



House of Commons
House of Commons Reform
Committee

Rebuilding the House

First Report of Session 2008–09

*Report, together with formal minutes and
written evidence*

*Ordered by the House of Commons
to be printed 12 November 2009*

HC 1117

Published on 24 November 2009
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

Select Committee on Reform of the House of Commons

The Select Committee on Reform of the House of Commons was appointed by the House of Commons on 20 July 2009 to consider and report by 13 November 2009 on four specified matters:

- the appointment of members and chairmen of select committees;
- the appointment of the Chairman and Deputy Chairmen of Ways and Means;
- scheduling business in the House;
- enabling the public to initiate debates and proceedings in the House

and closely connected matters.

The Committee, which lasts until the end of the Parliament, may also consider other matters referred to it by the House.

Current membership

Dr Tony Wright MP (*Labour, Cannock Chase*) (Chairman)
Mr Graham Allen MP (*Labour, Nottingham North*)
Mr Peter Atkinson MP (*Conservative, Hexham*)
Mr Clive Betts MP (*Labour, Sheffield, Attercliffe*)
Mr Graham Brady MP (*Labour, Altrincham & Sale West*)
Mr David Clelland MP (*Labour, Tyne Bridge*)
Mr David Drew MP (*Labour Co-op, Stroud*)
Natascha Engel MP (*Labour, North East Derbyshire*)
Dr Evan Harris MP (*Liberal Democrats, Oxford West and Abingdon*)
David Howarth MP (*Liberal Democrats, Cambridge*)
Rt Hon Michael Jack MP (*Conservative, Fylde*)
Rt Hon Greg Knight MP (*Conservative, East Yorkshire*)
Mr Elfyn Llwyd MP (*Plaid Cymru, Meirionnydd Nant Conwy*)
Mr Chris Mullin MP (*Labour, Sunderland South*)
Dr Nick Palmer MP (*Labour, Broxtowe*)
Martin Salter MP (*Labour, Reading West*)
Dr Phyllis Starkey MP (*Labour, Milton Keynes South West*)
Mr Andrew Tyrie MP (*Conservative, Chichester*)

The following member was also a member of the committee during the parliament.

Sir George Young MP (*Conservative, North West Hampshire*)

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/parliamentary_committees/reform_committee.cfm.

Committee staff

The current staff of the Committee are David Natzler (Clerk), Lucinda Maer (Senior Research Clerk) and Rowena Macdonald (Committee Assistant).

Contacts

All correspondence should be addressed to the Clerk of the House of Commons Reform Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 3255; the Committee's email address is reformcom@parliament.uk

Contents

Report	<i>Page</i>
Summary	5
1 INTRODUCTION AND CONTEXT	7
2 PRINCIPLES	11
General principles	12
Parliamentary control of business	12
Collective working and individual Members	12
Transparency and accessibility	13
Constraints: Government business	13
Constraints: time	13
Achievable change	13
3 SELECT COMMITTEES: ELECTION OF MEMBERS AND CHAIRS	15
A. Terms of reference etc	15
Deputy Speakers	15
B Select committees: what happens now	16
Members	17
Size and number	19
Speed of nomination	20
Intelligence and Security Committee	20
Public bill committee membership	21
Chairs	21
C Is the system satisfactory?	22
D A reformed system	24
Assumptions	25
Options	25
A reformed system: conclusion	25
Chairs	26
Members	28
E. Conclusion	29
ANNEX: Options considered by Committee	29
4 BUSINESS IN THE HOUSE	31
A. Terms of reference and connected matters	31
Business in the House	31
Scheduling and timetabling	31
Sitting patterns	32
Annual sessions and carry-over	33
Closely connected matters: general committees	33
Closely connected matters: Report stage of bills	35
Closely connected matters: consideration of Lords amendments	38
B The current framework	38
C. Government-initiated business	40
Who owns time?	40

Categories	41
Conclusion	45
D Process of scheduling business	45
E Is the current system satisfactory?	47
Strengths	48
Failure to match principles	49
Parliamentary control of business	49
Cross-party working	50
Transparency	50
Topicality	50
Use of time	51
F Five elements of a reformed system	51
I. The House should determine its own agenda and sitting pattern	51
II Backbench business should be scheduled by backbenchers and the House	54
III The Government should retain the initiative on scheduling ministerial business	55
IV The Opposition are entitled to more say in when Opposition Days are scheduled and how they are used	56
V Select committees and individual Members should be given enhanced opportunities, while retaining their existing rights of initiative	57
Key elements of revised system	58
G Assembling the jigsaw	59
H Time available to the backbench business committee	62
I Backbench business	64
J Conclusion	65
5 INVOLVING THE PUBLIC: NEXT STEPS	66
A Introduction	66
B What happens now	68
Individual Members	68
Petitions	69
Early Day Motions	69
Select committees	70
C Reform agenda	71
General	71
Petitions	71
Early Day Motions and Motions for House debate	77
Legislative Process	78
D Going further	79
General	79
Agenda initiative	80
A Direct Line to Westminster?	81
E Conclusion	81
6 CONCLUSION	82
Conclusions and recommendations	83
Annex: draft Resolution	94

Formal Minutes	95
List of written evidence	98
List of unprinted evidence	98

Summary

The Committee aims to make the Commons matter more, increase its vitality and rebalance its relationship with the executive, and to give the public a greater voice in parliamentary proceedings.

INTRODUCTION, CONTEXT AND PRINCIPLES

In the first two chapters the Committee sets out the wider background to its establishment in July 2009; seeks a prompt debate and decision on its proposals and their phased implementation; and describes the principles that have guided its work.

SELECT COMMITTEES

The Committee recommends that the Chairs of departmental and similar select committees be directly elected by secret ballot of the House using the alternative vote. The distribution of individual chairs between parties should be agreed as now by the parties, on the basis of a proportionate division conveyed to them by the Speaker, and put to the House for its agreement. Candidates for chairs would be required to have a minimum level of support from within their party as well as being free to demonstrate support from other Members.

The Committee recommends that members of departmental and similar committees should be elected from within party groups by secret ballot, each party choosing its own publicly declared method approved by the Speaker as democratic and transparent, and that the names then be transmitted to the House for its endorsement.

The Committee also recommends (a) a reduction in the size of a standard departmental committee to not more than 11, with the possibility of adding members to provide for smaller party representation, and a reduction in the overall number of committees (b) a Standing Order ensuring the election of members and Chairs of select committees within six weeks of the Queen's Speech (c) the election by the House of the Chair of the Intelligence and Security Committee.

It is the Committee's hope that these changes, to be implemented from the start of the new Parliament but requiring agreement in the last session of this Parliament, will invigorate select committees, leading to higher levels of attendance and participation, and that with other measures described they will help ensure that the work of select committees is more adequately reflected in the work of the House and on the agenda of public debate.

BUSINESS IN THE HOUSE

The Committee examines the current system for scheduling business in the House in detail, and in particular sets out for each category now scheduled by Ministers how far they are really to be regarded as Ministerial as opposed to House or backbench business. It concludes that all time belongs to the House, but also that Governments are entitled to put their legislation before the House at a time of their choosing, and concluded by a set date.

The Committee recommends a system where backbench business is organised by a

Backbench Business Committee, responsible for all business which is not strictly Ministerial. That Committee would then join with the representatives of the Government and Opposition in a House Business Committee which would be obliged to come up with a draft agenda for the week ahead, working through consensus, with the Chairman of Ways and Means (the Deputy Speaker) in the chair. The agenda would then be put to the House for its agreement, replacing the weekly Business Questions.

The Committee also looks at the sessional sitting pattern within which the scheduling of business operates and recommends that the House should decide its sitting pattern for itself. It provides a detailed prescription for reforming the way bills are considered on the floor of the House after the committee stage and also makes recommendations on consideration of Lords amendments and on Private Members' Bills.

It will largely be up to the Backbench Business Committee to determine how to fulfil its task of organising non-Ministerial business, but the report gives some indications of the sort of new or refreshed opportunities which might be offered, including readier access to the agenda of the House for select committees and better opportunities for backbenchers to raise matters of current concern.

PUBLIC INVOLVEMENT

The Committee calls for the primary focus of the House's overall agenda for engagement with the public to be shifted towards actively assisting a greater degree of public participation.

It calls for urgent discussions on the currently stalled process of introducing an e-petitions system, and for the Procedure Committee to become for a trial period a Procedure and Petitions Committee, dealing with petitions submitted under existing rules. It recommends a number of changes designed to give presentation of petitions greater significance in the House's proceedings, including the possibility of a debate. The Committee also calls for the working up of a scheme for identifying a monthly backbench Motion suitable for debate, alongside the existing Early Day Motions.

The report looks at the prospects for some form of "agenda initiative" which might enable the public to ensure that a given issue is debated in the House. It calls for the House to commission an investigation of the practicalities of such a procedure at national level, drawing on local and international experience, and concludes that the opportunities should be seized for nourishing representative democracy by the exploration of other democratic possibilities.

It concludes that opening up the process of legislation and giving the public a real opportunity to influence the content of draft laws should be a priority in the new Parliament.

1 INTRODUCTION AND CONTEXT

The public are sullen, some even mutinous.

(Sir Robert Worcester, June 2009)

1. We have been set up at a time when the House of Commons is going through a crisis of confidence not experienced in our lifetimes. This is largely, but not exclusively, because of the revelations about Members' expenses, bringing with it a storm of public disapproval and contempt. Public confidence in the House and in Members as a whole has been low for some time, but not as low as now. It is not too much to say that the institution is in crisis.

2. The storm has been gathering, but has now reached its climax. In 2001 a survey found that 30 per cent of people were dissatisfied with how Parliament was doing its job; in 2009, in the wake of the expenses scandal, dissatisfaction with the Commons was a massive 71 per cent (Ipsos/Mori). This demands a response, if public confidence in the central institution of our representative democracy is to be restored. Action is already being taken to establish a transparent, fair and independently regulated system of allowances. This is necessary, but not sufficient.

3. The great majority of Members of Parliament work extremely hard. Members are in closer and more regular contact with their constituents than ever before, and dedicate a great deal of time to serving their interests. But while the House of Commons remains the central institution of British democracy, in both real and symbolic terms, there is a sense in the country that it matters a good deal less than it used to. We believe that the House of Commons has to become a more vital institution, less sterile in how it operates, better able to reflect public concerns, more transparent, and more vigorous in its task of scrutiny and accountability. This requires both structural and cultural change. This report by necessity focuses on structural changes, but we hope they will lead gradually to a change of culture. The core business of Parliament has to matter more to the public and to individual Members. At present many Members do not see the point in attending debates or making the House the primary focus of their activities. In order to address this we must give Members back a sense of ownership of their own institution, the ability to set its agenda and take meaningful decisions, and ensure the business of the Chamber is responsive to public concerns. We believe this is what the public demands, what the institution needs and what most Members want. The present crisis presents an opportunity to make some real progress with this.

4. Without the shock of recent events, it is unlikely that this Committee would have been established. Yet the case for an inquiry such as ours was already strong, and becoming ever stronger. Since 1997 the Modernisation Committee has presided over a number of reforms, some of which—such as sittings in Westminster Hall and oral questions without notice to Ministers—have proved successful. However, a number of the proposals from that Committee, and the Procedure Committee and others, have been shelved, sidelined or simply disregarded, often without being put to the House, which is dispiriting for reform and reformers. A steady stream of reports from outside bodies have made the case for

significant parliamentary reform.¹ Meanwhile, the Modernisation Committee has run out of steam and not met for over a year.

5. We have a rare window of opportunity. There is an appetite for reform inside the House and among the public at large. We have a newly elected Speaker expressly committed to it. Backbenchers are fed up with their inability to make a difference and the deadweight of timeworn procedures. Select committees are universally praised but have few opportunities to initiate debates or propose amendments to legislation and sometimes struggle to maintain a quorum. Thirty years ago, in the closing period of the 1974–79 Parliament, our predecessors took the bold step of proposing a system of departmental select committees, which have now become integral to the work of the House. Unlike our predecessors, we have had to work at high speed under a very tight timetable, but hope to have produced proposals which—if implemented—may have an equivalent impact.

6. We are conscious of the fact that the large number of Members standing down at the next General Election will lead to an exceptional influx of new Members. In fairness to the incoming Parliament we propose that after two years of operation the changes recommended here be reviewed by an elected committee – as this one was.

7. The Prime Minister told the House on 10 June 2009, in the course of a wider statement, that he was ‘happy to give his support’ to a proposal from Dr Tony Wright MP, Chairman of the Public Administration Select Committee, ‘to work with a special parliamentary commission...to advise on necessary reforms, including making Select Committee processes more democratic, scheduling more and better time for non-Government business in the House and enabling the public to initiate directly some issues for debate’.² The proposal arose out of a suggestion for a new special committee set up for a defined period only with a mandate to come forward quickly with parliamentary reform proposals, of which the key one would be to separate the control of Government business from House business. Dr Wright’s letter to the Prime Minister drew particular attention to a report by Meg Russell and Akash Paun of the Constitution Unit, University College London, which had proposed the establishment of a Backbench Business Committee.³

8. The story of the delays in setting up the Committee need not be set out here in detail.⁴ In outline the Motion to establish a select committee for this purpose was tabled on 23 June. On 8 July, a fortnight later and a full five weeks after the Prime Minister’s announcement, the Motion appeared for the first time on the day’s Order Paper. No time was provided for debate. On 20 July it was again on the Order Paper. On this occasion—effectively the last opportunity before the House adjourned for the summer recess—the Government allowed time for debate and tabled a motion to oblige the House to come to a decision. The Motion was duly passed without a vote, nearly seven weeks after the Prime Minister had put his

¹ See for example: Commission to Strengthen Parliament, *Strengthening Parliament*, July 2000; Hansard Society Commission, *The Challenge for Parliament: Making Government Accountable*, 2001; Parliament First, *Parliament’s Last Chance*, April 2003; and Conservative Party Democracy Task Force, *Power to the People: Rebuilding Parliament*, 2007.

² HC Deb, 10 June 2009, col 797

³ Meg Russell and Akash Paun, *House Rules?*, Constitution Unit, University College, London, 2007

⁴ Library Standard note SN/PC/5140, Select Committee on Reform of the House of Commons

authority behind the move to establish a committee to come up with speedy proposals for reform.

9. This matters because it illustrates one of the key problems to which we have been directed to offer solutions. This is the impotence of the House to find time to debate and decide its own internal affairs, unless the Government enables it to. This is not a satisfactory situation for a sovereign legislature. We note that the Ombudsman recently observed that “What...I think citizens at large see is no visible distinction between Parliament and Government”.⁵

10. It is unfortunate that so many weeks were wasted, especially as our timetable was already very tight. We have worked intensively, so that the momentum for reform in this Parliament is not lost. Although we have found our terms of reference to be somewhat constraining, it would in practice have been impossible to give proper consideration to any wider matters in the time available. We have had to leave on one side some relevant matters which bear directly on the vitality of the Commons and its relationship with the executive, such as the number of Ministers.

11. We draw strength from the fact that, uniquely, Members of this Committee were elected in democratic and open procedures within the principal party groups to serve on the Committee. This is an indication of future possibilities.

12. We have not taken formal oral evidence, partly because of the time constraint. Many of the issues are well rehearsed and require political judgement to be applied to them. For the same reason, the Government did not submit detailed written evidence to the Committee.⁶ We have held informal and private discussions with a range of people, including former and current whips and business managers. We are grateful for their help and advice. We have also held a private meeting with Mr Speaker.

13. We issued an invitation for written evidence and the Chair asked all Members for views on the principal matters before us. We received useful contributions and are grateful to those who wrote to us.

14. We owe a particular debt of gratitude to our principal specialist adviser, Dr Meg Russell of the Constitution Unit, University College London. We have also benefited from expert advice on election systems from Professor Iain McLean of Oxford University.

15. It is conventional that a select committee report receives a written Government reply within two months. This is because most select committee reports, although formally made to the House, contain conclusions and recommendations directed at Government. This report is rather different. It is addressed to the House, Ministers and backbenchers alike. We do expect a Government reply on some points. However this is essentially a matter for the judgement and will of the House. What we would now expect is a debate within the next two months when a House majority can freely determine the outcome. To make it

⁵ Uncorrected transcript of evidence taken before the Public Administration Select Committee on 5 November 2009, HC 1079i, Q 24

⁶ Ev 1, letter from the Leader of the House

easier for a conclusion to be reached, and to avoid any doubt about what is being agreed, we have drafted a resolution to be put to the House.

16. The proposals which we make must only be implemented with all-party agreement, and not imposed on the House by a Government majority. They will inevitably need implementation in stages. Some changes can take effect in the course of the last session of this Parliament, such as some of the changes to petition procedures we recommend. Others can only come into effect in a new Parliament, such as the changes relating to select committee Chairs and members, and the scheduling of business. The necessary Standing Orders can and should be passed in this Parliament so that the new Parliament can start with new procedures and practices. As we recommend in para 6 above, they can then be reviewed after a couple of years.

17. This Committee remains in being for the rest of the Parliament. We do not intend to revisit our conclusions, or to undertake a further body of work, but we will reconvene as required to consider progress on our recommendations. We also recognise that this report is the start of a process of change which will take more than a Parliament to complete, and on a wider front than that considered here.

2 PRINCIPLES

Parliamentary control of the executive—rightly conceived—is not the enemy of effective government, but its primary condition. (Bernard Crick, *The Reform of Parliament*)⁷

18. This Committee was established in the wake of the expenses crisis, which triggered demand for wider parliamentary and political reforms. The reforms sought often have little or no direct connection with the cause of the crisis, which was largely cultural rather than structural. Yet the crisis has functioned as a catalyst to release pent-up demands which had been pressed in vain for some time.

19. Only some of these wider demands for change within Parliament are reflected in the matters referred to the Committee by the House: the appointment of members and chairs of select committees and the Deputy Speakers, scheduling business in the House, and enabling the public to initiate debates and proceedings in the House. Some would no doubt welcome a more wide-ranging inquiry. But each of the three distinct though interconnected matters referred to us, as set out below, reflects in some way the wider agenda for change in the way the House does its business. Together, they reflect common cross-cutting concerns about the vitality of Parliament.

- **Control of the parliamentary agenda.** It became clear in June that the House was dependent on the Government to provide time for debate on the motion of no confidence in the former Speaker, something which was quintessentially a House matter. This incident crystallised concerns expressed for some time about Members' inability to control the business in their own House. These concerns are wide-ranging, including the choice of topics for general debates, control over procedural reform, programming of government bills, Private Members' Bills and much else.
- **Select committees.** The select committees are widely respected and seen as generally functioning well. They have won more resources in recent years. Their work on pre-legislative and post-legislative scrutiny, examination of expenditure and pre-appointment hearings is gaining ground. There is a strong desire to strengthen yet further these forums for cross-party work and government scrutiny and indeed extend the way they work to other parts of parliamentary life. Some have long held the view that it is crucial to create a parliamentary career path focussed on select committee work. Concerns have particularly focused on the role of the whips in selecting committee members and, in practice if not formally, Chairs, as well as the powers of committees and their need for access to the Chamber agenda, where despite some improvements they remain essentially noises-off.
- **Public initiation of proceedings.** The expenses crisis and the nature and force of the public reaction to it heightened concerns about Parliament's connection to the public it serves and its public reputation. These matters have been the subject of various

⁷ Bernard Crick, *The Reform of Parliament*, 1970, p 259

inquiries in recent years. There have been many improvements in communication outwards (for visitors, through the internet and the media) but no major changes in terms of the public's ability directly to influence the parliamentary agenda.

General principles

20. The key principle that guides our recommendations is that Government should get its business, the House should get its scrutiny and the public should get listened to. Everything within this report can be measured against that simple proposition.

21. We have also applied a number of general principles which we have relied on in carrying out our work, and in making our recommendations.

Parliamentary control of business

22. We should seek to enhance the House of Commons' control over its own agenda, timetable and procedures, in consultation with Government and Opposition, whilst doing nothing to reduce or compromise such powers where they already exist.

23. The most important common theme is the House's lack of control over its own business. There is a well-established concern (dating back many decades) that Government in general is too dominant over parliamentary proceedings. The House is notionally in charge but, partly because of difficulties of collective decision-making, partly due to imbalance of resources, and partly as a result of its own Standing Orders, the coordination of decisions often rests with the executive. There is a feeling that the House of Commons, as a representative and democratic institution, needs to wrest control back over its own decisions rather than delegating so much (as it does now) to Ministers and frontbenchers. Where the House does retain at least notional control, such as the approval by the Chamber as a whole of select (but not public bill) committee membership, that must not be compromised. There are in fact many aspects of organisation in the Commons which are not directly controlled by the whips: for example the allocation of questions, adjournment debates and Private Members' Bills by ballot (rather than by whips, as in some other parliaments) and the strict neutrality of the Speaker. These should be protected, along with those conventions which sustain respect and fairness in the House's proceedings.

Collective working and individual Members

24. We should seek to enhance the collective power of the Chamber as a whole, and to promote non-adversarial ways of working, without impeding the ability of the parties to debate key issues of their choosing; and to give individual Members greater opportunities.

25. The House of Commons is not just a collection of individuals, but a forum for debate between political parties. Parties are integral to democracy and to coherent political choice. Almost every Member is elected on a party ticket and the continuous party battle between a Government and an Opposition is fundamental to political and parliamentary life. However, there is public concern at the extent to which party considerations (and party games) have come to be too dominant, leading to needlessly adversarial behaviour. One of the characteristics that is most valued in the select committees is the way in which Members work together constructively across party boundaries, with the emphasis being

on the quality of policy decisions. This style of working has obvious appeal to the public, particularly in an era when partisan affiliations outside Parliament are much weaker than once they were.

Transparency and accessibility

26. We should seek to enhance the transparency of the House's decision making to Members and to the public, and to increase the ability of the public to influence and understand parliamentary proceedings.

27. Decisions on matters such as which issues are to be debated in the House or who gets a seat on which select committee or public bill committee seem to be taken through informal hidden procedures (most obviously the 'usual channels'), rather than in more transparent and accountable ways. The public may also have the sense that the parliamentary agenda does not reflect their concerns but is some sort of strange ritual put on for the benefit of insiders.

28. These are all noble sentiments, which we trust are widely shared. However we also have to recognise that there are constraints.

Constraints: Government business

29. We should recognise that the Government is entitled to a guarantee of having its own business, and in particular Ministerial legislation, considered at a time of its own choosing, and concluded by a set date.

30. One of the principal functions of parliament is to scrutinise, debate and ultimately vote on Ministerial legislation, rooted in an electoral mandate. An elected Government must be able to govern. But strong government needs to be matched by strong accountability. There is therefore a balance to be struck between Government's legitimate demands for parliamentary time and the demands from other sources. Our recommendations must respect this need for balance.

Constraints: time

31. We should recognise that time in the Chamber, Westminster Hall and committees is necessarily limited, and therefore should work broadly within the existing framework of sitting days and sitting hours.

32. There is a limited amount of time available within the parliamentary week and within the parliamentary year. While wanting to enhance democracy, accountability and transparency within the Chamber and improve Members' opportunities for influence, we must recognise that there will be little appetite for reforms which put significant additional pressure on Members' time or make unrealistic assumptions about the time that is available. There will always be tough choices to be made about how existing time in the Chamber should be used.

Achievable change

33. Changes should be devised with sensitivity to real-world political constraints, and in a way which maximises the likelihood of achieving majority support in the House.

34. We are all aware that the issues we have to consider are both sensitive and challenging. There is always a danger that a reform committee makes proposals that are theoretically attractive, but which in the end achieve nothing because they are seen by some as too threatening or radical. The present moment offers a limited window of opportunity, where reform is genuinely achievable. It would be a great pity if this was squandered. We have therefore sought to recommend what might actually be adopted and thereby strengthen the House and its reputation with the public.

35. These principles have informed our deliberations and are reflected in our approach to the specific matters on which we have been asked to report. We aim to make the Commons matter more, increase its vitality, and rebalance its relationship with the executive.

3 SELECT COMMITTEES: ELECTION OF MEMBERS AND CHAIRS

There is widespread disquiet, both amongst Members and outside the House, about a system which is not open, and which is not clearly independent of the Government and the party managers. Those being scrutinised should not have a say in the selection of the scrutineers. We believe that the present system does not, and should not, have the confidence of the House and the public. (Liaison Committee, *Independence or Control?*, 2000)⁸

In this introductory section we report on our consideration of the appointment of the Chairman and Deputy Chairmen of Ways and Means (the Deputy Speakers): and recommend the general use by the House of the gender-neutral terms “Chair” for the office-holder and “chair” for the office, as we have in this report.

A. Terms of reference etc

36. The first two matters which we are directed by our terms of reference to consider and to make recommendations on are “(a) the appointment of members and chairmen of select committees, (b) the appointment of the Chairman and deputy Chairmen of Ways and Means..[ie the Deputy Speakers]”. Both matters have arisen from a sense that the House wishes to democratise its internal procedures and practices. The election in June 2009 of a new Speaker by a new procedure involving a secret ballot has shown the way.

Terminology

37. Our terms of reference refer to “chairmen” of select committees, and the same term is used in the official titles of the deputy Speakers. “Chairman” is embedded in the House’s Standing Orders in reference to select committees and general committees, as well as in various pieces of statute law. We do not think that is appropriate in the House of the 21st century. “Chair” is a widely used gender-neutral term for someone carrying out the chairing function, and “the Chair” is already used at Westminster as a shorthand for the Speaker or whoever is chairing proceedings. **In this report we will wherever possible use the term “Chair” to denote the individual chairing a committee, and “chair” to denote the office held, save where a particular officer is meant, such as the Chairman of Ways and Means. We hope that the House will soon follow this practice.**

Deputy Speakers

38. On 2 July 2009 Mr Speaker Bercow told the House of his conviction that the choice of Deputy Speakers should be determined not as hitherto by consultation and formal nomination by the House, but by a process of election. He expressed the hope that a ballot or ballots would be conducted shortly after the House returned in October to choose three

⁸ Liaison Committee, *Independence or Control? The Government’s reply to the Committee’s First Report of Session 1999–2000*, HC 748, para 28

deputy Speakers, one from the Opposition side and two from the Government side.⁹ On 16 July 2009, several days before the Motion to establish this committee was passed by the House, the Procedure Committee announced in a Press Release that it was launching an inquiry into the procedure governing the election of the Speaker and the lessons to be learned and would also make recommendations on the rules governing the election of the three Deputy Speakers. It stated that it aimed to publish its report shortly after the House returned from the summer recess.

39. At our first meeting on 21 July 2009 we decided that it would be fruitless to pursue a detailed inquiry into the appointment of the Chairman and Deputy Chairmen of Ways and Means (the Deputy Speakers) at exactly the same time as such an inquiry was being conducted by the Procedure Committee. We did not therefore seek separate evidence on that particular matter.

40. The Procedure Committee has now reported its outline conclusions.¹⁰ **It must in our view be right that a transparent means be found for the House as a whole to elect the House's three principal office-holders below the Speaker. As we have discovered in our examination of the appointment of members and Chairs of select committees it is not easy to find a generally acceptable and fair procedure. It is now for the House to consider the Procedure Committee's Report.**

B Select committees: what happens now

In this section we describe the current system of appointment of members and Chairs of select committees and how it works in practice. We also report on three closely connected matters: the size and number of committees, the speed of their nomination in a new Parliament and the Intelligence and Security Committee.

41. There are currently 34 “permanent” select committees, including joint committees.¹¹ There are other committees which will lapse at the end of the Parliament or earlier; statutory committees with a membership of Members of this House; and committees whose membership is *ex officio* or similar. Members of each select committee are appointed by the House on the basis of a motion moved in the House, usually in the first months of a new Parliament. Membership lasts for the remainder of the Parliament, unless and until the House agrees to the removal of a Member and their replacement by another.

42. Each Committee elects a Chair from among their number at its first meeting. There are rare exceptions to this general rule. Chairs may be appointed by the House in the Order setting up the Committee, as was the case with this Committee and the recently appointed Committee on privilege and other aspects of police searches on the Parliamentary Estate. The Chair remains in office unless removed by a vote of the committee, on the basis of a motion of which notice has been given. This has not happened in recent times.

⁹ HC Deb, 2 July 2009, col 496

¹⁰ Procedure Committee, Fourth Report of Session 2008–09, *Election of the Deputy Speakers: Principles*, HC 1080. It had reported on the subject in 2002, Second Report of 2001–02, HC 770, *Appointment of Deputy Speakers*

¹¹ Liaison Committee, First Report of Session 2008–09, *The Work of the Committees in 2007–08*, HC 291, Annex 3, p 60

Members

Committee of Selection

43. Under Standing Order [SO] No 121, nomination of members of nearly all permanent committees must arise on a motion moved in the House after at least two days notice by the Chair of the Committee of Selection.¹² Nomination of temporary select committees, such as the Regional select committees, is normally done on a motion moved by a Minister, but in practice following a process of nomination to the Government by the parties.

Motions and amendments

44. Appointments to committees are made in the House in stand-alone motions covering one committee at a time. They can be amended by leaving out names and inserting others, or merely leaving out names. Amendments to add names to a committee already limited in size without a balancing removal are not in order. Members proposing to nominate a Member must endeavour to ascertain if *“each such Member will give his attendance on the committee”*; in other words, Members must be volunteers.

Vacancies

45. Vacancies arise regularly throughout a Parliament. In session 2008/09 there were over 40 cases of members being removed and replaced, for a variety of reasons, typically the acceptance of a ministerial or Parliamentary Private Secretary (PPS) role or an Opposition frontbench role. Many committees have members who have ceased to attend for a variety of reasons and have not been replaced. It is not always easy to fill vacancies.

Origins of Committee of Selection

46. The role of the Committee of Selection in the nomination of members of most select committees is a relatively recent one. The Committee has its origins in 1839 as a means of nominating Members to committees dealing with private bills, of which there were many. When Standing Committees on Bills were first established in the 1880s the task of proposing names for members to be added to the core membership of a Standing Committee in respect of each Bill was given to the Committee of Selection. These names did not need to be approved by the House. The system of nomination of Standing Committee membership changed over the years so that the committee stage was entrusted to a separately appointed set of Members for each Bill; but the Committee of Selection retained under SO No 86 the duty of nominating the Members, still without requiring ratification in the House. In making nominations to such committees, now called public bill committees, it is obliged to *“have regard to the qualifications of those Members nominated and to the composition of the House”*. In practice, the whips bring nominations to public bill committees for the Committee’s ratification, and the names as endorsed by the Committee are simply recorded in the Votes and Proceedings.

47. The Committee of Selection is itself nominated by the House under Private Business Standing Order 109. The names of the nine Members to serve on the Committee are put to

¹² The exceptions are the Liaison, Selection and Standards and Privileges Committees. The Liaison Committee comprises ex officio the Chairs of specified committees. For the nomination of the Committee of Selection, see below.

the House in a motion moved formally at the outset of a day's proceedings by the Deputy Chief Whip. It normally comprises whips from all 3 major parties, with a senior Government party backbencher in the chair.

Earlier practice

48. So far as can be discovered, the nomination of Members to serve on select committees, which were from Tudor times if not earlier a regular feature of the Commons, was made relatively casually in a motion moved without notice. In the 18th century the practice was introduced of a secret ballot for select committee membership, in which Members were called up one by one to place their preferred names in large glasses on the Table of the House. The procedure lasted anything up to three hours, with the result declared the next day.¹³

49. In the course of the 19th century the House reverted to moving a motion to nominate membership, and gradually this became the preserve of Ministers, since it was they who controlled the agenda. Motions came to be tabled in the name of the deputy Government Chief Whip, following consultations between the parties, and put down for decision after the moment of interruption, with the intention of avoiding the need for debate or vote. That remains the standard means of nominating temporary committees, such as the current Regional select committees, and was indeed the means used to nominate this Committee. There remains a shadow of backbench initiative in SO No 23, the “ten-minute rule”, now used only to seek leave in a 10-minute speech to bring in a bill, but which also permits a motion by a backbencher to nominate a select committee.

1979 changes

50. The 1976–78 Procedure Committee recommended in its Report that “*in future the preparation of nominations for select committee membership should be entrusted to the Committee of Selection, who have long and valuable experience in the nomination of standing committees*” and that the motions to be tabled by the Chair of the Committee of Selection should be taken after at least two days' notice.¹⁴ The idea was to shift the responsibility for nomination away from the Leader of the House and the Whips to a forum where backbenchers could at least query the party's nominations. It is this thankless task that the Committee has carried out for the past 30 years.

Current practice

51. The Committee of Selection establishes at the start of each Parliament a standard division of places between the parties on committees of different sizes, based upon a calculation of the seats in the House held by each party. This calculation holds good for select committees as well as for public bill and delegated legislation committees. Names of prospective select committee members are brought up in the Committee of Selection by the individual party whips to fill the party “quota” on committees. On occasion a party has given up a place to a Member of another party, for example to ensure some places for

¹³ *House of Commons in the Eighteenth Century*, P D G Thomas (Clarendon Press, 1971) p 267

¹⁴ Procedure Committee, First Report of 1977–78, HC 588-I, para 6.19

members of Northern Ireland parties on committees dealing with Northern Ireland: or to enable an independent Member to take a place on a committee.

52. It is up to each party how it decides who is to be put forward by its whips in the Committee of Selection, and the process is not transparent.

53. Membership of a select committee is open to any member of the House. In 1979 the then Chair of the Committee of Selection told the House that the committee would not nominate Ministers, PPSs or Opposition front-bench spokesmen. This has remained the general practice, so far as circumstances permit. In practice, PPSs have served on committees scrutinising departments other than that in which they serve; and it has proved difficult for committee membership to keep up with the frequently changing membership of the Opposition front-bench. There are no similar constraints on membership of some temporary select committees such as Modernisation, which is chaired by a Minister and has Opposition front-bench membership, or Regional select committees. The House can of course object to the membership of a committee when it is first proposed in the House, but not in practice thereafter.

Size and number

54. We are directed to consider matters closely connected with those matters referred to us. In its Annual Report of March 2009 the Liaison Committee repeated its concern at the size of select committees, which over the 30 years since foundation of the departmental select committee system in 1979 has risen from 9 or 11 on a standard committee to 14, despite objections over many years from the Committee.¹⁵ The number of places to be filled on all Committees, including temporary and statutory committees, has doubled in that time, from 275 to 576,¹⁶ but there has been no change in the numbers willing and able to serve. There has also been a steady rise in the number of committees, from 24 to 39, not counting the Regional select committees. As a result, a number of Members serve on two or more committees, and the prohibition on service by PPSs and Opposition front-benchers has been breached in order to fill vacancies. Chairs have argued that committees are now unwieldy and that it is hard to engender a collective purpose and direction.¹⁷ In this report we make proposals on increased access for select committees to the floor of the House for debate and decision on substantive motions. If committees are slimmed down, we recognise the need to incentivise attendance and participation among that smaller group of Members. Rather than an unremunerated honour to be sought, and a responsibility to be discharged, a select committee place is in danger of being regarded by some backbenchers as a burden best avoided.

55. We propose that the new House of Commons reduce the size of its standard departmental committees to not more than 11; Members in individual cases can be added to specific committees to accommodate the legitimate demands of the smaller parties. We also recommend that the practice of appointing parliamentary private secretaries and front bench Official Opposition spokesmen should cease. We believe

¹⁵ Liaison Committee, First Report of Session 2008–09, *The Work of Committees in 2007–08*, HC 291, paras 78–81

¹⁶ *Ibid.*, page 60, Annex 3

¹⁷ See eg debate on establishment of the new Energy and Climate Change Committee, HC Deb, 28 October 2008, cols 851 ff

there should be clear consequences for unreasonable absence from select committees. The House must also seek to reduce the numbers of committees, ending overlapping or duplicate remits and rationing the scarce resource of Members time and commitment.

Speed of nomination

56. Committees can take an unconscionable time to be set up at the start of a new Parliament. In 1997 and again in 2005 it took a full three months, compared to one month in 2001. The delays are variously attributed to the need for the Government to complete its ministerial appointments and then identify the PPSs, and to delays in the official Opposition naming its front-bench. The Liaison Committee reports of 1999 and 2000 seeking reform of the system were responding as much to concerns over delays in nominating members at the start of a Parliament as to concerns over the way the nominations were made. We do not underestimate the problems. **But we consider that under any system the principal select committees should be nominated within no more than six weeks of the Queen's Speech and that this should be laid down in Standing Orders and capable of being enforced by the Speaker.**

Intelligence and Security Committee

57. The Intelligence and Security Committee is a statutory committee of Members of both Houses established under the Intelligence Services Act 1994 to examine the expenditure, administration and policy of the three main intelligence and security agencies. Its terms of reference reflect those of the House's departmental select committees. Under section 10 of the Act, appointments are made by the Prime Minister, in consultation with the Leader of the Opposition.

58. The July 2007 Governance of Britain Green Paper included a number of suggestions for minor changes in how the committee worked, to make it more like a select committee of the House, which it is not, and to increase transparency.¹⁸ In March 2008 the Government published its White Paper proposals based on, but falling short of, its Green Paper suggestions.¹⁹ In July 2008 the House endorsed these proposals, and passed a Standing Order, now SO No 153E, with effect until the end of this Parliament, permitting the Committee of Selection to “*propose that certain Members be recommended to the Prime Minister*” for appointment to the Intelligence and Security Committee. The Lords approved similar procedures in November 2008. A Member of this House was added to the Committee in October 2008 and was appointed as Chair, without a recommendation from the Committee of Selection having been put to the House. A month later, however, a Member was added using the new Standing Order. A change in the formal system of nomination to the ISC, and in the method of appointment of the Chair, would require a change in statute.

59. **It is unsatisfactory that any reforms we recommend to the system of election of members and Chairs of the House's select committees cannot be applied at the same time to the Intelligence and Security Committee. In the interim, we believe that the system we recommend below for electing Chairs of departmental and similar select**

¹⁸ *Governance of Britain*, Cm 7170

¹⁹ *Governance of Britain – Constitutional Renewal*, Cm 7342

committees should be applied so far as possible to the Chair of the Intelligence and Security Committee. We recommend that the Committee be regarded as one whose chair is held by convention by a Member from the majority party; that candidates wishing to stand for election by the House to the chair of the Committee should be obliged to seek in advance of the ballot the formal consent of the Prime Minister for their candidature, to be notified in writing; and that thereafter the procedure should be as for other departmental and similar select committee chairs.

Public bill committee membership

60. We are charged with considering appointment of members and chairs to select committees only, and have not considered the membership of public bill committees in detail. However it is notable that the arrangements for appointment of Members to public bill committees are markedly less transparent and democratic than those for select committees. The chairs of public bill committees are selected from the Chairmen's Panel, chosen by the Speaker, and this system is widely accepted. But the members of these committees are chosen by the Committee of Selection with no reference to the House itself. **We conclude that a review would be desirable of the means of selection of public bill committee members, so that it was subject to a similar level of accountability to that long applied to select committee membership.**

Chairs

61. Once a committee is nominated it meets to elect a Chair. The Committee can in theory choose any Member, so long as they do not fall foul of SO 122A introduced in 2002 which establishes term limits for Chairs. In practice Members are constrained by the outcome of private inter-party negotiations on the party affiliation of each committee chair, undertaken to ensure that a fair proportion of chairs are held by the Opposition parties. The outcome of these negotiations is notified privately to Members by whips. The Modernisation Committee has recommended that this distribution be published.²⁰

62. There are rare exceptions. The Liaison Committee's membership comprises one named individual in addition to the *ex officio* Chairs of select committees, and that Member is evidently intended by the House to take the chair. The House has also endorsed the proposition that the Finance and Services Committee should be chaired by a member of the House of Commons Commission, of whom one serves on the Committee. And the presence of the Leader of the House on the Modernisation Committee has, not without occasional controversy, been taken as a signpost as to the obvious candidate for the chair of that Committee.

63. More common has been the nomination to a committee of a "senior" figure by virtue of past Ministerial or Opposition front-bench service, with or without previous select committee experience, although this was less apparent in the appointments in 2005; and it is common knowledge that the whips on all sides ensure that members of their own party are left in no doubt about the "official" view as to the preferred candidate.

²⁰ Modernisation Committee, First Report of Session 2001-02, *Select Committees*, HC 224-I, para 3.22

64. Most Chairs are elected without recorded opposition. That is not to say that there is not sometimes internal dissent within the committee and within members of the same party on a committee. Alternative candidates are not infrequently privately canvassed before the first meeting of a committee. In the 1992 Parliament, where a typical departmental select committee had 6 Government and 5 non-Government members, the minority was well-placed to identify which of the majority party members they preferred without it needing a recorded vote, since the 5 plus their favoured candidate enjoyed an automatic majority. On the Employment Committee the returning Chair was defeated and an alternative candidate from the same party elected in his stead. In 2001 the International Development Committee was unable to find a majority for either of the Opposition party candidates, and eventually a third candidate was added to the Committee and elected unopposed.

65. Controversy has also arisen from candidates for the chair being “parachuted” into a committee where a chair has become vacant, rather than the successor being found from among the existing membership. For this to happen does still require a majority in the House to appoint the new member, and a decision of the Committee to elect that Member to the chair.

66. Chairs evidently play a crucial role in the operation of their select committee, acknowledged by the payment of an additional sum, albeit only half as much as the additional salary paid to the most junior Minister. Perhaps more significantly, the steadily growing public profile of select committees gives Chairs a wider role in the media than hitherto, as their opinion is sought on current areas of controversy. They enjoy some priority in being called in the Chamber. And as members of the Liaison Committee they have the task of twice yearly public evidence sessions with the Prime Minister, and of exercising influence through that Committee over the agenda of the House and Westminster Hall.

C Is the system satisfactory?

In this section we consider the strengths and weaknesses of current practices and set out three general conclusions.

Past criticism

67. There has been persistent criticism over the past decade in particular of the method of appointment of members of select committees, arising both from the lengthy delays in nominating members at the start of a Parliament and from the view that it is in principle wrong that membership should be in the hands of party whips. There has been less public comment specifically on the selection of Chairs, although recent cases of vacant chairs being “given” to former Ministers or other senior figures as a form of patronage have caused concern. The row in 2001, at the start of the 2001-05 Parliament, over the omission of Donald Anderson and Gwyneth Dunwoody from the lists of members proposed by the Committee of Selection for their respective former committees raised issues on the appointment of both members and Chairs, since it was apparent that both would if nominated to their previous committee have been likely to be re-elected to the chairs they had occupied in the previous Parliament. As a result the Parliamentary Labour Party

agreed a procedure for Labour nominations of Chairs and select committee members to be agreed by their backbench Parliamentary Committee.

68. In March 2000 the Liaison Committee proposed that nominations in a new Parliament would be made by a body of three senior Members selected for that purpose, who would invite applications and after a fortnight put suggested names to the House. Replacements would be the responsibility of the Liaison Committee.²¹ In July 2000 the Government gave an unfavourable response, noting the desirability of ensuring a balance not just of party on each committee but also of other categories; the difficulty in filling unpopular committees; and the need for intra-party negotiation.²² In March 2001, with the end of the Parliament looming, the Liaison Committee returned to the issue.²³ But nothing was changed.

69. The matter was taken up by the Modernisation Committee in the new Parliament, chaired by the then Leader of the House, the late Robin Cook. In February 2002 it proposed in place of the Committee of Selection a Committee of Nomination, to be chaired by the Chairman of Ways and Means (the Deputy Speaker) and comprising a number of senior backbenchers. Parties would have made propositions to it as to the Committee of Selection, but the Committee would have been able to hear appeals from excluded Members.²⁴ On 14 May 2002 the proposal was narrowly defeated in the House.

Strengths of current system

70. The system as it has grown up over not just the past 30 years but over several centuries has some strengths which need to be acknowledged in contemplating change:

- membership is subject to approval by the House, and if necessary debate, which the events of 2001 demonstrated is not a mere formality: in many parliaments the parties' propositions require no endorsement;
- not only is party balance within each committee assured by the system, but also a balance of gender, experience, region and so on can potentially be managed;
- the distribution of chairs between the parties ensures that opposition parties have a fair share of chairs, and that on a few specific committees there is an Opposition Chair: this is a feature of the Westminster system which is widely admired overseas;
- the power of committee members to choose the Chair, although perhaps insufficiently exercised in practice, means that Chairs enjoy to some measure the confidence of their colleagues: and committees also have the power to remove a Chair;
- all committees have a full or almost full complement of members, including those committees where service is plainly a duty that needs to be done on behalf of the House.

²¹ Liaison Committee, First Report of 1999–2000, *Shifting the Balance*, HC 300

²² Liaison Committee, *Independence or Control? The Government's reply to the Committee's First Report of Session 1999–2000*, HC 478

²³ Liaison Committee, First Report of Session 2000–01, *Shifting the Balance: Unfinished Business*, HC 21

²⁴ Modernisation Committee, First Report of Session 2001–02, *Select Committees*, HC 224

Reform

71. But there are strong feelings that the system should be reformed, in accordance with the principles we have enunciated above.

72. **It should be for the House and not for the Executive to choose which of its Members should scrutinise the Executive: the House should also have a strong if not decisive influence on the identity of the Chair.** It is unacceptable that the power of the whips has on some occasions in the past been used to keep off select committees those members of their own party who are seen as unsound or too critical – the “mavericks”. Every Member has the right to be considered for membership of a select committee. It is also unacceptable that the whips can in effect offer chairs as a reward or “consolation prize” to former Ministers, and that favoured candidates are parachuted into committees when a vacancy occurs. There is a general perception that the party whips have too great an influence on the choice of Chair; that Members’ chances to serve on a committee at the start of a Parliament may be subject to an understanding as to whom they will support for the chair; and that even after appointment to a committee Members are not robust enough in choosing their preferred candidate for the chair in the face of party discipline.

73. **The system by which parties select names to put forward to the Committee of Selection, and by which the whips divide up chairs between the parties, is very far from transparent.** While on occasions the internal selection procedures of the parliamentary parties have been discussed or revealed, they remain a mystery to many within Westminster as well as to those outside. The criteria for selection are unknown. It may sometimes be that selection has more to do with a record of past or expectation of future service, and proven loyalty, than evidence of interest or expertise in a particular departmental or other area. It is also not clear how particular individuals emerge as Chairs of committees.

74. **The credibility of select committees could be enhanced by a greater and more visible element of democracy in the election of members and Chairs.** Cross-party working is the basis of the success of select committees. That has been achieved under the current system of appointment. But the sense that a committee membership place is merely a form of party patronage—albeit formally endorsed by the House—may adversely affect Members’ sense of duty to attend meetings. There is a danger that appointment to a salaried select committee chair if it remains largely controlled and influenced by the whips might on occasion be less and “alternative career path” and more of an extension of the massive patronage that already exists through the appointment of ministers. Their election by a small group of Members, acting under party constraints, is evidently not conducive to producing a truly independent figure with the required weight inside and outside the House which House-wide election might confer.

D A reformed system

In this section we examine the options for change and make proposals for a reformed system.

Assumptions

75. Before contemplating the range of options for change, we set out three structural assumptions we have made.

- *Party balance on each committee:* we are satisfied that the maintenance in a select committee of a party balance broadly proportionate to the balance in the Chamber is necessary and beneficial to the operation of select committees.
- *Distribution of chairs between parties:* we consider that it is a strong benefit of the present system that it offers a broadly proportionate number of chairs to non-majority party members.
- *Not all select committees need be treated in the same way:* it is not essential that the same nomination system be applied to every committee and every chair: it may well be that different systems will suit different categories of committee, as is the case at present.

Options

76. We identified three overall approaches and based on those a number of potentially acceptable options:

- Maintaining the current system but with democratic safeguards: meaning transparent intra-party elections of select committee members by secret ballot conducted under the auspices of the House authorities, and a secret ballot within the committee for election of a Chair from a party openly identified in advance.
- Creation of a “selectorate” committee of senior members to whom application for a select committee place could be made, who would present their proposals to the House, based on Members’ “expertise” and demonstrable interest in the committee’s subject area.
- Election by secret ballot of the House of members of select committees and/or of Chairs.

77. Having examined the three overall approaches we ruled out the use of a “selectorate” system whereby committee members would be selected by a cross-party committee of senior Members. Whatever its advantages, we do not think it meets the current mood of the House.

78. We then gave detailed consideration to four feasible options for election of members and Chairs of select committees. We list them in an Annex to this chapter, together with some of the relevant considerations we bore in mind in looking at each of them.

A reformed system: conclusion

79. There is no perfect system and no single right answer. There are advantages and disadvantages in all arrangements. But what we propose has clear benefits. In reaching a recommendation to put to the House we have borne in mind a number of factors, including—

- the principles enunciated in chapter 2 of democratising the House's internal processes and making them more transparent;
- the desirability of removing the influence of party whips from the process, while ensuring the maintenance of party balance on committees and a fair division of chairs;
- the timing of appointments at the start of a new Parliament, when it is likely that there will be a large number of new Members who will be unknown to most of their colleagues, in particular those of parties not their own, and who in turn will know few colleagues;
- the need to avoid undue complexity and unintended consequences.

80. We recommend an initial system of election by the whole House of Chairs of departmental and similar select committees, and thereafter the election by secret ballot of members of those committees by each political party, according to their level of representation in the House, and using transparent and democratic means. The committees within this system should be those appointed under SO No 152 [the departmental select committees] together with the Environmental Audit Committee, the Public Administration Committee and the Committee of Public Accounts. We have concluded that of the four options we considered this is the system most likely to demonstrate the determination of the House more effectively to hold the executive to account, to give more authority to the scrutiny function of Parliament and at the same time to preserve the effective functioning of select committees. We also believe that it is likely to command widespread support in the House as a major step forward, but short of more radical proposals. It should give a major boost to these select committees, help establish the position of their Chairs, and increase the standing of their elected members. The review after two years which we recommend in paragraph 6 above would include examination of whether to extend this system to other select committees.

Chairs

Distribution of chairs between parties

81. The House itself might decide how best to distribute chairs so as to ensure the outcome we are committed to of a spread between the parties. But the devices for doing this as part of the electoral process of individual Chairs would not commend themselves to the House. Ensuring a proportional balance would require re-distributing a number of chairs to Members who had stood for a chair and not won, and possibly not even come second, on the basis of complicated algorithms. It might be technically fair but it would not be seen as just by Members or others.

82. We have also considered a formalised system of distribution using a system whereby parties would choose a particular committee chairmanship in a systematic order determined in accordance with the distribution of seats in the House.²⁵ That is the system used, for example, in Northern Ireland. It has the benefits of transparency and simplicity. **We recommend that the House return to examination of this and other options for**

²⁵ This is known as a modified d'Hondt system. See eg Ev5 [John Hemming MP]

distribution of the chairs when the rest of our recommendations and conclusions are reviewed two years into a new Parliament.

83. For the first running of a new system we recognise that the House may prefer to rely, as it has for many years, on the party managers coming to an agreement on distribution of chairs on the basis of established conventions. But we do recommend a greater degree of transparency. Immediately after the General Election, the Speaker would convey to the party leaders the number of chairs subject to whole-House election to which each party is to be entitled. The party leaders would then be obliged by Standing Order to report, within a week of the start of the session, to which party, but emphatically *not* to which individual, each select committee chair had been allocated. This would be put to the House for its approval.

Nomination of candidates

84. Candidates for each chair would have to be nominated within two weeks of the date of the House's agreement to the division of the chairs between the parties. So as to ensure that candidates enjoy at least a measure of support within their own party group, there should be a threshold requiring at least 10 per cent of members of that party, or 15 of its members, whichever was the lower, to indicate support for that and no other candidate. Candidates would also be free to seek nominations from those in other parties and have them published, up to a certain number. Those who had already served two Parliaments or eight years as Chairs would be unable to stand by virtue of Standing Order No 122A. We envisage that those who put themselves forward for select committee chairs would be likely to publish some sort of manifesto and that hustings of some sort might well be organised.

Election of Chairs

85. Election of Chairs would be by written secret ballot. All Members of the House would be able to vote, but we consider that Ministers and the principal front-bench Opposition spokesmen should voluntarily abstain from casting their votes for the Chairs of the departmental committee related to their responsibilities. If there were more than two candidates, voting would be by alternative vote, to eliminate the need for any subsequent ballots. If there was only one candidate for a particular chair—and that may well happen—then that candidate would be elected without a ballot.

Chair's term of office

86. A Chair elected by the House would remain in office for the Parliament. A Chair who wished for whatever reason to step down from an office now to be conferred by the House would formally notify the Clerk of the House, and a by-election would be held, on the same terms and conditions as the original election. It will also be necessary to provide for the situation, should it ever arise, of a Committee where the members altogether lose confidence in the elected Chair. It would be open to a Committee, subject to a qualified cross-party majority of its members, and with due notice, to make a special report to the House and thereby trigger a fresh election.

Members

Election within party groups

87. We propose that in the new Parliament members of departmental and similar select committees should be elected by secret ballot within party groups, by transparent and democratic processes, with the outcome reported to and endorsed by the House. This has the advantage of ensuring that all members have a fair chance to serve on such a select committee, subject to sufficient support from their colleagues and that committees reflect party proportions in the House whilst maintaining an electoral system that is relatively easy to operate and understand.

88. Party groups would in effect be acting on behalf of the House as electoral colleges. They would therefore expect to act under some constraints as to the methods used to elect committee members. We do not think it necessary that the House should interfere so far as to lay down one particular method of election rather than another. But the method chosen should be one approved by the Speaker, following independent advice, as transparent and democratic: “kite-marked” as legitimate in effect. Officers nominated by the Speaker would be obliged to assure themselves that the processes followed by each party, as notified by its Leader, were indeed in accordance with these norms. And each party would be obliged to publish the method it had adopted.

89. This will leave the parties a considerable freedom to organise the elections in accordance with their preferences. For example, they may wish or not to provide for a degree of gender or regional or other balance, such as of more or less experienced members. While it is axiomatic that a Member should serve on only one departmental or similar select committee, it would be open to each party to make the arrangements to produce that result, so long as it was patently fair.

Process of election and term of office

90. At the same time as conveying the number of relevant chairs to which each party is to be entitled, as set out in para 83 above, the Speaker would convey to each party leader the appropriate proportions for committees of various sizes. Parties would be obliged to hold ballots for departmental and similar select committee memberships after the conclusion of elections of Chairs of those committees and to complete the process within two weeks of those elections. The resultant names should then be forwarded to the House for endorsement as at present. A Member who wished to resign from a departmental or similar select committee would give formal notice to the Clerk of the House, and the party would be obliged to hold a by-election within a set time period, after which the procedure as in para 87 above would be followed.

Smaller parties etc

91. There are of course a number of detailed issues requiring resolution. The smallest parties are entitled to representation on committees in accordance with their numbers; and that should not be restricted to the committees scrutinising the nations of the United Kingdom. If merely added to a handful the proportions may be skewed. Similarly, there must be sufficient flexibility to allow independent Members some opportunity to serve on a select committee. We propose that the Speaker be empowered to nominate one member

to a particular committee so that minority parties or viewpoints can be fairly represented; and also that larger parties should remain free to “donate” one of the places to which they are entitled to a smaller party.

92. There may be occasions where parties do not have enough candidates for places on some committees. That is a problem at present. Where that is the case, parties should as now be under an understood obligation to find volunteers without requiring a ballot.

Work of committees

93. Select committees have rightly won respect for the work they do and they are being asked to take on an increasing number of tasks on behalf of the House. As a result committee members find it increasingly difficult to devote time to select committee work as well as all their other duties. **We consider that the Liaison Committee should re-examine the current role of select committees, their resources and their tasks, and in particular how to deal with the increasing demands of time made of Members as their role grows.**

E. Conclusion

94. There are a number of ways in which select committees can be strengthened. We have proposed smaller committees and thus greater competition for places on them among Members which we hope will in turn generate a greater sense of ownership and will lead to higher levels of attendance and participation. The direct election by the House of Chairs of departmental and similar select committees will raise their profile and that of their committees, at Westminster and outside, and help ensure that their work gets the results it merits. We believe that the changes we recommend, modest as they may seem, will be a boost to the whole select committee system.

ANNEX: Options considered by Committee

Option 1: Parties elect Members; Committee elects Chair

This would be a revised version of current practice. The division of seats on each committee between the parties would be agreed. Then each party would elect the requisite number of members for each committee. At the first meeting of each committee, the committee would, as now, elect its own Chair from amongst the membership, following the central guidance as to which party the Chair should be drawn from, but unlike now using a secret ballot.

Relevant considerations include

- whips might be able to manipulate a party election with slates, which might also effect the choice the committee then goes on to make for its Chair; but
- candidates would be better known by those voting than in a whole House election, especially at the start of a Parliament.
- The absence of any sense that Chairs are responsible to, or speak for, the House on a certain matter; but

- the Chair would command support and confidence of at least a majority of their colleagues on the committee.
- The continuing association of select committee membership with party affiliation; but
- The relative ease with which elections within parties can be organised.

Option 2: House elects Chair; Parties elect Members [Recommended Option]

Chairs would be elected first, by secret ballot of the House. The share-out of chairs would have been agreed in advance. After the Chairs have been elected, the parties would then elect members to the committees as in Option 1.

In addition to those mentioned under Option 1 above, relevant considerations include:

- Chairs would represent the whole House, and have a clear mandate and accountability; but
- direct election might result in candidates who did not command the confidence of their committees;
- some Members may feel uncomfortable voting for members of other political parties and a governing party majority could decide the outcome of elections of all Chairs; but
- Chair elections are transparent, minimise the use by whips of committee chairs as a form of patronage and would encourage cross-party working.

Option 3: House elects Members, Committee elects Chair

The first stage would be a whole House election to choose committee members. Once committee members have been chosen the committees would meet and elect their own Chair from amongst their number, as in Option 1.

In addition to those mentioned under Option 1 and 2 above, relevant considerations include:

- a whole House election for so many positions would be complex; but
- a whole House election is the most transparently democratic means of choosing committee members and would emphasise the cross-party nature of select committee working.

Option 4: House elects Chair; House elects Members

The first stage would be the election by the whole House of committee chairs, as in Option 2. Following this (either immediately or on a subsequent day) the remaining members of committees are also elected by the whole House, as in Option 3.

The relevant considerations are as set out under Options 1, 2 and 3.

4 BUSINESS IN THE HOUSE

The balance of power between the Executive and Parliament will remain too firmly tilted in favour of government until MPs win a say on the agenda of their proceedings through some form of collective business committee. (Robin Cook, *The Point of Departure*, 2003)²⁶

A. Terms of reference and connected matters

In this section we map in some detail the terrain of what is meant by “scheduling of business in the House”. We identify a number of closely connected issues, in particular the handling of Bills at report stage, which can only be properly addressed following the solution of the main question, of how the business of the House is scheduled; the question of on what days the House should sit through the year; and related scheduling issues in general committees. There is much necessary detail in the first four sections of the chapter, with our main proposals from section E onwards.

Business in the House

95. Our terms of reference direct us to examine “*scheduling business in the House*”. As originally tabled by the Leader of the House they referred to “*scheduling non-Government business in the House*”. We welcome the change, which has enabled us to consider how all business in the House is scheduled. As we show below, the distinction between “Government” and “non-Government” business is far from clear-cut. By looking at business as a whole we can give a more rounded picture of business in the House and how its scheduling can be improved.

Scheduling and timetabling

96. We have taken “*scheduling*” to mean the act of deciding **which** items of business are to be taken; **on what specific day** they are to be taken; and in some respects **for how long** items of business are to be debated. Some items—for example a motion to approve secondary legislation in an affirmative instrument—have a time-limit fixed in Standing Orders; others are conventionally understood to last for an approximate time often referred to as a “day” or a “half-day”. The actual time available for a “day” is rarely the maximum of around 6 hours. It is determined in practice by how much time is left after the end of questions and statements and before the fixed end-point of each parliamentary day at the “moment of interruption”.

97. *Scheduling* is therefore different from *timetabling*, which conventionally refers to the detailed arrangements made for a given item of business to start or end at a specified time or after a specified period. It is a term particularly applied to legislative business. In practice of course there is overlap between the two terms. The Procedure Committee announced in

²⁶ Robin Cook, *The Point of Departure*, 2003, pp 236–7

May 2009 that it was undertaking an inquiry into timetabling of business, examining “recent developments in the use of business motions and programme motions to govern Commons business on the Floor of the House and in Committee”. The paper from the Clerk of the House provided in connection with that inquiry sets out in detail the issues arising.²⁷ We have sought to avoid duplication with that inquiry.

Sitting patterns

98. The principal constraints of scheduling business in the House and on the volumes of business which can be transacted in a session are the total number of days on which the House sits in a given year, and the length of those sittings. Both issues have been well ventilated in recent years. We have for the sake of argument assumed:

- a) the current pattern of around 35 sitting weeks in a typical year and around 155 days;
- b) the current 4-day week plus 13 Fridays;
- c) the standard sitting day from Mondays to Thursdays of around 8 hours, whether it starts at 2.30 p.m., 11.30 a.m. or 10.30 a.m.;
- d) the 3 half-days for sittings in Westminster Hall on 3 days a week, amounting to 12 hours in total.

September sittings

99. Holding sittings of the House in September would of course increase the number of days available for business, unless countervailing reductions were made in sitting times at other points, for example by rising earlier in July. Following a decision of the House in October 2002, the House sat for the first fortnight of September in 2003 and 2004. There was Government and non-Government business. In 2005 the House was unable to meet in September because of the erection of the security screen in the Chamber. On 1 November 2006 the House decided on a vote not to sit in September, unless subject to an emergency recall.²⁸

100. There is not much Ministerial legislative business needing to be done in September, since the most contentious Bills are by then in the House of Lords. Greater use of carry-over of bills from one session to another, meaning they can conveniently be introduced at any time in the session, could alter that (see para 103). Other categories of business could also be scheduled for September sittings. It is no doubt undesirable that the executive enjoys a 80 day period free from parliamentary scrutiny; while noting that since 2005 it has been possible to table written questions and receive written answers to them in September. There is also a widely held view, mistaken though it may be, that when the House is not sitting then Members are on holiday. **We recommend that the House in the new Parliament should be asked to decide on the issue of September sittings, along with other sittings issues, sufficiently early in its life to be able to decide whether to sit in September 2010.**

²⁷ See www.publications.uk/pa/cm200809/cmselect/cmproced/memo/timetabling/uctb0502.htm

²⁸ HC Deb, 1 November 2006, col 418

Conclusion

101. There are a number of contentious issues over the House's sitting patterns, much debated over the past 10 years. Under Standing Order No 25, decisions on the sitting pattern of the House are taken at present on the basis of effectively unamendable motions which can only be moved by a Minister, and are decided without debate. We have no collective view on September sittings, nor on the issue of the recall of the House, on which proposals were made in the Governance of Britain Green Paper and referred to the Modernisation Committee and which remains unresolved. **But we do recommend that the House should at least decide for itself when it sits and does not sit.**

Annual sessions and carry-over

102. We have also of necessity assumed continuation of annual sessions. In some Westminster-style parliaments these have been either lengthened to two years or more or effectively by-passed by having a single-session Parliament.²⁹ Longer sessions would mean a loosening of the constraints on Bills having to complete their passage in one twelve-month session and would of course have an effect on scheduling. **It may be time to re-examine the need for annual sessions overall, drawing on the varying practice of parliaments around the world who face similar issues.**

103. The House agreed in 2002 to allow for the “carry-over” of bills from one session to the next, so as to allow a smoother flow of legislation through the parliamentary year. Relatively little use has been made of this provision. The Standing Order provides that the passage of a Bill must still be completed in 12 months from its introduction. It was suggested to us that a slight relaxation in that time-limit might be helpful.³⁰ **Greater use of carry-over of Bills from one session to the next could have a significant effect on scheduling business in the House.**

House of Lords

104. The House of Lords exercises a powerful if barely visible influence on the scheduling of business in the Commons. Its commitment to fixed intervals between stages of Bills, the absence of time limitations on debates in the Lords on legislation, and the detailed scrutiny of much legislation taking place on the floor of the Lords Chamber rather than in committees as in the Commons, mean that the time allowed for by the business managers for the passage of Government legislation in the Commons is heavily influenced by the time to be allocated to the passage of legislation through the Lords. The business managers have to pencil in a date for Third Reading for a Bill introduced in the Commons which allows sufficient time for its passage through the Lords.

Closely connected matters: general committees

Committees: public bill committees

105. Our terms of reference also allow us to consider matters which we consider to be “closely connected” to our principal terms of reference. We have not examined in any detail

²⁹ See Ev10 footnote 7 for international comparisons

³⁰ Ev9

the scheduling of business in the House's public bill committees. They are indeed closely connected to business in the House but subject to a separate set of rules. The recent changes in these committees have been broadly welcomed. A research review identified some areas for improvement of practices and procedures.³¹ We are aware in particular of concerns at some aspects of the way the evidence sessions in these committees are scheduled and the witnesses selected.³² This is an aspect of detailed timetabling of business, since it arises in part from the short time between Second Reading and the first day of the public bill committee. It may well form part of the Procedure Committee's current inquiry into timetabling. Meanwhile, **we hope that a more open approach to the scheduling of public bill committee evidence sessions can be piloted in the short 2009–10 session without the need for changes to Standing Orders, and request that the relevant authorities produce a report for an appropriate successor Committee in the new Parliament to consider.**

Committees: Grand Committees

106. Standing Orders provide for the existence of Grand Committees—debating committees with a membership comprising all members of a part of the United Kingdom, such as the Welsh Grand Committee, or a region of England, such as the North West. They are “closely connected” to business in the House by virtue of functioning like the House in miniature, with questions and debates. The scheduling of business in these committees is effectively in the hands of Government. Motions to set up a meeting can only be tabled in the House by Ministers. The motion put to the House sets out the proposed subject of debate, the place and starting time and length of meeting. If the House is to take greater control of the scheduling of non-Ministerial business in the House, as we propose below, it must follow that it should take similar steps in relation to these debating committees. **It should be open to others than Ministers to schedule business in Grand Committees, by relaxing Ministerial control of what Motions can be put to the House and decided.**

Committees: delegated legislation committees

107. Most items of the Government's secondary legislation requiring the positively expressed consent of the House—so-called “affirmative instruments”—are debated in a small specially convened committee upstairs, and then later (normally the next day) formally agreed to by the House without debate. The decision as to whether in exceptional cases to hold the debate in the Chamber is for Government. Similarly, the power to bring on a debate on a prayer—a motion seeking to disapprove an item of secondary legislation which does not require consent resolution, so-called “negative instruments”—is also vested in Ministers. These arrangements will not stand up to examination in the light of the general principles we set out below. The Procedure Committee as long ago as 1996 recommended a system which at least provided an avenue for Members to seek to get prayers debated in a committee.³³ **There will have to be relaxation of Ministerial control of motions to refer negative instruments for debate in committee.**

³¹ Jessica Levy, *Strengthening Parliament's Powers of Scrutiny?* (Constitution Unit, University College London, 2009)

³² eg Ev9

³³ Procedure Committee, Fourth Report of Session 1995–96, *Delegated Legislation* HC152

Committees: European standing committees

108. European standing committees question Ministers and debate European documents which have been recommended for such treatment by the backbench European Scrutiny Committee. Ministers determine the timing and table the substantive motion which is debated and then reported to the House for its decision without further debate. Ministers need to hold these debates because otherwise they would be prevented by the terms of the House's 1998 Scrutiny Reserve Resolution from agreeing to the documents in the Council of Ministers.³⁴ **The European scrutiny system offers an admirable if still imperfect model of responsible backbench committee control of business, in partnership with the Government, on an important part of the House's work.**

Closely connected matters: Report stage of bills

109. **The single greatest cause of dissatisfaction which we have detected with current scheduling of legislative business in the House arises from the handling of the report stage of government bills—technically the “consideration” stage when a Bill has been reported back to the House from a public bill committee.** In the majority of cases, the programme motion decided without debate immediately after Second Reading allows for a single day for report and Third Reading. It also usually specifies that the report stage will end one hour before the moment of interruption, leaving at most one hour for Third Reading. Even where no other business is taken first, such as a Ministerial Statement, that leaves around five hours for a report stage.

110. The report stage is a highly valued opportunity for scrutiny of legislation for a number of reasons.

- It offers all Members of the House at least a theoretical opportunity to propose amendments to a Bill or speak to them.
- It provides the one opportunity for the House as a whole to vote on a major specific provision of a Bill or a closely connected issue, including issues of public concern which might have been dealt with in a Bill but are not.
- Because it is on the floor of the House, debates on report stage represent the only opportunity for detailed participation in scrutiny of the Bill for senior backbenchers such as select committee chairmen who have not served on the public bill committee, for dissenting backbenchers who have not been chosen to serve on it and those members who for other reasons have been unable to serve on it.
- It represents what in many cases will be the only opportunity for Members from the smaller parties to participate in legislative scrutiny.

The report stage is the only opportunity for the House as a whole to engage with proposed legislation and debate and decide its principal provisions in any detail.

111. Practice and procedure on report have a significant effect on outcome. New Clauses moved by Ministers are taken first. They may well be grouped for discussion with related

³⁴ Standing Orders of the House of Commons, HC 2, 2008–09, pp 167–169

new Clauses and amendments moved by the Opposition or other parties or individual Members. Ministers—and only Ministers—may move a motion to take new Clauses and amendments in a different order so as to prioritise one “topic” over another. Ministers—and only Ministers—may move a motion to provide for end-times—“knives”—for particular groups of amendments so as to give time to others further down the list.

112. In practice, as a result of the programme motion proposed by Ministers and approved with little or no debate, the situation is that on many report stages several groups of amendments from Opposition parties or backbencher amendments selected by the Chair and grouped for a joint debate are not even reached for debate, let alone a decision. The practice of the Chair is only to allow a vote on a non-Ministerial amendment or new Clause if it has been part of a group which has at least had some debate. At the end of the time allowed for report, there is a ritual whereby Government amendments within the last group to be debated, and those relating to later unreached and undebated parts of a Bill are put without any explanation and routinely agreed to, while other amendments are simply lost. Because of the default position of Ministerial new Clauses being taken first, backbench propositions which seek to amend the Bill, including those with cross-party support, are most likely to be “lost” in this way, rather than propositions seeking to add new matter to the Bill. The extent of the problem can be demonstrated by the number of groups lost in this way in bills in recent sessions and the number of Bills affected.³⁵

113. This is an issue which causes great dissatisfaction in the Opposition parties and on the backbenches. The Government stands accused, not always fairly, of having prevented or suppressed debate, and the House bemoans at Third Reading its failure to exercise full and proper scrutiny. The point is then often echoed in the Lords and used by that House as the basis for significant revision in those areas of a Bill not touched upon by the Commons.

114. There are a number of means of ameliorating these problems within existing arrangements or under new arrangements, which do not necessarily require scheduling more time on the floor of the House. They include a combination of one or more of the following:

- more frequent use of internal finishing times—“knives” ;
- protection of time for report stage from intrusion by statements or other urgent business;
- greater use of partial re-committal: that is, requiring part of the bill, or selected new Clauses and amendments, to be sent back to a public bill committee to deal with some or all Ministerial new Clauses and amendments if these are too numerous;
- power given to the Chair to change the order in which new Clauses and amendments are taken;
- use of speech limits at report stage or development of a special speaking time regime;

³⁵ In Session 2008–09, on selected significant Ministerial Bills, the numbers of groups *not* reached included Apprenticeships, Skills, Children and Learning, 5 groups out of 10; Coroners and Justice, 7 groups out of 15; Marine and Coastal Access [*Lords*], 2 groups out of 8; Policing and Crime, 4 groups out of 8; Political Parties and Elections, 9 groups out of 18; Welfare Reform, 5 groups out of 8.

- encouraging the prompter tabling of new Clauses and amendments on report so that the a possible timetable can be established several days in advance: given that there are sometimes weeks between the out-date from Committee and the bringing on of a report stage there is ample time to table texts.

115. **Effective scheduling of business at report stage of many bills would often require nothing more than the allocation of a sufficient total time. It is too often insufficient at present. The House Business Committee which we recommend below will be a forum for agreeing the length of time to be devoted to a report stage in order to fulfil the scrutiny function adequately. But that is not enough in itself. Because effective scrutiny of legislation is of fundamental importance to the role of the House, the detailed use of that time must be a matter of concern. We believe that the time should be set so that the House should if it wishes be able to vote on new Clauses and amendments in every group, if and when they are selected for separate division by the Chair; and that there should be a presumption that no major group should go undebated. The House of Commons would then be able to exercise the same rights as the House of Lords.**

116. **This is precisely why we will have a House Business Committee. It will decide where, if at all, knives should fall bringing debate to an end on each group of selected new Clauses and amendments. As now, priority would be given to Government new Clauses and amendments. It would normally propose a provisional agenda a fortnight ahead as at present. At that stage it would have a provisional view as to how new Clauses and amendments would be most helpfully grouped and would communicate that to the Chair. By its next meeting a week later there would normally be a sufficiently clear idea for the House Business Committee to be able to agree how the report stage should be arranged. That proposition could then form part of the agenda to be put to the House.**

117. **It will be for the House Business Committee working between its formal meetings to interact with all the players to resolve all the practical issues which will require resolution: for example, the tabling at relatively short notice of unanticipated fresh amendments and new Clauses, including Government new Clauses, which inevitably disturbs any previously proposed timetable, and is likely to lead to the Chair making a different grouping; and the extent to which a specialist knowledge of the Bill and its contents is required to be able to construct such a timetable. On the first, the House Business Committee could reconvene if necessary in the event of new groups of new Clauses and amendments being tabled late in the day, and agree a revised scheme. On the second the House Business Committee could invite representations from those who have tabled new Clauses and amendments setting out their preferences as to those matters on which they place particular weight. It is not for us to second-guess the minutiae of House Business Committee business. We are confident that it will deal with these and other such issues and that as trust and experience grow it will operate ever more consensually and effectively.**

118. **In order to ensure that this system can work, without using up too much time and to avoid attempts to “talk out” full debate, we recommend the introduction of a regime of speaking time restrictions at report stage. We have gone beyond the issue of scheduling total time for report stage because we recognise that unless the current problems in this area are resolved then there will continue to be dissatisfaction and a sense that the House is failing to perform one of its core duties. In those circumstances, we will have failed in one of the primary parts of our mission. Our recommendations**

outlined above as part of the general reform which we propose below of the scheduling of business are intended to ensure that the House itself decides what matters are debated and decided at report stage of a Ministerial or a Private Member's Bill.

Closely connected matters: consideration of Lords amendments

119. Similar issues arise when the House considers Lords amendments. Unless Ministers bring forward a Motion to change the sequence, Lords amendments are considered in the order in which they relate to the Bill. Although they may be grouped for debate, that can leave the motions to agree or disagree with significant Amendments to later and thus not reached before the allotted time expires. The rules about the scope and form of permissible amendments in the later stages of “ping pong” – the passage of amendments back and forth between the two Houses – are incomprehensible to most participants. While we recognise that time for consideration is of necessity constrained in the later stages of further consideration of Lords amendments and messages, the initial consideration of Lords amendments is often too compressed. **We recommend the introduction of a scheme similar to that described above for report stage for consideration of Lords amendments, including restrictions on speech lengths.**

B The current framework

In this section we set out the existing system for the scheduling of business as embodied in the House's Standing Orders—its rule-book.

120. The gradual takeover by the Government of House time began in the first half of the 19th century, in response to the growth in Government financial business and Ministerial legislation.³⁶ In 1811 Mondays and Fridays were reserved for Orders of the Day as opposed to Notices of Motions: these Orders were principally Government Orders. In 1835 Mondays and Fridays were reserved for “Government Orders”, a category of business recognised for the first time in that way. Ministers could no longer tolerate waiting in a disorderly queue behind a mass of backbench business, and constantly liable to procedural devices of delay or diversion. The public had growing expectations that a Ministry would bring its own detailed legislation to the House, discussed and agreed in outline in Cabinet, announced in a Royal Speech and drafted by professional draftsmen working for the Crown. By the 1880s legislation was seen not only as largely the preserve of Ministers, but their principal function. In 1896 Balfour first limited by temporary and annually renewed Orders the business of Supply—the principal opportunity to raise debate by moving amendments to a formal Question or by seeking to amend the actual Supply motions—to a fixed number of days each session, with the Opposition given the freedom to choose the subjects. On 11 April 1902 the House agreed to what was first Standing Order No 4, and in a revised form is Standing Order No 14, giving “government business” precedence at every sitting unless otherwise provided.

121. SO No 14 (1) provides that “*Save as provided in this order, government business shall have precedence at every sitting*”. The specific savings in SO No 14 are for:

³⁶ See Erskine May, 24th Edition, pages 6–9

- 20 Opposition days each session, allotted on days determined by the Government: and
- 13 Private Members' Bill Fridays each session, fixed by the House at the outset of each session on the basis of a Motion moved by a Minister.

Protected time

122. Time in the Chamber is also set aside by other Standing Orders for:

- oral questions for an hour on Mondays to Thursdays and Urgent Questions [SO No 21];
- motions for leave to bring in Bills under the “ten-minute rule”, on Tuesdays and Wednesdays [SO No 23];
- emergency debates [SO No 24];
- end of day 30 minute adjournment backbench debates every sitting day [SO No 9];
- three Estimates days each year, for debates under the auspices of the Liaison Committee [SO No 54];
- opposed private business [SO No 20], to be distributed between “the sittings on which government business has precedence and other sittings”.

Westminster Hall

123. Time in Westminster Hall is technically at the disposal of the Chairman of Ways and Means (the Deputy Speaker) under SO No 10. It is used on Tuesdays and Wednesdays for five separate 30 or 90 minute backbench debates selected by ballot and on Thursdays for debates on either select committee reports or other matters chosen by the Government. The same Standing Order provides for the Speaker to appoint six days in Westminster Hall for debates on select committee reports chosen by the Liaison Committee. In practice the majority of Thursdays in Westminster Hall are on select committee reports less formally nominated by the Liaison Committee.

Order in which business is taken

124. Government control of the agenda covers not only what items are considered but the order in which they are considered. SO No 27 allows Ministers the right “*of arranging government business, whether orders of the day or notices of motion, in such order as they think fit*”. The Government therefore organises the Order Paper more or less as it wishes. It chooses which items of Government business to put on the paper. A backbencher may name a specified future day for an item of business but unless the Government assents it does not even appear on the effective Orders for that day.

Technical business motions

125. Only Ministers can move the Business of the House or other procedural motions required to ensure that items of business are decided at a fixed time of day or after the passage of a period of time, or to allow debate to continue after the normal end of the day's business.

Conclusion

126. The default position is therefore that time “belongs” to the Government, subject to a number of exceptions and practices which allow others to influence and even determine the agenda. Put crudely, and subject to maintaining a majority, the Government enjoys not merely precedence but exclusive domination of much of the House’s agenda, and can stop others seeking similar control.

C. Government-initiated business

In this section we categorise in detail the various sorts of business which are currently scheduled by Ministers for debate in the House. The categorisation shows how much of this business is not in origin initiated by Ministers.

127. Coming to an unarguable definition of “Government business” is not easy. Some business would be placed by most observers in that category, including legislation brought in by Ministers. This is not to deny that the time devoted to its scrutiny is the House’s time, not the Government’s, since it is the House that scrutinises legislation whatever its source and Parliament that passes laws. Some business is patently not Government business, such as motions moved by the Opposition front-bench on Opposition days. But items of business such as debates on the floor of the House on affirmative statutory instruments which have been sought by the Opposition or backbenchers could be categorised as “Government business” in that it is Ministers who initiated the matter and who move the motion the House is asked to consider, but others who have insisted it be debated on the floor of the House rather than in a committee upstairs.

128. Because of the difficulties in defining the term, we set out below a rough categorisation of most of the business which now comes before the House as a result of Government initiative, and briefly identify how each comes to be placed on the agenda. The fact that at present it may be Government Ministers who either initiate the business or move the relevant Motion has little or nothing to do with whether it is usefully to be regarded as “Government business”. We prefer the terms “Ministerial business” and “Government-initiated business”.

Who owns time?

129. **Ownership of the time of the House is to be distinguished from responsibility for sponsoring or promoting the business before it. There is a strong case for regarding all time as the House’s time. It is not the Government that seeks debate but the House: what the Government needs are the decisions which enable it to carry out its programme.** In practice Ministers may subscribe to the theory that parliamentary scrutiny is good for them, and that good scrutiny makes for good government. But it is hard to believe that, other things being equal, they would of their own volition bring on critical debates. There is not in reality the stark dichotomy suggested between business taken in time controlled by the “Government” and other business.

Categories

1. Ministerial legislation

130. Most business initiated by Ministers is legislative business. It is entirely the result of the Government's own proposals: if they bring in a lot of Bills then there will be a lot of time spent examining them. Legislation accounts for 35–40 per cent of time on the floor, measured in hours and minutes, and around 50 or 60 days in the rougher measure of business management. On the floor of the House that means for a typical Ministerial Bill a Second Reading debate lasting a day: a further day typically several months later devoted to report and Third Reading: and often a half day devoted to Lords amendments. Several Bills have all their stages on the floor of the House, because of their content, urgency or, on occasion, relative insignificance. Ministerial legislative business also covers the associated financial resolutions and programming motions, most of which are not separately debated.

Government Bills: 2008–09

Stage of Bill	Days required in Commons
Second Reading	17 days
Committee of the whole House	7 days
Report and Third Reading	16 days
All stages	1 day
Lords Amendments	8 days

The figures are approximate. Some minor bills were given or required a half-day for committee of the whole House and all remaining stages. One Bill was given 2 days for CWH and all remaining stages. Lords Amendments time is calculated as a day or half-day (three hours) or one hour. Days or fractions of days on Bills carried over from the previous session or to be carried over to the next session are included.

2. Budget

131. The annual Debate of several days (four days in 2008–09) on the Budget arises technically on the first of the many Ways and Means Motions moved by the Chancellor on Budget Day, which are necessary to give effect to the Government's fiscal plans for the year. In that sense these are days devoted to Ministerial legislation. The debate is in practice an opportunity for a general economic and financial debate, and in that respect may be seen as at least in part House business. The number of days devoted to these debates is not wholly of the Government's choosing, in that Ministers would presumably have no objection to fewer days being required, but is determined with an eye to the assumed wishes of the House.

3. Queen's Speech

132. In a similar category to the Budget debate are the five or more days each year dedicated to the debate on the Queen's Speech (six days in 2008–09). The debate on the Queen's Speech, although technically arising on a motion for a loyal Address moved by a Government backbencher, is in effect a debate on all aspects of the Government's programme. The Government constitutionally needs the approval of the House and a

defeat would be fatal, so in that sense it is Government-initiated business. But in practice it is a central part of the House's work in holding the Government to account by wide-ranging debate.

4. Ministerial statements

133. There are typically around 80 Ministerial statements in a year, meaning between two and three a week. The statement and subsequent question and answer normally take around an hour. A statement is made—in theory at least—of a Minister's own volition, and in that sense it is Government-initiated business: but it offers an opportunity for Opposition and backbench critique as well as praise, and in practice again is in part House business. And in practice statements are often made in response to pressure from inside or outside the House.

5. Affirmative instruments and European documents

134. Time also has to be found on the floor for other debates which arise on Ministerial motions, and concern matters for which Ministers are responsible, but where the debate arises because of demands from the House rather than the needs of Ministers. These are now relatively infrequent. The two main categories are:

- debates on the floor of the House to approve *affirmative statutory instruments*, all of which would otherwise be held in committees off the floor, but where convention dictates that they be held on the floor. Several recurring affirmative instruments, including those on the annual local government and police grant settlements, council tax capping, annual social security up-rating, and prevention of terrorism, are by convention normally debated on the floor.
- Debates on *European documents* where there has been a recommendation from the European Scrutiny Committee that a debate is held on the floor rather than as is generally the case in committees. This is now relatively infrequent, with only one debate in the 2008-09 session.

6. Prayers etc

135. When the Government “gives” time on the floor for a prayer against a statutory instrument (see para 107) the motion is tabled in the name of the Member—usually but not always an Opposition front bencher—who has tabled the prayer and who will lead the debate. That is now infrequent. In 2008–09 there were two such motions taken on the floor. Such business is scheduled by the Government in response to demand and arises out of Ministerial actions, but is not in fact initiated by Ministers nor is the relevant Motion moved by them.

7. Estimates Days

136. Estimates Days are a survival of the procedures whereby the Government needed to obtain the consent of the House to spend money, which was the peg for debate and the raising of grievances. The necessary financial motions are now moved formally by a Minister to enable debate to take place on a select committee report selected by the Liaison Committee. This is not really Government-initiated business but an extension to select committees of the 20 Opposition days, which also have their origin in financial supply

procedure. The Liaison Committee has proposed, in the context of reporting on the Treasury's Alignment Project proposals for reforms in the way expenditure figures are presented to Parliament, an additional two days' debate, combined with a widening of the scope of debates on Estimates Days to permit "genuine examination of *future* spending plans".³⁷

137. We broadly endorse the Liaison Committee's proposals for increasing from 3 to 5 the number of Estimates Days and in particular its suggestion that the type of debate on such days be widened to allow substantive opinion motions on expenditure plans for future years. These would normally be tabled and moved by the Chair of the relevant departmental select committee, thus giving committees an increased influence on the House's agenda. The Chair of the Liaison Committee wrote to the Chair of this Committee on 4 November to convey the Liaison Committee's decision that it would be prepared to select for debate a particular departmental Estimate.

138. In view of our desire to enhance the relevance of select committee work to the work of the Chamber we consider that these debates on Estimates Days could also usefully cover substantive motions on departmental annual reports, and recommendations in select committee reports which in the view of the Liaison Committee have not been adequately addressed by the Government's response.

139. We also note the Liaison Committee's repeated view that the Government should give an undertaking to provide a day's debate on the outcome of each Spending Review and on each year's Pre-Budget Report. Pre-scrutiny of expenditure is weak at the moment. In its recent response the Government said that it will aim to provide "adequate time" for debate of these issues, depending on other business. That neatly encapsulates the problem that it is the Government and not the House that determines what time is allocated to holding the Government to account. **The debates on the outcomes of Spending Reviews and the Pre-Budget Report sought by the Liaison Committee are exactly the sort of debates which it should be up to the House to decide whether or not to schedule.**

8. House business

140. Perhaps the most significant category of business scheduled by Ministers but not Ministerial business is the collective domestic business of the House itself. Motions on these matters are conventionally moved by the Leader of the House in her awkward dual role as a Government Minister and a spokesperson for the House.³⁸ In recent sessions they have included a number of motions on Members' pay and allowances and related matters. Some of these are in a technical sense linked to Ministerial business, since the effective motions on Members' pay and allowances require a Money Resolution, which can only be moved by a Minister.

141. In the 2008–09 session time has been spent on, among other things, business relating to the police searches of a Member's office in November 2008; changes in select committees consequent on machinery of Government changes; the proposal that the UK

³⁷ Liaison Committee, Second Report of Session 2008–09, *Financial Scrutiny: Parliamentary Control over Government Budgets*, HC 804, para 116

³⁸ See Justice Committee, Eleventh Report of Session 2008–09, *Constitutional Reform and Renewal*, HC 923, paras 40–49

Youth Parliament use the Chamber; and the membership of the Speaker's Committee on the Independent Parliamentary Standards Committee. Into this broad category also fall matters of privilege, such as those arising out of findings of the Standards and Privileges Committee, or where Mr Speaker has authorised a Member to raise a matter as one of privilege. And exceptionally in June 2009 a day was laid aside for the election of a new Speaker.

142. The Government will also on relatively infrequent other occasions put on the Order Paper motions to be moved by non-Government Members, such as those responsible for Church of England or Electoral Commission business. Motions to appoint members to the House's permanent select committees are tabled in the name of the backbench Chairman of the Committee of Selection.

143. House committees such as Modernisation, Procedure and Administration - all of whose business is intimately linked with the House as an institution - have no special right of access to the House for their proposals. This committee is in the same boat. Committees rely on Ministers to find a slot on the Order Paper for their proposals to be put to the House and decided upon. As we note below, the system is such that a proposal such as for e.petitions does not reach the House at all (see para 252). Where there is no opposition, a substantive proposal can go through without debate if tabled by the Government on the Order Paper. But if there is any objection—as was the case with the establishment of this committee—then committees are dependent on time being “found” by the business managers.

144. There is also no opportunity for the Speaker to put a proposition to the House for its decision, other than through the good offices of the Leader of the House. Any such matters will almost by definition be House and not Ministerial business, and often of some significance.

9. *Set piece debates*

145. Much Government-initiated business is scheduled as much from respect for conventions that certain debates are held in the course of the year as from a positive desire on the part of Ministers to hold a debate. These debates are sometimes referred to as “default” or “set piece” debates. They include each year:

- five days for defence debates—arising from the former two-day debate on the annual Statement on the Defence Estimates and the three individual service debates;
- two days for pre-European Council debates;
- two half-days [formerly one full day] on recent Public Accounts Committee reports;
- one day on the work of the Intelligence and Security Committee;
- one day on Welsh Affairs;
- one day to mark International Women's Day;
- four days for “periodic adjournment” debates normally held immediately before recesses, during which any matter can be raised.

10. General debates

146. The Government is also responsible for initiating general debates in the Chamber and in Westminster Hall on subjects determined by the Government, whether or not following consultation with others. It is comparatively rare for such debates to be held on a substantive motion; recent examples include the debate on 18 March 2003 on Iraq and on Trident on 14 March 2007. Instead, they are held on an unamendable motion in the form recommended by the Modernisation Committee, that the House has considered the matter. In session 2008–09 there were 12 general debates in the Chamber as set out below. Most were on Thursdays.

11. Topical debates

147. Following a recommendation from the Modernisation Committee, a new category of debate was introduced in 2008, known as “topical” debates. They are in effect shorter versions of the general debates referred to above, lasting 90 minutes and with a bespoke regime for front-bench speech lengths. They have to date always been held on a Thursday. They last 90 minutes. In session 2008–09 there have only been 10 topical debates, compared to 25 in 2007–08. The subjects are explicitly selected by the Leader of the House; there has been some controversy over the means of selection.

Conclusion

148. Leaving aside the 20 Opposition days, three Estimates Days, and business initiated by individual backbenchers, it is Ministers who decide whether a particular debate is held in the House; if so, when; and on what terms. Business scheduled by Ministers is diverse. It is by no means limited to matters the Government is comfortable with debating. But much of the business scheduled by Ministers as a result of their control of the agenda is neither required by Ministers for their legislative and political programme, nor initiated by Ministers. That is the issue. There is no transparent mechanism for individual backbench Members or groups of such Members to get motions onto the effective Orders, let alone secure a decision of the House. That includes motions to give effect to select committee reports as well as the choice of subjects the House is to debate.

D Process of scheduling business

In this section we give a brief overview of some of the mechanics of the scheduling of business.

Sitting and non-sitting weeks

149. The scheduling of business is dictated by the annual calendar of sitting and non-sitting—“recess”—weeks. This calendar is now normally announced by the Leader of the House in the autumn, running up to the return of the House from the summer recess in the year ahead. The dates of the end of the session in the autumn—“prorogation”—and the start of the next session are usually not announced until shortly before the House rises for the summer. The dates of the Christmas, February, Easter, Whitsun and Summer adjournments now follow a fairly standard pattern. Although announced in advance on a

firm but provisional basis, the dates for each recess are only formally put to the House for decision without debate as each individual recess approaches.

Annual planning

150. The business programme is managed at official level by the Private Secretary to the Government Chief Whip and his staff in conjunction with his opposite numbers in the House of Lords. At the outset of a session, or shortly before it begins, the business managers look at the Government's proposed legislative programme. Decisions have to be taken on which House each Bill is to start. Some Bills may require Royal Assent faster than others. A few may be introduced later in the session and be carried over. For each Bill, estimated dates are needed by when they should reach the second House. From these considerations spring the dates by which committee proceedings in the Commons must end—the “committee out-date”—which appears in the programme motion now usually applied to Government Bills in the Commons immediately after Second Reading. The date by which the managers wish to conclude Commons proceedings, at Third Reading, is not published. The business managers also have to allow for scheduling of the 20 Opposition days and the scatter of “default” debates (see para 145) through the year, as well as the Queen's Speech and Budget debates.

Business Statement

151. The business for the next fortnight is agreed internally by the Government business managers at a weekly meeting.³⁹ Before and after this meeting there are some consultations through the usual channels with the Official Opposition Whips. The Leader of the House then announces future business to the House each week on Thursday as a rolling two-week programme, with the second week avowedly less firmly determined than the first. Business in Westminster Hall is often announced more than two weeks in advance. The announcement of future business is akin to a Ministerial statement but preserves the facade of being an Urgent Question from the Shadow Leader.

Business Questions

152. The House is not given the opportunity to approve or amend the draft agenda. Individual members can comment on it in the course of Business Questions, which usually runs for an hour and in which typically 30 members are called to ask questions, meaning all or most of those who seek to catch the Speaker's eye. Few interventions are directly related to the details of the business announced and in practice the occasion is used by backbenchers to raise a range of matters of concern to them.

Changes

153. The statement is neither definitive nor all-embracing. Ministers retain the freedom to put whatever they wish on the Order Paper, whether or not announced at Business Questions, with the conventional courtesy of making an additional business statement if there is a substantial change. These are infrequent: there were two in session 2008–09, one making a proposed topical debate on Gaza into a full day's debate, and the other bringing

³⁹ Rush and Ettinghausen, *Opening up the Usual Channels* (Hansard Society, 2002)

on a full day's debate on Afghanistan in place of one planned on preparations for the Copenhagen climate change conference. In both cases this was in response to demand within the House. The debate on the Queen's Speech in December 2008 was interrupted on its third day to debate the setting up of a committee on the search of a Member's office. The business in the second week is explicitly provisional: it is not uncommon for there to be some change, including the re-allocation of announced business from one day to another, when it is announced a week later as a firm plan.

Matters not announced until later

154. The subject of a forthcoming Thursday topical debate is as a rule not announced until the Monday evening before, by using the House annunciator system and insertion of the information in the House's papers for the next day. The Opposition parties are not obliged to give more than minimum advance notice of the subjects they propose to raise and may change them; the actual texts of Opposition Day motions are usually not tabled until the afternoon of the previous day, and the Government amendments therefore commensurately later.

Matters not announced

155. Detailed Business of the House and other procedural motions are not announced in advance and are often tabled only the evening before they appear for the first time on the effective Order Paper. Formal questions to be put forthwith or without debate, such as those on statutory instruments requiring affirmative approval are not announced. Some Ministerial statements are announced several days in advance but most are not. Although Ministers will use the Future Business section of the Order Paper to give advance notice to Members of significant Motions which the Government intends to put to the House on a subsequent day, that is by no means the invariable practice.⁴⁰

E Is the current system satisfactory?

In this section we describe the strengths and weaknesses of the current system, and identify five ways in which it fails to match the basic principles set out at the beginning of the report: in relation to parliamentary control of business, cross-party working, transparency, topicality and the use of time.

156. The fact that the House has referred to us the issue of "*scheduling business in the House*" implies that the matter requires examination and that there is something unsatisfactory about the current system.

157. Some of the dissatisfaction arises from frustration felt by individual Members or parties represented in the House at the difficulties they have in bringing on a debate on a matter of their choice so that Parliament properly fulfils its function as a forum for deliberation and debate on issues of importance to the country. It may also reflect

⁴⁰ See eg OR 28 October 2009, cols 397ff

frustration that even where there has been an opportunity for debate there has been no resolution of the issue, because there has been no vote on a substantive motion.

158. Others see the fundamental fact that the Government controls the House's time as both a cause and a symptom of the weakness of the House of Commons as an institution, demonstrating the inadequacy of parliamentary procedures and processes as a means of holding the Executive to account. As a result, reformers have for many years called for changes in the management of business.

Strengths

159. We acknowledge the grounds for discontent and the extent of a desire for change. In shaping a new approach we must seek to build on the effective elements of the current arrangements. In comparison with the situation in many of our sister parliaments we have several advantages.

- *Advance Notice:* An outline agenda is now announced two weeks in advance and is largely adhered to; Westminster Hall Thursdays are announced even further ahead. Some seek further notice.⁴¹ But in many parliaments there is little or no advance notice of business.
- *Challenge:* every week there is an opportunity for backbench Members to challenge the Leader of the House on the future agenda, even if not to vote on it, and to seek debate on other matters or a change in the suggested agenda: although we recognise that it is now used by Members primarily for an assortment of other purposes.
- *Consultation:* The Official Opposition—although generally not other parties—are at least recognised as deserving limited informal consultation and the opportunity to make representations, even in the absence of a formal Bureau or Committee as is the general practice in other European parliaments. We are aware that the supposed beneficiaries of this consultation do not on occasion feel it is of much value.
- *Protected slots:* There are protected and regular time slots in the House for the Opposition parties, select committees and individual members to debate matters of their choice and to question Ministers, and no suggestion that these should be reduced or constrained.
- *General debates:* debates on general policy topics are on at least some occasions brought forward in “government time”: and contrary to the impression sometimes given there is not a mass of time taken up by general debates on wholly innocuous topics selected by Ministers.
- *Westminster Hall:* the sittings of the House in Westminster Hall offer backbenchers the opportunity for short 30-minute debates with a Ministerial reply, like those at the end of each day in the Chamber, and longer 90 minute debates on issues of wider interest of their choice, subject only to the luck of the draw.

⁴¹ Ev 7 [Jo Swinson MP]

Operation of the system

160. It is also important not to let frustration with the system spill over into criticising those who operate it, whether Ministers or officials. We acknowledge the excellent work of the professional civil servants in the Chief Whip's Office, in the Leader's Office and in the Opposition Chief Whip's Office. Ministerial-sponsored legislation reaches the statute book by the desired date having been debated on the floor (at least for some parts) and in committee; the 20 Opposition Days are scattered relatively evenly through the session: the days of set-piece debate which seem to be regarded as required are scheduled in. Hundreds of Statutory Instruments are laid, debated and formally agreed. The House runs according to rules which are obeyed and enforced. The smooth running of the House, whatever the political arguments, owes much to the talents of those operating the business system. It is no mean feat in a Chamber of 646 vigorously individual Members, and with a second chamber with interests and concerns of its own.

Failure to match principles

161. But we have concluded that the system fails in several ways to match the basic principles set out at the beginning of this Report. We set out below five ways in which it fails to meet these tests.

Parliamentary control of business

It is wrong in principle that, in addition to controlling its own legislative timetable, the Government rather than the House decides what is discussed, when, and for how long.

162. It is entirely right that a democratically elected Government should have a priority right to put its legislative and other propositions before the House at a time of its own choosing, and to be able to plan for the conclusion of that business. But it should be for the House as a whole to determine how much time to devote to such debate and scrutiny. It is also right in a democratic Chamber that the Government is free to deploy its majority to pass its business. But the procedures and practices which have grown up over the past two centuries have delegated to Government too much power to fix the agenda, and to take too many decisions without reference to its notional majority in the Chamber. We consider it for example unacceptable that Ministers can determine the scheduling of Opposition Days without reference to others; that they have an untrammelled power to decide the topics for general and topical debates; that they can determine which issues in major bills are debated on the floor of the House and by corollary which issues are not; that they can determine the fate of backbench legislation by procedural means rather than by decision of the House; and that they determine which pieces of secondary legislation are or are not debated in the Chamber. It is not easy for Members to bring on a debate—as opposed to a 30 minute exchange between a Member and a Minister—on a topic which Ministers do not want to have debated, irrespective of the strength of feeling across the House: let alone a debate on a substantive motion. Nor does the House have a mechanism to establish its own inquiry, beyond existing select committees, when the Government is unwilling to do so.

Cross-party working

The current framework provides protected time in the Chamber for the Government, Opposition and individual Members, but scarcely recognises the cross-party work of select committees, let alone other groups of Members.

163. The House devotes considerable resources to select committees and then largely neglects their output in drawing up the House agenda. That is in sharp contrast to prevailing parliamentary practice elsewhere. Time in Westminster Hall is not a substitute for committees having access to the House agenda when it is most useful rather than when it suits the convenience of Ministers.

Transparency

The system for scheduling business is not transparent to many inside the House, let alone those outside.

164. Even the term “the usual channels” has a distinct air of mystery which demonstrates the difficulty of establishing who has made or can make a particular decision.⁴² There is no consultation with minority parties or backbenchers. Most decisions are taken in private, do not have to be justified in public and can sometimes only be gleaned after the event. Naturally much of the detailed planning and negotiation needs to be conducted in private, but the process itself needs to be clear in order to be legitimate.

Topicality

The House is not systematically using its time to debate those matters of current concern which the nation expects its elected Chamber to be debating, nor is it responding flexibly to a swiftly moving political agenda, nor setting a long term policy agenda.

165. This applies to general and topical debates in the Chamber, and in Westminster Hall. Some debates seem to be mounted as platforms for speeches a department wishes its Ministers to make. Others are provided because there may be a row if they are not or because they have traditionally been provided; it may be a convenience for the business managers to plead such *force majeure*. As a result controversial select committee reports are often not debated promptly; and other controversial issues are avoided.

⁴² It dates back to at least 1905, when used by the then Prime Minister Arthur Balfour in response to a question.

Use of time

Time in the House is frequently described as a scarce commodity; but it is often wasted on business stretched out artificially to a pre-determined voting time or on arid debate on subjects on which backbenchers on neither side much wish to speak.

166. Ministers may not be best attuned to deciding how long or short an item needs to be. Each session around 30 hours of possible Chamber debate are “lost”, measured by the half hour adjournment coming on early. Many other debates are pointlessly strung out. In Westminster Hall a number of the 3-hour Thursday debates on subjects picked by the Government fall away early and time which backbenchers might have welcomed is lost: almost a third of the available time for the 8 such debates in session 2008–09 was not used, and only 2 backbenchers on average participated in a debate. This could of course change if there were whipped votes on Thursdays on a regular basis.

F Five elements of a reformed system

We describe five elements of a reformed system: the House determining its own agenda and sitting pattern; backbench business to be scheduled by backbenchers and the House; the Government retaining the initiative on ministerial business; more say and more freedom for the Opposition on its business; and enhanced opportunities for select committees and individual Members. We propose a committee of backbenchers to propose backbench business, and that business should be put to the House in a weekly agenda motion.

167. We consider that there is a strong case for change, particularly in the scheduling of debates on backbench business in the House and Westminster Hall, but also in the way in which the agenda as a whole is decided and justified.

1. The House should determine its own agenda and sitting pattern

168. Time in the House belongs to the House. At present the House has no mechanism for determining its own business and therefore takes no responsibility for it and for the difficult choices which have to be made. It is then all too easy to blame the Government for not providing time for debate: the Business Statement is followed by a raft of suggestions for additional debates but no proposal as to where the time is to come from. The current system infantilises Members and demonises Government: ending it would be to the advantage of both Ministers and Parliament.

Weekly agenda motion

169. **The agenda should therefore fall to be decided by the House, if need be by a majority. The straightforward way of doing that is by putting a motion to the House on a set day and time each week.** That is standard practice in many parliaments around the world and has operated in the Scottish Parliament without problems for the last decade.

No extra time would be required as it would take the place of the Business Statement and subsequent questions. This Motion would:

- set out the basic details of the agenda in the House for the week ahead, including the next Thursday in Westminster Hall;
- be available for inspection by Members by the middle of the previous day;
- be open to amendment, subject to the Chair's powers of selection;
- be put formally to the vote after the elapse of a period set in Standing Orders, such as 45 minutes;
- if an amendment were selected, give rise to a debate with specific speaking time limits following the 45 minute question and answer session, and would if need be end in a non-deferrable division.

Business for the second week in the cycle

170. The House would plainly want to retain the advance notice currently given for the second week in the cycle, if not get a rather longer forward look.⁴³ The introduction in the 1992 Parliament of the fortnightly forward look was widely welcomed as helping members and others plan ahead. **A draft agenda for the second week should also be announced to the House at the same time as the formal agenda Motion, and on broadly the same provisional basis as at present.** It would be explicitly provisional and it would be open to Members to make representations to the Business Committees (see below) before it was finalised for the formal motion the succeeding week.

Vote

171. **There is no reason why there should as a rule be a vote on the agenda, all the more once it has been the subject of wider discussion than at present and will have been exposed in draft the previous week.** But the ability of Ministers to deploy a whipped majority provides a necessary insurance policy for them. On what we expect to be the rare occasions when push comes to shove, a disciplined majoritarian party can have its way if it disagrees with a proposed agenda or if it wishes to defeat a proposed amendment. Such decisions will of course normally be taken on a whipped vote. It would be unrealistic to seek to stop the whips from operating in votes on such decisions. The Government will generally be able to secure a majority, should it wish to do so. But if a significant number of its own backbenchers are unhappy it will at least have had to make a convincing case, and in public: and at the cost of delaying the main business for the day and interrupting the smooth flow of business for all Members. If the time lost as a result of debate and vote on an amendment moved by Ministers comes out of backbench business, there should be commensurately more backbench time available in the next week's agenda.

⁴³ Ev 7, [Jo Swinson MP]; Ev 26, para 9 I [Hansard Society]

Scope of possible amendments to agenda motion

172. **The Speaker's power of selection of amendments would be required to ensure that merely destructive amendments were not selected and that a proposition coming from the House Business Committee (described below) was treated with respect.** No consideration would be given to amendments which had not been raised previously with the committee. Amendments intended merely to draw attention to some issue without proposing an alternative would not be in order, and we would expect the Chair only to select amendments demonstrating widespread support. But where Members across the House disagreed with, for example, the specific topic proposed for a general or topical debate and wished to press a cogent alternative expressed in an amendment, it should ultimately be for a majority in the House to decide. Such amendments to backbench business should however only be in order if tabled and moved by backbenchers. The House could not restrict the overall time allocated to backbench business (as set out below), nor deny the Opposition or government its time. It could not alter the topic of an Opposition Day, which is properly the property of the Opposition frontbench. But Members could, for example, propose that time on one Government Bill be curtailed in order to allow for more debate on another. We would hope that such challenges, to either government-initiated or backbench business, would be rare, with most difficulties ironed out beforehand in the House Business Committee.

Consensus

173. Where there is serious dissent a majority will of course prevail. That majority may not always be the majority of the governing party. But the system we propose will clearly have failed if disagreements have to be re-fought on the floor of the House. It will also have failed if debate on the agenda becomes a ritual leading to a ritual party vote. Ideally the agenda will be put together so as not to require a vote or an amendment: the effectiveness of the mechanism is not to be judged by the frequency of discord but its absence.

Conclusion

174. **A votable motion on the agenda provides a traditional accountability mechanism for such decisions, and ultimately a sanction were the wishes of a majority of the House to be misjudged or ignored. Any programme which requires the positive approval of the House will necessarily be drawn up—and we deal below with how and by whom it is to be drawn up—with the intention of satisfying a clear majority of members and delivering to the Government sufficient time to get the business it initiates through the House.**

Sittings

175. As set out above [paras 100–101], the House as a whole must also be given the opportunity to determine on a regular basis when it is to sit, on the basis of a proposition made by the House's own Business Committee in the autumn for the year ahead, which can be amended by the House nearer the time of each adjournment should it be thought necessary.

II Backbench business should be scheduled by backbenchers and the House

176. **Backbenchers should schedule backbench business.** Ministers should give up their role in the scheduling of any business except that which is exclusively Ministerial business, comprising Ministerial-sponsored legislation and associated motions, substantive non-legislative motions required in support of their policies and Ministerial statements. The rest of the business currently scheduled by Ministers—such as House domestic business, select committee reports and general and topical debates—is for backbenchers to propose and the House to decide.

Partnership

177. **On some business there needs to be an explicit partnership between Ministerial and backbench scheduling:** this includes the length of debates on the Budget and Queen's Speech, the timing of Estimates Days and the handling of secondary legislation and European documents on the floor. And the rota for oral questions must allow for ministerial availability but is also quintessentially an opportunity for the House to scrutinise the Executive. The suggestion has for example been made that oral questions might be switched from being first business to later in the day, so as to give an opportunity to the majority of the population who are otherwise engaged during the day to see it live. This would be a matter for backbenchers and for Ministers to agree together.

Backbench Business Committee

178. The scheduling of backbench business by backbenchers will require a means to decide what proposals for such business should be put to the House for its agreement. The obvious route is a committee of backbenchers elected by the House for that purpose. Such a committee's task will not be an easy one. **But it is in our view time for Members of the House, through a committee of their elected colleagues, to take some responsibility for what the House debates, when and for how long; and also for what it does not wish to debate, either at all or at its current length.** For example, the House must be enabled to decide whether to sacrifice or curtail or move to another forum one or more of the set piece debates to make space for other business.

179. This will reduce the current extent of Government control or influence over the Parliamentary agenda. But the matters "lost" to Government will be principally those in which it has no direct interest: for example, the timing and topics of general debates and discussion of select committee reports. Rather than Ministers seeking to prioritise the many demands for time that are presented by Members, this responsibility would be handed to a committee representative of the House as a whole.

180. **We therefore recommend that a Backbench Business Committee be created. It should be comprised of between seven and nine members elected by secret ballot of the House as a whole, with safeguards to ensure a due reflection of party proportionality in the House as a whole. The Chair would also be elected by ballot of the whole House. Frontbench members of all parties and PPSs would be ineligible for membership of the committee. The committee would have its own secretariat, provided by the Clerk of the House. To ensure that it was fully informed on a range of considerations affecting the scheduling of debates, such as the availability of Ministers, it might wish to invite the attendance of the Government's business managers for part of the meeting. The**

committee would meet weekly to consider the competing claims for time made by select committees and backbenchers in groups or as individuals for the protected days and/or time-slots [see below] available in the two weeks ahead, and then to come to a firm view on the backbench business in the week immediately ahead.

181. So what would be gained by a Backbench Business Committee along the lines we suggest? We believe that establishment of clear "backbench time" managed by a Backbench Business Committee will be a major step forward. Without in any way compromising Government's ability to have its own initiatives discussed and scrutinised, this Committee will take clear charge of part of the agenda for at least one day a week or its equivalent for the House collectively to discuss those matters that Members feel should be prioritised. It will create new opportunities for all Members, giving them a greater sense of ownership and responsibility for what goes on in their own House. It will make debates more responsive to public concerns, as fed in to Members by their constituents. It will strengthen the position of the widely-respected select committees. We feel that this is an essential reform which will have many benefits for Members, for Parliament as a whole, and for the esteem in which it is held. But these gains will not be realised unless individual backbenchers are committed to parliamentary activity and avail themselves of these opportunities, and that will only happen if they think it a more worthwhile use of their time than the many other tasks which make up the life of an elected Member.

III The Government should retain the initiative on scheduling ministerial business

Ministerial Business

182. **Ministers should continue to have the first call on House time for Ministerial business, meaning Ministerial-sponsored primary and secondary legislation and associated motions, substantive non-legislative motions required in support of their policies and Ministerial statements on major policy changes.** Ministers would for example retain the right to determine the date of second reading of a Government Bill, and the day by which the Bill was to conclude its passage through the House.

Ministerial control of timing

183. Ministers should also continue to be entitled to put to the House for its assent the order in which items of Ministerial business are scheduled and the day on which they are to be taken. They would also retain the ability, which any Member in charge of an Order of the Day has, to prevent others bringing a Ministerial-sponsored item forward onto the Order Paper which Ministers do not want to have moved at that time. Their control over the timing of the business they need to be put to the House will thus be preserved.

Length of business

184. **The Government's right to have the opportunity to put its legislative and other propositions to the House, at a day of its choosing, should not however extend to deciding without any reference to the House for how long these are to be debated by the House.** Scheduling must allow for Ministers to have a proper opportunity to present their case; for Opposition parties to present theirs; and for backbenchers to speak. But it cannot be right that Ministers effectively decide with little or no consultation the length of a

Second Reading debate or the report stage of a Bill or the time to be devoted to Lords amendments. There needs to be some means of consultation with Members speaking for the House and not just front-benchers.

185. Under programming of most Government Bills, the time allowed for the report stage is put to the House in the programme motion moved immediately after Second Reading. These motions are effectively unamendable and are not open to separate debate. It is unnecessary for the House to be asked to agree so peremptorily *before* a Committee stage how long the report stage should last.

186. Generally there is and will be no controversy. The current “standard allowance” of a day for Second Reading, a day or two for report and Third Reading, and a day or a half day for Lords Amendments is broadly recognised. But there are rough edges and rough justice. Every session there are second readings to which a full day is allocated which is not required: report stages which may require an additional half or full day to the amount given, or which do not require a full day: and Lords amendments which are unnecessarily squeezed. The House itself should take responsibility for determining how much time it wishes to devote to such matters.

Ministerial Statements

187. Some similar considerations apply to the time devoted to ministerial statements and the subsequent question and answer, which conventionally lasts for 60 minutes, up to a third of which may be devoted to the Minister reading out the text of the statement in full for up to 10 minutes, and the exchanges with the Opposition parties front-bench spokesmen. The text of the statement is not made available to most Members in advance. **There is plainly room for different procedures designed to give an opportunity for a more thorough form of parliamentary scrutiny, without undermining a Minister’s right to make a statement and respond to questions on it; and statements could well be taken at a different point in the parliamentary day.**

IV The Opposition are entitled to more say in when Opposition Days are scheduled and how they are used

Opposition Days

188. **The Official Opposition and other Opposition parties should continue to have a pre-emptive right to their fixed number of days, to be spread evenly through a session. There is a case for the Opposition parties to be given more say on when they can take such a day or half day.** In order to give the Opposition parties more opportunity to have a debate when they need one, Standing Orders could provide for the Opposition to have the right to schedule a day at a week’s notice, exercisable on a given number of occasions in the session. Opposition business would not come within the ambit of the Backbench Business Committee.

Content of Opposition Days

189. There is a “somewhat ritualistic element” to Opposition days.⁴⁴ **A wider range of business could be taken rather than what has now become the standard fare on Opposition Days of two debates of three hours each, dominated by the front-benches:** such as the introduction of the format used in European Committees of question and answer followed by debate. It has also in the past been suggested that there could be Opposition legislative business. This would represent a change in practice sufficient to require an explicit decision of the House and could of course have repercussions for the existing system for prioritising non-Ministerial bills. But it would in our view represent a significant opportunity for debate to focus around a specific legislative proposition from an Opposition party.

Announcement of topics

190. We are also aware of the inconvenience and uncertainty sometimes caused by delays in announcing the subjects to be debated on Opposition Days, or those subjects being changed at the last moment. **We consider that the subjects of Opposition Day motions should normally be laid down with at least two days’ notice.**

V Select committees and individual Members should be given enhanced opportunities, while retaining their existing rights of initiative

Select committee debates

191. Select committees do have some opportunities for having their reports debated. Most Thursdays in Westminster Hall are taken up from 2.30pm to 5.30pm by such debates. That may not be the most popular time or place, but these debates are often lively and reasonably well-attended. Six further select committee reports are in practice debated on the floor each year on the three Estimates Days [see para 136 above] . But there are flaws in the system, which the Liaison Committee has pointed out over the years. It is hard for select committees to get the attention of the House itself. Debates are not held until a Government Reply is received, which can take two months to compile, and sometimes more. And where there are debates there is no opportunity for a committee to test its conclusions in a vote of substance, based on a draft resolution it can put forward, itself then subject to amendment. Furthermore the now standard time of three hours for a debate on a report either on an Estimates Day or in Westminster Hall is on occasions too long and could usefully be reduced to 90 minutes, as for topical debates and longer backbench debates in Westminster Hall. These are the sort of opportunities which should be possible under a reformed system. **Select committees, including those concerned with the House’s own affairs, deserve greater access to the agenda, so that they can have their reports debated and decided upon a substantive motion, at a time which best suits them and the House.**

⁴⁴ Conservative Democracy Task Force, *Power to the People*, p 5: Ev 27, para 15 II

Individual Member initiatives

192. **Individual backbenchers must continue to be able to raise subjects as adjournment debates in the Chamber and in Westminster Hall, and to press legislation through Private Members' Bills, as well as participating in debate and questioning. In addition, any revised system must respond to the widespread sense that the right should be restored to Members to get a substantive motion put to the House and decided.** We propose below [paras 271–2] the introduction of a regular slot for debate on a heavily signed motion from the backbenches, separate from the EDM system. That would offer a return to backbenchers of the right to move a motion in the House which was lost in 1994. We also propose some other new forms of business which might be introduced, to be scheduled within backbench time.

Private Members Bills

193. Several Members have expressed dissatisfaction with the system of Private Members' Bills. It was last reviewed in detail by the Procedure Committee in 2002–03.⁴⁵ The proposition that they be taken after the end of other business on Wednesdays enjoys some support, as do the ideas that there should be some sort of automatic guillotines after a certain number of hours of debate on second reading and report, so as to constrain the ability of a handful of members or a Minister to “talk a Bill out”. Our recommendations on report stages apply equally to Private Members' Bills.

194. One essential test of the House's control of its own business is whether the handful of legislative propositions tabled by those backbenchers fortunate enough to win one of the top 7 places in the sessional ballot should be able to see their bills progress in the House unless and until defeated by a majority. **The House should be responsible for ensuring that merely procedural devices cannot obstruct Private Members' Bills, and that they are brought to a decision.** This could among other things mean scheduling Private Members' Bills at some other time in the week than Fridays, such as Wednesday evenings. As a corollary to this, the Government and other parties should be free to whip against those Bills it opposes; but the outcome should be clearly dependent on a decision of the House one way or another.

Key elements of revised system

195. **In summary, we envisage a system whereby Ministers indicate as now the business they intend to bring forward, principally legislation and related motions. It would not be realistic, or indeed reasonable, to expect Government to surrender control over these decisions to a committee of backbench Members. Ministers quite rightly want to determine the broad timing of the legislation they sponsor. At the same time, a committee of backbenchers should be set up to bring forward proposals to the House for backbench business. The Opposition should have some greater say than at present in when it uses its Opposition Days. Select committees and backbench Members deserve enhanced access to the House agenda. By giving Members greater control of the agenda, we are confident that the House of Commons will be strengthened.**

⁴⁵ Procedure Committee, Fourth Report of Session 2002–03, *Procedures for Debates, Private Members' Bills and the Powers of the Speaker*, HC 333

G Assembling the jigsaw

In this section we set out our proposals for a House Business Committee which would assemble a draft agenda to put to the House in a weekly motion

196. A draft agenda will have to be assembled from these various separate streams of business as a “composite” motion to be moved in the House, a task now carried out for want of any other structure by the Government Chief Whip’s office. We considered a number of options before deciding on a model to recommend to the House.

Option 1: a single Business Committee deciding all business

197. One option would be an all-purpose Business Committee with responsibility for all scheduling decisions, including backbench business. Any backbenchers on the committee would be in practice overshadowed by the Whips, as on the Committee of Selection. The conclusions of the studies by Meg Russell and Akash Paun of the Constitution Unit is that a Business Committee with wide-ranging and quasi-decisive power will in practice be dominated by party whips, and was so dominated in every case studied where that system currently runs, including Scotland.⁴⁶ If such a committee was created and then dominated by the Whips, the House would have gained no more ownership of backbench business than it has at present. **We therefore rejected this option.**

Option 2: the existing system with a Backbench Business Committee bolted on

198. Another option would be to continue with a variant of the present system, with a Backbench Business Committee feeding in its proposals for the use of backbench time. Such an arrangement would fail on several counts. The Backbench Business Committee would be just one more player—albeit a significant one—on the stage, together with the Official Opposition, the Liaison Committee, and other parties. It would as now be left to the Leader of the House and Government officials to sort it all out. There would therefore be no real sense of House ownership of the Ministerial part of the agenda: and no backbench challenge possible to it before the agenda was put to the House. A Backbench Business Committee created in these circumstances might not long survive. The House would gain something by its creation, but not to the degree we believe possible under other schemes. **We therefore rejected this option.**

Option 3: a House Business Committee with two sub-committees

199. A further variant would be to have a single House Business Committee with two sub-committees—a backbench sub-committee and a government business sub-committee. This would have the advantage of giving clear and equal weight to both backbench and government business. It would also formalize the usual channels. However, we accept there may be some reluctance from the executive to take this additional step. **We therefore rejected this option.**

⁴⁶ Meg Russell and Akash Paun, *House Rules? International Lessons for Enhancing the Autonomy of the House of Commons* (Constitution Unit, University College London, 2007)

Option 4: a House Business Committee and a Backbench Business Committee

200. Our preferred solution is to have two committees. The task of assembling a draft agenda to put to the House should be undertaken by a unified House Business Committee, comprised of representatives of all parts of the House with a direct interest: backbenchers, Government and Opposition. The members of this committee would comprise the elected members of the Backbench Business Committee, together with frontbench Members nominated by the three party leaders. We would expect the Leader and shadow Leaders of the House to be among these nominees. The House Business Committee should be chaired by the Chairman of Ways and Means [the Deputy Speaker], whose would have been elected by the House as a whole to that office with this function partly in mind. It would have a secretariat combining the House officers who support the Backbench Business Committee and the Government officials who currently support the usual channels.

House Business committee: internal operation

201. Given the complex nature of House business and the competition for scarce time, we accept that, in the interests of individual Members and the need for Government to get its business, and in order for our proposed system to work, extensive informal negotiation would take place well before the formal committee meetings. In such meetings, the frontbench members of the House Business Committee would be free to comment on the propositions brought to the Committee by the Chair of the Backbench Business Committee, but would not be able to alter or attenuate them. Similarly, the backbench Members of the House Business Committee would be free to raise objections to, make suggestions on and seek explanations of the Government or Opposition propositions. Either part of the committee would be free to change their original proposition following discussion. Standing Orders would oblige the Committee to accommodate the reasonable demands of Government, Opposition and backbenchers for time. A consensus would have to be arrived at. We do not envisage that a vote in such a committee would be possible. In the absence of a consensus the Chair would have to use their discretion to settle the matter so far as deciding what was to go into the draft agenda to be put to the House. Anybody wishing to challenge that would have to contemplate moving amendment to the draft agenda on the floor of the House.

Agenda and agenda motion debate

202. The resultant draft agenda would be moved formally in the House in the name of the Chair of the House Business Committee. We envisage that the question and answer session thereafter would be answered by the Leader of the House as at present where the matter concerned Ministerial business or the Chair of the Backbench Business Committee if it concerned backbench business. This session would in effect provide a similar opportunity to the current Business Questions on Thursdays.

Process of consultation

203. We would expect both committees to meet weekly, with the Backbench Business Committee meeting first to consider backbench business to be brought up to the House Business Committee. We would also expect that there would be a process of constant

consultation and negotiation between the secretariats of the two committees. The drawing up of a draft agenda for the second week gives a further chance to reach consensus as well as to react to the views of Members. Discussion in the privacy of a select committee should also enable Members to resolve any remaining rough edges.

Usual channels

204. It may be that the Government and Opposition nominees on the House Business Committee will want to meet separately in advance of the House Business Committee meeting to settle so far as possible the scheduling of the business for which they each have responsibility. We regard that as a matter for them and should they wish to constitute themselves as a Government business committee comparable to the Backbench Business Committee that could be accommodated and would have the benefits of greater transparency.

Annual planning transparency

205. The House Business Committee will not operate effectively unless it has a handle on the sort of annual planning exercise carried out at the start of each session—or rather before that—by the business managers. Without some sense of what other business might be coming up, it would not be possible to challenge the judgements being made about the time to be devoted to an item of Government business or how far additional time could be spared without creating countervailing pressures elsewhere in the programme. It is legitimate that some of this be held in confidence by the Government: for example, if they have in mind some legislation not yet announced which they do not wish to reveal to others. But we believe most of this provisional long-term planning could be shared with such a committee without damage.

Advance notice of plans

206. If there is not a guaranteed day each week for backbench business it will be difficult for the Backbench Business Committee to know what spaces it is seeking to fill. Even were there to be a regular day, there would still be the option of scheduling some backbench business on days largely devoted to other business. The Government should therefore be under an informal obligation to indicate to the Committee and its staff well in advance the slots it envisages needing in the coming fortnight for specified government business, and the Opposition likewise. By the time the House Business Committee meets to agree a draft agenda, there should be no surprises for anyone.

Minor unannounced business

207. Present practice allows a good deal of latitude to Ministers to bring up additional items not mentioned in the Business Statement. These are principally motions of a technical nature put down for the end of the day and either requiring unanimity to be agreed, or being capable of being voted upon as a deferred division on the next Wednesday. But they also include motions of real significance which seem as if they are being “smuggled through” [see para 155]. **We would expect a greater discipline to be applied in giving advance notice of motions, to the extent of allowing the Speaker to refuse to put a Motion to the House of which sufficient notice had not been given.**

Avoiding undue rigidity

208. **Tying the agenda down in a Resolution of the House should not be allowed to impose excessive rigidity on the House’s business.** There are rare occasions when the announced business has to be changed at short notice [see above]. We believe that the Leader of the House should be given the right, subject to the discretion of the Chair, to move a supplementary business motion without previous written notice, and have it decided by vote if need be after 10 minutes. The Leader would be obliged to signify the consent of the Chairman of Ways and Means and the Chair of the Backbench Business Committee.

Decisions of the House

209. The House Business Committee could be empowered to include in the agenda to be put to the House a binding proposition—which the House could amend or reject—that debate on a specified item of business be brought to a decision point after a fixed period—for example “after 90 minutes”—or at a specified time—for example “at Four o’clock”: or a mixture of the two—for example “at Four o’clock or after 90 minutes, whichever is later”. Such propositions could also cover backbench business. **Some advance timetabling is fairer to the House and ensures that debate cannot be used to talk out a specific proposition where it is reasonable to expect the House to express a view. But we would expect such a power to be used sparingly.**

Substantive motions

210. Most general debate in the House and in its debating committees proceeds on neutral and unamendable motions. There will on occasions be good reason to hold a debate on, for example, a foreign policy issue or a general social topic where being tied to the detailed terms of a draft proposition may be positively unhelpful. A substantive motion may invite amendment and stimulate dissent without necessarily achieving a useful outcome. On such occasions a take note or equivalent motion is positively helpful. **But in general terms we favour more use of substantive motions so that the House can come to a recorded conclusion which will then carry weight.** The Backbench Business Committee will be in a position to decide as to what sort of motion is best suited for the backbench business it proposes and to put forward for inclusion on the agenda either a neutral motion or a substantive motion already drawn up by a select committee or by backbenchers.

H Time available to the backbench business committee

We set out the options for protecting the time available for the business to be scheduled by the Backbench Business Committee: a nominated day each week, whether always the same day or a movable day, or the equivalent of a day spread through each week or through the year as a whole. We conclude that the minimum offering should be of one day a week or the equivalent.

211. Put very crudely, the current system relies on the Government taking the time it needs for legislation; the Opposition getting its allocation over the year as a whole; any other of those with a call on time—such as for opposed Private Business—being satisfied; and then

filling the rest with set-piece debates either from the list of hardy annuals or ad hoc debates. Some weeks there is virtually no non-Government business other than an Opposition Day; in other weeks there may be two days of miscellaneous non-Ministerial business. The creation of a Backbench Business Committee will call for a more transparent system and one which gives the protection of Standing Orders to backbench business. We have identified several options.

A foreseeable weekday every week?

212. The simplest and probably most transparent way of ensuring sufficient time for backbench business spread evenly throughout a session, and susceptible to planning by the Backbench Business Committee, is to identify in Standing Orders a fixed day of the week as reserved for backbench business. From the figures available, one day a week could easily be devoted to backbench business as we have defined it above, leaving more than enough days required for a standard Government legislative programme and for Opposition days. The Backbench Business Committee could fill the day as it thought fit, drawing on the menu of possible items we refer to below, and with regard to any regular mandatory slots. This system would be easy for all to foresee. It would import a degree of rigidity, however, and it might also tend to rule out shorter items of backbench business being taken on days otherwise given over to Ministerial business.

213. If a particular day were to be identified, and if it were to be the same day every week, the first suggestion made is likely to be *Thursday*. With the move in 1997 of Prime Minister's Questions to Wednesdays, Thursdays in the Chamber have lost status and are now increasingly used for unwhipped or only lightly whipped business. They are not well attended. The prospect of votes on substantive motions may change that. Another possibility is *Monday*. This is a day for main-stream business. But Members from further afield may only reach Westminster some way through a Monday, in time for an evening vote. **Ideally, if a particular day is to be protected, we would like backbench business to be scheduled on Wednesdays, with Thursdays once again becoming a "main" day for debate on Government legislation and other matters.** It is important that backbench business is not relegated to a backwater, and that Thursday be revived as a proper day for business, with its earlier finishing time. One suggested way of doing that would be to return Prime Minister's Questions to Thursday. **We ask the Chief Whips to pursue the suggestion that Prime Minister's Question Time be timetabled for Thursday afternoon.**

A changing weekday every week?

214. Alternatively, it could be left open to a process of regular discussion and negotiation as to which day of each week would be devoted to backbench business. This would avoid the rigidities referred to above.

Equivalent of a day every week?

215. Another means of providing a guaranteed minimum amount of backbench time every week would be to spread backbench time over each week in packets of half days or smaller fractions. This could ensure some backbench business on most days but might be unduly diffuse.

A minimum ration of days through the year?

216. A further variant, drawing on the parallel of the provision of 20 Opposition Days each session, would be to provide for a similar but higher number of backbench business days—say 35 Backbench Business Days—possibly with a requirement in Standing Orders that they be spread over the year as a whole. This could also allow for half days and shorter periods. In order to allow for some weeks which for good reason would be devoted exclusively to Government and Opposition business, there could be a fixed number per three month “term”.

Quotas for specified categories of business

217. Whichever option is chosen, it would also be possible to create an obligation on the Backbench Business Committee to schedule a given minimum number of specified items for the agenda over a period of a month or the year as a whole, or indeed every week. For example, it could be an obligation to have

- one topical debate each week;⁴⁷
- one select committee report presentation slot each week or fortnight⁴⁸ or 35 select committee presentation slots spread through the year:
- one debate on a heavily supported backbench cross-party motion each month.

218. Whichever option emerges from the debate and discussion which we expect to follow this Report, some time must be identified and protected for backbench business, not less than the equivalent of one day a week. We propose that Standing Orders should be sufficiently tightly drawn to guarantee this, but with some flexibility, so that the Backbench Business Committee can take matters forward.

I Backbench business

219. In the time we have had available it has not been possible to conduct an exhaustive inquiry into all the possible categories of backbench business which a Backbench Business Committee might in future bring forward. Over recent years there have been a number of suggestions and propositions, but no means of implementing them or even putting them to the House. A Backbench Business Committee will be empowered and expected to do that. It would be up to that Committee to innovate and mix and match. The last thing we would wish to do is to try and set down a narrow menu now.

220. Existing categories may well be adapted. Some changes may not require changes to the Standing Orders, or very minor changes. For example a topical debate could in future be led off by a back-bencher; some general debates could draw on the European Standing Committee format; and a debate on a select committee report could usefully be held on a substantive draft resolution based on that report. We would expect the Liaison Committee

⁴⁷ Ev4 [sir Patrick Cormack], Ev6 [Dr Brian Iddon]

⁴⁸ Eg Ev6 [Michael Meacher]

to continue to take the initiative in selecting select committee reports for presentation and debate, leaving it to the Backbench Business Committee to find an actual slot.

221. There are a number of welcome ideas for new sorts of business or revised forms of current categories. A Backbench Business Committee would be in position to seek the House's agreement to try these out. Some of the sorts of business which we would hope to see included are :

- substantive motions moved by backbenchers either after a ballot or based on the sort of procedure we identify in para 271;
- some category or categories of non-Government bills given priority over, or at least equality with, those presented following the ballot;
- brief presentation of a select committee Report in the Chamber by the Chairman and one or two Members, without it engaging instant rebuttal by Ministers;
- alternative uses of the 10-minute rule bill slot or its extension to Monday and/or Thursday;
- periods for short miscellaneous speeches not expecting a Ministerial reply, on the Australian model, where in the equivalent (and predecessor) of Westminster Hall six 10-minute speeches from backbenchers on any matter are permitted in a weekly “grievance” debate and ten 3-minute “constituency statements” at the start of proceedings: neither attracting a ministerial response.

J Conclusion

222. We have concluded that reform is both necessary and desirable. We have not drafted the specific changes to Standing Order No 14 and many other Standing Orders which will be required to implement our recommendations, but we believe that work on that task should now begin.

223. The House is unused to deciding its own business and has become dependent on Government. It may therefore be understandably fearful about change. But the public would find it strange if Members do not summon up the confidence to give effect to the view of all three party leaders that the time is now right for a clearer and more important role for Parliament. It is also worth pausing to consider how some of the practices and procedures we now value would look if proposed as an innovation, and how quickly they take root. Who would now suggest a 10 minute slot for a backbencher to move a motion to bring in a Bill—a quite unnecessary stage in procedural terms—at prime time before the main business of the day? And how many people 10 years ago could imagine that the parallel Chamber in Westminster Hall could thrive as it has? Is there any likelihood that the House would turn its back on topical questions introduced only a couple of years ago? Innovations swiftly become traditions; and it may in the future come to seem odd that the House once lacked the ability and confidence to control its own business.

5 INVOLVING THE PUBLIC: NEXT STEPS

“ [Political conversation was] when the next election would be—of the probable Prime Minister—of ins and outs—of Lord This and Duke of That—everything except the people for whose existence alone these politicians exist’ (*The Life and Work of Thomas Hardy*, 1891)⁴⁹

A Introduction

In this section we describe the general background to the matter of public initiation of proceedings which was referred to us, and connected matters, and conclude in favour of a shift towards a greater degree of public participation.

Debates and proceedings

224. We are directed to report on “*enabling the public to initiate debates and proceedings in the House*”. “Proceedings in the House” covers a range of activities. Debate and ministerial response is one form of proceeding, and enjoys the highest profile. There are a number of other types of proceedings, including oral or written Questions and Answers; the introduction of legislation or of amendments to Bills; motions, including Early Day Motions; and select committee inquiries, comprising the taking of oral or written evidence, commissioning research and making a report to the House, as well as private consideration of issues.

Public participation and influence

225. Members of the public already participate in proceedings in the House as witnesses in select committee and public bill committee hearings. Furthermore, online forums are now frequently used by select committees to garner experience directly from the public on specific topics.⁵⁰

226. The public already exercises a very substantial influence on what is discussed in the House; on the subjects on which Ministers are questioned; and on the inquiries pursued by select committees. It is indeed rare that proceedings in the House do not have their origins at some point in public concerns. Whether the vehicle for such concerns being raised is backbench questions and adjournment debates; Opposition day debates; Ministerial or backbench legislation; questions following Ministerial statements; or general debates, proceedings in the House—for all their admitted failings—cannot be fairly represented as having no connection to public concerns.

227. The overriding thrust of our Report is that Members of the House should be given substantially increased means of initiating proceedings, primarily through taking control of backbench business. That will automatically enhance public influence on the agenda, since

⁴⁹ *The Life and Work of Thomas Hardy*, ed. M Millgate, 1984

⁵⁰ See <http://forums.parliament.uk> for recent forums: also Ev10 [Lord Norton of Louth]

it is from the public that Members receive their impetus.⁵¹ The change should help create a sense that the public have some ownership of time in the House. Our proposals should ensure that what happens in the House is more reflective of public concerns; with more debates on topics which have a resonance with the public and fewer abstruse ones.

Outreach and engagement agenda

228. Much attention has been focused at Westminster in recent years on efforts by Parliament to “reach out” and reconnect to the public, and to make proceedings more readily accessible and more easily understood. Much has been done, and much remains to do, to attract more people to see and hear proceedings in person or through all available media. The June 2004 Modernisation Committee Report acted as a major stimulus in this area.⁵² Ambitious targets have been set for inward visitors on Education Service visits; the website is being radically upgraded and new media being extensively used; a positive outreach effort now includes parliamentary staff based in the regions; and all public proceedings are webcast. The BBC Parliament channel is widely watched. All 18 year olds receive a positive and personalised invitation from the Speaker to register to vote.⁵³ Members themselves engage in relentless communication with their electorates, increasingly using the resources of interactive media to do so.

229. Hitherto less attention has been devoted to the mirror image of that process of outreach. One of the stated aims of the Government’s July 2007 Governance of Britain Green Paper was to re-invigorate our democracy.⁵⁴ It paid particular attention to the possible role of petitions both at Westminster and in local government. In July 2008 the DCLG published a White Paper entitled *Communities in Control: Real People, Real Power*, which covered various aspects of the “community empowerment” agenda.⁵⁵ The prospect of facilitating public initiation of proceedings in the House is one part of that wider agenda of stimulating, facilitating and supporting greater public engagement with the democratic process at local and national level.

Conclusion

230. **There are varying views about the prospects for greater public participation.** Recent research from the Hansard Society conveyed in its submission to us warns that the level of public desire for direct involvement may be low and falling.⁵⁶ Dr Ruth Fox, Director of the Parliament and Government Programme at the Society, has warned in a recent article that

⁵¹ See eg Ev 6 [Dr Brian Iddon MP]

⁵² Modernisation Committee, First Report of Session 2003–04, *Connecting Parliament with the Public*, HC 368

⁵³ For latest published account of outreach activities, see House of Lords Information Committee, HL 138–II, pp 117–119

⁵⁴ *Governance of Britain*, paras 157–159. See also Ev 25 [Professor Bogdanor]

⁵⁵ Cm 7427

⁵⁶ Ev31 para 24

There is a danger that if the scope and scale of what the public want is misread, any new mechanisms will in fact come to be dominated by damaging groundswells of impassioned faction or organised economic interest groups.⁵⁷

One of the strengths of representative democracy is precisely that it can give a voice to the less advantaged and the unengaged.

231. The phrase “*the public*” can mean different things to different people. Through political parties and pressure groups, the public already exerts much influence on the parliamentary agenda. Individuals can exert influence much less readily, but the representative system and the constituency basis of our politics are designed in part to facilitate that. Well-organised groups will, quite properly, use any new or improved opportunities offered for public initiation to press their own causes.⁵⁸

232. **But none of these doubts should rule out making further and better opportunities available for public participation and engagement.** Many other parliamentary democracies provide such opportunities and surveys regularly find that people say that they feel disempowered and would like to have more say on decisions that affect them. We received submissions from several individual campaigners which conveyed the difficulties they found in getting their views and concerns heard.⁵⁹ If more or better opportunities are offered it may well be that more and better use will be made of them. **The primary focus of the House’s overall agenda for engagement with the public must now be shifted beyond the giving of information towards actively assisting the achievement of a greater degree of public participation.**

B What happens now

This section briefly describes four existing ways in which the public can directly or indirectly influence the agenda: through individual members, through petitions, through inviting members to sign Early Day Motions, and through contacting select committees.

Individual Members

233. The simplest way in which people initiate proceedings is by bringing a particular issue to a Member’s attention and asking them to pursue it. Such an initiative may come from individuals or organised groups focused on a particular cause.

234. In many cases a Member will deal with the matter by correspondence and forward an issue raised by a constituent to a Minister or other appropriate authority to respond. These activities are not strictly speaking “proceedings”. But in practice they form a significant part of the constituency workload of Members and offer the public a parliamentary route to pursue issues. Where a Member feels that a ministerial response is inadequate, or where a larger problem is revealed by casework, this may lead to pursuit of the issue through questions, debates, amendments etc. Many issues quite evidently do not lend themselves to

⁵⁷ Parliamentary Affairs 2009 62(4), p 674

⁵⁸ See eg Ev2 [Hugh Bayley MP], Ev3 [William Cash MP]

⁵⁹ See eg Ev 16-22 [David Watts]

being debated or publicly questioned; but others do, as can be seen in the number of half-hour debates instigated by backbenchers on such subjects, and of written questions that have probably been generated by issues raised with a Member by the public. It is also not unusual that a select committee inquiry has its origins in a matter being raised with individual Members.

Petitions

235. The only more or less direct means for those outside the House to initiate proceedings is through presentation of a petition, a practice of great antiquity.⁶⁰ In the earliest parliaments, dealing with petitions for justice was one of a parliament's core tasks. Gradually, as Parliament developed into a legislative and political rather than a judicial institution, petitions ceased to occupy centre-stage. Until the mid-19th century debate could be and frequently was raised on the subject of petitions, either because of the significance of the issue raised or later as a means of delaying other business. A Standing Order [now SO No 153] originally passed in 1842 limited a Member presenting a petition to a statement of the parties whence it came, the number of signatories and the material allegations, together with the “prayer”—the part of the petition which defines what the petitioners seek.

236. Subject to meeting relatively relaxed formal requirements, and to finding a Member willing to present it, any individual can petition the House. The issue does not—unlike a parliamentary question—have to engage ministerial or in any real sense parliamentary responsibility. The petition can either be presented in the Chamber by a Member just before the half-hour end of day adjournment or placed in the bag behind the Chair; the latter is now very infrequent. No debate is allowed, save for a petition complaining of “*some present personal grievance requiring immediate remedy*”, now rarely invoked. The text of the petition is printed in Hansard. In due course all petitions get an answer from a Government department: not the House of Commons to which it was in fact presented. The answer is also printed in Hansard. Copies are sent to departmental select committees; to date none have been explicitly taken up, although the subjects have on occasions coincided with inquiries already under way, such as post office closures.

237. In the 2008–09 session, over 120 petitions were presented. Most addressed local concerns: none the less important for that. Around 10 per cent concerned national policy issues, including foreign affairs issues such as Sri Lanka and Gaza, taxation, immigration, social services and so on. Several raised issues which had hitherto received little attention in the House and might conceivably have repaid inquiry: for example, on the storage of embryos or the control of airguns.

Early Day Motions

238. One of the principal means by which public concerns are mediated through individual Members to become “proceedings” is through Early Day Motions [EDMs]. These are formal motions of no more than 250 words on any subject, drafted so that they are in theory capable of being debated in the House. They are tabled by a Member and printed in the House's daily business papers. Other Members can sign them to express their support.

⁶⁰ See memo from Clerk of the House, First Report of Procedure Committee of Session 2006–07, HC 513, Ev 15–20

They are proceedings of the House in the technical sense that their contents are, for example, protected by privilege from suit for defamation. They are practically never debated or decided, with the rare exception when an Opposition party may choose to use time on one of their days to debate an existing EDM critical of the Government and signed by some Government backbenchers. Unlike petitions from the public, they do not receive any written “response” from Ministers. There have long been critics of the value of this sort of proceeding, which may offer a false prospectus to those outside as to the likelihood of any concrete outcome. EDMs were the subject of a recent inquiry by the Procedure Committee, which reported in May 2007.⁶¹

239. EDMs offer an opportunity for Members to test the volume of support a proposition can gather from among their colleagues: and to give that proposition a public airing. They can be a powerful tool for cross-party initiatives, and for government backbenchers to convey publicly to Ministers some pressing concern. Debate is by no means necessary for this to be effective.

240. Many EDMs have their origins in campaigning of various sorts outside the House. An organisation may invite a Member or group of Members to table an EDM and will then use signature of it as a focus for a campaign in a particular cause, for example by inviting supporters around the country to ask their local MP to sign. In turn, Members may sign existing EDMs because they have been asked by constituents to do so, as a sign of support for a particular cause. An added signature does not of itself trigger anything beyond reprinting the motion in the House’s papers. But EDMs are one means, however imperfect, of reflecting a wide range of popular concerns in the formal papers of the House of Commons, in a way which exists in few other parliaments.

Select committees

241. The public can also express concerns and views through making submissions to select committees, either by sending a letter or memorandum, or participating in a web forum where one is being run on a particular inquiry. Several members of the public indeed submitted evidence to this inquiry. Members of the public have on occasions been invited thereafter to appear in person to give oral evidence to a committee, if they have a particular insight or relevant experience which will assist the Committee in reaching its conclusions. And select committees frequently undertake informal visits around the United Kingdom where opportunities may be provided for public input in meetings or conversations.⁶² It is rare that a committee undertakes an inquiry directly and solely because of public representations to it, but the choice of matters inquired into frequently reflect what its members have been told by the public in person or in correspondence.

⁶¹ Procedure Committee, First Report of Session 2006–07, *Public Petitions and Early Day Motions*, HC 513

⁶² Liaison Committee, First Report of Session 2008–09, *The Work of Committees in 2007–08*, Annex 4, pp 61–65, listing 86 such visits made in 2007–08.

C Reform agenda

This section lists a number of proposed reforms and innovations, including a suggested way forward on e-petitions, changes in current practices and an interim expanded role for the Procedure Committee as a Petitions Committee; the introduction of Motions for House debate; opening up the process of legislation; and serious consideration of agenda initiative and similar tools of direct democracy.

General

242. Critics may with reason suggest that, while the House may be becoming more effective in reaching out to the communities it serves, it is insufficiently responsive to pressures from outside to debate or consider some issues of concern to the population. These often do not seem to be reflected in what is visible of parliamentary proceedings. If the Government and the Opposition do not want an issue debated, it will not be, save as a result of the exertions of individual members; and the options open to individual Members are limited. It may be thought that debate on issues such as assisted suicide or organ donation or same-sex partnerships was largely absent from the parliamentary agenda at a time they were being actively canvassed outside the House. In foreign affairs, a country or region of concern can easily fall off the political agenda.

243. The range of issues in Early Day Motions already on a notional parliamentary agenda, and indeed on the Number Ten petitions website, demonstrate that there will always be controversies not echoed in Parliamentary debate even if the House sat in permanent session. But we acknowledge that the range of subjects that are debated and inquired into by the House and its committees could usefully be broadened yet further. Enhanced possibilities for direct or indirect public initiation of proceedings could possibly ensure that matters of great public concern did not seem to be ignored.

244. It is not only because of a sense that there are matters deserving of debate which are missing from the parliamentary agenda that enhanced public participation is sought: it is also seen by some as a desirable end in itself. Reconnection—or indeed connection—of the public with Parliament is essential if our democracy is to thrive, whatever effect opportunities for participation have on the agenda of the House.

245. We set out below several proposed changes to the existing mechanisms used: and examine one area where there is a prospect for more radical innovation.

Petitions

246. As a result of the recent examination by the Procedure Committee, a number of improvements have been made recently to the procedures and practices on petitions.⁶³ In particular Government replies are now given to all petitions, and these replies are overall better and swifter. The petitions system is still not widely used by the public. It can easily be talked down. But it should be noted that for all its failings it does offer an unconstrained right for any Member to present a specific public grievance on the floor of the House, albeit

⁶³ Procedure Committee, First Report of Session 2006–07, *Public Petitions and Early Day Motions*, HC 513

near the end of a parliamentary day, and an opportunity for a petitioner to get at least some formal written response from Government.

Petitions: e-petitions

247. The Procedure Committee made detailed proposals for an e-petitions system in April 2008.⁶⁴ In essence, this would involve the House hosting a site where over a limited period of time public petitions could be signed up to electronically by anybody interested, so long as “facilitated” by a Member. These petitions would form a sort of public EDM system. At the end of the period the petition would be presented to the House and would become thereby part of the proceedings of the House. Signatories would be able to opt into receiving an e-mail on progress of the petition and up to two e-mails from their constituency Member. All petitions would receive a reply from the Government.

Number Ten petitions website

248. The proposed system drew on some aspects of the Number Ten petitions website introduced in November 2006. That site has attracted criticism, but it would be facile to dismiss the subject matter of Number 10 petitions simply because of some well-publicised foolish petitions. The most heavily signed petition so far on that site has been a petition of 1.8 million people to scrap the vehicle tracking and road pricing policy.

Debates

249. The scheme proposed by the Procedure Committee would not automatically provide for further proceedings on any specific petition but would offer some time for debate on selected petitions. In its May 2007 report the Committee had recommended a half-hour slot for members to initiate a debate on a specific petition at the end of Thursday sittings in Westminster Hall.⁶⁵ In its April 2008 Report, the Committee recommended three 90 minute slots a year in Westminster Hall to debate one or more e-petitions selected by the Procedure Committee “*in a manner similar to the way the Liaison Committee chooses the select committee reports to be debated in Westminster Hall*”.⁶⁶

Government response etc

250. In July 2008 the Leader of the House welcomed the Procedure Committee’s Report in a written ministerial statement and anticipated a debate in autumn 2008. But no such debate was scheduled. In December 2008 the Committee received a letter from the then Deputy Leader asking it to consider a lower-cost option. In May 2009 the Committee again set out its views and asked the Government to think again.⁶⁷ On 8 July 2009 in a letter in response to the Committee’s latest report the Deputy Leader of the House, expressed the hope that “*the new Committee [ie the Reform of the House of Commons Committee] will be able to draw on the Procedure Committee’s findings in considering the role that a simpler,*

⁶⁴ Procedure Committee, First Report of Session 2007–08, *e-Petitions*, HC 136

⁶⁵ HC 513, para 48

⁶⁶ HC 136, paras 113–4

⁶⁷ Procedure Committee, Second Report of Session 2008–09, *e.Petitions: Call for Government Action*, HC493

*cheaper form of on-line communication might take, whether in the form of an e-Petitions system or something slightly different”.*⁶⁸

251. There are evidently differences of opinion in the House, and between Ministers and the Procedure Committee, on the best way forward on e-petitions. There is a consensus that some sort of electronic petitioning system would be valuable. Ministers suggest that the Procedure Committee’s proposal is unduly complex and costly, in comparison with the costs attributed to the Number Ten site. The Procedure Committee has doubts as to the allegedly much lower costs of the Number Ten site. But in any event parliamentary costs are under pressure like all other costs in the public sector, and it would be foolhardy to embark on a scheme without a clear idea of the balance of cost and the benefit it might bring in terms of public engagement.

252. But what is curious is that in all the to-ing and fro-ing the House has not been given the opportunity to pronounce upon the Procedure Committee’s scheme one way or the other. It should of course be for the House and not for the Government to decide if it wishes to spend public money on the scale recommended. This is another example of where Ministerial control of the agenda denies a Committee set up by the House the opportunity to bring its proposals before the House. Under the reformed system we propose it would be for the Backbench Business Committee to ensure that such a proposal was at least debated in the House.

253. The estimated level of expenditure on the Procedure Committee scheme arises in some measure from the proposed link between all those who sign a petition and their constituency Member. This would require a complex and relatively staff-intensive system for matching up the postcode of each signatory with the appropriate Member. This and other aspects of the scheme would benefit from further detailed discussion and analysis. The Finance and Services Committee and ultimately the House of Commons Commission would have to find the resources for the scheme. The House would no doubt be assisted by their views and those of the House’s Management Board in advance of reaching a view.

254. We recommend urgent discussions among all those involved in the e-petitions scheme, with a view to bringing to the House in the early part of 2010 a costed scheme which enjoys the support of the Member bodies engaged: that is, the Finance and Services and Procedure Committees, and the House of Commons Commission.

A Petitions Committee?

255. A number of recent commentators have called for the establishment of a Petitions Committee, along the lines of those in operation in several other European countries, and more recently in Scotland.⁶⁹ Typically, such a committee meets regularly to examine all petitions received and decide what if any follow-up action to take. Such actions may include referral to another committee, typically a specialist subject committee; offering the petitioner[s] the opportunity to present a case in person; investigating the allegations itself

⁶⁸ Procedure Committee, First Special Report of Session 2008–09, *e-Petitions: Call for Government Action: Government Response to the Committee’s Second Report of Session 2008–09*, HC 952

⁶⁹ Ev21, para 27 [The Hansard Society]; Ev33, paras 7-19 [Unlock Democracy]; Ev7 [Michael Meacher MP]; Ev12 [Lord Norton of Louth]; Ev15 [Democratic Audit]

and reaching conclusions; and ultimately seeking a change of some sort in policy or practice.

Experience in other legislatures

256. The Procedure Committee looked in depth in its 2006–07 inquiry at the systems in operation in Germany and Scotland of Petitions Committees, and visited Berlin and Edinburgh for that purpose. It concluded that there was not a case for establishing a Petitions Committee along the lines of that in operation in Berlin and Edinburgh. Instead, it proposed a more active consideration by departmental select committees of the petitions which had been forwarded to them as a result of an earlier Procedure Committee recommendation of 2004.⁷⁰ The Scottish Parliament instigated a review of the operation of its Petitions Committee in 2006, which presented a rather mixed verdict.⁷¹ In 2008 the House of Representatives in Australia set up a Petitions Committee to investigate and report on petitions and forward selected ones for ministerial response.

Role of a committee

257. Opinions vary on the possible merits of establishing a select committee to scrutinise or investigate selected petitions. The parliaments which have a thriving petitions committee do not necessarily have the same strong Westminster tradition of Members pursuing constituency casework, and some of their workload would seem more properly to fall to individual members here. Furthermore, cases pursued may be matters which in the UK would be within the responsibility of elected local authorities; it would be plainly undesirable for the House to encourage the view that those dissatisfied with a local authority decision or policy could “appeal” to the House. Local democracy and accountability need strengthening, not weakening.

Formal referral to other committees

258. Referral by one select committee to another does not sit easily in the Westminster system of relative committee autonomy. A departmental select committee at Westminster is not likely to relish having its agenda set for it by a fellow committee, regarding itself as best placed to judge whether or not to follow up on a petition. There has been no perceptible outcome of the current system by which petitions are forwarded to departmental select committees.

Petitions: hard copy

259. The benefit of an electronic system is in the ease with which support can be gathered from around the country and indeed the world, and the accessibility to all concerned of the text. But petitions in their current format still have a role to play. Many people are happy to sign petitions in hard copy. And many people are not connected to the web, so an exclusively web-based system would be inaccessible to many. Democratic Audit warned of the danger of unintentionally excluding people by reliance on electronic means.⁷² If

⁷⁰ Procedure Committee, HC 513, paras 18–27, 39–41

⁷¹ SP Paper 654, Scottish Parliament Petitions Committee, October 2006

⁷² Ev33 para 7

proceedings can flow from an e-petitions scheme, they should also be able to flow from a “non-electronic” petition. **It is important that the focus on an e-petitions scheme does not displace concern with “standard” petitions, which are of equal validity.**

Petitions: Case for change

260. **The House cannot be satisfied with its current procedures for petitions.** Whether electronic or paper-based, they should be scrutinised by some organ of the House capable of deciding two things: does the matter merit investigation by the House in some way, and does it now or in due course merit debate? Experience suggests that if this is not a duty of a single identified committee then it will not be done at all.

Petitions Committee: Conclusion

261. Scrutinising petitions and investigating and reporting on some requires the commitment of resources. Dr Carman, who reviewed the Scottish system, noted that

Considering petitions is a time-consuming enterprise involving numerous discussions between parliamentary staff and petitioners, significant research efforts, time and resources devoted to contacting and following up on enquiries to Ministers and other public bodies, legal enquiries, records management and interactions with other committees... If the system becomes over-burdened, it cannot meet the needs and desires of petitioners.⁷³

Lord Norton of Louth warned that

There needs to be sufficient resources available to the Committee to process and assess petitions. Inadequate resources, be it in terms of staff or time, can fundamentally undermine the utility of the process.⁷⁴

Even a cursory look at the subjects raised on the Number Ten website, as well as the petitions presented to the House in the current session, demonstrates the scale of Member and staff commitment required. **We are cautious about recommending a full-scale free-standing Petitions Committee at this time.**

Procedure Committee role

262. The Procedure Committee envisaged that it would eventually play the main role in determining which petitions might be the subject of a debate. We do not envisage that the Procedure Committee would be held out to potential petitioners as a court of appeal on any matter on which they wished to petition the House, but it does offer an existing means of exercising some quality control over the current system, which is effectively an interim one until an acceptable e-petitions scheme is introduced. It might also function as a scrutiny committee. Its inward-facing procedural role would combine with an outward-facing role in relation to petitions.

⁷³ SP Paper 654

⁷⁴ Ev12

263. The Committee could at its regular meetings look at the petitions received and decide if any merited special treatment or raised immediate issues requiring further inquiry or a special reference to a departmental select committee. We do not envisage that more than a handful in any session would require such treatment. The Committee would then await a Government response. If that was unduly delayed then the Committee would have the errant department chased up. Having read the response, and any material supplied to the Member and/or petitioner by the House authorities, the Committee would decide if the issue merited debate. It would in sum operate in a scrutiny and not investigative mode. Such a task could in time be a potentially significant burden on Members and could involve at least modest additional staff cost; but in advance of an e-petitions system we do not believe it would be unduly onerous. The best thing is to try it and see. **We recommend that the Procedure Committee's terms of reference be broadened, and its title changed to Procedure and Petitions Committee, so as to enable it to exercise scrutiny of the petitions process, on an experimental basis from January 2010 until the end of the Parliament; and that it make a report of its experience before the end of the Parliament so that this can be available to a new Parliament.**

Proceedings on Petitions: Debates

264. If there is in place a reformed and refreshed petitions system, it must be right for it to be reflected in the business of the House. It is of course already open to a Member to seek an adjournment debate on the subject matter of a petition. The Procedure Committee envisaged three 90 minute slots in Westminster Hall each session. To give greater flexibility the time could be taken in 30 minute slots. The Committee proposed that it should take the role played by the Liaison Committee in relation to debates on select committee reports. We envisage the member who presented the petition taking the lead in applying to the Procedure Committee for a debate. The Procedure Committee would make its views known to the Backbench Business Committee. It would then be up to the Backbench Business Committee to allocate time in Westminster Hall, or to recommend to the House a short debate on the floor. **We recommend a trial in 2009-10 in advance of e-petitions of debates on petitions, subject to the presentation of petitions of sufficient significance.**

Response from House

265. A number of petitions now—and the same is likely to be true in a reformed system—raise issues which have been the subject of some recent debate or other proceedings in the House. The “responses” from departments are often helpful in setting out the issue as seen from Whitehall, but understandably make little or no reference to the House’s own proceedings. Petitioners may well like to know what has been said or done not just by Ministers but more widely in a parliamentary context. **We recommend that the House authorities ensure that petitioners are informed of recent relevant House proceedings.**

Proceedings in House

266. No notice is required when Members intend to present a petition in the House at the end of the day’s business. All that a Member has to do is have the petition checked for orderliness by the Journal Office and then inform the Table Office of the desired date of

presentation.⁷⁵ This relatively casual procedure has the disadvantage that no notice appears on the Order Paper. Hardly anybody knows that a petition is to be presented. **It would give petitions a slightly enhanced status if notice was required and when given if it appeared on the House's Order Paper at the appropriate place.**

267. Under current procedures, a Member who has presented and read out the prayer of a petition, goes behind the Speaker's Chair and places it in the bag kept there for that purpose. That gives an unfortunate and misleading impression of neglect, given that the petition is in fact subsequently printed in the House's record and replied to [see para 246 above]. **We consider that it would be more dignified if, as is the case with Bills presented to the House by backbench Members, the front sheet of the petition was taken to the Table, and an appropriate announcement read by the Clerk.**

Regional grand committees

268. We would also welcome using the sittings in the regions of Regional Grand Committees as a means of greater public participation. One small way of taking this forward would be to enable Members to present petitions to an appropriate Regional Grand Committee at the start of the sitting, where the subject-matter was of regional or local significance.

Early Day Motions and Motions for House debate

269. EDMs are an indirect form of public initiation of proceedings. It is sometimes suggested that an opportunity for debate and decision on selected EDMs on the floor of the House would both nourish public engagement with the EDM process, and might act as a control on the subject matter, weeding out the fatuous or trivial. An EDM could be automatically identified for debate either as a result of the number of signatories—weighted as desired to encourage cross-party initiatives—or by a process of selection by, for example, the Backbench Business Committee, based on criteria other than the merely mathematical.

270. We share the general view that there would be benefit in having a regular slot for a debate on a motion tabled and supported by a number of backbenchers, and capable of being decided in the House. Until 1994 backbenchers balloted for the opportunity to have such a motion debated on a Friday. A ballot is used for prioritising Private Members' legislation, and to allocate slots for backbench adjournment debates and is thus well understood by the House. But it is not widely used outside the House and is inevitably arbitrary in its effects.

271. We consider that it would be wiser to leave the existing system of EDMs to fulfil its present functions, and create alongside it a bespoke system of producing Motions on subjects which a number of backbenchers genuinely felt required *debate*—as opposed to, for example, unexceptionable motions praising an organisation, or purely politically partisan motions. Members could be constrained to signing one “*Motion for House Debate*” over a given period of, say, a month. At the end of that period, the number of signatories could be weighted by party grouping to create an order of priority, and a

⁷⁵ Procedure Committee, HC 513, Ev17, para 17

selected motion from among the most heavily supported could be given a guaranteed debate slot in the House or Westminster Hall by the Backbench Business Committee.

272. It would be open to the public to seek such debates through Members and to lobby individual Members to sign such an application. Members would have to choose from a number of options. The responsibility would rest with backbench Members, accountable to their constituents. There would no doubt be some “game-playing”. The system would have to allow for Members to switch their signatures in the event of a more “attractive” Motion being tabled later in the period. **We recommend that a scheme to this effect be worked up by the House authorities for piloting in the new Parliament.**

Legislative Process

273. The legislative process is already significantly influenced at all stages by public opinion, organised through interest and pressure groups. From the identification of an issue as requiring legislation, through the process of consultation in drawing it up, to debate and scrutiny in both Houses, organisations are engaged in pressing home their particular concerns. Backbenchers themselves have limited opportunities to influence legislation, including the possibility of service on a public bill committee and the opportunity to move or support amendments at report stage. Concerns from the public in general and from organisations in particular are often reflected in Private Members’ legislation.

274. An individual citizen, however, has few opportunities for involvement in the legislative process, beyond taking opportunities to influence individual Members. There may be an opportunity to submit evidence if the bill is undergoing pre-legislative scrutiny by a select committee. And there is a largely theoretical possibility of submitting written evidence if and when evidence is heard on a Bill at the outset of public bill committee proceedings. To date there have been very few individual submissions

275. The process of Second Reading of a bill followed by public bill committee followed by report stage is in technical terms fairly transparent, in that the relevant papers are findable on the website and the process is foreseeable. But in the same way that many consultations carried out by Government departments are conducted via a departmental website and genuine public engagement is not positively facilitated, nowhere are the public positively invited to comment in any detail on the provisions of Bills, or to propose amendments which might at least be worthy of debate. Nor are the legislative language and formats employed designed to be user-friendly in the wider world: they read as what they are, draft legal texts.

276. Proposals have recently been made for the introduction of an explicit opportunity for public comment on the details of legislation, immediately after Second Reading: a “public reading” stage.⁷⁶ In the past there have been similar proposals for every Government Bill to be the subject of a web forum. A procedure could also be envisaged for a mandatory period of pre-legislative scrutiny, either of a draft text or of a concepts paper setting out the thinking and objectives of the forthcoming legislation.⁷⁷ The latter would be more

⁷⁶ Speech by Rt Hon William Hague MP, 5 October 2009, Conservative Party Conference

⁷⁷ Ev 10 [Lord Norton of Louth]; Ev 16 [Better Government Initiative]

susceptible to public engagement. The publication of a draft legislative programme goes only some way along that path. Subject to the caveats we have expressed above about the appetite for such intense engagement, and to ensuring that the result is not to diminish the already short time in which elected Members have to examine a Bill in detail, some such opening up of the current system would be welcome. **Opening up the process of legislation and giving a real opportunity to the public to influence the content of draft laws should be a priority for consideration in the next Parliament. That is an issue for the House and not for Government.**

D Going further

General

277. The dominating characteristic of the current system—and some would argue a sign of a mature representative democracy—is that initiation of proceedings is dependent on the mediation and intervention of an elected Member. This may be seen as a “gatekeeper” or triage function, since Members are seen as best placed to judge whether, and if so when and how, an issue needs to be ventilated in debate or is better handled in other ways. It is by the same token only also through Members that the public can have a grievance against a public body explored by the Parliamentary Ombudsman, whose reports of unsatisfactory outcomes can be and are taken up by the Public Administration Committee in evidence and reports.

278. In 2004 an independent inquiry chaired by Baroness Kennedy of The Shaws was set up to consider how political involvement and engagement in Britain could be increased. It reported in 2006 in a report entitled *Power to the People*. It made a number of recommendations on public involvement and the introduction of rights of initiation. In its wake several campaigns have been launched to press the case for greater citizen initiative rights. A paper from the distinguished constitutional expert Professor Vernon Bogdanor urged us to consider some system of popular initiative.⁷⁸ Unlock Democracy made a submission to us on this subject.⁷⁹ Michael Meacher MP proposed a form of agenda initiative.⁸⁰ In April 2008 Douglas Carswell MP introduced a Bill to permit members of the public to initiate legislation, the Citizens’ Initiative (Legislation) Bill. This would have led to the introduction of six bills with the most public signatures. In other countries there are a range of tools of direct democracy, many of which can be used to trigger referendums of one sort or another.

279. We examine briefly the initiative model which we judge most likely to command parliamentary support, as one which does not weaken Parliament by by-passing it but might reinforce its authority as the central place for national debate. It was particularly drawn to our attention by Unlock Democracy.

⁷⁸ Ev 25-27

⁷⁹ Ev 34, paras 20-26

⁸⁰ Ev 7

Agenda initiative

280. “Agenda initiative” is the generic term used by proponents of direct democracy for procedures designed to allow for public initiation of proceedings in a parliament or similar body, but which falls short of being able to bring on a national or local vote or a binding or non-binding referendum. In the USA they are known as “indirect initiatives”.⁸¹ Typically, such a process sets a numerical threshold of support for an initiative to begin, provides some control on the topic, and then allows a period in which proponents can gather support in a specified way. If a threshold figure is reached, expressed as a number of supporters or a percentage, then the parliamentary body must consider and/or act on the proposal.

281. Agenda initiatives are relatively common in modern constitutions, notably in South America and in the democracies of central and eastern Europe, such as Poland, where there have been more than 20 such initiatives. They also operate at sub-national level, in particular in the USA and Scandinavian countries.

282. Among the parliamentary democracies of Western Europe the process has been most frequently used in Austria, where there have been over 30 such initiatives since 1964. It is apparent that they are used there by opposition parties as well as organisations to gather and demonstrate support for policies. In the past such initiatives have led in Austria to reforms of state broadcasting governance, the 40 hour week and school re-organisation.

Local authorities

283. Agenda initiatives and similar “petition-based” practices will soon be in operation in England and Wales at local authority level. Chapter 2 of the Local Democracy, Economic Development and Construction Act obliges local authorities to provide an e-petition facility, and to make a scheme for the handling of petitions. The scheme has to allow for a number of possible outcomes, including holding an inquiry or a public meeting or commissioning research. Section 15 of the Act introduces a category of locally-signed petition, entitled “*petition requiring debate*”. It is envisaged that such a petition signed by, typically, 5 per cent of a local authority population would oblige the authority to consider the petition at one of its meetings.

European Union

284. New Article 8B.4 of the Treaty on European Union inserted by the Treaty of Lisbon would allow for an agenda initiative whereby “*not less [sic] than one 1 million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties*”.⁸² The detailed regulations to clarify how this is to work in practice have not yet appeared. This is not a close parallel; the procedure would affect a non-parliamentary body and merely “invites” it to submit a proposal; but it plainly reflects the enthusiasm some feel for agenda initiatives.

⁸¹ see Initiative and Referendum Institute website, www.iandrinstitute.org

⁸² Cmnd 7294, page 17

A Direct Line to Westminster?

285. Serious consideration should be given to following the route taken in the Local Democracy, Economic Development and Construction Act with respect to local authorities. The equivalent threshold would require several million signatures, which seems oppressive. On the other hand, some threshold is required. Numbers alone, especially in an electronic age, easily mobilised by organised groups, should not be enough to guarantee attention. That is why “deliberative democracy” is thought by many to offer more promising possibilities. Unlock Democracy advised that such an initiative should be “difficult but possible”.⁸³ That seems right.

286. If our principal recommendations are implemented Members will have greater access to the agenda on behalf of their constituents. But the House should remain open to the possibilities afforded by mechanisms such as the agenda initiative and similar proposals to involve people more directly in the parliamentary process. **We recommend that the House commission an investigation of the practicalities of applying at a national level the procedures applied to local authorities for “petitions requiring debate”, drawing on local and international experience, including the appropriate thresholds to be applied.**

E Conclusion

287. It is for Members collectively and individually to represent all their constituents, and to ensure that their concerns are properly represented in the House of Commons. The recommendations made in this report should make the proceedings of the House more responsive to public concerns, by giving backbench Members a greater say over the House’s agenda. Our aim is to strengthen a representative democracy, not supplant it. As the memorandum from Democratic Audit put it

...proposals that will enable the public to initiate debates and proceedings in the House, and to participate in them, will deepen the quality of democracy in the United Kingdom. But that deepening can only take place if Parliament has first regained a real measure of self-government and with it, the ability to respond to the public.⁸⁴

288. The House of Commons is nothing if its proceedings fail to reflect the concerns and aspirations of the people. In this part of our report we have looked at ways of enhancing some existing processes and procedures. We make a number of proposals for extending the antiquated petitions procedures we have. And we suggest that the House remains open-minded on the prospect for agenda initiatives, whereby people can get a matter onto the agenda of the House for debate, and investigate the practicalities of such a procedure.

289. It is sometimes suggested that there is an opposition between representative democracy and more direct forms of political activity. This is not our view. Representative democracy is indispensable, but it can be nourished by the exploration of other democratic possibilities; the opportunities for doing so are now greater than ever before and should be seized. Democracy is about culture and not merely structures; but this needs to be cultivated by practice. The challenge for the House is to understand this and to respond to it.

⁸³ Ev35, para 24

⁸⁴ Ev13, para 2

6 CONCLUSION

I then ventured to tell this House that its business was not to govern, but to call to account those who govern. (Gladstone, Feb 1855)⁸⁵

290. Everything in this report is aimed at making the House of Commons matter more. It should sit, in fact and not just in name, ‘at the apex of a system of accountability’. A flourishing representative democracy demands an effective and vital House of Commons, with strong government improved by strong accountability. This is also the best antidote to the political disengagement and anti-politics that characterises our age, and which is dangerous in its consequences.

291. It is our contention that, at present, the House of Commons is not as effective or vital as it could—and should—be. This was so long before the expenses scandal that has rocked it to its foundations and done so much damage to its reputation. The task of rebuilding confidence in the House, both within and without, is immense; but it is also urgent. Paradoxically, the present crisis has also presented an opportunity at least to begin this task.

292. This is not to suggest that a cultural problem (in this case, of standards and behaviour) can be resolved by a structural solution. Nor to deny that there may be political reforms needed that go beyond anything discussed in this report. Yet we have to start somewhere; and the changes we recommend in how the House works are designed to make an immediate and practical contribution to the enterprise of rebuilding trust in the ability of the House of Commons to act as the vigorous guardian of democratic accountability.

293. That is why we want the House to control more of its own business; boost the standing and authority of its select committees; and connect more strongly with public concerns. From these key changes could flow many associated opportunities for the House to work in new and innovative ways as other bodies are having to learn to do. This will only happen if Members are fully engaged and committed to the task. We believe that the public wants to see its House of Commons restored to robust health. The challenge for its Members, both present and future, is to ensure that this happens.

⁸⁵ HC Deb, 23 February 1855, col 1826

Conclusions and recommendations

A PRINCIPLES

1. (a) We should seek to enhance the House of Commons' control over its own agenda, timetable and procedures, in consultation with Government and Opposition, whilst doing nothing to reduce or compromise such powers where they already exist;
- (b) We should seek to enhance the collective power of the Chamber as a whole, and to promote non-adversarial ways of working, without impeding the ability of the parties to debate key issues of their choosing; and to give individual Members greater opportunities;
- (c) We should seek to enhance the transparency of the House's decision making to Members and to the public, and to increase the ability of the public to influence and understand parliamentary proceedings;
- (d) We should recognise that the Government is entitled to a guarantee of having its own business, and in particular Ministerial legislation, considered at a time of its own choosing, and concluded by a set date;
- (e) We should recognise that time in the Chamber, Westminster Hall and committees is necessarily limited, and therefore should work broadly within the existing framework of sitting days and sitting hours;
- (f) Changes should be devised with sensitivity to real-world political constraints, and in a way which maximises the likelihood of achieving majority support in the House.

These principles have informed our deliberations and are reflected in our approach to the specific matters on which we have been asked to report. We aim to make the Commons matter more, increase its vitality, and rebalance its relationship with the executive. (Paragraphs 22 to 35)

B DEPUTY SPEAKERS

2. It must in our view be right that a transparent means be found for the House as a whole to elect the House's three principal office-holders below the Speaker. As we have discovered in our examination of the appointment of members and Chairs of select committees it is not easy to find a generally acceptable and fair procedure. It is now for the House to consider the Procedure Committee's Report. (Paragraph 40)

C SELECT COMMITTEES: CHAIRS AND MEMBERS

Terminology

3. In this report we will wherever possible use the term “Chair” to denote the individual chairing a committee, and “chair” to denote the office held, save where a particular officer is meant, such as the Chairman of Ways and Means. We hope that the House will soon follow this practice. (Paragraph 37)

Principles

4. (a) It should be for the House and not for the Executive to choose which of its Members should scrutinise the Executive: the House should also have a strong if not decisive influence on the identity of the Chair.
 (b) The system by which parties select names to put forward to the Committee of Selection, and by which the whips divide up chairmanships between the parties, is very far from transparent.
 (c) The credibility of select committees could be enhanced by a greater and more visible element of democracy in the election of members and Chairs.
 (Paragraphs 72–74)

Conclusion

5. We recommend an initial system of election by the whole House of Chairs of departmental and similar select committees, and thereafter the election by secret ballot of members of those committees by each political party, according to their level of representation in the House, and using transparent and democratic means. The committees within this system should be those appointed under SO No 152 [the departmental select committees] together with the Environmental Audit Committee, the Public Administration Committee and the Committee of Public Accounts. We have concluded that of the four options we considered this is the system most likely to demonstrate the determination of the House more effectively to hold the executive to account, to give more authority to the scrutiny function of Parliament and at the same time to preserve the effective functioning of select committees. (Paragraph 80)

Election of members

6. We propose that in the new Parliament members of departmental and similar select committees should be elected by secret ballot within party groups, by transparent and democratic processes, with the outcome reported to and endorsed by the House. Party groups would in effect be acting on behalf of the House as electoral colleges. They would therefore expect to act under some constraints as to the methods used to elect committee members. We do not think it necessary that the House should interfere so far as to lay down one particular method of election rather than another. But the method chosen

should be one approved by the Speaker, following independent advice, as transparent and democratic: “kite-marked” as legitimate in effect. Officers nominated by the Speaker would be obliged to assure themselves that the processes followed by each party, as notified by its Leader, were indeed in accordance with these norms. And each party would be obliged to publish the method it had adopted. (Paragraphs 87–88)

Distribution of chairs

7. For the first running of a new system we recognise that the House may prefer to rely, as it has for many years, on the party managers coming to an agreement on distribution of chairs on the basis of established conventions. But we do recommend a greater degree of transparency. We recommend that the House return to examination of this and other options for distribution of the chairs when the rest of our recommendations and conclusions are reviewed two years into a new Parliament. (Paragraphs 82–83)

Appointment

8. We consider that under any system the principal select committees should be nominated within no more than six weeks of the Queen’s Speech and that this should be laid down in Standing Orders and capable of being enforced by the Speaker. (Paragraph 56)

Size, number and attendance

9. We propose that the new House of Commons reduce the size of its standard departmental committees to not more than 11; Members in individual cases can be added to specific committees to accommodate the legitimate demands of the smaller parties. We also recommend that the practice of appointing parliamentary private secretaries and front bench Official Opposition spokesmen should cease. We believe there should be clear consequences for unreasonable absence from select committees. The House must also seek to reduce the numbers of committees, ending overlapping or duplicate remits and rationing the scarce resource of Members time and commitment. (Paragraph 55)

Intelligence and Security Committee

10. It is unsatisfactory that any reforms we recommend to the system of election of members and Chairs of the House’s select committees cannot be applied at the same time to the Intelligence and Security Committee. We recommend that the Committee be regarded as one whose chair is held by convention by a Member from the majority party; that candidates wishing to stand for election by the House to the chair of the Committee should be obliged to seek in advance of the ballot the formal consent of the Prime Minister for their candidature, to be

notified in writing; and that thereafter the procedure should be as for other departmental and similar select committee chairs. (Paragraph 59)

Role, resources and tasks of select committees

11. We consider that the Liaison Committee should re-examine the current role of select committees, their resources and their tasks, and in particular how to deal with the increasing demands of time made of Members as their role grows. (Paragraph 93)

D BUSINESS IN THE HOUSE

Time

12. The default position is that time “belongs” to the Government, subject to a number of exceptions and practices which allow others to influence and even determine the agenda. Put crudely, and subject to maintaining a majority, the Government enjoys not merely precedence but exclusive domination of much of the House’s agenda, and can stop others seeking similar control. (Paragraph 126)
13. Ownership of the time of the House is to be distinguished from responsibility for sponsoring or promoting the business before it. There is a strong case for regarding all time as the House’s time. It is not the Government that seeks debate but the House: what the Government needs are the decisions which enable it to carry out its programme. (Paragraph 129)

Agenda

14. The agenda should fall to be decided by the House, if need be by a majority. The straightforward way of doing that is by putting a motion to the House on a set day and time each week. A draft agenda for the second week should also be announced to the House at the same time as the formal agenda Motion, and on broadly the same provisional basis as at present. (Paragraphs 169–170)
15. A votable motion on the agenda provides a traditional accountability mechanism for such decisions, and ultimately a sanction were the wishes of a majority of the House to be misjudged or ignored. Any programme which requires the positive approval of the House will necessarily be drawn up—and we deal below with how and by whom it is to be drawn up—with the intention of satisfying a clear majority of members and delivering to the Government sufficient time to get the business it initiates through the House. (Paragraph 174)
16. There is no reason why there should as a rule be a vote on the agenda, all the more once it has been the subject of wider discussion than at present and will have been exposed in draft the previous week. The Speaker's power of selection of amendments would be required to ensure that merely destructive

amendments were not selected and that a proposition coming from the House Business Committee (described below) was treated with respect. (Paragraph 171–172)

Backbench business

17. Backbenchers should schedule backbench business. On some business there needs to be an explicit partnership between Ministerial and backbench scheduling. But it is in our view time for members of the House, through a committee of their elected colleagues, to take some responsibility for what the House debates, when and for how long; and also for what it does not wish to debate, either at all or at its current length. (Paragraph 176–178)
18. We therefore recommend that a Backbench Business Committee be created. It should be comprised of between seven and nine members elected by secret ballot of the House as a whole, with safeguards to ensure a due reflection of party proportionality in the House as a whole. The Chair would also be elected by ballot of the whole House. Frontbench members of all parties and PPSs would be ineligible for membership of the committee. The committee would have its own secretariat, provided by the Clerk of the House. To ensure that it was fully informed on a range of considerations affecting the scheduling of debates, such as the availability of Ministers, it might wish to invite the attendance of the Government's business managers for part of the meeting. The committee would meet weekly to consider the competing claims for time made by select committees and backbenchers in groups or as individuals for the protected days and/or time-slots available in the two weeks ahead, and then to come to a firm view on the backbench business in the week immediately ahead. (Paragraph 180)

Ministerial business

19. Ministers should continue to have the first call on House time for Ministerial business, meaning Ministerial-sponsored primary and secondary legislation and associated motions, substantive non-legislative motions required in support of their policies and Ministerial statements on major policy changes. (Paragraph 182)
20. The Government's right to have the opportunity to put its legislative and other propositions to the House, at a day of its choosing, should not however extend to deciding without any reference to the House for how long these are to be debated by the House. (Paragraph 184)

Opposition business

21. The Official Opposition and other Opposition parties should continue to have a pre-emptive right to their fixed number of days, to be spread evenly through a

session. There is a case for the Opposition parties to be given more say on when they can take such a day or half day. A wider range of business could be taken rather than what has now become the standard fare on Opposition Days of two debates of three hours each, dominated by the front-benches. We also consider that the subjects of Opposition Day motions should normally be laid down with at least two days' notice. (Paragraphs 188–190)

Select Committees

22. Select committees, including those concerned with the House's own affairs, deserve greater access to the agenda, so that they can have their reports debated and decided upon a substantive motion, at a time which best suits them and the House. (Paragraph 191)

Backbenchers

23. Individual backbenchers must continue to be able to raise subjects as adjournment debates in the Chamber and in Westminster Hall, and to press legislation through Private Members' Bills, as well as participating in debate and questioning. In addition, any revised system must respond to the widespread sense that the right should be restored to Members to get a substantive motion put to the House and decided. (Paragraph 192)

Overall system

24. In summary, we envisage a system whereby Ministers indicate as now the business they intend to bring forward, principally legislation and related motions. It would not be realistic, or indeed reasonable, to expect Government to surrender control over these decisions to a committee of backbench Members. Ministers quite rightly want to determine the broad timing of the legislation they sponsor. At the same time, a committee of backbenchers should be set up to bring forward proposals to the House for backbench business. The Opposition should have some greater say than at present in when it uses its Opposition Days. Select committees and backbench Members deserve enhanced access to the House agenda. By giving Members greater control of the agenda, we are confident that the House of Commons will be strengthened. (Paragraph 195)

House Business Committee

25. Our preferred solution is to have two committees. The task of assembling a draft agenda to put to the House should be undertaken by a unified House Business Committee, comprised of representatives of all parts of the House with a direct interest: backbenchers, Government and Opposition. The House Business Committee should be chaired by the Chairman of Ways and Means (the Deputy Speaker), whose would have been elected by the House as a whole to that office with this function partly in mind. It would have a secretariat combining the

House officers who support the Backbench Business Committee and the Government officials who currently support the usual channels. (Paragraph 200)

Notice and flexibility

26. We would expect a greater discipline to be applied in giving advance notice of motions, to the extent of allowing the Speaker to refuse to put a Motion to the House of which sufficient notice had not been given. But tying the agenda down in a Resolution of the House should not be allowed to impose excessive rigidity on the House's business. (Paragraphs 207–208)

Timetabling

27. Some advance timetabling is fairer to the House and ensures that debate cannot be used to talk out a specific proposition where it is reasonable to expect the House to express a view. But we would expect such a power to be used sparingly. (Paragraph 209)

Substantive Motions

28. In general terms we favour more use of substantive motions so that the House can come to a recorded conclusion which will then carry weight. (Paragraph 210)

Protected time for backbench business

29. Ideally, if a particular day is to be protected, we would like backbench business to be scheduled on Wednesdays, with Thursdays once again becoming a “main” day for debate on Government legislation and other matters. We ask the Chief Whips to pursue the suggestion that Prime Minister's Question Time be timetabled for Thursday afternoon. (Paragraph 213)
30. Whichever option emerges from the debate and discussion which we expect to follow this Report, some time must be identified and protected for backbench business, not less than the equivalent of one day a week. We propose that Standing Orders should be sufficiently tightly drawn to guarantee this, but with some flexibility, so that the Backbench Business Committee can take matters forward. (Paragraph 218)

Sittings

31. We recommend that the House in the new Parliament should be asked to decide on the issue of September sittings, along with other sittings issues, sufficiently early in its life to be able to decide whether to sit in September 2010. We do recommend that the House should at least decide for itself when it sits and does not sit. (Paragraphs 100–101, 175)

Sessions and carry-over

32. It may be time to re-examine the need for annual sessions overall, drawing on the varying practice of parliaments around the world who face similar issues. Greater use of carry-over of Bills from one session to the next could have a significant effect on scheduling business in the House. (Paragraphs 102–103)

Report stage

33. The single greatest cause of dissatisfaction which we have detected with current scheduling of legislative business in the House arises from the handling of the report stage of government bills—technically the “consideration” stage when a Bill has been reported back to the House from a public bill committee.[...] Effective scheduling of business at report stage of many bills would often require nothing more than the allocation of a sufficient total time. It is too often insufficient at present. The House Business Committee which we recommend will be a forum for agreeing the length of time to be devoted to a report stage in order to fulfil the scrutiny function adequately. But that is not enough in itself. Because effective scrutiny of legislation is of fundamental importance to the role of the House, the detailed use of that time must be a matter of concern. We believe that the time should be set so that the House should if it wishes be able to vote on new Clauses and amendments in every group, if and when they are selected for separate division by the Chair; and that there should be a presumption that no major group should go undebated. The House of Commons would then be able to exercise the same rights as the House of Lords. [...] the House Business Committee will decide where, if at all, knives should fall bringing debate to an end on each group of selected new Clauses and amendments. As now, priority would be given to Government new Clauses and amendments. It is not for us to second-guess the minutiae of House Business Committee business. We are confident that it will deal with these and other such issues and that as trust and experience grow it will operate ever more consensually and effectively.

In order to ensure that this system can work, without using up too much time and to avoid attempts to “talk out” full debate, we recommend the introduction of a regime of speaking time restrictions at report stage. We have gone beyond the issue of scheduling total time for report stage because we recognise that unless the current problems in this area are resolved then there will continue to be dissatisfaction and a sense that the House is failing to perform one of its core duties. In those circumstances, we will have failed in one of the primary parts of our mission. Our recommendations outlined above as part of the general reform which we propose of the scheduling of business are intended to ensure that the House itself decides what matters are debated and decided at report stage of a Ministerial or a Private Member’s Bill. (Paragraphs 109–118)

Lords Amendments

34. We recommend the introduction of a scheme similar to that described above for report stage for consideration of Lords amendments, including restrictions on speech lengths. (Paragraph 119)

Ministerial statements

35. There is plainly room for different procedures designed to give an opportunity for a more thorough form of parliamentary scrutiny, without undermining a Minister's right to make a statement and respond to questions on it; and statements could well be taken at a different point in the parliamentary day. (Paragraph 187)

General Committees

36. It should be open to others than Ministers to schedule business in Grand Committees, by relaxing Ministerial control of what Motions can be put to the House and decided. There will [also] have to be relaxation of Ministerial control of motions to refer negative instruments for debate in committee. The European scrutiny system offers an admirable if still imperfect model of responsible backbench committee control of business, in partnership with the Government, on an important part of the House's work. (Paragraphs 106–108)

Public bill committees

37. We conclude that a review would be desirable of the means of selection of public bill committee members, so that it was subject to a similar level of accountability to that long applied to select committee membership. (Paragraph 60)
38. We hope that a more open approach to the scheduling of public bill committee evidence sessions can be piloted in the short 2009–10 session without the need for changes to Standing Orders, and request that the relevant authorities produce a report for an appropriate successor Committee in the new Parliament to consider. (Paragraph 105)

Estimates Days

39. We broadly endorse the Liaison Committee's proposals for increasing from 3 to 5 the number of Estimates Days and in particular its suggestion that the type of debate on such days be widened to allow substantive opinion motions on expenditure plans for future years. In view of our desire to enhance the relevance of select committee work to the work of the Chamber we consider that these debates on Estimates Days could also usefully cover substantive motions on departmental annual reports, and recommendations in select committee reports which in the view of the Liaison Committee have not been adequately addressed by the Government's response. (Paragraphs 137–138)

Private Members' Bills

40. The House should be responsible for ensuring that merely procedural devices cannot obstruct Private Members' Bills, and that they are brought to a decision. (Paragraph 194)

E PUBLIC INVOLVEMENT

Public Participation

41. There are varying views about the prospects for greater public participation. But none of these doubts should rule out making further and better opportunities available for public participation and engagement. The primary focus of the House's overall agenda for engagement with the public must now be shifted beyond the giving of information towards actively assisting the achievement of a greater degree of public participation. (Paragraph 230–232)

Legislation

42. Opening up the process of legislation and giving a real opportunity to the public to influence the content of draft laws should be a priority for consideration in the next Parliament. That is an issue for the House and not for Government. (Paragraph 276)

Agenda initiative

43. We recommend that the House commission an investigation of the practicalities of applying at a national level the procedures applied to local authorities for "petitions requiring debate", drawing on local and international experience, including the appropriate thresholds to be applied. (Paragraph 286)

e-Petitions

44. We recommend urgent discussions among all those involved in the e-petitions scheme, with a view to bringing to the House in the early part of 2010 a costed scheme which enjoys the support of the Member bodies engaged: that is, the Finance and Services and Procedure Committees, and the House of Commons Commission. (Paragraph 254)
45. It is important that the focus on an e-petitions scheme does not displace concern with "standard" petitions, which are of equal validity. (Paragraph 259)

Petitions committee role

46. The House cannot be satisfied with its current procedures for petitions. We are cautious about recommending a full-scale free-standing Petitions Committee at this time. We recommend that the Procedure Committee's terms of reference be

broadened, and its title changed to Procedure and Petitions Committee, so as to enable it to exercise scrutiny of the petitions process, on an experimental basis from January 2010 until the end of the Parliament; and that it make a report of its experience before the end of the Parliament so that this can be available to a new Parliament. (Paragraphs 260–263)

Debate

47. We recommend a trial in 2009–10 in advance of e-petitions of debates on petitions, subject to the presentation of petitions of sufficient significance. (Paragraph 264)

Information for petitioners

48. We recommend that the House authorities ensure that petitioners are informed of recent relevant House proceedings. (Paragraph 265)

Proceedings in House

49. It would give petitions a slightly enhanced status if notice was required and when given if it appeared on the House's Order Paper at the appropriate place. We consider that it would be more dignified if, as is the case with Bills presented to the House by backbench Members, the front sheet of the petition was taken to the Table, and an appropriate announcement read by the Clerk. (Paragraphs 266–267)

Motion for House debate

50. We recommend that a scheme to this effect [Motions for House debate] be worked up by the House authorities for piloting in the new Parliament. (Paragraph 272)

Annex: draft Resolution

That this House welcomes the First Report from the House of Commons Reform Committee, *Rebuilding the House*, HC 1117;

looks forward to the full implementation of its proposals in the next Parliament, subject to agreement in this session of the necessary Standing Orders, and to implementation in the current session of some proposals;

acknowledges the need for Government to retain the first call on House time for Ministerial business and the House's collective ownership of its time;

welcomes its proposals for enhanced access to the House agenda for select committees and backbenchers;

endorses its proposal for an elected Backbench Business Committee to schedule non-Ministerial business, and to join with Government and Opposition representatives in a House Business Committee in drafting a weekly agenda to be put to the House for decision;

welcomes its conclusions on the House's sitting patterns and on the need for improved procedures at the report stages of bills;

supports its recommendations for the election by the whole House of Chairs of departmental and similar select committees, and the election of members of such committees by secret ballot of parliamentary parties;

endorses its recommendations on the size and number of committees, and the timetable for their establishment;

welcomes the proposals designed to help the House connect more strongly with public concerns, and enhance opportunities for public involvement in proceedings, including the proposed shift in the House's engagement agenda towards facilitating public participation and opening up the process of legislation; and

endorses its proposals on petitions, e-petitions and a petitions committee scrutiny function.

Formal Minutes

Thursday 12 November 2009

Members present:

Dr Tony Wright, in the Chair

Mr Graham Allen
Mr Peter Atkinson
Mr Clive Betts
Mr Graham Brady
Mr David Clelland
Mr David Drew
Natascha Engel
Dr Evan Harris

David Howarth
Mr Greg Knight
Mr Chris Mullin
Dr Nick Palmer
Martin Salter
Dr Phyllis Starkey
Mr Andrew Tyrie

Draft Report proposed by the Chairman, brought up and read.

Draft Report proposed by Natascha Engel, brought up and read as follows—

“1. The Select Committee on Reform of the House of Commons was instigated by the Prime Minister in response to a suggestion from Dr Tony Wright MP, Chair of the Public Administration Committee. Its ambit as envisaged by the Prime Minister was to look at

- making Select Committee processes more democratic;
- scheduling more and better time for non-Government business in the House; and
- enabling the public to initiate directly some issues for debate.

2. The remit of the Committee was subsequently widened to include scheduling time for all business in the House, and refined to cover the appointment of members and chairs of select committees.

3. The Committee was directed to report to the House on these matters by Friday 13 November 2009.

4. After much detailed discussion on the three matters referred to us as well as some closely connected matters, we have been unable to come to agreement. **We therefore recommend that the matters be remitted to a new committee in the next Parliament to continue our detailed investigation and analysis.**

5. We looked at different options for democratising the process of nominating Chairs and members of Select Committees. The Committee was divided on whether those elections should be by the whole House or within party groups, and did not come to a satisfactory conclusion. **We therefore believe that a new committee in a new Parliament should explore this further and make a decision.**

6. We examined the prospects for setting up a Backbench Business Committee to decide on the better use of backbench time in the House, as well as options for a House Business Committee which comprised members of the Backbench Business Committee as well as party managers. The Committee was divided on the matter of a House Business Committee, some believing it to be the answer to ‘wresting control’ from Ministers, whilst others believed that this was merely an exercise in moving the deckchairs: to paraphrase Professor Vernon Bogdanor, some members of the Committee believed that we were in danger of shifting the balance of power from one democratically and directly elected elite (the Executive) to a less directly accountable and less expert elite (backbenchers). **We therefore recommend that we continue with the current system and explore more widely in the next Parliament options for better scrutiny of legislation and accountability of Ministers.**

7. We examined how best to encourage greater public engagement in the activities of Parliament. Whilst the Committee was unanimous in its support for widening participation in our democratic processes with e-petitions and exploring the possibilities for ‘agenda initiatives’, we felt too restricted by its remit to be able to do justice to this important question. **We would like a future Parliament to look at the wider role of Parliament and Members of Parliament; and to start an open and honest debate about what it is that Members of Parliament do and how the constituents that we represent can better influence our work and decisions.**

8. Our deliberations were informed by submissions from members of the public, from interested and expert individuals and organisations, from Members of Parliament and constitutional academics. **We would like this evidence to be made available to the new Parliament so that our work can inform the debate of a new generation of Members of Parliament, rather than tie their hands with decisions we make today before they have even started.”**

Motion made, and Question proposed, That the Chairman’s draft Report be read a second time, paragraph by paragraph.—(*The Chairman.*)

Amendment proposed, to leave out “Chairman’s draft Report” and insert “draft Report proposed by Natascha Engel”.—(*Mr Peter Atkinson.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2
Mr Peter Atkinson
Natascha Engel

Noes, 10
Mr Graham Allen
Mr Clive Betts
Mr Graham Brady
Mr David Clelland
Mr David Drew
Dr Evan Harris
David Howarth
Mr Greg Knight
Mr Chris Mullin
Martin Salter

Main Question put and agreed to.

Ordered, That the Chairman’s draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 56 read and agreed to.

Amendment proposed, to leave out paragraphs 57 to 59.—(*Dr Phyllis Starkey*)

Question, That the Amendment be made, put and negatived.

Paragraphs 57 to 73 read and agreed to.

Paragraph 74 read.

Amendment proposed, in line 12, to leave out the word “House-wide”.—(*Dr Phyllis Starkey*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 4
Mr Clive Betts
Mr David Clelland
Natascha Engel
Dr Phyllis Starkey

Noes, 10
Mr Graham Allen
Mr Peter Atkinson
Mr Graham Brady
Mr David Drew
Dr Evan Harris
David Howarth
Mr Greg Knight
Mr Chris Mullin
Dr Nick Palmer
Martin Salter

Paragraph agreed to.

Paragraphs 75 to 195 read and agreed to.

Amendment proposed, to leave out paragraphs 196 to 205.—(*Natascha Engel*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3
Mr Peter Atkinson
Mr David Clelland
Natascha Engel

Noes, 10
Mr Graham Allen
Mr Clive Betts
Mr Graham Brady
Mr David Drew
Dr Evan Harris
David Howarth
Mr Chris Mullin
Dr Nick Palmer
Martin Salter
Dr Phyllis Starkey

Paragraphs 196 to 293 read and agreed to.

Annex agreed to.

Summary agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report

Written evidence was ordered to be reported to the House for placing in the Library and Parliamentary Archives.

[Adjourned to a date and time to be determined.]

List of written evidence

1	Rt Hon Ms Harriet Harman MP, Leader of House of Commons	Ev 1
2	David Amess MP	Ev 1
3	Hugh Bayley MP	Ev 1
4	William Cash MP	Ev 2
5	Colin Challen MP	Ev 3
6	Sir Patrick Cormack FSA MP	Ev 4
7	Dai Davies MP	Ev 4
8	John Hemming MP	Ev 4
9	Brian Iddon MP	Ev 5
10	Michael Meacher MP	Ev 5
11	Jo Swinson MP	Ev 7
12	Professor The Lord Norton of Louth	Ev 8
13	Democratic Audit	Ev 12
14	Better Government Initiative	Ev 14
15	David Watts	Ev 15
16	Professor Vernon Bogdanor	Ev 21
17	Hansard Society	Ev 24
18	Unlock Democracy	Ev 30
19	John Owens	Ev 33
20	Andrew Dismore MP	Ev 36

List of unprinted evidence

The following memoranda have been reported to the House, but to save printing costs they have not been printed and copies have been placed in the House of Commons Library, where they may be inspected by Members. Other copies are in the Parliamentary Archives, and are available to the public for inspection. Requests for inspection should be addressed to The Parliamentary Archives, Houses of Parliament, London SW1A 0PW (tel. 020 7219 3074). Opening hours are from 9.30 am to 5.00 pm on Mondays to Fridays.

Pat Molloy
Robin Watson
David HB Tarr

Written evidence

Letter to the Chairman from Rt Hon Ms Harriet Harman MP, Leader of the House of Commons

I am pleased that the Motion to establish the Select Committee on Reform of the House of Commons was agreed to last night.

Thank you for agreeing to chair this Committee which presents an important opportunity to look at how the reform of parliamentary procedure can achieve stronger accountability of the Government to Parliament through a larger role for backbench Members and the wider public.

The Government does not propose to submit detailed written evidence to the Committee. The areas which the Government will be considering have been the subject of a great deal of debate and discussion in recent years, both within the House and wider academic study. We have established the Committee precisely because we want to hear the views of backbench MPs on these issues. However, I would be happy to appear before the Committee either formally or informally, towards the end of your inquiry, in order to discuss potential recommendations.

We would like the Committee to report quickly so that the proposed reforms can be considered for implementation early in the next Session. We look forward to receiving the Committee's recommendations.

21 July 2009

Memorandum submitted by David Amess MP

The appointment of Members and chairmen of select committees: the attempts by the Government to certainly remove at least two select committee chairmen because they were not running the committees to their liking was totally inappropriate and should not be allowed to happen again. I am not sure that arrangements for the House to choose Members is very practical, I would hope common sense and decency would prevail. The important point is that select committees should have some independence guaranteed and that their power to scrutinise the executive should be uninhibited.

(ii) I myself am not convinced about having a beauty contest for the appointment of Chairman and Deputy Chairman of Ways and Means. It seems to me that the Speaker and his three deputies at the time of appointment should reflect the balance of the House's composition so that parties themselves decide on who the candidates should be.

(iii) The scheduling of business in the House has become increasingly haphazard. Greater notice and care should be taken in terms of scheduling business. Within that area the guillotine procedure should be used more sparingly than it is at the moment.

(iv) Enabling the public to initiate debates and proceedings in the House and closely connected matters: I think this is a ridiculous proposal and totally unworkable. The House of Commons and its Members should be well aware of how the public feel on any number of issues and should act accordingly.

September 2009

Memorandum submitted by Hugh Bayley MP

SELECT COMMITTEES

I have been a member of a departmental select committee while my Party was in opposition (Health Committee 1992–97) and in government (International Development Committee 2001 to present). Departmental select committees exist to hold the Government to account and the executive should play no part in deciding which party should chair each committee, or selecting the chairs or Members of committees.

I believe it is fair for the allocation of chairs and Members between the parties to reflect the party balance in the House after each general election. The Clerk should calculate the shares for each party. Thus, if there are 20 Committees, and the party balance is calculated to be, say, 12, 8 and 2, the allocation of chairs should be determined by drawing "party labels" from a hat and applying them to committees listed in a pre-determined order.

I reject the idea that the usual channels should negotiate which party chairs each committee. It would be invidious to give this role to the Speaker and Deputy Speakers so I suggest the allocation is made by ballot.

Once the vacancies for chairs and committee members open to each party are decided, Members should indicate if they wish to be considered as a chair or member of a committee. Elections should be held if there are more candidates than vacancies. Voting should be restricted to MPs from the same party as the vacancy to be filled. It would be wrong, for example, for the governing party—who are likely to have a majority in the House—to be able to influence which opposition Members should chair or sit on a committee

scrutinising the executive. It used to be the practice that front benchers (on both sides) were not members of select committees. This is a good practice which should be re-established, and I think it would be best to restrict voting to back benchers, on both sides.

I see no reason why Members should not stand for election for more than one vacancy at a time (say to chair a committee, and to be a member of the same committee, or to be a member of more than one committee) but I not think it would be right for a Member to hold more than one select committee post at the same time. A Member selected to two posts would have to choose one job and the vacancy should go to the runner up.

Casual vacancies should be filled by by-elections.

SCHEDULING BUSINESS IN THE HOUSE

Westminster Hall has increased the opportunity for back benchers' adjournment debates, but far too much time in the main chamber is taken by the front benches for Government or opposition day debates. In particular there is too little time for Private Members' Bills. The worst aspect of this problem is the lack of committee time for Bills which have had a second reading. I should like your committee to recommend increasing the number of Public Bill Committees listed to consider Private Members' Bills so that there is sufficient committee time allocated to ensure that all Bills which receive a second reading have as good a prospect as Government Bills of returning to the House for report and third reading.

This, of course, would also require more time for Private Members' Bills on the floor of the House. This additional time should be provided on days when the House has whipped business, rather than Fridays when MPs from constituencies far from London usually give priority to constituency meetings. One possible time would be between 7pm and 10pm on Wednesdays.

ENABLING THE PUBLIC TO INITIATE DEBATES

The amount of mail I receive from constituents on behalf of lobby groups has increased during my seventeen years in the House. There is certainly an appetite from members of the public to seek to put things on Parliament's agenda. This is a healthy part of our democracy. It shows that the public believe that parliament is relevant and well organised lobbies have had a major impact on legislation and Government policy over the years (Action on Smoking and health campaigning for a ban on tobacco advertising, Make Poverty History, Friends of the Earth promoting a Climate Change Bill and commercial lobbies on all manner of things).

However, it is necessary to have some checks and balances. Parliament needs to decide whether the interests of a lobby coincide with the public interest. There are examples of groups with apparently conflicting interests lobbying to get Parliament to back their side of the argument rather than seeking a compromise with other interests (I recall canoeists and anglers lobbying to restrict each others access to inland waterways). As well financed groups are better able to mobilise support for their causes, I would suggest that the public and the lobby groups are not able to place items directly on Parliament's order paper.

If the House wants to encourage the public to nominate topics for debate, I suggest they do so via their MPs. However, for this to be meaningful back bench MPs would have to have access to time on the floor of the House for general debates—a back bench equivalent of Opposition Days.

A mechanism would be needed for deciding which of the hundreds of subjects nominated by the public and sponsored by MPs are selected for debate. The options would be a cross party "Committee of Debate Selection"; or asking the Speaker to make selections, as is done for adjournment debates; or a ballot as with Private Members' Bills. I would like as much transparency as possible (because transparent decisions are accountable and therefore likely to be more rational), so I would personally favour the first option over the second, and the second over the third.

October 2009

Memorandum submitted by Bill Cash MP

1. I strongly believe that members and chairmen of select committees should not be appointed at all but should be elected. The whips should not be involved at all and should be prohibited from involvement by Standing Orders. Both members and chairmen should be elected on merit and experience and if the whips are effectively prohibited from involvement, then it would be down to the good sense of the House using the authority it has and also to prove its authority by showing its independence to have the good sense to ensure that there is proper and fair representation of the political spectrum so that when the select committees report, the voting on the content of their reports reflects proper analysis and not party political allegiances of the kind I have witnessed in my 25 years on the European Select Committee, now the European Scrutiny Committee, on many occasions of vital importance. The Chairmen of Scrutiny Committees, ie in particular Public Accounts, Procedure and European Scrutiny, should always be from the Opposition and not the Government.

2. The House should elect the Chairman and Deputy Chairman of Ways and Means according to similar principles of (1) above.

3. There should be a business committee and the House should run this and restore and enhance its authority, which was lost in the Irish obstructionism of the 1880s, as was fully described by a former Clerk of the House, in an essay by Sir Edward Fellowes in *The Commons in Transition*, edited by A. Harry Hanson and Bernard Crick (Fontana, 1970). The closure, the guillotine, programme motions and similar devices which originated in the 1880s might have been justified in view of the wilful obstructionism of the then Irish Members in order to undermine the authority of the House of Commons and its business.

However, now these devices are used in themselves as a means of delivering the Government's own business and intrinsically to undermine the authority of the House of Commons and to enhance the authority of Government as an objective in itself. They have almost nothing to do these days with the fair and proper allocation of time, but everything to do with ramming through legislation even though this means that Bills and large sections of Bills are not properly discussed at all, as everyone knows. Parliament, as I have said on a number of occasions, is now "a sham" and many Bills and much of the legislative business of the House is derived from the European Communities Act 1972 and hardly debated at all. The supremacy of the House of Commons has been whittled down to almost ground zero and must be restored in line with the amendment which I have now put forward on many occasions, most recently in the Parliamentary Standards Bill a few months ago and the Legislative and Regulatory Reform Bill in 2006, which on both occasions was supported by the Conservative Party, the explanations of which are well known and are set out in Hansard: "Notwithstanding any provision of the European Communities Act 1972, nothing in this Act shall affect or be construed by any court in the UK as affecting the supremacy of Parliament".

4. I believe that Members of Parliament are elected as representatives of the electors. I do not subscribe to the idea of enabling the public to initiate debates and proceedings in the House. This would be a prescription for chaos and could well lead to unwarrantable pressures unrelated to the democratic principles of government and stimulated by, for example, Internet chatrooms and noticeboards or networking sites.

September 2009

Memorandum submitted by Colin Challen MP

Thank you for your e-mail. As you say, the Committee is working under a very tight timetable, and this is symptomatic of the knee-jerk fashion in which the House (and Government) are responding to the expenses scandal and related issues. A mad rush to "sort everything out" is under way and will lead to many bad decisions being made. Perhaps this is not entirely unrelated to the fact that we (Labour) have to be seen to be doing something in the remaining months before our presumed defeat in the general election, and to tie the Tories hands thereafter. Whatever, I feel there is an atmosphere in parliament now which recalls the words "chickens" and "headless".

Having said which, there is much to do to improve the way Parliament works—and that process is and should be seen to be a continuing process. At the heart of it I would suggest that the role of the member is paramount. Members, if they are to earn the respect of the public must endeavour to do a job in parliament which commands respect, and this means amongst other things not diminishing the MPs' role to that of a councillor, social worker or parish pump greaser. I recognise the shift of power that has taken place from the legislative assembly to the executive, and yet this does not seem to feature in your remit. How strange. We may discuss whether or not to elect the Chairman of Ways and Means, but not how to execute control over the executive. We may have more debates initiated by Members (and that would be a good thing) but still, are we merely going to facilitate a greater torrent of verbiage to no obvious effect?

And what's this about how the public can "initiate proceedings in the House"? How about a weekly referendum or *The Sun* (which apparently wants to dictate defence policy) telling us what we need to do? Have we completely lost sight of the fact that MPs are elected not only as representatives but also mediators?

Sad to say the trend towards the diminution of parliament did not start with the expenses row, but with the accumulation of unaccountable executive power, which New Labour has accelerated with its vast array of quangos, arms' length arrangements and semi-privatisations. The expenses row resonates so much with the public in my opinion precisely because the public now sees us as a useless collection of tools happily defining our real responsibilities out of existence. The latest batch of reforms now on the cards will further diminish the respect which MPs deserve or are capable of earning. It's almost as if we are ashamed of being MPs because of the craven behaviour of many of our colleagues and now consider reform a suitable antidote to this collective guilt. It won't work.

September 2009

Memorandum submitted by Sir Patrick Cormack FSA MP

I do not wish to burden you with a long letter but I would like to make the following points.

1. Members of select committees should be appointed by a new selection committee, which is not dominated by the Whips. Members wishing to serve on select committees should make their applications direct to a committee of selection, and it should bear in mind a variety of factors, such as knowledge and experience on the subject, location of constituency, age and seniority, in making its selection. It should be a requirement that no Member should be appointed to more than one select committee and that every Member appointed to a select committee have a 60% attendance record. Each committee should elect its own chairman.
3. I have made separate representations on this subject to the Committee of Privileges.
4. The business of the House should be determined by a business committee chaired either by the Speaker or the Chairman of Ways and Means.
5. If there is an independent business committee it will obviously take into account matters of great public interest when determining the business of the House. There should be one topical debate per week, and it should take place between 7.30–10.00 pm on a Wednesday evening, and the subject should be chosen by the business committee.

I hope these comments are helpful and if you wish me to expand on any of them I will gladly do so.

September 2009

Memorandum submitted by Dai Davies MP

Select Committee Structure. (I believe the following should also apply to Public Bill Committees) Those interested in being an Officer or Member of a select committee should apply in writing and then present their credentials and case for membership to a committee of the whole House which would then elect all Officers and Members.

The committee should also be open to any Member to give oral or written evidence.

The appointment of chairman and deputy chairman should also be by application and a vote of the Committee of the House.

Scheduling Business in the House. There is a need for less legislation and more time allocated for debate on the floor of the House. More use could be made of the larger committee rooms to stage general debates.

General debates could be generated by the public by either petitions, via contact with a dedicated office such as the Leader of the House or via their MP.

September 2009

Memorandum submitted by John Hemming MP

In terms of appointing the members and chairmen of select committees:

If the House of Commons were to use the system of single transferable vote for the membership of committees then it would be possible to ensure that the balance of the house is replicated on the committees, but the Members of the House have the power to decide on membership rather than the whips. It is, however, sensible that the party allegiance of the chairman is identified on a D'Hondt basis on membership of the House and only candidates who are members of that party are allowed to stand for election by the whole house to the position of chairman (on the basis of secret ballot with preferential voting). This would allow a single vote casting exercise to allocate all the membership and chairmanship of committees.

Additionally, however:

- (a) Nominations should be in public over a period of time to enable Members to identify where there are vacancies and challenges. (A sheet in the division lobby with a list of nominees should be updated by the lower table office at the end of each hour that nominations are made).
- (b) There should be a priority sequence for committees where Members can drop out of subsequent elections if elected to previous positions.

As far as business of the house is concerned it should be determined in full by a business management committee including the identification of knives and subject matters to be allocated time at reports stage to ensure that key issues in bills are considered and voted on by the house as a whole. The details of this should be implemented by the Speaker on the advice of House Officers. The committee should have the duty to ensure that the government gets sufficient time to progress its bills and should be elected as other select committees.

September 2009

Memorandum submitted by Brian Iddon MP

1. Nominations for select committees should be taken by the Parliamentary Labour Party, or equivalent body for other political parties, and put to the membership of the political parties for agreement—by secret ballot, if that is agreed.

2. I believe that the chairman of select committees should be elected by those committees through taking nominations and by holding secret ballots.

3. There should be much more “space” for backbenchers to raise matters of concern (other than through the very unsatisfactory procedures for adjournment debates, when front bench spokespersons take up much of the time) for a wide ranging debate along the lines of Opposition Days. When did we last have such a debate (as in the early days of this Government) on the Government’s drug policy, for example? These debates could take place even after the full sitting has ended on a Wednesday. I would be prepared to see an extension of the parliamentary year (shortened summer recess) to accommodate this.

4. The general public already initiate many of the debates through public pressure or by raising campaigns through individual MPs.

September 2009

Memorandum submitted by Michael Meacher MP

In response to the letter inviting comments on the three issues mentioned regarding House of Commons reform (leaving aside the separate inquiry into the appointment of the chairman and deputy chairmen of Ways and Means), I would like to offer the following views:

THE APPOINTMENT OF MEMBERS AND CHAIRMEN OF SELECT COMMITTEES

I would propose that at the start of each Parliament the Speaker should call for nominations for each select committee, and any Member may nominate any other. From those nominated for each committee the Members should be elected by secret ballot, with each Member of the House having one vote in regard to each select committee. Those elected will be those with the highest number of votes for the number of places allotted to each party in accordance with party strengths in the House. The minority parties (ie other than the three main parties) will collectively be entitled to one Member on each committee, to be determined by themselves according to their numbers. The select committee thus elected will then elect its chairman from among its members.

I also believe strongly that if select committees are to fulfil effectively their main function of holding the executive to account, it is essential not only that the appointment of the members and chairman is kept free from the influence of the party managers so far as possible, but also that the main recommendations of at least some of the major reports from select committees in the course of the year are able to be debated and submitted to voting on the floor of the House. Only in that way can it be ensured that some of the key reports have access to exercise real influence over government thinking to the degree they perhaps deserve.

I would therefore propose that the Liaison Committee should have the right once a month when Parliament is sitting to select from those select committee reports which have been completed one or two (either for a whole-day or half-day debate) which are to be debated, with a vote at the end, on the floor of the House. In each case the relevant select committee would then draw up the substantive motion for debate based on the main conclusions of their report.

Where the Liaison Committee has not chosen a select committee report for debate on the floor of the House, I would also propose that in some cases chairmen of select committees should have the opportunity to make a statement introducing their committee’s report on the floor of the House, and to take questions for, say, half an hour. As with the earlier proposal, the Liaison Committee should allocate a predetermined quota for this purpose.

SCHEDULING BUSINESS IN THE HOUSE

I strongly support the call that has been made that Members should elect their own business committee to control the agenda of the House. Over time the executive has encroached more and more on the rights of Members until the House has now become little more than a rubber-stamp for proposals previously determined by the executive without any prior consultation with the legislature. The purpose of the House as a debating and voting chamber is to act as a forum for the public representation of the concerns of the electorate, and that must entail Members collectively taking control of the agenda of the House and the manner in which it is conducted.

That does not of course mean procedurally preventing the Government from getting the business through the House on which has been elected. The Government, in negotiation with the business committee, must be allotted adequate time for this purpose, though the timetabling of all business would remain ultimately in the hands of the elected business committee.

The business committee should be elected by secret ballot of Members of the whole House in accordance with the strengths of each party. It should consist of 15 Members and would then elect its own chairman who should be one of the Members from the opposition parties.

The role of the business committee would be to prepare a rolling fortnightly programme for the future business of the House which would be renewed weekly and put to the House for decision. Notice of the proposed business programme should be given at least three days before it is put to the House (though be subject to amendment in the light of urgent matters arising). The business statement would then be formally moved by the chairman of the business committee, replacing the statement currently given by the Leader of the House. It could be subject to questioning and on specific items put to the vote, though not on the basis of a debate which should be the purpose and prerogative of the business committee itself.

ACCESS FOR THE PUBLIC TO INITIATE DEBATES AND PROCEEDINGS IN THE HOUSE

It has traditionally been the practice that members of the public can petition Parliament, but it has largely fallen into desuetude because there is currently no guarantee that such petitions will receive proper consideration or indeed any consideration at all. I therefore wish to support the call that has been made that a Public Petitions Committee should be established, elected by secret ballot of Members of the whole House. It would then elect its own chairman, and its function would be to respond to all petitions received (other than those that are vexatious, offensive or litigious).

The committee would be empowered, in the light of their discussions, either to refer the matter to the appropriate select committee for their consideration, or to the appropriate Minister for necessary action to be taken, or to the business committee with a request that time be given for a debate on the floor of the House. The petitioners should then be informed as promptly as is feasible of the action that is being taken and of the eventual outcome. To improve the public's sense of engagement in the parliamentary process, it would also be desirable that the petitions committee should rotate their meetings around the major cities across the whole country (which is already the practice of the Petitions Committee in the Scottish Parliament).

I also believe (as again happens in some other countries) that there is a strong case for allowing petitions that have attracted the signature of a certain significant proportion of the electorate (say 5%) automatically to have the right to be debated on the floor of the House with a vote at the end of the debate. That does not of course prevent the tabling of amendments or preclude the House from reaching whatever conclusion it may collectively decide. But if the petition were approved, either in its pristine or amended form, it would be strongly incumbent on the Government to respond accordingly, and failure to do so, or to do so adequately, could have serious electoral consequences.

OTHER MATTERS

I appreciate that colleagues' views are not being sought on other issues, but wish to indicate disquiet that the proposal that Parliament should adopt the right to set up its own commissions of inquiry, where it considered this necessary and appropriate, has been omitted from the ambit of the Select Committee on Reform of the House of Commons. It has already been explored and recommended by the Public Administration Committee and reflects practice that was regularly followed by our Victorian predecessors. Ironically in setting up this select committee the House has accepted a restriction on its deliberations which

it was the whole purpose of this committee, if it so chose, to seek to sweep away. I think this is regrettable and hope that this particular very much needed reform, as well as others, will not be lost in the current discussions and that the Committee may so recommend.

October 2009

Memorandum submitted by Jo Swinson MP

INTRODUCTION

I thoroughly welcome the Committee's formation and trust that it will approach the issues outlined with a genuine spirit of reform. Such a spirit is something which I find sadly too often lacking in the House of Commons, where tradition and the status quo are often not questioned. My ideas mainly relate to how we can engage the public much more with Parliament, though I will also briefly address the other issues in the inquiry.

APPOINTMENT OF MEMBERS AND CHAIRMEN OF SELECT COMMITTEES

In keeping with a democratic institution, these positions should be elected by MPs, by secret ballot to avoid cajoling by party whips. Procedures should allow for committee membership broadly reflecting the balance of political representation in the House.

APPOINTMENT OF CHAIRMAN AND DEPUTY CHAIRMEN OF WAYS AND MEANS

The success of the recent election for the Speakership makes an excellent case for these positions to be elected in a similar way. The hustings process in particular enabled MPs to challenge candidates on how they would perform the role of Speaker, making a more informed judgement.

SCHEDULING BUSINESS IN THE HOUSE

Many MPs have long argued for a business committee to schedule parliamentary business, such as exists in Holyrood and in many other Parliaments around the world, and I share this view. This should be drawn from all parties, and while recognising Government requirements for time for its legislative programme, it should be independent of Government. Provisional business should be published at least a month in advance: the current practice of finding out what will be discussed only a week or two in advance makes it incredibly difficult for MPs to plan their time. In reality, the Government does plan business further ahead than two weeks, but does not publish its plans. Other large organisations do not operate with such secrecy about future timetabling, and there is no need for the House to do so. Of course MPs will understand that provisional business can be subject to change due to unforeseen circumstances.

ENABLING THE PUBLIC TO INITIATE DEBATES AND PROCEEDINGS IN THE HOUSE

Petitions

I understand the Procedure Committee has looked at the current practice of petitions, and compared examples from elsewhere such as the Scottish Parliament where petitions can be submitted online and a committee discusses petitions presented. Such ideas could be developed further so that the public could influence debates in the House. This could be done through the petitions system, perhaps with a certain threshold of signatures triggering a debate in the House or Westminster Hall.

Public choosing debates

Similarly, the most popular early day motions could be voted on by the public and prioritised for debate. A weekly debate on an issue or EDM chosen by the public could replace one of the current adjournment debate slots in Westminster Hall, or its sitting times could be extended by using it on Monday afternoon or Thursday morning for such a purpose. The subject of the topical debate is currently chosen by the Leader of the House, but instead this could be voted on by the public from a shortlist agreed by the business committee. There could also be a function for the public to submit possible topics for these debates.

Online interactivity

Facilitating many of these new initiatives will require the use of the Internet, though thought should also be given to ensuring fair access for those who are not online, perhaps by a House of Commons public engagement telephone line for voting and suggesting topics. As time goes on, however, the proportion of people using the Internet will grow until it is as ubiquitous as using telephones. Parliament must move with the times, recognising and embracing the opportunities this gives for opening up public access to politics and meaningful two-way involvement. The House should be looking at all aspects of its organisation and how they need to change for the digital age. The education service is one example where this has started already, with a wide range of online tools to complement the face-to-face work they do, and reach out to places geographically remote from Westminster. The Public Bill Office is rather further behind. Changes

need to be made to let the public track bills online and the data must be presented in a suitable electronic format to enable external organisations to develop tools to help people get to grips with the legislation, making it accessible, along the lines of the Free Our Bills campaign (www.theyworkforyou.com/freeourbills and EDM221). Similarly, while watching BBC Parliament for hours on end may be an attractive prospect for a small minority of people, the Internet has huge power to help the wider public see the bits of Parliamentary proceedings that they are most interested in, whether about their area or an issue close to their heart. The BBC's new Democracy Live service is one example of how this can work. Currently this power to engage is severely hampered by restrictions on use of Parliamentary clips online (EDM 1104). On the BBC Democracy Live site which will stream footage from the Scottish Parliament, Welsh Assembly and European Parliament, Westminster alone will not allow full functionality, for example letting users "share" the clips they like. The Administration Committee has looked into this issue and concluded that relaxing these restrictions is desirable—I hope this Committee will endorse that view and encourage this to be done speedily and completely. After all, footage of what happens in Parliament should be seen as an electronic Hansard, the property of the people who elect us.

October 2009

**Memorandum from Professor The Lord Norton of Louth
Professor of Government at the University of Hull**

My starting point is that we tend to see the relationships between Parliament and Government and between Parliament and the public as distinct rather than inter-related relationships. In considering reforms to structures and procedures to strengthen the House of Commons in calling government to account, the public tend not to figure as part of the exercise. I think that there is a compelling case for considering to what extent any reform can enhance public engagement with the political process. The greater the opportunity for such involvement, the greater the potential for a better informed House and the greater the likelihood of bolstering public confidence Parliament.

THE LEGISLATIVE PROCESS

There is clearly a case for strengthening the House of Commons in the legislative process. This has always been the weakest point of parliamentary scrutiny. The introduction of Public Bill Committees in place of Standing Committees is a very welcome development. It is something I have long supported. However, there remains a serious problem in terms of time. The time usually provided between Second Reading and the first evidence-taking session is too short to enable a good range of witnesses to be assembled. Too often, the evidence-taking is confined to the "usual suspects"—interest groups who are known to Members—and, even then, they may not always have sufficient time to prepare material. There is also insufficient time between the evidence-taking sessions and consideration of amendments to enable Members to digest the evidence and to utilise it as part of the probing and amending process. The problems are well researched and expressed by Jessica Levy in her study, *Strengthening Parliament's Powers of Scrutiny*.¹

The tight timetable not only causes problems for MPs but also for those outside the House. The process is too short to enable anyone other than organised interests, who hire or have an in-house parliamentary monitoring facility, to know what is going on and to be able to have an input into the process. It is skewed in favour of an established set of bodies. They can and do provide useful and often authoritative input into the process: my concern is with those who are excluded.

There is a solution that will enable people outside Parliament to have a greater say as a Bill goes through. It can be realised without jeopardising the capacity of the Government to get its legislation. The House has already made provision for Bills in certain circumstances to be carried over from one session to the next. The rules in the Commons are not as constrained as in the Lords.² I have long advocated the use of carry over. It enables Bills to be staggered in their introduction (reducing pressure on parliamentary counsel) and for a more equitable distribution of parliamentary resources: it avoids the bunching of committees at roughly the same time of year. As long as one maintains a specified cut-off point (a Bill must be passed within a specified period otherwise it falls) then the discipline provided by the sessional cut-off is maintained. At the moment, the cut-off point for a Bill that is carried over is twelve months from First Reading. This cut-off point replicates the problems associated with the traditional sessional cut-off. It fails to provide time for proper evidence-taking by committees.

What I recommend is the greater use of carry-over, with a fourteen-month cut-off point.³ This enables time to be built into the process to widen the gaps between Second Reading and evidence-taking, to reduce some of the pressure on the evidence-taking period, and to enable time for Members to assess the evidence and, as appropriate, table amendments. This not only benefits Members, it also opens the process more to

¹ Jessica Levy, *Strengthening Parliament's Powers of Scrutiny?* (The Constitution Unit, 2009)

² For the provisions, see Modernisation: Carry-over of public bills, Standard Note SN/PC/03236, House of Commons Library, 4 December 2008

³ As recommended by the Constitution Committee, Parliament and the Legislative Process, Fourteenth Report of Session 2003–04, HL Paper 173–I, p 41.

those outside Westminster. Allied with better dissemination of information about Bills, there is the opportunity for more people to have their say. This may be achieved not only by the traditional method of calling for and taking evidence, but also through the greater use of online consultations. The UK Parliament has tended to be at the forefront of such consultations—it is one area where it is ahead of other parliaments—and they provide a useful means of eliciting input from people who may have experience of the matter being considered.

The Parliamentary Office of Science and Technology (POST) employed an online consultation on flood management and the all-party group on domestic violence employed one as part of its study of domestic violence. In 2004, Professor Stephen Coleman was able to tell the Modernisation Committee:

On-line consultations are something that you [Parliament] have in fact pioneered, and have done better than any other parliament in the world. There is quite a lot of data suggesting that these consultations have had an effect on the fairly small minority of people who have engaged in them—because they have been deliberative, because they have been expansive over a period of a month, and because they have taken people seriously.⁴

Since then, the use of online consultation has been expanded, a number being run by the Hansard Society on behalf of Parliament⁵ and more recently by Parliament itself.⁶ Topics covered have included hate crime, human reproductive technologies, conditions of prison officers, traditional retail markets, universities' admission processes, UK engineering, post offices, armed forces recruitment and retention, criminal justice, forced marriage, the role of local government in the drive to reduce carbon emissions, as well as issues being addressed by the Speaker's Conference. They have also been held on connecting both Houses with the public. As the TellParliament website noted, of those who contributed to the consultation on diabetes, 78% had never contacted an MP before. Though they have been used by select committees and for draft bills, I believe there is the potential for their greater use in the legislative process. Creating more time would provide a short but useful window of opportunity to invite contributions from those who have something to say but who may never have thought previously of contributing to the parliamentary process.

It is also worth recording that creating a cut-off point of fourteen months after introduction remains, in international perspective, extremely tight. The present sessional cut-off renders the UK Parliament distinctive in comparative perspective.⁷

PRE-LEGISLATIVE SCRUTINY

Pressure on the legislative process is arguably reduced, and people outside Parliament have a greater opportunity for some input, when Bills are published in draft and subject to pre-legislative scrutiny. The use of pre-legislative scrutiny is to be welcomed and the experience to date has been encouraging—at least where employed.⁸ Committees have the opportunity, albeit often under considerable time pressures, to take evidence, to utilise online consultations and even, on occasion, to be peripatetic. They obtain input from interested bodies at a stage when they may have an opportunity to influence the content of the Bill.

The Constitution Committee of the Lords in its 2004 report on *Parliament and the Legislative Process* welcomed the practice and argued for its extension. As it recorded:

The Modernisation Committee in 2002 stressed that it wished to see publication in draft become the norm. The Deputy Leader of the House, Phil Woolas, has stated that “a bill should be published in draft form unless there are good reasons for not doing so” and has made clear that “it is the Government's intention and policy to increase the amount of legislation that is subject to pre-legislative scrutiny”.⁹

The problem has been that there not been a consistent increase in the use of pre-legislative scrutiny. As the data published by the Constitution Committee demonstrate, there was a notable fall in the number of bills published in draft in the sessions following that of 2003–04, expressed both in absolute terms and in terms of the ratio of draft bills to government bills.¹⁰ The explanation offered by the Government for the failure to increase the number of bills published in draft was expressed by Baroness Ashton: “The main practical obstacle remains the need to have the freedom to bring forward much legislation on a timetable which does not allow for publication of the proposed legislation in draft form.”¹¹ I have more than once asked for an explanation of what this means, but have received no answer. Given that the Government have

⁴ Modernisation Committee, *Connecting Parliament with the Public*, First Report of Session 2003–04, HC 368, pp 20–1

⁵ www.tellparliament.net

⁶ <http://forums.parliament.uk/html/index.html>

⁷ The UK and Denmark are at one end of the spectrum (tight cut-offs) and the Netherlands at the other (no cut-off point). The norm is for a bill to remain on the agenda, unless voted down, until the end of the legislative term (typically, four or five years). P. Norton, “Time Limits on Bills: Ending the sessional cut-off in the UK”, *The Parliamentarian*, Vol. 78 (1), 1997, pp 96–99

⁸ See Constitution Committee, *Parliament and the Legislative Process*, pp 13–15

⁹ *Ibid.*, p 15

¹⁰ House of Lords, *Report of the Constitution Committee, Pre-Legislative Scrutiny in the 2006–07 Session*, Session 2007–08, HL Paper 43, Table 1, p 6

¹¹ House of Lords, *Report of the Constitution Committee, Pre-Legislative Scrutiny in the 2006–07 Session: Follow-up*, Session 2007–08, HL Paper 129, p 5

expressed disappointment at the limited number of Bills published in draft, it appears to be the case that it favours their use in principle but in practice cannot persuade ministers to utilise the procedure on a more regular basis.

The House benefits from pre-legislative scrutiny: it can examine bills in detail at a stage when Government has not finalised the content and when the views of those outside the House can be heard. The greater use of carry-over also reduces some of the time pressures for committees engaged on pre-legislative scrutiny. The Constitution Committee of the Lords recommended that publication in draft should be the norm rather than the exception, with ministers having to justify those occasions when measures are not published in draft. The Government should be urged to commit itself to publication in draft, and pre-legislative scrutiny, as the norm rather than the exception.

A BUSINESS COMMITTEE

The proposal for a business committee has been variously made. I would make three observations.

First, the House of Commons is distinctive in international comparison for the amount of time that is controlled by the Government. When I chaired the Conservative Party's Commission to strengthen Parliament, some of the most remarkable data we received were from Dr Thomas Saalfeld, showing just how marked that control was compared to other countries.¹² We recommended that the House move more in the direction of the practice of other countries.

Second, giving control of business to bodies other than the Government's business managers does not prevent the Government from getting its legislation. That again is apparent from comparative study. As long as the Government has its majority, it will be able to get its bills passed. To enable the distribution of time to pass to some other body or bodies does not necessarily affect outcomes. Time can be allocated within the limits of a set out-date. The House largely proceeds on the basis of the adage that the Government is entitled to get its business but the Opposition is entitled to be heard. Reducing the Government's grip on the business timetable may enable all parts of the House to contribute more effectively to proceedings.

Third, the transfer from Government of control over business does not necessarily have to be total and, perhaps most importantly, it does not necessarily have to be transferred to a single body. I favour a business committee, but there is a case for allowing other bodies to determine some part of the timetable. This avoids Members fearing that control will pass from one body that may be viewed as a little too powerful and distant to another that may possibly be similarly viewed (especially if it is a small body of the great and the good). Distributing responsibility to more than one body prevents an unhealthy monopoly. Alternatively, a business committee could determine allocation of time but not necessarily determine the content. At the moment, for example, three Estimates Days are scheduled each session, but it is the Liaison Committee that determines which reports will be debated on those days. At the moment, this is the only example of a committee of the House determining the content of business in the chamber. This practice of allowing a committee of the House to determine the content of business could usefully be developed, perhaps encompassing more than one committee.

TIME OF THE HOUSE

In allowing more than one body to determine what the House debates may also be allied with a more varied distribution of time. The timetable at the moment is largely predictable and unimaginative. Government business managers have no obvious incentive to depart from the tried and tested. However, creating a more varied timetable may also link to my theme of enabling those outside Parliament to be heard, directly or indirectly. By directly I refer to the proposal for some debate to be prompted by petitions and indirectly through greater opportunities to debate select committee reports, possibly on substantive motions. The use of debates in Westminster Hall has greatly expanded the opportunity to consider committee reports, but allocating time on the floor for occasional half-hour or hour-long debates would add considerably to the process. Another procedure worth considering is something similar to Questions for Short Debate (QSDs) in the Lords. These are not dissimilar to the half-hour adjournment debate at the end of business in the Commons, but if taken in the dinner hour they last for a maximum of 60 minutes and if taken as the last business of the day they last for ninety minutes. There is considerable opportunity for several peers to take part. One possibility may be to extend the length of the adjournment debate at the end of the day. Even if it lasted for forty-five minutes, the difference in terms of opportunities for others to contribute briefly would be significant. Given that the issues raised are often matters of concern to particular individuals or groups outside the House, greater time would fit very much with the theme of enabling those outside the House to have a greater voice.

Some scheduled debates, including Second Reading debates, are lengthy and unproductive, characterised by empty green benches—sending out the wrong (albeit misleading) signals to people outside the House. A more varied diet of debates, including greater opportunities for emergency debates under Standing Order 24, has the potential to engage Members and to enable debate on matters of concern to those outside the House.

¹² Commission to Strengthen Parliament, *Strengthening Parliament* (The Conservative Party, 2000), p 28

PETITIONS COMMITTEE

Petitions committees are common in West European legislatures. The Scottish Parliament has one. Indeed, the House of Commons used to have one. There is pressure for the House to have greater regard to petitions that are presented to it. Though now referred to the relevant select committee, petitions still, for all intents and purposes, enter a parliamentary black hole. This is not good for Parliament's reputation. Many thousands may sign petitions in good faith, hoping their views will at least be given serious consideration, only to find that nothing of note happens.

There is a case for considering a petitions committee and, indeed, as the Procedure Committee has recommended, utilising e-petitions and enabling some debates to be triggered by petitions.¹³ Having accepted the proposal in principle, the Government have now rowed back on grounds of cost.¹⁴ Even if cost proves an inhibiting factor in enabling e-petitioning, there is still a case for dealing more effectively with petitions, whether submitted electronically or in paper form. A failure to move ahead with e-petitions is not in itself a bar to creating a petitions committee. However, there are still resource implications. There needs to be sufficient resources available to the committee to process and assess petitions. Inadequate resources, be it in terms of staff or time, can fundamentally undermine the utility of the process. In the German Bundestag, the sheer number of petitions submitted tends to overwhelm the system. "Given its modest resources (especially time), the Committee cannot follow up all complaints and petitions".¹⁵ Time is also a factor in the Portuguese Parliament. "The main criticisms of this instrument are its ineffectiveness and the long time span between the presentation of a petition and its consideration by parliament. In any case, it soon becomes clear that the main petitioner is not the citizen, but rather organized groups, such as trade unions."¹⁶

There may be a case for appointing a petitions committee with a staff that can engage in an initial sifting exercise, farming out those with a small number of signatures, or dealing with topics previously covered, for a response from the relevant Department, and enabling well-supported petitions on topics not previously the subject of petitioning to be assessed by the committee. Three days each session could be set aside, either in the chamber or Westminster Hall, for debates on topics selected by the petitions committee. This is very much line in with the recommendation of a more varied use of time, and with the decision as to content being determined by different bodies. The petitions committee could select topics in a manner analogous that of the Liaison Committee in the selection of reports for debate on Estimates Days.

SELECT COMMITTEES

Departmental select committees have proved a great boon to the House of Commons. They were the product of pressure from the House and are sustained by the House. They deserve now to be developed further.

The Committee has already discussed the means by which committee members are chosen. Some of the debate has surrounded whether they should be elected by the House as a whole. It is important to remember that they already are. Nominations for committee memberships are placed before the House for approval. The nominations for the Transport and Foreign Affairs Committees were voted down in 2001. There may be a case for duplicating or overlaying the process, but it is not clear as to the extent to which this will make a difference. There is competition for places on the high-profile committees but not for places on the rest (the majority). I have seen no study assessing by how much the membership would be different if other modes of selection were employed.

I would contend that the more pressing issue to be addressed is one of resources and ensuring that Members know how to utilise resources effectively. Time is a major resource and there is not much scope for extending the time available to select committees (unless other commitments of Members are reduced). Given that, the alternative is to make additional staff and research resources available. In 1994, Sir John Banham recommended that each committee "should have a budget of, say, £2 million per session, to enable Members to secure the necessary independent and expert advice".¹⁷ Even with a smaller research budget than this, each committee could commission research, complementing the necessarily self-serving evidence given by witnesses and not eating into the time of the committee itself. Researchers would be on tap but not on top. The committee could commission research on particular programmes or indeed utilise research in topics just coming on to the political agenda. (Research suggests that it is when addressing such topics that select committees have the greatest impact.)¹⁸ The committees could also utilise the budgets to fund online consultations and, if necessary, opinion surveys. Providing more resources, though, will have little effect if members are unwilling to utilise them or don't know how to utilise them effectively. Providing greater

¹³ Procedure Committee, e-Petitions, First Report of Session 2007–08, HC 136

¹⁴ Procedure Committee, e-Petitions: Call for Government action, Second Report of Session 2008–09, HC 493; e-Petitions: Call for Government Action: Response to the Committee's Second Report of Session 2008–09, First Special Report of Session 2008–09, HC 952

¹⁵ T Saalfeld, "Parliament and Citizens in Germany: Reconciling Conflicting Pressures", in P. Norton (ed.), *Parliaments and Citizens in Western Europe* (Frank Cass, 2002), p 51

¹⁶ C Leston-Bandeira, "Parliament and Citizens in Portugal: Still Looking for Links", in P. Norton (ed.), *Parliaments and Citizens in Western Europe* (Frank Cass, 2002), p 140

¹⁷ Sir J. Banham, *The Anatomy of Change* (London, Weidenfeld and Nicolson, 1994), p 50

¹⁸ See, for example, D. Hawes, *Power on the Back Benches? The growth of select committee influence* (SAUS Publications, 1993)

research resources to select committees has the capacity to enhance their work but needs to be accompanied by advice and training on how to utilise those resources effectively. The Scrutiny Unit may possibly have a role to play in providing such advice.

CONCLUSION

These recommendations are not exhaustive, but they provide I believe some proposals that are achievable and that enable the House of Commons to link more effectively to the public. I have previously argued that a number of conditions have to be met for significant parliamentary reform to be achieved (as in 1979): a window of opportunity, a reform agenda, leadership, and political will. The Committee has the opportunity to offer a reform agenda and may contribute to leadership in seeking to implement it. Ultimately, though, schemes of reform count for nought if Members themselves are not willing to embrace and sustain such reform. Without political will, the House cannot enhance its capacity to scrutinise government and engage more effectively with the public. The present public mood may (and I hope) engender the political will.

A reform agenda is thus not sufficient. It is, however, necessary.

September 2009

Memorandum submitted by Democratic Audit

1. For the purposes of this paper Democratic Audit has re-ordered the three matters on which the Committee will deliberate as it is our view that the executive's formal and de facto control of the business of the primary legislative chamber is a crucial issue in itself; and that the opportunity for reform is most probably now at its highest point, given the House's commitment to "put its house in order" and the public interest outside Parliament in how this can be achieved. While there is no clear popular consensus about what the central elements of a reform agenda might be, people need to be reassured that MPs have the capacity as well as the integrity to represent them and restore public confidence in our democracy.

2. In the longer run, proposals that will enable the public to initiate debates and proceedings in the House, and to participate in them, will deepen the quality of democracy in the United Kingdom. But that deepening can only take place if Parliament has first regained a real measure of self-government and with it, the ability to respond to the public.

Bullet points

3. We have the following observations to make on the three matters, (i) the scheduling of business in the House; (ii) the appointment of members and chairs of select committees; and (iii) enabling the public to initiate debates and proceedings in the House:

THE SCHEDULING OF BUSINESS

- The Government's control of the parliamentary agenda is at the heart of the undue dominance of the executive over Parliament that discredits and damages our parliamentary democracy;
- The House of Commons should therefore take control of the parliamentary agenda, placing a limit of two days a week on government time on the agenda and establishing a similar period for House business, in addition to allowances for adjournment debates; Private Members' Bills; and debate on select committee reports;
- In consequence, governments should modify their approach to law-making (see below);
- In consequence, Standing Order 14 should be abolished and a business committee of cross-party backbench MPs established to determine the allocation of House business;
- The business committee should be established independently of the whips and to consolidate this principle, it should have no role in the determination of government time;
- The House should have a vote on the business committee's proposals;
- The House of Commons Liaison Committee proposal that six days a session should be set aside for debates on select committee reports should be adopted.

THE APPOINTMENT OF MEMBERS AND CHAIRS OF SELECT COMMITTEES

- It is unacceptable from the perspective of both democratic principle and practice that the appointment of committees charged with overseeing government activities should be dominated by government whips;
- It is also important to the independence of those committees that opposition whips should play no part in their establishment;
- A selection committee to allocate places on select committees should be established early in the Parliament on the same basis as the business committee;
- The chair of the committee should be elected by the House in a secret ballot;

- The overall composition of select committees, as recommended by the committee, and the party division of chairs should require the approval of the House;
- Select committees should elect their own chairs by secret ballot;
- The Committee should consider making it normal practice that all backbench MPs would serve on select committees, in order to strengthen the capacity of committees and Parliament as a whole to hold governments to account;
- The Committee could also consider the possibility that opposition chairs of select committees could become the norm (as is the case for the Commons Public Accounts Committee) in order to assert their independence.

ENABLING THE PUBLIC TO INITIATE DEBATES AND PROCEEDINGS IN THE HOUSE.

- At present the means by which the public may initiate debates and proceedings in the House are limited—even if a substantial number share a particular concern. The Commons should be required not merely to receive, but to act meaningfully upon, petitions;
- The current arrangements for petitioning should be liberalised and extended so that a reasonable fixed number of people outside Parliament should be enabled to initiate debates and committee inquiries;
- To facilitate this practice, a committee akin to the Public Petitions Committee in the Scottish Parliament could be established, to ensure that full consideration is given to petitions and to recommend an appropriate course of action, from a range of possible options including a response from the executive, a parliamentary debate, or substantive consideration by another parliamentary committee or committees;
- As well as their initiation, consideration should be given to means of involving the public more widely in the proceedings of the House as they take place, including pre-legislative scrutiny on-line.

OTHER MATTERS

- The Committee should make use of its time after 13 November to conduct further research and analysis on matters of reform and make further proposals designed to right the balance between the executive and Parliament, as well as commenting on—and if necessary taking up issues within—any government responses to its proposals;
- The Committee should consider recommending a parliamentary self-assessment exercise on the model of the International Parliamentary Union’s for the continuation of its work in a future Parliament.

The scheduling of business in the House

4. As members of the Committee will be aware, the Government’s control over the House of Commons does not rest solely on its majority in the House. Standing Order 14 gives the government, regardless of whether it has a majority over a given issue or not, a mandate to decide every day what the agenda of the Commons should be, except for 20 opposition days, 13 Private Members’ Bill days and three days for select committee business.

5. The damaging repercussions of this power over the legislative are apparent in two aspects of parliamentary governance. First the growing number of clauses of primary and secondary legislation squeezed through Parliament, often ill-prepared, badly thought out and insufficiently scrutinised; and it is important that governments should not try and squeeze a similar amount of legislation through should more limited time be at their disposal. (As such, the Committee could perform a valuable service by re-examining the legislative process as a whole and considering whether it remains “fit for purpose”). Secondly, it prevents MPs from being able to debate and vote on key issues, such as the “third runway,” and ongoing military operations in Afghanistan. Even the Speaker has no power to overrule the government on its determination of topics for decision by vote.

THE APPOINTMENT OF SELECT COMMITTEE MEMBERS AND CHAIRS

6. It has long been appreciated that current arrangements for the appointment of select committee members and chairs are unsatisfactory. The most blatant attempt by the executive to abuse its patronage in July 2001, when it sought to remove the chairs of two select committees, was rejected by the House. But Members are aware that a broader ongoing problem exists, in terms of principle, perception and practice. The lack of independence from the Government (and Opposition) Whips enables both ministers—and on occasion even the Prime Minister—and opposition front benches to promote or block particular appointments. It is time to act on the report of the Committee on Modernisation, in response to the July 2001 debacle, endorsing the statement by Lord Sheldon that: “the executive, via the Whips, ought not to select those members of select committees who will be examining the executive”. We trust that the Committee and the House as a whole will take advantage of this “reform moment”.

ENABLING THE PUBLIC TO INITIATE DEBATES AND PROCEEDINGS

7. The most effective means of involving the public in initiating debates and proceedings in the House would be through the introduction of a petitioning process that—as in Scotland—serves to encourage and build-in citizen initiatives rather than to inhibit them as at Westminster. As well as giving people opportunities to instigate parliamentary debates and proceedings, consideration should be given as to how the public could be engaged in deliberative fashion in proceedings as they take place, using modern communication facilities, involving citizen participation for example in pre-legislative scrutiny and the work of select committees. Another improvement could be mandatory annual meetings between MPs and constituents, including a report-back session, to give the local public opportunities to make recommendations for the future. But Parliament and Members should take measures to ensure that such openings to greater participation do not widen the “participation gap” within society and thus further disempower already marginalised groups within society.

Other reform matters

8. We will deal with these matters in bullet point form to facilitate consideration by the Committee:

- The Committee should consider whether and how far current government proposals for reform of Royal Prerogative powers place those powers on a statutory footing so that Parliament has a fuller say in the conduct of government;
- Select committees, the main instruments of scrutiny in the House, do not have the resources or time to do their job properly. The Committee should consider how best to give these committees adequate research resources, powers to subpoena ministers and officials, and more powers to oblige government to respond fully and in good time;
- In addition to our proposals to integrate time for select committee reports into the parliamentary timetable, we also recommend that they should be given the power to introduce their own Bills;
- Select committee chairs often find it very difficult to muster sufficient members to keep their committees quorate, and especially to hold meetings during the long recesses. The Committee should consider proposals that would make the House a modern committee-driven chamber and bring to an end the pernicious ‘case-work’ ethos that does more to shore up MPs’ incumbency than to bring real redress to their constituents; as well as looking at ways of introducing a rolling parliamentary calendar where work does not grind to a halt over long recesses;
- Other issues that would bear consideration:
 - (i) the introduction of fixed-term Parliaments;
 - (ii) applying the same procedures for determining the composition of select committees to the choice of members of public bill committees;
 - (iii) bringing the choice of Prime Minister and ministers into the House prior to their appointment at Buckingham Palace;
 - (iv) finding ways to ensure that government initiatives are announced first in Parliament, not the media;
 - (v) giving Parliament its own legal counsel;
 - (vi) making pre-legislative scrutiny of draft bills the norm;
 - (vii) giving MPs more space to introduce their own bills;
 - (viii) strengthening the role of the all-committee Liaison Committee.

Parliamentary self assessment

9. The Select Committee—while focussed on certain specifics at present and subject to serious time constraints—could consider the idea of at least recommending a full self-assessment exercise as a continuation of its work in a future Parliament. We have identified above a particular need to consider the legislative process, but our democracy would benefit from a comprehensive assessment of the work and performance of Parliament. The Select Committee could be an ideal body to facilitate such an urgently-needed assessment, using the model put forward by the Inter-Parliamentary Union.

September 2009

Memorandum submitted by the Better Government Initiative

On behalf of the Better Government Initiative (BGI) I am writing to put forward, on the basis of our work and consultation with parliamentarians over recent years, some key points which the Committee might consider in preparing their report in the short time available.

The resolution setting up the Committee does not include the objective of reforming the House. But two of the specific matters listed in the resolution (scheduling business in the House and appointments to Select Committees) and the Government’s constitutional agenda, suggest to us that a quotation from the Governance Green Paper of July 2007 expresses the core of the objective well:

“...to rebalance power between Parliament and Government, and give Parliament more ability to hold the Government to account...”

A key part of this is strengthening parliamentary scrutiny. As a 2006 report by the Modernisation Committee put it: “the purpose...is to make better laws by improving the scrutiny of Bills.” Our proposals are geared to these purposes.

KEY POINTS

1. Parliament should set standards for thorough preparation by the executive of legislation and policies. This could be initiated by Parliament (we have suggested an illustrative resolution to be found at Annex A to the summary attached to this letter), or alternatively by Government and then endorsed by Parliament. Either way this would produce agreement between Parliament and executive; and would need to be accompanied by changed procedures within the executive.

2. The standards would include showing that:

- a. The bill or other proposal is complete and comprehensive;
- b. New powers are operationally necessary;
- c. The criteria for secondary legislation are defined when a bill enters Parliament;
- d. The problem addressed, and the purpose and intended effects of the measure, have been defined;
- e. It is practicable.

3. Once standards were agreed, they would need to be enforced. For example, the relevant departmental select committees could check compliance before the proposal reaches the floor of the House. If the proposal were judged non-compliant, it might only reach the floor of the House if a motion from the select committee is voted down (perhaps by a qualified majority). Alternatively a business committee could withhold time on the floor for a proposal judged non-compliant by a select committee. Such cases should be rare once standards are agreed between Parliament and executive.

4. The volume of legislation should be limited to a level that can be adequately scrutinised by Parliament. Ministers should confirm to Parliament that their programme satisfies this criterion. A business committee could, if necessary, reject this statement and reflect this in the allocation of time. Again this should be rare.

5. Pre-legislative scrutiny should become the norm with timely publication of draft bills, along with adequate explanatory documents (Green, White papers and impact assessments) directly related to the bill or major policy proposal.

6. Select committees should be strengthened, partly through changes in the way chairs and members are chosen, and partly through other means, including the pay of chairs, designed to create an attractive career in scrutiny, as an alternative to becoming a minister. Their chairs should be able to present their reports on the floor of the House and the Committees should have the power to propose substantive motions and amendments or bills.

7. The Commons and Select Committees should play a greater role in expenditure and tax matters, as proposed by the Liaison Committee report, *Financial Scrutiny: Parliamentary Control over Government Budgets*, and by the BGI.¹⁹

The Committee may consider other measures merit similar improvements in parliamentary scrutiny: for example, major policy proposals not requiring legislation, among them significant changes in the machinery of Government, and in service delivery and information systems.

We wish the Committee every success in its crucial task.

July 2009

Memorandum submitted by David Watts

INTRODUCTION

1. The format of this document

With regards to the four distinct matters that the select committee is discussing, this submission is specifically targeted at point (iv), which is:

“enabling the public to initiate debates and proceedings in the House”

I believe that the “enabling” will require two definitive pre-conditions in order for it to take place and to be successful:—

- 1) Given the low level of interest that the public currently show in the parliamentary process, radical steps must be taken to regenerate that interest.

¹⁹ See Liaison Committee, *Financial Scrutiny: Parliamentary Control over Government Budgets*, Second Report of Session 2008–09, HC 804; and BGI Report, *Governing Well*, on the BGI website: www.bettergovernmentinitiative.co.uk

- 2) Create a simple, easy-to-use, all-inclusive method for the public's views to be received, processed and turned into sensible legislation in a democratic fashion.

This introduction gives details of my background, and of my communication experiences with people involved in the parliamentary process. I have split the main part of this submission into two sections, to reflect each of the points 1) and 2) above. These sections are further sub-divided into “problems” and “solutions”. Obviously all of the points raised are my views. The emphasis is on “my view”—I am sure there will be quite a few people who share my views, but there may also be a substantial number who do not. I honestly admit that many of my views will have been shaped and conditioned by the various media articles that I have seen, viewed and listened to, but the same is obviously true for the vast majority of people in the country.

With regards to the suggested solutions, please at least consider them. Once considered, they may be discarded if you wish, but please take the time to give them a thorough review before allowing them to join the queue marked “trash”. Even if they are rejected, they may create the odd spark of inspiration in your deliberations.

I have concluded this document with a summary of the main points, and a heartfelt wish that you are successful, forthright and courageous in your endeavours.

2. MY BACKGROUND

My name is David Watts. I am 56 years old, I work full-time (in accounts) for a not very lucrative wage and I live in Bedfordshire.

Whenever I have the time and, just as importantly the energy, I campaign on behalf of various environmental, wildlife and animal causes. This also includes campaigning about social problems or developments that impact upon the environment. After researching a topic thoroughly, I write to MPs, MEPs, government departments, ministries and individual ministers, as well as overseas governments and ministers.

I am a member of the Royal Society for the Protection of Birds and Birdlife Malta. I make small financial contributions when I can to organisations that I believe are making positive contributions in the continuous battle to protect the environment and wildlife. I am not affiliated to any political party and for many years I have refused to vote in general, European or local elections. This is because:

- Most of the political decision-making process is complex, long-winded and incomprehensible to anyone outside of politics;
- The party system and particularly the “whip” system diminishes or even roadblocks true independent thought and action from MPs;
- The integrity of many MPs and government ministers has been called into question many times over the past 20 years or so. This situation is getting worse rather than improving;
- The House of Commons appears to be devoid of independent, honest, rational debate;
- The “first past the post” system for general elections which occur every four to five years encourages complacency, incompetence and arrogance for some MPs in “safe” seats;
- I am sure many MPs enter parliament intending to be honest, hard working and principled. Why is it that so many seem to lose all of these ideals after a few years?

3. MY COMMUNICATIONS WITH MEMBERS OF PARLIAMENT AND GOVERNMENT MINISTERS

In my communications with my constituency MP, I am heartened by the fact that he always reads my letters and emails, and always replies after a week or two. I am disappointed by the fact that he tends to “toe the party line”, but generally, I am happy with the job that he is doing. I also share many but not all of his views.

Although I send many emails and letters to government ministers and departments, much of my energy and time appears to be wasted. I’m afraid that I am getting more and more angry and more and more frustrated about the poor level of communication from ministers and their departmental officers:

- After researching an environmental problem or topic, it is a real challenge to determine which individual in the Government, or which department to write to. I would like to direct my communication to the place where it will have both the most impact and where it will be most efficiently processed. At the moment, I tend to have a slightly “scattergun” approach, which is not ideal.
- After writing to a government minister, I have never had a reply from that minister. If I receive a reply at all it is usually a “bog standard” reply from a junior employee working in a “customer contact unit” or something similar. This is terribly disheartening and frustrating. I can easily spend a day (from my “spare” time) researching and then constructing a communication. I do this because I care about the environment that we all share and are responsible for. I want to do

something positive for future generations. It appears that my letters and emails are more or less ignored—to receive a “generic” reply from a junior official in a “customer contact unit” is an insult.

- Incidentally, a couple of years ago, in response to my letters about the unintentional (but still tragic) killing of seabirds by the New Zealand fishing industry, the New Zealand Minister of Fisheries was considerate enough to write me two personal letters within a few days of his receiving my letters. His actions, attitude and professionalism throw into sharp relief the amateurish and arrogant stance shown by British ministers and their departments.

As you can see, I have a somewhat jaundiced and cynical view of British politics and politicians, and I am sure that I am not alone in that. However, like many people, I also want things to improve.

REGENERATING PUBLIC INTEREST IN POLITICS AND THE PARLIAMENTARY PROCESS

The current problems

1. The Legislative Process

- The Parliamentary process, and the ways in which new legislation is suggested, amended and introduced is incomprehensible to 99% of the population.
- The vast majority of the population have no idea what select committees, working parties, green papers, white papers, private member’s bills, early day motions etc. actually are and what they achieve.
- Much of the existing legislation is incomprehensible to the man in the street. Lawyer-speak and over-complexity seems to be the order of the day. However, this system still allows wealthy individuals to employ clever accountants and lawyers to find loopholes and escape routes, while the rest of the population have to abide by the rules.

2. How MPs vote in Parliament

- MPs are always under pressure to vote in a particular way ie stick to the party line, obey the Whip’s office diktats, give priority to their career prospects when making judgements or decisions. There is also the nonsensical lack of a secret ballot for debates and legislation.
- Ideally, when MPs vote, they should be thinking both “locally” (the views of their constituents) and “globally” (the state of the planet and all of its inhabitants). Above all, they should be thinking and acting independently—if their views coincide with the party line, then that’s fine, but if not, then they should be free to vote as they choose.
- Currently, I can write as many letters and emails as I like to my MP, but the chances of he/she seriously considering my views when debating or voting in parliament is negligible.
- With a few honourable exceptions, many politicians are unwilling to speak and act independently. Those that are willing to do so are labelled as “rebels”, “mavericks”, “eccentrics” and such like.

3. The Electoral System

- Many voters are effectively disenfranchised, resulting in a feeling of “powerlessness”. The “first past the post” electoral system, with a general election every four to five years is to blame. For example, imagine that if I live in a leafy village in Surrey and I want to support and vote for the Green Party. Even if I vote in every general election that I can, it is highly unlikely that I will see a Green Party MP returned in my lifetime—so what is the point of voting?
- It is possible for a minor political party to receive 5% of the total votes in a general election but still end up without an MP in parliament. This implies that the votes of a few million British residents are totally wasted.

4. MPs’ background and experience

- Far too many MPs have none, or very little experience of working life (or even social life) outside of politics—they simply escalate from university up through the political ranks.
- Many MPs are far too young and inexperienced to make balanced, mature judgements about issues with far-reaching consequences.
- There is a perception (probably true in many cases) that many people enter politics for reasons of ego, self-importance, high remuneration and power seeking, rather than for public-spirited and philanthropic reasons.

5. The workload of MPs and their remuneration

- Many MPs have outside business and employment interests, rather than treating “being an MP” as their only profession. Although an MP’s salary is not excessive for a responsible full-time job, it is bordering on being too high for a part-time job.
- MPs are members of the best pension scheme in the country, paid for out of taxpayer’s largesse.

- Many also participate in the dubious practice of employing family members, again with taxpayer's money.
 - The MPs expenses system has been shown to be sneaky and shoddy at best, and fraudulent at worst.
6. Communication with government ministers and departments
- Government ministers and departments are very poor at communicating with the public. Politicians complain about the lack of interest that people give to the political process. There is a very good reason for this—communication is a two-way street. Please see my introduction above—I will only continue to communicate with politicians if they communicate back (and not via a junior clerk). I want my communications to be read, understood, noted and even debated. I want my views to be considered as part of the democratic political process. I can accept political decisions that have been democratically made even if the result opposes my beliefs. What I cannot accept is being ignored and then excluded from the democratic process.
7. The House of Commons debating chamber
- The British public is totally fed up with the sight of politicians of all parties constantly exchanging insults across the so-called “debating” chamber. The layout of the chamber ie two opposing rows of benches, I think encourages this behaviour.
 - The current parliament building, because of its history, architecture and traditions probably encourages an egotistical “power” boost for MPs. This is not ideal. By the nature of the job and their career ambitions, a lot of ministers already appear to have succumbed to the problems of “power” and “ego”. “Power” and “ego” must be thrown out, and be replaced by “intellect” and “wisdom”.

SUGGESTED SOLUTIONS

Some of the proposed solutions below may appear radical—that's because they are! However, I think the British public are crying out for a “fresh start”, so there has to be major changes—a piecemeal approach, or “business as usual” will just not do.

1. The legislative process
 - Simplify the legislative process so that it is more easily understandable by the public.
 - Make it easier for the public to access and monitor new legislation.
 - Speed up the legislative process.
2. How MPs vote in Parliament
 - All votes in Parliament should be by secret ballot.
 - The Whips system should be dismantled. MPs must be allowed to make totally independent decisions.
3. The electoral system
 - Introduce a functional and easily understood proportional representation voting system.
 - Discard the corrupt and debased postal voting system.
 - Introduce a highly secure and easy-to-use online voting system.
4. MPs' background and experience
 - Take measures that will encourage people from all walks of life to put themselves forward as candidates.
 - Insist that all candidates have at least five years experience of working outside of politics.
 - Set a minimum candidate age limit of thirty. British politics needs far more wisdom, and a lot less ambition.
5. The workload of MPs and their remuneration
 - The workload of MPs is likely to increase a lot if they are required to communicate more regularly and in more detail with their constituents. There will obviously be an increase in the legislation workload if the public can initiate a sizeable minority of it. Therefore, all MPs should work full-time as an MP, with no outside interests, but with a salary that is commensurate.
 - The salary should initially be set at £100,000 per annum, increasing at a fixed rate of 2% per annum. An additional payment of 10% of salary (and no more) should be paid to all MPs to cover expenses. The current debased expenses system should be scrapped.
 - MPs must not be allowed to employ members or extended members of their family. Instead, all MPs should be allowed the resources of two full-time paid assistants, one for their constituency and one for Westminster. These assistants should be paid by the government at a set rate, this rate to be set by a cross-party committee on an annual basis.

- The gold-plated final salary pension scheme for MPs should be scrapped, to bring them into line with the rest of the population. A contributory unit-linked pension scheme should be introduced to replace it, with maximum contributions of 5% of salary matched pound for pound by the taxpayer.
- The large number of government “advisers and consultants” must be reduced drastically. Limits must be set on the numbers and levels of remuneration for both advisers and consultants, but ideally all advisers should be employed on a voluntary basis ie their advice should be free. This is more public-spirited, and may encourage ministers and MPs to accept or ignore advice as they see fit.

6. Communication with government ministers and departments

- Ensure that all correspondence from a member of the public to a government minister or department receives an acknowledgement (not automated) within one week, indicating that the communication has been received and forwarded to the appropriate person or department for processing.
- Ensure that all communications are read by a senior employee with appropriate experience in the matter being discussed.
- All communications should be analysed methodically and accurately so that statistics can be kept of the public’s views and thoughts on issues, events, parliamentary decisions etc.
- These statistics should be presented to the government minister or head of department on a frequent and regular basis so that he or she can get a balanced and accurate idea of the public’s views. This will help the individual concerned make well-judged decisions and take appropriate actions, which have the backing of the majority of the public.

7. The House of Commons debating chamber

- A working party should be set up to investigate how the physical layout of the chamber could be improved in order to achieve sensible, rational and good-mannered debates.
- If no suitable solution can be imagined and created, then the working party should then consider the planning and building of a totally new parliament building. A new well-designed building that encourages positive well-informed debates could produce a sea change in the public’s view of the parliamentary process.
- A brand new, modern building, with high-tech communication systems would encourage MPs to think and work professionally, intelligently and efficiently.
- A new building could provide far better public access and viewing facilities.
- As any new building would be extremely costly (£1 billion?), a referendum should be held to determine the public’s acceptance or rejection of such a proposal. I think that it might well be accepted if it was just one of a package of radical measures with a remit to bring parliament and the parliamentary process into the twenty-first century.

PUBLIC INVOLVEMENT IN THE LEGISLATIVE PROCESS

The current problems

1. Direct public involvement in the creation of legislation

- I am not aware that the general public can currently initiate new laws and legislation.
- The public has a certain amount of input prior to legislation being introduced eg public enquiries, submissions (such as this one) to select committees, asking MPs to raise questions in the House.
- All of this takes time and effort by the public, and no doubt money as well. Not everyone is aware of the best method (or any method?) to take in order to make their voice heard.
- Legislation can be introduced to address public concerns about a particular matter, but the legislation can end up only partially solving the problem, or creating disastrous side-effects, or leaving loopholes to be exploited.

2. Indirect public involvement in the creation of legislation via their MP

- It is possible for an MP to introduce a Private Members’ Bill, possibly as a consequence of communications received from their constituents. Hardly any of them are debated in parliament, and even fewer make it onto the statute books.
- Early day motions can be created by MPs and cover a multitude of topics, many of which are sensible and desperately require debate and then legislation. It is possible that some early day motions are derived from the views of an MPs constituents. However, many early day motions are inconsequential and comic in nature. Whether the early day motion is important or not, it is unlikely that it will have any impact on the laws of the country. Valuable parliamentary time is therefore wasted.

SUGGESTED SOLUTIONS

1. Direct public involvement in the creation of legislation

- The general public should initiate a large minority (say 30%) of all new legislation.
- The Government's existing e-petitions website is a simple and easy-to-use way for the public to create and support petitions about many aspects of life in the United Kingdom and even international and global matters. Why not use this method (either the same website or a totally new one) for generating new legislation that has the support and input of the British people?
- The security and robustness of the website and its database would have to be maintained at the highest level.
- Most importantly, the e-petitions process would have to be communicated to the public in such a way that nobody would be unaware of it, and everybody would be able to understand and use it.
- To make the system all-inclusive, free Internet access points would need to be set up around the country for people without PCs or Internet access.
- At the moment, voting for a petition seems to be linked to an individual's email address. It is very easy for someone to set up multiple email addresses, and therefore register multiple votes. I think the use of the individual's National Insurance Number would provide a better option, but there may be other solutions.
- An "e-petition consideration committee" should be set up, consisting of voluntary members from outside parliament. The general public (say, every two years) would elect these members via the e-petition website.
- The committee should meet once a month, every month in order to vet the most popular petitions. The committee would then agree which petitions could go forward into the normal political process for the introduction (or amendment) of legislation. If need be, the committee could refine the terminology of the e-petition (without altering the context) to make it more easily digestible by the political process.
- Members of the public could create e-petitions with a "petition time" of 3, 6 or 12 months, depending upon how urgent they viewed the topic. A time limit needs to be set, because at the moment, the petition time limit is very flexible.
- There would probably need to be three levels of e-petition—local issues, national issues and global issues. At the moment, all three categories are mixed up on the website. This results in a vast discrepancy between petitions with the highest and lowest votes, even though the topics may be of equal, or even skewed priority, for the people voting eg is the destruction of a local park more important than the destruction of a whole forest in Latvia? Well, for an individual, it may be.
- Members of the public should be able to view the progress and status of e-petition generated legislation as it follows the parliamentary legislative process. Again, this can be done via the website.
- Extra parliamentary time would be required to consider, review, refine, and introduce e-petition legislation. However, if the existing parliamentary processes were simplified and refined, and if MPs had no outside interests, and worked full-time, then I'm sure that the extra work could be accommodated.

2. Indirect public involvement in the creation of legislation via their MP

- Get rid of Private Members' Bills and early day motions. Replace them with a system that would allow MPs to propose legislation generated by themselves or in tandem with their constituents.
- The proposal should be circulated for the signatures of other MPs who agree with it (similar to early day motions).
- Any proposal that gathers the signatures of a majority of MPs (ie greater than 50%) should automatically be given adequate parliamentary time for debate, refinement, and then acceptance or rejection of the legislation.

CONCLUSIONS

After all of the problems of the last few decades (and who is to blame for the problems?) it is hardly surprising that the British public hold their politicians in such low esteem. However, there is a groundswell of opinion amongst both MPs and the public that "something must be done", and done quickly. There is now a real opportunity to take radical and far-reaching decisions that can reinvigorate political life in Britain. A fresh start can be achieved by taking the following actions:

- Create a simple to use, efficient system that will allow the public to initiate legislation at the local and national level, as well as triggering legislation that has international and global consequences. As individuals, the British public can be inconsistent and even eccentric—however, “en-masse” they normally display a high degree of integrity, common sense and wisdom.
- Encourage MPs to think, act and vote independently.
- Introduce an electoral system that will produce a parliament that reflects the views of everyone in the country. People must begin to believe again that every vote is important, that every viewpoint is important.
- Ensure that MPs come from a variety of backgrounds and have experience of “real” jobs.
- Simplify the legislative process and all laws and rulings that it produces.
- MPs should have one job and one job only, and that is working as full-time Members of Parliament, introducing fair, just and meaningful legislation, with intellect, vision and wisdom. They should work hard, work passionately, work professionally and honestly, and be well remunerated.
- Consider constructing a new debating chamber, or even a new parliament building.

I believe that any proposed reforms should be publicly debated and for any major changes a referendum might have to be considered.

Finally, I would like to wish all members of the select committee every success in conceiving and hopefully introducing a more modern, democratic and for want of a better word “interesting” parliamentary system. I have real doubts that anything of consequence will emerge to disturb the status quo, but I would dearly like to be surprised. I hope that all of you have the necessary courage, fortitude and stoicism required to give British politics a “kick up the backside”!

September 2009

**Memorandum submitted by Vernon Bogdanor, Professor of Government
Oxford University**

- 1. Constitutional reform and popular disenchantment.**
- 2. The second stage of constitutional reform.**
- 3. The popular petition.**
- 4. The popular initiative.**

I. CONSTITUTIONAL REFORM AND POPULAR DISENCHANTMENT.

The constitutional reforms of the years since 1997, reforms such as devolution, the Human Rights Act and freedom of information have had the effect of dispersing power. Yet, this dispersal of power has hardly registered with the electorate. The reforms have done little to counteract that widespread disenchantment with politics which characterises modern Britain, as well as many other advanced democracies. Constitutional reform does not appear to have reconnected voters with government or to have combated disenchantment with politics, a disenchantment marked by a fall in turnout in general elections, a decline in the membership of political parties, and a weakening in popular identification with political parties.

Some suggest that disenchantment with politics is part of a wider loss of community engagement, a decline in what social scientists call social capital, the willingness to form social bonds and networks. Yet survey evidence seems to show instead that popular interest in politics is as strong as it has ever been, and that there is a powerful sense of civic obligation in modern Britain. Around 40% of the population belong to a voluntary organization, while around 3 million 18–24 year olds, the very generation that is least likely to vote, volunteer every year. Although young people aged between 16–24 are far less likely to vote than the over 50s, a Citizenship Survey undertaken between April and December 2007 showed that they were more likely than the over 50s to participate in informal voluntary activities at least once a month—41% compared with 32%.²⁰

The same survey showed that 77% of people in England had given to charity in the four weeks prior to interview.²¹ Survey evidence seems to indicate that four out of ten adults belong to at least one type of group. “18 million adults in Great Britain belong to, 11 million participants participate in, and four million volunteered their time and labour for organisations”.²² It is not so much, therefore, “that participation has declined, but rather that it has evolved over time and taken on new forms”.²³ Popular interest in politics

²⁰ Communities and Local Government, *Communities in Control*, Cm 7427, 2008, p 33

²¹ *Ibid.*, Evidence annex, p 28

²² Liam Byrne, MP, “Powered by Politics: Reforming Politics from the Inside”, *Parliamentary Affairs*, 2005, p 615

²³ *Ibid.*, Paul Whiteley quoted, p 614

remains high, but electors are no longer content to confine participation to orthodox channels. In Britain, so it seems, the democratic spirit is healthy enough. It is the institutions in which that spirit is reflected that are at fault. It is not so much that there is a generalised disengagement with politics, but “rather that a vital link that connected citizens to the state and the formal democratic process has been broken.”²⁴ How, then, can constitutional reform be extended so as to channel this civic spirit and desire for community engagement?

II. THE SECOND STAGE OF CONSTITUTIONAL REFORM

The real achievement of constitutional reform is to have redistributed power, but between elites, not between elites and the people. It has redistributed power “downwards” to politicians in Edinburgh, Cardiff, Belfast and London, “sideways” to the life peers in the House of Lords and “sideways” to the judges interpreting the Human Rights Act. But constitutional reform has not redistributed power to the voter. It has not shifted power from the politicians to the people. That is the crucial weakness in the constitutional reform programme as it has so far been implemented. That is the central reason why it has made so little impact on entrenched attitudes towards the political system.

Of course, political parties will remain, for the foreseeable future, crucial in the formation of governments and in ensuring the periodic accountability of rulers to the people in general elections. But, in a perceptive Fabian pamphlet written as long ago as 1992, entitled *Making Mass Membership Work*, Gordon Brown argued that, “In the past, people interested in change have joined the Labour Party largely to elect agents of change. Today they want to be agents of change themselves”.²⁵ He instanced as agents of popular participation such bodies as tenants associations, residents groups, school governing bodies and community groups. There can be little doubt that, in the future polity, such innovations, including various forms of direct democracy will come increasingly to supplement, though not of course, to replace, the traditional machinery of representative government.

The next stage of constitutional reform, therefore, and a far more difficult stage, must be a redistribution of power, not from one part of the elite to another, amongst those professionally involved in politics and the law, but from politicians to the people. This was heralded in the Green Paper issued by Gordon Brown’s government in the summer of 2007, entitled “The Governance of Britain”. Together with a series of reforms designed to make government more accountable to Parliament, by, for example, rendering the war-making power accountable to Parliament, it contained a short but important section entitled, “Improving direct democracy”.²⁶ “In the past”, the Green Paper declared, “individuals and communities have tended to be seen as passive recipients of services provided by the state. However, in recent years people have demonstrated that they are willing to take a more active role, and that this can help improve services and create stronger communities” (para 169). The Government proposed, therefore, to begin a consultation process on such matters as the introduction of citizens juries and on giving citizens the power to ballot ie call for referendums, on local spending decisions. In doing so, the Government was moving, however tentatively, into a new area of constitutional reform, the introduction of new elements of direct democracy into the British political system.

The proposals, limited though they are, recognise that the era of pure representative democracy, as it has been understood for much of the twentieth century, is now coming to an end. During the era of pure representative democracy, the people, though enfranchised, exercised power only on relatively infrequent occasions at general elections. Between general elections, they trusted their elected representatives to act on their behalf. There was some degree of deference towards elected politicians and, in any case, in an era when educational standards were lower than they are now, few voters believed that they had the political competence to make decisions for themselves. In the late 1940s, for example, the level of political knowledge was pitiable. Just 49% could name a single British colony, while, in a sample survey in Greenwich during the 1950 general election, barely half could name the party of their local MP.²⁷ Voting tended to be tribal and instinctive, based largely on an inherited viewpoint derived from parental attitudes and social position. That, however, was bound to be a transitional stage. It was bound to take time before universal adult suffrage came to be taken for granted, and its implications for popular enfranchisement fully understood. Universal male suffrage had been introduced in 1918, and universal female suffrage in 1928. It took until the general election of 1950, however, for the principle of one person one vote to be fully implemented, since it was not until the 1948 Representation of the People Act that plural voting was abolished. Universal suffrage, therefore, is still a relatively recent phenomenon.

The model of representative democracy—perhaps guided democracy would be a better term—that was acceptable during the first years of universal suffrage—is no longer adequate. The exercise of a modicum of power at relatively infrequent general elections is seen as insufficient. Voters wish to exert influence upon events between elections as well as at them. Deference has largely disappeared, and it is no longer accepted that political decisions should be made only by politicians. Elected politicians, therefore, are no longer accepted as the sole source of power and authority. Few now believe that the system of pure representative democracy is sufficient to enfranchise them, and this feeling of disengagement seems most pronounced

²⁴ Matthew Taylor, “Can Funding Reform Stir the Party Animal?”, *Parliamentary Affairs*, 2005, p 640

²⁵ Quoted in Liam Byrne MP, “Powered by Politics”, *Parliamentary Affairs*, 2005, p 620

²⁶ Paras 157–179

²⁷ David Kynaston, *Austerity Britain, 1945–51* (Bloomsbury, 2007), p 382

amongst the young. It is one of the main reasons why turnout has fallen so precipitously amongst this age-group. In addition, many voters, better educated than those of their parents' generation, find themselves empowered in many other areas of their lives, while the collective organisations which previously ruled their lives, and in particular, the trade unions, have lost much of their authority. Yet, in politics, the people are still expected to remain passive and deferential. The political system has not yet responded to the new individualism. Despite the wave of constitutional reforms since 1997, the political system itself has not been opened up. There is a striking contrast between the empowered consumer and the passive citizen.

The remainder of this memorandum discusses two weapons of direct democracy, the petition and the popular initiative.

III. THE PETITION.

The right of petition is recognized in the European Union, which, after the Maastricht Treaty of 1992, established a European Union Petitions Committee. It is also recognised in Article 19 of the German constitution, and in a number of the new democracies of Central and Eastern Europe. At Westminster, there is a system for presenting petitions, but no way of ensuring that they are taken any notice of by the government; and action taken by the House of Commons is usually minimal. But the Scottish Parliament has developed a petitions system which is well worth adapting for Westminster.

The Public Petitions Committee established by the Scottish Parliament is empowered to receive petitions from members of the public. In the parliamentary year, 2007–8, 103 such petitions were received, and 38 individuals were invited to give evidence on them. The petitions can then be passed on to the relevant subject committee, with the Public Petitions Committee having the task of monitoring what happens to them. But the Public Petitions Committee is not just a postbox, feeding petitions to the subject committees. More often, it takes an active initial role itself, looking critically at the petitions it receives.

The petition, so the Procedures Committee of the Scottish Parliament believed, “has the capacity to be a main driver in expanding and deepening participative democracy in Scotland”.²⁸ Of course, unlike the referendum or popular initiative, a petition cannot be expected to override a decision made by Parliament, nor can it be expected to interfere with or overturn a decision either of the Scottish Executive or of any other public body in Scotland, such as, for example a local authority, which of course enjoys its own democratic mandate, or a health board. Nevertheless the intention is that the Scottish Parliament might initiate legislation based on demands from outside parliament. A petition, therefore, even though it cannot override a decision by Parliament, should be able to influence the agenda of Parliament by bringing the subject-matter of the petition to the attention of its members. Thus the petitions process would, so it was hoped, enable the Scottish Parliament to form a bridge with the people, enabling it to link the legislative process with popular demands.

An example of how the petition process might work in influencing public policy was given in a 2002 report sponsored by the Procedures Committee of the Scottish Parliament.²⁹ In 2001, the Blairingone and Saline Action Group submitted a petition requesting the Parliament to revise its legislation so as to ensure that public health and the environment were not placed at risk from the practice of spreading sewage, sludge and non-agricultural waste on land. The chair of the Action Group gave evidence to the Public Petitions Committee, and the issue was then sent on to the Transport and Environment Committee. This committee asked one of its members to carry out an investigation, including site visits and to produce a report. The Transport and Environment Committee in turn produced a report recommending action by the Scottish Executive and other public bodies to amend the regulatory framework. This report was then debated in the Parliament and the appropriate legislation was passed.

It would be well worth considering whether such a petitions system might also be adopted in Westminster.

IV. THE POPULAR INITIATIVE

Instruments of direct democracy such as the referendum serve to supplement representative government, not to supplant it. Most democracies use the referendum, but, like Britain, only very infrequently. Switzerland, which has on average around one national referendum a year, is far from being typical. It is in fact very much the exception. Switzerland indeed has held around half of all the national referendums that have ever been held. 30 Australia and Italy are the only other democracies to have used referendums at national level at all frequently. No other democracy has held more than 45 nationwide referendums.

In countries with constitutions, the constitution often prescribes when the referendum is to be used. Most frequently, it is used before changes to the constitution itself are made, to ensure that such changes enjoy popular support. The referendum, however, as it has been used in Britain, which of course lacks a constitution, has remained a weapon for the political class, and can be used for purely tactical purposes. It is the government of the day, or Members of Parliament, who suggest whether and when it should be used.

²⁸ Scottish Parliament Procedures Committee, meeting 18, 10 December 2002, Consideration of Draft Report of Consultative Steering Group Inquiry, PR/02/18/A, para 289

²⁹ *Ibid.*, paras 210–213

In practice, however, it may be argued that there is now a constitutional convention that a referendum is required before wide powers are devolved from Westminster, as in Scotland, Wales and Northern Ireland. It is generally accepted that a referendum is required before power is devolved to any of the English regions. A referendum is also thought to be required before there is any alteration in the machinery by which laws are made—for example, legitimizing membership of the European Community in 1975, directly elected mayors, or the introduction of a new electoral system for elections to the House of Commons.

Some would argue that, just as a referendum is needed for the shift of powers downwards from Westminster to devolved bodies, so also it ought to be required before there is a shift of power upwards to the European Union. Yet, British governments have not held referendums on amending treaties to the Treaty of Rome—whether the Single European Act or the treaties of Maastricht, Nice, Amsterdam or Lisbon.

Parliament might perhaps seek to entrench the referendum by requiring it before a statute thought to be of constitutional importance, eg the Scotland Act, is repealed or radically amended. Upon one interpretation of parliamentary sovereignty, this could not be done since a future parliament could simply ignore it. The decision of one parliament cannot, it may be said, bind another. But, it could be argued that the referendum requirement could be made a condition of a bill purporting to abolish a devolved body receiving the Royal Assent. The referendum requirement would then redefine what was to count as a valid Act of Parliament, just as the Parliament Acts of 1911 and 1949 redefined what was to count as a valid Act of Parliament by providing that, under certain circumstances, legislation did not require the consent of the House of Lords.

But a more radical method of ensuring that the referendum was not merely a weapon for the political class would be to allow a certain proportion of registered electors eg 5%, to trigger a referendum. There is a precedent for this in the 2000 Local Government Act which provides that 5% of registered electors in any local authority area can require that authority to hold a referendum on whether it ought to adopt a directly elected mayor. The Local Democracy etc bill currently proceeding through Parliament imposes duties on local authorities to allow for petitions, and a provision by which a percentage of those living in a local authority area can trigger not a referendum but actions by the authority.

Why should this instrument not be extended to other issues? Why should not 5% of registered electors be able, for example, to require a referendum on whether a particular local authority in England or Wales should replace the first past the post electoral system with a system of proportional representation? Why should not 5% be able to propose a referendum on aspects of the budget of their local authority? Why should not 5% be able to propose a referendum on the organization of the schools in their authority—or even a referendum on matters not under the statutory control of the local authority, such as issues connected with the National Health Service?

It is hoped that the Select Committee may be able to examine these two instruments of direct democracy—the petition system and the popular initiative—in order to evaluate whether they would be suitable for wider adoption.

October 2009

Memorandum submitted by the Hansard Society

The Hansard Society is the UK's leading independent, non-partisan political research and education charity. We aim to strengthen parliamentary democracy and encourage greater public involvement in politics.

We welcome the formation of the committee and the areas of inquiry set out. The Committee's deliberations represent a unique opportunity to agree some important parliamentary reforms before the next general election and the recommendations will need to be urgently acted upon if progress is to be made in the short time available.

Following the 17 September seminar with members of the committee the Hansard Society submits this evidence to follow up in more detail on some of the issues discussed and to comment on some areas which were not raised during the course of the round table debate. We also refer members of the committee to our recent *Parliamentary Affairs* article entitled "Engagement and participation: What the public want and how our politicians need to respond" (a copy is attached for reference). The section of our submission concerning public initiation of proceedings draws directly on this article.

EXECUTIVE SUMMARY

SCHEDULING BUSINESS IN THE HOUSE

- The secretive usual channels process for organising parliamentary business should be replaced by a more transparent system designed to: provide greater certainty to and advance notice of the parliamentary timetable; allow for more involvement by the main political parties in the management of business; facilitate greater discussion between all interested parties in the Commons about the shape and timing of the legislative agenda; and introduce greater flexibility for consideration of topical issues of public interest.

- There are advantages and flaws with all the possible business committee permutations. On balance, however, we think the case may be marginally stronger for two committees (one for government and one for non-government business) if some of the concerns about cumbersome administration can be overcome. If not, one single all purpose business committee would still represent a significant improvement on the current secret usual channel arrangements.

APPOINTMENT OF MEMBERS AND CHAIRMAN OF COMMITTEES

- An independent selection committee comprised of senior backbenchers from all parties should be elected by secret ballot within the first few days of a new Parliament. The committee could be chaired by the Chairman of Ways and Means. Members interested in serving on a select committee would submit to the selection committee an “expression of interest” paper outlining their relevant interests and experience and committee preferences. The business committee or usual channels would agree the allocation of committee chairmanships and divide the number of seats between the parties and inform the selection committee accordingly. The selection committee would then nominate Members to each committee—informed but not bound by Members’ expressions of interest—in accordance with the required party balance. A motion outlining the proposed chair of each committee would be put to the whole House for a vote, thereby allowing members to reject the suggestions if desired. The selection committee should be required to complete its work within six weeks of the start of the new Parliament in order to ensure that the work of committees begins promptly.

PUBLIC INITIATION OF PROCEEDINGS

- A parliamentary petitions committee should be adopted to assess issues of public concern and, if appropriate, to make referrals for debate or committee inquiry. Additionally a system of e-petitions should be established and incorporated with paper petitions and processed through this new petitions committee.
- The procedural process for petitions must be clear if this approach is to be effective. The scope of petitions—what is the responsibility of Parliament and what is not, what is therefore admissible and what is not—must be clearly set out. Responses must be provided in timely fashion and it must be clear from whom, when and how these responses are to be provided. Good tracking mechanisms are required. And clearly defined outcomes through the parliamentary process must be sign-posted (for example, whether, as a result of a petition, an issue may simply appear on the order paper, or a written response be provided, a debate triggered or some other form of procedural escalation).
- By placing parliamentary petitions within a clear procedural process a petitions committee and e-petitions approach will help to strengthen the role of representative democracy rather than simply allow the loudest voices and mob mentality to dominate. The introduction of a petitions system would have real symbolic value in better linking Parliament and the public.

GUIDING PRINCIPLES

1. Contrary to popular perception the House of Commons is not a supine body which acts at the whim of the executive. Recent parliamentary sessions have seen the highest rates of rebellion by MPs in the post war period. The scrutiny opportunities of Members have also been augmented through, for example, the enhancement of the role and resources of select committees, the introduction of Public Bill Committee evidence sessions and the Liaison Committee’s opportunities to question the Prime Minister.

2. However, the balance of influence over decision-making in the House of Commons—about, for example, what is debated and when, who sits on what committees etc—is widely perceived to have tilted too far in the interests of the executive to the detriment of Members. But a reform approach focused solely on a desire to reduce the power of the executive and thereby empower parliamentarians collectively is based on too narrow an analysis.

3. Firstly, the tension within the House of Commons is not one solely between members of the executive and other MPs. At times, the frontbenchers of all parties have a common interest which can frustrate the desires and interests of backbenchers. The drive for reform should be based on a desire to dilute the overweening influence of frontbenchers generally over matters that should be the preserve of the House collectively rather than purely focus on the influence of the executive.

4. Secondly, we do not have a political system in which the legislature is a co-equal branch of government alongside the executive but rather a system of “Government in Parliament”. Reform should take account of this constitutional position and Members should work with the grain of it—with what the system is rather than what they might wish it to be. A delicate balance must be drawn between the right of the executive to secure its legislative programme in a timely and efficient manner and the obligations that weigh on the shoulders of Members on all sides of the House properly to scrutinise that legislative programme.

5. Thirdly, MPs are not a homogenous group of like minded parliamentarians: each defines their role, function and interests differently and the relationship each has with his/her party varies. They do not represent an *en bloc* vote for an agreed programme of parliamentary reform. There are already a number of

ways in which backbench Members could exercise more influence and be more proactive in the arena of legislative scrutiny for example, but many choose not to do so. The independence of Members in asserting their rights and role as parliamentarians is largely a matter of personal will and political vicissitude.

6. Fourthly, the vast majority of Members are elected not as individual politicians but as a representative of their party. As such political parties have a legitimate role in the parliamentary process and their influence, as exercised through the whips, cannot and should not be wholly circumscribed but rather restrained from excessive and egregious behaviour.

7. Beyond addressing the right of the House of Commons to determine aspects of its own operation free from executive/frontbench influence and control, a further important reason to pursue reform is the need for Parliament to develop into a more open and transparent institution in which its decision-making structures and administrative processes are held up to full public gaze. Greater transparency and accountability is a necessary precondition if improved standards of governance in the House of Commons are to be achieved.

8. Any reforms proposed must form a coherent, comprehensive package of change rather than a series of unconnected cherry-picked initiatives selected for their populist appeal. Reforms can often have unintended consequences and lead to developments that are the opposite of what was intended. Imperfect implementation of previous reforms can also significantly undermine their value. For example, timetabling is rightly criticised as having failed and descended into partisanship, but it does not work largely because it has been decoupled from the process of pre-legislative scrutiny. The two changes were recommended not as independent stand-alone reforms but as linked elements of a holistic reform package by the Hansard Society and others. It is imperfect implementation that has seriously compromised their value and effectiveness.

SCHEDULING BUSINESS IN THE HOUSE

9. The secretive usual channels process for organising parliamentary business should be replaced by a more transparent system predicated on the establishment of a business (or steering or legislative) committee(s) designed to meet the following principles:

- I. Provide greater certainty to and advance notice of the parliamentary timetable—the work of the House is of interest to many more people than just Members of the House and the organisation of business should provide, in the public interest, greater advance notice than is currently the case.
- II. Allow for more involvement by the main political parties in the management of business.
- III. Facilitate greater discussion between all interested parties in the Commons about the shape and timing of the legislative agenda. A number of key challenges exist with the current arrangement of business: i) there are few avenues by which backbenchers can generate legislative initiatives; and ii) the time split between plenary and committee work needs to be better balanced to reinforce the scrutiny work of committees and ensure that their work is properly debated in the House.
- IV. Introduce greater flexibility for consideration of topical issues of public interest—the limited topicality of current business arrangements is particularly damaging to public engagement and confidence.
- V. Ensure greater transparency in the overall process. A shift away from the secrecy of the usual channels in favour of full transparency and accountability in the organisation of business might act as a natural restraint on any egregious effort by party whips to exercise excessive control and influence. Political reality dictates however, that whatever business committee model is adopted, the whips will have the means to influence its deliberations if they wish to do so.

10. A single all purpose business committee—amounting, in effect, to the usual channels operating in public rather than private—may be sufficient to address issues of transparency and advance planning and would represent a significant improvement on the current arrangements. However, if the committee is not sufficiently inclusive and is dominated by the main party whips then it is unlikely that the issue of topicality will be addressed or that challenges such as backbench initiation of legislation or the balance between plenary and committee work will be explored.

11. The alternatives to an all-purpose Committee are therefore a Committee for non-government business or two separate committees—one for government and one for non-government business. Both have advantages and disadvantages in equal measure.

12. A single non-government business committee would not resolve any issues about the timetabling of government business. A decision would also have to be made about opposition days and whether these would fall under the purview of the committee. If so, opposition whips would want seats on the committee and it would be difficult to do so without also providing equal representation for government whips thereby undermining the committee's rationale *vis-à-vis* the desired reduction in influence of the whips. If opposition business is not included in the committee's remit then the extent of that remit would actually be quite limited in practice, extending to Private Members' legislation and requests for debates.

13. A committee for government business (formalisation of the usual channels, dominated by the whips) and another committee for non-government business (backbenchers, whip free) would combine the pros and cons of the two options set out above. There would be improved transparency as far as the usual channels are concerned and backbenchers would have more control over non-governmental business. But the existence of two committees might prove administratively burdensome.

14. There are thus advantages and flaws with all the possible business committee permutations. On balance, we think the case may be marginally stronger for two committees if the administrative and related issues can be overcome. But if not, one single all purpose committee would, we believe, represent a significant improvement on the current secret usual channel arrangements.

15. Whichever option Members choose, a number of key questions will need to be addressed:

- I. If there is to be anything other than a single all purpose business committee then a decision will need to be made about where the balance of time should lie between government and non-government business in any given week if the system is to operate effectively. This may need to be enshrined in Standing Orders. How time will be managed in the event of emergency/fast-track legislation will also need to be considered as this may not readily fit within the usual timetable constraints.
- II. How are Opposition days to be dealt with—by which committee? When determining this we would urge Members also to consider reform of business arrangements to enable the Opposition to substitute their time for topical debates.
- III. How far will the remit of the committee(s) extend? For example, should it include decisions about pre-legislative scrutiny or the timing of Public Bill Committees? Will it consider the balance of time between plenary and committee work? In order to provide for greater focus on select committee work and resolve the difficult timetabling issues that often confront MPs we recommend that one half or preferably one full day per week be set aside in the parliamentary timetable for committee work during which time the main chamber would not sit. Alongside this the core tasks of the chamber of the House of Commons should be refined and clarified. The floor of the House remains the main public focus for activity but attendance is low for anything other than big, set piece parliamentary occasions. The extent to which discussion in the chamber dominates political debate has also declined. To improve attendance and influence, the work of the chamber should therefore be refined to reflect its emergence as the plenary session of Parliament and the place where ministers are held to account on the topical issues of the day.
- IV. What will the relationship be between a business committee(s) and the Liaison Committee? The latter currently acts as the representative body of backbenchers and determines which committee reports are used in which debating slots. Should this remain with the Liaison Committee or pass to the new business committee(s)?
- V. Finally, how are the chair and members of a business committee(s) to be determined? A single all purpose committee will likely be the usual channels augmented by some backbench representatives. A non-governmental business committee would primarily be composed of backbenchers. The non-whip members of the committee(s) might be (s)electd by an independent selection committee of senior backbenchers set up by the House which would have an obligation to bear in mind party political balance in terms of the committee(s) membership. If the alternative of election of members of the committee is preferred then this should be by secret ballot. The committee(s) might be chaired by the Speaker representing the “interests” of the House and acting as independent arbiter, or perhaps preferably by the Deputy Chair of Ways and Means in order to insulate the Speaker from the partisan debate.

APPOINTMENT OF MEMBERS AND CHAIRMEN OF COMMITTEES

16. Committees currently provide an alternative career path for some MPs with a particular interest in specific areas of public policy. But the structure and membership of select committees is a concern due to:

- I. the frequency of ministerial reshuffles and linked changes in the architecture of departmental administration as a result of which the turnover of select committee membership is unhelpfully high; and
- II. the increased demands on select committee time and the commitment clashes that Members often experience between committee, other parliamentary and constituency duties, resulting in low attendance levels at some committee meetings.

17. We recommend that every member of the House of Commons who is not a member of the Government payroll vote or on the opposition front bench should serve as a member of a select committee. If necessary, the number of Parliamentary Private Secretaries should be reduced to one per department in order to expand the pool of available MPs for select committee work.

18. The choice of committee chairs and members should be more clearly placed in the hands of MPs as a collective body. Given the number of posts to be allocated the election of all members of select committees would be administratively cumbersome, unwieldy and time consuming. It would also give rise to difficult

political questions about the electoral system to be deployed which might in turn inhibit the chances of the proposed reform being adopted. Nor should it be assumed that election rather than selection of members/chairs would result in better outcomes in terms of securing more independently minded committee members free from the influence of the whips. The whips currently exercise considerable influence but once on a committee many members tend to “go native” quite quickly. They adapt to the independent and collegial approach required by the nature of the committee work and members of the governing party often subject their ministers to considerable and often critical scrutiny.

19. We recommend the establishment of an independent, broadly based selection committee comprised of senior backbenchers from all parties elected by secret ballot within the first few days of a new Parliament. The committee could be chaired by the Chairman of Ways and Means and the arrangements for its establishment might be modeled similarly to that of the Chairman’s Panel. This approach is similar to that already proposed in 2001 by the Modernisation Committee when it suggested the establishment of a Committee of Nomination.

20. Members interested in serving on a select committee would submit to the selection committee an “expression of interest” paper outlining their relevant interests and experience and committee preferences. The business committee (or usual channels if a business committee is not established) would agree the allocation of committee chairmanships and divide the number of seats between the parties and inform the selection committee accordingly. The selection committee would then be responsible for nominating members to each committee—informed but not bound by members’ expressions of interest—in accordance with the required party balance. A motion outlining the proposed Chair of each committee would be put to the whole House for a vote, thereby allowing members to reject the suggestions if desired.

21. The selection committee should be required to complete its work within six weeks of the start of the new Parliament in order to ensure that the work of committees begins promptly. If not, a gap of six months or more can develop (encompassing the period before and after a general election) during which no committee work takes place. This is an unacceptable delay.

PUBLIC INITIATION OF PROCEEDINGS

22. Hansard Society research over the last six years—through our annual Audit of Political Engagement—has consistently found that the public view of political engagement and participation is far more complex than many of those advocating for more direct, participatory forms of decision-making are willing to acknowledge.

23. In particular, the Audit finds that:

- 55% simply do not want to be involved in national decision-making;ⁱ
- a lack of time is the greatest barrier to participation;ⁱⁱ
- a clear distinction is drawn between having a say and being involved in decision-making, and influence is favoured but not involvement;ⁱⁱⁱ
- people feel they lack influence in decision-making above all because “nobody listens to what I have to say”;^{iv}
- the more efficacious any form of political action or engagement is perceived to be, the more highly it is valued;^v and
- although the public recognise what it takes to be a good citizen they largely fail to convert good intentions into positive action.^{vi}

24. The barriers to public engagement and participation in the political process are broadly a mixture of a lack of knowledge and interest, low levels of satisfaction, and a shortage of time. If participation in the political process is to be enhanced, knowledge and interest need to be augmented and deep-rooted social and demographic disparities addressed. The objective must be an informed as well as an engaged public. Mechanisms for engagement and decision-making need to be constructed in such a way that they provide for a more satisfying engagement experience, respecting the fact that influence through having a voice in the process rather than direct involvement is preferred by a majority. Such mechanisms must also be mindful of the time that the public is able and indeed willing to give to the political process. Overall the focus should be on the quality of public engagement and participation not just the quantity and scale of direct involvement in the process.

25. The public’s desire for influence rather than involvement, for giving voice to their views and being heard, points to the fact that the political process may be as important as the policy outcomes from any such process, though positive outcomes do reinforce the value that the public places on the process. But such processes have to be satisfying forms of public engagement if that engagement is to have any chance of being sustained. The most obvious form of enhanced democratic engagement in recent years has been the government’s efforts to consult more widely on policy proposals and provide opportunities for the public and interested stakeholders to have a say. However, amidst the blizzard of consultation opportunities a perception has increasingly grown that too often the process is illusory and that the government has already made up its mind, resulting in disengagement amidst increasing cynicism.^{vii}

26. The challenge then is how to adopt new mechanisms to enable people to have a say and exercise influence in a meaningful manner, and in a way that ensures that politicians must listen and respond, but which recognises some core constraints: that not everyone's views can be reflected in the final outcome and the degree to which people actually want to sustain their engagement is quite limited.

27. In light of this data we believe that a parliamentary petitions committee would provide a possible solution to the public engagement challenge and ought to at least be adopted on a trial basis by the House of Commons. It would not be a panacea for public engagement and participation but it would offer a realistic and deliverable reform. Petitions are an important part of the contemporary democratic process. The Audit shows that the public are more likely to sign a petition than they are to engage in any other form of democratic activity.^{viii} Petitions should therefore be made a much more significant feature of the work of Parliament in order to better engage the public and be more responsive to matters of topical public concern.

28. At present, petitions are governed by strict rules about wording and there is little sense that petitions to Parliament result in any concrete action on the part of MPs. In contrast, the Scottish Parliament has a Public Petitions Committee which plays a pivotal role in connecting the public and the legislature. It assesses the merits of each petition, if necessary through the taking of evidence. It filters out petitions where action is already being taken or where the case is weak. But where there is a case to be answered it refers petitions for further consideration. A similar petitions (or public engagement) committee could be established in the House of Commons to assess issues of public concern and, if appropriate, to make referrals for debate or committee inquiry. We further recommend that Parliament adopt a system of e-petitions, incorporated with paper petitions and processed through the new petitions committee.

29. An e-petitions system was recommended by the Procedure Committee in a report in April 2008. The Government response "envisaged providing time" to debate the issue later in 2008 but such a debate was not forthcoming. In March 2009 the Procedures Committee issued a further report calling on the Government to introduce the system. It was critical of the Government for stalling on this issue and for requesting that the proposed scheme be changed in order to cut its cost based on comparisons ministers had made with the No 10 e-petitions system. However, what is proposed with a parliamentary petitions committee and incorporation of e-petitions is markedly different to what is offered on the Downing St site. By placing parliamentary petitions within a clear procedural process the objective of a petitions committee and e-petitions approach is to strengthen the role of representative democracy rather than simply allow the loudest voices and mob mentality to dominate. The introduction of a petitions system would have real symbolic value in better linking Parliament and the public.

30. However, our support for the petitions system is predicated on the assumption that it will become an integral and core part of the parliamentary process and not a bolt-on accessory. Any petitions system, particularly e-petitions, needs to sit at the heart of a well defined procedural process which is transparent and clear to the public. The scope of petitions—what is the responsibility of Parliament and what is not, what is therefore admissible and what is not—must be clearly set out. Responses must be provided in timely fashion and it must be clear from whom, when and how these responses are to be provided. Good tracking mechanisms are required. And clearly defined outcomes through the parliamentary process must be sign-posted (for example, whether, as a result of a petition, an issue may simply appear on the order paper, or a written response be provided, a debate triggered or some other form of procedural escalation).

October 2009

REFERENCES

ⁱ *Audit of Political Engagement 6*, Hansard Society, 2009, pp. 36–37

ⁱⁱ *Ibid.*, p 37

ⁱⁱⁱ *Ibid.*, p 52

^{iv} *Ibid.*, p 35

^v *Ibid.*, p 51

^{vi} *Ibid.*

^{vii} See A. Brazier, S. Kalitowski, and G. Rosenblatt with M. Korris, *Law in the Making: Influence and Change in the Legislative Process* (Hansard Society, 2008) pp 177–178

^{viii} *Audit 6, op. cit.*, p 27

Memorandum submitted by Unlock Democracy

ABOUT US

Unlock Democracy (incorporating Charter 88) is the UK's leading campaigning think-tank working on issues of constitutional reform and democratic renewal in the UK. We focus on constitutional reform, political parties and active citizenship. For more information please see www.unlockdemocracy.org.uk.

EXECUTIVE SUMMARY

- Unlock Democracy welcome the creation of this Committee and in particular the fact that it is examining how the public can initiate debates and proceedings in the House.
- Unlock Democracy believes that there needs to be a rebalancing of power between the executive and the legislature. We believe that this rebalancing of power should include the election of members and chairs of select committees by secret ballot and the creation of a business committee for the scheduling of business in the House.
- Unlock Democracy supports the proposal made by the Speaker of the House of Commons that the debate of Private Members' Bills should be moved from Friday afternoon to Wednesday. We believe that this will strengthen the role of backbench MPs and encourage civic society and the public to engage with Parliament.
- Unlock Democracy urges the House of Commons to establish a petitions committee, along similar lines to the Public Petitions Committee in the Scottish Parliament, at the earliest level.
- Unlock Democracy proposes that the House of Commons should consider introducing a system of agenda initiative so that voters can propose policies that they feel should be debated by Parliament. We believe that this would be a very moderate step towards the use of direct democracy tools which would enable voters to constructively engage with Parliament but would leave the decision making with Parliament.
- Should the House of Commons choose to create a petitions committee or to implement agenda initiative we would strongly recommend that the different stages of the processes are made very clear to the public and that the petitioner or person submitting the proposal is given feedback on what has happened to their idea.

THE APPOINTMENT OF MEMBERS AND CHAIRS OF SELECT COMMITTEES

1. Unlock Democracy believes that there needs to be both a rebalancing of power and a clarification of roles between the executive and the legislature. All too often Parliament is seen as being the same thing as the Government and this is not healthy for democracy or for encouraging participation in politics.

2. The scrutiny work done by select committees is a very valuable aspect of Parliament's work. Whilst we recognise the excellent work done by those currently serving on select committees, we believe that the select committee system would be strengthened by increased independence from the executive. Therefore Unlock Democracy supports the introduction of secret ballots for the election of select committee members and chairs.

SCHEDULING BUSINESS IN THE HOUSE

3. As part of the rebalancing of power between the executive and the legislature, Unlock Democracy would be interested in the creation of a business committee for the House of Commons. It is of course important that the Government is able to get through its business, but we do not accept that this means they need to unilaterally control the legislative agenda. Establishing a business committee would also increase the openness and transparency of Parliament.

4. Unlock Democracy also supports the proposal made by the Speaker of the House of Commons made in his speech to the Hansard Society,³⁰ that the debating of Private Members' Bills should be moved from Friday afternoon to Wednesday. We agree that this would strengthen the role of the backbench MP and encourage the public and civic society to engage with Parliament.

ENABLING THE PUBLIC TO INITIATE DEBATES AND PROCEEDINGS IN THE HOUSE

5. Unlock Democracy believes that it should be possible for members of the public to suggest issues for consideration by Parliament. All too often political participation is seen as nothing more than cast a vote once every four or five years. We believe that enabling the public to propose ideas for discussion in Parliament is one way to start fix the disconnect between Parliament and the public. The measures we recommend would also encourage the public to engage with the work that Parliament does outside the media set-pieces such as Prime Minister's Questions (which is far from representative of the work of the legislature).

³⁰ *Parliamentary Reform: The Route from Here to There*, 24 September 2009, www.hansardsociety.org.uk

6. There are two measures that Unlock Democracy believes Parliament should introduce to enable the public to initiate debates and proceedings in the House. Firstly there should be a formal petitions committee as is currently the case in the Scottish Parliament. Secondly the House of Commons should consider introducing agenda initiative which is already used successfully at a local government level.

PETITIONS

7. Petitioning is one of the oldest forms of political participation in the UK and is very successfully used as a means of citizen engagement in the devolved administrations, as well as around the world. Submitting a petition is one of the most basic ways in which a voter can seek to raise a policy issue with the legislature and not just their constituency MP. It allows individuals, community groups and organisations to participate in the policy scrutiny process by raising issues of concern with their Parliament. In the Scottish Parliament the public petitions process is seen as a key part of the Parliament's commitment to participation, openness and accessibility. Unlock Democracy believes that the House of Commons should establish a Public Petitions Committee, on a similar basis to that which exists in the Scottish Parliament, as a matter of urgency.

8. While the current system for dealing with petitions to the House of Commons may have a historic and symbolic value, it does not serve the needs of a modern democracy. It is unclear for members of the public who wish to petition Parliament what happens to a petition once it has been submitted, and there is no formal mechanism for the petitioner to receive any feedback.

9. We note that the Procedure Committee³¹ has previously proposed that the House of Commons should use an e-petitioning system. However we have some concerns about the proposals being put forward for e-petitions. Firstly any petitioning mechanism should be as widely accessible as possible and so anything that is available in terms of online participation should have an equivalent offline process. The Internet provides a quick and easy way for people with the skills and technology to participate, but these are by no means universal among the UK electorate.

10. Secondly, the key aspect of any petitioning system is how flexible and responsive it is. Where petitioning works well it is not so much that petitions are frequently adopted but that the institution or legislature responds to the issues raised by popular petitions and acts of its own accord. This has been the case with the petitioning system in New Zealand, where if a petition reaches a significant number of signatures Parliament acts pre-emptively and engages with the issue rather than waiting to be forced to do so. The emphasis on the e-petitioning proposals seems to be the petitioner "getting her day in court" rather than Parliament engaging with the issue and deciding whether to respond. As the day in court in this instance would be a reference in Hansard we don't think this is a satisfactory outcome for either party.

11. Thirdly, the focus on e-petitions does not encourage engagement between citizens and parliamentarians. An individual fills in a form online, if the issue is popular and meets the regulations, then their MP is expected to take it forward. If the individual has requested feedback then they will get a response at the end of the process. Politics is all too often seen as something that is remote, incomprehensible and only conducted in Westminster. This mechanism will do nothing to change this perception. Nor does it engage people meaningfully in the legislative process.

12. While under the Procedure Committee's proposals it would be possible for the petition to be referred to an existing select committee we are concerned that they would not have the time or resources to undertake additional investigations. The workload of departmental select committees is increasing, particularly with moves towards pre-appointment hearings for public appointments. We are concerned that petitions from the public would simply be lost in the system.

13. Fourthly we are concerned that in the proposed mechanism MPs could become gatekeepers rather than facilitators. Unlock Democracy recognises the need for MPs to have a key role in the petitioning process, but we do not believe this proposal is practicable, particularly as there is no filtering mechanism. In theory each MP will present their constituent's petition regardless of whether or not they agree with it. Most petitioning committees use some kind of trigger system, so that they only consider petitions that reach a certain number of signatures for example. Under the current proposals MPs would be sent, and assuming they fell within Parliament's remit, be expected to present every single petition received from a constituent. In the nearly two years that the Downing Street e-petitions system has been in place there over 29,000 petitions have been submitted. It would be all too easy therefore for MPs to be forced to become the filter and decide which of the many petitions they have received should be presented to Parliament.

14. The advantage of a petitions committee is that it gives the process a human face but also that the Committee can go beyond Westminster. For example the Scottish Petitions Committee has gone outside Holyrood to take evidence on a number of occasions including going into schools to take evidence from pupils on the public health impact of cheap alcohol.³²

15. The Public Petitions Committee (PPC) in Scotland accepts petitions from any individual who is not an MSP, and there is no threshold in relation to the number of signatures. An individual can submit a petition with one signature and as long as it is a devolved matter it will be considered by the Committee. We recognise

³¹ Procedure Committee, *e-Petitions: Call for Government Action*, Second Report of 2008–2009, HC 493

³² See the following links for just two examples http://news.bbc.co.uk/1/hi/scotland/south_of_scotland/5116898.stm
<http://news.bbc.co.uk/1/hi/scotland/5404808.stm>

that the House of Commons may be concerned about the number of petitions that any equivalent committee may receive. Therefore the House may wish to consider setting a threshold of a certain number of signatures that a petition has to receive before it can be considered.

16. The PPC meets fortnightly when the Parliament is sitting and all its meetings are held in public. Its membership broadly reflects the balance of the various political groupings in the Parliament. About eight new petitions are normally considered at each meeting as well as a number of current petitions. Should the PPC consider it necessary, in order to broaden its understanding of a petition, it may invite a petitioner to give oral evidence before it. This may be where a petition raises a new issue. Petitioners may also provide written evidence in support of their petition.

17. The role of the PPC is to ensure that appropriate action is taken in respect of each admissible petition. In fulfilling this function, it takes responsibility for the initial consideration of the issues raised.

18. This may involve hearing oral evidence from the petitioners or seeking written evidence from organisations with an interest in the issues raised eg the Scottish Government. Following consideration of the written and any oral evidence, a decision will be taken as to whether the issues raised merit further consideration. The PPC may also refer a petition to the relevant subject committee of the Parliament for further investigation. It can also bid for parliamentary time for a petition to be debated by the whole Parliament. Having considered a petition the PPC (or the relevant subject committee) may agree that no further action is required and close it. In all cases, the petitioner will be notified of any action.

19. Unlock Democracy believes that it is the involvement of the petitioner in the process and the fact that they are kept informed at each stage that makes the PPC a particularly valuable example of how petitioning can be used to enable the public to initiate debates and proceedings in the House of Commons.

AGENDA INITIATIVE

20. Agenda initiative is a direct democracy tool but it does not lead to a referendum and decision-making rests firmly with the legislature, rather than being held jointly with citizens. Generally speaking an agenda initiative leads to either a committee of the legislature, or the legislature as a whole examining the issue, deciding whether it has merit and how if at all it should be taken forward.

21. An agenda initiative procedure is the right of a group of voters, meeting predetermined requirements, to initiate a process for the revision of a law, the introduction of a new law or an amendment to the constitution. While it is voters who make the proposal, the legislature retains full decision-making power.

22. Agenda initiative procedures first began to be used in Europe in the aftermath of the First World War and are now used in 22 countries across Europe with a further seven countries allowing agenda initiatives (though only at a sub-national level). The types of issues that have been raised include proposals to improve the teacher training programme in Poland and the introduction of a 40-hour week in Austria. It should be noted that if the Lisbon Treaty is ratified, as now looks likely, EU citizens will be able to petition the EU Commission to bring forward proposals.

23. The predetermined requirements that have to be met can include the subjects on which proposals can be made, the number of signatures required for a proposal to be considered, the amount of time allowed to collect the signatures and how the signatures can be collected.

24. These requirements determine how easy or difficult it is to use this tool and how likely it is that the public will engage with it. For example, the requirement to collect a high number of signatures, in a short period of time, and with those signatures required to have been collected in specific places means that very few proposals will be successful. This may discourage people from trying to use the tool. However those that are successful are guaranteed to have widespread support. An agenda initiative system which requires a low number of signatures which can be collected over a long period of time means that many more proposals are likely to reach the threshold and be considered by the legislature. This makes it more likely that the public will use the tool but may create more work for the legislature. Unlock Democracy believes that it should be difficult to submit a proposal under an agenda initiative system but that it should be possible. We would therefore support high thresholds.

25. Some countries restrict the subjects on which an agenda initiative can be proposed. For example Austria, Brazil, Cape Verde and Thailand do not allow agenda initiative to be used for amendments to the constitution while Niger does not allow agenda initiative on devolution.

26. Although petitions and agenda initiatives are different mechanisms they are both tools designed to make Parliament more responsive to voters in between elections. These tools enable voters to raise issues, demonstrate that there is a significant level of public support and provide a formal mechanism for

Parliament to respond. We believe that these mechanisms will help to address the disconnect between Parliament and the public.

October 2009

Memorandum submitted by John Owens

My name is John Owens. I am Professor of United States Government and Politics at the University of Westminster, a Faculty Fellow in the Center for Congressional and Presidential Studies at the American University in Washington DC, and an Associate Fellow at the Institute of the Americas in the School of Advanced Studies at the University of London. I have been a student of the United States Congress for almost 35 years and have written extensively on congressional politics, congressional-presidential relations, and comparative legislative politics.

1. INTRODUCTION.

- 1.1. Let me start by pointing to the important and obvious differences between the US “separated” system and British parliamentary government, and to the much greater strength of “party” as an organising force in the House of Commons compared with the US House of Representatives. Still, as I argued in an article written with Professor Burdett Loomis of the University of Kansas, which was published in the *Journal of Legislative Studies*, there are growing similarities between the two chambers, primarily as a result of the growing influence of party in the US House.
- 1.2. Like the House of Commons, the US House is increasingly a majoritarian institution in which the majority party exercises tight control over the chamber’s agenda, most particularly the floor agenda. Increasingly, the leaders of the majority party in the US House can shape and structure the floor agenda through the Rules Committee (which is effectively under their control), while the executive/the president and/or the Senate may be controlled by the opposing party. This control is exercised by the Rules Committee through the use of very often elaborate and increasingly restrictive special rules that limit which amendments, if any, will be considered on the House floor, in what order they will be considered, for how long, whether they will be subject to points of order, which will be the subject of roll call votes, and so forth.
- 1.3. Typically, though not always, these rules prohibit or limit amendments offered by the minority party—which often seek to undermine majority party control by designing amendments aimed at creating cross-party coalitions. In recent congresses, over 70% of special rules are restrictive, whereas 40 years ago about 10% were.
- 1.4. In the US House, the majority party also exercises increased control over standing committees through committee assignments, bill referrals, and legislative access to the House floor. Gone are the days of committee government when committees might write legislation that majority party leaders felt obliged to accept. In the contemporary House, committees now enjoy much less autonomy as parties have become the most significant organisations on Capitol Hill.
- 1.5. Given increased majority party control in the US House, and extant ministerial control of the House of Commons agenda, it seems useful and legitimate to ask what procedural opportunities exist for individual US House members to influence the floor agenda that might be made available to member of the House of Commons.
- 1.6. Several caveats need to be entered in drawing such comparisons, however:
 - 1.6.1. US House members have much larger staffs (18 FTEs). Although most members’ staff concentrate on constituency-related tasks, members are nevertheless able to direct considerable staff resources from within their own offices to their legislative responsibilities, which usually reflect their committee assignments. As a consequence, individual House members are still able to write, recommend and influence legislation, which is still largely written in committees.
 - 1.6.2. Second, when US House members make their legislative decisions, constituency influence trumps party influence if the two sources of influence conflicts.

2. THE DISCHARGE PETITION

Given the extent of majority party leadership control in the US House, one opportunity that is available to House members that your Committee may want to consider is the discharge petition. This is a mechanism by which ordinary backbenchers may use either a) to prize a bill out of the committee to which it has been referred and it has not reported to the House floor, without the Rules Committee granting a special rule; or b) when the Rules Committee/the majority party leadership refuses to grant a rule on legislation that enjoys considerable support.

As Richard Beth, Legislative Specialist with the Congressional Research Service, testified before the US Congress: “[t]he discharge rule in practice today is the *only form of proceeding in the House by which you can get a measure on the floor* if it was over the opposition of the Speaker, the committee of jurisdiction and the Committee on Rules” (US. Congress 1993: 63).

- 2.1. An early form of the discharge petition was introduced in the US House in somewhat similar circumstances to those in which your Committee is considering Commons reform. In 1910, a coalition of minority Democrats and Progressive Republicans combined in a famous revolt against “Cannonism”. The Republican Speaker “Uncle Joe” Cannon exercised autocratic control of the House and would not allow floor consideration of legislation demanded by their constituents. A new discharge rule was introduced (Rule XV, clause 2), which allowed any House member to submit a motion to discharge any bill from any committee when the chair of a committee refuses to place a bill or resolution on the committee’s agenda; without such a procedure, a bill before a committee might never be reported out thus preventing the full House from considering it.
- 2.2. The discharge petition procedure provides that if a bill has been before a standing committee for 30 legislative days any members may introduce a motion to discharge the committee from considering the measure further. The procedure is as follows:
 - 2.2.1. A member introduces a motion to discharge a committee from considering the measure further
 - 2.2.2. One of the House clerks then writes a discharge petition that is made available for House members to sign when the House is in session.
 - 2.2.3. If a majority of House members (218) is willing to sign the petition, a bill can be brought to the House floor for consideration regardless of whether the relevant committee of jurisdiction or the majority leadership (including the Speaker and the Rules Committee) opposes the bill.³³
 - 2.2.4. Once at least 218 members have signed a petition, the motion to discharge a bill is placed on the discharge calendar. Once it has been on this calendar for seven legislative days, the measure becomes privileged business on the second and fourth Mondays of the month, except when these days are the final six days of a legislative session.
 - 2.2.5. Any petition signatory may be recognised to offer the discharge motion. Once the motion is called up, debate is limited to 20 minutes, divided equally between supporters and opponents. If the discharge motion fails, the bill cannot be considered again during that legislative session. If it is approved, however, any petition signer may then make a motion to call up the bill that is the subject of the petition for immediate consideration. The bill is then considered under normal procedure until it is disposed of. Even if the vote for immediate consideration fails, the bill is nevertheless assigned to the appropriate legislative calendar with the same rights of any other bill reported by a committee.

3. THE DISCHARGE PROCEDURE’S LIMITATIONS

- 3.1. In reality, few discharge petitions are successful in collecting the required number of signatories and even less in prizing measures from committees. Between 1931 and 2008, 615 petitions were submitted, but only 47 acquired the requisite number of signatures—less than 10% per (2-year) Congress. For example, after Republicans won control of the House in 1994, no discharge petition gained 218 signatures before 2002 (on the campaign finance reform bill). Over the same 1931–2008 period, no more than 26 bills were discharged, only 19 ultimately passed the House, and only two became law (Beth 2003; 2009), the most recent being the 1960 Federal Pay Raise Act. In the most recent example, in 2003, Congressman Brian Baird successfully entered a discharge petition with the required 218 signatures but the measure (proposing an amendment to the US Constitution of the United States regarding the appointment of individuals to fill vacancies in the House in the event of a catastrophic attack on the Capitol Buildings) failed to gain the necessary two-thirds vote on the House floor.
- 3.2. The procedure is difficult to implement for a number of reasons:
 - 3.2.1. Most obviously, party leaders—particularly those from the majority—often discourage and pressure their party colleagues not to sign discharge petitions. Before 1993, it was more difficult for party leaders to exert pressure because House precedents required the names of signatories of discharge petitions to be kept secret until the required 218 signatures had been obtained. Following public criticism—primarily from conservative House members—that the process was not sufficiently open, the House changed the rules in 1993 to require the names of those who had signed a petition to be made public *as soon*

³³ Originally, only one-third of House members (145) were required for a discharge petition to take effect. In 1935, Speaker Rainey, who wanted to stop legislation awarding veterans a cash bonus from being brought up in Congress, changed the number to a majority. The increase in the number of required signatories, of course, further strengthened the power of Rules Committee and the Speaker in relation to rank and file members.

as the discharge petition was introduced. The argument they used was that previously House members introduced, co-sponsored or publicly declared support for a bill but then refused to sign a discharge petition that would allow it to come to the floor for consideration. Without public disclosure, they argued, committee and party leaders could press members not to sign or to remove their names from the petition if they had signed already. In 1995, the House revised its rules to require the Clerk's office to make available on a daily basis lists of the names of those members who had signed discharge petitions and to publish such lists in the Congressional Record (the equivalent of Hansard) every week.

Besides actively discouraging majority members from signing any discharge petition, the Speaker working in consort with a majority of the Rules Committee, may also circumvent a discharge motion through deft interpretation and use of the House rules (see Patty 2007: 683–4). However, as Cannon discovered in 1910, when the House revolted against his autocratic rule, if support for a bill is very strong, a Speaker's attempts to deny or subvert backbench pressures may provoke even greater hostility, and ultimately threaten his/her position as party leader. As the case of the 1993 rules change demonstrates, in the face of overwhelming backbench support, House majority leaders felt compelled to support the change.

- 3.2.2. Second, members are reluctant to challenge a committee's prerogative to consider a bill. Because the discharge rule violates regular legislative procedure, by definition, even those members who sponsored or support the bill that is the subject of the discharge petition, may not support the procedure. Committees themselves may also vitiate discharge attempts by reporting a bill, possibly adversely, so that they no longer have responsibility for it.
- 3.2.3. Third and relatedly, legislators are typically reluctant to write legislation on the House floor—particularly if it is complex legislation—without the benefit of the committee of jurisdiction's expertise and information provided it by witnesses in hearings.
- 3.2.4. Fourth, gathering the necessary signatures without—and, indeed, likely in contravention of the wishes of—the majority party whips is time-consuming and requires political capital, which most backbench Members will not possess. These costs frequently deter members from resorting to the discharging procedure.
- 3.2.5. Finally, Members are reluctant to use an irregular procedure that might one day be used against committees they chair or on which they serve.

4. POTENTIAL BENEFITS.

- 4.1. Just because its actual use in the US House is rare, however, does not negate the potential benefits of instituting such a procedure. Like the presidential veto and the Senate filibusters, which are also rarely invoked, discharge is a potential threat, a bargaining tool that can be used to extract concessions from majority party leaders while at the same time extending participation in the legislative process.

There are numerous examples from the US House to support this contention. These range from the Equal Rights Amendment to the US Constitution, flag burning, balancing the federal budget, prayers in state schools, consumer protection, gun control, and campaign finance. Although some of these efforts were not successful and/or use of the discharge procedure did not lead directly to legislation, the procedure nevertheless provided an avenue by which these issues could reach the legislative agenda. As Beth (1994:37) argues, “struggles to bring measures to the floor over the opposition of the Committee presumably loomed larger than the raw number of petitions filed (or of rules denied) would suggest”. The threat of a discharge petition may also prompt a committee to hold hearings or report a bill or majority leaders to allow a floor debate on an issue.

- 4.2. Second, although by definition, the minority do not have the numbers to muster 218 signatures, discharge is an important tool for the minority party. That is, the discharge procedure provides minority party members with an institutional incentive to identify issues on which they may seek the support of majority party members willing to defect from their party's position. Still, discharge can be a two-edged sword for the minority. When the minority party seek to use the discharge procedure to demonstrate wide House support for their proposals and then they fail to garner the necessary 218 signatures, they run the risk of appearing as a divided party.

REFERENCES

- US. Congress. 1993. House. Rules Committee. Subcommittee on Rules. Hearings. 93rd Congress, Second Session.
- Richard S. Beth, Control of the House Floor Agenda: Implications from the Use of the Discharge Rule, 1931-1994. Paper presented at the annual meeting of the American Political Science Association, 1 September 1994.

Beth, Richard S. 2009. Personal communication with the author.

Beth, Richard S. 2003. "The Discharge Rule in the House: Principal Features and Uses CRS Report for Congress. 97-552 GOV. Washington, DC: Congressional Record Service: Government and Finance Division.

Miller, Susan M. and L. Marvin Overby 2009. "Party or Petition": Discharge Behavior in the Modern House". Paper presented to the Midwest Political Science Association, Chicago. April.

Patty, John W. 2007. "The House Discharge Procedure and Majoritarian Politics", *The Journal of Politics*, 69/3: 678-88.

US. Congress. House. Rules Committee. Subcommittee on Rules of the House. 1993. *Discharge Petition Disclosure H. Res 134*. Hearings. 103rd Congress, Second Session, Washington, DC: USGPO, 14 September. October 2009