinet Office, although, in contrast to most civil service appointments, it was stated that the position 'is likely to be a long-term appointment' and was open to 'existing members of the civil service, or Officers of the House of Commons or the House of Lords, with a recommendation for promotion to the S[enior] C[ivil] S[ervice].'<sup>26</sup>

## Appendix 2

# ***Job Description for Private Secretary to the Government Chief Whip (extract)***

### ***CABINET OFFICE***

#### ***Private Secretary to the Government Chief Whip, Commons***

**JESP:** Under review

**SCS Pay Band:** 1

**Location:** London

**Terms:** This is likely to be a long-term appointment. Terms to be agreed on appointment (and see below under “Requirements”).

**Closing Date:** 1 September 2000

#### ***About the Job***

This is an opportunity to work in a unique role at the heart of the Parliamentary process and in a complex, fast-moving environment.

The Chief Whip’s Office is made up of three distinct areas: the Chief Whip’s Private Office; the Government Whips’ Assistants; and the Opposition Whips’ Assistants. The Private Secretary is head of the office and is responsible for 19 staff members.

The Private Secretary provides support to the Government Chief Whip to enable her to fulfil her role of time-tabling and securing the passage of Bills through the House of Commons and successfully completing the government’s legislative programme.

The Private Secretary also offers support to the Chief Whip as a Government Minister, in her responsibilities to Parliament.

The Private Secretary acts as the channel between Government and the opposition parties to arrange Parliamentary business.

The Private Secretary co-ordinates and monitors the proceedings in the House of Commons on a daily basis.

The Private Secretary provides advice and guidance to Ministers and Departments on the government’s legislative programme and associated parliamentary procedures.

The Private Secretary oversees an office budget in excess of £1 million. He or she has overall management responsibility for 9 members of staff in 12 Downing Street and 10 members based in the House of Commons. He or she oversees the training and development of all members of the team. The Chief Whip's Office is an accredited Investor in People.

### ***Requirements***

Existing members of the Civil Service or Officers of the House of Commons or the House of Lords, with a recommendation for promotion to the SCS. We would expect an Officer of either House who was successful in this process initially to join the Cabinet Office on secondment, subject to a later review of the arrangements by agreement between the House authorities and the Cabinet Office.

Clear strength in the SCS core competencies and behaviours (a full set of the core competencies and behaviours is included with this notice), and particularly in:

- Making a Personal Impact
- Working Collaboratively
- Taking a Wide Perspective

Knowledge of:

- The working of Parliament and related issues; and in particular, the Standing Orders of the House of Commons and their relation to current parliamentary practice.

## Appendix 3

# ***Arranging Business in Other Legislatures***

The Westminster Parliament is by no means unique in arranging its business informally, rather than formally through a Business Committee, but a number of other legislatures have formalised their agenda-setting and timetabling arrangements.

### ***Devolved Legislatures in the United Kingdom***

In the case of the UK, each of the devolved legislatures has a Business Committee. In Northern Ireland such a committee was a necessity, given the creation of a power-sharing executive, following the 1998 Good Friday Agreement. Quite apart from the need for legislation to be passed by the UK Parliament to set up the Scottish Parliament and the National Assembly for Wales, detailed contingency planning also took place. In both cases this resulted in proposals for Business Committees and these proposals were in due course adopted.<sup>27</sup> All three legislatures publish the minutes of their Business Committees.

Formal Business Committees normally consist of representatives of all the parties in the legislatures, usually with weighted voting according to the number of seats each holds. The parliamentary norm, that a government with a majority is entitled to secure the passage of its business, provided it has the support of enough of its members is accepted, but it is set against the rights of other parties to have their say and of the legislature generally to hold the government to account. Inevitably, the formal deliberations of such committees are normally preceded by informal discussions, but Business Committees ensure the representation of all parties (very small parties in some cases excepted), greater transparency in setting the legislative agenda (including in some cases the possibility of modifying it when it is presented to the legislature), and the removal of some of the mystique from the Westminster-style usual channels.

### ***Scottish Parliament – Ian Campbell***

#### ***Parliamentary Bureau***

The Scottish Parliament's Parliamentary Bureau undertakes functions similar to those dealt with by the usual channels. Its main functions are to propose the Business Programme of the Parliament; alterations to the daily business list; to consider and agree in general Parliamentary business management issues; to propose the establishment, remit, membership and duration of any Committee or Sub-Committee; to propose in respect of each Committee the party from which the Convener should be chosen; and to determine which Committee should lead on a matter where more than one Committee is competent to deal with it.



## *Members*

The Parliamentary Bureau consists of the Presiding Officer and the two Deputy Presiding Officers together with the Business Managers of each Political Party or Group represented by five or more members within the Parliament. At present there are four Business Managers on the Bureau, representing the Labour, Conservative, Scottish National and Liberal Democrat Parties. The Labour and the Liberal Democrat Business Managers are also Ministers in the Scottish Executive. Each Business Manager has a Deputy who can also attend meetings of the Bureau.

## *Procedures*

All Bureau meetings are held in private although a note of the decisions reached by the Bureau is published after each meeting. At least half of the total number of Members must attend to achieve a quorum and either the Presiding Officer or one of his Deputies must be present to allow a meeting to take place. Voting within the Bureau is weighted on the basis of the number of Members in the Party or Group the Business Manager represents. Matters are decided on a vote if there is disagreement and a decision is taken by a simple majority. The Presiding Officer has only a casting vote and the Deputy Presiding Officers may only vote if they are chairing the meeting on behalf of the Presiding Officer when again they can only use a casting vote. The Bureau may invite other Members to attend meetings e.g. when a consideration is being given to allocating Bills to Committee. On such occasions the Convener of the lead Committee may be invited to discuss the timetabling of the Bill and the effect this will have on the Committees' overall workload. Where such persons attend the meetings they may participate but do not have a vote.

## *Business Programme*

Informal discussions take place regularly between the Business Managers, the Clerks to the Parliamentary Bureau and Executive Officials within the Minister for Parliamentary Business Private Office<sup>28</sup>, but all formal decisions are required to be taken in the Parliamentary Bureau. Formal meetings of the Bureau take place each Tuesday at which a draft Business Programme covering the current week and normally two subsequent weeks is considered. The draft Business Programme is initially prepared by the Executive's Business Managers and discussed with the non-Executive Parties in advance of it being considered in the Bureau. This provides an opportunity for alterations to be made to the draft before it is formally considered by the Bureau.

## *Allocation of Parliamentary Time*

Standing Orders provide for specific time to be allocated to the non-Executive Parties and the Committees where their topics for debate take precedence over any other business. While Standing Orders are silent on Executive business there is a general acceptance within the Bureau that the Executive will propose the business for the remaining time available. The Bureau will also give due consideration to any other business, such as Members' Bills and Parliamentary Motions which require time to be allocated within the time available for debate in the Chamber. The Bureau Business Managers also decide on which Members' Business Debates (similar to Westminster close of business Adjournment Debates) take place each day after Decision Time<sup>29</sup>.

## *Approval of Business Programme*

Once the Business Programme has been agreed by the Parliamentary Bureau it is proposed on a Motion for agreement by the whole Parliament. It is open to any Member to oppose the Motion in debate and where this is done it is normally one of the Executive Ministers on the Parliamentary Bureau who would respond on behalf of the Bureau. Under Standing Orders only one member may move against the Business Motion and the mover and objector to the Motion may speak for up to five minutes only. It is however rare for Members to press opposition to a vote with any objection being used to make a point or ask questions about a specific item of business. Once the Business Programme has been agreed it can only be altered by a Motion from the Parliamentary Bureau.

## *Assessment of Effectiveness*

The fact that the main political Parties' Business Managers<sup>30</sup> are involved in the decision making process has enabled the planning of parliamentary business and the other ad hoc matters which are considered by the Bureau to take place without too much disagreement. While some concern has been expressed about lack of openness of the Bureau proceedings and some pressure for the Bureau to meet in public, this has been resisted to allow for frank and open discussion to take place. The success of the Bureau and its ability to work on a consensus basis on most issues is reflected in the number of occasions that decisions have been taken without the need for a vote.

## *National Assembly for Wales – Andrew George*

In the National Assembly for Wales, the functions of the usual channels at Westminster are dealt with in a Business Committee, chaired by the Deputy Presiding Officer and including one representative of each political group.

Each week that the Assembly is sitting, the Minister for Assembly Business presents a draft three-week timetable to the Committee for its views. The Business Minister takes account of the Business Committee members' comments but without the Committee having a veto over the proposed timetable. Such a veto can only be exercised by the full Assembly, which has the power to vote down the proposed timetable when it is presented to them.

This procedure for determining the allocation of the Assembly's time and setting the timetable for the weeks ahead was intended to strike a fair balance between all parties. It would have been possible to structure the Business Committee, like other Committees, to reflect the balance of party representation in the Assembly. This would have had the advantage of ensuring that the Government was able to get its business done. However, this priority was balanced against the need to ensure that minority parties are involved in the business of the Assembly, have a fair hearing, and can exercise proper scrutiny.

In most parliaments, the usual channels negotiations between political parties invariably go on behind closed doors. The Assembly's Standing Orders recognise the political realities and do not require the Business Committee to meet in public. If it were forced to do so, the Committee might well have become a forum for political theatre and the real negotiations

would simply go on elsewhere. Holding Committee meetings in private means that discussions are frank and purposeful. The minutes are published six weeks after the meeting and by and large all parties have respected the confidence of Committee proceedings. Of course, there are also bilateral discussions between party business managers and occasions when political actors will want to meet without the officials who are habitually present at the Business Committee.

In practice the Business Committee appears to work very well and is accepted by all parties as an effective mechanism for organising the Assembly's business. While the Minister for Assembly Business is not obliged to do what the Business Committee asks, he has in practice gone to considerable lengths to act in accordance with the consensus in the Committee. As a former Clerk to the Assembly has commented:

*'The cynical may say that this reflects the situation of an administration that initially lacked an overall majority and now has to rely on a coalition to provide one; but I think there is more to it than this, and that the Business Committee machinery helps generate a desire to operate by consensus wherever possible.'*<sup>31</sup>

One interesting innovation in the usual channels has arisen from the provision of e-mail facilities for all Members in the Chamber. If an issue of timing or procedure arises during a Chamber debate, there is no 'behind the Speaker's Chair': discussions about urgent changes to business take place between the Business Managers and the Presiding Officer from their own desks.

## ***Overseas Experiences***

Commonwealth legislatures tend to organise their parliamentary agendas on lines very similar to those operating at Westminster. Indeed, if informal accounts of the usual channels in Australia are to be believed, they might be described as 'like Westminster, but with more explosives!' Similarly, the Irish Oireachtas closely follows the Westminster pattern, not least in the use of the term the 'usual channels'. There are some differences, however, notably the formalisation through standing orders of a weekly meeting of the whips of all parties to discuss business for the following week, but no minutes are kept, although there are proposals for greater formalisation.<sup>32</sup> Two other European cases, Germany and Portugal, offer experience of formal Business Committees.

### ***German Bundestag***

The Bundestag places some limits on the ability of a majority government to control the parliamentary agenda by building in rights of initiative for other parties and encouraging compromise on the agenda in the operation of its Business Committee or Senior Council.<sup>33</sup> The Council is quite a large body, nearly 30 in number, and consists of the President of the Bundestag (basically equivalent to the Speaker), Vice-Presidents representing each of the parliamentary parties, and nominees of the parties in proportion to their numbers in the Bundestag. The government, however, is not directly represented, although a minister attends Council meetings, as does the Director of the Bundestag (a civil servant) and other civil servants as necessary. All parties, including the government party or parties, are represented

by elected parliamentary leaders who are not ministers. The President of the Bundestag presides over meetings and is responsible for organising the Bundestag's proceedings. The Council is responsible for nominating the chairs and deputy chairs of all Bundestag committees, seeking agreement between the parties on the parliamentary timetable, and for various services and facilities, such as the library and office accommodation and administrative matters, including preparing the Bundestag's budget.

Formally, the Council can only make recommendations and any unresolved procedural matters are decided in a full plenary session of the Bundestag. However, considerable efforts are made to avoid matters being decided in plenary session, so that the government (even though it normally has a majority) and minority parties invariably agree a compromise. This system has its roots in the pre-1919 imperial Reichstag, which was not part of a parliamentary system but subject to a separation of powers, and the semi-presidential Weimar Republic. The 1949 German Constitution did not seek to change it but, in fact, institutionalised it.

### *The Portuguese Legislative Assembly*<sup>34</sup>

The Portuguese Legislative Assembly has a formal Business Committee – the Conference of Representatives – on which each party in the Assembly has equal representation. The committee normally operates by consensus, since like the Bundestag, any unresolved issues are decided by the chamber as whole. However, under rules changes introduced in 1985, larger parties each have an equal share of parliamentary time in debates, smaller parties a lesser share. Apart from ministers and opposition frontbenchers, the Chief Whip of each party decides who will speak in debates, so that the agenda is driven very much by the parties. The Conference also approves the agendas of all parliamentary committees.

There is little doubt that government control of the parliamentary agenda is greater in Westminster-style parliaments than in most other European legislatures. A study of the extent to which governments control the parliamentary agenda and timetable, covering 18 European countries, found that the United Kingdom and Ireland were consistently at the 'most government control' end of the continuum. Germany and Portugal tended to be towards the middle of the continuum. Those characterised by 'least government control' were the Netherlands and Sweden.<sup>35</sup>

## **References**

1. Standing Order 14: 'Save as provided in this order, government business shall have precedence at every sitting.'
2. See Michael Rush, *The Role of the Member of Parliament Since 1868: From Gentlemen to Players*, Oxford University Press, Oxford, Chapter 3.
3. HC Deb., CXLVI, 16 May 1905, c. 500. We are grateful to Keith Parry of the Parliament and Constitution Centre, House of Commons Library for providing us with this information.
4. See Select Committee on the House of Commons (Procedure), HC 378, 1914.

5. Donald Wade, *Behind the Speaker's Chair*, Austick Publications. Leeds & London, 1978, p.21.
6. Sir Ivor Jennings, *Parliament*, Cambridge University Press, Cambridge, 2nd ed. 1969, p. 151.
7. Alpheus Todd, *On Parliamentary Government in England: Its Origins, Development and Operation*, Longman, London, 2nd ed. (ed. A. H. Todd), 2 vols., 1887 and 1889 (originally published 1867 and 1869), vol. II, p. 400.
8. A. L. Lowell, *The Government of England*, Macmillan, New York, new ed. 1920 (originally published 1908), Vol. I, p. 297.
9. *Ibid.*, p. 449–50.
10. Previous Government Chief Whips had had private secretaries, but Harris developed the position into its current role.
11. Bonar Law was Leader of the House 1916–21 and Austen Chamberlain 1921–22.
12. See in particular Robert J. Jackson, *Rebels and Whips: Analysis of Dissent, Discipline and Cohesion in British Parliamentary Parties*, Macmillan, London, 1968.
13. Gyles Brandreth, *Breaking the Code: Westminster Diaries May 1990–May 1997*, Phoenix ed., London, 2000, p. xiii. Note also the recent case of Paul Marsden, who defected from Labour to the Liberal Democrats, after complaining about his treatment by Hilary Armstrong, the Government Chief Whip.
14. This aspect of the role of the whips is reflected in the work of Philip Norton (Philip Norton, *Conservative Dissidents: Dissidence within the Parliamentary Conservative Party, 1970–74*, Temple Smith, London, 1978. Philip Norton, *Dissension in the House of Commons, 1945–74*, Macmillan, London, 1975. Philip Norton, *Dissidence in the House of Commons, 1974–79*, Clarendon Press, Oxford, 1980. Philip Norton, 'Government defeats in the House of Commons: myth and reality', *Public Law*, 1978, pp. 360–78) and, more recently, of Philip Cowley on backbench dissent (Philip Cowley, *Revolts and Rebellions: Parliamentary Voting Under Blair*, Politico's, London, 2002).
15. Richard Crossman, *The Diaries of a Cabinet Minister: Vol. 2 – Lord President and Leader of the House of Commons*, Hamish Hamilton and Jonathan Cape, London, 1976, p. 23.
16. Cabinet Office, internal advertisement, September 2000
17. *Ibid.*
18. See <http://www.privycouncil.gov.uk/output/page6.asp>
19. House of Lords, *The Companion to Standing Orders*, para. 4.17.
20. Select Committee on Modernisation, *The Legislative Process*, HC 190, 1997–98
21. Select Committee on Modernisation, *Modernisation of the House of Commons: A Reform Programme*, HC 1168–I, 2001–02
22. HC debates 29 October 2002, vol. 391, col. 689

23. Greg Power, *Reinventing Westminster: The MP's Role and the Reform of the House of Commons*, Charter 88, London, 1996, Section 3. *Strengthening Parliament*, Report of the Commission to Strengthen Parliament (the Norton Commission), Conservative Party, London, July 2000, pp. 22 and 28. Hansard Society, *The Challenge for Parliament: Making Government Accountable*, Report of the Hansard Society Commission on Parliamentary Scrutiny, Vacher-Dod, London, 2000, paras. 2.45–49. A similar proposal was made by the earlier Hansard Commission on legislative scrutiny, *Making the Law*, 1992. Select Committee on Modernisation, *Second Report: Programming of Legislation and the Timing of Votes*, HC 589, 1999–2000, Appendix 4, written evidence presented by Paul Tyler and Andrew Stunell.
24. Hansard Society, *The Challenge for Parliament: Making Government Accountable*, Report of the Hansard Society Commission on Parliamentary Scrutiny, Vacher-Dod, London, 2000, paras. 2.45–49.
25. See J.C. Sainty, 'Sir Charles Harris and the management of the business of the House of Commons', *Parliamentary History*, 21, 2002, pp.233–39. We are also grateful to Dr David Butler for providing us with the draft of his entry on Sir Charles Harris for the *Dictionary of National Biography*, on which this account is based.
26. Cabinet Office, internal advertisement, September 2000.
27. See Barry K. Winetrobe, *Realising a Vision: A parliament with a Purpose – An Audit of the First Year of the Scottish Parliament*, The Constitution Unit, University College London, 2001, especially Chap. 4 and J. Barry Jones and John Osmond (eds.), *Inclusive Government and Party Management: the National Assembly for Wales and the Work of its Committees*, Institute of Welsh Affairs and Welsh Governance Centre, Cardiff, 2001.
28. Minister for Parliamentary Business Office is the Executive's Business Managers civil service support staff.
29. Generally all votes are taken at Decision Time which is normally scheduled as the last item of main business each day.
30. Only four MSPs out of 129 are not formally represented on the Bureau. Where decisions are taken that affect them directly they are consulted by the Clerks.
31. *Journal of Legislative Studies*, Vol. 7, No.4, Winter 2001, p8
32. We are grateful to Muiris MacCarthy of University College, Dublin for information on the usual channels in the Oireachtas.
33. We are grateful to Dr. Thomas Saalfeld of the University of Kent and to Professor Gerhard Loewenberg of the University of Iowa for providing us with information on the Bundestag.
34. We are grateful to Dr Cristina Leston-Bandeira of the University of Hull for information on the Portuguese Legislative Assembly.
35. See Herbert Döring, 'Time as a Scarce Resource: Government Control of the Agenda' in Döring (ed.), *Parliaments and Majority Rule in Western Europe*, Campus Verlag, Frankfurt/St. Martin's Press, New York, 1995, pp. 223–46.

The views expressed in this report are those of the authors and the Hansard Society, as an independent non-party organisation, is neither for nor against. The Society is, however, happy to publish these views and to invite analysis and discussion of them.

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