

The working practices of the House of Lords

Proposals for reform



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HUSTINGS FOR THE ELECTION OF THE LORD SPEAKER

If there is a contest for the next Lord Speaker the Hansard Society will
be hosting a hustings for all the candidates

5pm, 28 June 2011, Robing Room

Chaired by the Rt Hon Peter Riddell

Save the date in your diary!



Acknowledgements

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Introduction

On 26 April 2011 the [Leader's Group examining the working practices of the House of Lords](#) published its wide-ranging recommendations for reforms to enable the Lords to better fulfil its core functions of scrutinising government, reviewing legislation and debating topical and important issues of the day. In the intervening weeks, however, there has been no response from the government and no indication of what will be done with the recommendations.

The issue is now pressing for two key reasons:

- The report contained a number of important recommendations for reform of the role of the Lord Speaker particularly in relation to managing oral questions, private notice questions and statements in the House. The Leader's Group suggested that the new approach should be trialled, beginning no sooner than 5 September 2011. If this is to be implemented from the September sitting then a decision needs to be taken prior to the summer recess. **With the election of the new Lord Speaker scheduled to take place on 13 July there is also a real risk that the election will be run before the House has had an opportunity to debate the merits of the reforms proposed by the Leader's Group.**
- **Following the recent publication of the government's proposals for long-term reform of the Upper House there is a risk that reform of current working practices will simply be sidelined.** Given that the government argues (wrongly in our view) that current conventions and working practices can be maintained even in a fully elected chamber, it is all the more important that the House reaches a view on any reforms it wishes to implement in relation to those working practices as early as possible in order to provide a platform for future debate in the Joint Committee and beyond.

On 7 June Lord Tyler has a question on the order paper to the Leader of the House enquiring about the government's plans for implementation of the Leader's Group recommendations. This is an important opportunity for the government to clarify what will now happen with the report's proposals and what the timescales for consideration will be.

The Hansard Society has produced this briefing paper to help raise awareness of the proposals to reform working practices and the need for these to be considered by the House of Lords as a matter of urgency. Last year we provided some assistance to the cross-party group of peers chaired by Lord Filkin which

explored how scrutiny of primary legislation by the House of Lords might be improved and the group chaired by Baroness Murphy which explored issues of governance in the Upper House. On 14 July 2010 we hosted a private meeting of peers to facilitate discussion of how House of Lords procedure and governance might be reformed and published the papers produced by these two groups plus the group chaired by Lord Butler which looked at reform of non-legislative procedures.

Our own recommendations to the Leader's Group, replicated here in this paper, broadly drew on our advisory work with the Filkin group supplemented by work for a major new publication, *Making Better Law: Reform Of The Legislative Process From Policy To Act* (published in December 2010).

The Leader's Group endorsed many of our proposals and we would draw members' attention to those in relation to legislative standards, pre-legislative scrutiny, taking evidence on Lords bills, and reform of Grand Committee stage as being particularly important.

Our recommendations here do differ in some aspects to those of the Leader's Group. We are disseminating our proposals once again in the hope that they will help facilitate further discussion about reform of the Upper House's working practices and provide a foundation for implementation of much needed changes as soon as possible in this Parliament.

PRINCIPLES FOR REFORM

Our proposals are shaped by a series of principles and priorities that we believe should govern the process for reforming the House's working practices.

- Peers have a constitutional obligation to ensure adequate scrutiny of all legislation but equally government has a right to take forward its legislative programme in timely fashion – the goal must be to establish a judicious balance between these competing objectives.
- Parliament has a right to expect that a bill presented to Parliament for scrutiny will be of good quality: that it will be technically sound; that appropriate consultation will have taken place (including wherever possible pre-legislative scrutiny); the policy objectives will be clearly stated; and the provisions are fit for purpose. If not, Parliament should not consider itself under any automatic obligation to consider the legislation.
- The focus should be on reforming scrutiny processes such that they are both more efficient and effective.
- The best scrutiny will be done on a bi-cameral parliamentary basis in which the expertise of the Upper House is effectively deployed to augment the scrutiny that takes place in the House of Commons – this means avoiding duplication of

scrutiny work and greater co-ordination with and dovetailing of scrutiny with the House of Commons. However, one size does not fit all and there will inevitably be some variation in the scrutiny methods used.

- The House should wherever possible seek to engage the public in an accessible, transparent and accountable way with its work. At present only the House of Commons, through Public Bill Committees, provides for public comment on legislation during the scrutiny process.
- Scrutiny time in the Chamber is a finite resource. Its use should therefore be maximised and prioritised, particularly for those areas of greatest public interest – for example debate of topical, relevant and controversial issues, rather than line-by-line consideration of uncontroversial legislative clauses.
- Current scrutiny processes are not easily comprehensible for the public – indeed, many peers themselves struggle to understand the scrutiny process and procedures. Wherever possible these should therefore be simplified and rationalised to foster greater accessibility and understanding.

PRE-INTRODUCTION TESTS AND A COMMITTEE ON LEGISLATIVE STANDARDS

At present there is no means within the legislative process simply to evaluate and confirm the need for fresh legislation and there is no way of imposing a quality standard on the production of a bill before it is sent to Parliament. A strong case exists for establishing new ground rules to rebalance the legislative relationship between Parliament and government, establishing a consensual approach predicated on mutual acceptance of common standards of legislative consultation, preparation and scrutiny. Parliament should at least be a partner in the process of setting the standards of what constitutes a validly prepared piece of legislation rather than permitting the executive to determine this from bill to bill. The goal should be to build in some constraints – some checks and balances – to the legislative process at the parliamentary end such that they might restrain the executive from bringing forward hastily prepared, ill thought out legislation.

A limited number of benchmarks – pre-introduction tests – that have to be met before legislation can proceed through Parliament might usefully help to offset the pressures caused by the impetus to legislate that bear down heavily in Whitehall. In effect, Parliament needs a system to ‘kitemark’ legislative bills, establishing standards of quality and best practice to demonstrate that the legislation being delivered is, at least in technical and procedural terms, fit for purpose.

A Legislative Standards Committee, ideally convened on a bi-cameral basis, could provide a gateway mechanism for assessing the necessity of legislation and whether the technical quality of a bill has met those standards Parliament has a right to expect and demand from government. Empowered to call ministers to account before it and with the ultimate sanction to recommend to both Houses that they defer consideration of the bill because it does not meet mutually agreed qualifying standards of preparation, the existence of a Legislative Standards Committee would provide, over time, an important restraining influence on government and provide a further means to rebalance the relationship between Parliament and the executive.

Before legislation is presented to the committee the government should be required to certify that they believe the bill does indeed meet those qualifying standards. The committee would then judge the bill according to a narrow, tightly drawn set of objective qualifying criteria, assessing the legislation purely on the basis of whether the legislative standards of bill preparation have been met not whether they believe the policy objectives are likely to be realised or whether the principles and policies enshrined in the legislation are appropriate.

The Legislative Standards Committee would have the option to call ministers to appear before it to account for their department's preparation of the bill. It would submit a report before second reading and it would then be for the

relevant House to decide whether or not to defer a bill if the preparation criteria were deemed not to have been met.

As part of the pre-introduction process, the House should require more detailed information from government regarding the bill.

In Scotland, for example, Executive Bills must be accompanied not only by an explanatory note and impact assessment but also by a policy memorandum, a financial memorandum and a memorandum on delegated powers.

PRE-LEGISLATIVE SCRUTINY

At present decisions about which legislative proposals will be subject to pre-legislative scrutiny is wholly a matter for the executive. As part of the process of agreeing with government a mutually acceptable set of standards for legislative consultation, preparation and scrutiny, this decision should be agreed in consultation with Parliament.

A new Business Committee / Joint Business Liaison Committee (see page 7) should determine whether a draft bill will be scrutinised by a House of Commons Select Committee, by a House of Lords Committee, or by a Joint Committee. Peers should agree criteria for bills they believe they are best suited to scrutinise in draft.

COMMITTEE HEARINGS FOR PUBLIC EVIDENCE

The parliamentary scrutiny process should presume that at some stage every bill

should be subject to a public evidence hearing committee. At present, evidence hearing committees are held in the House of Commons through the Public Bill Committee process. However, bills originating in the House of Lords are not subject to such public evidence sessions when they reach the House of Commons.

The House of Lords should therefore adopt a public evidence hearing committee approach to all bills that originate in the Upper House, unless peers determine that the nature of the bill is such that the House discharges itself from that duty (e.g. if the bill has already been subject to pre-legislative scrutiny), or that it is such that the bill should be heard by the whole House rather than in committee. In these cases the bill should be referred to a temporary select committee established specifically to take evidence – oral or written – on the bill after second reading.

Members of this temporary committee would be appointed in accordance with the normal appointment process to committees (4:4:2:2).

A Chairman would be chosen by the committee and would determine which witnesses they wished to call and the form and conduct of questioning.

It would be open to any member of the House to attend the evidence taking proceedings and ask a question; however, only members of the select committee should deliberate and vote on any final report emerging from the evidence session on the bill.

The committee's report should clearly focus on highlighting those issues that the members wish to draw to the attention of the whole House to assist them in conducting later scrutiny.

The committee would not have the power to amend or delay a bill – its role would be solely to facilitate the holding of public evidence hearings and the reporting back of findings from these hearings to the rest of the House.

The committee members should also consider the bill at Grand Committee stage in order to ensure that the bank of knowledge about the detail of the bill generated through the temporary select committee stage can be maximised for the benefit of all members at this later stage of detailed consideration.

In establishing public evidence hearing committees the House should be mindful of the lessons to be learnt from the Public Bill Committee (PBC) process in the House of Commons. For example:

- the power of the chair of a PBC is much more circumscribed than a select committee chair – influence over a PBC is retained in the hands of whips;
- the whips largely determine who will be invited to give evidence, often resulting in a 'usual suspects' approach;
- too often witnesses are given only limited notice to appear (and sometimes cancelled at very short notice);

- that the time between the end of an evidence session and the detailed line-by-line scrutiny by the committee is often short – sometimes just 24 hours – giving little opportunity for members to think about and absorb what they have learnt from the evidence sessions.

This process will require some additional time in the legislative timetable but much if not all of this can be offset by the time-savings that can be made as a result of our proposed reforms of committee stage (see below).

FLAGGING SCRUTINY PRIORITIES WHEN A BILL PASSES TO THE HOUSE OF LORDS

There is an ever increasing reliance on the House of Lords to conduct scrutiny of sections of bills not dealt with by the Commons (particularly the large number of new government clauses tabled at Commons report stage and often close to the tabling deadline). However, at present there is no mechanism to alert peers to those sections of a bill that have not been scrutinised in the Commons. When a bill passes from the Commons to the Lords any clauses that have not been debated, either because there has been no amendment to a clause or no clause stand part debate, should therefore be ‘flagged’ either by annotation of the Order Paper or marking-up of the bill. This would help inform peers as to the state of scrutiny of the bill, enabling them to then determine whether and how to prioritise these hitherto unscrutinised clauses.

COMMITTEE STAGE

Greater use of Grand Committee should be made in order to rationalise the scrutiny process and prioritise the use of time in the Chamber to best effect.

Grand Committee should be the default mechanism for consideration of all bills unless otherwise required by the House. As now, these committee sessions would continue to be transcribed in full in Hansard, audio recorded and wherever possible televised.

However, alongside this reform the House should make greater use of the opportunity for split committal of bills with contentious issues continuing to be considered and voted on in the Chamber.

REPORT STAGE

If the majority of bills are dealt with in Grand Committee then this will free up more time in the Chamber for consideration of bills at report stage. Given current procedures, implementation of this reform will require either a) agreement that the House should not consider a bill at report stage after the dinner hour; or b) reform of the sitting hours of the House.

POST-LEGISLATIVE SCRUTINY

The Government has agreed that all Acts of Parliament should be reviewed between three and five years after enactment by a House of Commons select committee. However, these committees already have a heavy and growing workload and the expertise of

members of the House of Lords could offer a great deal particularly in areas of very technical scrutiny – such as, for example, review of audit mechanisms, departmental memoranda, regulatory and environmental impact assessments etc.

In ideal circumstances a Joint Committee for Post-Legislative Review should be established to examine any legislation that the relevant departmental House of Commons select committee declines to look at. It would sift the Acts eligible for review under the three to five year rule and determine which ones or which specific aspects of the legislation it would like to review.

In the event that the House of Commons do not wish to partake in a Joint Committee then the House of Lords should initiate its own post-legislative scrutiny inquiries, either by existing relevant committees or by new temporary Post-Legislative Review Committees to look at specific Acts.

This would of course have resource implications and an assessment will be needed to determine how the current committee arrangements can support the scrutiny demands of this process and what additional, occasional specialist support might also be needed.

BUSINESS COMMITTEE / JOINT BUSINESS LIAISON COMMITTEE

The coalition government has committed itself to establish a new Business Committee in the House of Commons within three years, as recommended by the Select Committee on Reform of the

House of Commons. The House of Lords should consider doing the same as the Usual Channels will no longer operate in the same way.

Preferably, a Joint Business Liaison Committee should be established to enable cross-chamber discussions to take place regarding how each House is to examine legislation to ensure that proper scrutiny takes place at each stage in an efficient and effective manner and that the scrutiny work of each House complements and augments rather than duplicates the work of the other.

In the interim, a slot for questioning the Leader of the House about the scheduling of business should be established at least on a trial basis, allowing members to raise issues and concerns for approximately 20-30 minutes each week. This would enhance transparency and accountability with regard to the management of the work of the House.

QUESTION TIME

Current procedures mean that too often question time is dominated by certain members and the conduct of the sessions can appear somewhat chaotic to the outside observer. Exaggerated courtesies expressed by the speakers towards each other also wastes time unnecessarily.

The Lord Speaker should, in the interests of all members of the House, select members to ask supplementary questions, ensuring that all sections of the House and the widest possible number of members are given the opportunity to

participate.

The allocation of oral questions should be subject to ballot up to a fortnight beforehand.

Consideration might be given to imposing a time limit on the length of supplementary questions and answers in order to maximise the use of question time for more members.

STATEMENTS

Consideration should be given to whether the reading of ministerial statements made earlier in the House of Commons is always a good use of Chamber time. Whilst the statement provides an opportunity for members to comment on it, there may be occasions when the nature of the statement is such that it could be heard in the Moses Room rather than the main Chamber.

However, there is a strong case for chairs of select committees having an opportunity to make the House aware of a report being published by their committee. A 5-10 minute statement after questions would be a useful opportunity for the chair to identify the committee's key findings and recommendations for members.

DEBATES

The House has topical or semi-topical debates on Wednesdays and Thursdays but there remains scope for improvement. For example, to improve the topicality of the work of the House: a weekly topical debate slot should be

established allowing for a one hour discussion or two shorter 30 minute debates. The timing of this might be considered as part of the wider review of sitting hours. The allocation of time might be decided either by (the new Business Committee / Joint Business Liaison Committee (though only the members of the Upper House would have a say on this use of time in the event of a Joint Committee); or by a ballot of the whole House.

SELECT COMMITTEES

The House Liaison Committee should, as a matter of best practice, review the organisation, structure, core tasks and resourcing of select committees at the start of each new Parliament and as required thereafter during the course of the Parliament in response to any significant developments that impinge upon their work.

The House should give consideration to the election of select committee chairs.

Where possible, as set out in these recommendations, it is in the interests of Parliament to establish joint committees and thereby ensure a more integrated, bi-cameral approach to legislative and non-legislative scrutiny. If necessary, the House should take a pro-active lead in approaching the House of Commons with suggestions for more joint working, clearly identifying where the House might add value to the scrutiny process, and where shared work and resources might help deliver a more effective and efficient approach.

FINANCIAL SCRUTINY

Financial scrutiny and accountability issues lie at the heart of the relationship between government and Parliament. The House should look at areas where it might add value to the process in future in areas of financial scrutiny, particularly, for example, by examining past government expenditure.

A Joint Committee on Tax Administration should be established – currently these issues are not being scrutinised effectively because of the workload burden falling on the House of Commons Treasury Committee. The remit of the Committee should be tightly drawn around only tax administration and it should respect the principle of the financial precedence of the House of Commons.

The House should take a greater interest in following-up the work of the National Audit Office and the Public Accounts Committee with regard to the use and effectiveness of previous government expenditure and related accountability functions. The scrutiny functions of the Lords generally could be substantially strengthened by greater use of the specialist and expert reports of the NAO.

ASSESSING THE NEED FOR FUTURE REFORMS

The mechanisms for the House of Lords to initiate consideration of reforms to process and procedure are inchoate. Neither the Procedures Committee nor the Liaison Committee perform the same functions as the committees of the same name in the House of Commons, and

there has been no House of Lords equivalent to the Commons Modernisation Committee or the Select Committee on Reform of the House of Commons. The House of Lords Constitution Committee has from time to time looked at reform of the legislative and scrutiny process and made many useful recommendations but House of Lords process and procedure is not the core focus of the committee's work. Earlier Leader's Groups have also previously investigated procedural practices and made recommendations but this approach is ad hoc.

Once the Leader's Group has made its recommendations, the House should therefore establish a permanent committee to keep reforms to House process and procedure under review, to assess the outcome of any trial initiatives, and to keep a watching brief on reforms in the House of Commons to determine whether the House of Lords might need to adjust its processes and procedures in order to streamline and improve the scrutiny process in the future. Although a permanent committee, this need not necessarily sit regularly but on an 'as required' basis.



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