



# **The Challenge for Parliament Making Government Accountable**

## **Summary of Hansard Society research**

The Hansard Society established The Newton Commission in 1999 – it was given 18 months to report on how Parliament scrutinised the Executive and assess what changes were needed. The Commission held a number of seminars and meetings and received written evidence from a number of organisations and individuals. The Commission reported in 2001.

The Commission found that Parliament was being left behind by changes in the constitution, government and society. It found weakness in the working of accountability, concluding there were serious gaps in the way parliament keeps the government in check. It set out how a reformed Parliament might work. The central theme of the report was that Parliament should be at the apex of a system of accountability. The report recognised that the activities of Members in both Houses could be better coordinated and more complimentary in terms of accountability. The report also recognised the need for Parliament to be responsive to the public.

### **Principles**

The report set out seven principles:

**Parliament should be at the apex** of a system of accountability and more formal and organised relationships were needed with the array of independent regulators, commissions and inspectors, so that Parliament provided a framework for their activity;

**Parliament must develop a culture of scrutiny** with scrutiny an integral part of the work of every Member;

**Committees should play a more influential role with Parliament** with select committees being seen by the Newton Commission as the principal vehicle for promoting a culture of scrutiny and parliamentary effectiveness;

**The Chamber should remain central to accountability** and should be more responsive to issues of public concern;

**Financial scrutiny should be central to accountability** and procedures needed to be adapted to make certain that committees could ensure proper financial accountability; **The House of Lords should complement the Commons** with closer co-operation and co-ordination between the two Houses with the Lords playing a significant part in the scrutiny of cross-departmental issues and ethical, constitutional and social issues; and **Parliament must communicate more effectively with the public** by changing procedures, improving relations with the media by varying sitting times and establishing a dedicated press office, making greater use of the internet and developing a Petitions Committee.

### **Key findings**

- Select committees should be the main vehicle for scrutinising the government and with every Member serving on one.
- The Prime Minister should go before a select committee once a year to answer questions.
- Committees should have performance targets
- The Chamber should not sit on one day a week to make time for Members to devote themselves to committee business
- Sitting hours should be altered to improve media coverage
- Key committee posts should be paid, with select committee chairmen commanding the same salaries as ministers.

In 2005, the Hansard Society reviewed parliamentary modernisation since 1997 in *New Politics, New Parliament?*, A review of parliamentary modernisation since 1997, Alex Brazier, Matthew Flinders, and Declan McHugh (ISBN 0 900432 62 4, £10).

### ***New Politics, New Parliament? Conclusions and recommendations***

Parliamentary modernisation since 1997 has been punctuated by great hope and positive advances on one hand, and deep frustration and backward steps on the other. The period began with great expectations for positive change, stimulated by the election of a Labour Government committed to modernising Parliament in order to make the institution stronger, more efficient and more appealing to the outside world. However, although a number of significant reforms have been enacted over the last eight years, particularly during the 2001- 2005 Parliament, the objectives outlined by the Labour Government have not been fully met. Despite some improvements, Parliament remains in many ways an inefficient and, some would allege, largely ineffective institution. Likewise, it continues to suffer from low public esteem. Moreover, while there have been some important changes in the relationship between the executive and Parliament, it remains clear that the balance of power remains firmly in the lap of the former. In terms of an overall assessment of the period since 1997, therefore, this report concurs with the view of Tony Wright that: 'In general, modernisation-as-efficiency has had more success than modernisation-as-scrutiny'.

The reason for this outcome stems in part from flaws in the prime mechanism designed to create a modern Parliament. The Modernisation Committee, formed soon after Labour's 1997 election victory, failed to produce a blueprint for what it wanted a modern scrutinising Parliament to look like. With no clear end point for reform, the work of the Committee was shaped by the interests and outlooks of its personnel, especially its chair and key members and officials. Between 1998 and 2001, Margaret Beckett, the longest serving Chair of the Committee – and Leader of the House – displayed little or no interest in strengthening Parliament. Consequently, apart from a number of important changes to the legislative process during Ann Taylor's brief spell as Commons Leader in 1997, the Modernisation Committee concerned itself during the Blair Government's first term with largely superficial matters and steered well clear of issues concerning the accountability of the executive.

Going into the 2001 general election, therefore, there was widespread dissatisfaction both inside and outside Westminster about the nature and extent of parliamentary modernisation, certainly as far as shifting the balance of power was concerned. However, a confluence of factors that year opened a 'window of opportunity' that Robin Cook, a new and more parliamentary-minded Leader of the House, was able to exploit. In the wake of a recent general election, buoyed by a groundswell of political demand for change, and armed with a reform agenda formed from the recommendations of several commissions and committees that had reported around that time, Cook piloted a raft of important measures through Parliament designed to deliver modernisation-as-efficiency in tandem with modernisation-as-scrutiny. Key developments included the introduction of additional payments to select committee chairs, reforms to select committees and Parliamentary Questions, and the twice-yearly appearance of the Prime Minister before the Liaison Committee. The last of those developments emerged outside the formal modernisation process, but nonetheless owed something to the momentum and pressure for change that had built up.

The impact of these reforms is not yet fully known, but although their long-term effect may be to strengthen Parliament in ways that the Government did not anticipate when they were passed, as things stand it would be inaccurate to claim that the balance of power has shifted decisively away from the executive. That said, it would be equally mistaken to argue that no change of any significance has been affected. Cracks have been exposed into which, as Tony Wright has said, wedges may be pushed. In other words, while the modernisation measures enacted over the past eight years may not have achieved the objectives outlined at the start of the process, at least some opportunities have emerged that can be built upon and extended. In this concluding section, we make a number of recommendations as to where existing fissures should be exploited and new openings created.

Parliament matters. Those who claim that it has become an irrelevance are mistaken. The Palace of Westminster remains at the apex of British democracy, but its pre-eminent position is under threat. Parliament is dominated by the executive, undermined by low levels of public confidence and declining interest in its affairs, and challenged by the growth of alternative sources of power: the European Union, the judiciary, quasi-

autonomous public bodies, the media, global financial markets, regulators and so on. To restore confidence in its role and revitalise its work Parliament needs to reassert and re-establish its own identity. Primarily, it needs to take more control of running its own affairs.

As a first step, **the House of Commons should establish a Business Committee responsible for managing the parliamentary timetable.** At present the informal ‘usual channels’ benefits the executive over the interests of backbenchers and the opposition. A Business Committee would bring a greater certainty to the parliamentary timetable and involve the main political parties in the management of business. Another key role of the Business Committee would be to ensure that the Commons determined its own Standing Orders and protected the Commons’ interests against any encroachment by the executive. The idea of a steering committee to organise business is not new and has been widely recommended by other reviews of Parliament (Hansard Society 1992, 2001; *Strengthening Parliament* 2000; *Parliament’s Last Chance* 2003; Rogers & Walters 2004). Government backing has never been forthcoming, largely because the executive fears a Business Committee would lead to a serious loss of control over parliamentary business. But if, as numerous ministers have declared down the years, more accountable government leads to better government, then this must surely be a positive step. Moreover, it is significant that many other Parliaments have a bureau or steering committee which decides and manages parliamentary business. For example, the model has recently been incorporated into the Scottish Parliament under the title ‘Bureau’ – chaired by the Presiding Officer and including representatives from parties with five or more MSPs, weighted to party share – and illustrates a very different form of business organisation and also provides a forum for discussion and negotiation on matters of parliamentary administration and concern.

Secondly, **we recommend that the Modernisation Committee should be restructured in order to give more weight to the views of Parliament.** As previously described, the nature of its composition – with the Leader of the House, a Cabinet Minister – in its chair, meant that the Committee was at times easily diverted from an agenda concerned to increase accountability towards one more in tune with the executive’s thirst for greater efficiency. For some, the presence of a member of the executive at the heart of the Modernisation Committee is a fatal flaw that can only be solved by its dissolution. However, while the Committee has undoubtedly been a double-edged sword, its abolition would be a backward step. As one participant told our inquiry:

*There is a fallacy that if the Modernisation Committee didn’t exist with a cabinet minister in the chair, somewhere there would be another committee getting on with sensible reform; who was going to be doing it?...The Procedure Committee [which considers the practice and procedure of the House, and the conduct of public business] can make recommendations until the cows come home but the government can just ignore them all.*

But if the Modernisation Committee is to continue to exist, perhaps there is a way that Parliament’s voice could be amplified within it. **The appointment of the Chair of the Procedure Committee, who already sits on the Modernisation Committee, as its**

**permanent Deputy Chair would provide an influential, expert parliamentary voice and give the Committee's leadership a degree of constancy that is currently disturbed with each change of Commons Leader.** Furthermore, there should be an assumption that the Procedure Committee Chair should always be a member of the opposition party, as is the case with the Chair of the Public Accounts Committee and the Standards and Privileges Committee.

Alongside the Modernisation Committee, the Liaison Committee has emerged since 1997 as a champion of Parliament, publishing a number of influential reports that threw down a gauntlet to the Government and helped build momentum for demands to strengthen the legislature vis-à-vis the executive. To further enhance its position, **the Liaison Committee should be restructured and reduced in size.** As one contributor to this inquiry noted, the Liaison Committee's rejection of proposals to slim it down and differentiate between scrutiny and domestic committees means that 'we have a bizarre situation in which the chair of the catering committee has a hand in questioning the Prime Minister every six months'. **By removing the chairs of domestic committees from its membership, the Liaison Committee would become less unwieldy and more able to provide direction and coordination of parliamentary activity.**

There are three areas where a reformed Liaison Committee could give immediate parliamentary leadership. First, as noted earlier, the information provided to the Hutton and Butler inquiries has thrown into stark relief the limited range of information generally provided to select committees. The House of Commons, through the Liaison Committee, should not submissively accept the minor changes to the Osmotherly Rules that were offered by the Leader of the House in October 2004. The rules regarding the appearance of officials before select committees have always been 'Whitehall rules' and Parliament should not feel bound by them nor afraid to draw up its own Code of Conduct. **The House of Commons should consider taking ownership of the current rules regarding the provision of 'persons, papers and records' to select committees by asking the Liaison Committee to devise a set of guidelines that could be passed on the floor of the House in a manner akin to that followed for the core tasks for select committees.** More generally, Parliament needs to ensure that its Members get fair treatment under the Freedom of Information Act. At a minimum the resolution of March 1997, which linked ministerial answers to PQs with the Code of Access to Official Information, should be replaced with an updated version that includes the presumption that the provisions of the Freedom of Information Act should now form the benchmark for ministerial answers.

**Second, the Liaison Committee should display parliamentary leadership and vigour by supporting the PASC's recommendations of February 2005 relating to public inquiries (2004-2005, HC 51).** There has been a long-term diminution in Parliament's role in the process of inquiries throughout the 20th century. The draft *Inquiries Bill*, which was introduced for consideration into the Lords in November 2004, would further restrict the role of Parliament while creating new powers for ministers to impose indefinite restriction notices or orders on public access to the proceedings and evidence of an inquiry. It would also make the obligation of public access subordinate to this

power of restriction – a direct reversal of the presumption in favour of openness to be found within the 1921 Tribunals of Inquiry (Evidence) Act – as well as giving ministers new powers to terminate an inquiry where it is viewed as investigating beyond its original remit. Public inquiries represent a critical mechanism of public accountability and executive scrutiny which can complement and deepen parliamentary oversight. But they are an accountability tool that is controlled by the executive rather than Parliament; it is ministers who decide whether to establish an inquiry and, if so, what its remit and powers will be and how and when the final report will be published. **As the PASC notes, ‘Parliament now has to decide whether it wants to reclaim territory it has lost as far as inquiries of this kind are concerned’. A valuable bulwark against executive dominance would be the rejuvenation of parliamentary commissions of inquiry, reporting to the House as whole or a specific select committee, rather than to ministers.** The PASC has suggested that Standing Order No.145 should be amended to enable the Liaison Committee to consider the value of a proposal that a specific matter of public concern involving ministers should be the subject of a formal inquiry and, if so, to report a resolution to the House of Commons for its consideration. Although in practice these parliamentary commissions of inquiry would be used infrequently, a formalised procedure for their establishment would represent another minor shift in the balance of power from the executive to Parliament.

The third key area in which the **Liaison Committee should take the lead relates to a formal review and evaluation of the select committee reforms that have been implemented since 1997. This should take place towards the middle of the next Parliament and would involve the Liaison Committee reviewing the efficacy of recent reforms and assessing the need for further change.** This review would examine core tasks, resources, payment for select committee chairs, and the Scrutiny Unit. What seems already apparent is that the select committee system needs to better reflect the evolving structure of the British state. Currently, select committees are largely based around the traditional departmental structure and yet the greater part of British governance takes place beyond ministerial departments in the form of public-private partnerships, non-departmental public bodies and other forms of delegated governance. **A select committee or joint committee of both Houses dedicated to the scrutiny of this delegated sphere of governance would complement the work of the departmentally related select committees while also illuminating the innate complexity of modern governance.**

**Furthermore, any review should consider changes to the structure of select committees, particularly the case for increasing the number of members who sit on them.** (The Hansard Society’s Scrutiny Commission proposed that there should be an assumption that all backbench MPs should sit on at least one select committee). **Consideration should also be given to piloting the formation of one or two committees that would combine the functions of select and standing committees.** Such combined committees are the norm in most other Parliaments, including in Scotland and most of Western Europe. A piloted approach, with full evaluation, would allow a judgement to be made as to whether such a combined system would enhance Parliament’s scrutiny and accountability functions.

The establishment by the Lords, in 2003, of the Merits of Statutory Instruments Committee to serve as a sifting mechanism to identify those Statutory Instruments that are important and merit further debate or consideration, serves as a model that the Commons should follow. It also represents a challenge to the Commons which risks ceding crucial functions to the Lords. The Commons, in the form of the Procedure Committee, has already made a strong case for such a Committee, in 1996 and 2000 (HC 52; HC 48). It is the Government that needs to be persuaded. The Government's argument that a Merits Committee would place greatly increased demands on parliamentary time seems unconvincing in the face of such widespread and severe criticism of the current methods of scrutinising delegated legislation. **We urge the Government to reconsider and establish a Merits Committee in the Commons to enhance the scrutiny of this vital area of legislation.**

In addition to the creation of a House of Commons Merits Committee, two further, sensible procedural changes would improve Parliament's operation and increase its scrutiny powers. First, **there should be a presumption that all legislation will be produced in draft form to allow for increased scrutiny.** Encouragingly, the Government has already voiced its intentions to move in this direction and to build upon the positive steps that have been made. Secondly, and relatedly, **greater use should be made of Special Standing Committees,** which would allow committees to hear outside expert opinion on a Bill and potentially enable members to work in a more collegiate fashion. Although the powers to use such special committees already exist, they are little used because their formation requires the agreement of ministers who fear their use will delay the passage of legislation and weaken party control. This attitude is short-sighted, given the obvious inadequacies of the present system of standing committees, in which the majority of MPs, as Peter Riddell notes, ignore their scrutinising duties and simply get on with constituency correspondence or – depending on the season – their Christmas cards: 'The result is a mass of hastily considered and badly drafted Bills, which often later have to be revised'

The shortcomings of standing committees encapsulate in microcosm the reason for low public interest and confidence in Parliament. The misleading view that Parliament is tangential to modern politics is to some extent perpetuated by textbooks that fail to discuss recent reforms and continue to misrepresent Members as lobby fodder (see, for an example, Ward 2004). However Parliament does not help itself. Debate in the House of Commons, according to one well-known media commentator, appears to those outside as some kind of 'parallel universe' with its 'farmyard noises which signify approval or scorn' making the 'business of democracy seem cheap' (Paxman 2002: 98). A critical task for Parliament is, therefore, not just to achieve significant change to its capacity to hold the government to account but also to ensure that such change enables the public to engage more closely and meaningfully in its work.

One obvious method would be to **make petitions a more significant feature of the work of Parliament.** At present they are governed by strict rules about wording and there is little sense that petitions to Parliament result in any concrete action on the part of

MPs. Many are submitted to Parliament each year but they rarely, if ever, translate into action. This is in contrast to the Scottish Parliament where the Public Petitions Committee plays a pivotal role in connecting the public and the legislature. All petitions go to the Committee which then assesses the merits of each submission by consulting with the executive, MSPs and, if necessary, taking evidence from individuals and organisations. The Committee filters out petitions where action is already being taken or where the case is weak. Where there is a case to be answered the Committee refers petitions on for further consideration. **We recommend that a Petitions Committee should be established in the House of Commons to assess issues of public concern and, if appropriate, to make referrals for debate or committee inquiry.**

### **The opportunity and need for immediate action**

Parliament and the executive enjoy a fluid and dynamic relationship. Much of the tension and friction involved in this relationship is played out and resolved through informal channels. It is often difficult for those not actively working within the Palace of Westminster to detect, recognise and understand the role and importance of these unofficial channels of communication. The system is much more complex and complicated than it looks from the outside. Therefore, to describe Parliament as an irrelevance or to talk of its eclipse (Lenman 1992) is to misunderstand the depth and complexity of parliamentary politics. Nor is such a position supported by empirical research. One of the central revelations of Stothard's 2003 shadowing of the Prime Minister, for example, was not how little Parliament mattered but conversely how much time and energy the Prime Minister and other members of the Cabinet spent meeting backbenchers and various all-party parliamentary groups. Stothard's *30 Days* represents a rejoinder to much of the academic literature which perpetuates the myth of parliamentary impotence.

Parliament quite clearly does have some control over the executive but whether it has sufficient control is another matter. This study of parliamentary modernisation since 1997 reveals a situation in which the House of Commons is still largely reliant on the goodwill of the executive to provide the information on which it can be held to account. On the relatively small number of occasions when the executive refuses to co-operate with a select committee inquiry or declines to answer a PQ (or answers in a limited or is leading manner) the current balance of power effectively insulates the executive from parliamentary censure. There are, however, a number of reasons to be optimistic.

The issue of parliamentary reform and the relationship between Parliament and the executive is becoming an issue of increasing debate and controversy. There is a sense that the current situation is unsustainable and must at some point be addressed. The Liaison Committee, *Parliament First* group of Members, the All Party Parliamentary Reform Group, and the Cross-Party Group on Reform of the Second Chamber are advancing this agenda. The executive is well aware of heightening backbench pressure for reform and has acknowledged that it is willing to support (or at least not block) reform proposals that have cross-party support. One of Peter Hain's last duties as Leader of the House involved considering how best to revise the Codes of Conduct relating to the provision of information to Parliament. In advancing reform Parliament now has a number of 'wedges

and cracks' through which it can seek to open up and further develop its scrutiny of legislation and the administration of the British State. This may involve increasing the additional payments for select committee chairs or further developing the role and personnel of the Scrutiny Unit.

As Evans (2003) has emphasised constitutional reforms tend to have 'spillover' and 'spillback' effects in that reform in one area is likely to lead to demands for similar reforms or procedures to be implemented elsewhere. The creation of a Scottish Parliament and a Welsh Assembly and reforms within the European Parliament, for example, have seen the introduction of innovative new procedures and frameworks for scrutinising the wider state sector and an active role for scrutiny committees in senior public appointments (see Denton and Flinders 2005; Flinders 2004b). The creation of a Petitions Committee and a Business Committee in the Scottish Parliament have led to increasing discussion regarding the possibility of creating similar bodies in London. In time, it is likely that cross-fertilisation will lead to demands for similar procedures to be adopted at Westminster. Similarly, the fact that elections to the Scottish Parliament, Welsh Assembly and London Assembly have been established using a proportional system (modified Additional Member System) and fixed-term elections makes the continued use of a plurality system for Westminster increasingly difficult to justify. Indeed, the Labour Government's ambivalence towards even opening up a debate about altering the voting system for Westminster is possibly the clearest illustration of its commitment to maintaining a strongly majoritarian model of democracy in Britain.

There are also clear areas of 'unfinished business' where the current constitutional configuration is arguably indefensible - reform of the second chamber being the most pressing example. A reformed second chamber designed to complement and support the work of the Commons may go some way towards shifting the balance of power between the executive and Parliament as a whole.

It is critical that Parliament acts now to address the weaknesses outlined in this report. The low turnout (61%) at the May 2005 general election once again underlines the fact that a significant proportion of the population has become disconnected from the formal political process. What many hoped was a blip in 2001 has turned into a sustained problem, with worrying implications. As one former Leader of the House commented, 'Parliament's authority rests on public confidence'. If it is to restore such confidence it must take advantage of the current momentum for reform and build on the opportunities created in recent years not just to shift the balance of power between Parliament and the executive but to close the growing gulf between Parliament and the public. This report has highlighted a possible future course for parliamentary modernisation. It is up to parliamentarians to follow it.