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# EVIDENCE TO THE HOUSE OF COMMONS PROCEDURE COMMITTEE: TIMETABLING OF BUSINESS

JUNE 2009

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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.

## Summary

1. There is a pressing need to reform timetabling in the House of Commons and the use of programme motions to rebalance scrutiny in favour of Parliament.
2. A Business Committee should be established to deal with aspects of parliamentary business, including elements of the legislative process such as the decision to conduct pre-legislative scrutiny.
3. The Business Committee should be designed to meet the following principles: greater certainty to the parliamentary timetable; more involvement between the main political parties in the management of business; greater discussion between all interested parties in the Commons about the shape and timing of the legislative programme; and greater transparency in the overall process.
4. Greater flexibility should be introduced to the programming of public bill committees (PBCs), including an 'injury time' provision to allow for the committee to return to clauses on which debate was cut short.
5. Between second reading and the commencement of a PBC time should be guaranteed for the committee to meet in private to consider the witnesses they wish to call, and the decision should be solely in the hands of the committee, not the whips.
6. During PBC sittings where multiple witnesses are scheduled, it should be left to the discretion of the chair as to the management of time.
7. Both government and opposition members of the PBC need sufficient time to examine and reflect on the evidence presented, and to draft appropriate amendments to the bill. There should be the expectation of one sitting week at the very least between the two stages of the PBC to allow this to happen.
8. Where a bill has been heavily amended – in PBC or especially by the government at report stage – a full third reading should take place. The PBC should make a recommendation at the end of its sitting as to the necessity for a full third reading.
9. A mechanism should be devised to allow a number of well-supported private members' bills to enjoy the advantages of timetabling and therefore the chance to pass all stages, if both Houses consent.

## Hansard Society research

10. The Hansard Society conducts detailed research into Parliamentary process and procedure and has, over the years, made a number of recommendations for reform and improvement of the timetabling of legislation.
11. In 1993 *Making the Law*, the report of our Commission on the Legislative Process, recommended a system of formal timetabling for legislation and the establishment of a

Business Committee.<sup>1</sup> The issue of timetabling was considered again by our 2001 Commission on Parliamentary Scrutiny,<sup>2</sup> and the impact of programming has been pursued in subsequent Hansard Society research.<sup>3</sup>

12. Our most recent work on the legislative process, *Law in the Making: Influence and Change in the Legislative Process*, called for a major review of the operation of programming in the House of Commons to rebalance the timetabling of business in favour of Parliament and increased scrutiny, and we therefore greatly welcome the Committee's inquiry.<sup>4</sup>

### The principles of timetabling

13. Timetabling is required in the House of Commons to ensure that the business of legislation is managed efficiently and effectively. It needs to strike a careful balance between the right of government to enact its legislative programme efficiently and the importance of effective scrutiny of bills by Parliament.

14. We concur with the Modernisation Committee's principles for programming as set out in their 2000 and 2003 reports:

- a) 'The Government of the day must be assured of getting its legislation through in a reasonable time (provided that it can obtain the approval of the House);
- b) The Opposition in particular, and Members in general, must have a full opportunity to discuss and seek to change provisions to which they attach importance;
- c) All parts of a bill must be properly considered;
- d) Bills need to be prepared properly so as not to require a mass of new Government amendments.'<sup>5</sup>

15. The programming of bills has been an improvement over the allocation of time motions (guillotines) that were largely used previously, in that it has afforded greater certainty to the timetable for legislative scrutiny, and guaranteed that principle (a) has been achieved.

16. However it is clear from our research that the rest of the Modernisation Committee's principles have not been met.<sup>6</sup> Opposition and backbench members often do not consider that sufficient time is available for scrutiny (leading to the contesting of

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<sup>1</sup> Lord Rippon of Hexham (chair) (1993), *Making the Law: The Report of the Hansard Society Commission on the Legislative Process* (London: Hansard Society), p.123 & p.150.

<sup>2</sup> Lord Newton of Braintree (chair) (2001), *The Challenge for Parliament; Making Government Accountable, Report of the Hansard Society Commission on Parliamentary Scrutiny*, (London: Vacher Dod), pp.25-26.

<sup>3</sup> See A. Brazier (2004), *Issues in Law Making 4: Programming of Legislation* (London: Hansard Society); A. Brazier (ed.) (2004), *Parliament, Politics and Law Making: Issues & Developments in the Legislative Process* (London: Hansard Society); A. Brazier, M. Flinders & D. McHugh (2005), *New Politics, New Parliament?* (London: Hansard Society).

<sup>4</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.205.

<sup>5</sup> Select Committee on the Modernisation of the House of Commons (1999–2000), *Programming of Legislation and Timing of Votes*, HC 589, para 5; Select Committee on the Modernisation of the House of Commons (2002–03), *Programming of Bills*, HC 1222, para 11.

<sup>6</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).

programme motions), large numbers of bill clauses still go undebated in the Commons chamber, and large numbers of amendments are still required.

17. There is a pressing need to reform timetabling in the House of Commons and the use of programme motions to rebalance scrutiny in favour of Parliament.

## Business Committee

18. The Hansard Society has long advocated that the House of Commons should have control over its business and that a Business Committee should be established. A Business Committee has the potential to significantly improve the arrangement of legislative business in the House of Commons, leading to enhanced scrutiny and improved outcomes for the legislative process. Many other legislatures organise their legislative process in a way that allows the government's need for legislative time to be balanced with both opposition and backbench concerns.
19. We propose that a committee to deal with aspects of parliamentary business, including elements of the legislative process such as the decision to conduct pre-legislative scrutiny, should be established. The committee should be designed to meet the following principles: greater certainty to the parliamentary timetable; more involvement between the main political parties in the management of business; greater discussion between all interested parties in the Commons about the shape and timing of the legislative programme; and greater transparency in the overall process.<sup>7</sup>
20. The problems with the programming of parliamentary business are a good example of what can happen when a reform is introduced in isolation, decoupled from other reforms intended to accompany it as part of a broad package of change. When the Hansard Society's independent commission on the legislative process recommended the introduction of timetabling, it saw this reform in the context of other proposed changes, namely greater use of pre-legislative scrutiny, the carry-over of legislation and the introduction of a Business Committee.<sup>8</sup> Future proposals for reform should emphasise the importance of the package as a whole, and discourage the cherry-picking of individual elements.
21. The committee should be made up of representatives of all parties, with representation weighted to reflect the strength of the parties in Parliament. It might be chaired by the Speaker. A clear demarcation between the executive's share of the parliamentary timetable and the share allocated for all other parliamentary activity might be determined by this committee. The executive would therefore remain assured of securing its business but the system of managing that business would be placed on a formal footing. All parties would also be involved in the management and timetabling of the rest of parliamentary business, and it would ensure that the Commons determined its own Standing Orders, thus protecting the House of Commons from excessive encroachment by the executive.

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<sup>7</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.205.

<sup>8</sup> Lord Rippon of Hexham (chair) (1993), *Making the Law: The Report of the Hansard Society Commission on the Legislative Process* (London: Hansard Society), p.123 & p.150.

## Programming in practice

22. The use of programme motions for almost every government bill has not changed noticeably since the Procedure Committee's previous inquiry on the subject in 2004.<sup>9</sup> In the last two sessions, 90% of government bills have been subject to programming (not including Consolidation Bills or those subject to Allocation of Time motions).

Session	Proportion of government bills programmed	Percentage
2006-07	21 out of 23	91%
2007-08	23 out of 26	88%
2008-09 <sup>10</sup>	14 out of 16	88%

23. The number of programme motions (or amendments to programme motions) pressed to division has varied in recent sessions. Timetabling in the 2006-07 session was fairly consensual, though the figures so far suggest the current 2008-09 session will be much less so.

Session	Proportion of programme motions on which divisions were held	Percentage
2006-07	5 out of 42	12%
2007-08	15 out of 42	36%
2008-09 <sup>11</sup>	9 out of 19	47%

24. There may also be occasions when opposition parties refrain from contesting programme motions as it will cut into the time for debate on the substance of the bill. This cannot be reflected in the figures.

25. The effects of timetabling at the various stages of the legislative process are considered below.

## Pre-legislative scrutiny

26. Time is at a premium in the legislative process. As one senior official explained to us in the course of our research, 'there is no more time in the system; the question is how to use it more effectively'.<sup>12</sup>

27. To this end, greater pre-legislative scrutiny is required. Pre-legislative scrutiny allows parliamentarians to suggest amendments before ministers have finally committed

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<sup>9</sup> House of Commons Procedure Committee (2003-04), *Programming of Legislation*, HC 325.

<sup>10</sup> Figures as to 19 June 2009.

<sup>11</sup> Figures as to 19 June 2009.

<sup>12</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.194.

themselves to the text of legislation, making it easier to agree to change. Our research has found that bills have been significantly altered by the process.<sup>13</sup>

28. Bills that have been subject to pre-legislative scrutiny are therefore likely to need less amendment through the rest of the legislative process. There may then be a case in some circumstances for bills that have been subject to pre-legislative scrutiny (or those carried-over after substantial consideration in the previous parliamentary session) being given an accelerated passage through the rest of the legislative process, thus freeing up more time for the scrutiny of other bills. If such provision were to be made, the decision should be made by the Business Committee on a case-by-case basis.

## Public Bill Committees

29. There is clear evidence that more time needs to be given to public bill committees (PBCs) and programming needs to be more flexible around them.

### *Discussion of Clauses*

30. The Modernisation Committee in its 2003 report on programming noted that the impact of programming led to a significant number of clauses and schedules not being debated on nine out of 23 government bills that session.<sup>14</sup> It concluded that 'concern about the volume of legislation which passes undebated is entirely legitimate'.<sup>15</sup>
31. Given the lack of time for scrutiny at report stage (outlined below), committee stage is the only time when thorough discussion and amendment of every clause of a bill can take place.
32. A possible solution would be to introduce greater flexibility in the programming of PBCs. We have in the past recommended that an 'injury time' provision could be included, to allow extra time at the end of PBC to return to clauses where debate was cut short.<sup>16</sup>
33. The Procedure Committee in its 2004 report recommended that the initial programme motion for a bill should not be taken less than 48 hours after second reading, to allow the proposed date for the end of committee stage to take account of the second reading debate and any representations received.<sup>17</sup> We agree with this recommendation and believe it would reduce the incidence of the foreshortening of debate in committee.
34. Another option for reform would be to link the application of programming more explicitly to other reforms of the legislative process. For example, programme motions might only be moved immediately after second reading without debate if at least one of the following four conditions had been met:

- (a) the bill had been subject to pre-legislative scrutiny;

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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.197.

<sup>14</sup> Select Committee on Modernisation of the House of Commons (2002-03), *Programming of Bills*, HC 1222, p.7.

<sup>15</sup> Select Committee on Modernisation of the House of Commons (2002-03), *Programming of Bills*, HC 1222, p.8.

<sup>16</sup> A. Brazier (ed.) (2004), *Parliament, Politics and Law Making: Issues & Developments in the Legislative Process* (London: Hansard Society), p.27.

<sup>17</sup> House of Commons Procedure Committee (2003-04), *Programming of Legislation*, HC 325, p.10.

- (b) the bill is to be subject to carry-over between sessions (to increase the overall time for scrutiny);
- (c) the bill is to be committed to a Committee of the Whole House;
- (d) there is cross-party agreement on the terms of the programme.<sup>18</sup>

#### *Evidence-gathering and witnesses*

35. Our research has found that significantly more time is required around PBCs if the evidence-gathering sessions are to function adequately.
36. Between second reading and the commencement of a PBC time should be guaranteed for the committee to meet in private to consider the witnesses they wish to call, and the decision should be solely in the hands of the committee. At present the witnesses are selected by the usual channels, which can lead to the same organisations and individuals being called upon repeatedly. Reflecting upon the Criminal Justice Bill Committee, one MP told us that ‘we either ended up hearing from the usual suspects or getting the same arguments, or both. We learned nothing new.’<sup>19</sup>
37. The restricted time allowed around PBCs also causes difficulties for witnesses. In the case of the Counter-Terrorism Bill Committee, some witnesses were only given 24 hours’ notice of being asked to give evidence.<sup>20</sup> It also leaves very little time for clerks to prepare briefings for members of the committee, potentially reducing the quality of scrutiny.
38. The programming of the evidence-gathering sessions themselves is also a concern, as a set amount of time is fixed in advance to take evidence from each witness. This is in contrast to select committees, where there is flexibility to over-run if members still wish to question an interesting witness, or to cut short a session if all useful angles of scrutiny have been exhausted. We recommend that during sittings where multiple witnesses are scheduled, it be left to the discretion of the chair as to the management of time. Programme motions should be amended as required to allow this.<sup>21</sup>
39. More time is also required between the evidence-gathering phase of a PBC and the line-by-line consideration of the bill. Edward Garnier MP highlighted the problem at the start of the PBC considering the Criminal Justice and Immigration Bill:

‘I have some private doubts as to the usefulness of the arrangement—I say that these are private doubts because we are in Committee, so no one is listening—because the Public Bill Committee starts next week and there is, therefore, very little time between the closing of the evidence sessions on Thursday and the beginning of the Committee on Tuesday, for the Government to do anything about the evidence that they have received.’<sup>22</sup>

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<sup>18</sup> A. Brazier (ed.) (2004), *Parliament, Politics and Law Making: Issues & Developments in the Legislative Process* (London: Hansard Society), pp.26-27.

<sup>19</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.223.

<sup>20</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.223.

<sup>21</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.110-111.

<sup>22</sup> Criminal Justice and Immigration Bill Deb 16 October 2007 c5.

40. Both government and opposition members of the PBC need sufficient time to examine and reflect on the evidence presented, and to draft appropriate amendments to the bill. There should be the expectation of one sitting week at the very least between the two stages of the PBC to allow this to happen.

## Report Stage

41. Our research has found that report stage is hobbled by a lack of time. One, or occasionally two days of debate is often insufficient to allow for thorough scrutiny of the work of the PBC.
42. This is exacerbated by the government's propensity to radically amend and add new clauses to a bill at this stage. The Legislative and Regulatory Reform Bill 2006 was heavily amended by government at report stage which prevented any discussion of Parts 2 and 3 of the bill.<sup>23</sup> Similarly the Criminal Justice and Immigration Bill 2007 and the Planning Bill 2008 were both subject to a substantial amount of government amendment at report stage, which dramatically undermined the quality of scrutiny that the Commons could bring to bear.
43. In our research report stage was described to us as 'useless' and 'in need of a lot of work' by opposition frontbenchers, although there was recognition of its importance as the one opportunity for the rest of the Commons to get involved.<sup>24</sup>
44. Programme motions are often amended at report stage, but this is rarely to add sufficient time for scrutiny in the eyes of opposition parties, and they are regularly pressed to division.<sup>25</sup> However opposition speakers are acutely aware that the time spent debating and dividing on the programme motion further reduces the time available for scrutiny.
45. While report stage cannot include debate on every clause and amendment, it is clear that more time is required if it is going to adequately fulfil its purpose, and that debate on programme motions should not cut into time for scrutiny. The establishment of a Business Committee that can amend the timetable for report stage in response to the number of amendments before the House would ameliorate the situation and significantly improve scrutiny.

## Third Reading

46. As has been highlighted, there is not a great deal of surplus time in the legislative process, and amending standing orders to require third reading debates for all bills will increase the time pressures still further.

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<sup>23</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.223.

<sup>24</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.120.

<sup>25</sup> In the 2007-08 session, 11 amended programme motions were moved at report stage, with divisions taking place on six of them. As of 19 June 2009, in the 2008-09 session four amended programme motions have been moved at report, with divisions on three of them.

47. However there is a strong case for having a full third reading debate (as opposed to squeezing it together with report stage in a 'remaining stages' debate), given the weaknesses of report stage as outlined above.
48. We believe that flexibility should be maintained in the use of third reading debates. Where a bill has been heavily amended – in PBC or especially by the government at report stage – a full third reading should take place. Where change has been minor or consensus exists, the need for a third reading is obviated.
49. The decision on whether a third reading is required should be made by the Business Committee, in consultation with the chair of the PBC. The PBC itself could make a recommendation at the end of its sitting as to whether it considered a third reading necessary.

### **Time limits for speeches**

50. The setting of time limits for speeches should be left in the hands of the Speaker. The Speaker is in the best position to make a judgement of an appropriate time limit, on the basis of the representations he or she receives from backbenchers who wish to participate in the debate. If the model of a Business Committee with the Speaker as chair is adopted, then time limits could be proposed by the Speaker and agreed with members.

### **Private Members' Bills**

51. Unlike government bills, private members' bills (PMBs) are not programmed, and are therefore extremely vulnerable to defeat by a small minority of opponents. We recommend that a mechanism should be devised to allow certain number of well-supported PMBs to enjoy the advantages of timetabling and therefore the chance to pass all stages, if both Houses consent. It should be the ability to secure a majority – not the ability to be so inoffensive as to attract no opposition – which a PMB should have to demonstrate. A dedicated PMB committee could be established to fulfil this role.<sup>26</sup>

### **Emergency legislation**

52. There will be exceptional occasions, such as in response to emergencies, when it is imperative that government legislates at greater speed than normal, and timetabling arrangements should be made to accommodate such eventualities. The House of Lords Constitution Committee is holding an inquiry on 'Emergency Legislation', to which we also gave evidence, and we anticipate its report will be helpful in framing the challenges and possible solutions to deal with fast-track legislative scenarios.

ENDS

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<sup>26</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.171-172.