

Building Legislative Capacity: Pre-legislative scrutiny in the UK Parliament

Abstract

Pre-legislative scrutiny is the detailed examination of an early draft of a Bill that is done by a parliamentary select committee before the final version is drawn up by the Government. Given the government dominance of the legislative process in the House of Commons, this can be an important mechanism which affords select committees in both Houses a greater degree of influence in the policy making process. However there has been a lack of insight so far in terms of what impact this scrutiny actually has on the shaping of government legislation. The consideration of draft bills began with the Conservative administrations of the late 1980s and early 1990s but only became an established feature of parliamentary life since the election of the Labour Government in 1997. This paper will begin by presenting an overview of the pre-legislative scrutiny that has taken place since its regular commencement in 1997 through to 2019. In addition, using content analysis, the draft bills which received pre-legislative scrutiny between 2010 and 2012 will be examined in more detail in order to assess the impact of these inquiries both in terms of the acceptance of recommendations but also in terms of how committee reports were utilised during the legislative process.

Keywords: pre-legislative scrutiny, committees, legislation, draft bill, parliament, executive

Introduction

Since the 1940s Parliament has been described as ‘an overworked legislative factory’ (Amery, 1964), a critique of the way in which a large amount of government-initiated legislation passes through the UK Parliament. Nearly 50 years later, the Hansard Commission on the Legislative Process (also referred to as the Rippon Commission) came to a similar conclusion arguing that ‘For some time many of those who make the law, many of those who have to apply the law and many of those who have to comply with the law have been unhappy about the way in which legislation is prepared, drafted and passed through Parliament (Hansard Society, 1993). The Rippon Commission suggested that where there was no urgency to legislate, a bill could be published in draft as a green paper – so triggering the starting gun for the development of pre-legislative scrutiny. Prominent themes explored by fellow critics of the legislative process include that Parliament’s record in amending and improving bills during the formal legislative process and its capacity to influence the formation of legislation proposal is weak (Mulley & Kinghorn, 2016). This is where the ability for Parliament to build legislative capacity becomes important and pre-legislative scrutiny is one of those mechanisms where there is potential to build legislative capacity. Pre-legislative scrutiny is defined by Mulley & Kinghorn (2016) as an occasional, additional stage of parliamentary scrutiny of government proposals for primary legislation (i.e. bills which are published in draft form). The process of publishing bills in draft form began in the mid-1990s with the Major Government beginning to publish a small number of bills in draft form before their formal presentation to Parliament. Pressure for parliament to have more influence over the framing and shaping of laws was made all the more pressing following the enactment of the Child Support Act 1991 and the Dangerous Dogs Act 1990 – both of which were seen as weak pieces of legislation with undesirable and unforeseen consequences. However it was following Labour’s victory in 1997 that improvements to the legislative process were made a priority with the Modernisation of the House of Commons Committee concluding that ‘some, or even all’ draft bills published by the

government, should received scrutiny by parliamentary committees, either existing Departmental Select Committees, ad hoc committees of the House of Commons or Joint Committees of both Houses of Parliament (Modernisation of the House of Commons Committee, 1997). Pre-legislative scrutiny, alongside its sister, post-legislative scrutiny, at the other end of the legislative process provide Parliament with an opportunity to influence legislation both at an early stage (i.e in draft) and also impact future policy develop. These two processes see extra legislative capacity booked ended at each side of the legislative process in order to influence both draft bills produced by the government and the development of the next series of policies following enactment and royal assent.

There is a near universal view that pre-legislative scrutiny is a good thing and it has largely been an unchallenged view since the late 1990s. Peter Hain, the then Leader of the House of Commons, told the House of Commons Liaison Committee in 2003 that he was 'a very great fan of pre-legislative scrutiny, and the more we can do the better' (House of Commons Liaison Committee, 2004). As Prime Minister, Gordon Brown told the House of Commons in 2007 that 'we want more draft bills for scrutiny ... I hope that the practice can become more widespread' (HC Deb 11 July 2007, col 1458). In 2011 Lord McNally, the then Justice Minister told the House of Lords that 'the [Coalition] Government are committed to simplifying and improving the quality of legislation. We will improve quality by publishing in draft for pre-legislative scrutiny where possible' (HL Deb 17 January 2011, cols 2-3). There is clearly a great deal of goodwill by multiple governments (Major, Blair, Brown and Cameron) towards pre-legislative scrutiny however the fundamental question is whether pre-legislative scrutiny is making a difference and helping to build legislative capacity. With one or two exceptions there is little quantitative analysis or independent assessment of the effects of pre-legislative in the UK Parliament. This paper aims to fill that gap in our empirical knowledge. Given the circumstances the UK Parliament finds itself in with an adversarial political system through which the government can dominate the main parts of the legislative process – the UK is an ideal case study to assess the impact that pre-legislative scrutiny can have to build and enhance the legislative capacity of parliaments. The paper sets out to answer two main research questions:

- 1) What is the extent and characteristics of pre-legislative scrutiny in the UK Parliament
- 2) What is the impact/influence of pre-legislative scrutiny in the UK Parliament

These two questions are important ones to answer empirically as they both current rest upon assumptions. It is over 25 years since the publication of the Modernisation Committee's report 'The Legislative Process' which set the tone for the pre-legislative scrutiny that has followed. This paper will analyse pre-legislative scrutiny in two distinct parts. Firstly it will address the extent to which this kind of scrutiny has continued but also how it has evolved in the post-2010 era - given the commitment of previous governments to enhance the amount of bills published in draft form and in turn the amount of pre-legislative scrutiny taking place. The paper will also assess the type of committees being used to assess them and how this has impacted their passage through the legislative process. A key query here is to what extent is pre-legislative scrutiny an extension of scrutiny (i.e truly building capacity) vs a replacement for scrutiny during the legislative process which would suggest it isn't necessarily building as much capacity as it could. The second part of the paper will focus upon the impact and influence that pre-legislative scrutiny has on the legislation which is subject to it. The paper will address the type of recommendations which committees have produced as a result of pre-legislative scrutiny, and their level of acceptance by the government. The paper will also assess how many times pre-legislative scrutiny reports are raised/referred to in House of Commons and House of Lords debates.

Literature Review

It is important to place pre-legislative scrutiny into the context of the legislative process in the UK Parliament, not because pre-legislative scrutiny can solve every problem (it cannot) but because it provides parliament with an opportunity to influence legislation at an early stage before the government has formally put its name to the bill (as it does when it formally submits them to the formal legislative process). It is argued that the need for pre-legislative arises within the context of an increasing volume of legislation being enacted in each session of parliament (Law Commission, 2006). Fox & Korris, (2010) and Korris (2011) have argued that the sheer number of bills being produced and initiated, combined with their increasing complexity, places pressure on the legislative process as well as parliamentary time and resources. Their argument is that the volume of legislation is having a detrimental impact upon the amount of scrutiny such bills receive and subsequently, upon their operation. However research by Vollmer & Badger (2013) shows that there has in fact been a fall in the number of bills being introduced per session. Despite this fall in the number of bills, the length of legislation has increased (Greenberg, 2016). While pre-legislative scrutiny would not stem the flow of legislation from the government, it does necessitate a process of reflection after the publication of a draft bill and following the recommendations that committees publish following their inquiries. The drafting of legislation has also been criticised for starting too late and being rushed (Rippon, 1993) in order to meet strict deadlines (Slapper & Kelly, 2015), which can lead to a lack of clarity within legislation. This leads to further criticism surrounding complex and difficult to follow legislation (Fox & Korris, 2010; Slapper & Kelly, 2015), in which lawyers struggle to comprehend laws. In essence the problem is with both demand and supply, an increasing level of complexity over the issues both government and parliament face, mixed with issues surrounding resources. Pre-legislative scrutiny can be used to deal with these drafting issues, as Parliamentary Counsel are required to produce draft versions of bills in order to allow committees to scrutinise their contents and also their drafting.

Public bill committees in the House of Commons are frequently criticised as being ineffective in terms of scrutinising legislation (Thompson, 2015). Brazier (2004) argues that public bill committees deliver weak and incomplete scrutiny, as substantial changes are not usually made to bills at this stage, and bills often leave committee without full line by line scrutiny. Greenberg (2015) has argued that public bill committees in the UK barely undertake clause by clause scrutiny of bills, never mind line by line scrutiny due to a lack of appetite from committee members. Research by Thompson (2013) showed that on average committees make 22 amendments per bill but the vast majority of these amendments are government sponsored. Indeed bills are rarely amended against the wishes of the government, given the membership of public bill committees is decided by the party whips. This ensures that even the most controversial bills get a relatively smooth passage (Brazier, 2003; Brazier, Kalitowski, & Rosenblatt, 2007; Rippon, 1993). This is one of the major concerns which underpins the need for building legislative capacity, as the legislative process at least in the Commons is so dominated by the Government. Further to this Mulley & Kinghorn (2016) note that Westminster culture sees a Minister's ability to steer a bill through Parliament largely unamended as a mark of political competence – which makes it difficult for Ministers to accept changes to a bill during the formal legislative process. Pre-legislative scrutiny allows parliament to build extra capacity into the process and gives Members a greater chance of influencing government legislation. There is a benefit for the government too in publishing draft bills and encouraging pre-legislative scrutiny, they get to test the political waters of a policy, and build goodwill and a sense of legitimacy around a bill that is needed to ensure successful law making (through the formal legislative process) and implementation (Mulley & Kinghorn, 2016).

However, the government's strength can be overstated and the influence of opposition and government backbenchers is often masked in public bill committees (Russell, Gover, & Wollter, 2016; Thompson, 2013). Russell et al. (2016) noted that most of the substantive amendments moved by the government are a result of parliamentary pressure. Russell & Cowley, (2016) also noted that around 75% of all government amendments contained little policy substance and were rather technical or clarification amendments. The House of Lords is also able to limit the executive's dominance over the process as it is not subject to programming, has no government majority and thus has greater flexibility over how it considers legislation and all amendments that are tabled are also debated and voted on (Norton, 2013). While the legislative process is perhaps more effective than many suggest, it is still a process that sees legislation enter into law without full scrutiny. As such pre-legislative scrutiny provides parliament with a mechanism to undertake additional pre-scrutiny of bills before they enter into the legislative process. If bills are poorly drafted and lack thorough scrutiny, they are more likely to contain mistakes or problems – pre-legislative scrutiny provides parliament with an opportunity to correct drafting errors early and provide an additional amount of scrutiny time. Although the time available to committees to undertake pre-legislative scrutiny has been criticised previously, 12 weeks has been recommended by a number of committees – but they rarely get that long (Mulley & Kinghorn, 2016). Pre-legislative scrutiny might not be a silver bullet but it does have the potential to make a difference. The aim of this paper is to make an empirical judgement of how much of a difference it does make.

Parliamentary committees are the main vehicle through which pre-legislative scrutiny is undertaken in the UK Parliament. As such engagement with the wider literature on the broader impact of parliamentary oversight committees is necessary in terms of understanding the potential impact of pre-legislative scrutiny undertaken by these committees.

Academics have taken various approaches when studying and assessing the impact of scrutiny in the UK (White, 2015). They have measured the impact of committees using indicators such as; whether committee recommendations are being accepted; whether references to committee work are being made during parliamentary proceedings; whether amendments to bills stem from committee recommendations; as well as citations of committee work in judicial decisions and whether the media has mentioned the work of committees (White, 2015). For the purposes of this research, the focus will be on the acceptance of committee recommendations and whether pre-legislative scrutiny reports are cited in other parliamentary proceedings (particularly in the formal legislative process).

Tolley's (2009) study into the work of the Joint Committee on Human Rights (JCHR) assessed the extent to which the JCHR contributes to more informed debate and prevents governments from passing the legislation it wants without agreeing to any changes the JCHR recommends. Tolley did so by measuring how many references there were to the Joint Committee during floor debates in both Houses of Parliament and also the extent to which the Joint Committee's recommendations went on to influence legislative and judicial outcomes (Tolley, 2009). Tolley (2009) found that in most instances the Government did not consider the views of the Committee during the drafting stages of legislation and that there was an inability of the Committee to be able to prevent the Government from passing bills (Tolley, 2009; White, 2015).

Hawes' (1993) study on the influence of committees on environmental policies used case studies and the analysis of interviews, on top of government responses to committee reports. The study found that 60 per cent of recommendations went on to be accepted by the government although he also concluded that select committee influence is not always direct or visible and can also take place over a long period of time. However, a number of researchers and authors have noted the problem of using a simple assessment of the acceptance of recommendations as an indicator of impact (Giddings, 1994).

Such problems include: weak recommendations skewing the results as they are more likely to be accepted (Aldons, 2000); the government agreeing to accept but then not implement; and finally the government initially rejecting recommendations only to go on and implement them anyway (Hawes, 1992). That being said while the assessment of recommendations does not tell the whole picture, it does still show how the government is responding to them and if there is a pattern in the way it responds.

There have however been attempts to deal with this problem. Hindmoor, Larkin, and Kennon (2009) when assessing how influential the House of Commons Education Committee assessed the initial government response and whether the recommendation was implemented in legislation (but didn't measure non-legislative measures). They also identified a number of measures to assess the impact and influence of the Committee on four sets of actors; government, parliament, the media and political parties (Hindmoor et al., 2009). They put these findings into context by interviewing both politicians and civil servants. They concluded that while there were examples of the Committee having an impact on, and influencing policy, a pattern of influence was harder to pinpoint (Hindmoor et al., 2009; White, 2015). From the perspective of this research, we are interested in governmental and parliamentary actors on the basis that it is only government who can redraft a bill and only parliament who can pass amendments to bills.

Benton and Russell (2013) undertook a comprehensive study of the policy impact of select committees in the House of Commons. They utilised a mixed methods approach which included the coding of media coverage of select committees and the coding of recommendations, and the acceptance and implementation of recommendations from the reports of seven select committees between 1997 and 2010 (Benton & Russell, 2013; Russell & Benton, 2011). Benton and Russell (2013) also undertook 56 semi-structured interviews with committee chairs and members as well as committee staff and civil servants in order to explore less quantifiable parts of select committee influence (Russell & Benton, 2011). The study found that of the recommendations which were clearly aimed at central government, 40 per cent of them were formally accepted, they also found that around 44 per cent of measurable recommendations went on to be implemented. It is this study which forms the methodological foundation for this research. Further to this, research on the impact of post-legislative scrutiny between 2008 and 2019 found that 40% of recommendations were accepted in part or in full (Caygill, 2019; Caygill 2021). Although it was harder to measure the impact of post-legislative scrutiny it was still visible through a number of case studies, however pre-legislative scrutiny provides us with an opportunity to follow impact more closely as if there are successful changes to a bill between a draft version and final version being published, these will be visible.

There is a limited literature on the operation and impact of pre-legislative scrutiny, although there is little quantitative analysis – which is the main contribution of this research. Mulley and Kinghorn (2016) noted that manifesto bills which are central to a government's agenda are unlikely to be selected for PLS as they are going to want them on the statute books in a form designed by them. They also found circumstances where pre-legislative scrutiny worked, for example on the Draft Communications Data Bill Committee – out of 144 recommendations, 136 were accepted by the government. But also found circumstances where it did not – for instance, with the House of Commons Environment, Food and Rural Affairs Committee inquiry into the draft Dangerous Dogs Bill which only had 8 sitting days worth of scrutiny. Published research on pre-legislative scrutiny mainly does focus on a couple of case studies, this is also true of Smookler (2006) whose research focused upon the Civil Contingencies Bill and the Disability Discrimination Bill. This research builds upon their previous work with a more comprehensive quantitative overview of pre-legislative scrutiny assessing the impact of it since 2010. Research by Lynch and Martin (2020) found that there was scope for pre-legislative scrutiny to

strengthen the capacity of the Irish Parliament but it does not always lead to significant changes in legislation. With the UK Parliament being one of the first national legislatures to experiment with pre-legislative scrutiny – it is here where the process is most developed and this requires further exploration as analysis of the most advanced system of pre-legislative scrutiny will have wider implications for other parliaments who are in the early stages of implementing this kind of scrutiny or thinking about implementing it.

Methods

The research is split into three different sections, first is an audit of pre-legislative scrutiny in order to answer the question of the extent of pre-legislative scrutiny. The second is content analysis of pre-legislative scrutiny reports and corresponding government responses in order to review the type and success of committee recommendations and the final element is content analysis of Hansard debates of the bills as they went through the legislative process to gain a better understanding of how pre-legislative scrutiny is utilised outside of the formal confines of a committee inquiry.

The audit of pre-legislative scrutiny has focused on the time period initially between the 1997-1998 and 2021-2022 sessions of the UK Parliament. For this part of the analysis the audit has focused on the number of draft bills published and the proportion of those draft bills which have gone on to receive scrutiny. The data has been gathered from the Parliament website and also from each Queen's Speech during the time period. For the period of time between 1997-2001, data has also been obtained from the House of Commons Library (2015). A more detailed snapshot of pre-legislative scrutiny follows for the time period between 2010-12 and 2021-22. Using committee webpages and sessional returns, this has allowed for further analysis of the types of committees engaging with pre-legislative scrutiny, the departments which have presented the most draft bills as well as a wider audit of the scrutiny each of the draft bills has received (including the number of days the subsequent bill received during the legislative process).

The second part of the research has utilised content analysis developed by Benton and Russell (2013) and adapted by Caygill (2019) for the purposes of post-legislative scrutiny. To date this has involved the content analysis of committee reports and corresponding responses for eight draft bills in the 2010-2012 session. It is my intention to develop this analysis further into the remainder of the 2010 Parliament. This parliament has been chosen for the focus of this analysis on the basis that it lasted a full term and precludes the challenges presented by Brexit, in order to give us a more stable understanding of the impact and influence that pre-legislative scrutiny has. In total 295 recommendations and their corresponding responses were analysed. The recommendations were coded for the type of action called for (e.g. legislation – drafting changes; guidance – more information to be released). The corresponding government responses were coded on a six-point scale for the level of acceptance from 0 = no response through to 5 = fully accepted. Please note that the totals for recommendations and acceptance are not equal as one committee report did not receive a government response.

The third and final part of the research utilised content analysis of Hansard debates on each of the eight bills which were published in draft form during the 2010-2012 session. This was to enable a deeper understanding of how this kind of scrutiny is used. Unlike post-legislative scrutiny where a new piece of legislation might not be forthcoming, a draft bill is usually presented as a bill shortly after a committee has reported. In this case we are able to monitor and track how the pre-legislative scrutiny is used. This data was tracked in a number of ways. For each of the legislative stages in both Houses a

tally was kept for how many times the pre-legislative scrutiny report or the committee undertaking it was mentioned. A tally was also kept in terms of how the report was being used. Finally a tally was also kept in terms of whether members of the committee who undertook the pre-legislative scrutiny made contributions to the debate, given their additional insight into the bill.

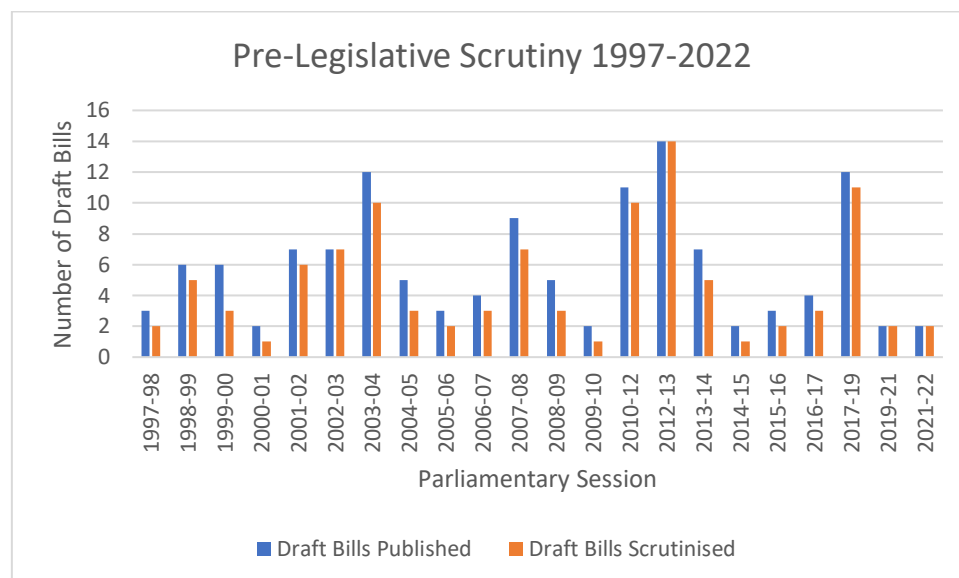
Discussion and Analysis

In this section we present the findings of the research into pre-legislative scrutiny in the UK Parliament since 2010. We start with an overview of the extent and characteristics of pre-legislative scrutiny. For context, data here will initially go back to the inception of pre-legislative scrutiny in 1997 in order to provide a timeline comparison of its extent.

Extent of pre-legislative scrutiny in the UK Parliament

Pre-legislative scrutiny was formally established in 1997 and has been operating for over 25 years at the time of writing, however as noted earlier in the paper there has not been an empirical analysis of the extent and impact of pre-legislative scrutiny since its inception outside of Ireland. The UK case is somewhat unique given its early establishment and this gives us a perfect opportunity to assess the extent of this scrutiny and how it has developed over time. As there has been a long history of pre-legislative scrutiny in the UK it might be expected that the capacity to undertake this type of scrutiny, both in terms of the production of draft bills and the scrutiny of them too would have enhanced over time. In the 25 year period between 1997 and 2022, 128 bills were been published in draft by the government and 103 have received pre-legislative scrutiny which is an average of 4 pre-legislative inquiries per calendar year. Figure 1 shows the extent of this type of scrutiny since 1997.

Figure 1: Pre-Legislative Scrutiny 1997-2022



(Source: House of Commons Library and Parliament.UK)

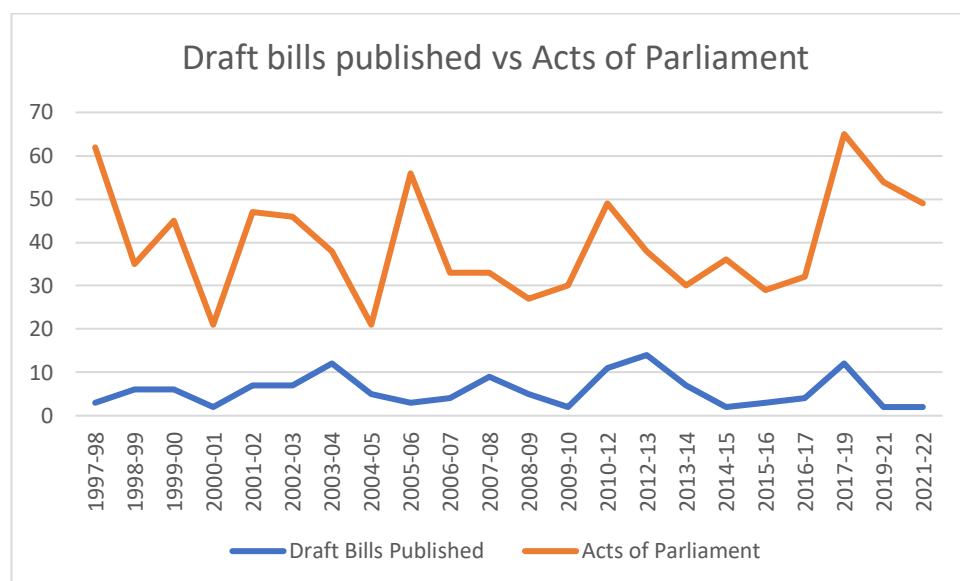
The first bar denotes bills which have been published in draft and the second, how many of those draft bills went on to receive pre-legislative scrutiny by a parliamentary committee. Figure one shows that the vast majority of bills published in draft each session have gone on to receive pre-legislative scrutiny. This suggests that where the government does publish draft bills, there is appetite in Parliament to

scrutinise those draft bills – i.e. there is a willingness to try and build capacity wherever they can to try and influence policy making. What is also noticeable in Figure 1, is that despite pre-legislative scrutiny having been practiced for 25 years, there is little evidence in increase in capacity to undertake it as the process has developed. As a result there is evidence to suggest that there has not been a capacity increase here – this is contrary to the warm words of previous governments going back to John Major’s. This follows a similar trend in post-legislative scrutiny where by previous research found that it fluctuated over time, with it increasing in usage immediately after an election – however the same trend is not visible here. However this is perhaps because with pre-legislative scrutiny, government departments are focused upon drafting legislation for immediate entry into the legislative process as opposed to draft bills.

While 128 draft bills is an achievement, it is disappointing not to see a more structured approach to pre-legislative scrutiny, with governments committing to give pre-legislative scrutiny to all but their most precious pieces of legislation. The data on pre-legislative scrutiny is put into stark context by the data on the total amount of legislation passed in the 25 year period between 1997-2022, this stands at 876. So around 15% of bills have been published in draft form in order to receive pre-legislative scrutiny. This is a rough estimate as not all draft bills do go on to become Bills and eventually Acts of Parliament (this will be analysed in more detail later in this subsection).

Figure two shows the disparity between pre-legislative scrutiny undertaken vs the number of bills going on to receive Royal Assent.

Figure 2: Draft bills published vs Acts of Parliament



(Source: UK Parliament)

Figure 2 shows the disparity between these two activities between 1997 and 2022. The interesting trend from this chart is that towards the middle and end of a government's term is when pre-legislative scrutiny starts to pick up – perhaps as a result of the government getting its key manifesto legislation through parliament and on to the statute books. However as noted above, while pre-legislative scrutiny has continued over the course of the past 25 years, it has not really made much progress. Although despite challenging political circumstances in recent years as a result of Brexit, this has not stopped pre-legislative scrutiny in its tracks. However despite a fairly low uptake (generally) there is

evidence that the government is producing more draft legislation than it initially plans. Typically the government will announce which bills will be published in draft during the Queen's Speech each year. Table 1 shows that the government is actually producing more draft bills than it originally intends.

Table 1: Draft bills published vs draft bills announced

	Draft Bills Announced	Draft Bills Published
2010-2012	2	10
2012-2013	4	15
2013-2014	5	7
2014-2015	3	2
2015-2016	1	3
2016-2017	1	3
2017-2019	3	12
2019-2021	2	2
2021-2022	3	2
<i>Total</i>	24	56

(Source: UK Parliament)

In the time period between 2010 and 2022 (12 years) the government has announced 24 draft bills over 9 Queen's Speeches however they have in fact have produced 56 draft bills for pre-legislative scrutiny. This has actually doubled the amount of draft bills available for scrutiny in comparison to what was initially expected. So while the scale of pre-legislative scrutiny might be disappointing, in some ways it is doing a lot more than intended. It is of course important to remember that there is only so much capacity in the UK Parliament to undertake pre-legislative scrutiny. In an ideal world more pre-legislative scrutiny would be undertaken but this would require greater drafting resources and of course Parliamentary Counsel already have a lot of work to complete in terms of producing legislation that is ready to go through the legislative process even before they consider producing draft legislation too. There are also limited resources when it comes to the parliamentary end too. Departmental select committees in the House of Commons also have nine other tasks to be undertaking too – so there is a limited amount of time that they have available. The answer to this might be to create more Joint Committees or ad hoc committees however there are resource constraints here too – particularly from a staffing perspective (there are only so many Clerks and other committee staff available at any one time) and there are budgetary pressures too.

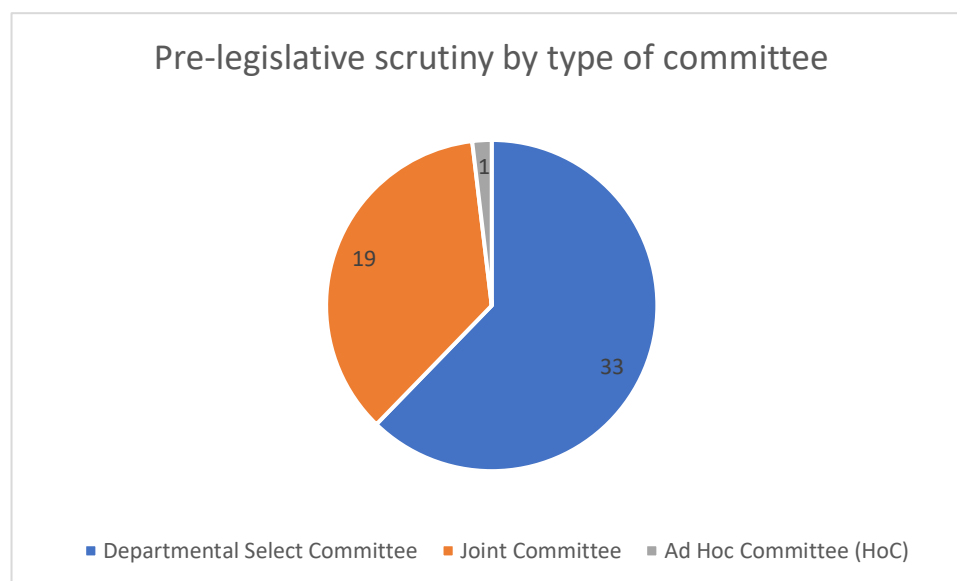
Types of committees used to undertake pre-legislative scrutiny

As noted previously in the paper, there are a number of ways in which pre-legislative scrutiny can be undertaken in the UK Parliament. It can be undertaken by departmental select committees, by ad hoc committees of the UK Parliament and also by Joint Committees of both Houses of Parliament. It is the type of committees which we turn our attention to now. Departmental Select Committees in the House of Commons shadow government departments and are responsible for holding them to account in more detail than can be achieved on the floor of the House. Their main benefits include the fact that they are permanent (leading to collegiality among MPs), they are cross party and encourage a more consensual style of politics (useful for inquiries into government activity, including pre-legislative scrutiny as reports are more hard hitting if backed by MPs from across the House), they are independent (since 2010 committee chairs have been elected by the whole House, and committee

members by their parliamentary parties) and finally they are specialised too, as a result of their permanence and focus on one department. Ad hoc committees, are useful to give the House of Commons and House of Lords more committee capacity if the wider committee system is busy. For pre-legislative scrutiny they tend to be used solely in the House of Commons, however they are used more prolifically in the House of Lords for post-legislative scrutiny and other one-off inquiries (Russell, 2013; Caygill, 2021). One other benefit of ad hoc committees is that they are appointed for one task, so aren't battling with 10 as departmental select committees do. However they are not permanent and they are not necessarily specialist. Joint Committees of both Houses, combine MPs and Peers and make the most of expertise in the House of Lords. As with ad hoc committees these pre-legislative scrutiny joint committees are appointed to conduct scrutiny of one draft bill and have no other tasks but they do have the benefit of adding the Lords expertise. This is perhaps why they are more widely used in comparison to ad hoc committees in the House of Commons. One final benefit of joint committees is that they allow the government to test the water for draft bills in both Houses of Parliament simultaneously – making them an important litmus test.

Figure 3 shows the breakdown in the types of committees that are being given the task of undertaking pre-legislative scrutiny between 2010 and 2022.

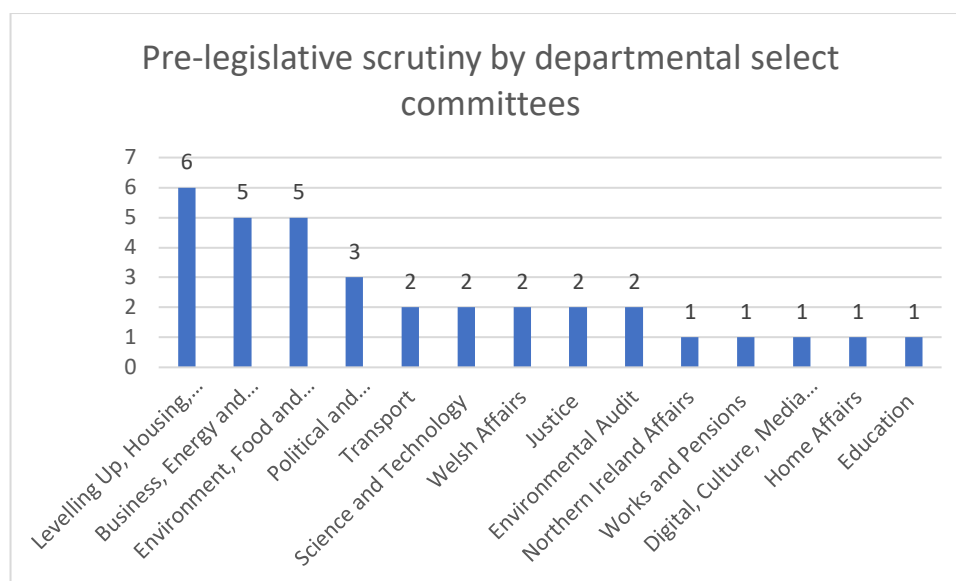
Figure 3: Pre-legislative scrutiny by type of committee



It is clear from the figure that the most popular route for undertaking pre-legislative scrutiny is by departmental select committees – as noted above, there are many benefits of having departmental select committees undertake this kind of scrutiny and the main one is the specialisation and expertise that they gain from scrutinising one government department. Joint Committees are the next most popular choice of committee to undertake pre-legislative scrutiny, this is likely to due to the benefits of them adding temporary capacity to the select committee system and also drawing in the expertise of the House of Lords. Ad hoc committees have only been used once in this time period and this was in the House of Commons – as noted above, if you want to increase the capacity of the committee system but retain an element of expertise, then Joint Committees are probably a safer bet.

Figure 4 shows the breakdown by departmental select committees as they are the most popular choice of committee to undertake pre-legislative scrutiny

Figure 4: Pre-legislative scrutiny by departmental select committees



(Source: UK Parliament)

In terms of which departmental select committees have been most prolific in terms of undertaking pre-legislative scrutiny, the Levelling Up, Housing, Communities and Local Government Committee, Business, Energy and Industrial Strategy Committee and Environment, Food and Rural Affairs Committees rank in the top three committees. Pre-legislative scrutiny is less in the hands of committees in comparison to post-legislative scrutiny, as they are reliant upon the government for the publication of draft bills. This does however give us an indication of what areas the government is publishing such bills in. This leads us to our next section which will focus on the characteristics of the bills receiving pre-legislative scrutiny since 2010 in order to determine whether there is a pattern which the government is following in terms of prolific departments.

Characteristics of draft bills

Table 2 shows the number of draft bills published by each government department between 2010 and 2022.

Table 2: Draft bills published by government departments, 2010-2022

Department	Draft Bills
Cabinet Office	10
Home Office	7
Department of Business, Energy and Industrial Strategy	7
HM Treasury	6
Department for Environment, Food and Rural Affairs	5
Ministry of Levelling Up, Housing, Communities and Local Government	4
Ministry of Justice	3
Department of Transport	2
Department of Health and Social Care	2
Department for Education	2

Wales Office	2
Department for Work and Pensions	1
Northern Ireland Office	1
Scotland Office	1
Office of the Leader of the House of Commons	1
Department of Digital, Culture, Media and Sport	1

Table two shows that the top five government departments publishing draft bills are the Cabinet Office, the Home Office, the Department of Business, Energy and Industrial Strategy, HM Treasury and the Department for Environment, Food and Rural Affairs. There are a couple of important observations that are worthy of analysis, the first is that there is a lot of constitutional/procedural legislation which is published in draft form for pre-legislative scrutiny. As noted by Mulley & Kinghorn (2016) the government is likely going to want to test the waters of parliament before submitting a bill to the formal legislative process and given that constitutional legislation tends to divide opinion (not always seriously but enough to force a change in direction) even manifesto bills can be subject to pre-legislative scrutiny in these circumstances. For instance the Draft House of Lords Reform Bill – although not successful through the formal legislative process for political reasons – it was a major plank of the Coalition Agreement of the 2010-2015 Conservative/Liberal Democrat Coalition Government. There is also a trend in devolution related bills receiving pre-legislative scrutiny too, including a Draft Scotland Bill and two Draft Wales Bills, which fits with the broader constitutional theme. Another key theme in this set of draft bills is the amount of published by the Home Office, often in controversial areas such as communications data linked to the prevention of terrorism. While such legislation is not likely to be a manifesto bill there is clearly a desire to put some controversial legislation in front of parliament in draft form in order to identify where the problems with the bill are and to help ease its passage through the legislative process. In comparison to post-legislative scrutiny at the other end of the legislative process, there are departments here (and as a result committees) which are aiding in building extra legislative capacity – these are the Treasury, Home Office and the Business departments.

Bills and the legislative process

Following the publication of draft bills and pre-legislative scrutiny the goal of course is to submit the revised bill to Parliament for full legislative scrutiny. Given the resources involved in undertaking pre-legislative scrutiny it is important to assess how many bills make it through to the legislative process to become Acts of Parliament. While details of recommendations and success will be discussed in subsequent sections, this section will address some of the characteristics of the revised bills submitted for full scrutiny following pre-legislative scrutiny.

Table three shows the complete list of draft bills published between 2010 and 2022 as well as details of their progress through the legislative process, including the time that both Houses of Parliament spent undertaking scrutiny on the legislation. The table shows that the vast majority of bills that are published in draft do end up being revised in some shape or form and are submitted for formal consideration by both Houses of Parliament. Only three draft bills published between 2010 and 2022 were not taken forwards. One of those cases, the Voting Eligibility (Prisoners) Draft Bill, while a full bill was not introduced, there was a non-legislative response to the policy dealing with the issues covered in the draft bill. For the other two bills it is not clear why they were not taken forwards in the end. Of course it is important to remember that political events can shape outcomes here. The Draft Public Services Ombudsman Bill was published in draft three times for consideration but around that time

we saw Brexit, a change in Prime Minister and an early general election – while it is not completely clear why the draft bill was not taken forwards, political turmoil can affect legislative plans and legislative process. Research by Caygill (2020) showed how post-legislative scrutiny was impacted by political events and cycles, and those cycles are likely to impact pre-legislative scrutiny too.

A further two pieces of legislation were introduced but did not make it through the legislative process – again this can be down to political events interfering with the legislative cycle. For instance the Draft House of Lords Reform Bill was introduced in the 2012-2013 session and did pass its second reading in the House of Commons, however disagreements on the government backbenches saw the bill being withdrawn after a programme motion, timetabling its progress through the House of Commons could not be agreed. This was an issue as without a programme motion, the bill could have been filibustered. This is interesting as it is an example of where pre-legislative scrutiny has not helped to smooth the progress of a Bill through Parliament.

One final piece of analysis is important and that is most revised bills are submitted in quick succession after the completion of pre-legislative scrutiny, this perhaps explains the time pressures that the government puts on parliament when undertaking this kind of scrutiny (Mulley & Kinghorn, 2016).

Table 3: From draft bill to Act of Parliament

Draft Bill Session	Draft Bills	Bill introduced	Bill Session	House introduced	Scrutiny Time	Bill Name
<u>2010-2012</u>	Draft Civil Aviation Bill	Y	2012-2013	Commons	20	Civil Aviation Bill
	Draft Detention of Terrorist Suspects (Temporary Extension) Bills	Y	2010-2012	Commons	28	Protection of Freedoms Bill
	Draft Defamation Bill	Y	2012-2013	Commons	17	Defamation Bill
	Draft Electoral Administration Provisions	Y	2012-2013	Commons	11	Combined into the Electoral Registration and Administration Bill
	Further Draft Electoral Administration Provisions	Y	2012-2013	Commons	11	Combined into the Electoral Registration and Administration Bill
	Draft Financial Services Bill	Y	2012-2013	Commons	31	Financial Services Bill
	Draft Groceries Code Adjudicator Bill	Y	2012-2013	Lords	14	Groceries Code Adjudicator Bill
	Draft House of Lords Reform Bill	Y	2012-2013	Commons	Withdrawn	House of Lords Reform Bill
	Draft Individual Electoral Registration Bill	Y	2012-2013	Commons	13	Combined into the Electoral Registration and Administration Bill
	Draft Recall of MPs Bill	Y	2014-2015	Commons	12	Recall of MPs Bill

<u>2012-2013</u>	Draft Financial Services (Banking Reform) Bill	Y	2013-2014	Commons	18	Financial Services (Banking Reform) Bill
	Draft Anti-Social Behaviour Bill	Y	2013-2014	Commons	29	Anti-social Behaviour, Crime and Policing Bill
	Draft Care and Support Bill	Y	2013-2014	Lords	29	Care Bill
	Draft Communications Data Bill	Y	2014-2015	Commons	6	Data Retention and Investigatory Powers Bill
	Draft Dangerous Dogs (Amendment) Bill	Y	2013-2014	Commons	29	Anti-social Behaviour, Crime and Policing Bill
	Draft Energy Bill	Y	2013-2014	Commons	29	Energy Bill
	Draft Enhanced Terrorism Prevention and Investigation Measures Bill	Y	2014-2015	Commons	16	Counter-Terrorism and Security Bill
	Draft legislation on family justice (Children and Families Bill)	Y	2013-2014	Commons	34	Children and Families Bill
	Draft legislation on reform of provision for children and young people with Special Educational Needs	Y	2013-2014	Commons	34	Children and Families Bill
	Draft Local Audit Bill	Y	2013-2014	Lords	18	Local Audit and Accountability Bill
	Draft Pensions Bill	Y	2013-2014	Commons	22	Pensions Bill
	Voting Eligibility (Prisoners) Draft Bill	N	N/A	N/A	N/A	N/A
	Draft Water Bill	Y	2013-2014	Commons	22	Water Bill
	Draft Wild Animals in Circuses Bill	Y	2017-2019	Commons	10	Wild Animals in Circuses Bill
	Draft Northern Ireland (Miscellaneous Provisions) Bill	Y	2013-2014	Commons	10	Northern Ireland (Miscellaneous Provisions) Bill
<u>2013-2014</u>	Draft Consumer Rights Bill	Y	2014-2015	Commons	29	Consumer Rights Bill
	Draft Deregulation Bill	Y	2014-2015	Commons	29	Deregulation Bill
	Draft Clauses of the Finance Bill 2014	Y	2014-2015	Commons	4	Finance Bill
	Draft National Insurance Contributions Bill	Y	2013-2014	Commons	9	National Insurance Contributions Bill
	Draft Modern Slavery Bill	Y	2014-2015	Commons	20	Modern Slavery Bill

	Draft Wales Bill	Y	2014-2015	Commons	12	Wales Bill
	Draft Scotland Clauses 2015	Y	2015-2016	Commons	16	Scotland Bill
<u>2014-2015</u>	Draft Taxation of Pensions Bill	Y	2014-2015	Commons	8	Taxation of Pensions Bill
	Draft Protection of Charities Bill	Y	2015-2016	Lords	15	Charities (Protection and Social Investment) Bill
<u>2015-2016</u>	Draft Investigatory Powers Bill	Y	2016-2017	Commons	28	Investigatory Powers Bill
	Draft Public Services Ombudsman Bill	N	N/A	N/A	N/A	N/A
	Draft Wales Bill	Y	2016-2017	Commons	15	Wales Bill
<u>2016-2017</u>	Draft Law of Property Bill	N	N/A	N/A	N/A	N/A
	Draft Public Services Ombudsman Bill	N	N/A	N/A	N/A	N/A
	Draft Spaceflight Bill	Y	2017-2019	Lords	12	Space Industry Bill
	Draft Homelessness Reduction Bill (PMB)	Y	2016-2017	Commons	12	Homelessness Reduction Bill
<u>2017-2019</u>	Draft Environment (Principles and Governance) Bill	Y	2019-2021	Commons	35	Environment Bill
	Draft Domestic Abuse Bill	Y	2019-2021	Commons	26	Domestic Abuse Bill
	Draft Public Service Ombudsman Bill	N	N/A	N/A	N/A	N/A
	Draft Parliamentary Buildings (Restoration and Renewal) Bill	Y	2017-2019	Commons	10	Parliamentary Buildings (Restoration and Renewal) Bill
	Draft Animal Welfare (Sentencing and Recognition of Sentience) Bill	Y	2019-2021	Commons	7	Animal Welfare (Sentencing) Bill
		Y	2021-2022	Lords	11	Animal Welfare (Sentience) Bill
	Draft Domestic Gas and Electricity (Tariff Cap) Bill	Y	2017-2019	Commons	12	Domestic Gas and Electricity (Tariff Cap) Bill
	Draft Health Service Safety Investigations Bill	Y	2019	Lords	Withdrawn	Health Service Safety Investigations Bill
	Draft Tenants Fees Bill	Y	2017-2019	Commons	12	Tenant Fees Bill
	Draft Finance Bill	Y	Multiple	Commons	12	Finance Bill

	Draft Non-Domestic Rating (Property in Common Occupation) Bill	Y	2017-2019	Commons	10	Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Bill
	Draft Registration of Overseas Entities Bill	Y	2021-2022	Commons	8	Economic Crime (Transparency and Enforcement) Bill
	Draft Personal Injury Discount Rate Clause	Y	2017-2019	Lords	11	Civil Liability Bill
<u>2019-2021</u>	Draft Building Safety Bill	Y	2021-2022	Commons	21	Building Safety Bill
	Draft Fixed-term Parliaments Act 2011 (Repeal) Bill	Y	2021-2022	Commons	11	Dissolution and Calling of a Parliament Bill
<u>2021-2022</u>	Draft Online Safety Bill	Y	2021-2022	Common	30	Online Safety Bill
	Draft Downstream Oil Resilience Bill	No evidence of introduction yet				

(Source: House of Commons Sessional Returns; UK Parliament)

There is evidence, even from the descriptive data that there is a benefit to undertaking pre-legislative scrutiny. On a basic level the fact that pre-legislative scrutiny is taking place and then revised draft bills are being introduced to the House of Commons and House of Lords shows there is evidence of capacity building. On average the bills receiving pre-legislative have also had 17 days of further scrutiny as part of the formal legislative process. The amount of scrutiny each bill receives ordinarily does vary, so it difficult to discern whether bills which have received pre-legislative scrutiny see a reduction in formal legislative scrutiny. However the different amount of days worth of scrutiny presented in the table does correspond to the length of the bill. The next issue to analyse is the quality of that capacity building – this will be analysed in the next section and will address the recommendations committees are producing, their acceptance and whether there is evidence that the recommendations and wider inquiries are influencing the revised bills themselves and their passage through Parliament.

The influence of pre-legislative scrutiny in the UK Parliament

Using the 2010-2012 session as a case study, this section will address the influence of pre-legislative scrutiny. It is intended to expand this analysis to cover the entire 2010 Parliament.

Eight committee reports disseminating from pre-legislative scrutiny have been reviewed through content analysis and seven corresponding government responses. It should be noted that the inquiry into the Draft Electoral Administration Provisions did not receive a government response. Table 4 shows the types of recommendations which committees are making as a result of their pre-legislative scrutiny of draft bills.

Table 4: Types of pre-legislative scrutiny recommendations

Type of Recommendation	No	Percentage
Legislation	145	49
Guidance	10	3
Research / Review	16	5
Promotional	1	0
Disclosure	5	2
Resources / Funding	2	1
Attitude	1	0
Policy / Practice	114	39
Recommendations to other bodies	1	0
Total	295	100

(Source: Committee Reports)

As would be expected, almost 50% of recommendations relate to changes in the draft bill / final bill itself, this is a higher propensity from other types of committee inquiry but it reflects the legislative focus of pre-legislative scrutiny. However it also reflects the ability of committees to influence legislation at this early stage while the government is still formatting its final bill for submission to parliament. This is a substantive increase in the number of legislative based recommendations in comparison to post-legislative scrutiny where only 15% of recommendations related to legislative action (Caygill, 2021). The nature of pre-legislative scrutiny means that it is perhaps not surprising that 88% of recommendations relate to either policy or legislative change. Indeed in terms of the coding of policy change, some of these recommendations may have required legislative action to implement however if they recommendation did not specifically refer to amendments/drafting it was not considered legislative in nature – as too many assumptions would need to be made.

Table 5: Degree of Acceptance of Pre-Legislative Scrutiny Recommendations

Degree of Acceptance	No	Percentage
No Response	40	14
Fully Rejected	43	15
Partially Rejected	35	12
Neither Accepted nor Rejected	48	16
Partially Accepted	45	15
Fully Accepted	84	28
Total	295	100

(Source: Government Responses)

In terms of the acceptance of recommendations 43% are accepted in part or in full, this is higher than the 40% which recommendations from post-legislative scrutiny (Caygill, 2021) receive. This is not a substantial increase however when put into the context of a 34% increase in the proportion of legislative based recommendations being made compared to post-legislative scrutiny, it is positive that we are still seeing an increase (albeit small) in the level of acceptance. Again this points to the legislative impact that select and joint committees have when it comes to pre-legislative scrutiny. It is also worth highlighting that the rate of rejection is down compared to post-legislative scrutiny too, for pre-legislative scrutiny it is only 27% compared to 37% for the post-legislative scrutiny (Caygill, 2021).

However it should be noted that this represents the government's response within 60 days of the publication of the report. The success rate could indeed be higher, as even if the government rejects certain recommendations, it is possible for members in the House of Commons and the House of Lords to apply pressure and table amendments to bring about the change they wish to see to the bill. This is a key benefit of pre-legislative scrutiny in comparison to post-legislative scrutiny in that there is short to medium term action on the bill which has been reviewed in draft form.

That there is more opportunity for this scrutiny to be utilised fairly quickly after a report has been published, if the government is keen to get their bill introduced to parliament. Table 6 shows the number of times each pre-legislative scrutiny report has been referred to in the House of Commons and House of Lords during the course of the formal passage of the bill through parliament.

Table 6: Engagement with the pre-Legislative scrutiny report during the legislative process

Bill	House of Commons				House of Lords			
	2 nd R	Cttee	Report	3 rd R	2 nd R	Cttee	Report	3 rd R
Civil Aviation	35	38	6	3	2	4	0	0
Groceries Code Adjudicator	18	5	3	0	10	15	2	0
House of Lords Reform	40	X	X	X	X	X	X	X
Recall of MPs	4	1	0	2	5	8	2	0
Protection of Freedoms	0	17	24	1	X	X	X	X
Defamation	43	56	7	4	28	66	9	0
Financial Services	40	20	7	3	9	37	0	0
Electoral Registration	23	28	0	7	6	0	2	0

(Source: Hansard)

As we can see from the table, each of the reports have been referred to during the course of its formal scrutiny, although the amount of references does tend to vary. The Civil Aviation Bill and the Defamation Bill saw the most mentions of their respective pre-legislative scrutiny reports. These mentions (across all bills) have come from government and opposition frontbenches as well as backbenchers. The mentions tend to fall into a number of categories, firstly we have expressions of thanks to the members of both Houses who served on the committees undertaking pre-legislative scrutiny. The government frontbench for the most part make references to reports in terms of those thank yous but also using reports to argue against certain recommendations (i.e. that a committee did not think it was appropriate, so therefore members should reject certain amendments). The opposition frontbench do tend to offer their thanks too but also push the government on recommendations that they have rejected or ignored from the report. They use the reports as leverage to get the government (and backbench MPs) to support their amendments. Backbenchers, tend to fall into two categories, members of the select committee which undertook the scrutiny pushing their recommendations further both with the government but also trying to convince other members to back them. The second category are those MPs who have a special interest in the legislative area and are also pushing their own recommendations and using the report as leverage (due to its evidence and recommendations).

Table 7 highlights a number of observations from the eight bills which received both pre-legislative scrutiny and formal legislative scrutiny in the 2010-12 session. There is variation in the extent to which the pre-legislative scrutiny report was highlighted as a relevant document on the order paper. This only happened twice during the course of the session but it does raise the question as to why the reports are not highlighted more. It also became clear that unless there was a joint committee

undertaking pre-legislative scrutiny, the House of Lords were less likely to reference the pre-legislative scrutiny reports. Instead they focus on the reports of their own committees such as the constitution committee or the delegated powers committee (although not necessarily pre-legislative in nature).

Table 7: Notes from the legislative debates

Bill	Notes
Civil Aviation	• Pre-legislative scrutiny report was noted as a relevant document for the House of Commons second reading debate. • Five MPs on the select committee spoke in the second reading debate, with an additional three making interventions. • Five MPs on the select committee also sat on the public bill committee
Groceries Code Adjudicator	• Pre-legislative scrutiny report was not noted as a relevant document for the House of Commons second reading debate. • Two MPs on the select committee spoke in the second reading debate • No members of the select committee sat on the public bill committee • Peers were less interested in the select committee report and more in the report of the Delegated Powers Committee
House of Lords Reform	• Pre-legislative scrutiny report was not noted as a relevant document for the House of Commons second reading debate. • Eight MPs on the joint committee spoke in the second reading debate, a further two MPs made interventions
Recall of MPs	• Pre-legislative scrutiny report was not noted as a relevant document for the House of Commons second reading debate. • No MPs on the select committee took part in the second reading debate, but one did participate in committee (of the whole house) stage
Protection of Freedoms	• Pre-legislative scrutiny report was not noted as a relevant document for the House of Commons second reading debate. • No MPs on the joint committee spoke in the second reading debate, but three did participate in committee stage
Defamation	• Pre-legislative scrutiny report was not noted as a relevant document for the House of Commons second reading debate. • Three MPs on the joint committee spoke in the second reading debate, and a further one made an intervention • No MPs on the joint committee sat on the public bill committee; however all Peers on the joint committee contributed to committee stage (to varying degrees)

	• Five peers on the joint committee spoke in the second reading debate
Financial Services	• Pre-legislative scrutiny report was not noted as a relevant document for the House of Commons second reading debate. • Five MPs on the select committee spoke in the second reading debate • No MPs on the select committee were on the public bill committee
Electoral Registration	• Pre-legislative scrutiny report was noted as a relevant document for the House of Commons second reading debate. • Two MPs on the select committee spoke in the second reading debate and a further two made interventions. • No MPs on the select committee were on the public bill committee. • Peers less interested in the select committee report and more in the reports produced by their own House

What stands out in terms of the Civil Aviation Bill and the Defamation Bill having the most mentions of the pre-legislative reports during their passage, is how engaged the members of those committees are in the formal legislative process. For the Civil Aviation Bill, five MPs on the select committee spoke in the second reading debate, with an additional three making interventions. In addition, five of those MPs also made it on to the public bill committee. This does suggest some co-ordination not just in terms of interventions in legislative debates but also seeking support from party whips to get selected to sit on the public bill committee. This does stand out as the only time in the session where so many select committee members, who undertook pre-legislative scrutiny, significantly contributed to the committee stage scrutiny of the bill.

In terms of the Defamation Bill, three MPs on the joint committee spoke in the second reading debate, and a further one made an intervention. In the House of Lords, five Peers from the joint committee spoke in their second reading debate. While no MPs who sat on the joint committee sat on the public bill committee, all Peers on the joint committee contributed to committee stage. This was to varying degrees, however four out of the six peers attended and contributed to each day of committee stage in the House of Lords. Again this does suggest a level of co-ordination between both MPs and Peers from the joint committee to push their work further.

If we were looking to justify pre-legislative scrutiny as a committee activity, the 43% of recommendations being accepted, despite a higher proportion of legislative based recommendations and how well utilised these reports are after pre-legislative scrutiny has finished suggests that this is a valuable form of scrutiny whose shelf life clearly extends beyond the end of the initial inquiry.

Conclusion

In conclusion, while there is yet to be a ramping up of pre-legislative scrutiny, despite warm words from successive governments, the number of draft bills receiving scrutiny has remained remarkably stable over the past 25 years. 103 draft bills have received pre-legislative scrutiny and there is evidence

to suggest that successive governments have been publishing more bills in draft than initially intended. While further progress would be welcomed, we shouldn't under appreciate the work of government and committees in this area, particularly when capacity from both perspectives presents challenges. There is also evidence of this scrutiny having an impact. 43% of recommendations in the 2010-12 session were accepted by the government, which is higher than we have seen for post-legislative scrutiny despite a substantive increase in legislative based recommendations. This does suggest that committees are influencing the drafting of the final bill and governments are willing to listen. There is also evidence that the impact of the inquiries does not end after the publication of the government's response. For all draft bills in the 2010-12 session all pre-legislative reports were referenced during the substantive legislative debates. This use of the reports does vary but there is a pattern developing where if MPs and Peers are willing to co-ordinate and continue to pressure the government and their colleagues on their findings and recommendations they can achieve further influence. Even the government and opposition frontbenches are making use of the reports, albeit for different reasons. This provides further important insight into the impact and influence that committees in Westminster can have, particularly in terms of pre-legislative scrutiny. If we were looking to justify pre-legislative scrutiny, the findings of this research suggests that this is a valuable form of scrutiny whose shelf life clearly extends beyond the end of the initial inquiry.