

LAW IN THE MAKING

A discussion paper

Alex Brazier, Susanna Kalitowski and Gemma Rosenblatt



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Tel: 020 7438 1222. Fax: 020 7438 1229. Email: hansard@hansard.lse.ac.uk

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About the authors

Alex Brazier is the Director of the Hansard Society's Parliament and Government Programme.

Susanna Kalitowski is a Researcher on the Hansard Society's Parliament and Government Programme.

Gemma Rosenblatt is a Research Fellow on the Hansard Society's Parliament and Government Programme.

About the Hansard Society

The Hansard Society is an independent non-partisan organisation that operates across the political spectrum to promote effective parliamentary democracy. The Parliament and Government Programme undertakes research to stimulate reform of political institutions and the parliamentary process. We work with parliamentarians and others to improve the operation of parliamentary democracy and encourage greater accessibility and closer engagement with the public.

The Hansard Society is a leading expert on the legislative process. Among our most notable work in this field is the 1992 Commission chaired by Lord Rippon, which produced the report, *Making the Law*. Many of the Commission's recommendations have since either been adopted or significantly influenced debate on changes to the legislative process. More recently, the Hansard Society published a report into parliamentary modernisation, *New Politics, New Parliament?*, which included analysis of legislative reform since 1997; *Parliament, Politics and Law Making: Issues & Developments in the Legislative Process*, a collection of essays looking at aspects of the legislative process; and *Issues in Law Making*, a series of briefing papers recommending areas for reform of specific aspects of Parliament's law making machinery.

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1. Introduction: The impact of Parliament on legislation

The Westminster Parliament undertakes a range of functions which ensures its place at the heart of our democracy. However, it is increasingly commonplace to hear assertions that it has been crushed by the executive, and that its role has been supplanted by the media, European Union, globalisation, regulators and pressure groups, to name but a few. Arguably Parliament's prime function, and indeed its best known, is to make law. More accurately, it is to discuss, consider and give assent to laws put forward by government, which is almost always able to command a majority in the Commons. Taken together with the conventional dominance of the Commons over the Lords, this situation ensures that Parliament usually assents to the legislative proposals that government wishes to see enacted. To some commentators, this relationship is the inevitable and correct method by which government exercises its mandate; to others it is indicative that Parliament is simply a rubber stamp, a mechanism without clout or meaning. But even if Parliament generally gives overall consent to legislative proposals put forward by government, to what extent does it have an impact on the final shape of the legislation it passes?

The project

To shed light on this issue, the Hansard Society is conducting a major project looking at how laws are made and at the various influences that are brought to bear on legislative proposals during their journey from genesis to Royal Assent. The final outcome will be a report published in spring 2008 that will make an assessment of the strengths and weaknesses of the legislative process and, where appropriate, make recommendations for improvement and change.

We are tracking five different bills at each stage of the legislative process. We have chosen distinct pieces of legislation that exemplify different subject areas and have very different political contexts: the Export Control Act 2002, the Equality Act 2006, the Immigration, Asylum and Nationality Act 2006, the Legislative and Regulatory Reform Act 2006 and the Welfare Reform Act 2007. We are also looking at a number of additional bills in lesser detail to illustrate some specific elements of the legislative process.

Our research includes interviews with civil servants, ministers, parliamentarians, lobbyists and pressure groups; a detailed examination of the parliamentary stages of each bill; and a literature review of academic work, parliamentary committee reports and the output of think tanks and pressure groups. Within our broad analysis, we are focusing on four specific aspects of the policy and law making process: (1) the impact of public consultation on policy and law; (2) the

extent to which MPs and peers have a meaningful role in the scrutiny and development of legislation; (3) how effectively the Commons and Lords collaborate to scrutinise proposed legislation; and (4) the conditions under which the parliamentary phase of the legislative process performs most – and least – effectively.

This paper

The aim of this discussion paper is to prepare the ground for our final report by setting out some of our initial findings and posing key questions to aid our research. Section two examines the primary influences on the legislative process, looking at the role of government, Parliament and external actors. The third section provides an overview of our five case studies, with a particular focus on pre-parliamentary stages, and gives our initial impressions of the factors that have influenced them. Finally, section four offers a brief preliminary assessment of Parliament's position *vis-à-vis* the legislative process.

2. Key influences on the legislative process

This section outlines some of the primary influences on Parliament's law making functions: the role of government in shaping legislation; the influence of parliamentarians on the passage of law; the working relationship between the two Houses of Parliament; and the impact of external actors on the legislative process.

2.1 The role of government

Law is generally 'made', that is formulated in a coherent form, by the executive, initially the Crown and now, in practice, the government.¹

Government has an enormous influence on the legislative process. Law may be scrutinised and enacted by Parliament, but the vast majority of it is initiated and drafted by the executive. It is formulated by government departments, usually after consultations with interested stakeholders, and subsequently presented to Parliament for approval. Consent for each bill has to be secured from the relevant Cabinet Committee before it is introduced into Parliament. All bills must be considered by the Legislative Programme (LP), the Cabinet Committee which is made up of key members of the Cabinet - notably the Leaders of both Houses, the Deputy Prime Minister, the Home Secretary, the Lord Chancellor, the Cabinet Secretary, the Chief Whips of both Houses and the relevant Secretary of State. This Committee, chaired by the Leader of the House of Commons, agrees the contents of the Queen's Speech and all changes to the legislative programme; approves the introduction of all bills and monitors their progress; makes decisions on parliamentary handling of bills; and clears all significant amendments.

Civil servants

Civil servants exercise a crucial policy role. Long before consultations are undertaken, policy commitments made and laws drafted, they will have been moulding policies into a form that can be put before ministers and the outside world. Indeed, a study by Page and Jenkins found that many policies which find their way into party manifestos and subsequently the Queen's Speech originally stem from items drafted by civil servants, suggesting that Whitehall retains a more influential role in the policy and law making process than is often supposed.²

1 Lord Norton of Louth (2004), 'Parliament and Legislative Scrutiny: An Overview of Issues in the Legislative Process', in A. Brazier (ed.), *Parliament, Politics and Law Making* (London: Hansard Society), p. 5.

2 E.C. Page & B. Jenkins (2005), *Policy Bureaucracy: Government with a Cast of Thousands* (Oxford: Oxford University Press); see also E.C. Page (2003), 'The Civil Servant as Legislator: Law Making in British Administration', *Public Administration* 81(4).

Control over Parliament

Once a bill enters Parliament, the government continues to have a great deal of control. Most obviously, it is usually able to rely on the MPs of the governing party to vote in its favour. Also, the procedures of the Commons enshrine a significant degree of dominance. For example, Standing Order 14 of the Commons states that 'government business shall have precedence at every sitting'. In the last few years, the advent of programming, which involves the imposition of a timetable for the passage of a bill after Second Reading, has further tightened government's grip on the timetable.³

Our project will examine which actors within the executive - from the Prime Minister and members of the Cabinet to civil servants - shape legislation, and how and when they are able to do so. It will also consider the assertion that government is becoming more centralised.

The role of government - key points:

- Law may be scrutinised and enacted by Parliament, but it is overwhelmingly initiated and drafted by the executive.
- While the executive's dominance over the legislative process is relatively clear, the role and impact of different actors within the government is less understood. This includes civil servants, who retain an influential role in the policy and law making process and shape many government policies.
- The government's majority in the Commons and its control of the parliamentary timetable ensures it has a great deal of control over the passage of legislation.

2.2 The role of parliamentarians

Ministers now take account of parliamentary, and especially Labour backbench, opinion and modify policy and bills in order to avoid defeats.⁴

In highlighting the role that civil servants, pressure groups, think tanks, lobbyists and members of the government play in proposing and shaping law, the role of parliamentarians can often be ignored or underplayed in academic analyses

3 See A. Brazier, M. Flinders & D. McHugh (2005), *New Politics. New Parliament?* (London: Hansard Society), p. 15.

4 P.Riddell (2007), 'Parliament and political engagement', in C. Bryant (ed.), *Towards a New Constitutional Settlement* (London: Smith Institute), p. 106.

and political commentaries. Yet it is Parliament alone that has the power to make or repeal legislation and only parliamentarians can formally amend a bill. One central theme of the project is to investigate how effectively they perform their unique role and consider previous assessments of how this central function is exercised.⁵

Stages of the legislation: the formal process

First Reading is the formal introduction of a bill into Parliament, but parliamentary examination may begin with pre-legislative scrutiny. Since 1997, an increasing number of bills have been published in draft form and referred to a parliamentary committee such as a departmental select committee, joint committee, or even a temporary committee. The Lords Constitution Committee identified the pre-legislative period as an opportune moment for MPs and peers to shape the nature of a bill, explaining that once ministers have brought bills before Parliament, they 'tend to adopt a proprietary attitude toward them'.⁶ Indeed, once bills are introduced into Parliament, they are very rarely rejected in their entirety. It has been over 20 years since a bill was defeated at the Second Reading stage in the Commons and recent attempts by backbenchers to stop government bills at this stage have not been successful.⁷

Once a bill has passed Second Reading, the next procedural opportunity for parliamentarians to influence legislation is at the committee stage, which consists of detailed, clause-by-clause examination. Bills are often heavily amended at this stage, though usually by government rather than opposition amendments. In the Commons, this usually takes place in small Public Bill Committees (PBCs) – previously standing committees.⁸ A bill is rarely amended against the wishes of the government at Commons committee stage; membership is in the hands of the whips, ensuring that even controversial bills usually have a relatively smooth passage through committee. Committee stage differs substantially in the Lords. All peers are free to participate in the committee stage of any bill, which generally takes place on the floor of the Chamber or, increasingly, in Grand Committee (the so-called 'Moses Room' procedure). The latter takes place away from the Chamber and divisions are not allowed.

5 J.A.G. Griffiths (1974), *Parliamentary Scrutiny of Government Bills* (London: Allen and Unwin).

6 House of Lords Constitution Committee (2003-04), *Parliament and the Legislative Process* HL Paper 173-I, para 10.

7 The Shops Bill was defeated at Second Reading stage in the Commons in 1986, even though the governing party had a very substantial majority in the Commons.

8 Sometimes committee stage in the Commons takes place on the floor of the Chamber, in a Committee of the Whole House, particularly if a bill is deemed to be 'constitutional'. However, not all constitutional bills are scrutinised in this manner. See R. Hazell (2006), *Time for a New Convention: Parliamentary Scrutiny of Constitutional Bills 1997-2005* (London: Constitution Unit).

One of the clearest illustrations of parliamentarians influencing policy occurs when the government loses a vote in the Commons or Lords, which is more likely to happen at Report stage. The 2001-05 Parliament had a higher rate of rebellion than in any other Parliament since 1945, with rebellions by Labour backbenchers in just over a fifth of Commons votes.⁹ However, the 1997 Labour Government was not defeated in the Commons until the votes on the Terrorism Bill in November 2005.

Private Members' Bills

Private Members' Bills (PMBs) are one distinct strand of law making which do not, at least in theory, represent government policy and legislative proposals. A PMB can be introduced by a member of either House who is not a minister and thus provides backbenchers with the opportunity to legislate on matters of their choosing.

PMBs had considerable impact in the 1960s, when they were used to decriminalise abortion and homosexuality and abolish the death penalty. However, over the past 25 years, governments' reluctance to provide extra time in the parliamentary timetable has affected the number and content of successful PMBs. Few bills with controversial elements now make it to the statute book. Indeed, for every PMB that is passed, there are many more that do not make it. For example, in 2002-03, 110 PMBs were introduced, and 13 were successful; by the 2005-06 session, three out of 130 were successful.¹⁰ Many of those which are successful originate from government departments, known as 'handout bills'.

Informal channels

Informally, the influence of parliamentarians can begin at a very early stage, for example by an indication of support for an early day motion or in policy debates in a variety of settings. This may be a factor in deciding which bills the government chooses to introduce into Parliament. Philip Norton has identified the importance of the anticipated reactions of MPs and peers, arguing that this can imbue Parliament with the capacity to keep things off the agenda.¹¹ Correspondingly, Philip Cowley has noted that 'MPs may not *make* policy, but they do constrain (and occasionally prod) government. All but the most technical of decisions are affected by some consideration of party management.'¹²

9 P.Cowley (2005), *The Rebels: How Blair Mislaid his Majority* (London: Politico's).

10 House of Commons Information Service (December 2006), 'Private Members' Bills Procedure', Factsheet L2, p.7.

11 P.Norton (2005), *Parliament in British Politics* (London: Palgrave Macmillan), p.78.

12 P.Cowley (2005), *The Rebels: How Blair Mislaid his Majority* (London: Politico's), p.9.

Behind-the-scenes negotiations can take place once legislation is introduced into Parliament - an approach that is often preferred by MPs from the governing party who do not wish to vote against the party line. In some instances this form of negotiation can result in meaningful change. Joan Ruddock MP has noted how access to ministers can make a real difference to what is finally presented to Parliament.¹³ Furthermore, ministers and officials are increasingly holding informal meetings with parliamentarians of all parties to discuss bills once they are introduced, a practice that has been commended by the Lords Constitution Committee.¹⁴ Informal meetings with backbenchers may reflect a concern to minimise the appearance of division and disunity within parties. Indeed, the activities of the respective whips' offices in ensuring MPs vote with the party line is in some ways a reflection of the importance they place on gaining the support of backbenchers.

Effectiveness

Certain variables may dictate the degree to which a particular bill is shaped by MPs and peers. The size of the government's majority is a key factor. However, even fairly stable majorities can be overturned. The impact of individual parliamentarians will depend on whether they are able to join forces with other like-minded individuals to strengthen their leverage, as occurred with the 2005 Alternative Education White Paper.¹⁵ Notwithstanding backbench rebellions, the overwhelming majority of MPs vote with their party on most occasions. The Lords Constitution Committee has affirmed that partisanship 'remains a central feature of the legislative process', but it warned that this 'should not squeeze out the quest for informed and objective scrutiny'.¹⁶ However, the influence of the whips and the political parties does have a practical element, as one MP from the 2005 intake explained:

In under four days, you couldn't possibly have the first chance of sitting in the Chamber all the time and listening to all the debates, you couldn't possibly read all the legislation before the House of Commons to be an expert on what you're voting on.¹⁷

Free votes on so-called 'matters of conscience', in which parliamentarians are allowed to vote according to their personal beliefs, also offer an

13 A. Brazier, M. Flinders & D. McHugh (2005), *New Politics, New Parliament?* (London: Hansard Society), p. 31.

14 House of Lords Constitution Committee (2003-04), *Parliament and the Legislative Process* HL Paper 173-I, para 151.

15 E. Morris et al. (2005), *Shaping the Education Bill - Reaching for Consensus*.

16 House of Lords Constitution Committee (2003-04), *Parliament and the Legislative Process* HL 173-I, para 154-5.

17 G. Rosenblatt (2006), *A Year in the Life: from member of public to Member of Parliament* (London: Hansard Society), p. 37.

opportunity for backbenchers to exert influence on legislation. Recent examples include the votes on smoking in public places and the hunting ban. Nonetheless, party allegiance is discernible in many free votes, as parties attract like-minded individuals.

Recent changes to the legislative process

Our final report will include an early assessment of the major changes introduced in early 2007 based on proposals in the Commons Modernisation Committee's 2006 report on the legislative process.¹⁸ The most notable change involves the replacement of standing committees with Public Bill Committees (PBCs), enabling them to take evidence as well as to question ministers and officials. The first bill to be subject to the PBC procedure was the Local Government and Public Involvement in Health Bill, which was introduced in January 2007. While the Hansard Society has long argued for reforms of this sort, a recent witness to one of the very first PBCs was far from impressed:

If this is their idea of modern government they have no right to lecture us at town halls on new governance. We arrived on time and after 10 minutes were asked to leave for 30 minutes while they decided who should ask what questions... What a farce.¹⁹

Other changes introduced include greater flexibility around the length of Second Reading debates and a further increase in the proportion of bills published in draft form.

The role of parliamentarians - key points:

- Parliament alone has the power to make or repeal legislation, but parliamentary processes are often shaped by the governing party. Even controversial bills have a relatively smooth passage through the committee stage in the Commons and Report stage, often aided by timetabling.
- Nevertheless, the 2001-05 Parliament had a higher rate of rebellion than in any other Parliament since 1945, with rebellions by Labour backbenchers in just over a fifth of Commons votes.
- Private Members' Bills are one distinct strand of law making which do not, in theory, represent government policy and legislative proposals. In reality, few PMBs are successful and many of those which are originate from government departments.

¹⁸ House of Commons Modernisation Committee (2005-06), *The Legislative Process*, HC 1097.

¹⁹ Richard Kemp quoted in 'The Diary,' *Public Servant*, March 2006, p. 54.

2.3 The interaction between the two Houses of Parliament

The process whereby the two Houses, having each passed a bill, go about reconciling their differences is potentially the most complex part of the legislative process.²⁰

Both Houses of Parliament must agree to the final text of a bill before it can be enacted. The Commons and the Lords have different compositions, roles and functions. Our project will analyse the ways that this impacts on their respective legislative roles, and how successfully the two Houses work together in scrutinising legislation as it moves back and forth between the Commons and Lords. This is particularly relevant given the present discussions about what form and powers a reformed second chamber should assume. Furthermore, the Lords is showing increasing signs of asserting itself in relation to both the Commons and the executive, particularly since the removal of most hereditary peers in 1999.

Parliamentary conventions

The Parliament Acts of 1911 and 1949 enshrine the dominance of the Commons over the Lords and ensure that the latter can only delay rather than block the will of the former, though this only applies to bills that start in the Commons. There are also conventions governing the interaction between the two Houses. The Salisbury Convention, for example, dictates that bills which were contained in the government's party manifesto should not be blocked by the Lords.

A recent joint committee on the conventions governing the relationship between the two Houses asserted that, by their nature, conventions cannot be rigid and that they are likely to change if the composition of the Lords changes. The Committee recognised that it is 'common ground that the Lords is a revising chamber, where government measures can be scrutinised and amendments proposed. But there is a range of views on what should be the proper role of the Lords in the legislative process.'²¹ Nonetheless, it maintained that the existing conventions should continue to apply between the Houses, and both Houses passed resolutions to this effect in January 2007. One central question is how reform of the House of Lords may affect these arrangements. The February 2007 White Paper on House of Lords reform affirmed that 'it is clear that we are proceeding on the basis that we would wish to see the current conventions survive into a new House'.²²

20 House of Commons Modernisation Committee (2005-06), *The Legislative Process*, HC 1097, para 97.

21 Joint Committee on Conventions (2005-06), *Conventions of the UK Parliament*, HL Paper 265-I/HC 1212-I, para 57.

22 HM Government (2007), *The House of Lords: Reform* (London: The Stationery Office), Cm 7027, para 4.16.

Differences between the Houses

The Commons and Lords have strengths in different areas. The Commons has the legitimacy that comes through its elected status as the representative of the people. The Lords brings a different form of expertise and experience and is widely viewed as a less overtly party political body. There is no doubt that the party whips have greater influence in the Commons, although examination of voting patterns suggests that the Lords too operates with party considerations very much in mind. However, one significant difference between the two Houses is that the Lords contains a number of Crossbenchers and Independents (currently around a third of the House) who are far less constrained by partisan pressures.²³

It is generally held that the quality of debate is higher in the Lords than in the Commons, but there is no objective evidence to sustain this view. Many debates in the Lords are detailed and are strengthened by the expertise of some of its members. However, our initial research has found that Second Reading debates in the Commons are frequently very useful. For example, the Second Reading of the Animal Welfare Bill in January 2006 allowed many MPs to voice the concerns of their constituents and pressure groups. As a result, ministers bowed to MPs' requests for a longer debate at Third Reading, which led to the banning of tail-docking of dogs. Even when specific changes or commitments are not forthcoming, Second Reading debates in both Houses often provide an informative range of views.

There are some important differences in the procedures governing the legislative process in the two Houses. Unlike the Commons, the Lords is not subject to programming and has greater flexibility over how it considers and scrutinises legislation. It also performs most of its committee work on the floor of the House, allowing anyone with expertise or an interest in the bill to participate. As a result, 50 to 60 per cent of time in the Lords Chamber is spent considering legislation, as opposed to only one third of the sitting time in the Commons.²⁴

Forms of interaction: collaboration, complementary, competition

There is a continuum of different forms of interaction between the two Houses, from collaboration to opposition. The two Houses collaborate, for example through the use of joint committees - especially for pre-legislative scrutiny. For example, the Joint Committee on Human Rights (JCHR) scrutinises every bill which passes through Parliament on human rights grounds. Established in 2001,

23 As of 21 May 2007, 241 of the 749 peers are not affiliated with a political party.

24 R. Rogers & R. Walters (2006), *How Parliament Works*, 6th edition (Essex: Pearson Education Limited), p. 234.

the JCHR reports on the majority of bills before their Second Reading in the second House. A former clerk to the JCHR has asserted that 'the threat of unavoidable, detailed and well-supported parliamentary scrutiny' provided by the JCHR has enhanced Parliament's ability to influence the legislative process.²⁵

Russell and Sciara have argued that the Commons and the Lords are increasingly acting in partnership to achieve legislative change.²⁶ For example, in 2006, MPs backed a Lords amendment to the Racial and Religious Hatred Bill and defeated the government in the House of Commons. The two Houses similarly collaborated to defeat the government on the Identity Cards and Police and Justice Bills.

The two Houses also complement one another by undertaking different forms of scrutiny. For example, they use different forms of scrutiny at committee stage. The Lords has a specialist committee to scrutinise all bills for inappropriate use of executive power or parliamentary scrutiny, the Delegated Powers and Regulatory Reform Committee.

Finally, the two Houses at times oppose one another when they are unable to agree. Government defeats in the Lords have been more frequent since the 1999 reform, with 64 defeats in the 2003-04 session compared with 31 in the 1998-99 session.²⁷ In 2005, the Prevention of Terrorism Bill resulted in the biggest row between the government and the Lords since the early 20th century, yielding 18 government defeats and the longest parliamentary sitting day on record.²⁸ Recently, the Lords defeated the Gambling Order 2007 - only the second time it has defeated a statutory instrument since 1968. Around the same time it also rejected the Fraud (Trials without a Jury) Bill at Second Reading. Russell and Sciara argue that Lords defeats have been substantial and lasting, and that the House's growing strength has the potential to alter the relationship between Parliament and the executive.²⁹

25 Paul Evans quoted in A. Brazier, M. Flinders & D. McHugh (2005), *New Politics, New Parliament?* (London: Hansard Society), p. 27.

26 M. Russell and M. Sciara (2007), *The House of Lords in 2006: Negotiating a Stronger Second Chamber* (London: Constitution Unit).

27 Joint Committee on Conventions (2005-06), *Conventions of the UK Parliament*, HL Paper 265-I/HC 1212-I, para 35.

28 M. Russell and M. Sciara (2006), *The House of Lords in 2005: A More Representative and Assertive Chamber?* (London: Constitution Unit).

29 M. Russell & M. Sciara (2007), 'The Policy Impact of Defeats in the House of Lords', Paper presented to 2007 Political Association Conference, University of Bath.

Interaction between the two Houses - key points:

- The Commons has legitimacy through its elected status as the representative of the people, while the Lords brings a different form of expertise and is widely viewed as a less overtly partisan body.
- The Commons and Lords are increasingly acting in partnership to achieve legislative change.
- There is evidence of the Lords taking a more active and confrontational role in relation to both the Commons and the government since the eviction of most hereditary peers.

2.4 The role of external actors

Parliament does not operate in a vacuum. It is important that those affected by, or with knowledge of or having an interest in proposed legislation should have an opportunity to make their voices heard while the legislation is being considered rather than after it has taken effect.³⁰

Legislation enacted by Parliament binds society, conferring rights as well as duties. It is therefore not surprising that a wide range of external actors from outside Parliament and government seek to influence the content of legislation, and the exchange between these actors and Parliament and government is a vital part of the democratic process. Changes in governance have widened the range of actors in the policy and legislative process by blurring the traditional distinctions between state, market and civil society.³¹ The process has become more open to external groups such as think tanks, lobbyists and pressure groups, the number of which have grown significantly in recent decades – although studies are divided about the extent to which these groups influence the policy and law making process.³² A recent Hansard Society report found that lobbying is more widespread than it is often assumed to be by both critics and supporters, and that it is becoming more professionalised.³³

30 House of Lords Constitution Committee (2003-04), *Parliament and the Legislative Process*, HL Paper 173-I, para 5.

31 For example, see W. Grant (2005), 'Pressure Politics: A Politics of Collective Consumption?' *Parliamentary Affairs* 58(2).

32 D.E. Abelson (2002), *Do Think Tanks Matter? Assessing the Impact of Public Policy Institutes* (Montreal: McGill-Queen's University Press); A. Rich (2004), *Think Tanks, Public Policy and the Politics of Expertise* (Cambridge: Cambridge University Press).

33 P. Parvin (2007), *Friend or Foe? Lobbying in British Democracy* (London: Hansard Society).

Interest groups

A wide range of organised interest groups follow the development of legislation and work to influence its content. These groups include companies and private sector lobbying organisations; non-governmental organisations (NGOs), pressure groups and charities; trade unions and professional bodies; and think tanks and research institutions.

Private sector lobbying organisations, in particular, are increasingly viewed as having a disproportionate impact on government policy and legislation. The Joseph Rowntree Reform Trust's 2006 State of the Nation survey found that 67 per cent of people think that large companies have a great deal or a fair amount of influence over government policies, but only 27 per cent feel that this *should* be the case.³⁴ Individual citizens quoted in the report of the Power Inquiry expressed concerns about 'the extraordinary power afforded to corporations and their lobbying groups' and declared that 'governments are on the side of big business'.³⁵ However, a Hansard Society poll of MPs revealed that 62 per cent are more persuaded by arguments put forward by charities and interest groups than they are by businesses.³⁶

The media

It is an increasingly common refrain among politicians and members of the public alike that the media exercises a great deal of power over the political process. The most recent Hansard Society and Electoral Commission *Audit of Political Engagement* found that 54 per cent of people thought the media had the most impact on people's everyday lives, more than local councils, business, Parliament, the Prime Minister and civil servants.³⁷ Similarly, the State of the Nation Poll found that 65 per cent of people think that the media has a great deal or a fair amount of power over government policies, which is only slightly less than large companies. However, as was the case for big business, far fewer - 28 per cent of people - think that the media *should* have this much power.

Individual citizens

The 2006 Commons Modernisation Committee report recommended that, whenever possible, the public should have the opportunity to become involved in the legislative process as 'active participants'.³⁸ While interest groups

34 *State of the Nation Poll 2006* quoted in P Parvin (2007), *Friend or Foe? Lobbying in British Democracy* (London: Hansard Society).

35 The Power Inquiry (2006), *Power to the People, The Report of Power: An Independent Inquiry into Britain's Democracy* (London: The Power Inquiry), pp. 163-4.

36 P Parvin (2007), *Friend or Foe? Lobbying in British Democracy* (London: Hansard Society).

37 Hansard Society and Electoral Commission (2007), *An Audit of Political Engagement 4* (London: Hansard Society/Electoral Commission), p. 52.

38 House of Commons Modernisation Committee (2005-06), *The Legislative Process*, HC 1097, para 2.

generally have far more resources to lobby the government than have individual citizens, Hansard Society research has found that being lobbied by constituents can have a greater impact on an MP than being lobbied by a pressure group.³⁹

Nevertheless, most people do not feel they have a say in how the country is run. The *Audit of Political Engagement* found that only 33 per cent of people agree that 'when people like me get involved in politics, they can really change the way the country is run'.⁴⁰ It also found that relatively few people have actually taken concrete steps to influence government policy. For example, 20 per cent of people have contacted their MP and less than half (46 per cent) say they would be willing to do so; only four per cent have taken part in a governmental or parliamentary consultation and a mere 14 per cent say they would be willing to do so.⁴¹

When citizens do engage with government, it is important that their expectations are realistic. Many of the 1.79 million people who signed the road pricing e-petition on the 10 Downing Street website were disappointed that the government did not promise that it would not introduce road pricing, or even commit to holding a referendum on the issue. The Chair of the Commons Public Administration Committee, Dr Tony Wright MP, has suggested that e-petitions are 'liable to produce responses from people who say in large numbers that they dislike something and then nothing happens and so they are more disgruntled than they were before you started'.⁴²

Public consultations

There is more consultation in policymaking than ever before. The government is increasingly required to consult with interested external groups – frequently described as 'stakeholders' – when developing policies and legislation. The Cabinet Office recommends that government departments should carry out a full public consultation whenever options are being considered for a new policy or if new regulation is planned, and it has issued a Code of Practice which sets out the basic principles for conducting effective consultations.⁴³ Nonetheless, the impact of consultation on the legislative process has remained largely unexplored.

39 G. Rosenblatt (2006), *A Year in the Life: from member of public to Member of Parliament* (London: Hansard Society), p. 40.

40 Hansard Society and Electoral Commission (2007), *Audit of Political Engagement 4* (London: Hansard Society/Electoral Commission), p. 36.

41 *Ibid.*, p. 48.

42 House of Commons Public Administration Committee (2006-07), *Public Services: Putting People First*, HC 251-iii, 8 March, Q 117.

43 Cabinet Office, *Code of Practice on National Public Consultation*, 6 February 2007; see <http://www.cabinet-office.gov.uk/regulation/consultation/>.

The requirement to consult is not new; as early as the mid-20th century the constitutional lawyer Sir Ivor Jennings suggested that it had attained the status of a constitutional convention.⁴⁴ It is, however, increasingly widespread and open. Traditionally, consultation on legislation has taken place through the publication of a Green or White Paper, which sets out the policy behind impending legislation and invites written responses from interested members of the public. More recently, it has expanded beyond written submissions to encompass public events held around the country, online consultations, debates and petitions. As noted earlier, the Government has also increased its use of pre-legislative scrutiny since 1997. External actors, for example experts and interest groups, may be asked to give evidence before a parliamentary committee that is considering a draft bill.

There is, however, some cynicism about the consultation process. Critics view consultation as nothing more than an elaborate public relations exercise for government. Sometimes government can feed this cynicism. Speaking recently about a High Court decision which ruled that the Government's public consultation on nuclear power had been 'seriously flawed',⁴⁵ Prime Minister Blair declared, "This won't affect the policy at all. It will affect the process of consultation, but it won't affect the policy."⁴⁶ The Power Inquiry charged that consultations are 'largely cosmetic and designed to support policies which have already been developed'.⁴⁷

Influencing legislation within Parliament

Once a piece of legislation enters Parliament, external actors continue to exert their influence. It is clear from our initial research that MPs and peers, particularly those scrutinising legislation at the committee stage, rely heavily on information provided by interest groups, which often comes in the form of briefing papers and proposed amendments, though the latter are usually rejected by the government. It has also shown that some interest groups are particularly adept at using the media to communicate their views during the course of a particular piece of legislation. New 'legislation gateways' on Parliament's website also make it easier for members of the public to follow the progress of bills, and in theory to be in a better position to influence the legislative process.

44 Conservative Party (2000), *Strengthening Parliament* (London: Conservative Party), p. 13.

45 'Nuclear plans go back to public', *BBC News*, 22 February 2007.

46 *BBC 10 o'clock News*, 15 February 2007.

47 The Power Inquiry (2006), *Power to the People, The Report of Power: An Independent Inquiry into Britain's Democracy* (London: The Power Inquiry), p. 110.

External actors - key points:

- The range of actors in the policy and legislative process has widened, with the number of think tanks, lobbyists and pressure groups growing in recent decades. However, opinion is divided about the degree of influence they have.
- The public are increasingly encouraged to be active participants in the legislative process and it has been suggested that consultation has attained the status of constitutional convention. Yet most people do not feel they have a say in how the country is run and the impact of public consultation remains largely unexplored.

Conclusion

Our project is particularly concerned with discerning the impact of Parliament on legislation, but this cannot be done without a nuanced understanding of all of the other factors that affect legislation. A law may be formally enacted by Parliament, but its content is shaped by a wide range of influences, notably members of the executive; external actors such as the media, interest groups and even individual citizens; as well as by parliamentarians themselves. However, the degree to which each can influence legislation is not equal and can vary dramatically from bill to bill. This becomes apparent in the next section, which provides details of our five case studies.

3. Legislative case studies

We are tracking five pieces of legislation in depth and a dozen or so further pieces of legislation in lesser detail. For each bill, we are looking at issues such as its origins and development; whether it was the subject of a public consultation, Green or White Paper or a draft bill; what changes were made as it progressed through Parliament; the involvement of external actors; and how it was covered by the media.

This section presents a summary of some of the key issues surrounding our case studies: the Export Control Act 2002, the Equality Act 2006, the Immigration, Asylum and Nationality Act 2006, the Legislative and Regulatory Reform Act 2006 and the Welfare Reform Act 2007. While it focuses particularly on the pre-parliamentary stages of the bills, the final report will provide a comprehensive overview of each bill from genesis to Royal Assent.⁴⁸

3.1 Export Control Act 2002

*Despite the pressures of time, Ministers appear to wish, and could certainly ensure, that this pre-legislative consultation process is a model of its kind.*⁴⁹

- Quadripartite Committee report on the draft Bill

Background to the Act

The Export Control Act 2002 was the long-awaited response to the 1996 Scott Report on the arms to Iraq scandal, which had criticised the strategic export regime for its lack of accountability and transparency.⁵⁰ Legislation to overhaul the export control regime was one of the Report's key recommendations, which it advised be done 'as soon as practicable'.⁵¹ Existing export controls were based on a hastily-passed 1939 Act which was deemed inadequate for the post-Cold War era.⁵² It was therefore surprising that legislation reforming the export control regime was not passed until six and a half years later.

48 While the Hansard Society is an advocate of post-legislative scrutiny, it is outside the scope of this project.

49 House of Commons Quadripartite Committee (2000-01), *Draft Export Control and Non-Proliferation Bill*, HC 445, para 118.

50 Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecution (1995-96), HC 115, 15 February 1996.

51 Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecution (1995-96), HC 115, 15 February 1996, Vol. IV, Chapter 2, para K2.1.

52 The 1939 Act was made permanent by the Import and Export Control Act 1990, which was rushed through Parliament in two months.

The Export Control Act 2002 established an entirely new legislative framework for strategic export controls and improved government accountability for export controls by setting out their purposes in legislation and providing for parliamentary scrutiny of all secondary legislation made under the Act. It introduced statutory controls on the transfer, trafficking and brokering of military and dual-use equipment and the requirement that government publish annual reports. The Act has been described as 'enabling' rather than substantive; all of the substance of export policy is actually contained in secondary legislation. This makes it of particular interest to our project, as does the fact that it covers a complex, technical area of law which is distinct from the other case studies. One of the first draft bills of its kind, it was also subject to an unusually high degree of public consultation and pre-legislative scrutiny.

Green and White Papers

Five months after the Scott Inquiry reported, the Department for Trade and Industry (DTI) produced a Green Paper to which the Government received 38 responses, just over half from industry and the rest from NGOs.⁵³ The aim of the Green Paper was to have 'the benefit of the initial views of interested parties before presenting worked-up proposals'; the Government said it envisaged producing further proposals by early 1997.⁵⁴

However, a White Paper did not follow until two years later, in July 1998, under a new government.⁵⁵ The Blair Government had promised in its 1997 manifesto to 'increase the transparency and accountability of decisions on export licences for arms'.⁵⁶ Propelled in part by the adoption of new arms sales criteria in July 1997 and the May 1998 EU Code of Conduct on Arms Exports, the White Paper contained proposals for a new legislative framework, controls on electronic transfers of controlled technology and brokering and for reforms to licensing procedures.

The White Paper was immediately criticised in the media by NGOs and the Liberal Democrats for not going far enough in implementing the Scott Report's recommendations; for example, it had rejected the Report's suggestion that export licences should be approved by Parliament within a set period of time.⁵⁷ A few weeks after its publication, the White Paper began

53 Department for Trade and Industry (July 1996), *Strategic Export Controls – A Consultation Document*, Cm 3349.

54 Ibid.

55 Department for Trade and Industry (July 1998), *Strategic Export Controls*, Cm 3989.

56 Labour Party (1997), *New Labour because Britain deserves better*.

57 See F. Abrams, 'New powers for MPs on arms exports', *The Independent*, 2 July 1998; A. Nicoll, 'Arms exports may face stricter scrutiny by MPs', *Financial Times*, 2 July 1998; R. Norton-Taylor, 'Policy and politics: Arms export rules fail to meet Scott target', *The Guardian*, 2 July 1998.

to receive vocal criticism from academics, who claimed that the proposed new regime would adversely affect academic freedom because it sought to extend government control over exports of so-called 'intangibles' such as software and research papers.⁵⁸ After a 12-week consultation period, the Government received 54 responses from the defence industry, NGOs and academics.

The White Paper was also scrutinised by the Commons Trade and Industry Committee.⁵⁹ The Committee rejected the White Paper's view that there should be no parliamentary scrutiny of individual export applications after a decision has been taken.⁶⁰ It concluded that the responses to the consultation 'raise genuinely complicated issues requiring resolution', but also criticised the lack of forthcoming legislation which it considered to be 'largely uncontroversial'.⁶¹ Nonetheless, the Government did not proceed with legislation for nearly two and a half years.

Draft Bill: a model for its time

At the end of March 2001, the subject of strategic export controls was resurrected by the publication of a draft bill, one of only two in the parliamentary session of 2000-01.⁶² Based on the White Paper, the draft Bill contained some key differences, including wider controls and the introduction of a licensing system for traffickers and brokers; new measures on licensed production overseas; and an increase in the maximum penalties for export control offences from seven to 10 years' imprisonment. During a reduced consultation period of eight weeks, the Lords Delegated Powers and Deregulation Committee and the Commons Quadripartite Committee scrutinised the draft legislation.⁶³ The former outlined three major concerns with the Bill in its brief report, questioning in particular the appropriateness of granting the power to change the purposes set out in the Bill and to impose controls for purposes which are not set out in the Bill.⁶⁴

The Quadripartite Committee's comprehensive report on the draft Bill

58 T. Durham & N. Loder, 'New allies train sights on export controls', *The Times Higher Education Supplement*, 11 September 1998.

59 House of Commons Trade and Industry Committee (1998-99), *Strategic Export Controls*, Second Report, HC 65.

60 *Ibid*, para 43.

61 *Ibid*, para 24.

62 Department for Trade and Industry (March 2001), *Consultation on Draft Legislation: the Export Control and Non-Proliferation Bill*, Cm 5091. The draft bill was accompanied by a detailed commentary, a draft Regulatory Impact Assessment (RIA) and technical explanatory notes.

63 According to the government, the consultation period was reduced from 12 to eight weeks due to the substantial amount of previous consultation, the brevity of the Bill, and to the fact that much of the substance would be contained in secondary legislation.

64 House of Lords Delegated Powers and Deregulation Committee, (2000-01), *Twentieth Report*, HL 72.

contained 24 recommendations.⁶⁵ The Committee specialises in strategic export controls and has members drawn from four other committees: Trade and Industry, Defence, Foreign Affairs and International Development. It strongly criticised the Bill's failure to include import controls within its scope. It recommended pre-legislative scrutiny for all orders made under the Act, as well as for secondary legislation, and strongly reiterated its support for prior parliamentary scrutiny of all export licences. This would enable MPs to make recommendations to the government on individual licence applications before a final decision was taken on whether to allow or refuse them.

While such a measure was not included in the draft Bill, the media reported that ministers privately agreed to prior parliamentary scrutiny of exports to any country covered by an arms embargo, although the Committee deemed that this did not go far enough.⁶⁶ In its July 2001 response to the Committee's report, the Government remained adamant that prior parliamentary scrutiny 'would not be right in principle, and could not be made to work in practice', though it offered 'confidential briefings to the Committee on export control issues' as a concession.⁶⁷

Parliamentary stages

The Export Control Bill was introduced in the Commons on 26 June 2001 – three weeks after the Labour Party won a second term in office.⁶⁸ However, a host of contentious issues surrounding the Bill ensured that its parliamentary passage was less than smooth. Parliamentary scrutiny of licences was still on the agenda, as was the impact of new transfer controls on the defence industry and higher education sector; lack of control over arms brokering and trafficking outside of the UK; and the impact of export licences on sustainable development. As the Bill progressed through Parliament, a number of interested parties – notably human rights and development campaigners, representatives from the defence industry, higher education sector and Anglican bishops – lobbied against a number of its provisions and were relatively skilful at using the media to convey their messages.⁶⁹

65 House of Commons Quadripartite Committee (2000-01), *Draft Export Control and Non-Proliferation Bill*, HC 445.

66 P. Wintour, 'MPs win right to scrutinise key arms sales', *The Guardian*, 28 March 2001.

67 Secretaries of State for Defence, Foreign and Commonwealth Affairs and Trade and Industry (July 2001), *Strategic Export Controls: Annual Report for 1999 and Parliamentary Prior Scrutiny*, Cm 5141, p. 8, 10.

68 Export control policy had not been mentioned in the 2001 Labour Party Manifesto, although a draft Bill was mentioned in the Queen's Speech of 6 December 2000 and the final Bill was mentioned in the Queen's Speech of 20 June 2001.

69 See, for example, J. Wilson, 'Arms bill will not deter dealers', *The Guardian*, 24 November 2001; G. Hurst & T. Baldwin, 'Clergy lead attack on weapons export Bill', *The Times*, 4 February 2002; C. Arthur, 'New Laws to Suppress Academic Research', *The Independent*, 18 February 2002.

A number of external events may have influenced the terms of the parliamentary debate. A major UN Conference on small arms and light weapons, at which the British Government was particularly active, took place during the Commons standing committee stage. In the middle of this stage, the September 11 terrorist attacks occurred. As the Bill reached the Lords committee stage, a public row erupted in the Cabinet between the International Development Secretary, Clare Short, and the Trade and Industry Secretary, Patricia Hewitt, over the sale of a BAE Systems military air traffic control system to Tanzania.

We will consider in detail how these consultations impacted on the parliamentary stages, although it is clear that the Government was forced to make significant concessions. The Bill emerged from the Lords with 30 amendments, 22 of which the Commons agreed to outright. Two notable Lords amendments, one on academic freedom and another on sustainable development, were rejected by the Commons when the Bill first arrived from the Lords. However, when it became clear that the Lords would not back down on academic freedom, the Government accepted an agreed compromise amendment. The Export Control Act became law on 24 July 2002, 11 months after it first entered the Commons.⁷⁰

Export Control Act 2002 – key points:

- Although legislation to overhaul the export control regime was urgently recommended by an independent inquiry in 1996, it was not passed until six years later. The legislation was largely enabling, and much of the substance of export control policy was contained in later secondary legislation.
- The Bill was subject to a high degree of consultation, including a Green Paper, White Paper and pre-legislative scrutiny; it was one of only two bills published in draft form in the 2000-01 session.
- The draft Bill was scrutinised by a specialist select committee on export controls, but the Government refused to accede to the committee's key demand for prior parliamentary scrutiny of all export licences.
- After years of resistance, the Government did finally give in to campaigners' and peers' calls for an amendment protecting academic freedom and the Bill received the Royal Assent the following day.

⁷⁰ However, it did not come into force until nearly two years later on 1 May 2004.

3.2 Equality Act 2006

*The approach of successive governments to the increasingly complex, opaque and anomalous state of the (equality) legislation has been piecemeal and minimalist. It has involved adding new layers of legislation in bits and pieces.*⁷¹ – Lord Lester, Second Reading

The Equality Act is an example of legislation that falls under the remit of more than one government department – in this case the Department for Trade and Industry (DTI), Department for Constitutional Affairs (DCA), Department for Work and Pensions (DWP) and the Home Office. Unlike most pieces of legislation, including the other bills in this study, the Equality Bill was introduced in the House of Lords and then passed on to the Commons.

Origins of the Act

The Equality Act 2006 reformed the institutional framework that accompanies equality legislation in the UK. The origin of the legislation can be found in changes to European Union Law under Article 13, specifically in relation to the Employment Directive 2000/78/EC.⁷² All member states were required to implement legislation banning discrimination in employment on grounds of sexual orientation and religion or belief by December 2003, and on the grounds of disability and age by December 2006. As a result, the Government reassessed the structure of Britain's three existing equality institutions, which had been set up to oversee discrimination laws in relation to race, gender and disability.

The Equal Opportunities Commission (EOC), the Commission for Racial Equality (CRE) and the Disability Rights Commission (DRC) drew their authority from a series of Acts, some of which dated back to the 1970s. Regulations introduced by the Government in response to EU Directives now extended protection from discrimination in employment and training to sexual orientation, age and religion, thereby doubling the number of equality 'strands' protected under UK law. While introducing regulations into domestic law to ban such discrimination, the Government began concurrent consultations to reform the structures tasked with implementing and overseeing equality legislation. At this stage, its focus was firmly centred on reform of the institutions, rather than further changes to the scope of discrimination laws *per se*.

71 HL Deb 28 February 2003 vol. 645 col. 526-527.

72 For more information, see House of Commons Library, *Equality Bill (HL) Research Paper 05/77* (2005).

Consultation process

The official consultation process began in December 2001, with the publication of *Towards Equality and Diversity*.⁷³ This document considered the implementation of EU Employment Directives and acknowledged arguments in favour of a single statutory commission. It was followed six months later by the announcement of a government review to consider possible models for a unified equality body.

In October 2002, the Government published a Green Paper, *Equality and Diversity: Making it Happen*, and an accompanying document, *Equality and Diversity: The Way Ahead*.⁷⁴ These set out three specific options for the structural reform of Britain's equality institutions and the main features of the proposed legislation. The Government articulated its preference for a Single Equality Body (SEB) and referred to the possibility of using a reform of the equality commissions as an opportunity to provide institutional support for human rights.

In the foreword to *Making it Happen*, Barbara Roche, Minister for Women, emphasised that success would be dependent on a continuing dialogue with the existing commissions and other stakeholders. Consequently, the DTI's Women and Equality Unit complemented the written consultation with a range of discursive events, including a series of ministerial roundtables across the country; a citizens' forum for 100 members of the public; and events targeted at certain audiences, such as black and minority ethnic women. An online consultation also fed in the views of small and medium-sized businesses.

A summary report on the consultation found the SEB to be the most popular of the organisational models proposed by the Government.⁷⁵ The report identified a concern that was to be referred to throughout the passage of the legislation: that the establishment of a single body should be preceded by a Single Equality Act (SEA). The strands differed in the emphasis that they placed on the need to harmonise existing equality legislation in advance of creating a single body. Similarly, opinion was divided about merging the equality and human rights agenda. The Joint Committee on Human Rights (JCHR) described an integrated body as its 'preferred option',⁷⁶ but a significant proportion of stakeholders were concerned that this would be 'motivated more by political expediency than by belief in the inherent compatibility of the two strands'.⁷⁷

73 Cabinet Office, Department for Trade and Industry, Home Office, Department for Work and Pensions (Dec 2001), *Towards Equality and Diversity: Implementing the Employment and Race Directives*.

74 Department for Trade and Industry (2002), *Equality and Diversity: Making it Happen*, Department for Trade and Industry (2002), *Equality and Diversity: The Way Ahead*.

75 MORI (2003), *'Equality and Diversity - Making it Happen' Report on the Consultation Exercise*, Oct 2002-Feb 2003 (London: Department for Trade and Industry/Women and Equality Unit).

76 Joint Committee on Human Rights (2003), *The Case for a Human Rights Commission*, Sixth Report, HC 489-I, HL 67-I.

77 MORI (2003), *'Equality and Diversity - Making it Happen' Report on the Consultation Exercise*, p.54.

Merging equality and human rights

Government support for a Commission for Equality and Human Rights (CEHR) was announced on 30 October 2003 and a task force was set up to advise the government on developing the detail of the new body. The White Paper, *Fairness for all: A new Commission for Equality and Human Rights*, was published on 12 May 2004, setting out proposals for a CEHR in detail and outlining how it would deliver to its key stakeholders.⁷⁸ The existing equality commissions differed in their appraisal of the White Paper; the EOC was broadly supportive of the proposals, but the CRE described the White Paper as the 'wrong proposal at the wrong time'.⁷⁹ The Government received 433 responses to the consultation and published a response in November 2004.

By the time the Equality Bill was finally published in March 2005, much of the earlier criticisms had been countered. The Government had taken measures to secure the support of each of the existing equality commissions and their accompanying stakeholders and it was described as 'a massive improvement on the White Paper proposals'.⁸⁰ Members of both Houses also acknowledged the degree to which the Government had responded to the concerns of stakeholders. Tim Boswell MP described the process as 'an object lesson to the House and the country in the formulation of public policy'.⁸¹ Lord Ouseley described it as 'a giant step change from the tentative proposals set out in the White Paper, *Fairness for all*'.⁸²

The contribution of external stakeholders was complemented by those in Westminster, as parliamentarians sought to exert influence in the years preceding the introduction of the Bill. In October 2000, the Commission on the Future of Multi-Ethnic Britain, chaired by Lord Parekh, called for the establishment of a human rights commission. Lord Lester later introduced the Equality Bill 2003, a Private Members' Bill which proceeded through the Lords but was not allocated time in the Commons, despite the fact that an early day motion in support of the Bill was signed by 246 MPs. A Ten Minute Rule Bill introduced by Angela Eagle MP, Sex Equality (Duties of Public Authorities), advocated a duty to promote gender equality.

78 Department for Trade and Industry in association with Department for Constitutional Affairs, Department for Education and Skills, Department for Work and Pensions and Home Office (May 2004), *Fairness for all: A new Commission for Equality and Human Rights: White Paper*, Cm 6185.

79 Trevor Phillips, chair of the CRE, quoted in BBC News, 'Race watchdog rejects merger plan', 22 July 2004.

80 Karen Chouhan, chief executive of the 1990 Trust, quoted in BBC News, 'Equality watchdog plans unveiled', 3 March 2005.

81 HC Deb 5 April 2005 vol. 432 col. 1308.

82 HL Deb 15 June 2005 vol. 435 col. 1272.

A more sustained campaign of lobbying was undertaken during this period by the JCHR, which published no fewer than five reports on the Equality Bill.⁸³ The Committee was not only influential in forming an alliance in the stakeholder community in favour of a CEHR, but also went on to shape the details of the legislation.

The legislation

The Equality Bill was published in March 2005 and comprised three main parts, the first of which set out in detail proposals for a CEHR. Parts two and three were added to the Bill following the White Paper consultation and referred to the scope of equality legislation rather than the functioning of the new institution. Part two of the Bill prohibited discrimination on grounds of religion or belief in the case of provision of goods, facilities and services; part three introduced a duty on public authorities to promote gender equality (the 'gender duty'). The White Paper had not indicated that a gender duty would be included in the final Bill; rather, it had advocated its introduction 'in due course' only.⁸⁴

The Equality Bill had its Second Reading in the House of Commons on 5 April 2005. It was reintroduced in the House of Lords after the general election and moved to the Commons on 11 November. Amendments in the Lords had added a fourth part to the face of the Bill, allowing regulations to be made prohibiting discrimination on grounds of sexual orientation in the provision of goods, facilities and services. The House of Lords also removed religious harassment provisions from the Bill.

During the passage of the Bill, parliamentarians questioned the government about the structure, composition, functions, powers and cost of the CEHR. There was explicit support for the notion of a one-stop shop but concern about its lack of independence from government, preventing the emergence of a hierarchy of equalities and the potential for a CEHR to engage in social engineering. The future introduction of a SEA was added to the Labour Party's 2005 General Election manifesto, but that did not quell concerns that such an Act should precede the creation of the CEHR. The Equality Act received Royal Assent in February 2006, but some of the most high profile debates have taken place subsequently, in relation to the sexual orientation regulations that were provided for by the Bill.

⁸³ The JCHR also referenced the Equality Act in legislative progress reports.

⁸⁴ Department for Trade and Industry (2004), *Fairness for all*, Cm 6185.

Equality Act 2006 – key points:

- The Government set out to reform the structure of Britain’s equality institutions. The notion of a one-stop shop for equalities was welcomed by the majority of stakeholders, but the absence of a Single Equality Act was contentious.
- The Government signalled its desire to gain the support of parliamentarians and key stakeholders in advance of introducing the legislation into Parliament. To achieve this, it broadened the remit of an equality body to include human rights, and later incorporated changes to discrimination law in relation to gender and religion or belief.
- Public debate on the Equality Bill was most visible after it had been made an Act of Parliament, with a relatively low profile piece of legislation suddenly becoming the source of great public controversy. The dispute related to a House of Lords amendment allowing regulations to be made to prevent discrimination on the grounds of sexual orientation in the provision of goods, facilities and services.

3.3 Immigration, Asylum and Nationality Act 2006

*The proceedings in this standing committee have been an example of Parliament working at its best.*⁸⁵ - Sir Nicholas Winterton MP, standing committee

Background to the Act

The Immigration, Asylum and Nationality Bill was introduced in the Commons two months after the Labour Party won a third term in a general election campaign preoccupied with immigration issues. Many of its provisions had been detailed in the Labour Party manifesto. Two days after its Second Reading in the Commons, London was hit by terrorist attacks. The Government subsequently amended the Bill, incorporating a number of new counter-terrorism policies at the start of the standing committee stage.

Controversially, the Bill sought to remove the rights of appeal against refusal of nearly all types of visas and limit appeal rights for people refused entry to the UK at its borders. It also created the offence of knowingly employing an illegal worker and introduced civil penalties (on-the-spot fines) for employers who hire illegal immigrants. The Bill supported the introduction of a points system for migrants, and the use of fingerprinting and biometric travel documentation to

⁸⁵ House of Commons Standing Committee E 27 October 2005 vol. 438 col. 315.

identify illegal immigrants, as well as an e-borders programme to permit the sharing of information between border agencies and immigration officers. As of October 2005, the Bill also sought to make it easier to deny asylum to suspected terrorists, remove citizenship from those whose presence in the UK is not 'conducive to the public good' and speed up the removal of those being deported on national security grounds.

Immigration and asylum issues have become increasingly high profile and controversial over the past decade. Prior to this Act, the Government introduced three pieces of primary legislation on immigration and asylum and a host of secondary legislation, some of which has been challenged by the judiciary. One advantage of using the Bill as a case study is to assess whether the parliamentary process takes judicial challenges into account. Given its high profile and controversial subject matter, it presents a useful case study to assess the impact that interest groups and the media can have on the form of policy and legislation. The Bill is also notable for the absence of formal consultation.

Policy origins

Unlike some of its predecessors, this immigration Bill was not preceded by a White or Green Paper, nor was it ever published in draft. Its content derived from two government policy documents: the Government's five-year strategy for asylum and immigration⁸⁶ and the Home Office's four year Strategic Plan.⁸⁷ In the former, the Government pledged that reform would be made 'in consultation with employers and other stakeholders'.⁸⁸ Between the Second Reading and standing committee, the Home Office conducted a four-month public consultation on the points-based system, a necessary prerequisite for many of the provisions in the Bill, but which was not explicitly contained in the Bill itself.⁸⁹

The counter-terrorism provisions added to the Bill in standing committee originated from the Government's 12-point plan to combat terrorism, which was unveiled by the Prime Minister on 5 August 2005. The Government said it would 'consult widely' on its anti-terrorism measures, including with other political parties. The Home Secretary, Charles Clarke, announced that the Government would bring forward amendments to the Bill on 15 September 2005, and a month later

86 Home Office (February 2005), *Controlling our borders: Making migration work for Britain. Five year strategy for asylum and immigration*, Cm 6472.

87 Home Office (July 2004), *Confident Communities in a Secure Britain: The Home Office Strategic Plan 2004-2008*, Cm 6287.

88 Home Office (February 2005), *Controlling our borders: Making migration work for Britain. Five year strategy for asylum and immigration*, Cm 6472, para 15, p. 15.

89 'Selective Admission: Making Migration Work for Britain' www.homeoffice.gov.uk/documents/238408/cons-selective-admission-190705.

he published draft clauses for consultation. In standing committee, opposition MPs said that the process of adding new clauses had been 'open and consultative'.⁹⁰

Parliamentary scrutiny

At Second Reading, the official position of all three main parties was to support the Bill, or at least not to obstruct it. A number of measures commanded almost universal support, including increased penalties for employers of illegal immigrants, e-borders and information sharing. Nonetheless, a large number of MPs from all three parties voiced concern about the removal of appeal rights which they hoped would be amended at committee stage. The Minister for Immigration and Citizenship, Tony McNulty, sought to pacify concerns by promising that appeal rights would not be removed until the Entry Clearance Officer (ECO) system was reformed and there was evidence of better quality decisions by immigration officers.

During the standing committee stage in the Commons, whose proceedings were described by the Chair, Sir Nicholas Winteron MP, as 'exceptional', the Government added several new clauses.⁹¹ The removal of appeal rights continued to be highly contentious. Members of the committee often spoke on behalf of a diverse range of interest groups, notably Universities UK, UKCOSA (Council for International Education), the Immigration Advisory Service, the Immigration Law Practitioners' Association (ILPA) and Amnesty International. The Conservatives and Liberal Democrats were united throughout the committee stage, supporting each other's amendments on nearly every occasion. However, none of the over 100 opposition amendments was accepted. There were no rebellions, and almost every division pitted the Conservatives and Liberal Democrats (seven in total) against Labour Members (10 in total), with the latter always victorious.

The Bill was subject to four small rebellions in the Commons at Report stage, but the most significant one occurred when the Commons considered the Lords amendments. Nineteen Labour MPs supported the amendment of a Labour backbencher. The Conservative frontbench line was to abstain, but three Conservative MPs also voted for the amendment. In the end, the Commons accepted all 40 amendments made by the Lords.

Although it contained some highly contentious clauses, the Bill was introduced in the same parliamentary session as a host of even more controversial bills,

⁹⁰ Dr Evan Harris MP, House of Commons Standing Committee E 27 October 2005 vol. 438 col. 263.

⁹¹ House of Commons Standing Committee E 27 October 2005 vol. 438 col. 315.

namely those on identity cards, education and terrorism, and it received the Royal Assent nine months later in March 2006. The final report will examine the Grand Committee stage in the Lords - a format which was highly criticised by peers as being inappropriate for such a controversial Bill - as well as the role of the JCHR (which released two highly critical reports of the Bill as it passed through the Lords), interest groups and the media in shaping the final Act.

Immigration, Asylum and Nationality Act 2006 – key points:

- Even though the Government had recently come under fire from the judiciary for limiting the appeal rights of foreign nationals, it introduced a Bill which removed the right of appeal against refusal of nearly all types of visas and limited the appeal rights of people refused entry to the UK.
- The Bill was introduced without any formal consultation. It was not preceded by a Green or White Paper, nor was it published in draft. Its content derived almost entirely from Home Office strategy documents.
- Nevertheless, when the Government incorporated new anti-terrorism clauses into the Bill just before the start of the standing committee stage, it consulted the two main opposition parties and the process of adding the clauses was labelled 'open and consultative' by opposition MPs.

3.4 Legislative and Regulatory Reform Act 2006

*If this Bill had come to your Lordships' House in its original form, we would have proposed that the whole of Part 1 should simply be chucked out, as being totally and constitutionally unacceptable.*⁹² - Lord Goodhart, Second Reading

The Legislative and Regulatory Reform Bill was introduced as part of the Government's drive to reduce regulation within the UK. It was intended to revise the Regulatory Reform Act 2001, which allowed the Government to remove regulatory burdens from businesses by using Regulatory Reform Orders (RROs) instead of having to pass an Act of Parliament. However, it became clear that the Bill had constitutional implications and was rapidly nicknamed the 'Abolition of Parliament Bill' due to the unprecedented power it offered to the executive. As a case study, it is illustrative of a piece of legislation which put forward proposals far greater in scope and implication than its original intention suggested.

92 HL Deb 13 June 2006 vol. 683 col. 136.

Reviewing regulation

The Bill originated from the Government's drive to create a better regulatory environment. In October 2004, the Better Regulation Taskforce was commissioned to write a report for the Prime Minister stating how regulatory burdens on businesses and the third sector could be reduced. The report was published to coincide with the Budget statement of 2005, and was immediately adopted as policy by government.⁹³ It stated that the government needed to review the 2001 Act urgently, and 'should consider how the scope of the Regulatory Reform Act can be widened to allow a greater number of reforms to be delivered by Regulatory Reform Orders (RRO)',⁹⁴

The review conducted by the Cabinet Office was published in July 2005.⁹⁵ It concluded that the existing framework was too narrow in scope and had not allowed as many changes as expected. Given that the Government's intention to legislate for a new bill had been made clear in the Queen's Speech, little attempt was made to find a non-legislative solution to the problems with RROs, or indeed to find them 'fit for purpose'.

A consultation paper, also published in July, varied considerably from the Bill that was put before Parliament. For example, in the consultation paper, the purpose of the Bill was defined as being to 'remove, reduce, re-enact or impose burdens; simplify legislation; and implement uncontroversial Law Commission recommendations, including those that amend common law'.⁹⁶ By First Reading, this had been changed to 'reforming legislation and implementing recommendations of any one or more of the United Kingdom Law Commissions, with or without changes'. The consultation document also contained objective safeguards not subsequently included in the published Bill. There were 77 responses to the exercise, with the Government claiming that 'respondents expressed strong support for proposals outlined in the consultation document'.⁹⁷ The Government also said that responses to the consultation asserted that the need for a new Act was urgent, and consequently it was decided that there was no time for pre-legislative scrutiny.⁹⁸

93 Better Regulation Task Force (March 2005), *Regulation – Less is More: Reducing Burdens, Improving Outcomes* (London: Better Regulation Task Force).

94 *Ibid.*, p. 9.

95 Better Regulation Executive (2005), 'Review of the Regulatory Reform Act 2001' (London: Cabinet Office).

96 Better Regulation Executive (July 2005), *A Bill for Better Regulation: Consultation Document* (London: Better Regulation Executive), p. 7.

97 Better Regulation Executive (December 2005), *A Bill for Better Regulation: Summary of Consultation Responses* (London: Better Regulation Executive), p. 5.

98 Letter from the Lord Chancellor to Chairman of the Constitutional Committee of the House of Lords, 8 February 2006.

Courting controversy

The Bill's First Reading took place on 11 January 2006. In the four weeks until Second Reading, the Lords Constitution Committee, the Commons Regulatory Reform Committee, and the Law Society all expressed their concerns regarding the Bill. At Second Reading, a large number of MPs, including Shadow Constitutional Affairs Minister Oliver Heald, and the Liberal Democrats' Shadow Leader of the House, David Heath, argued unsuccessfully that the committee stage of the Bill should take place on the floor of the House, in line with the convention on issues of major constitutional importance. The programme motion restricted the standing committee to eight sessions and the combined Report stage and Third Reading to two days.

At this stage, concerns about the Bill focused on three key areas. Firstly, the Bill's purpose was defined as 'reforming legislation', and thus applied to all legislation, regardless of scope or importance, with no constraints on the reason behind reforming the law. This raised concerns that RROs could be used to alter the Magna Carta, the Parliament Acts or even the Legislative and Regulatory Reform Act itself. Secondly, the Bill allowed government to decide which parliamentary procedure could be used for each RRO, with Parliament itself being given no say in the level of scrutiny that it was allowed to provide. Thirdly, the safeguards in the Bill were entirely discretionary, as only the minister in charge needed to be satisfied that they had been fulfilled. This would have made the decisions impossible to challenge in court. Taken together, the Regulatory Reform Committee declared that it had 'the potential to be the most constitutionally significant Bill that has been brought before Parliament for some years'.⁹⁹

A climb-down or a compromise?

Following Second Reading, the media caught wind of some of the more serious implications of the Bill. Six senior Cambridge University law professors wrote a letter to *The Times*, stating their concerns that the Bill would allow the government to enact, without Parliament's approval, laws that could 'create a new offence of incitement to religious hatred punishable with two years' imprisonment; curtail or abolish jury trial; permit the Home Secretary to place citizens under house arrest; allow the Prime Minister to sack judges; rewrite the law on nationality and immigration; and "reform" the Magna Carta'.¹⁰⁰ Thus began a fairly sustained campaign by *The Times*, which was picked up by columnists in *The Guardian*, *The Independent*, *The Observer* and *The Daily Telegraph*. The media response also prompted a web campaign that was

⁹⁹ House of Commons Regulatory Reform Committee (2006), *Legislative and Regulatory Reform Bill*, HC 878.

¹⁰⁰ Letter to the editor, *The Times* 16 Feb 2006.

initiated by the non-partisan group Save Parliament.¹⁰¹ Over the course of its campaign, it amassed over 4,500 members, who were kept informed about the progress of the Bill and were asked to write to MPs and peers concerning their objections. Additionally, bodies such as the Hansard Society issued briefing papers setting out their key concerns regarding the Bill.

Substantial government amendments to the Bill were announced in early May, between the committee and Report stages in the Commons. They included changing the Bill's purpose to 'removing or reducing burdens', and explicitly stated that the Bill could not refer to itself or the Human Rights Act. Our final report will seek to understand why these amendments were made at this stage and how concessions were forced upon the Government.

The Bill was passed at Third Reading with a majority of 46, with six Labour MPs rebelling against the Government. Subsequently, the Lords concentrated on improving the safeguards in the Bill and put forward five amendments, all agreed to by the House of Commons. The Bill received the Royal Assent on 8 November 2006.

Legislative and Regulatory Reform Act 2006 – key points:

- The Government set out to create a better regulatory environment for business, but formulated a highly controversial bill that was deemed to be of great constitutional significance.
- Concerns about the Bill were raised by several parliamentary committees in advance of its Second Reading. Yet the Government did not accept that it was of major constitutional significance, rejecting requests for the committee stage to take place on the floor of the House of Commons.
- A parliamentary and media campaign gained momentum after Second Reading and, in the face of sustained criticism, the Government was forced to amend the Bill between committee and Report stages in the Commons.

3.5 Welfare Reform Act 2007

*Following consultation on the Green Paper, we made two substantial changes to our proposals:*¹⁰² - John Hutton, Secretary of State for Work and Pensions, Second Reading

101 www.saveparliament.org.uk.

102 HC Deb 24 July 2006 vol. 449 col. 626.

Background: a long running issue

The Welfare Reform Act has a number of features that make it distinct from the other Acts chosen for detailed scrutiny. One of the most significant features is that some of its main proposals, in particular those relating to the replacement of Incapacity Benefit (ICB) and, to a lesser extent, the reform of Housing Benefit, have been critical features of the political and social policy agenda for many years. As such, many of the Bill's aims are far from the alleged 'knee-jerk', 'something must be done' caricature frequently attached to legislation. In fact, the Bill attempts to deal with issues that have concerned governments of both parties over the past two decades or more. Another feature is that this legislation directly affects the livelihood of millions of citizens and thus raises particular political sensitivities. Indeed, previous attempts by the Labour Government to reform welfare provision have led to some large scale rebellions, for example, on lone parent benefit in 1997 and on a previous Welfare Reform Bill, when 65 Labour MPs voted against the Government in 1999.

The background to the main element of the Bill – reform of ICB – has been the substantial rise in the number of people receiving this benefit, from 700,000 in 1979 to 2.7 million in 2005. All parties have been concerned at the social policy, job market and expenditure implications of this increase. However, the Labour Government had an added concern, namely that the greatest concentration of ICB claimants are almost exclusively in areas represented by Labour MPs. As such, any perception that the rights and benefits of claimants were at risk would be likely to face some opposition. Maybe as a result of such fears, or simply because it recognised that changes to a long-term issue required a suitably long timeframe, the Government brought forward a number of announcements and consultation strategies before moving formally to introduce legislation. Taken together, they provide an opportunity to assess whether consultation had a measurable impact.

Testing the water: consultations and preparations

In November 2002, a Department for Work and Pensions (DWP) Green Paper outlined proposals to support ICB claimants back into work.¹⁰³ In October 2003, the DWP launched a number of pilot projects, entitled Pathways to Work, to test ways to help people claiming ICB back into the labour market. Reforms to housing benefit were also piloted from 2003. Subsequently, major changes to ICB were announced in the DWP Five Year Strategy, published in February 2005. Following the 2005 General Election, it was announced in the Queen's Speech

¹⁰³ Department for Work and Pensions (November 2002), *Pathways to Work: Helping People into Employment*, Cm 5690.

that a Welfare Reform Bill would be introduced to implement the proposals and that a Green Paper would be issued in advance of the legislation. Although the Green Paper had been expected to be issued swiftly in the new Parliament, considerable time elapsed, during which the Government weighed up options for reform and sought support for its proposals. For example, John Hutton, Work and Pensions Secretary, wrote to the 100 MPs with the highest ICB caseloads in their constituencies (almost all of them Labour MPs), putting the case for reform.¹⁰⁴ The Green Paper, *A new deal for welfare: Empowering people to work*, was published on 24 January 2006 and it was clear that some of the more controversial ideas that had previously been floated – for example, that ICB might be means tested or its receipt time-limited – had been dropped.

There then followed two main forms of consultation, both within and outside Parliament. The Green Paper was published on 24 January 2006 and marked the beginning of a 13-week formal consultation period, in which over 600 individuals and organisations gave their views.¹⁰⁵ Additionally, the DWP hosted around 100 events which attracted an estimated total audience in excess of 5,000 people. The consultation was also supported by an online discussion forum which was moderated by the Hansard Society.¹⁰⁶ Separately, the House of Commons Work and Pensions Committee undertook an inquiry into the proposals in the Green Paper and published its report on 6 May 2006.¹⁰⁷

Government response: some significant changes

On 19 June 2006, the Government published two reports to respond to these consultations: *A new deal for welfare: Empowering people to work - Consultation report*; a report on its response to the consultation exercise, and its response to the Work and Pensions Committee's report.¹⁰⁸ Responding to the consultation, John Hutton claimed that the Government proposals had been 'widely welcomed' and the 'positive response reflects our close working relationship' (with stakeholders).¹⁰⁹ While few respondents were indeed calling for no change and greater efforts to get ICB claimants into work were welcomed, the full picture was rather more complicated, with many concerns raised about the benefit regime for future claimants and how this would work in practice. For example, Age Concern argued that 'the existing pilots are not

104 BBC News, 'Support Sought for Benefit Reform', 3 January 2006.

105 Department for Work and Pensions (January 2006), *A new deal for welfare: Empowering people to work*, Cm 6730.

106 www.welfarereformforum.net.

107 House of Commons Work and Pensions Committee, (2005-06), *Incapacity Benefits and Pathways to Work*, HC 616-I.

108 Department for Work and Pensions (June 2006), *A new deal for welfare: Empowering people to work - Consultation report*, Cm 6859; Department for Work and Pensions (2005-06), *Report on Incapacity Benefits and Pathways to Work*; Reply by the Government to the Third Report of the Work and Pensions Select Committee, Session 2005-06 (HC 616), Cm 6861.

109 Cm 6859, Ministerial Foreword.

working for people over 50' and the mental health charity Sane believed that tougher tactics could be counterproductive and that 'a sense of threat could trigger individuals living on a fragile balance into relapse'.¹¹⁰

Nonetheless, the Government did respond positively to major points raised. One contentious point about different rates of benefit for younger claimants led the DWP to change its proposals, acknowledging clearly the influence of the consultation process. There was a reassurance that 'the Government has listened to the views of stakeholders, including the Committee, therefore everyone in the main phase of the Employment and Support Allowance will get the same basic allowance regardless of age'.¹¹¹ Also, in response to the consultation, the Government decided that existing ICB claimants would be moved to the new benefit at protected benefit rates.¹¹²

Other proposals were changed, not because of the select committee's intervention, but because the views of other stakeholders proved more persuasive. For example, the committee welcomed measures to reform Statutory Sick Pay 'as a necessary simplification that will improve the system for claimants and employers', but the Government replied that there were strong arguments from employers for not abandoning the three waiting days because of the potential increase in their costs, and that 'it is not sensible to proceed with the changes to Statutory Sick Pay at this time'.¹¹³ The consultation process had a significant impact on other elements of the proposals, with John Hutton acknowledging that concerns raised in the Green Paper consultation led the Government not to introduce the local housing allowance for social housing tenants.¹¹⁴

The parliamentary process

The Welfare Reform Bill had its First Reading on 4 July 2006. The key elements were the introduction of the Employment and Support Allowance to replace ICB with eligibility for different rates of benefit dependent on capacity for work-related activity. Other proposals included the national roll out of the Local Housing Allowance and a housing benefit sanction for anti-social behaviour; loss of benefit for commission of benefit offences; and benefits for widows and widowers. The Bill had its Second Reading debate on 24 July, reached committee stage on 17 October 2006 and was carried over into the

110 BBC News, 'Ministers Unveil Overhaul', 4 July 2006.

111 *Report on Incapacity Benefits and Pathways to Work*, Reply by the Government to the Third Report of the Work and Pensions Select Committee, Session 2005-06 (HC 616), Cm 6861, para 34.

112 Cm 6859, paras 20-21.

113 *Report on Incapacity Benefits and Pathways to Work*, Reply by the Government to the Third Report of the Work and Pensions Select Committee, Session 2005-06 (HC 616), Cm 6861, para 12.

114 HC Deb 24 July 2006 vol. 449 col. 626.

next session (2006-07). Following its Report stage and Third Reading in November 2006, the Bill entered the Lords in January 2007. It received the Royal Assent on 4 May 2007. Our final report will analyse the various stages of the Bill's passage in the Commons and Lords and will assess the extent to which changes to the final shape of this legislation can be attributed to the formal parliamentary process.

Welfare Reform Act 2007 – key points:

- Previous Labour backbench rebellions on social security and welfare reform issues led the Government to anticipate a similar reaction, particularly on the reform of Incapacity Benefit.
- The Government therefore moved slowly on the issue and eventually put forward a Green Paper which did not contain many of the more radical ideas that had previously been mooted.
- This less contentious package of measures was further amended following extensive consultation on its proposals. The views raised during public and parliamentary consultation had a significant impact on the final proposals put to Parliament and, as a result, secured a smoother passage for the legislation.

Conclusion

Our five case studies illustrate that differences begin in advance of legislation being introduced into Parliament, with the government able to pick and choose between various pre-legislative tools of consultation and scrutiny. Once introduced into Parliament, the passage of a bill is dependent partly on the nature of the proposed change in law; this is in terms of both the subject area and the degree to which the measures of a bill are deemed to be controversial among parliamentarians, key stakeholders, the media and the public. Our final report will assess common themes between the case studies identified, as well as what distinguishes each of them in its own right. A range of other bills will also be scrutinised in order to contextualise these findings.

4. Conclusion: The growing assertiveness of Parliament

Any assessment of the standing and effectiveness of Parliament, particularly in its relationship with government, must deal with some conflicting evidence and opinion. On the one hand, there is the widespread perception, shared by large sections of the media, a substantial proportion of the public and many academics and politicians, that government dominates Parliament to an excessive and unacceptable degree and also consistently ignores the views of the public. Moreover, it is maintained that this sorry state of affairs is getting worse.

On the other hand, recent evidence points to a number of countervailing trends that have increased the effectiveness of Parliament and have improved communication between the government and those it governs. These varied features include the growing propensity for members of the governing party to vote against their party (leading to substantial rebellions and sometimes defeats), the step-change in assertiveness of the House of Lords, numerous improvements to Parliament's scrutiny functions and procedures (such as pre-legislative scrutiny, consideration of draft bills and select committee reform), as well as a series of innovations in how the government consults with the public.

Both positions contain elements of truth. Although government undoubtedly has enormous control over the legislature, the Hansard Society contends that the view of Parliament as spineless and supine is too simplistic. Parliament is increasingly asserting itself and improving its functions in a number of ways. But the essential question is whether these various developments have substantially changed the way that Parliament and government interact and carry out their work. By looking in considerable depth at one of Parliament's prime functions – making the law – we hope to shed some light on this issue and, furthermore, to make proposals that may further strengthen the role and effectiveness of Parliament.

We would like to hear from you

We would be delighted to receive submissions or views from all interested parties on any of the issues raised in this paper. Please send your contributions by email to parliament@hansard.lse.ac.uk, or by post to: Parliament and Government Programme, Hansard Society, 40-43 Chancery Lane, London WC2A 1JA. If you would like to discuss any of the issues raised in this paper, or the project in general, please do not hesitate to contact the authors by email or on 0207 438 1222.

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LAW IN THE MAKING

A discussion paper

Making the law is one of Parliament's best known functions, but what impact does it actually have on the final shape of legislation? Does the government propose new laws and Parliament simply agree to them? And do external consultations on proposed legislation make any difference?

To shed light on these and other issues related to Parliament's role in law making, the Hansard Society is conducting a major project on how laws are made and the various influences that affect their passage.

This discussion paper provides an overview of the subject, outlining five legislative case studies chosen for detailed study and posing central questions that underpin our research. A final report on the legislative process will follow in 2008.

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