



## ***Good Government:*** **Hansard Society evidence to the Public Administration Select Committee**

### **1. Introduction**

The Hansard Society is an independent, non-partisan organisation that works to strengthen parliamentary democracy and encourage greater public involvement in politics. We undertake research to stimulate reform of political institutions and the parliamentary process.

We welcome the Committee's inquiry on good government. The Hansard Society is strongly of the view that an effective Parliament is a pre-requisite for a well functioning government. In recent years the Hansard Society has undertaken a number of studies and commissions which have had a central theme: that there should be improved and more exacting scrutiny and accountability of government to Parliament.<sup>1</sup>

Parliament has a unique role to seek from government greater explanation of what it is planning to do and the reasons for its proposals, and to ensure that they have been well considered and tested. Equally, government should co-operate to the fullest extent with Parliament's oversight function to ensure its actions and expenditure are accounted for and efficiently deployed and, where necessary, that lessons are learned and implemented.

There are already mechanisms within Parliament which promote some effective scrutiny and accountability – most notably departmental select committees and the work of the Public Accounts Committee and the National Audit Office. The Hansard Society has proposed reforms to make parliamentary scrutiny more rigorous and has welcomed changes when they have occurred. These changes have, to a partial extent, seen a shift of emphasis from Parliament's role as a legislature towards its scrutiny function. Yet much more could be done to facilitate and encourage the scrutiny role of Parliament.

This evidence paper looks at our proposals in two specific areas, parliamentary scrutiny of government finance and government legislation, as well as recent developments in the area of parliamentary scrutiny of the executive as a whole. The aim of these

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<sup>1</sup> Hansard Society (2001), *The Challenge for Parliament; Making Government Accountable*, The Report of the Hansard Society Commission on Parliamentary Scrutiny, chaired by Lord Newton of Braintree (London: Hansard Society); A. Brazier, M. Flinders & D. McHugh (2005), *New Politics, New Parliament? A review of parliamentary modernisation since 1997* (London: Hansard Society).

proposals is to promote a culture of explanation, openness and information and to ensure that government seeks and responds to parliamentary input and oversight. Robin Cook, when Leader of the House of Commons, succinctly described the purpose of parliamentary functions in these areas: 'Good scrutiny makes for good government'.<sup>2</sup> We concur with this view.

## 2. Financial scrutiny of public money

There is much scope to improve Parliament's scrutiny of government's finance<sup>3</sup> and widespread agreement that changes are needed.<sup>4</sup> We welcome the government's recent acknowledgement of the importance and value of good financial scrutiny by Parliament and the Alignment Project underway to improve and simplify the government's reporting to Parliament.<sup>5</sup> While there are measures that Parliament can adopt to improve its scrutiny of government spending, the government has a responsibility to assist the process in a number of areas: Budget and Pre-Budget reports, spending reviews, National Audit Office/Public Accounts Committee reports, and Private Financial Initiatives.

### 2.1 Government timing of financial announcements

**The Government could allow for better financial scrutiny by Parliament by reconsidering the timing of the Budget and Pre-Budget reports (PBR).** The Budget is presented to Parliament shortly before the Easter parliamentary recess, leaving little opportunity for parliamentary debate before the end of the fiscal year (the 2006 and 2007 Budgets were both presented to Parliament just one week before the parliamentary recess).<sup>6</sup> The OECD guidelines on Budget transparency state that 'the government's draft budget should be submitted to Parliament...no less than three months prior to the start of the fiscal year.'<sup>7</sup>

While it could be argued that the PBR enables Parliament to consider some of the issues which will be raised in the Budget, in reality, the parliamentary process following the PBR does not allow for, or indeed encourage, close scrutiny or input into the comprehensive picture of government spending and taxation, and policy priorities.

There is also the question of the amount of notice traditionally given by the Chancellor of the dates of the PBR and Budget. It has been put to us that these are typically too short for relevant organisations to prepare. There is, therefore, an argument that **the dates for such important statements should be set well in advance or perhaps even be fixed.**<sup>8</sup>

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<sup>2</sup> Modernisation of the House of Commons Committee (2001-02), *A Reform Programme for Consultation: Memorandum submitted by the Leader of the House of Commons*, HC 440, para 2.

<sup>3</sup> A. Brazier & V. Ram (2006) *The Fiscal Maze: Parliament, Government and Public Money* (London: Hansard Society), p.75

<sup>4</sup> House of Commons Liaison Committee (2007-08), *Parliament and Government Finance: Recreating Financial Scrutiny*, HC 426.

<sup>5</sup> House of Commons Liaison Committee (2007-08), *Parliament and Government Finance: Recreating Financial Scrutiny: Government and National Audit Office Responses to the Committee's Second Report of Session 2007-08*, HC 1108.

<sup>6</sup> A. Brazier & V. Ram (2006), *The Fiscal Maze: Parliament, Government and Public Money* (London: Hansard Society), p.18.

<sup>7</sup> OECD (May 2001), *OECD Best Practices for Budget Transparency* (Paris: OECD), p.4.

<sup>8</sup> A. Brazier & V. Ram (2006), *The Fiscal Maze: Parliament, Government and Public Money* (London: Hansard Society), p.19.

## 2.2 Spending reviews

Spending reviews with their summaries of departmental objectives, firm expenditure plans for forthcoming years and analysis of cross departmental issues, provide the ideal opportunity for Parliament to scrutinise government spending plans at both the macro and the micro level. However, the timetable for the reviews, and the way that Parliament is involved in the process, limits the opportunity for detailed parliamentary scrutiny. There is little opportunity for committees to conduct a thorough analysis of budget allocations between and within departments. The government has said that 'the timing of discussions on the allocations of individual Departments and the information made available by Departments is a matter for individual Departments and select committees to agree,'<sup>9</sup> however we would like the government to commit to providing this information in a timely fashion as a matter of course.

**A greater willingness by the government to open up the Comprehensive Spending Review process to scrutiny and input by Parliament is needed. This includes presenting the interim report sufficiently early in the parliamentary calendar for committees to be able to carry out thorough scrutiny and to feed these comments to the government.** At the same time it requires greater commitment from Parliament to rise to the challenge and make full use of the material in the interim report to scrutinise and debate government spending priorities.<sup>10</sup>

## 2.3 National Audit Office/Public Accounts Committee reports

In our report, *The Fiscal Maze: Parliament, Government and Public Money*, we made it clear that the work of the Public Accounts Committee and National Audit Office was generally well regarded and played an important part in making the government more accountable for its actions. However, we identified one cause for concern which was that the recommendations made, and usually accepted by government, were not always implemented fully and effectively. Even when they were implemented, there was insufficient focus on whether they had actually improved the quality of public services or the utility of expenditure.

**There should be greater follow-up of the NAO/PAC reports to ensure government money is being spent effectively.** Follow-up of PAC recommendations should not be haphazard but happen automatically. One option would be to introduce a regular trigger for follow-up of NAO/PAC reports. As a general guide, this could be set at 18 months or two years after the recommendations were first made, but could be extended or shortened where appropriate. The key issue is not the exact timing of the review. A prescriptive approach would not be suitable in all cases. Some reports on emergency or critical issues might require a shorter timescale for review; others may take longer to ensure that changes have had time to bed down. **The key point is that there should be an expectation and assumption that if the NAO/PAC have**

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<sup>9</sup> House of Commons Liaison Committee (2007-08), *Parliament and Government Finance: Recreating Financial Scrutiny: Government and National Audit Office Responses to the Committee's Second Report of Session 2007-08*, HC 1108, p.6.

<sup>10</sup> A. Brazier & V. Ram (2006), *The Fiscal Maze: Parliament, Government and Public Money* (London: Hansard Society), p.29.

reported on a subject, then there will be a review or inquiry to find out what has happened since, whether change has been achieved and if so, whether it has led to improvements. The timescale of 18 months to two years would provide a framework to guide work in this area.<sup>11</sup>

This could be accommodated by requiring departmental annual reports to include an update on how they have responded to any NAO/PAC reports on their spending over the previous two years. This would allow the relevant departmental select committee, perhaps with the assistance of NAO staff, to examine progress on the report.

Furthermore, the fundamental task should be whether long term improvements in outcomes are achieved, wider lessons are learned and mistakes not repeated. **There should be a move towards a deeper notion of accountability to ensure that individual lessons are translated into general reforms of public institutions that are found to be flawed.**

#### *2.4 Private Financial Initiatives (PFIs)*

**Government should look to structure PFI agreements to allow for greater oversight.** There is a need for systematic parliamentary scrutiny which is pro-active rather than reactive and seeks to ensure that lessons learnt from mistakes are translated into improvements in PFI systems. In particular, consideration of PFI projects by departmental and other select committees should be extended, and there should be greater follow-up on recommendations previously made. Given the complexity of the issues involved in PFI contracts, the NAO's support to committees other than the PAC should be extended in this area.<sup>12</sup>

There will need to be a concomitant increase in transparency of private partners in PFI contracts and 'commercial confidentiality' should not be used to block full parliamentary scrutiny. **PFI contracts should include a requirement for the private partner to share information, not only with public auditing bodies, but with parliamentary committees as well.** Where sensitive issues are involved the government should offer explanations of PFI agreements to committees in private sessions.

### **3. Government legislation**

Law is the framework within which a democratic state operates, and its importance cannot be overstated. We have found evidence that Parliament's scrutiny of legislation is improving, and that far more changes are made to legislative proposals now than in the past. Nonetheless, parliamentarians from all parties have told us that there is a predominant belief within Whitehall that to change a bill is a sign of weakness, and many feel that a cultural change is needed in order for change to be viewed as possible – and even desirable. Our recent study on lawmaking has identified a number of areas

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<sup>11</sup> Ibid., p.40.

<sup>12</sup> Ibid., p.53.

where improvements could be made, including to the volume of legislation, consultations, and delegated legislation.

### 3.1 Volume of legislation

There has been a marked increase in the volume and complexity of legislation in recent years, which taxes Parliament's ability to scrutinise it effectively.<sup>13</sup> We have found evidence of a culture within government which inspires the creation of more and more legislation. It has been asserted by a variety of actors engaged in the legislative process – from parliamentarians to pressure groups – that bills are sometimes simply used to 'send a signal'; for example, five bills on immigration and asylum were introduced in the space of 10 years.<sup>14</sup> Legislation is also frequently superseded by new bills before being implemented, making it difficult to determine its impact.

**A reduction in the number of bills taken through Parliament would allow for much more detailed scrutiny and also permit more time for debates and other work. We believe consideration should be given to the 2004 Lords Constitution Committee recommendation that there should be stronger pre-introduction tests for the introduction of specific legislation.<sup>15</sup> In making the case for primary legislation, the issues that should be considered include whether existing legislation needs to be consolidated or repealed and whether it already provides the necessary powers.**

### 3.2 Consultations

In general, bills that are carefully prepared and consulted upon before entering Parliament experience an easier passage. The quality of consultation with external stakeholders is crucial, as an effective consultation helps to generate public support for the resulting bill.

However our research has found that the value and effectiveness of consultations varies considerably. While they can exert a noticeable influence on legislation, there is evidence of an increasing cynicism about the consultation process and an impression in some quarters that they do not always seem 'genuine'. While some government departments have built up a reputation for regular and robust consultation, others are considered less effective or well disposed toward gathering stakeholder input beyond 'trusted circles'; some make use of all the resources available, while others 'go through the motions'.<sup>16</sup>

**To redress this situation, consultations on legislation should be more structured, and should be focused much more clearly on choices and priorities, taking respondents through competing arguments and the consequences of choices. The often unrealistic approach that all options are open – even when it is obvious that the government has a clear direction in mind – should be avoided. Being**

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<sup>13</sup> A. Brazier, S. Kalitowski & G. Rosenblatt with M. Korris (2008), *Law in the Making: Influence and Change in the Legislative Process* (London: Hansard Society), p.195.

<sup>14</sup> *Ibid.*, p.196.

<sup>15</sup> House of Lords Constitution Committee (2003-04), *Parliament and the Legislative Process*, HL 173.

<sup>16</sup> A. Brazier, S. Kalitowski & G. Rosenblatt with M. Korris (2008), *Law in the Making: Influence and Change in the Legislative Process* (London: Hansard Society), pp.177-178.

**straightforward about what can or cannot change as result of consultation would bring greater confidence to the system.**

There is also scope for greater use of consultation evidence to strengthen parliamentary scrutiny. **There should be more detailed feedback presented to Parliament and the public, in the form of reports on consultations undertaken for every bill (draft or full).** Such reports, in addition to summarising the consultation evidence, should address specific points and evidence rather than just present a broad brush response, and give the reasons why certain proposals were chosen and others rejected.<sup>17</sup>

### *3.3 Delegated legislation*

The increase in the volume and complexity of legislation has resulted in more 'framework bills', where much of the crucial detail on the powers and provisions are contained in delegated legislation which is added subsequently.<sup>18</sup> This severely restricts Parliament's ability to adequately scrutinise government proposals. **The government should commit itself wherever possible to produce draft delegated legislation for consideration at committee stage to allow for proper scrutiny to take place.**

## **4. Recent developments**

There have been a number of important reforms and commitments recently in the area of parliamentary scrutiny. The use of pre-legislative scrutiny and the issuing of bills in draft allow greater debate and parliamentary input at an early stage when government may be more willing and relatively open to accepting changes to its proposals. A new system for post-legislative scrutiny would examine the effectiveness of government law making and administration, and pre-appointment hearings would improve the transparency of government decision-making. The benefits of these innovations will only materialise, however, if government acts positively to embrace them.

### *4.1 Pre-legislative scrutiny*

Pre-legislative scrutiny has a number of clear benefits, as has been shown in the years since 1997. It gives a wide range of interested external parties an opportunity to seek to influence legislation at an early stage, providing a mechanism for direct engagement with the parliamentary and political process. It also allows parliamentarians to make proposals for change before ministers have finally committed themselves to the text, making it easier to agree to change.<sup>19</sup> The experience of the committees examining these bills has generally been a productive one.<sup>20</sup>

The government committed itself in 2003 to increasing the number of bills published in draft,<sup>21</sup> but progress has been patchy. There is still a long way to go before even a third

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<sup>17</sup> Ibid, p.203.

<sup>18</sup> A. Brazier, S. Kalitowski & G. Rosenblatt with M. Korris (2008), *Law in the Making: Influence and Change in the Legislative Process* (London: Hansard Society), p.196.

<sup>19</sup> Ibid., p.197.

<sup>20</sup> A. Brazier (ed) (2004), *Parliament, Politics and Law Making: Issues and Developments in the Legislative Process* (London: Hansard Society), p.8.

<sup>21</sup> HC Deb 4 February 2003 c134W.

of bills are published in draft for pre-legislative scrutiny.<sup>22</sup> In the 2005-06 parliamentary session four draft bills were published (compared to 58 'full' government bills) of which three were scrutinized by a select committee. In the 2006-07 session it was four draft bills (compared to 34 full government bills), of which three were scrutinised, and currently in 2007-08 session nine draft bills have been published (compared to 31 full government bills), of which seven have been scrutinised.<sup>23</sup>

**Pre-legislative scrutiny through the issuing of draft bills for scrutiny by parliamentary committees should be the norm for most bills. The government should seek to ensure that a significant and lasting increase in pre-legislative scrutiny is achieved.**

Greater efforts should also be made to ensure that MPs who took part in pre-legislative scrutiny should subsequently become members of the public bill committee, a recommendation also made by the Modernisation Committee.<sup>24</sup> Finally all bills which are subject to carry-over should have had pre-legislative scrutiny of the draft bill to balance out the greater flexibility gained by the government with greater parliamentary scrutiny.

#### 4.2 Post-legislative scrutiny

The Hansard Society has been a long-standing advocate of systematic post-legislative scrutiny, and we welcome the government's recent commitment that departments publish memoranda reviewing relevant Acts three to five years after they have received Royal Assent, which will serve as the basis for parliamentary committees to conduct thorough post-legislative scrutiny.<sup>25</sup>

Effective post-legislative scrutiny has the potential to identify and remedy defects in legislation, promote good practice, improve administrative outcomes and involve groups outside of Parliament. Now that the principle has been accepted, we look forward to the speedy implementation of a system of post-legislative scrutiny.

#### 4.3 Pre-appointment hearings

In *The Governance of Britain* green paper the government proposed that select committees hold pre-appointment hearings for key government appointees.<sup>26</sup> It has also largely accepted the recommendations of the subsequent Liaison Committee report to expand the number of appointees who could be subject to the process.<sup>27</sup> We welcome these developments and believe that effective scrutiny of government

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<sup>22</sup> For figures on previous sessions, see A. Brazier, S. Kalitowski & G. Rosenblatt with M. Korris (2008), *Law in the Making: Influence and Change in the Legislative Process* (London: Hansard Society), p.226.

<sup>23</sup> Of the nine bills in the current session, one was a partial draft bill and another, the Draft Counter-Terrorism (Temporary Provisions) Bill, contained proposals on 42 days detention that had been dropped from the Counter-Terrorism Bill.

<sup>24</sup> Modernisation of the House of Commons Committee (2005-06), *The Legislative Process*, HC 1097, p.17.

<sup>25</sup> Office of the Leader of the House of Commons (2008), *Post-legislative Scrutiny – The Government's Approach*, Cm 7320.

<sup>26</sup> Ministry of Justice (2007), *The Governance of Britain*, Cm 7170.

<sup>27</sup> House of Commons Liaison Committee (2007-08), *Pre-appointment hearings by select committees*, HC 384; House of Commons Liaison Committee (2007-08), *Pre-appointment hearings by select committees: Government response to the Committee's Third Report of Session 2007-08*, HC 595.

appointees has the potential to improve the workings and transparency of government. In order for this development to function effectively, Parliament and its committees will have to embrace this new avenue for scrutiny and the government will have to respond positively to any findings.

## **5. Conclusion**

The Hansard Society has long argued that better parliamentary scrutiny will benefit the work the government. In any debate and proposals about improving government, the role of Parliament and its relationship with government should be given a high priority.

**Hansard Society  
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