

Private Members' Bills in Westminster and Beyond: balancing 'expression' and 'function' ¹

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Abstract

Private members' bills (PMBs) are a feature of most parliamentary democracies. In Westminster, some hundreds are proposed every year but few become law. Legislators nevertheless value the opportunity to put forward bill proposals and we explore in this paper why that might be. Some bills are intended to have a 'functional' role (by becoming law) while others have an 'expressive' role. Legislatures can favour one or the other through their procedures and conventions. To examine how this balance operates in practice, we compare the Westminster parliament with the devolved UK legislatures (Scotland, Wales and Northern Ireland). We find that Westminster leans towards 'expressive' roles for PMBs while the devolved legislatures favour 'functional' bills. Nevertheless, we find no hard dividing line—functional PMBs do pass in Westminster and such bills can have expressive value in the other legislatures. We discuss how this balance occurs and suggest that proposals for reform should take into account the varied purposes of private members' legislation.

Introduction

Most parliamentary democracies allow members to submit proposals for legislation, independently of the government or executive. Such proposals may have only a small chance of becoming law but the sheer number of proposals indicates their value to the members involved. In Westminster, Private Members' Bills (PMBs) were arguably even more important in the past, used to pass contested legislation such as the abolition of the death penalty and the legalization of abortion. They were often used to give Members of Parliament (MPs) a free vote. More recently, successful PMBs tend to be on less controversial topics as almost any opposition, whether from the Government or backbench MPs, can block the bill. But PMBs have led to some significant recent legislation such as protection from stalking and to extend the scope of civil partnerships.

This paper seeks to explore the roles and functions of PMBs by comparing the PMB process at Westminster with that in other legislatures. PMB practice and numbers vary greatly across countries. In Israel, for example, over forty percent of bills enacted by the Knesset in 2019-20 were PMBs (Cavari et al. 2023). In the US, similarly, most bills are sponsored by members of the House of Representatives or the Senate rather than by the President or executive agencies (Sullivan 2007). Conversely, the last time a PMB was passed in India was in 1970 (Rajya Sabha Secretariat 2023). In Ghana, the 1992 constitution was thought to prohibit private members' legislation altogether but alternative legal interpretations obtained in 2020 enabled the Ghanaian parliament to pass a resolution allowing PMBs. Since then, several PMBs have become law including one to remove the death penalty (Antiedu & Larbi 2023:31-32).

¹ This paper is based in part on a forthcoming book chapter and should not be cited or circulated without the authors' permission.

Not all proposed PMBs can—or should—be enacted, of course. The statute book would be unmanageable if every member’s proposal was successful. On a practical level too, the legislative process requires resources, not only of parliamentary time but also of legal and policy advice and specialist drafting skills. Parliaments vary in the level of support offered to members but any such support is necessarily limited. Elected governments understandably expect their own legislative programme to take priority over backbench proposals. The interests of the executive and those of individual members are therefore in tension, and this paper considers how a balance may be achieved.

Control of scarce resources

Shota Moriue explores how both the *demand* for and the *supply* of parliamentary resources for PMBs can be controlled (Moriue 2020). Considering the Japanese legislature and the four UK parliaments, Moriue finds that *demand* can be constrained by limiting the number of PMBs that enter the system—this can involve a ballot or pre-approval process. The *supply* of administrative and drafting assistance is limited by the level of resources devoted to these functions, and debating time is controlled by parliamentary rules and conventions. Moriue found considerable variation across the legislatures, as we discuss further below.

Another way of looking at constraints is the ‘*structure / agency*’ distinction, applied to Westminster PMBs by Holly Marsh and David Marsh (Marsh & Marsh 2002). The *structural* (or institutional) constraints are the procedures and rules which proposers—and opponents—of bills must follow. Individuals also have *agency* (choice and capability) to determine the fate of a bill. Marsh and Marsh noted that the government is the main source of veto (either by explicit objection or by less obvious withholding of support) but they also described how two Conservative MPs in the 1997-2001 parliament (Eric Forth and David Maclean) worked together to block numerous PMBs. The MPs argued that there is too much legislation and that ‘many Private Members’ Bills are ill-considered and poorly drafted’ (Marsh & Marsh 2002:105). Marsh and Marsh noted that both structure and agency are at play, given that ‘agents’ must work within the imposed ‘structure’. The structure can also influence the agents: as the MPs became more familiar with the rules, their vetoes became more effective. At the same time, bill sponsors adapted their own behaviours to counter the opponents’ strategies (Marsh & Marsh 2002:109). The tradition of opposing PMBs on principle has been continued by MPs such as Sir Christopher Chope and Mr Peter Bone, but as we will see, the attitude of the UK government has also evolved.

More like Government legislation?

Some argue that the Westminster PMB system is broken. Dawn Oliver and colleagues described PMB procedures in the House of Commons as ‘by and large ... extravagantly and egregiously wasteful both of resources and the reputation of Parliament.’ (Oliver et al. 2005).

A similar tenor is found in reports from the Wright committee (House of Commons Reform Committee 2009) and the Hansard Society (Brazier and Fox 2011). The House of Commons Procedure Committee issued a series of reports between 2013 and 2016. One referred to the PMB process as ‘largely reduced to an exercise in futility’ (Procedure Committee 2016:7). These reports concurred that the government has ‘too much power to fix the agenda’ (House of Commons Reform Committee 2009:49). They recommended that the process should become more streamlined and predictable, mostly by requiring that the PMB system became more like government legislation, such as by scheduling and timetabling debates, which would guarantee debating time and prevent ‘talking-out’ (‘filibustering’) to block a bill. More recently, Paul Evans argued that ‘there should be fewer [PMBs], better supported, and given some kind of guarantee of time for reaching a decision’ (Evans 2024:135).

The Hansard Society recommended ‘giv[ing] PMBs the same opportunity as a government bill to get through all their stages.’ (Brazier and Fox 2011:25). Taken at face value, this would result in some hundreds of new laws every year, as the Government normally enacts all of its legislation. The Hansard Society did not

address this point directly but in effect proposed that gate-keeping should occur before the bill was introduced. They proposed that Backbench Business Committee should select PMBs on merit and allocate parliamentary time. The Procedure Committee made similar proposals (most explicitly in 2016 (Procedure Committee 2016:23)). The Backbench Business Committee, however, disagreed, noting that:

‘it would mean our having to rank the comparative merits of competing campaigns to change the law. This would be an impossible task and could not be done objectively. It is far better for bills to be selected for debating time, as at present, through a random ballot of all Members’ (Backbench Business Committee 2015:10).

Despite these calls for reform over several decades, successive governments have made no changes to parliamentary procedures. Which poses the question, if PMBs are an ‘exercise in futility’ which governments would prefer to dissuade or block, what are they for?

Functional or expressive roles?

Are PMBs in fact ‘made to pass as razors are made to sell’ as nineteenth century parliamentary draftsman Henry Thring memorably described legislation? That is, unless a law passes (‘sells’) it cannot have a policy function (‘shave’) (see Engle 1983). Mihkel Solvak considered PMBs in the light of Thring’s aphorism and concluded that many PMBs are meant neither to sell nor to shave but instead are largely *expressive*, even calling them ‘pseudo-legislation’ for that reason (Solvak 2013). Such expressive roles are viewed both positively and negatively. The House of Commons Procedure Committee criticized MPs who treat PMBs as ‘merely an advertising opportunity’ (Procedure Committee 2014:6). The Indian upper Chamber, the Rajya Sabha noted that, while PMBs almost never pass in India, proposals nevertheless ‘often act as precursors or catalysts for future official enactments.’ (Rajya Sabha 2023). A study of female legislators in Pakistan found that women proposed PMBs which, while rarely passed, served to raise a range of social and economic issues and gave an independent voice to female legislators who were not generally expected to oppose party policy (Gul, Khan & Khan 2011).

Nicolee Dixon identified numerous roles of PMBs from raising issues opposed by the Government to prompting the Government to bring in its own legislation. She noted that PMBs contribute to wider debates, raise the profiles of individual members and overall preserve ‘the variety of activity which is good for the general vitality in the legislative process’ (Dixon 2004:91).

Perhaps Benjamin Tachie Antiedu and Goodnuff Appiah Larbi put it most positively when describing the recent introduction of PMBs in Ghana:

“Private Members’ Bills offer enormous prospects. First, they help deepen democratic culture by empowering citizens, civil society ... and other private organisations to participate actively in the law-making process. Second, they offer Minority Members of Parliament the opportunity to initiate Bills and, thereby, contribute towards addressing the winner-takes-all syndrome. Third, they empower constituents to properly assess the performance of their MPs based on the core mandates of the latter. Fourth, they deepen consensus building in Parliament as a sponsoring MP needs to get other MPs along to pass a Bill introduced by them. Last, they improve the capacity of Members of Parliament and parliamentary staff towards the enactment of effective legislation.” (Antiedu & Larbi 2023:31-32)

There is evidence that voters do indeed assess their MP on the basis of PMB activity or, at least, legislators believe that they do. Studies in several jurisdictions found that proposing PMBs (modestly) increased an MP’s vote share and that, furthermore, MPs in electorally marginal seats were significantly more likely to propose PMBs (Bowler 2010, Williams and Indridason 2018, Williams 2018, Fleming 2022). In these studies, it was generally the number of *proposals* of PMBs that were important, not whether they passed into law.

Some PMBs, of course, *are* intended to pass. Some are drafted by the Government (so-called ‘handout bills’). These bills are sponsored by individual MPs, perhaps to enhance their promotion prospects, and usually have an easy passage. Former Parliamentary Counsel Daniel Greenberg calls these PMBs ‘bogus’ and argues that they can be a way for Government to pass laws without using up its own legislative time (Greenberg 2011:115). Occasionally, PMBs are used by the House of Commons to require the Government to act in a particular way, such as two bills passed in 2019 that sought to avoid a ‘no deal’ Brexit. Nevertheless, some PMBs originating from individual backbenchers do surmount all of the obstacles and become law. The British Sign Language Act 2022 is one such; despite starting from the lowest place in the ballot, Rosie Cooper MP successfully steered her bill to become law, gathering cross-party and ministerial support to make British Sign Language an official language of the UK.

Research question, methods and cases

Reformers, as we have seen, generally recommend that the PMB process becomes more like that of government legislation. Nevertheless, might some ‘expressive’ value be lost if this was the case? Ministerial laws, after all, are meant to be functional. Can legislatures provide scope for both expressive and functional roles?

To explore that question, we consider how a legislature might demonstrate its preference for functional or expressive roles. We would expect that legislatures favouring functional PMBs would act as a strong gate-keeper before the bill enters parliament. Bills will undergo a stringent pre-approval process which might include public consultation, policy and legal advice, committee scrutiny and evidence of ministerial or cross-party support. A fully drafted text of the bill will be available prior to introduction. Conversely, legislatures which value the expressive role would be expected to impose few or no limitations on PMBs before they are presented to parliament. The draft text of the bill would not be needed, no consultation or pre-approval would occur, and there would be no limit to the number of proposals a member can make. The constraints would instead occur inside parliament, with the flow of PMBs being limited by factors such as the ease with which they can be blocked and the difficulty of obtaining parliamentary time. We would expect that the ‘success’ rate of proposals entering parliament would be much higher in legislatures that value functional PMBs than in those that favour the expressive role.

In this paper, we explore how these factors play out in the four legislatures in the UK, that is, the Westminster parliament and the devolved legislatures of Scotland, Wales and Northern Ireland. Our comparisons are derived from the cited documentary sources supplemented by our knowledge of the parliamentary systems and procedures. In the following analysis, we focus mainly on the House of Commons which is the primary target of the reformers and the source of most PMB proposals and most of those that become law.

We chose the UK legislatures for this study as each determines its own legislative procedures while sharing a similar (though not identical) legal and cultural background. Unlike Westminster, the devolved legislatures are all unicameral legislatures. Voters in the devolved nations elect members both of their own legislature and the Westminster parliament while English voters elect only Westminster MPs. Some or all of the members of the devolved legislatures—but not Westminster—are elected by proportional representation, though the details vary greatly. The UK Government remains responsible for ‘reserved matters’ such as defence, monetary policy and constitutional matters across the UK.

To give a very brief timeline of devolution in the UK, the Scottish Parliament was established in 1998 after a referendum of the Scottish people. The Welsh Assembly was established in 1999 after a referendum and was given additional powers during the 2000s. After the Senedd and Elections (Wales) Act 2020 was passed, the Assembly became a fully-fledged parliament and changed its name to the Senedd Cymru or Welsh

Parliament. Northern Ireland had its own parliament from 1921 to 1972. That parliament was suspended and then abolished by the Northern Ireland Constitution Act 1972, and Northern Ireland was subsequently administered by direct rule from Westminster. The Northern Ireland Assembly was established in 1998 as a result of the Belfast Agreement. The Assembly has been suspended for several periods since that time and devolved government was most recently restored in January 2024. (For a detailed discussion of devolution see e.g. Birrell et al. (2023).)

Findings

In this section, we first describe the Westminster PMB system in some detail, followed by a comparison with procedures in the devolved legislatures across the factors described above.

PMB procedures at Westminster

A Private members' bill (PMB)² at Westminster must pass through the same parliamentary stages as any other legislation. It must be approved by both chambers (the House of Commons and the House of Lords). If it successfully passes these stages it receives Royal Assent and becomes a law like any other.

The main barrier encountered by a PMB is to obtain enough parliamentary time for debate. Much of the procedural complexity results from the need to balance the opportunities to propose new PMBs (some hundreds in every parliamentary session³) with the requirements of bills returning for their subsequent stages. In the House of Commons, thirteen Fridays in each parliamentary session are allocated for PMBs. Debate takes place between 9.30 a.m. and 2.30 p.m. The most effective way to obtain time is via the ballot, which is held on the second Thursday of the session. Most members of parliament (MPs) submit their names to the ballot and twenty are successful. At the first reading (a formal stage with no debate) each MP, in ballot order, chooses the day on which their bill will be listed for second reading. The first seven winners usually choose the first slots on the first seven sitting Fridays. Subsequent members choose whether to put their name down as second or third item on a Friday early in the session (which risks running out of time for debate) or to opt for the first slot on a later Friday, when other bills will be returning for their later stages and take priority over newly introduced bills.

MPs who are unsuccessful in the ballot (or who want to present more than one bill) have two other ways of introducing a PMB: a presentation bill or a ten-minute-rule bill.

A presentation bill is formally presented in the Chamber, with no chance for the MP to make a speech or for any other MP to object. The bill title appears on the order paper for the day and the short title is read out by the Clerk. They need only the short and long titles, not a fully prepared bill, at this stage.

At the start of the session, there is a great rush to be among the first MPs to place their bill on the order paper, which allows them to name a Friday for second reading while there is still time available behind successful ballot bills. MPs used to queue overnight outside the Public Bill Office for this purpose. Covid, however, put an end to that practice. An 'email queue' has operated since 2020, with the order determined by the receipt of emails after a designated time. Perhaps because of this change, more MPs are using this procedure: twenty-nine MPs presented Bills on the earliest possible day in the 2022-23 session compared with just four in the 2017-19 session.

² A note on terminology: in Westminster, a 'private member' is a member of either chamber who is not a government minister. Private members' bills should not be confused with 'private bills' which are laws affecting particular locations or groups of people. All PMBs are 'public bills,' which means that the proposed laws apply to everyone. A law is referred to as a bill until it receives Royal Assent, at which time it becomes an Act of Parliament.

³ Most parliamentary sessions last about a year but some are longer. Unlike government legislation, PMBs cannot be carried over between sessions.

Subsequently, an MP can present a PMB on any sitting day by giving notice no later than the rise of the House on the previous sitting day, but there is little hope of securing debating time.

Members may also introduce PMBs under the ‘ten minute rule.’ After Questions on Tuesdays and Wednesdays, one MP can seek the leave of the House to bring in a bill. This is a procedural device to enable them to speak for ten minutes about the proposed bill. Another MP can speak against the idea for ten minutes, though this is increasingly rare. The House then decides whether the MP should be allowed to bring in the bill. If agreed, the MP names a Friday for second reading. Ten minute rule bills are rarely, if ever, able to secure time for debate on a Friday because they find themselves behind all of the ballot bills and presentation bills brought in at the start of the session.

Unsurprisingly, neither ten minute rule bills nor presentation bills have as good a chance of becoming law as ballot bills. A total of 135 ballot bills received Royal Assent between 1997 and 2023, but only eight ten-minute rule bills and twenty presentation bills were successful over the same period (analysis of Priddy 2023).

Regardless of how they are introduced, PMBs must pass their second reading to proceed further. For bills that are debated on a sitting Friday, the debate must conclude before 2.30 p.m. When the debate ends (or a closure motion is agreed) the Speaker ‘puts the question’ (asks the House if the bill should pass to the next stage) and calls a vote if one is needed. Members opposing the bill are able to ‘filibuster’ or ‘talk out’ the bill—that is, exhaust the time for debate. If the debate has not concluded by 2.30 p.m., the bill is effectively blocked. At 2.30, any remaining bills on the order paper have their short titles read out. Almost all such bills are objected to and make no further progress.

A PMB that passes its second reading is assigned to a public bill committee, for which the sponsoring MP must find members. If any provisions in the bill will give rise to public spending or taxation, a money or ‘ways and means’ motion (which can only be moved by a Minister) must be agreed by the House of Commons before it can be considered in committee. There is a convention that the Government will promptly bring forward the necessary motions for a PMB that has been given a second reading, but this has not always been observed. If the bill passes committee stage, it returns to the Commons for report stage and third reading and then proceeds to the Lords.

Procedures differ somewhat for PMBs originating in the House of Lords. Members enter a ballot at the start of every session. Since 2021, they are not required to have the full text of the bill to enter the ballot but—unlike MPs—they need the short and long titles of their bill. The ballot closes on the day after State Opening. The following day, 25 bills are drawn; the draw determines the order of introduction. Members who are not successful in the ballot can introduce PMBs throughout the session after the ballot bills have been introduced.

It is largely in the gift of the business managers in the Lords—usually the Government Whips’ Office—to arrange for substantive debate stages of PMBs, although commonly Fridays are used for this purpose. It is rare for a vote to be held at second reading and most PMBs are committed to a Committee of the Whole House. Nevertheless, relatively few obtain a committee stage debate as chamber time is usually taken up with proceedings on Government Bills. If no amendments are tabled, committee and report stages can be formally passed over (‘discharged’) and the bill proceeds directly to third reading.

When a PMB has passed through all its stages in one Chamber, it is taken through the corresponding stages by a sponsor in the other House. PMBs starting in the Commons are often passed unamended in the Lords, particularly government ‘handout’ bills legislating on fairly uncontentious policy areas. However, there are exceptions, such as the Hunting Trophies (Import Prohibition) Bill. In September 2023, this Commons-starting PMB was effectively blocked by members of the Lords tabling multiple amendments. The Bill had one day of

committee stage but, as a result of slow progress through the amendments, it did not conclude its committee stage and no further time was scheduled.

PMBs starting in the Lords tend to have low priority when they reach the Commons because, by that time, the sitting Fridays are already filled with MPs' bills. Nevertheless, one such bill did pass in 2023, the first since 2015.

In both Chambers, the allocation of time for PMBs and the ease with which they pass their various stages is a complex process of negotiation between Whips, departmental Ministers and sponsoring Members. This becomes more complicated later in the session as bills at different stages compete for the remaining time.

PMB numbers over time

By one measure—Royal Assent—PMBs appear to have declined in importance, as shown in Figure 1. About twenty PMBs were passed in each four- or five-year parliament since 1997, compared to sixty or more in each parliament before that date (analysis of (Priddy 2023) and (House of Commons Information Office 2010)). The decline in the Lords has been even more stark. Only fourteen PMBs introduced in the Lords since 1997 have passed, compared with forty-six between 1983 and 1997.

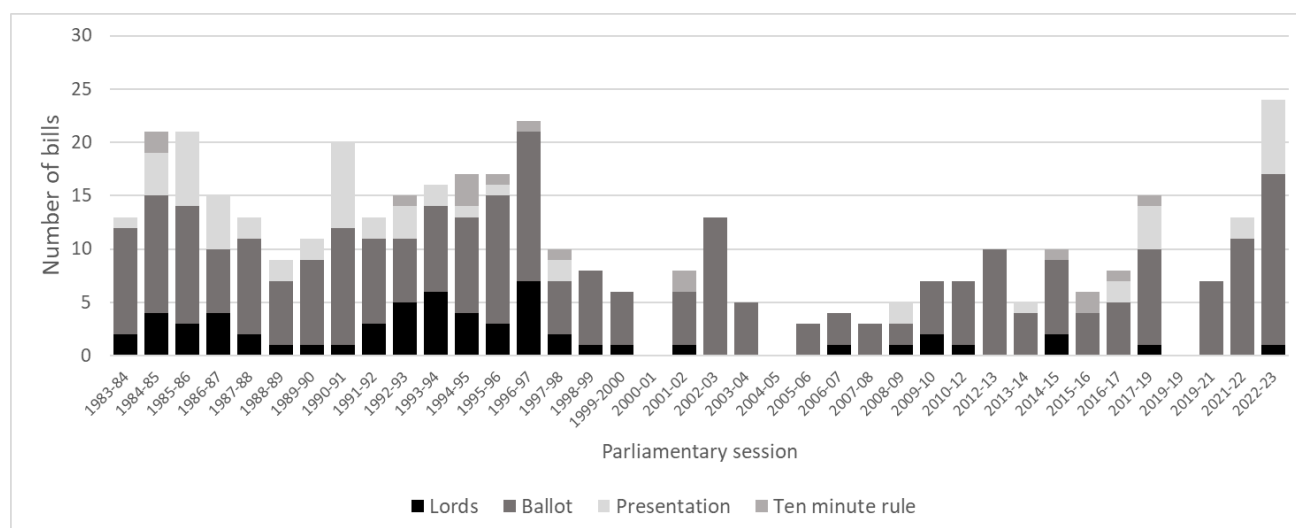


Figure 1 PMBs receiving Royal Assent from 1983 to 2023 (analysis of data in Priddy 2023)

The lower numbers becoming law does not, however, reflect a lack of interest in PMBs on the part of Members. In fact, as Figure 2 shows, more PMBs are being introduced in both Houses than ever before. Success rates have fallen accordingly: about five per cent of PMBs introduced in the Commons became law in recent sessions compared with over ten per cent in the 1990s.

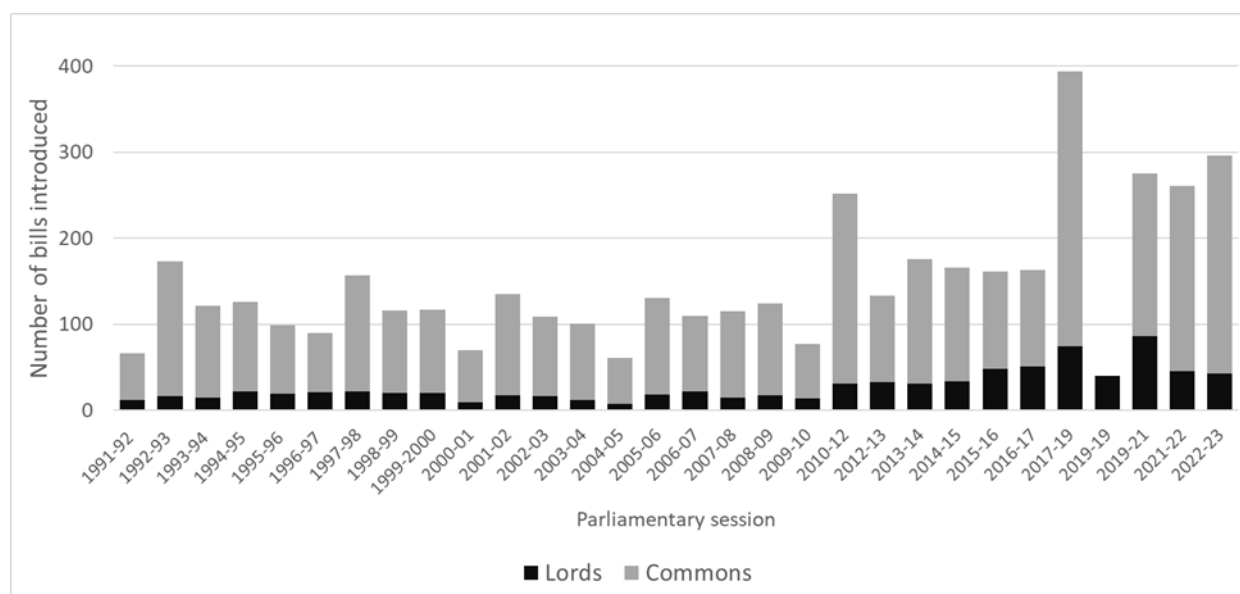


Figure 2 Private Members Bills introduced in the Commons and the Lords from 1991 to 2023. Analysis of (UK Parliament data 2024).

There is evidence, however, that the attitude of the Whips and others has recently changed. The decline in success rates appears to have halted or even reversed. In the 2022-23 session, twenty-four PMBs (nine per cent of those introduced) received Royal Assent, including one from the Lords. The MPs who made a habit of talking out bills did not do so, and, highly unusually, no closure motions were called. (Closure motions can be used to block a bill.) Instead, all twenty-four bills were given a second reading unopposed.

The reasons for this shift are not wholly clear but MPs from across the Chamber—both backbenchers and Ministers—have acknowledged the role played by Dame Rebecca Harris, the Government Whip responsible for PMBs. For example, Liberal Democrat MP Wendy Chamberlain said, ‘I thank the hon. Member for Castle Point (Rebecca Harris), who does so much to make Fridays work’ (HC Debates 21 October 2022, c1006) and the Conservative MP, Edward Argar, commended ‘the persuasive skills of my hon. Friend the Member for Castle Point’ (HC Debates 15 July 2022, c606).

Comparison of Westminster with Scotland, Wales and Northern Ireland

Having considered the Westminster PMB process we now compare it with the legislatures in the devolved nations of the UK: Scotland, Wales, and Northern Ireland.⁴ The results of the comparison across the factors described above are shown in Table 1.

Factor	Westminster parliament (the House of Commons for procedures that differ in the Lords)	Devolved legislatures: The Scottish Parliament, the Sennedd (Welsh Parliament), and the Northern Ireland Assembly
Selection or approval process	No prior approval is required before entering the ballot or putting forward a presentation or ten-minute rule bill.	Scotland: A draft proposal normally requires public consultation and must obtain cross-party support from 18 members. The proposal must then obtain approval from a ‘lead committee’ in order to be introduced into the Scottish Parliament. A member can introduce a maximum of two bills in any parliamentary session. Wales: A ballot is held ‘from time-to-time’ from which one name is drawn. No prior approval is required to enter the ballot. The successful member then asks for the Senedd’s

⁴ The devolved legislatures have different ways of referring to such bills, such as ‘Member bills’ or ‘non-Government bills,’ but for clarity we refer to them all as PMBs.

		agreement to introduce the bill, after which public consultation normally occurs. Northern Ireland: There are two routes for PMBs: 'supported' or 'privately drafted'. For 'supported' bills, members submit a proposal and evidence of public consultation to the Private Members' Bill Unit (PMB Unit, a dedicated service created in 2020 within the Bill Office). A 'privately drafted' bill is submitted directly to the Speaker. In either case, approval of the Speaker is required to move a bill to the Introduction stage.
Text required at which stage	Only the MPs' name enters the ballot, with no policy proposal or bill title required. Presentation and ten-minute rule bills require only long and short titles. The full draft text is required for bills that reach a second reading debate.	Scotland: Outline policy proposals are published on the Parliament's website. Bills that proceed to a lead committee require the full bill text along with explanatory notes and policy and financial memoranda. The Presiding Officer makes a statement of legislative competence. Wales: Members enter their proposed bill title and policy objectives into the ballot. The successful member seeks the Senedd's agreement to introduce the bill and, if approved, must prepare the full text and explanatory memoranda within 13 months. Northern Ireland: For a supported bill, the member takes a policy proposal to the PMB Unit. If approved, the member receives support to produce a draft text before it is introduced to the Assembly. The full text of a privately drafted bill must be presented to the Speaker along with an explanatory financial memorandum.
Drafting assistance and administrative support	MPs can receive help and advice from the Clerk of the Public Bill Office on drafting a PMB and taking it through parliament. (Lords receive assistance from the Lords Legislation Office.) Members do not receive drafting assistance from parliamentary counsel (apart from government 'handout bills' which are professionally drafted).	Scotland: the Non-Government Bills Unit (NGBU) offers advice and support to MSPs throughout the PMB process from policy development onwards. The NGBU drafts briefing notes and explanatory materials, provides legal advice via parliamentary lawyers, and can instruct members of an external panel of lawyers to draft PMBs. Wales: Members can consult the Policy and Legislation Committee Service and other Senedd officials at any time. When a member receives 'leave to proceed,' a Bill Team is appointed to provide support and advice on legal, financial and policy matters and to draft the text of the bill. The Team can also draft briefings and speeches and prepare the member for committee hearings. Northern Ireland: the PMB Unit provides 'supported' bills with research, legal and financial advice and access to specialist drafters. It also coordinates the bill process (p.16). Privately drafted bills receive no assistance from the PMB Unit but face less onerous procedural and consultation requirements, sometimes allowing them to proceed more rapidly than supported bills. (p.33 inquiry)
Parliamentary time allocation and veto process	Success in the ballot guarantees time on a sitting Friday, other bills compete for the remaining available time. Support from government Whips is required to provide time for later stages. The bill is easily vetoed at many	Scotland: if approved by the lead committee, a bill enters parliament and follows the same three stage process as a Government bill. The only difference is that the lead committee may recommend to parliament that the general principles of the bill not be agreed to. Wales: if the Senedd gives agreement to introduce the successful ballot bill, it enters the same parliamentary process as Government legislation. No more than one Member's bill normally proceeds at any time.

	points in the process. The process differs from that of government legislation by not allowing scheduling or timetabling.	Northern Ireland: the Business Committee determines the time allocated to PMBs having regard to ‘the desirability of giving precedence to those Bills which are furthest advanced in their passage.’ One introduced, the process is the same for PMBs and executive legislation.
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Table 1. Comparison of PMB procedures across the UK. Sources: House of Commons 2024; House of Lords 2022; McCaffrey 2021; Moriue 2020; Northern Ireland Assembly 2022; Northern Ireland Assembly Committee on Procedures 2022; Scottish Parliament 2023; Welsh Parliament 2021)

Table 1 shows that PMB processes differ widely even among the four UK legislatures. The factors appear to cluster in line with our expectations for ‘expressive’ or ‘functional’ roles in the various legislatures.

Westminster meets our expectations of a legislature which favours an expressive role for PMBs. There are minimal conditions to meet before a bill enters Parliament and only the short and long titles are initially required. Commensurately fewer professional resources are provided to MPs; just one Clerk role in the Public Bill Office is dedicated specifically to private members’ legislation, though other staff in that office also work on private members’ Bills when capacity allows. In parliament, PMBs must compete for the very limited parliamentary time available and they are easy to block—a bill can be vetoed at some junctures by an objection from just one MP. Unsurprisingly, this combination leads to a very low ‘success’ rate. Of the 2783 PMBs introduced in the Commons from 1999 to 2023, just 148 (5 per cent) received Royal Assent. The rate in the Lords was still lower: over the same period 683 PMBs started in the Lords and only 10 (1.5 per cent) became law.

The devolved legislatures, in contrast, all tend to favour ‘functional’ PMBs. They exert strong gatekeeping roles. Scotland and Northern Ireland require pre-approval of proposals, which may include consultation with government departments and the public, legal and/or policy advice, evidence of cross-party support, and the complete text of the bill, all before the proposal is put to the legislature. While Wales has no specific restrictions on entering the ballot, only one bill proceeds at a time and consultation is usually required for the bill to make progress. Considerable support is given to members in order to fulfil these conditions whether via specialist parliamentary units in Scotland and Northern Ireland, or a Bill Team in Wales. When a bill enters parliament it follows the normal legislative process. According with our expectations for ‘functional’ PMBs, a much greater proportion of the bills that are introduced into the devolved legislatures become law. Since 1999, forty-two per cent of the Members’ bills introduced in the Scottish parliament became law (31 out of 74 bills introduced), and a similar proportion in Northern Ireland (19 out of 44). In Wales, information is incomplete until 2011 but since then 3 bills were agreed⁵ out of 12 introduced (25 per cent).⁶

While the ‘success’ rate for PMBs is much higher in the devolved legislatures than at Westminster, it is nevertheless considerably lower than for government legislation. Understanding the reasons for this are beyond the scope of this paper, but one particular hurdle appears to be the report published by the scrutinizing committee. If the committee report does not support the PMB’s general principles, the bill rarely passes the subsequent plenary session. All three legislatures produce such reports for government and private members’ legislation alike, but they seem particularly decisive for PMBs. This is explicit in Scotland, where the guidance states that the ‘lead committee has the option ... of recommending to the Parliament

⁵ One of these was not enacted as it was referred to the Supreme Court which decided that it was not within the (then) Welsh Assembly’s legislative competence. <https://business.senedd.wales/mglIssueHistoryHome.aspx?lId=4837>

⁶ Numbers assembled from the respective legislatures’ websites and McCaffrey 2021.

that the general principles not be agreed to,' which is not the case for Government legislation (Scottish Parliament 2023, para 3.24).

Discussion

Our findings suggest that Westminster favours an expressive role for PMBs, while the other UK legislatures lean towards a 'functional' role. Recalling the demand and supply argument earlier, Westminster limits the *supply* of parliamentary resources while the other legislatures limit the *demand*. In the devolved nations, the procedures aim to select the most realistic proposals which also have cross-party and public support. Consequently, a much higher proportion of PMBs in those parliaments become law than at Westminster, where a bill can enter parliament without any pre-screening or consultation. In Westminster, however, bills can easily be blocked *after* they enter parliament. Bills obtain a somewhat higher chance of success via the ballot, a form of randomness that is absent from the other legislatures apart from Wales (which nevertheless selects very few PMBs for consideration). Among other parliamentary democracies, Canada and New Zealand also include ballots (in New Zealand, famously, tokens are drawn from a biscuit tin (Desmarais 2024)). It would be interesting to extend this type of comparison to other legislatures to see if the expression—function distinction can be detected outside the UK.

Nevertheless, we cannot define Westminster PMBs as wholly expressive nor those in the devolved legislatures as wholly functional. First, as noted above, more than 150 PMBs became law in Westminster since 1999, compared with 31 in Scotland and 19 in Northern Ireland. Even if we scale those numbers by the size of the population or the legislature, it is clear that numerous Westminster PMBs achieve a policy function. Second, PMBs in the devolved legislatures have a much lower success rate than government legislation, which means that members and others are expending effort on bills that will not necessarily become law.

It could be argued that draft proposals can have an expressive role even if they are not introduced to parliament. In recent years, Scotland and Wales have published non-government Bill proposals on their parliamentary websites.⁷ However, those lists are not as consistent or easy to navigate as those at Westminster, where the annual list of 'bills in session' gives the title of every PMB introduced to parliament.⁸ And even if only the title of a bill is read out in the Chamber, it appears in the permanent Hansard record.

Nevertheless, the publication of draft proposals indicates that an expressive role for PMBs is valued beyond Westminster. Does the Westminster system, then, represent the waste of time and effort the reformers suggest? While fewer parliamentary resources are provided for Westminster MPs, the introduction of a PMB is not cost-free. MPs obtain help and advice from the Public Bill Office. Clerks keep track of hundreds of bill titles and arrange for them to be printed on the Order Paper and read out as appropriate. Significantly, it is not costless for the Government either, which must consider every PMB and ensure that someone is present in the Chamber to object if necessary. There is much behind-the-scenes activity involving Whips, Ministers, members and officials. And the time devoted even to reading out the title of each bill represents an opportunity cost for the scarce resource of parliamentary time.

The best of both worlds?

In conclusion, perhaps expression and function can operate alongside each other. The Westminster *structures* may favour an expressive role for PMBs, but individuals have *agency* to make changes. As noted above, Government Whip Dame Rebecca Harris appears to have transformed the culture in Westminster and

⁷ <https://www.parliament.scot/bills-and-laws/proposals-for-bills> <https://senedd.wales/senedd-business/legislation/proposed-member-bills/tabled-proposals-for-a-member-bill/>

⁸ Recent years' lists are here <https://www.parliament.uk/business/bills-and-legislation/current-bills/public-bill-list/>

Whitehall regarding PMBs despite the absence of procedural reforms. More PMBs were passed in the 2022-23 session than in any other session in the past four decades, and blocking behaviour was greatly reduced.

Could this, then, be a way forward – the best of both worlds? Most proposed reforms would make the Westminster system more similar to those in the devolved parliaments and would therefore be likely to diminish the expressive role of PMBs. But, as we have seen, cultural change can allow ‘functional’ bills to proceed more easily while preserving the ‘expressive’ roles that have their own distinctive value.

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