

# How Democratic is the UK? The 2012 Audit

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## 2.4. The democratic effectiveness of parliament

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## 2.4. The democratic effectiveness of parliament

### Executive Summary

This chapter reviews the available evidence relating to the eight 'search questions' concerned with the democratic effectiveness of the UK parliament.

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings: (a) areas of improvement; (b) areas of continuing concerns; and (c) areas of new or emerging concern.

#### **(a) Areas of improvement**

##### **1. The reduction in the role of the whips, including the shift to MPs electing Commons select committee chairs and members**

At the end of the last parliament, the Select Committee on the Reform of the House of Commons made proposals that would serve to enhance the autonomy of the Commons, in particular by reducing the power of the whips. Following the 2010 general election, elections were held for chairs and members of select committees, and the Backbench Business Committee was established. It is as yet too soon to ascertain the full practical impact of these changes, but in themselves they already represent an important principled movement towards greater legislative independence. (For further discussion and details, see Section [2.4.1](#) and Case Study [2.4b](#))

##### **2. Pre-appointment hearings for major public appointments by select committees**

A recent innovation in parliamentary practice has been the introduction of pre-appointment hearings by select committees for major public appointments - a part of Gordon Brown's Governance of Britain agenda. However, there are limitations upon this process and committees do not have the power to block an appointment of which they do not approve. By the end of 2009, there had been 18 hearings covering 19 appointments. (For further discussion and details, see Section [2.4.3](#))

##### **3. The introduction of Public Bill Committees for legislative scrutiny**

Public Bill Committees (PBCs) were introduced in the 2006-07 session to replace the 'standing committee' system for legislative scrutiny. As well as carrying out line-by-line scrutiny of bills, the task that had been undertaken by standing committees, PBCs were empowered to receive oral and written evidence. (For further discussion and details, see Section [2.4.2](#) and Case Study [2.4c](#))

##### **4. The formalisation of post-legislative scrutiny**

There has been a greater formalisation of the process of post-legislative scrutiny. However, the process formally set out by the government in 2008 leaves it with a degree of discretion as to which acts will be subject to such scrutiny. (For further details and discussion, see Section [2.4.2](#))

##### **5. Some curtailment of the extent of the royal prerogative**

There is a range of executive powers, decisions over the exercise of which neither the Commons nor the Lords normally has a specific right to be involved in, since they are within the remit of the royal prerogative (though the government may choose to consult parliament over its exercise on terms it sees as appropriate). This is a significant limitation on the extent of parliamentary oversight and accountability for the executive. The royal prerogative includes within its scope decisions to enter into armed conflict and the conferral of royal charters. The Constitutional Reform and Governance Act 2010 reduced the reach of the royal prerogative in two key areas, through placing the civil service on a statutory basis and creating a limited power for parliamentary oversight of treaties. (For further details, see Section [2.4.3](#) and Case Study [2.4f](#))

##### **6. More resources for parliamentary committees and for parliamentarians**

Though they remain modest compared to committees in legislatures such as the US Congress, the resources available to select committees have increased significantly over the last decade. One important development in this area has been the establishment of the Scrutiny Unit in the 2003-04 session, which provides additional support to parliamentary committees. The staff allocation to individual members has increased. (For further discussion and details, see Sections [2.4.3](#) and [2.4.7](#) and Figure [2.4.k](#))

##### **7. Greater systemisation of the work of Commons select committees**

In 2002 a set of 10 'Core Tasks' were introduced to attempt to systematise the work of select committees. (For further discussion and details, see Section [2.4.3](#))

## **8. Greater transparency in public accounting**

In recent years the government has introduced various measures intended to improve financial transparency, including Public Service Agreements; Whole of Government Accounts; Resource Accounting and Budgeting; and most recently the Treasury Alignment (or 'Clear line of sight') Project, proposed by the government in 2009. (For further discussion and details, see Section [2.4.4](#) and Case Study [2.4j](#))

### ***(b) Areas of continuing concern***

#### **1. The in-built government dominance of the Commons, bolstered by the power of patronage and enforced by the whips**

Governments - whether single-party or coalitions - normally enjoy by definition a majority in the Commons. This basic fact of UK constitutional arrangements, involving the tradition of the fusion rather than separation of powers, restricts the potential impact of parliamentary reforms, unless the decision to make substantial structural alteration to the UK settlement is taken. (For further discussion, see Section [2.4.1](#))

#### **2. The undemocratic composition of the House of Lords**

One of the two chambers of parliament, the House of Lords, is completely unelected. Whatever contributions it may make to the democratic process, this basic lack of legitimacy is problematic. (For further details and discussion, see Section [2.4.1](#))

#### **3. The growth of the total volume of primary and secondary legislation**

There is an ongoing overall rise in the quantity of legislation, stretching the capacity of parliament to scrutinise it effectively. (For further details, see Section [2.4.2](#), Figures [2.4d](#) and [2.4e](#), and Case Study [2.4d](#))

#### **4. The persistence of parts of the royal prerogative**

Despite the reforms to the royal prerogative discussed above, important parts of it - including the power to commit the armed forces to potential or actual hostile action - remain. (For further discussion and details, see Section [2.4.3](#) and Case Study [2.4f](#))

#### **5. Limitations on the ability of parliamentary committees to obtain access to officials and official papers**

Parliament possesses a right to send for 'persons, papers and records' that is theoretically unlimited. Yet there are strong conventions that the executive can resist such calls if it feels it necessary to do so. (For further discussion and details, see Section [2.4.2](#))

#### **6. Unsatisfactory government responses to committee reports**

A reflection of the unequal power relationship between the legislature and the executive is the regular complaint by Commons select committees of long delays in receiving government responses to their reports, or of the poor quality or evasiveness of those responses. (For further discussion and details, see Section [2.4.3](#))

#### **7. Weaknesses in financial scrutiny**

Effective oversight of taxation and expenditure is fundamental to all democratic accountability. But even within the context of the weakness of the UK parliament relative to the executive, financial accountability in the UK is flawed. Problems include the lack of participation of parliament in developing the budget; the failure of lessons learned during the course of the work of the National Audit Office/Public Accounts Committee to be applied properly across Whitehall; select committees not being effectively integrated into public finances; and a lack of capacity and interest on the part of parliamentarians, preventing them from becoming properly engaged. The particular areas of shortcoming are the authorisation and scrutiny of future expenditure plans, with parliament better at investigating past expenditure. The House of Lords is not sufficiently involved in financial scrutiny. (For further details, see Section [2.4.4](#) and Case Studies [2.4i](#), [2.4j](#) and [2.4k](#))

### ***(c) Areas of new or emerging concern***

#### **1. Ongoing increase in the size of the 'payroll vote'**

The government has a guaranteed bloc of support in parliament comprising ministers, who by convention must vote with the government in divisions or resign. This so-called 'payroll vote' is in long-term increase in the Commons. (For further discussion and details, see Section [2.4.1](#) and Figure [2.4b](#))

### **2. Undermining of the perceived value of parliamentary inquiry**

The perceived value of parliamentary inquiry itself has arguably been undermined by government decisions to hold a number of major investigations - including those related to the Iraq war - outside parliament. (For further details, see the [Introduction](#) to Section 2.4)

### **3. Evidence of an overstretching of parliamentary committees, combined with poor attendance by members**

Some observers have warned that the work capacity of committees (and the MPs who serve on them) are being stretched by ever-increasing committee responsibilities. At the same time, low attendance levels of MPs on select committees is a particular cause for concern, and can to some extent be attributed to the wide range of competing demands which MPs have on their time. (For further discussion and details see Section [2.4.3](#) and Figure [2.4h](#))

### **4. Dependence on the House of Lords**

The House of Lords makes an increasingly valuable contribution to parliamentary processes through legislative scrutiny and committee work. However, this dependence on an unelected body lacking in democratic legitimacy is problematic. (For further discussion and details, see Sections [2.4.1](#), [2.4.2](#) and [2.4.3](#) and Case Study [2.4h](#))

### **5. Inequity of the resourcing of parties within parliament**

Opposition parties receive financial support for their parliamentary activities known as 'Short Money', which is determined on a formula relating to their past electoral performance. In so far as it is partly based on seats held in the Commons, this system arguably reinforces the distorting impact of the first-past-the-post electoral system used for the House of Commons. (For further discussion and details, see Section [2.4.5](#), Case Study [2.4i](#) and Figure [2.4i](#))

### **6. The inability of parliament to determine who forms a government after an inconclusive general election.**

A consequence of the persistence of the royal prerogative is that the appointment of the prime minister is a personal power of the monarch. There is no formal vote to determine who is prime minister, even in circumstances of no overall majority in the House of Commons, as occurred in May 2010. Legislatures are able to determine their head of government through an investiture vote in countries such as Germany and, within the UK, in Scotland. However the Westminster parliament was unable to meet to express a view until deals had been struck at elite level, with appointments made and approved by an unelected, unaccountable head of state. (For further discussion and details, see [Introduction](#), Section [2.4.3](#) and Case Study [2.4f](#))

## Introduction

Parliament is responsible for a variety of functions crucial to the effectiveness of UK democracy. They include holding government to account; scrutinising, amending and passing legislation; and authorising the government to raise and spend taxation. As the body from which the government is drawn, the confidence of parliament (or, more precisely, that of the House of Commons) is also required in order for the government to remain in office. Finally, parliament raises with the government issues brought to it by members of the public; and can act as a forum for public debate.

The following section considers the independence of parliament from the executive and the freedom of its members to express their opinions; the powers of parliament to oversee and hold to account the executive; the extensiveness of procedures for the approval and supervision of taxation and public expenditure; the freedom of parties and groups to organise within parliament; parliamentary procedures for consulting the public and relevant interests; the accessibility of elected representatives to constituents; and the performance of parliament as a forum for public deliberation. It does not deal directly with the MPs' expenses scandal, which is covered elsewhere (see [Introduction](#) to Section 2.6).

There are important restraints upon the democratic effectiveness of parliament. Of the two chambers of the UK parliament, only the House of Commons possesses direct democratic legitimacy (albeit via a disproportionate electoral system), as every elector in the UK is represented there by a single MP based in the constituency in which they live. Given that the House of Lords is, by contrast, wholly unelected, it follows that the constitution of parliament could not be said to be entirely democratic.

Moreover, the principle of parliamentary sovereignty - a doctrine central to the UK constitutional tradition - is not generally conducive to the existence of a strong, autonomous parliament capable of discharging its various democratic functions. Because of the fusion rather than separation of powers that the notion of parliamentary sovereignty produces, it is associated with an unhealthy concentration of power at UK executive level - in practice, meaning the sovereignty of the executive under the control of whichever party (or parties) holds office at a given time.

There have been significant reforms to the way parliament operates in the period of the present Audit. They include changes to the way the membership of select committees is determined and the way these committees operate; and mechanisms for legislative scrutiny and financial oversight. However, the potential impact of all these shifts is limited by the broader structural constraints set out above. Consequently, the fundamental problem of an executive-dominated legislature helping facilitate over-centralised government remains; as does that of an unelected second chamber.

A major alteration to this problematic framework would be achieved if the current coalition proposal for a wholly or mainly elected second chamber is implemented. However, there is resistance to this idea from within both chambers of parliament and within the the Conservative Party. It is also unclear how determined the government as a whole is to achieve this reform objective, or whether it will be abandoned.

Circumstances surrounding the Iraq War of 2003 served to highlight the pitfalls associated with the concentration of power at the executive level, and the difficulties that parliament can experience in contributing to the democratic process (see Case Study 2.4a below). The revelations produced by the war about the place of parliament within the UK constitution helped trigger certain, ameliorative reforms. But there remains significant room for improvement. Indeed, the establishment of the coalition government in May 2010 revealed how parliament can be of little direct relevance to momentous political developments. While in countries such as Germany - and, within the UK, in Scotland - legislatures are able to determine their head of government through an investiture vote, the Westminster parliament was unable to meet to express a view until deals had been struck at elite level, with appointments made and approved by an unelected, unaccountable head of state. Although there was some role for less formal inter- and intra-party politics, parliament as such was simply required to endorse a *fait accompli*.

### Case Study 2.4a: The Iraq War and parliament

Parliament was unable to recall itself from recess in the autumn of 2002, when it seemed an invasion of Iraq was looming, because the power to reconvene it effectively resides with the executive.

The votes that were held in the Commons in advance of the operation in February and March 2003 took place not because they were formally required, but because the government decided they were politically necessary. Furthermore, ministers - and in particular the prime minister - enjoyed significant flexibility over such matters as the timing of the votes, the information that was provided to parliamentarians and the motions that were put.

Parliament could not obtain expert advice of its own on the international legality of the action, and did not have a right to view all the work of the government's most senior law officer, the attorney general.

Finally, when the time came to investigate the Iraq War, inquiries held outside parliament obtained better access to witnesses and evidence, and received more public attention, than those held within parliament.

Source: Burall et. al. (2006); Blick (2005).

## 2.4.1 The independence of parliament from the executive

How independent is the parliament or legislature of the executive, and how freely are its members able to express their opinions?

### ***Independence of parliament from the executive***

The general nature of the relationship between the House of Commons and the executive has been expressed in previous full UK Audits. The 1999 Audit referred to (Weir and Beetham, p. 495) 'a House of Commons which is reluctant to assert its own rights against the executive, preferring to accept the executive's views of the conventions which govern their relationship rather than provoke it to insist on something worse'. In a similar vein, the 2002 Audit (Beetham et. al., p. 134) noted that:

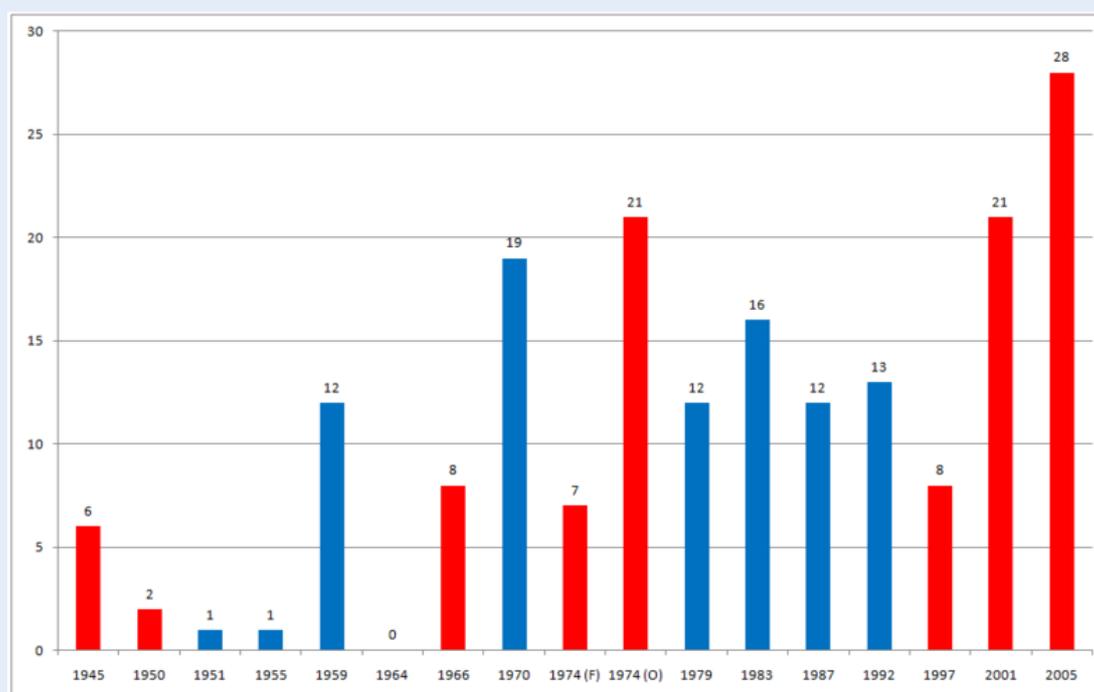
'government usually commands a party majority in the Commons, swelled by an electoral system that gives it more seats than its votes justify; in most circumstances, government MPs support its policies, actions and legislation out of loyalty and self-interest'.

Developments since 2002 suggest that while certain qualifications must be made, the basic premise that the government dominates the Commons - and through the Commons, parliament - has not been altered. Indeed, this position arises from the fundamental nature of the UK constitution as a parliamentary system with a fusion, rather than separation, of powers. To alter this arrangement would be a massive constitutional shift, raising various problems of its own. In its absence reforms to the legislature - though they have been, and arguably will continue to be, necessary - seem likely to yield only marginal, and possibly diminishing, returns (for discussion of these issues see, for example, [Flinders and Kelso, 2011](#)).

Parliament - and in particular, the House of Commons - continues to be dominated by the government (or rather governing party/parties) and the party system as a whole. Parliamentary business is largely determined by agreements between the respective whips. Among MPs of the governing party (or parties), the possibility of future appointments to ministerial posts acts to discipline those who sit on the backbenches; while ministers (drawn predominantly from the Commons) provide the government with a guaranteed bloc of support in parliament due to the convention of collective responsibility, which stipulates that they must either vote with the government in divisions or resign. The embedded importance of party discipline in parliamentary proceedings is reflected in the public funding made available to support the activities of government and opposition whips as part of the 'Short Money' allocated to parties represented in the House of Commons (for further discussion of which, see Section [2.4.5](#)).

There has been no strong evidence of an increase in independent behaviour by the backbenches. While the noted increase in rebellions by MPs on the government side (see Figure 2.4a) might be said to provide a *prima facie* case for the increased independence of parliamentarians, the act of defying the whip does not in itself amount to meaningful independence - particularly in circumstances where it is highly unlikely to lead to a defeat for the government. Indeed, increasing rebellions may partly be a symptom of poor communications between government and backbench MPs; or of ideological shifts within parties (for instance, resistance to New Labour from some Labour backbenchers, and Euroscepticism on the Conservative backbenches), rather than a sign of increasing autonomy on the part of the backbenchers.

Figure 2.4a: Backbench rebellion rate, by parliament, 1945-2005 (percentage of divisions to see a rebellion by at least one government backbencher)



Source: Cowley and Stuart, as presented by [Cowley \(2011\)](#).

During the period from 2002 until the end of the Blair premiership in 2007, no reforms substantially affecting the institutional independence

of parliament from the executive were introduced. Some relevant measures were initiated as part of Gordon Brown's 'Governance of Britain' programme, launched when he first arrived at No 10 in 2007. They included alterations to the Intelligence and Security Committee (ISC), responsible for oversight of the intelligence and security agencies, to make it more closely resemble a proper parliamentary committee than a creature of the executive (see [Ministry of Justice, 2007, pp. 31-32](#); and for further discussion, Section [2.5.2](#)).

At the end of the last parliament, the Select Committee on the Reform of the House of Commons made proposals that would serve to enhance the autonomy of the Commons, in particular by reducing the power of the whips (see Case Study 2.4b). Following the 2010 general election, elections were held for chairs and members of select committees, and the Backbench Business Committee was established. It is as yet too soon to ascertain the full practical impact of these changes, but in themselves they already represent an important principled movement towards greater legislative independence.

### Case Study 2.4b: The Wright Committee proposals

The Select Committee on the Reform of the House of Commons was established, under the chairmanship of Tony Wright MP, in July 2009 and in the wake of the MPs' expenses scandal (for further details of the latter, see Section [2.6](#).) Its terms of reference were to investigate the appointment of members and chairs of select committees; the scheduling of business in the house; and the ability of the public to initiate debates and proceedings. Its recommendations, issued in November 2009, included that:

- 'Chairs of departmental and similar select committees be directly elected by secret ballot of the House using the alternative vote'.
- 'Members of departmental and similar committees should be elected from within party groups by secret ballot'.
- Backbench business should be organised by a 'Backbench Business Committee, responsible for all business which is not strictly ministerial'.
- The 'primary focus of the house's overall agenda for engagement with the public' should be shifted towards 'actively assisting a greater degree of public participation'.

Source: [House of Commons Reform Committee \(2009\)](#).

Another coalition change is for the introduction, through the Fixed-term Parliaments Act 2010, of fixed-term parliaments of five years, with earlier general elections being possible only if 66 per cent of all MPs support a dissolution (with provision for an election to take place if there is a deadlock following a no-confidence vote against a government). In a sense, this change would represent a shift in power away from the prime minister and towards parliament - as previously the prime minister enjoyed the sole right to request dissolutions at the time he or she chose. However, as discussed elsewhere, five years is an unusually long fixed term, and this shift in the UK constitution should arguably have been subject to wider and fuller consultation. The outcome will be that general elections - the main means by which the UK population participates in democracy - become less frequent (for discussion of the Fixed-term Parliaments Bill, now an Act, see [Political and Constitutional Reform Committee, 2010](#); [House of Lords Constitution Committee, 2010a](#)).

Yet, despite the need for qualification, the 2002 critique of the executive/parliament relationship quoted above has by no means been rendered redundant and in some areas has become more apt.

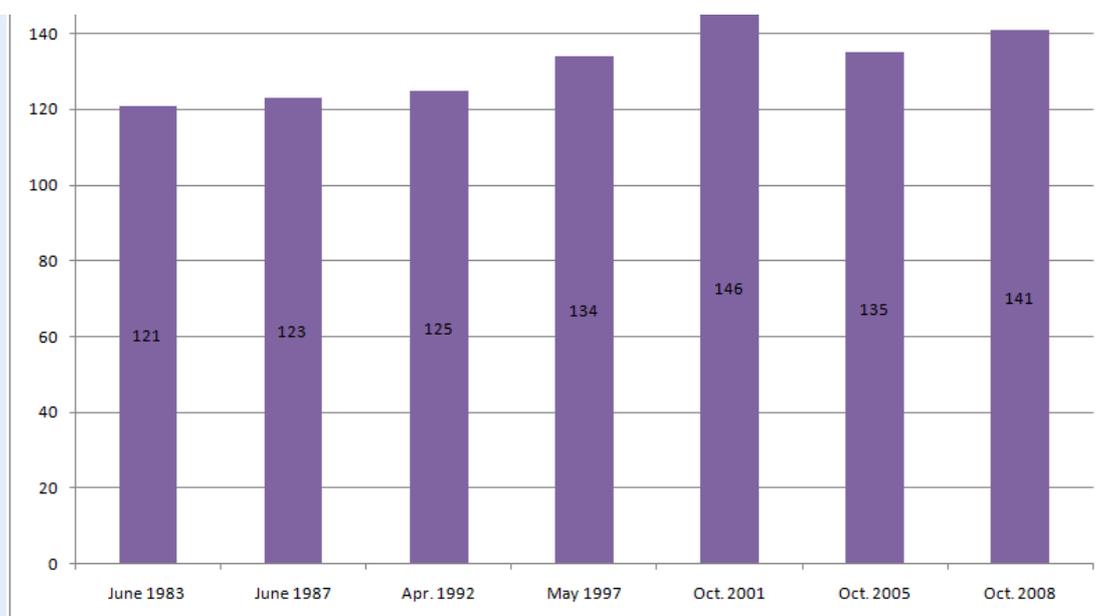
Even with select committee chairs and members being elected, the allocation of chairships between parties is made in advance; and the elections for committee members take place within party groups, arguably providing them with a partisan rather than a cross-parliamentary mandate (although there are strong practical justifications for both of these methods).

Another tendency serving to undermine the independence of parliament is the long-term increase in the so-called 'payroll vote' - that is, of members of the government bound by convention to vote with it in divisions or resign - in the Commons (see Figure 2.4b). The size of this block is also relatively high when placed in international comparison (see [PASC, 2010](#)). The proportion of ministers to MPs in the Commons is likely to grow further with the reduction in the number of MPs from 650 to 600, which will be brought about by the Parliamentary Voting System and Constituencies Act 2011 (for an assessment of this and other legislation, see Section [1.1.5](#)).

Figure 2.4b: Size of payroll vote in the Commons, 1983-2008



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Source: [Powell and Lester \(2010\)](#).

### **The House of Lords**

Historically, a democratic problem with the Lords (aside from its being unelected) was that it contained an inbuilt majority for one party, the Conservatives, regardless of which party had formed the government. Under New Labour, following the removal of most of the hereditary peers from the House of Lords in 1999, the Lords came not to be dominated by any one party, and enjoyed in this sense a degree of independence from the executive. However, the coalition has decided that, pending further reform of the House of Lords, the composition of the house should reflect the vote share received by parties in the most recent election to the Commons. Consequently, the coalition government enjoys a majority in both chambers, undermining the independence of the Lords and potentially detracting from its value as a check on the executive.

### **Freedom of members to express their opinions**

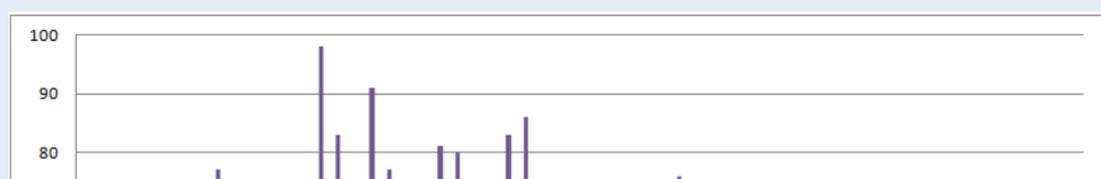
The freedom of speech of parliamentarians - part of the set of rights known as 'parliamentary privilege' - is provided for by Article IX of the Bill of Rights of 1689 (See [Joint Committee on Parliamentary Privilege, 1999](#)). They are constrained by arguably archaic rules on the way in which they speak; and are subject to *sub judice* rules (for instance over issues related to the Hutton Inquiry when it sat in 2003). It could be argued as well that things that parliamentarians say in parliament (as well as the way they cast their vote) may be held against them by their respective whips, with a detrimental effect on their careers.

## 2.4.2 Parliament's powers over legislation

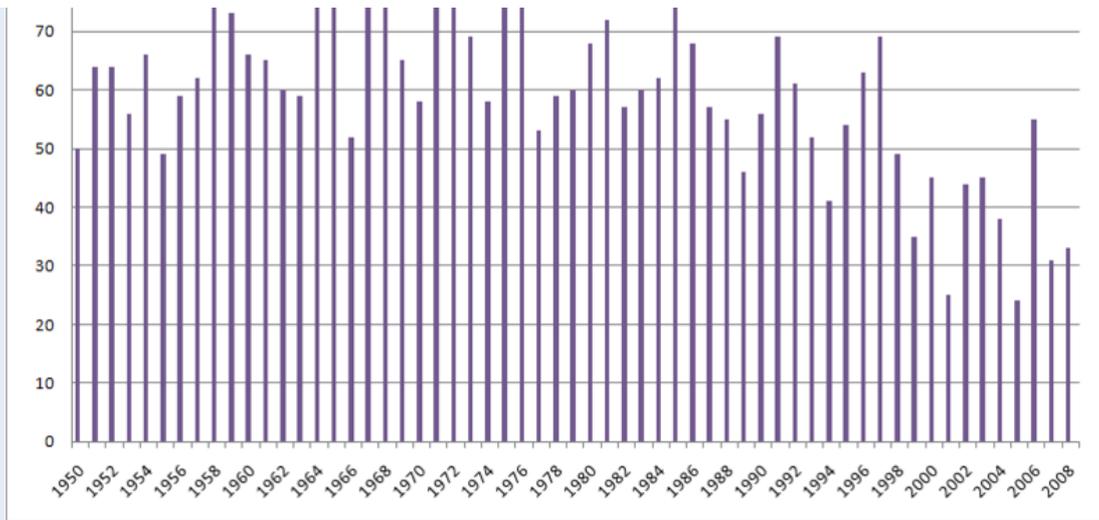
How extensive and effective are the powers of the legislature to initiate, scrutinise and amend legislation?

In practice it is the executive, not the legislature, which initiates the overwhelming majority of legislation. For instance, in the 2006-07 session, 30 government bills became law, compared to only 3 private members' bills (that is, bills initiated by backbenchers). There is an ongoing overall rise in the quantity of legislation, stretching the capacity of parliament to scrutinise it effectively. There has been a deceptive trend for a decline in the number of acts of parliament for a period of three to four decades (see Figure 2.4c).

Figure 2.4c: Acts of parliament, 1950-2008



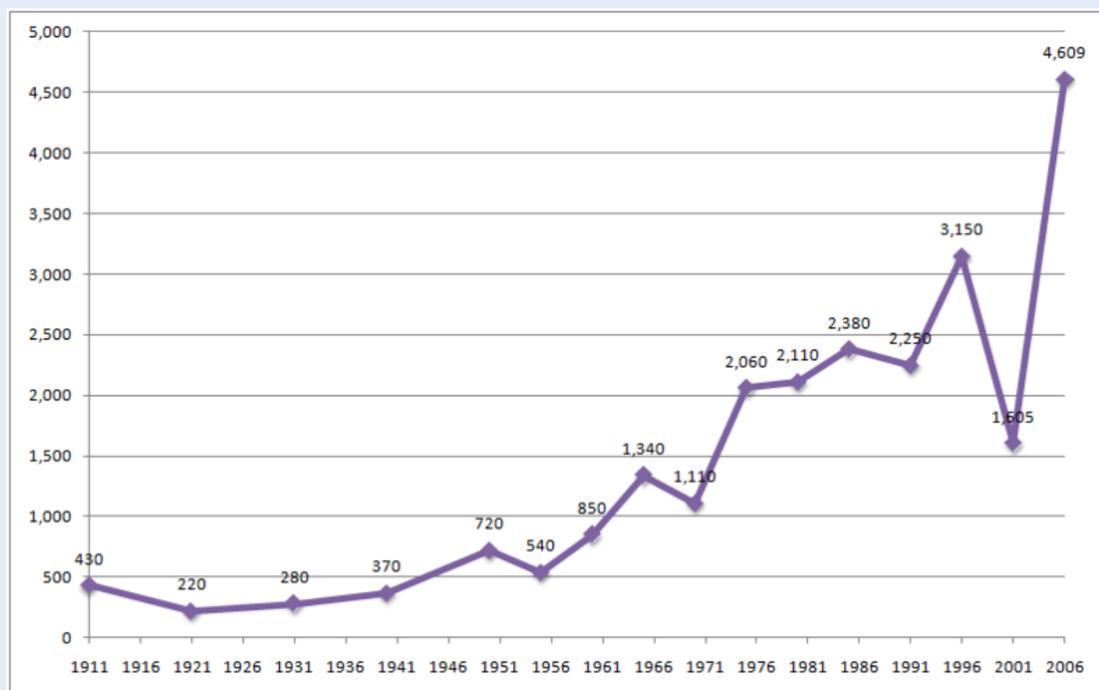
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Source: [Lightbown and Smith \(2009\)](#).

But the number of *pages* of primary legislation passed has grown substantially (see Figure 2.4d).

Figure 2.4d: Pages of primary legislation by selected years, 1911-2006

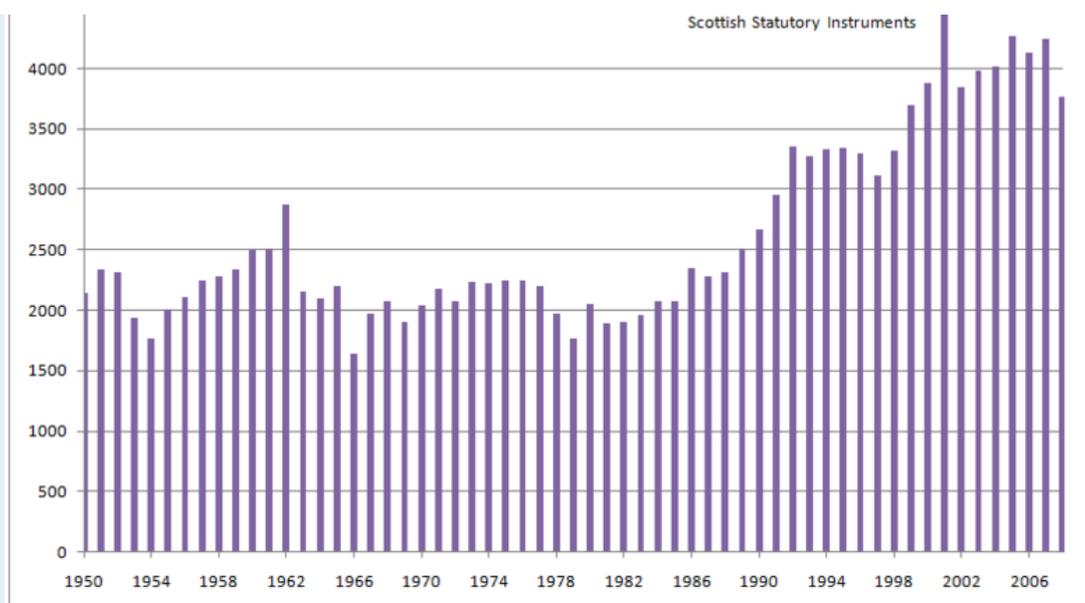


Source: [Lightbown and Smith \(2009\)](#).

Another significant growth area over time has been in secondary legislation (see Figure 2.4e).

Figure 2.4e: Statutory instruments, 1950-2008





Source: [Lightbown and Smith \(2009\)](#).

### Legislative committees

Primary legislation in the form of acts of parliament is in theory scrutinised line-by-line, and possibly amended, in bill committees. But the quality of this oversight is subject to timetabling restrictions; lack of expertise (and often interest) among MPs drafted onto committees; and the influence of the whips. The previous full audit (Beetham et al., 2002, p. 134) stated that:

'the ad-hoc "standing" committees that scrutinise legislation in the Commons are purely partisan bodies on which the governing party majority sit simply to assist the fast passage of government bills'.

Recognition of this area of weakness led to the replacement of the old 'standing committee' system with the Public Bill Committee (PBC) in the 2006-07 parliamentary session. In addition to carrying out line-by-line scrutiny, the task that had been undertaken by standing committees, PBCs were empowered to receive oral and written evidence (see Case Study 2.4c).

#### Case Study 2.4c: Public Bill Committees: excerpts from review of initial operation by the Constitution Unit

In 2009 the Constitution Unit produced an initial assessment of the impact of Public Bill Committees (PBCs). It found that:

- *The appearance of expert witnesses before PBCs has increased the quality and quantity of information available to committee members. The reforms have enhanced transparency of briefing by outside organisations, providing an official platform to inform and influence parliament's consideration of legislation.*
- *Members of PBCs are...more engaged with the task of legislative scrutiny, and backbenchers are becoming more confident participants in the committee stage.*
- *Debate is more fruitful, and the flexibility of each PBC to divide its time between witness and detailed scrutiny sessions as it sees appropriate, is welcome.*

While concluding that 'the new committees should certainly be welcomed and encouraged', the Constitution Unit report also identified problems with PBCs, including:

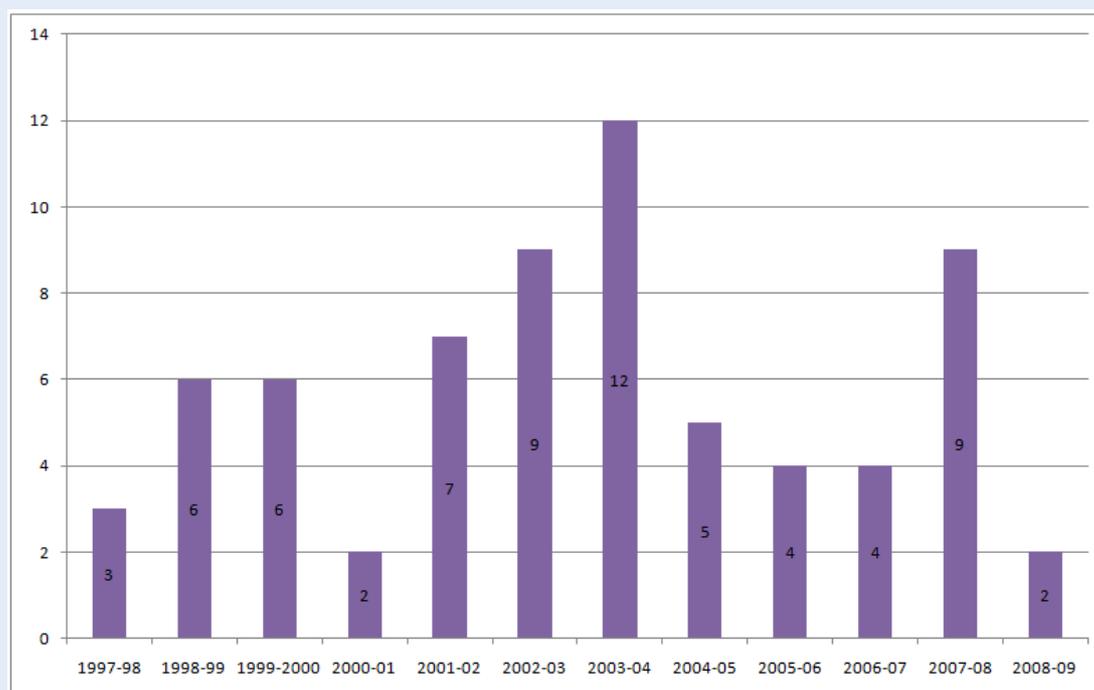
- *Their timetabling limits members' ability to deliver effective scrutiny, with insufficient time to prepare for the committee stage, or to reflect on what is learnt through evidence-taking before moving to line-by-line scrutiny.*
- *A lack of committee ownership over witness selection, at present an opaque process orchestrated via the usual channels, is a key grievance. This report recommends that the committee itself should determine its timetable and list of witnesses.*
- *Concerns that committee memberships fail to reflect the balance of opinion in the House of Commons also need to be addressed. One possible reform would be to alter the composition of the Committee of Selection to diminish whip influence.*

Source: [Levy \(2009\)](#).

### **Pre- and post-legislative scrutiny**

Recent attempts to improve the quality of legislative scrutiny have included the increased use of pre-legislative scrutiny, which involves consideration of a bill in draft form. However, the amount of pre-legislative scrutiny that can be conducted depends on the quantity of legislation that the government chooses to publish in draft form, which has been variable (see Figure 2.4f).

Figure 2.4f: Draft Bills published since Session 1997-1998



Source: [House of Commons Liaison Committee \(2010\)](#).

The [Liaison Committee \(2010\)](#) has recently complained that: 'of the seven draft bills announced by the government for the 2008–09 session, only two [...] were published in time for scrutiny within that session.'

Another development has been the greater formalisation of the process of *post-legislative* scrutiny. However, the process formally set out by the government in 2008 leaves it with a degree of discretion as to which acts will be subject to such scrutiny (see [Office of the Leader of the House of Commons, 2008](#)).

### **Secondary legislation**

Overwhelmingly, secondary legislation (legislation issued under powers provided for by primary legislation) is neither debated nor voted on by parliament. Even the minority of secondary legislation - or statutory instruments (SIs), as they are more commonly known - for which express approval of the legislature is required cannot be amended, but only accepted in full or rejected. The Commons has not rejected an SI since 1979; the Lords last did so in 2000 (see Case Study 2.4d for details of how parliament processes SIs).

#### **Case Study 2.4d: Statutory instruments and parliament**

About 200 statutory instruments (SIs) a year require express approval from parliament ('affirmative procedure'); about 1,100 pass unless parliament specifically objects ('negative procedure'); with around 2,200 being subject to no parliamentary control at all.

There is a Joint Committee of both houses on statutory instruments. It is concerned with whether a particular statutory instrument exceeds the powers provided for by the parent legislation; and whether it represents an 'unusual or unexpected' use of this authority. The committee does not concern itself with the merits of secondary legislation; nor does it scrutinise powers as they are being created in primary legislation. These latter two tasks are the responsibility of House of Lords committees.

The House of Lords Committee on the Merits of Statutory Instruments has a responsibility to draw the attention of the House to measures that are politically or legally important; if changed circumstances render them inappropriate; if they implement EU legislation improperly; or if they achieve their policy objectives imperfectly. The Lords Select Committee on Delegated Legislation and Regulatory Reform advises on 'whether the provisions of any Bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny'. This latter committee also scrutinises draft secondary legislation produced under the authority of the Legislative and Regulatory Reform Act 2006.

No equivalent committees operate in the Commons (although the Commons Regulatory Reform Committee scrutinises draft orders under the 2006 act). The Commons Procedure Committee has since 1996 recommended the introduction of a Commons committee performing the same function as the Lords Merits of Statutory Instruments Committee.

The European Scrutiny Committee in the Commons and the European Union Committee in the Lords both play a part in scrutinising proposals for European legislation, some of which is ultimately enacted in the UK through SI under the European Communities Act 1972.

Source: [Blick \(2010\)](#); [UK Parliament \(undated\)](#).

SIs vary greatly in their significance. They can be used for controversial measures. For instance the Identity Cards Act 2006 created various powers to extend the scope of the National Identity Register by SI. When scrutinising the granting of secondary powers in primary legislation, it can be difficult for parliament to assess precisely the uses to which it will be put.

A particular area of concern has been over the creation of so-called 'Henry VIII' powers, enabling ministers to amend primary legislation through SI. The House of Lords Constitution Committee recently took issue with the Public Bodies Bill produced by the coalition because it creates such powers (see Case Study 2.4e).

### Case Study 2.4e: House of Lords Constitution Committee report on the Public Bodies Bill: excerpts

*3. The Bill grants extensive powers to Ministers to abolish, to merge, to modify the constitutional arrangements of, to modify the funding arrangements of, to modify or transfer the functions of, or to authorise delegation in respect of a very significant number and range of public bodies, as listed in the Schedules to the Bill.*

*4. The majority of these public bodies were created by statute (some were created by Royal Charter). Thus, the Bill vastly extends Ministers' powers to amend primary legislation by order. Such powers are commonly referred to as 'Henry VIII' powers. We have several times in recent years reported on the extended use of such powers. As we have previously acknowledged, while they may have become an established feature of the law-making process in this country, they remain a 'constitutional oddity'. That is: they are pushing at the boundaries of the constitutional principle that only parliament may amend or repeal primary legislation.*

*5. Where the further use of such powers is proposed in a Bill, we have argued that the powers must be clearly limited, exercisable only for specific purposes, and subject to adequate parliamentary oversight. When assessing a proposal in a Bill that fresh Henry VIII powers be conferred, we have argued that the issues are 'whether Ministers should have the power to change the statute book for the specific purposes provided for in the Bill and, if so, whether there are adequate procedural safeguards'. In our view, the Public Bodies Bill [HL] fails both tests.*

Source: [House of Lords Select Committee on the Constitution \(2010b\)](#).

### **The House of Lords and legislative oversight**

In a bicameral system such as that of the UK parliament, it might be appropriate to expect the upper chamber to act as a check upon

legislative proposals emerging from the government-dominated Commons. This function could be seen as particularly valuable given the growing quantity of laws being produced. But the role of the House of Lords in the legislative processes of parliament is restricted by the principle of House of Commons primacy. The justification usually offered for this subordination of the Lords is its unelected nature. While it is certainly the case that there are democratic problems with the Lords, reform in this area, which would legitimise a more active role for the second chamber, has been exceptionally slow to come about; and one of the blocks on such a change has been the reluctance of the Commons to create a chamber with a rival democratic mandate to its own.

Commons primacy is underpinned both by legislation and convention (for Commons primacy in financial matters, see Section [2.4.4](#)). Under the Parliament Acts 1911 and 1949 the most important types of legislation over which the Lords possesses an absolute veto are any bill first introduced to parliament in the Lords; any bill extending the duration of parliament beyond the present maximum of five years; and any secondary legislation. Any other public non-money bill (for money bills, see Section [2.4.4](#)) passed by the Commons in two successive sessions will, if rejected by the Lords on both occasions, be sent for Royal Assent anyway. In practice the Lords can delay legislation of this sort for not less than thirteen months after it first receives a second reading in the Commons.

The Parliament Acts have been used to force through legislation without the consent of the Lords on seven occasions, by Liberal, Labour and Conservative governments. The most recent such use occurred during the current Audit period, for the Hunting Act 2004. There followed a legal challenge to this act, on a basis that the Parliament Act 1949 was invalid, because it both amended the Parliament Act 1911 and was passed into law against the wishes of the Lords using the 1911 act. In the challenge to the Hunting Act 2004 it was argued that the Parliament Act 1911 was not intended to be used to amend itself, and that therefore the Parliament Act 1949, and by extension the Hunting Act 2004 which was passed using the 1949 act, were invalid. While this particular challenge failed, comments made by some law lords when giving their judgements in the case suggested that there might be limits to the uses to which the Parliament Acts could be put in forcing through legislation. For instance, a court might hold that the acts could not be used to remove the ability of the Lords to veto extensions to the life of a parliament. The removal of this veto ability would then leave the way open for the Commons to use the Parliament Acts to extend the life of a parliament: clearly contrary to the purpose of parliament in passing the 1911 act. It seems appropriate that, in the absence of a written UK constitution setting out the fundamental democratic rules, the judiciary should be prepared to resist such potential flagrant abuses of the Parliament Acts by a government using its Commons majority ([House of Lords Select Committee on the Constitution, 2006](#); see also the [Introduction](#) to Section 2.4).

As well as legislation, the House of Lords is restrained by constitutional convention in its ability to resist the will of the Commons. The so-called 'Salisbury-Addison doctrine', dating to 1945, requires the Lords not to obstruct legislation enacting pledges included in the general election manifesto of the governing party. The existence since 2010 of a coalition government with no single manifesto to draw upon has cast doubt upon the continued relevance of Salisbury-Addison. There are, however, claims (often made in particular by the governing party or parties of the day) that there exists some kind of principle that the Lords should be reluctant to resist any government legislation. There also appears to be a convention that the Lords will be sparing in its use of its ability to veto secondary legislation. This veto power has been used on only three occasions, and in each case the Lords backed down when asked to pass the secondary legislation again ([Joint Committee on Conventions, 2006](#)).

Yet while it is subject to Commons primacy, the Lords has been portrayed as playing an increasingly constructive and valuable role in the legislative process. A Constitution Unit report analysing the work of the Lords during 2006 found that the government was defeated there 52 times; and substantial concessions were made by the government to the Lords. It noted that the Lords was able to work in conjunction with the Commons to bring about alterations to legislation. Areas of success identified included the Identity Cards Bill, the Police and Justice Bill and the Racial and Religious Hatred Bill ([Russell and Sciara, 2007](#)). In such cases, a perverse phenomenon has developed: the Lords is being relied upon to resist legislation which might undermine democratic principles, yet in so doing it could be seen as an unelected chamber seeking to frustrate the will of an elected one.

### 2.4.3 Parliament's powers over the executive

How extensive and effective are the powers of the legislature to oversee the executive and hold it to account?

The ability of the UK parliament to hold the government to account is hindered by the organisational complexity of central government and certain discretionary powers possessed by the executive. As recognised in previous audits (Weir and Beetham 1999; Beetham et al., 2002), reconciling the doctrine of ministerial accountability to parliament with the size and sophistication of the bureaucratic machines, executive agencies and quangos for which ministers are formally responsible is difficult. However, it is a task made more complicated by the existence of executive powers exercised under the royal prerogative, which delimits a significant set of powers - including to make decisions to enter into armed conflict and confer Royal Charters - in which neither the Commons nor the Lords normally has any *specific right* to be involved at all (for further details, see Case Study 2.4f).

These concerns are both longstanding. Yet during the period of the present Audit, new developments have also served to further muddy the

waters of ministerial accountability. During the 2000s, for instance, a quasi-department of the prime minister began to emerge more clearly than before, employing record numbers of staff and engaging in various new functions - despite the fact that, traditionally, the office of prime minister has few specific policy responsibilities. Given that the established position has always remained that secretaries of state are responsible for policy (money is voted to secretaries of state by parliament; many of their powers derive from statute; and parliamentary accountability mechanisms are primarily focused on secretaries of state), this development has created a blurring of responsibility and an additional difficulty in securing parliamentary accountability through traditional routes (see Blick and Jones, 2010; [House of Lords Select Committee on the Constitution, 2010c](#)).

### Case Study 2.4f: The royal prerogative

The royal prerogative is a set of powers once wielded personally by monarchs, and now in practice exercised largely by ministers and officials. These powers are non-statutory, meaning that parliament has never approved them; and it largely has no formal role in their exercise. They include:

- War powers
- Organising and controlling the armed forces
- The Prerogative of Mercy
- Powers in the event of a severe national emergency
- Powers to keep the peace in the absence of an emergency
- Granting charters, including the BBC Royal Charter
- To call independent public inquiries
- Issuing and revoking passports
- Recognising states and acquiring and ceding territory
- Conducting diplomacy
- Treaty-making (subject to the provisions of the Constitutional Reform and Governance Act)
- Governing British territories overseas

There also exist certain powers which remain personal to the monarch. Some are exercised solely on advice - often from the prime minister - including the appointment of ministers; while others may conceivably be exercised with some personal discretion, including the appointment of the prime minister when, in circumstances of a Commons with no overall majority, there is more than one candidate. As part of the Governance of Britain programme launched by the Labour government in 2007, the Constitutional Reform and Governance Act 2010 reduced the scope of the royal prerogative in two key areas. It placed the civil service on a statutory basis and gave parliament a limited power to oversee treaty-making, though this function nonetheless continues to be exercised under the royal prerogative (for further details, see Section [4.2.4](#)).

Source: [Ministry of Justice \(2009\)](#).

It is from within this vaguely Kafkaesque context of bureaucracy and discretionary executive power that parliament must seek to secure an appropriate degree of oversight over the actions and policies of government. To this end, it possesses a number of useful tools, including parliamentary questions, debates, votes (or 'divisions') and committee work. Yet the effectiveness of these various mechanisms is variable. Furthermore, all parliamentary efforts at achieving accountability take place within a constitutional system configured in such a way as to produce what is often termed 'strong government', whereby the government normally has an inbuilt dominance of the primary parliamentary chamber, the House of Commons ([Flinders and Kelso, 2011](#)). There have been a number of significant improvements, set out below, in the way parliament operates during the period under consideration in the present Audit. There may well remain scope for further change still. But the opportunities for enhancing parliamentary oversight and accountability remain limited by the overall framework within which it is exercised.

#### ***Debates, divisions and parliamentary questions***

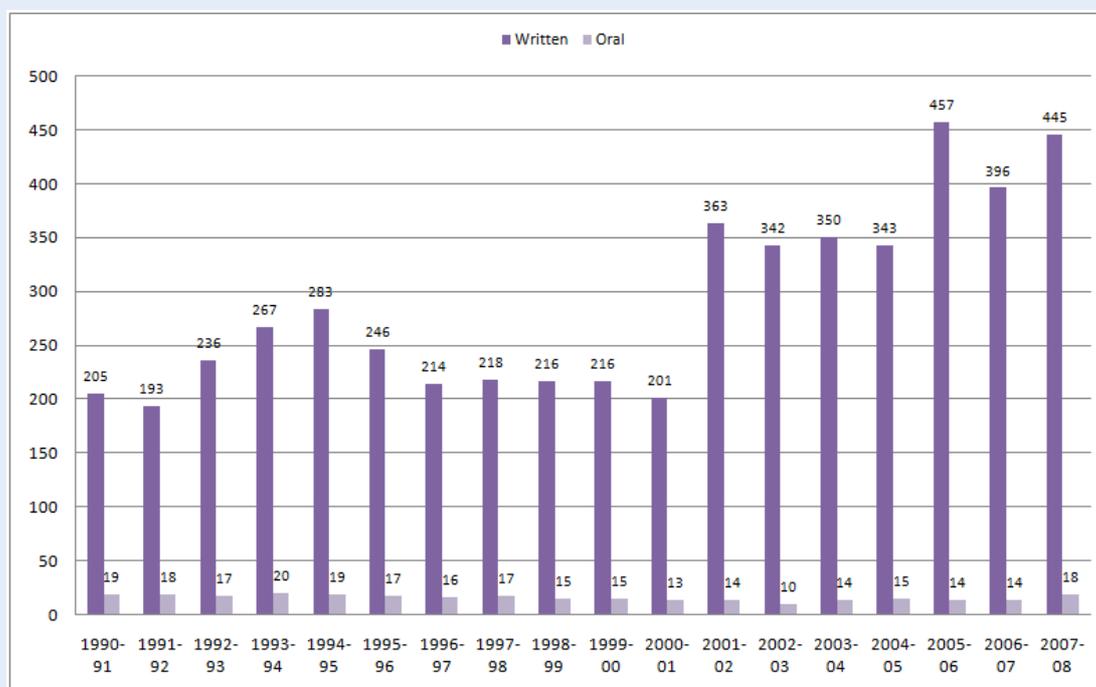
Debating and voting in parliament are perhaps the most publicly-visible ways in which MPs and peers scrutinise and oversee the work of government. The precise contribution of these practices to democratic effectiveness is difficult to measure, but their symbolic importance cannot be questioned. Debates can be held by the government, opposition parties or by backbenchers, and since 1999 have been made available for backbenchers to hold in Westminster Hall, where they receive a response from a minister. Yet with parliamentary proceedings dominated by the governing party, there is often no guarantee of a full and frank debate. Equally, a vote - while a fundamental prerequisite for meaningful democracy - does not in itself amount to effective democratic oversight when the government of the day has an inbuilt

majority (for rebellions, see Section 4.2.1 above). Furthermore, although the number of divisions in the Commons rose steadily after the Second World War, there has in any case - been a subsequent decline in recent years, meaning that the Commons is being asked to assent specifically to particular propositions less often.

Parliamentary questions can also be an effective means of eliciting important information from the government. A particular value of oral questions is that they can provide more discursive analysis of policy; while written questions offer the opportunity for obtaining detailed responses. However, these means of oversight suffer from weaknesses in practice. There is a notorious tendency for the government to provide evasive answers to questions, or to be asked questions that are simply sycophantic in nature (many of which are planted by the government itself). The number of written questions answered per day is rising, possibly meaning that more information about government activity is being obtained; but the number of oral questions, which are subject to time constraints of the parliamentary day, is static (see Figure 2.4g).

There exist other methods of supposedly achieving oversight and accountability which are of questionable value, including Early Day Motions (EDMs). All-Party Parliament Groups (APPGs) can achieve a valuable impact, as did the APPG on rendition, but they are of exceptionally variable nature and quality (see [Weir, 2007](#)).

Figure 2.4g: Written and oral questions answered per sitting day in Commons, 1990-91 to 2007-08



Source: [Lightbown and Smith \(2009\)](#).

### Select Committees

Parliamentary select committees are the most important vehicles for detailed oversight of government activity. At the heart of the system are the specialist select committees in the Commons, first introduced in their present form in 1979, that shadow particular departments. Alongside them there exist various thematic committees such as the Environmental Audit Committee (in the Commons), the Human Rights Committee (a joint Commons/Lords committee), and the various House of Lords select committees. Each Commons departmental select committee exists to scrutinise the policy, expenditure and administration of government departments, and to assist parliament by producing reports which inform debate and decision-making. This is an unusual role when placed in comparative international perspective - under many other parliamentary systems standing committees are primarily focused on legislation rather than policy. Consequently it is harder to establish 'good practice' for UK parliamentary select committees than it might otherwise be.

As noted previously by Democratic Audit, the introduction of select committees in 1979, which allow for systematic, ongoing scrutiny of government policy, has proved to be an advance for parliamentary accountability and oversight of the executive, albeit subject to limitations discussed below (Weir and Beetham, 1999, p. 494). However, potential improvements to the select committee system have regularly been

identified by organisations such as the Hansard Society, in its sustained engagement with this issue (see [Hansard Society, undated](#)). Partly under the influence of such reform proposals, a series of changes to the way these committees operate were introduced during the current Audit period.

In 2002, a set of 10 'Core Tasks' for select committees was introduced, arguably rendering their work more systematic and methodical (see [Brazier and Fox, 2011](#)). There has also been a significant increase in the resources available to committees (although they remain modest compared to committees in legislatures such as the US Congress). One particularly notable development in this area has been the establishment of the Scrutiny Unit in the 2003-04 session, which exists to:

- support select and other committees, primarily but not only in the areas of government expenditure, reporting on performance and pre-legislative scrutiny;
- provide staff for joint committees of both houses set up to scrutinise draft bills; and
- assist evidence-taking by Public Bill Committees.

Other valuable innovations to select committee activity include the evidence sessions that the Liaison Committee (which comprises the chairs of Commons committees) holds twice-yearly with the prime minister, which have been held since 2002. In 2003, payment in addition to the salary of an MP was introduced for select committee chairs, enhancing the status of the role and perhaps creating a career path in the Commons that does not necessarily involve being appointed a minister. In 2008, pre-appointment hearings by select committees for major public appointments were inaugurated as part of Gordon Brown's Governance of Britain agenda. Under this system, the Commons can consider the suitability and priorities of the favoured candidate as well as the selection process employed. Perhaps most significantly of all, elections for select committee chairs and members were introduced in 2010, in a change which enhances the independence of select committees from government (for further details of the proposals which led to this change, see Case Study 2.4b).

These developments have not all been unalloyed successes. The Liaison Committee's evidence sessions with the prime minister, for instance, have been criticised by a number of MPs as ineffective - a problem which some of them attribute to the unwieldy size of the committee ([Simons, 2011](#)). Pre-appointment hearings by committees, meanwhile, are subject to the limitation of being unable to block an appointment of which the committee does not approve (for further details, see [House of Commons Liaison Committee, 2008](#)). This is a significant handicap. A report into the initial operation of the pre-appointment hearings procedure up until the end of 2009 ([Waller and Chalmers, 2010](#)) found that in the only instance where a select committee did not endorse an intended appointment (the candidate for children's commissioner for England), the secretary of state confirmed the appointment regardless. The report found that while parliamentarians view the process as a valuable, if not spectacular, development, they have little confidence that negative recommendations will be acted upon; and that many MPs would like a power of veto over the preferred candidate of the government, or for the committee to see a range of candidates.

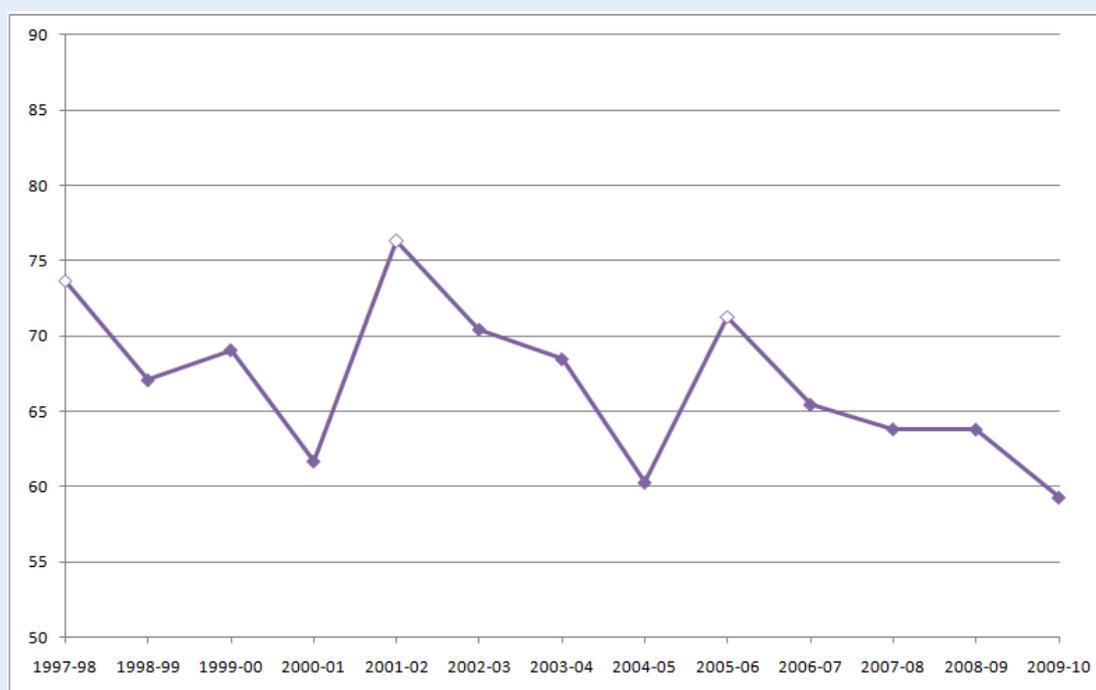
In addition, some of the old weaknesses of committees remain. For instance, their composition reflects the party balance in the Commons, meaning that bodies charged with overseeing the executive have a government majority. There is a problem with the obtaining of information as well. In 1999, Democratic Audit complained that (Weir and Beetham, 1999, p. 494):

'[select committees] do not have effective powers to insist that ministers, MPs or named officials attend their hearings; they cannot demand government documents as of right [...] and officials give evidence under the direction of ministers'.

The overall configuration of the UK constitution once again lies at the heart of this particular problem. Parliament possesses a right to send for 'persons, papers and records' that is *theoretically* unlimited. Yet there are strong conventions that the executive can resist such calls if it feels it necessary to do so. Moreover, it would require a full Commons vote to force a government to relent, which is unlikely to pass given government dominance of the Commons. The regulations stipulating how governments handle evidence-giving to committees, commonly known as the 'Osmotherly Rules' were, however, revised in 2005, the new wording of which suggested a shift in the direction of a greater presumption of cooperation with parliamentary inquiries on the part of the executive ([Cabinet Office, 2005](#)); though the difference that has been made in practice is debatable.

Another reflection of the unequal power relationship between legislature and executive is the regular complaint by Commons select committees of long delays in receiving government responses to their reports, or of the poor quality or evasiveness of those responses ([House of Commons Liaison Committee, 2010](#)). Indeed, the perceived value of parliamentary inquiry itself has arguably been undermined by government decisions to hold a number of major investigations - including those related to the Iraq war - *outside* parliament (see Blick, 2005; Burall et al., 2006). Calls to enhance the powers of select committees remain among the most prominent of the many demands made by those in favour of democratic reform (see, [Power Inquiry, 2006](#)).

Figure 2.4h: Average attendance levels on departmental select committees



Source: [House of Commons Sessional Returns](#).

Yet a lack of procedural powers is not the only handicap on the effectiveness of committees as scrutinisers of government. Joint working between select committees remains limited, despite the fact that it has been shown to be particularly effective in a number of instances. Others, meanwhile, have warned that the work of committees (and the MPs who serve on them) are being stretched by ever-increasing committee responsibilities (see [Brazier and Fox, 2011](#)). Low levels of attendance by MPs on select committees are a particular cause for concern. Figure 2.4h suggests that attendance at select committees peaks in the first session of each parliament and then declines as the next general election approaches. Poor attendance can to some extent be attributed to the wide range of competing demands which MPs have on their time. However, The [Liaison Committee \(2010\)](#) has argued that cultural change would in fact make the biggest contribution to changing the way committees work. In its words:

'The House must recognise that the work of select committees is fundamental to the discharge of its democratic function, and individual Members must recognise that service on a select committee is both a privilege and a core part of their role as democratic representatives. It demands consistent concentration and commitment'.

It is clear that there remain constraints on select committee effectiveness, most importantly those of a cultural and structural nature; and recently there have been calls for a review of their operation (see [Brazier and Fox, 2011](#)). Yet over the past decade this area has nonetheless seen a series of significant reforms, albeit within the limitations of the existing system. The ability of Commons select committees to make an important contribution to the quality of UK democracy should not be understated, as suggested by a recent assessment of their policy impact conducted by the Constitution Unit (see Case Study 2.4g).

#### Case Study 2.4g: The policy impact of House of Commons select committees

The Constitution Unit recently published research based on analysis of the activities of seven departmental select committees over the period 1997-2010. It found that:

- Committees are producing a large and growing number of reports.
- The government accepts and implements about 40 per cent of committee recommendations. Small proposals for change are more likely to be accepted; with about a third of more substantial recommendations succeeding.

- Other means of achieving influence are: contributing to debate; compiling evidence; highlighting issues and altering the priorities of ministers; 'brokering', meaning improvements to the transparency of departments and between departments; through bringing about accountability, exposure and the generation of fear.
- Maximum influence is achieved by select committees through a strategic approach, timeliness or tenacity. More could be done to follow-up previous work and implementation of proposals. The media can be useful in shaming government, but can also encourage 'ambulance chasing' by committees.

Source: [Russell and Benton \(2011\)](#).

### **House of Lords Committees**

Alongside the Commons select committees, there exist a set of Lords select committees and joint committees of both Houses, which seem to have been more effective during the present Audit period than at any earlier point. Though there is a problem of a lack of legitimacy, committees composed wholly or partly of peers are often able to contribute a more strategic, long-term approach to a variety of issues (partly because they do not shadow particular departments) and provide an outlet for the expertise present in the second chamber. An example of where the Lords committees fill a gap left by the Commons is in the meaningful scrutiny of European Union affairs and policy. Case Study 2.4h sets out the Lords and joint committees which are the most significant in terms of bringing about oversight and accountability of government.

#### **Case Study 2.4h: Significant House of Lords and joint policy oversight committees in the UK parliament**

- Communications Committee;
- Constitution Committee;
- Economic Affairs Committee (and its Finance Bill Sub-Committee);
- European Union Select Committee, including: Sub Committees A - Economic and Financial Affairs; B - Internal Market, Energy and Transport; C - Foreign Affairs, Defence and Development Policy; D - Agriculture, Fisheries and Environment; E - Justice and Institutions; F - Home Affairs; G - Social Policies and Consumer Protection;
- Human Rights (Joint Committee);
- National Security Strategy (Joint Committee); and
- Science and Technology

### **2.4.4 Parliamentary oversight of taxation and public spending**

How rigorous are the procedures for approval and supervision of taxation and public expenditure?

Effective oversight of taxation and expenditure is fundamental to all democratic accountability (for an outline of its operation in the UK, see Case Study 2.4i). But even within the context of the weakness of the UK parliament relative to the executive, financial accountability in the UK is flawed. In 2006 the Hansard Society ([Brazier and Ram, 2006, p. 9](#)) described how:

'In the field of taxation and public expenditure, government dominance over Parliament is particularly marked. When it comes to giving the government authorisation to raise and spend money Parliament is seen by many people as little more than an interested and acquiescent bystander [...] the UK is considered to have among the weakest systems for parliamentary control and influence over government expenditure in the developed world'.

Problems include the lack of participation of parliament in developing the budget; the failure of lessons learned during the course of the work of the National Audit Office/Public Accounts Committee to be applied properly across Whitehall; select committees not being

effectively integrated into public finances; and a lack of capacity and interest on the part of parliamentarians, preventing them from becoming properly engaged. The particular areas of shortcoming are the authorisation and scrutiny of future expenditure plans, with parliament better at investigating past expenditure. The House of Lords is not sufficiently involved in financial scrutiny either (for further details of which, see Case Study 2.4k).

### Case Study 2.4i: Financial scrutiny by the UK parliament

Financial scrutiny by the UK parliament falls into three categories:

**Scrutiny of Financial Legislation and Taxation**, taking in the Budget and the Finance Bill, debated and scrutinised by the House of Commons and considered by its Treasury Select Committee, which considers the pre-budget report as well. In the House of Lords, the Economic Affairs Committee carries out limited scrutiny of taxation legislation and financial proposals.

**Scrutiny of expenditure plans**, such as departmental annual reports, spending reviews and estimates.

**Scrutiny of government expenditure**, traditionally the primary task of the Commons Public Accounts Committee. Unlike any other parliamentary committee it has a substantial organisation to support it, in the form of the National Audit Office. The combined role of the two is to ensure that public money is spent on what it was voted for, in accordance with legal and other norms, and that value for money is obtained.

Source: [Brazier and Ram \(2006\)](#).

In recent years, the government has introduced various measures which have served to improve financial transparency, including Public Service Agreements; whole of government accounts; resource accounting and budgeting; and most recently the Treasury Alignment (or 'Clear line of sight') Project, first proposed by the government in 2009 (see Case Study 2.4j).

### Case Study 2.4j: The Treasury Alignment Project

The purpose of this project was to make consistent: the information included in budgets set within government for individual departments; estimates of government spending put to parliament to approve; and the accounts of departmental spending as audited by the National Audit Office. In the past, the information included has differed substantially. For instance, there was £129 billion in the departmental budgets for 2008-09 which was not part of the estimates presented to parliament. The House of Commons Liaison Committee broadly supported the Treasury Alignment Project on the grounds that it would:

'allow the controls exercised by Parliament to reflect those exercised within Government, and enable the House to track spending plans clearly as they are translated from plans for future years into precise figures requiring legislative authority for each year, and into actual spending recorded in the accounts'.

The Committee argued the change would:

'be a significant contribution to remedying one of the major gaps identified by this and other committees, that of the House's inability to examine effectively the spending plans of the future years of each Government Spending Review. Existing procedures are closely geared towards examination by the House of the current year's spending plans. Given that this is usually after the year has started, it is generally too late to have any effect. Better aligned and clearer figures will enable the various select committees of the House to examine the budget figures provided for years to come on the basis that they are 'draft Estimates' for those future years'.

But this in itself is not enough. The opportunities for committees and the House to debate and influence these figures need to be developed further.

Source: [House of Commons Liaison Committee \(2009\)](#).

Since its establishment in 2002, the House of Commons Scrutiny Unit has supported committees in their financial scrutiny work; and the 'Core Tasks' of select committees, also introduced in 2002, include considering departmental spending proposals (see Section 2.4.3). Reforms to the governance of the National Audit Office - including a maximum term limit for the comptroller and auditor-general (of ten years) and a new oversight board for the National Audit Office, as recommended by the Public Accounts Commission - will be provided for by the coalition's Budget Responsibility and National Audit Bill.

### **House of Commons Financial Privilege**

The House of Commons has primacy in financial matters, partly founded in convention dating to the seventeenth century, and also set out in Section one of the Parliament Act 1911 (see Case Study 2.4k).

#### **Case Study 2.4k: Excerpt from text of the Parliament Act 1911, Section 1, Powers of House of Lords as to Money Bills**

(1) If a Money Bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is so sent up to that House, the Bill shall, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified, notwithstanding that the House of Lords have not consented to the Bill.

(2) A Money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, [the National Loans Fund] or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this subsection the expressions "taxation", "public money", and "loan" respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes.

(3) There shall be endorsed on every Money Bill when it is sent up to the House of Lords and when it is presented to His Majesty for assent the certificate of the Speaker of the House of Commons signed by him that it is a Money Bill. Before giving his certificate, the Speaker shall consult, if practicable, two members to be appointed from the Chairmen's Panel at the beginning of each Session by the Committee of Selection.

The [House of Lords Constitution Committee \(2011, p. 6\)](#) recently noted 'one particular difficulty with money bills'. It was:

'The fact that money bills are certified only upon completion of all their Commons' stages means that there is likely to be a minimal length of time between such certification and introduction of a bill into this House. There is therefore a risk that a certification which was not anticipated by Members of the Commons or Lords may give rise to concerns that a bill may not, as a result, receive appropriate parliamentary scrutiny. For example, MPs scrutinising a bill in the Commons might select some aspects on which to concentrate in the expectation that Members of the Lords would focus on others'.

### **2.4.5 The freedom of parties within parliament**

How freely are all parties and groups able to organise within the parliament or legislature and contribute to its work?

There is no specific bar on any party organising in parliament, but there is inequity in the support made available for parties to facilitate their parliamentary roles. Opposition parties receive financial support for their parliamentary activities known as 'Short Money', which is determined on a formula relating to their past electoral performance (see Case Study 2.4i and Figure 2.4i). In so far as its value is partly based on the number seats held in parliament, this system arguably reinforces the distorting impact of the first-past-the-post system used for elections to the Commons (the parliamentary activities of the main parties are subsidised further because the government and official opposition whips offices in parliament also receive public funding - the latter under Short Money). Another effect of these rules is that very small parties can receive no support. The Ulster Unionist Party, for instance, ceased to qualify for Short Money after the 2005 general election because it had only one seat and secured less than 150,000 votes.

Sinn Fein, as Irish republicans, do not recognise the authority of the UK parliament and do not take up their seats or vote. This stance once

meant that they were denied access to parliamentary facilities and services and were unable to claim members' allowances. A Commons motion of late 2001 overturned this ban. Following a recommendation by the Northern Ireland Independent Monitoring Commission, allowances were suspended for one year from April 2005, although in November of the same year allowances were restored and backdated. In February 2006, the Commons voted to provide Sinn Fein with funding analogous to Short Money, which was previously denied to the party. However, Sinn Fein is still not permitted policy development funding under the Political Parties, Elections and Referendums Act 2000 (see [Kelly, 2010](#)).

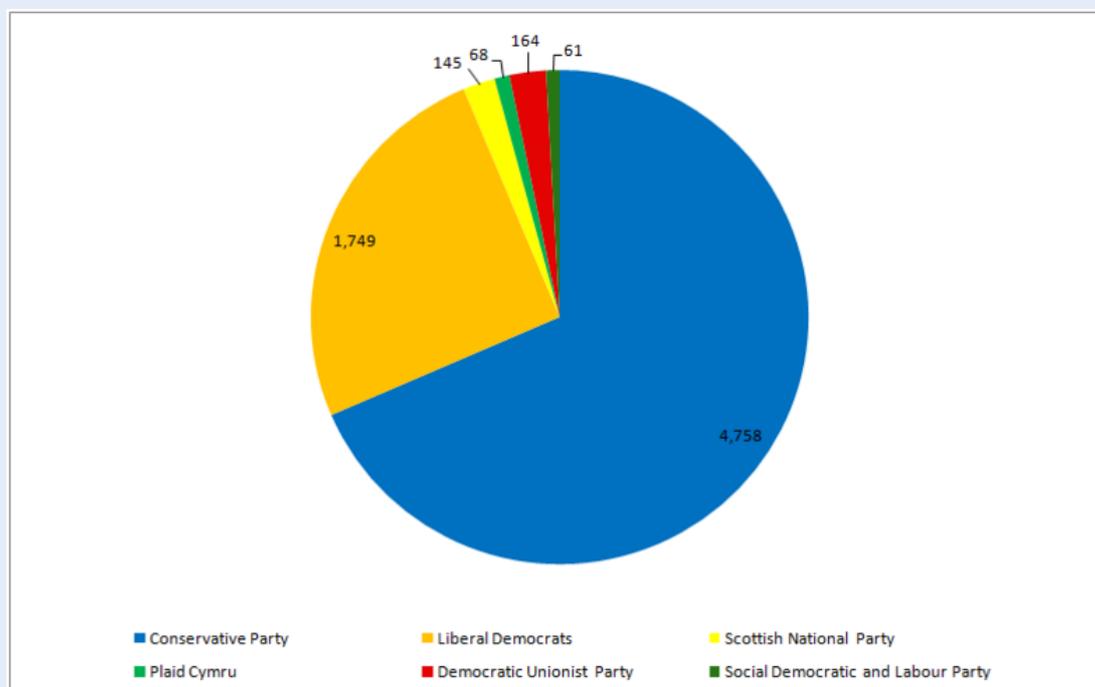
### Case Study 2.4i: Short Money

Short Money was introduced in 1975 as a means of funding the parliamentary business of opposition parties. It falls into three categories (the following figures cover 2009-10 tax year):

- General funding for opposition parties, paid at a rate of £15,039.85 for each seat won at the most recent general election, plus £30.04 for every 200 votes won by the party.
- Travel expenses for opposition parties at a rate of £165,218 divided between the parties in proportion to the amount they each receive for general funding.
- Support for the Leader of the Opposition's Office at £700,699. In addition, the leader of the opposition, the opposition chief whip and a maximum of two assistant opposition whips receive a salary from public funds. The salaries are: leader of the opposition £63,098; opposition chief whip £33,002; assistant opposition whip £19,239.

Source: [Kelly \(2011\)](#).

Figure 2.4i : Allocations under the Short Money scheme, 2009-10 (£000s)



Source: [Kelly \(2010\)](#).

The nature of the parliamentary oath could theoretically be a barrier to the organisation of a party in parliament. It requires a pledge of allegiance to the monarch. A party which objected to the content of the oath and whose members felt unable to take it would consequently be denied the ability to take part in the proceedings of the house (though Sinn Fein's policy of not taking up seats is motivated by concerns

broader than an objection to the oath).

There are difficulties for smaller parties in influencing the parliamentary agenda. Only 20 'Opposition Days' days are available every parliamentary session, meaning that a number of the smaller parties are not allotted a debate every session. The system of 'Opposition Day Debates' has other weaknesses. The debates tend to follow a rigid standard pattern of three-hour discussions of particular subjects. Ideas such as the discussion of opposition legislative proposals have been floated but not yet implemented. Opposition parties lack flexibility over when they can choose to hold debates.

There exist groups such as the 1922 Committee (for the Conservatives) and the Parliamentary Labour Party, which provide backbenchers from within parties the opportunity to discuss and raise issues.

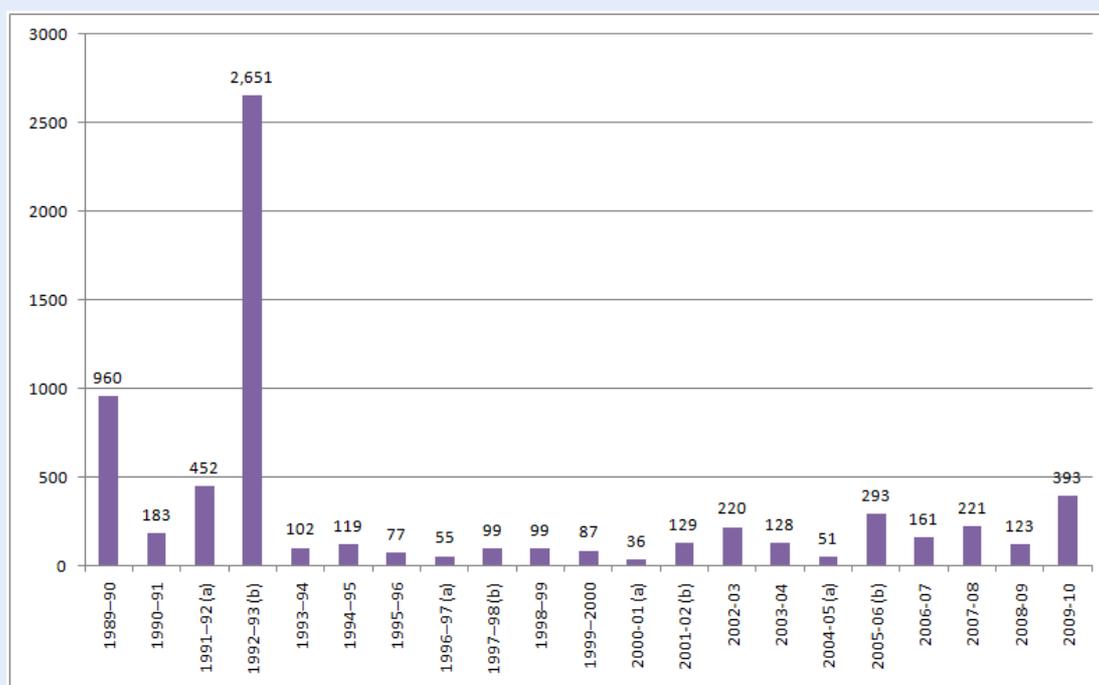
The problems experienced by smaller parties in making an impact upon parliamentary proceedings apply in even greater measure to all-party parliamentary groups (APPGs). Funding for APPGs is also scarce, unless they are able to receive substantial outside support, which creates a bias towards those APPGs with links to business and industry.

## 2.4.6 Parliament's relationship with the public and relevant interests

How extensive are the procedures of the parliament or legislature for consulting the public and relevant interests across the range of its work?

Over this Audit period there have been some limited improvements in parliament's relationship with the outside world. In particular, select committees now utilise online forums; and all written petitions sent to an MP who agrees to present them to parliament receive official replies from the government. The number of petitions presented to parliament each year fluctuates enormously, although there was a clear decline after the early 1990s (see Figure 2.4j). However, it seems likely that public petitions will become more frequent in future. The coalition government has introduced measures to ensure e-petitions receiving 100,000 signatures within a year are eligible for formal debate in parliament, with the final decision whether to hold a debate resting with the Backbench Business Committee. The coalition has also established a 'public reading stage' for bills, enabling online comments on proposed legislation, with a 'public reading day' where those comments are debated by the bill committee (see Section [2.4.2](#)).

Figure 2.4j: Petitions presented to parliament, 1989-90 to 2007-08



Note:

- a. Short sessions (October 1991 to March 1992; October 1996 to March 1997; December 2000 to May 2001; November 2004 to April 2005)
- b. Long sessions (April 1992 to October 1993; May 1997 to October 1998; June 2001 to November 2002; May 2005 to

November 2006)

Source: [Lighthown and Smith \(2009\)](#).

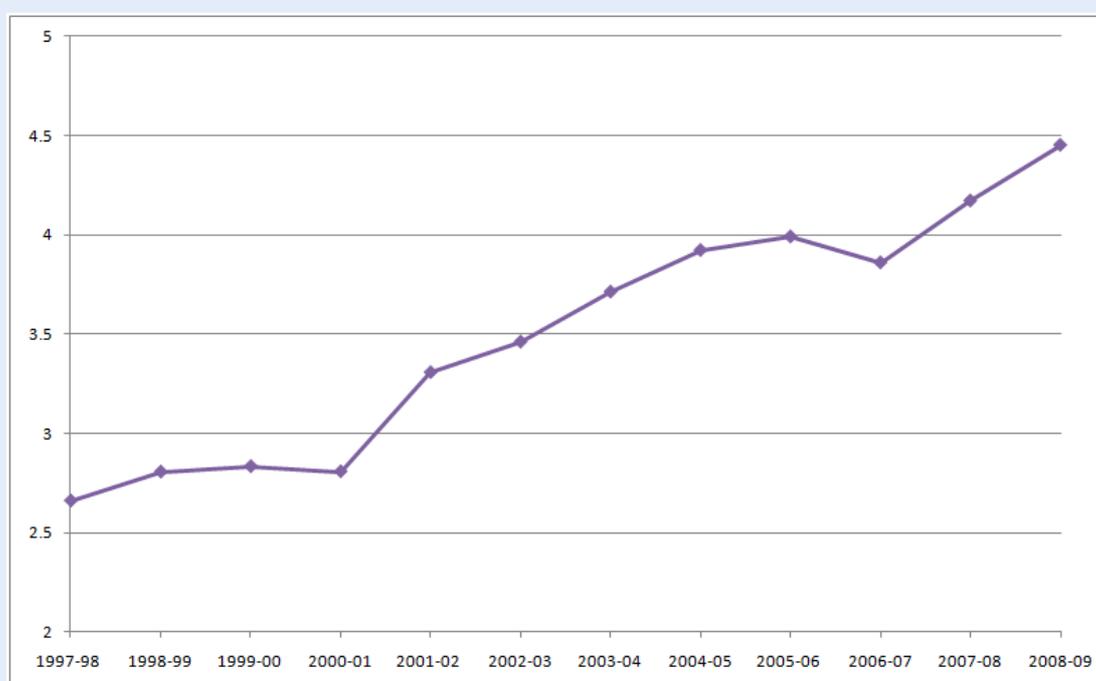
Yet while parliament has devoted additional resources to facilitating public awareness of its work, there remain worrying levels of professed public ignorance about its basic functions - thereby making wider involvement more difficult. Data from a survey commissioned by the Hansard Society in 2008 ([Kalitowski, 2008, p.4](#)) shows that just 32 per cent of respondents said they had a 'good understanding of the way Parliament works'. The most recent Hansard Society Audit of Political Engagement ([Hansard Society, 2011](#)) showed an increase in those saying that knew 'a fair amount' or 'a great deal' about Parliament', from 37 per cent in 2010 to 44 per cent in 2011, but this figure - under half of those questioned - could still be regarded as unsatisfactorily low. As far as interest groups are concerned, there is a tendency for parliamentary committees to take evidence repeatedly from limited circles of individuals and organisations, with attempts to reach more widely by committees often proving unsuccessful. It could be that these two deficiencies are mutually re-enforcing, with the lack of public awareness causing and being perpetuated by the reliance of select committees on small groups of individuals.

## 2.4.7 Accessibility of elected representatives to constituents

How accessible are elected representatives to their constituents?

One of the longest established principles of parliament is that it is a means by which members of the public can raise issues of concern. There is a strong convention for MPs in the UK to hold regular surgeries in their constituencies, at which they can be approached directly without appointments being made; although there is no specific guidance as to how (or even how often) these events should take place. Increases in staffing allowances over recent decades make it more possible for MPs to take up casework that arises at surgeries and generally carry on communications with their constituents (See Figure 2.4k). The introduction of the communications allowance in 2007 has provided MPs with up to £10,000 per year for non-party political communications with constituents, and can be used for purposes such as newsletters, contact cards and websites. However, it has been argued that such staff and allowances are, in practice, a means of protecting the incumbency of MPs, by making continuous electoral campaigning possible.

Figure 2.4k: Number of staff per MP, 1997-98 to 2008-09



Source: [Department of Information Services \(2011\)](#).

To some extent the work carried out by MPs is self-generated, or arises because of the constitutional restrictions on local government; the

shortcomings of appeal and complaints mechanisms in the public services; or the lack of resources provided for Citizens Advice. Yet it would be a cause for concern if members of the public felt there was no point at all in contacting their local MP. The Hansard Society's 2010 *Audit of Political Engagement* showed that nine per cent of the public had contacted their local MP in the past twelve months - a similar figure to previous years ([Hansard Society, 2010](#)). However, the Parliamentary Voting System and Constituencies Act 2011 will probably have a negative impact here. It is likely that the rise in the average population size of a parliamentary constituency this legislation will bring about - combined with a higher than average likely rise in areas such as inner cities that generate the most casework - will mean that the ability of MPs to deal with issues raised by their constituents will decline (see Section [2.1.2](#) for further discussion of the new rules for the drawing of constituency boundaries).

## 2.4.8 Effectiveness of parliament as a forum for public concerns

How well does the parliament or legislature provide a forum for deliberation and debate on issues of public concern?

In the middle of 2011, parliament demonstrated that it can provide a focus for public concern about major issues, when two Commons select committees held high profile evidence sessions in relation to the News International phone-hacking scandal. Moreover, parliament achieved this exposure in the face of an attitude on the part of central government that was at best ambivalent about the rising level of interest in this issue. However, in some ways this unusual event was the exception that proved the rule about the ability of parliament to act as a public forum.

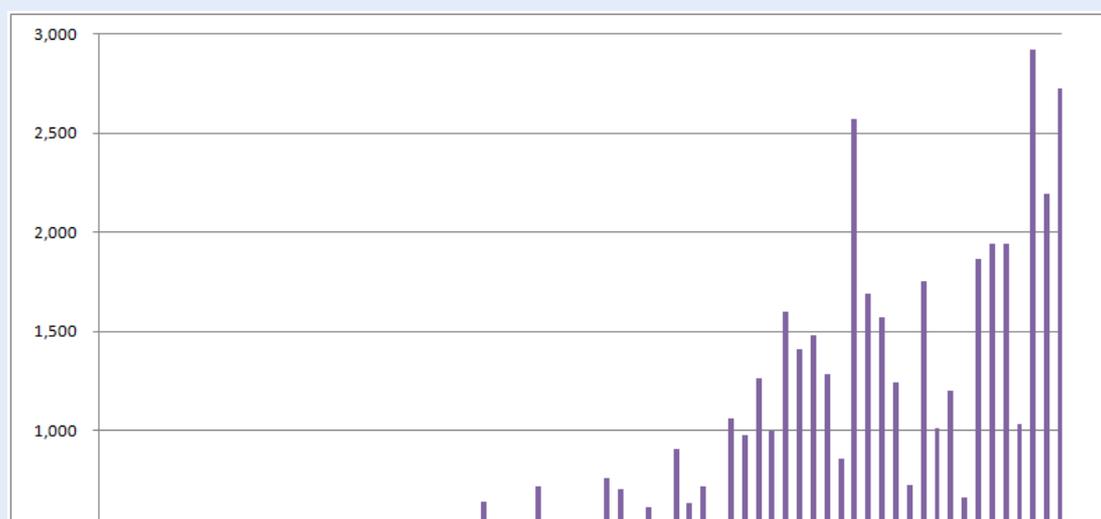
There is a clear connection between the issue of control of the time of the House of Commons (discussed in Section [2.4.1](#)) and the sense that parliament sometimes fails to address issues of public concern. The [House of Commons Reform Committee \(2009, p. 71\)](#) found that there was a strong case for arguing that the Commons was:

'insufficiently responsive to pressures from outside to debate or consider some issues of concern to the population. These often do not seem to be reflected in what is visible of parliamentary proceedings. If the Government and the Opposition do not want an issue debated, it will not be, save as a result of the exertions of individual members; and the options open to individual members are limited. It may be thought that debate on issues such as assisted suicide or organ donation or same-sex partnerships was largely absent from the parliamentary agenda at a time they were being actively canvassed outside the House. In foreign affairs, a country or region of concern can easily fall off the political agenda'.

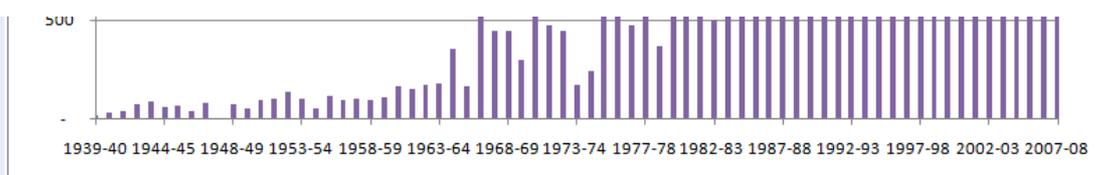
There was introduced into the Commons a new category of 'topical debate' in 2008. Yet a marked decline took place in the number of debates held between the first year of their operation (2008-09) and the second (2009-10) ([House of Commons Reform Committee, 2009, p. 45](#)).

One means of permitting MPs to rapidly express a view on topical issues, though which rarely achieves significant impact, is through early day motions (see Section [2.4.3](#)). The use of EDMs has accelerated, perhaps partly indicating the inability of parliament to provide other more effective means of addressing current subjects, and the desire of MPs to be seen to be engaging with these subjects while actually doing very little (see Figure 2.4I).

Figure 2.4I: Early Day Motions tabled, 1939-40 to 2007-08



## Democratic Audit



Source: [Lightbown and Smith \(2009\)](#).

## Conclusion

Many of the most significant democratic reforms of the Labour period of office, such as devolution, the Freedom of Information Act and the Human Rights Act, were not directly concerned with parliament - although they did involve it. However, there were some shifts. They included the introduction of the 'Core Tasks' for select committees; the establishment of the Scrutiny Unit; experiments with pre- and post-legislative scrutiny; the introduction of public bill committees; and greater transparency for public accounts. Demands for further reform grew, particularly in the wake of the Iraq War. The accession of Gordon Brown to No 10 and the constitutional reform programme he adopted provided some impetus, leading to a reduction in the scope of the royal prerogative and changes such as the introduction of pre-appointment hearings for major public appointments.

The public scandal over MPs' expenses helped generate circumstances in which more substantial reform was possible, even if it did not have a direct relationship to the expenses issue. The introduction of elections for members of select committees and their chairs and the possibility of the Commons gaining more control over its own timetable may help produce substantial changes in the ability of parliament to contribute meaningfully to democratic processes.

But there remain deficiencies. There is a relationship of dependency upon the executive, a lack of powers in key areas still covered by the royal prerogative, a growth in the length of acts of parliament and the volume of secondary legislation, and weaknesses in financial scrutiny. Moreover, there is room for improvement in the way parliament interacts with and responds to the outside world.

This consideration of the democratic effectiveness of parliament engages two of the overarching themes emerging from the present UK Audit in particular. First, it is suggestive of an unstable constitutional settlement (theme one), in which there are continual calls for reform which, when acted upon, are limited in their impact by the nature of the overall framework within which they are introduced. Second, the pressures upon representative democracy are clearly a problem for parliament, reflected in its difficulties in achieving meaningful engagement with the public (theme four).

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