



House of Commons
Procedure Committee

Explanatory statements on amendments to bills

Second Report of Session 2009–10

*Report, together with formal minutes and
written evidence*

*Ordered by the House of Commons
to be printed 24 February 2010*

Procedure Committee

The Procedure Committee is appointed by the House of Commons to consider the practice and procedure of the House in the conduct of public business, and to make recommendations.

Membership during the Session

Rt Hon Greg Knight MP (*Conservative, Yorkshire East*) (Chairman, from 9.11.05)
Ms Celia Barlow MP (*Labour, Hove*)
Mr Ian Cawsey (*Labour, Brigg & Goole*)
Mr Christopher Chope MP (*Conservative, Christchurch*)
Ms Katy Clark MP (*Labour, North Ayrshire and Arran*)
Mr Mark Field MP (*Conservative, Cities of London and Westminster*)
Mr Roger Gale MP (*Conservative, North Thanet*)
John Hemming MP (*Liberal Democrat, Birmingham, Yardley*)
Mr Eric Illsley MP (*Labour, Barnsley Central*)
Mrs Siân C. James MP (*Labour, Swansea East*)
Mrs Linda Riordan MP (*Labour, Halifax*)
Sir Robert Smith MP (*Liberal Democrat, West Aberdeenshire and Kincardine*)
Sir Peter Soulsby MP (*Labour, Leicester South*)

The following Members were also members of the Committee during the Parliament:

Mr David Anderson MP (*Labour, Blaydon*)
Mr Jim Cunningham MP (*Labour, Coventry South*)
Annette Brooke MP (*Liberal Democrat, Mid Dorset and Poole North*)
Mr David Gauke MP (*Conservative, South West Hertfordshire*)
Andrew Gwynne MP (*Labour, Denton and Reddish*)
Rosemary McKenna MP (*Labour, Cumbernauld, Kilsyth and Kirkintilloch East*)
Sir Nicholas Winterton MP (*Conservative, Macclesfield*) (Chairman till 9.11.05)
Mr Rob Wilson MP (*Conservative, Reading East*)

Powers

The powers of the Committee are set out in House of Commons Standing Orders, principally in SO No 147. These are available on the Internet via www.parliament.uk.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at <http://www.parliament.uk/proccom>.

Committee staff

The current staff of the Committee are Dr Lynn Gardner and Miss Sara Howe (Clerks) and Rowena Macdonald (Committee Assistant).

Contacts

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Explanatory statements on amendments to bills

Introduction

1. In September 2006 the Modernisation Committee recommended that the Procedure Committee “draw up a set of rules governing the tabling and publishing of explanatory statements to amendments in standing committee, and that a pilot scheme be conducted with a single, substantial bill to evaluate the potential impact of this move”.¹ The aim was to assist Members in preparing for debate in a public bill committee by providing a brief explanation of the intended effect of an amendment. In response to the recommendation, our Committee established guidelines for explanatory statements and oversaw an experimental trial of the facility during the committee stage of the Legal Services Bill [*Lords*] in June 2007. The pilot phase was extended to cover three bills in 2007–08 and then extended again to include all bills before a public bill committee (except the Finance Bill) from February 2009 until the end of session 2008–09. In this short report, we bring together the evidence and feedback received from these three pilots and consider what future steps should be taken with regard to explanatory statements.

Guidelines and publication of explanatory statements

2. The guidelines for the use of explanatory statements, drawn up by this Committee and endorsed by the Chairmen’s Panel before their first use in 2007, are as follows:

Procedure Committee Guidelines

1. Any Member tabling an amendment to a bill in a Public Bill Committee may at the time of tabling accompany that amendment with an explanatory statement of not more than 50 words.
2. The explanatory statement must describe the intended effect of the amendment but may not be phrased as an argument for its adoption or against the existing text of, or any other proposed amendment to, the bill.
3. Questions as to the implementation of these rules shall be decided by the Chairman of the Public Bill Committee.
4. Explanatory statements will be printed in italics immediately following the amendment to which they relate. Where several amendments are tabled which are consequential upon another amendment, the explanatory statement should state that fact and shall be printed with the first amendment in the sequence.

3. Members, or Parliamentary Counsel in the case of Government amendments, submit explanatory statements to the Public Bill Office with the relevant amendment and the statements are then printed on the amendment paper in 10pt italic type under the amendment. As a result of a recommendation from this Committee, explanatory

¹ First Report from the Select Committee on the Modernisation of the House of Commons, *The Legislative Process*, HC 1097, Session 2005–06,

statements were also printed in the Official Report of the Committee's proceedings during the 2009 experiment. We considered at the time of making the recommendation that this would help the reader in cases where members of the committee make reference to the statements and would increase their visibility to anyone interested in public bill committee proceedings.

Take-up

4. The Government gave a voluntary undertaking to table explanatory statements with amendments but there is no obligation on others to do so, and the use made by Members of the facility has varied considerably through the three stages of the pilot. In the first phase, of 17 members of the public bill committee looking at the Legal Services Bill [*Lords*], nine tabled amendments and seven of these tabled explanatory statements with either all or some of their amendments.² In the second phase, take up by opposition and backbench members was described as “low”.³ This continued through to the third phase of the experiment from which the Clerk of Bills reported that “the Opposition front bench rarely produce ESs [...] The Liberal Democrat front bench produce them more often than not [and a] few backbenchers have tabled ESs”.⁴

5. It is not surprising that the Government is more able to fulfil its undertaking to produce explanatory statements than the Opposition or backbenchers are able to take up the optional facility, given the disparity of resources available to the different sides. We also recognise that for the Opposition there may be a political imperative to retain an element of surprise as to their intentions. In addition, some amendments are tabled to probe rather than to suggest a viable alternative to the words in the bill. Nevertheless, we are struck by the difference in scale between the levels of take-up at the different stages of this experiment.

6. It is possible that the fall-off in tabling explanatory statements may reflect an informed decision on the part of Members that tabling them is not worthwhile but from the evidence we have seen we cannot rule out the possibility that it derives rather from a lack of awareness of the existence of the facility. We note that for the first pilot intensive efforts were made to publicise the innovation through the parliamentary website, information from the Vote Office handed out with the bill, and an email to all members of the public bill committee, as well as similar information placed on the department's website for outside parties and an announcement of the pilot by the Leader of the House during Business Questions.⁵ The views of committee members were sought by means of a questionnaire distributed during the last sitting, which again drew attention to the fact that they were participating in an experiment. In the latter two stages, committee members were given a leaflet by the PBO and received an email from us as the bill went into committee but there has not been a similar publicity drive. One Member on a public bill committee in early 2009 observed:

² Ev 4

³ Ev 6

⁴ Ev 13

⁵ Ev 4

We only had a few amendments where there was an explanation and these were all government amendments.

I put down a few amendments myself but didn't add an explanation—this was because I was unfamiliar with the procedure and there was no particular prompt for me to do so. The issue of explanations was referred to by the Clerk in one memo but no particular guidance was given. I think if guidance had been there then backbenchers might have been more inclined to put down explanations.⁶

We believe that this needs to be explored further and we return to the subject in our recommendations at the end of this report.

Usefulness

7. Explanatory statements were designed to meet the needs of Members, and in general the feedback we have received from them has been positive. Of the 17 members of the public bill committee in the first pilot, all 13 who completed the survey felt that explanatory statements had either greatly assisted or helped to some extent their consideration of the Bill.⁷ One backbench member also told us that explanatory statements “helped avoid the Public Bill Committee sessions becoming a preserve of the front bench”.⁸ In addition, officials supporting the Minister believed that “explanatory statements on non-Government amendments helped to clarify points which Members were seeking to make”.⁹

8. Perhaps as a result of the lower take-up, the reported level of satisfaction was less marked in stage 2 and 3 of the experiment but the balance of opinion was still in favour. Two of the Chairmen from the second pilot bills told us that explanatory statements were “most helpful” and again “very helpful in understanding amendments and their purpose”.¹⁰ Members of the Committee also found them “useful” and “helpful”, with one commenting that they “contributed significantly to achieving a better understanding of the issues” and another judging that the pilot was “an unambiguous success”.¹¹ There were some negative comments, including that the process “is largely a waste of time!”¹² and one Member who considered that it was impossible to convey the necessary level of detail in this form.¹³ Clerks attending the committees in the second pilot reported that they “did not notice any specific references to explanatory statements in debate and did not perceive any difference in the quality or focus of debate in Committee”.¹⁴ On the other hand, government officials on the Pensions Bill (one of the three bills in the 2007-08 experiment) regarded explanatory statements “as a helpful opportunity to explain proposed Government amendments” and “of significant benefit in clarifying the purpose of opposition

⁶ Ev 12

⁷ Ev 4

⁸ Ev 10

⁹ Ev 4

¹⁰ Ev 8

¹¹ Ev 8, 9

¹² Ev 8

¹³ Ev 9

¹⁴ Ev 7

amendments and improving the focus of debate by helping Ministers to respond to the substantive issues being raised”.¹⁵ For the third pilot, from which feedback was very scanty, the verdict amongst Members appeared to be positive as to the idea but that it needed to be used more regularly for it to be beneficial.¹⁶

Impact of explanatory statements upon Government departments and the House services

9. Drafting explanatory statements clearly imposes a burden upon Members where they choose to use the facility but because of the number of Government amendments that are tabled and the commitment by the Government to table such statements to all amendments to the relevant bills, the impact of the experiment has fallen disproportionately on the Government in preparing, and on the House in processing, the statements. It was recognition of the costs and “the significant use of resources involved” that led the Leader of the House to suggest the third stage in the pilot in July 2009 as a means of addressing the question as to “whether the use made of the facility is properly cost-effective”.¹⁷

10. We have found it difficult to reach an accurate estimate of the real costs of the facility. For Government amendments, the explanatory statements are drafted by the department and edited and tabled by Parliamentary Counsel. At the second stage of the pilot Government departments were positive about the cost-effectiveness of the process, seeing “a small increase in workload as worthwhile given the advantages they derived from the inclusion of explanatory statements”,¹⁸ whilst Parliamentary Counsel were markedly less sanguine, finding the “value of statements [to be] marginal” and considering “the need to edit statements supplied by departments (for substance and length), insert statements into amendment documents and cross-reference these as necessary, added significantly to their workload”.¹⁹ After the wider experiment in session 2008–09, the First Parliamentary Counsel reported that, where there had been a large number of government amendments to a bill, “the preparation of explanatory statements has been a considerable extra burden”.²⁰ He suggested that other means of providing information on amendments, such as detailed briefing to Ministers or letters to committee members, were more useful, although he accepted that explanatory statements may have been of use to interested lobby groups because of their public nature.²¹

11. In the case of the House itself, explanatory statements to Government amendments do not cause any additional work for the Public Bill Office. Explanatory statements to other amendments need to be checked against the guidelines and edited to meet the 50 word limit. The low number of such statements in 2009 has limited the impact of this on the Public Bill Office but the office’s review of the first pilot indicated that wider take-up would

¹⁵ Ev 6

¹⁶ Ev 12

¹⁷ Ev 7

¹⁸ Ev 7

¹⁹ Ev 7

²⁰ Ev 13

²¹ Ev 14

have significant resource implications. Similarly, such an increase would have cost implications for the Editorial Supervisor of the Vote which estimates that each Government explanatory statement adds about one minute extra work and each non-Government statement five minutes extra processing time.²² Finally, there are printing costs. During the first pilot, the amendment paper was increased in length by 42 per cent by the inclusion of explanatory statements.²³ The then Clerk of Legislation estimated that this would cost an additional £113,000 a year if applied across all committee amendment papers,²⁴ although experience leads us to believe that the actual cost would be far less than this.

Recommendations

12. Experiments have now been conducted with explanatory statements in each session since 2006–07 and the results of these experiments are, we have to say, inconclusive. The take-up of the facility by non-Government frontbenchers and all backbenchers has been disappointing. The positive feedback from those Members who responded to our call for evidence, however, indicates that the provision of explanatory statements by others is valued and that more could and should be done to encourage Members to use the process. We also consider that the benefit of explanatory statements may be greater in a new Parliament with many new Members unfamiliar with the procedure on scrutinising bills. For this reason, we do not advocate calling a halt to the experiment at this stage.

13. We have a few suggestions to make as to how the system could be improved in order to realise more of the potential benefits. First, thus far the pilots conducted with explanatory statements have been restricted to bills in committee but there is an argument to be made that in fact Members appointed to such committees are more likely to have a firm knowledge of the subject than Members faced with amendments to bills in Committee of the whole House or at report stage. Parliamentary Counsel alerted us to the tighter time constraints in these circumstances because amendments, on consideration at least, are “typically tabled over a much shorter period than are amendments for public bill committee”.²⁵ This timescale would increase the burden on those preparing and processing the statements but in other ways supports the contention that explanatory statements may be more beneficial here precisely because Members have less time to study the amendments themselves. In addition, as the Clerk of Bills reminded us, there may be occasions on report and in Committee of the whole House where there is “no other opportunity for Ministers to explain their amendments before they are decided *en bloc* under a programme order.”²⁶ This is a gap which explanatory statements could usefully fill. We also see a case for extending the experiment to Private Member’s Bills where we consider that explanations may be particularly useful.

14. Secondly, we believe that there are gains to be made from a concerted effort to encourage the submission of explanatory statements to non-Government amendments.

²² Ev 13

²³ Ev 5

²⁴ Ev 5

²⁵ Ev 14

²⁶ Ev 13

The official Opposition have not made great use of the facility and we were pleased to receive an undertaking from the Shadow Leader of the House that he would remind the Shadow Cabinet of the existence of explanatory statements and see “whether they would like to make better use of the opportunity that this provides”.²⁷ Although we stress that we do not believe that it should be compulsory for amendments to be accompanied by explanatory statements, we would like to see the frontbenches use the facility as a matter of course. For other Members, we believe that giving a higher profile to explanatory statements, perhaps by repeating the publicity campaign that accompanied the first pilot, would result in a higher level of take-up. The Public Bill Office should remind Members that they might consider tabling explanatory statements and highlight guidance on how to do so. It would also be helpful if forms were made available for the submission of amendments with an appropriate space provided for an explanatory statement. In addition, engagement by the House with Members’ researchers might prove fruitful in increasing the proportion of amendments tabled with explanatory statements.

15. Thirdly, we have taken the opportunity to review the guidelines for explanatory statements in the light of the experiment so far. We consider that they have proved workable and robust but that there are slight adjustments which could now be made for the convenience of the House. In particular, we recognise Parliamentary Counsel’s observation that “some limited flexibility on the 50-word limit might make the process of preparing explanatory statements less time-consuming and the terms of the statements more helpful”.²⁸ We also accept that where the effect of the amendment is self-explanatory there should be no requirement for an explanatory statement. We hope that these two changes will ease the burden on those producing explanatory statements whilst not reducing their usefulness nor the commitment of the Government to providing them.

16. We recommend that the trial with explanatory statements to amendments to bills continue in the first year of the new Parliament; that it be extended to bills in Committee of the whole House and on report, and to Private Member’s Bills; that the opposition frontbenchers and all backbenchers be strongly encouraged to table explanatory statements with their amendments; and that the guidelines be changed to allow explanatory statements of “around 50 words” and to lift the requirement for such a statement when the amendment itself is self-explanatory. We hope in this way to increase the use and therefore the usefulness of this facility without imposing an undue burden on the House, Government departments or others. To ensure that the House has a better idea of the value that Members place on explanatory statements and their contribution to increasing the scrutiny of Bills, we recommend that at the end of the next stage of the experiment a full survey be carried out by the House authorities of all Members and the results analysed by a committee of the House.

²⁷ Ev 13

²⁸ Ev 14

Formal Minutes

Wednesday 24 February 2010

Members present:

Mr Greg Knight, in the Chair

Mr Ian Cawsey

Mr Christopher Chope

Mr Mark Field

Mr Roger Gale

John Hemming

Sir Robert Smith

Sir Peter Soulsby

Draft Report (Explanatory statements to amendments to bills), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 16 read and agreed to.

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Wednesday 1 March at 2.30 pm]

List of written evidence

1	Robert Rogers, Clerk of Legislation	Ev 1: Ev 3
2	Public Bill Office	Ev 6
3	Rt Hon Harriet Harman QC MP, Leader of the House of Commons	Ev 7
4	Members' Responses on Explanatory Statements (2007–08)	Ev 8
5	Rt Hon Greg Knight MP, Chairman of the Procedure Committee	Ev 10
6	Chris Bryant MP, Deputy Leader of the House of Commons	Ev 11: Ev 11
7	Members' Responses on Explanatory Statements (2008–09)	Ev 12
8	Simon Patrick, Clerk of Bills	Ev 12
9	Rt Hon Sir George Young Bt MP, Shadow Leader of the House of Commons	Ev 13
10	Stephen Laws CB, First Parliamentary Counsel	Ev 13

Reports from the Procedure Committee since 2005

The following reports have been published during this Parliament:

Session 2009-10

First Report	Election of the Speaker and of the Deputy Speakers	HC 341
Second Report	Explanatory statements on amendments on bills	HC 410
First Special Report	Written Parliamentary Questions: Government Response to the Committee's Third Report of Session 2008-09	HC 129

Session 2008-09

First Report	Interleaving of Bills and Explanatory Notes	HC 377
Second Report	e-Petitions: Call for Government action	HC 493
Third Report	Written Parliamentary Questions	HC 859
Fourth Report	Election of the Deputy Speakers: Principles	HC 1080
Fifth Report	Tabling of amendments by select committees	HC 1104
First Special Report	e-Petitions: Call for Government Action: Government Response to the Committee's Second Report of Session 2008-09	HC 952

Session 2007-08

First Report	e-Petitions	HC 136
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Session 2006-07

First Report	Public Petitions and Early Day Motions	HC 513
Second Report	Corrections to the Official Report	HC 541

Session 2005-06

First Report	Legislative and Regulatory Reform Bill	HC 894
Second Report	Application of the <i>sub judice</i> rule to proceedings in coroners' courts	HC 714

Written evidence

Memorandum submitted by Robert Rogers, Clerk of Legislation (P 8, 2006–07)

1. On behalf of the Procedure Committee you have sought my views on the issues of principle and practice arising from this Modernisation Committee recommendation.

CONTENT OF EXPLANATORY STATEMENTS

2. I agree with the view of the Chairman of your Committee. When the Modernisation Committee recommended the present system of Explanatory Notes on Bills¹ they thought that such documents should be

- written in plain English;
- neutral in political tone;
- of value to those outside Parliament as well as to Members;

and in their latest Report the Committee said that statements should be as short as is consistent with describing the intended purpose of an amendment.²

3. These seem to me to be the right criteria for explanatory statements on amendments. There is then the question of how they are handled when handed in.

EDITING OF EXPLANATORY STATEMENTS

4. If the Modernisation Committee's criteria quoted in paragraph 2 are to be observed, then your Committee may wish to consider the question of editing; drafters of explanatory statements may well be tempted into argument. And should there be a word limit, either for a statement covering a single amendment or a series?

5. If the Public Bill Office were to be expected to edit statements so that the criteria were observed, then an explicit authority would be helpful (along the lines of the authority to edit Questions³). I should say that the editing of statements, in addition to the processing of the amendments themselves, is likely to occupy time and skilled resources. The Public Bill Office can be very stretched when significant numbers of late amendments come in and need complex editing. Processing explanatory statements at the same time for appearance on the Notice Paper the following morning could cause difficulty.

ORIGIN OF EXPLANATORY STATEMENTS

6. In the case of Explanatory Notes on Government bills, which I see before publication, the process is simplified by having Parliamentary Counsel as a single interlocutor who understands the requirements of political neutrality and other factors. Parliamentary Counsel would no doubt play a similar role in the preparation of explanatory statements on Government amendments.

7. Many proposed amendments are suggested to Members by outside organisations who will no doubt in future also draft accompanying explanatory statements. As they may be unfamiliar with the style required, considerably more editing may be necessary, and the time for processing amendments commensurately increased.

8. I should mention that, following *Pepper v. Hart*, because a statement will indicate the intention of an amendment it may, if that amendment is made, be a means of statutory interpretation.

HOW MUCH WILL EXPLANATORY STATEMENTS BE USED?

9. The use of statements may not be all that extensive. The time for preparation of amendments is often short. Members may feel that an amendment is sufficiently explicit on its own, or perhaps is minor and does not merit an explanatory statement. The Modernisation Committee recognised this, recommending that the statement should be optional (although supplied for Government amendments as a matter of course).⁴ It follows that the presence or absence of a statement would not of itself be a factor in selection. However, authoritative confirmation of this would, I am sure, be helpful to the House; and it is a point on which your Committee might want to consult the Chairman of Ways and Means and the Chairmen's Panel.

10. It already happens from time to time that a Minister writes to the members of a committee on a bill to explain the purpose of an amendment in some detail, and I imagine that this would continue. Now that public bill committees are able formally to receive evidence, such a letter could be printed with the evidence.

¹ Second Report, HC 389 of Session 1997–98, *Explanatory Material for Bills*; see especially paragraph 3. See also First Report, HC 190 of Session 1997–98, *The Legislative Process*, paragraphs 34 to 37.

² First Report, HC 1097 of Session 2005–06, *The Legislative Process*, paragraph 82.

³ See *Erskine May*, 23rd Edition, page 343, third paragraph.

⁴ First Report of Session 2005–06, paragraph 82.

11. If your Committee thought that a full system of explanatory statements on amendments might be too cumbersome, the evidence-taking powers of public bill committees might provide a compromise. A Minister or any other member of a committee could submit a note on proposed amendments which, as formal evidence, would form a permanent part of the Committee's documentation, rather than an ephemeral accompaniment to an amendment paper. Issues of conforming with criteria, editing, software development and so on, would not arise. And such a note might in practice be more convenient than individual statements scattered through an amendment paper.

PRESENTATION OF EXPLANATORY STATEMENTS

12. Some practical issues in a formal system of explanatory statements might be:

- the physical relationship between statement and amendment⁵

Should there be a single paper, or a paper of amendments and one of explanatory statements? Both methods of presentation would need to take into account the fact that amendments appear first in a paper of notices given and are then marshalled on subsequent days. If amendments and statements were to be in a single paper, then additional software development might be required.

- how should amendments and explanatory material be distinguished?

If both were in a single paper, a distinguishing typeface might be the best way (rather than, for example, text boxes); but if explanatory statements were in a separate paper there would be no need.

- a single explanatory statement referring to several amendments

This possibility was foreseen by the Modernisation Committee, which referred to a statement on "a set of amendments".⁶ This would be fairly straightforward if the amendments were relatively close together in the bill, but would be harder to follow if they were scattered through a number of provisions, with references to the note on the principal amendment. I think there would be a presumption that a statement should not simply be repeated for all the relevant amendments. Your Committee might wish to consider whether, when the principal amendment had been dealt with and so dropped from the amendment paper, the explanatory statement should be moved to the next relevant amendment, which would be an additional complexity.

When your Committee considers the matter in detail, it might be helpful if I were to provide a mock-up of an amendment paper so that some of these issues could be seen in a practical context.

PRE-EMPTING GROUPING AND SELECTION

13. Some statements may appear to pre-empt the Chair's decisions on grouping and selection. For example, an explanatory statement on a clutch of amendments might say "Amendments 145 to 167 are a closely co-ordinated set of proposed changes to the powers of entry and search in Part V of the Bill". The Chair, on the other hand, might judge that there was only a loose connection between them, that half of them did not merit selection, and that those that did should be inserted in three other groups. It might also be that, when the opportunity arose, a Member whose amendment was not selected sought to table an explanatory statement which sought (within the content criteria) to make the case for selection. These are matters on which your Committee might wish to seek the views of the Chairman of Ways and Means and the Chairmen's Panel.

NOTICE

14. The House has agreed to increase the period of notice for amendments in public bill committees from two days to three. Will this apply to explanatory statements, where a period of notice is not linked to the issue of selection? There is a neatness (and probably a cost saving) in requiring statements and amendments to be dealt with together. No doubt your Committee will wish to weigh this (and the opportunity to make corrections following one appearance on the Notice Paper) against the contrary argument that no notice period should operate so as to deprive a committee of explanation of an amendment.

COST

15. The present cost of the House's amendment papers is about £82 per originated page. Any estimate of overall cost will depend on a number of imponderables: for example, the extent to which the opportunity is used; the degree of editing required; any software development needed; rekeying of hard-copy statements; the processes of remarshalling and of inserting statements received later than the amendments to which they relate, and of marking and making any corrections. The Board of Management's Explanatory Memorandum for the debate on 1 November 2006 predicted "significant additional printing costs"⁷ but this would be only one element of the overall cost.

⁵ I take it that a system of explanatory notes on amendments would apply also to amendments to amendments, and amendments to new clauses and new schedules.

⁶ First Report of Session 2005–06, paragraph 81.

⁷ If explanatory notes for amendments appeared in the same proportion as those for bills (23%) that would suggest some 2,570 pages at a cost of some £211,000. That is for only one appearance; amendments appear first as given notices and then one or several times in marshalled lists. The printing costs are therefore likely to be significantly higher.

AN EXPERIMENT

16. You ask about timing and about the type of Bill which might be appropriate. On *timing*, I suggest: long enough ahead to benefit from the initial experience of Public Bill Committees; but not so late as to make it difficult to put into practice the lessons learned if the system were to be introduced from the beginning of next Session. That might suggest a Bill introduced in April or May 2007.

17. On the *type of Bill*, there might be an argument for choosing something pretty impenetrable so that explanatory statements were seen to be of maximum use, but I think there is much to be said for choosing something fairly straightforward so that the process is more transparent. If this finds favour with your Committee, I will, with the Government's help, try to identify something suitable, both as regards type and timing.

CONCLUSION

I hope this letter provides what your Committee needs. I am of course at their disposal should they want further information, or if they would like to discuss the issues.

January 2007

Memorandum submitted by Robert Rogers, Clerk of Legislation (P 41, 2006–07)

EXPLANATORY STATEMENTS ON AMENDMENTS TO BILLS:

THE EXPERIMENT WITH THE LEGAL SERVICES BILL [LORDS]

SUMMARY

(a) In September 2006 the Modernisation Committee recommended that Members should be allowed to table brief explanatory statements to accompany amendments in Public Bill Committee.

(b) The Procedure Committee drew up guidelines for these (including 50-word limit, not to be argumentative) which were endorsed by the Chairmen's Panel.

(c) A pilot took place 12–26 June in the Committee on the Legal Services Bill [Lords], a large Bill with technical issues, but not overly contentious.

(d) Reactions of Members, both expressed in Committee and in response to a questionnaire, were positive. Departmental officials felt that statements helped in briefing the Minister.

(e) 50 words appeared to be the right length; but editing to reduce length and argument doubled the processing time in the Public Bill Office (PBO). General introduction of the system would have significant resource implications for the PBO and for the Office of the Editorial Supervisor of the Vote, where text is prepared for printing and web publication.

(f) The pilot showed a 42% increase in printing costs, which would cost an additional £113K a year if applied across all committee amendment papers.

(g) The Office of Parliamentary Counsel (PCO) found that preparing and checking the statements was a significant additional burden upon drafters and upon the Department, occupying time normally spent in finalising instructions/amendments and checking those already drafted.

(h) A bespoke software template is needed to manipulate text reliably and to provide automatic cross-referencing.

(i) A second pilot in the new session with more Bills (perhaps three or four) would allow the development and trialling of such a template, and a better assessment of the costs of general implementation, and of the impact on the work of the PBO, ESVO and PCO. Including one or more politically contentious Bills in the second pilot might provide a sterner test of the guidelines and of the usefulness of the system to Members.

THE MODERNISATION COMMITTEE RECOMMENDATION

1. In its First Report of Session 2005–06, *The Legislative Process*, the Modernisation Committee concluded that Members preparing for debates in Public Bill Committees would be assisted if they were allowed to table a brief explanatory statement with each amendment or set of amendments (the relevant part of the Report is at Annex A). On 1 November 2006 the House agreed a Motion welcoming the Report and, among other things, endorsing “the proposals for the gradual development of improved documentation and explanatory processes relating to bills”.

THE PROCEDURE COMMITTEE'S GUIDELINES

2. The Modernisation Committee asked the Procedure Committee to draw up a set of guidelines governing the tabling and publishing of explanatory statements. The Procedure Committee's guidelines (in full at Annex B) included a 50-word limit and a prohibition on argument in explanatory statements. These guidelines were endorsed by the Chairmen's Panel on 18 April 2007.

THE LEGAL SERVICES BILL [*Lords*]

3. The Legal Services Bill [*Lords*] was suggested by the Procedure Committee as a good candidate for the pilot because it was a substantial Bill (215 Clauses, 24 Schedules, 373 pages) with a number of technical issues, but not overly contentious. The Chairman of Ways and Means supported this choice, and the then Leader of the House agreed to it on 30 March 2007.

4. Arrangements for the pilot were made by the Public Bill Office and the Office of the Editorial Supervisor of the Vote (which prepares House papers for printing), in close co-ordination with the Office of Parliamentary Counsel (PCO).

5. The Bill had its Second Reading on 4 June. We publicised the pilot on the Parliamentary website, handed out information about it from the Vote Office with copies of the Bill, and emailed the Members on the Public Bill Committee (the email included an introductory letter from the Chairman of the Procedure Committee). The Department for Constitutional Affairs put similar information on its own website. The Leader of the House also announced the pilot during Business Questions on 24 May.

THE PUBLIC BILL COMMITTEE

6. The Committee on the Bill sat from 12 to 26 June (10 sittings in all). 326 amendments, four amendments to amendments, and 17 New Clauses were tabled, the majority by the Government.

7. Of the 17 members of the Public Bill Committee (which included one member of the Procedure Committee), nine tabled amendments, and seven tabled explanatory statements as well. Some Members tabled explanatory statements with some but not all of their amendments. They told us that this was either because they had not had time to draft them, or that there was little point in explaining a particular amendment.

8. Examples of explanatory statements on the published amendment paper are at Annex C.

MEMBERS' VIEWS ON THE PILOT

9. Comments made during Committee proceedings were all positive. We also sought more detailed views by means of a questionnaire distributed during the last sitting of the Committee.

10. 13 out of 17 Members completed the survey (76%). Of Members responding, four (31%) felt that explanatory statements greatly assisted their consideration of the Bill, while the remaining nine (69%) felt it helped to some extent.

11. Members reported no difficulty in complying with the Procedure Committee guidelines, although one said that some of his statements had been ruled out of order on other grounds, and another that the time constraint on tabling amendments and statements could be difficult.

12. 12 Members who completed the survey (92%) thought the format of the amendment paper including explanatory statements was clear.

13. Officials supporting the Minister (Bridget Prentice) said that explanatory statements on non-Government amendments helped to clarify points which Members were seeking to make.

EVALUATION BY THE HOUSE SERVICE AND PARLIAMENTARY COUNSEL

14. This section summarises the experience and views of the Public Bill Office (PBO), the Office of the Editorial Supervisor of the Vote (ESVO) and the Office of Parliamentary Counsel (PCO). I have added my own comments in italics where appropriate.

Procedure Committee guidelines

15. 50-word limit: No significant problems. PCO thought that the 50-word limit might be a significant constraint where amendments were non-technical and controversial, but added that without the 50-word limit it would be difficult for Departments to draft explanatory statements within the required timeframe if the Government were tabling a large number of amendments. *On balance, this suggests that the 50-word limit should be retained.*

16. *Argument:* PBO Clerks reported that a significant proportion of explanatory statements tabled by Opposition and backbench Members required editing to remove argumentative material. The PBO allowed modest alterations to statements which had already been printed. As has long been the case in Committees on Bills, outside organisations suggest amendments to the Opposition of the day. In the pilot, explanatory statements accompanied such amendments, and many needed extensive editing. Examples are at Annex D. *I was grateful to the Chairmen's Panel for their robust support of the PBO. However, the editing of statements is an area of concern. We will have to assist Members to table orderly statements just as we help them with amendments; and, although it is clear that amendments must always take priority, the time taken to process statements was significant. I return to this in paragraph 19 below.*

17. There was no reason to think that connections between amendments perceived by Members had any impact on the process of selection and grouping.

18. *Consequential amendments:* The Procedure Committee's guideline that only procedurally consequential amendments should be identified as consequential in explanatory statements was applied strictly by the PBO. Where amendments did not meet this test but were connected, PCO adopted a form of words stating that amendments were "related". The PBO used the words "See statement on Amendment X" where Members tabled more than one amendment with the same explanatory statement. PCO suggested that in any future pilot the guideline on consequential amendments might be applied more flexibly to avoid excessive repetition of statements in the case of technical amendments which were not procedurally consequential. *This is a useful lesson from the pilot. I suggest that the strict "consequential" test might be replaced by a "related" test.*

RESOURCE IMPLICATIONS

19. *Public Bill Office:* The PBO reported that explanatory statements attached to amendments doubled the time required to check and process amendments tabled by Opposition Members and backbenchers. *The pilot took place at a time when the PBO was under less pressure than at other times of the year. Members' familiarity with the system might reduce the editing requirement but not, I suspect, by very much (and explanatory statements drafted by outside bodies may always be a problem). If the system were generally introduced, and we had more than three or four Bills in Committee at the same time, I think that additional staff would be necessary (together with somewhere to put them).*

20. *Editorial Supervisor of the Vote:* If a significant number of non-Government amendments with explanatory statements were to be tabled shortly before the rise of the House, there might be difficulty setting text in time to meet the printing deadline (3.00 a.m.) to assure production for the following day. The general introduction of explanatory statements on bills would mean a change in ESVO staff shift patterns, unless an earlier deadline for amendments tabled with explanatory statements were to be set. *There would be disadvantages in setting earlier deadlines or in decoupling statements from amendments (with the former appearing a day later). If the format of the pilot is to be maintained, then a rearrangement of shift patterns, probably at additional cost, will be necessary.*

21. *Printing costs:* The Stationery Office reported that the amendment paper was increased in length by 42% by the inclusion of explanatory statements. Current expenditure on printing amendments and associated papers is some £950K a year. The increased numbers of pages suggested by the pilot would result in an annual increase of some £113K a year.

22. *PCO and the Ministry of Justice:* Preparing and checking the explanatory statements on Government amendments placed a significant additional burden on the Department and PCO. PCO expressed concern that time was spent on the statements that would usually have been spent finalising instructions and amendments and checking those already drafted. This was due partly to the novelty of the statements, and partly to IT problems, but PCO suggest that a move to allow explanatory statements on bills more widely would significantly increase the time taken for production of Government amendments.

TECHNICAL ASPECTS

23. For the pilot, a Framemaker⁸ template for the amendment paper to allow the incorporation explanatory statements was produced by the ESVO. The pilot showed up some problems with this, mainly in the manipulation of text and the production of pdf files.

24. The pilot demonstrated that any template for wider use must be able to cross-reference automatically between explanatory statements and amendments. Manual cross-referencing was a time-consuming task for PCO and also increased the processing time for amendments in the PBO. Cross-references between statements and amendments from Opposition and backbench Members had to be manually marked up by the PBO (which would still be necessary in any wider implementation as only the Government amendments will be tabled in Framemaker). PCO suggested that a facility to count the number of words in an explanatory statement automatically would be helpful.

CONCLUSION

25. Members' willingness to participate meant that the Legal Services Bill [*Lords*] provided a useful pilot of the Modernisation Committee proposal on explanatory statements. Members' feedback was almost uniformly positive. However, the pilot highlighted some technical issues, as well as the resource implications of any wider implementation.

26. If the Procedure Committee considers that the lessons of this pilot suggest that the scheme should be introduced more generally (and in its current format), I would strongly endorse the observation of the Chairman of Ways and Means that it would be prudent to have a second, larger scale pilot, involving perhaps three or four Bills. This would allow:

the commissioning and trialling of a bespoke Framemaker template; and

a proper assessment of the likely increase in costs, and of the impact on the work of the PBO, ESVO and PCO.

⁸ Adobe Framemaker is the software used by the House for the printing of Bills and amendment papers.

The inclusion of one or more politically contentious Bills in the second pilot might provide a sterner test of the guidelines and of the usefulness of the system to Members. Such a pilot could take place in the new Session as soon as the software development was complete.

July 2007

Annex A

EXTRACT FROM MODERNISATION COMMITTEE REPORT ON LEGISLATIVE PROCESS, SEPTEMBER 2006

EXPLANATORY MATERIAL FOR AMENDMENTS

81. It has also been put to us that it would assist Members in preparing for debates in standing committee if they were allowed to table a brief explanatory statement with each amendment or set of amendments. It can sometimes be difficult to work out what the intended effect of an amendment would be and a brief statement from the Member who tables it could in many cases greatly assist the reader of the amendment paper. Witnesses from the Health Bill team told us that such statements could help to “ensure that, when we are briefing our ministers and advising them how to respond, the issues the Member really wants debated are covered and we really are responding to the queries or concerns that are being raised”.

82. There will need to be rules governing the submission of such statements. In particular, they must not be unduly long, nor must they be argumentative. These explanatory statements should be confined to a description of the intended purpose of their amendment which is as short as is consistent with the adequate expression of that purpose. We recommend that the Procedure Committee draw up a set of rules governing the tabling and publishing of explanatory statements to amendments in standing committee, and that a pilot scheme be conducted with a single, substantial bill to evaluate the potential impact of this move. The statements should be optional and it should still be open to Members to table amendments with no explanatory statement, though we would expect the Government to provide them as a matter of course.

Annex B

PROCEDURE COMMITTEE GUIDELINES

1. Any Member tabling an amendment to a bill in a Public Bill Committee may at the time of tabling accompany that amendment with an explanatory statement of not more than 50 words.
2. The explanatory statement must describe the intended effect of the amendment but may not be phrased as an argument for its adoption or against the existing text of, or any other proposed amendment to, the bill.
3. Questions as to the implementation of these rules shall be decided by the Chairman of the Public Bill Committee.
4. Explanatory statements will be printed in italics immediately following the amendment to which they relate. Where several amendments are tabled which are consequential upon another amendment, the explanatory statement should state that fact and shall be printed with the first amendment in the sequence.

Explanatory statements on amendments: feedback on second pilot (P 58, 2007–08)

CO-ORDINATED BY THE PUBLIC BILL OFFICE

BACKGROUND

In its First Report of Session 2005–06, *The Legislative Process*, the Modernisation Committee concluded that Members preparing for debates in Public Bill Committees would be assisted if they were allowed to table a brief explanatory statement with each amendment or set of amendments. Following an initial pilot on the Legal Services Bill [*Lords*] the Procedure Committee concluded that a second pilot should take place during the 2007–08 session, on the basis of three or more Bills in Public Bill Committee at the same time. The bills selected for this second pilot were the Energy Bill, the Pensions Bill and the Planning Bill.

This note summarises feedback on the second pilot from the Public Bill Office, Editorial Supervisor of the Vote, Parliamentary Counsel Office and relevant government departments.

TAKE UP AND USEFULNESS

Government departments: Explanatory statements were tabled to all Government amendments on all three bills. Officials saw explanatory statements as a helpful opportunity to explain proposed Government amendments to the Pensions Bill. They found statements of significant benefit in clarifying the purpose of opposition amendments and improving the focus of debate by helping Ministers to respond to the substantive issues being raised.

Opposition/back bench: Members saw tabling explanatory statements to their own amendments as an additional burden and take up by opposition and back bench members was low. One Member said that he found explanatory statements useful in understanding the intent of Government amendments.

Officials: Parliamentary Counsel on the Energy Bill found that the value of statements was marginal because the 50 word limit meant that the extent of their explanation was often inadequate. Some statements on opposition amendments were materially inaccurate. Clerks did not notice any specific references to explanatory statements in debate and did not perceive any difference in the quality or focus of debate in Committee.

IMPACT ON RESOURCES

Government departments saw a small increase in workload as worthwhile given the advantages they derived from the inclusion of explanatory statements.

Parliamentary Counsel (PCO) found that the need to edit statements supplied by departments (for substance and length), insert statements into amendment documents and cross-reference these as necessary, added significantly to their workload.

The Public Bill Office did not find that explanatory statements created any significant additional workload, because of the low number of statements tabled by opposition and back-bench Members. In some cases statements were of assistance in grouping amendments for debate.

The Editorial Supervisor of the Vote (ESVO) found that their workload was increased by approximately one minute for each government explanatory statement and five minutes for each opposition/back bench explanatory statement. There was an increase in the amount of paper used for the printing of amendment papers.

June 2008

Memorandum submitted by Rt Hon Harriet Harman QC MP, Leader of the House of Commons (P 69, 2007–08)

I am writing in response to your Committee's review of the operation of the further experiments which have taken place this year for the inclusion of explanatory statements on amendments tabled in public bill committees. I know you have written to all Members asking them for observations. I am grateful to you and to Sir Alan and the other members of the Chairmen's Panel for enabling the two experiments—covering one bill last session and three bills this session—to take place.

It is clear that the possibility of tabling explanatory statements has been of some assistance, both to Government and to non-Government members of public bill committees. Bill teams and Parliamentary Counsel have reported that members of the committees have made use of the statements and that statements on non-Government amendments have helped to clarify for officials the intended effect of amendments ahead of meetings.

But it is also the case that there is a significant use of resources involved, both within Government and for the House services (though these may be largely absorbed within existing duties and processes and not generally separately quantifiable). There is therefore a question to be addressed as to whether the use made of the facility is properly cost-effective. I will be most interested in your Committee's views, including on whether any estimate can be made of the specific costs involved. It could be therefore that a further experiment would be appropriate for all sides to take a more detailed look at the system.

If this were done, it would be helpful if your Committee could consider again what steps might be taken to increase tabling of explanatory statements in respect of non-Government amendments. While it was always understood that the Government would expect to table such statements, there is a case for relaxing this approach in cases where the statement have been explained in other ways (such as in a Ministerial letter to the Opposition spokesman and committee members). But it would be useful if your Committee were to examine the extent of tabling of statements by other Members and whether there are ways of increasing the rate of tabling. I recognise that there would be possible objections to making the tabling of such statements mandatory, since it would be possible objections to making the tabling of such statements mandatory, since it could place an undue pressure on House officials in deciding whether a given statement was sufficient, and indeed in some cases they may come under pressure to draft the statements themselves, which would not be appropriate.

But I do think that the system will not be achieving its full potential benefits if the obligation rests solely with the Government.

July 2008

Members' Responses on Explanatory Statements (P 73, 2007–08)

Sir Nicholas Winterton DL MP

Thank you for your letter of 8 July about explanatory statements on amendments in Public Bill Committees. As lead Chairman of the Pensions Bill Committee, I must advise you that I personally found these explanatory statements to be very helpful in understanding amendments and their purpose.

I must advise you that explanatory statements were mainly provided by the Government and by the Liberal Democrats. Few, if any, such statements were provided by Her Majesty's Opposition on the Committee.

On balance, while I accept that there is a cost to explanatory statements, I believe that their use helpful.

July 2008

Sir John Butterfill FRICS MP

I thank you for your letter of 10 July.

I must say that, in connection with the Planning Bill which I chaired, I found the new procedure and explanatory statements to be most helpful.

July 2008

Steve Webb MP

Thank you for your e-mail about explanatory statements on amendments in public bill committees.

My reflection on the process is that it is largely a waste of time! In the energy bill committee I think I am right in saying that the opposition parties did not do this—partly because we have such limited resources it is hard enough to draft amendments that are in order and achieve what you want, without the added burden of writing explanatory text.

Explanations of Govt. amendments are helpful, but ministers often write letters to explain their amendments at committee stage, so I'm not sure what voluntary explanatory statements really add.

July 2008

Dr Nick Palmer MP

Greg Knight asked for comments on this pilot. I think it was an unambiguous success and should be made general.

July 2008

Alison Seabeck MP

Thank you for your letter regarding the pilot on explanatory statement on Amendments.

Like most Members I have sat on a number of committees and whilst some of the subject matter is straight forward in others it is very technical. I therefore would support the extension of the explanatory statements for amendments because when dealing with unfamiliar or highly specialised areas they can be useful. I also suspect that for Opposition parties who will not have the benefit of the Minister's knowledge based on his or her civil service briefings, that these notes are of additional value. Government Party MPs do have the ability to more easily 'pick a Minister's brain', although I have to say that most Ministers are keen to make themselves available to all parties should they have concerns.

I suspect that there is an additional cost for the work necessary to produce these briefings and you will have to take a view on whether or not this is a price worth paying but I would say that for me they were useful.

July 2008

Jonathan Djanogly MP

Generally speaking I think Statements have been helpful, although this would be a question better answered by a Committee backbencher who may not be so aware of the detail, as the person leading.

They are probably also helpful for members of the public.

July 2008

Dr Brian Iddon

In response to your letter of 10 July on “Explanatory Statements on Amendments in Public Bill Committees” I was not aware that this procedure had been used during passage of the Energy Bill through its Standing Committee—I was a Member of that Committee. However, we did have several sessions at which outside organisations and individuals were able to make their views known to the Committee on the content of the Bill before we scrutinised it. Most Members of the Committee felt that was a useful exercise.

July 2008

Mr John Greenway MP

I thought the use of explanatory statements extremely helpful and contributed significantly to achieving a better understanding of the issues. This was particularly important for such a complex subject, as pensions! Also the evidence sessions at the commencement of the committee stage were equally beneficial.

If you check the Hansard of the last committee hearing, on I believe 19 or 21 February, you will be able to pick up a number of positive comments about the process.

July 2008

Charles Hendry MP

Thank you for your letter about explanatory statements about amendments to Public Bill Committees. My experience of the Energy Bill suggests that these are of moderate value, as most of the amendments put forward were relatively self explanatory in terms of what they were seeking to achieve. Inevitably, it was a resource which was more generally used by the Government than by opposite parties or Backbenchers as the Government has the necessary resource to take full advantage of them.

Separately, I did find the evidence sessions of immense value and this is undoubtedly a very significant improvement to the workings of a Public Bill Committee.

July 2008

Mr Henry Bellingham MP

My own view is that the explanatory statements that myself and Jonathan Djanogly added to amendments that we tabled on the Legal Services Bill were indeed worthwhile and of value.

I do feel that it would be a mistake to make this anything other than a voluntary exercise but certainly it should be part of a best practice regularly implemented by Ministers.

July 2008

Helen Goodman MP

Thank you for your letter of 10 July about the pilot of Explanatory Statements on Amendments in Public Bill Committees. You asked for comments on the pilot, particularly in the light of my experience on the committee for the Legal Services Bill.

I must admit that, even allowing for the fact that I was a member of that Committee over a year ago, I have no recollection of the explanatory statements. This in itself might be helpful for you in considering whether to implement these explanatory statements more widely.

July 2008

Paul Rowen MP

Thank you for your letter of 10 June 2008 asking for my comments regarding the above pilots, which were run in the Pensions Bill in which I was a member.

You asked for my views on how I felt that this particular pilot had worked. Can I say that I found that the information, whilst superficially helpful, did lack the detail required in order to have a fuller understanding of what the movers of any particular amendments might have been planning. I do feel that this is a difficulty that cannot necessarily be resolved by any of these particular statements as it is impossible for any mover of amendment to provide the detail required in order to furnish others with information on what lies behind the amendment. In my view much of this comes from a developing understanding, during the course of the discussion during a committee, as to the particular concerns or issues that movers of amendments may wish to raise. As one who has moved, spoken and been involved in discussions of the committee, I can fully understand this. Therefore whilst supporting the principle of explanatory statements I am not sure that they necessarily do everything that Members would wish them to do.

I hope that this answers the points that you raise. If you wish to discuss this further please don't hesitate to get in touch.

August 2008

Mr David Burrowes MP

At the time of the Legal Services Bill I was a Back Bench Member and found the explanatory statements helpful. The Legal Services Bill was in places complex and the explanatory statements helped avoid the Public Bill Committee sessions becoming a preserve of the front bench. I felt the explanatory statements helped to encourage greater participation from the Committee, helped the Member tabling the amendment to focus on the amendment's purpose and perhaps provided a useful reminder when it came to speak against the amendment!

The Legal Services Bill attracted a relatively large amount of interest and attendance at the Public Bill Committees and the explanatory statements no doubt assisted in providing an early understanding of the amendments.

July 2008

Mr Elfyn Llwyd MP

I thank you for your letter of the 10 July regarding the Explanatory Statements on Amendments in Public Bill Committees.

I found it very helpful and I believe it would be useful innovation.

September 2008

Mr Nigel Waterson MP

Thank you for your letter of 10 July. As you rightly point out, the Pensions Bill on which I was the Opposition Spokesman was one of the first Bill committees to pilot the new system.

I think my broad conclusion is that this innovation was useful. However, I think it should remain as an option rather than being obligatory. I say this because the preparation of these explanatory notes is quite a substantial burden on Opposition resources, whereas of course the Government can have them drafted by legions of civil servants. Nonetheless, when circumstances allow, I would wish to prepare such notes in the future.

I hope this is helpful.

July 2008

Letter from the Chairman to Rt Hon Harriet Harman QC MP, Leader of the House of Commons

You wrote to me on 23 July setting out your views on the recent experiments allowing explanatory statements to be tabled with amendments in public bill committees.

The comments which we have received from Members and, via the Public Bill Office, from government departments and Parliamentary Counsel lead us to agree with you that the procedure has been seen as generally helpful.

The procedure clearly has resource implications, although from the information we have received, with the exception of Parliamentary Counsel and possibly the Office of the Editorial Supervisor of the Vote, these do not seem to have caused problems. Indeed we gather that government departments saw the small increase in workload as worthwhile given the advantages they derived from the inclusion of explanatory statements.

You asked us to consider whether there are ways of increasing the rate of tabling by non-government members of committees. We agree that it would be wrong to require Members to table explanatory statements with their amendments. In our view increased familiarity with the procedure is likely to be the best way of increasing its take up. It is worth bearing in mind that it has so far applied to only four bills over two Sessions. To that end we suggest that there might be merit in printing the explanatory statements alongside the amendments to which they relate in the Hansard of the public bill committee. This would both aid the reader in cases where members of the committee make reference to the statements and increase their visibility to anyone interested in public bill committee proceedings.

We note your suggestion that the Government might not always table statements if the amendments have been clearly explained in other ways. This of course is for Ministers to decide, but it would be a matter of regret if the effect was to reduce the public availability of such statements (as might be the case if a letter to committee members was considered to be an adequate substitute).

We welcome your proposal that there should be a further period of experiment before a decision is reached on whether the procedure should be made permanent. It will be important that that experiment takes us significantly further forward in terms of our experience with explanatory statements and that it constitutes

a rigorous and thorough test of the procedure. We do not believe that another limited experiment will be able to deliver these objectives. We therefore propose that, in the next Session of Parliament, explanatory statements should be permitted in respect of all public bills committed to public bill committees.

October 2008

Letter from Chris Bryant MP, Deputy Leader of the House of Commons (P 10, 2008–09)

Thank you for your letter of 15 October to Harriet Harman. I have been asked to reply.

I agree with your suggestion that the way forward is to conduct a further trial involving all bills in the current Session. This will be the only way to gauge accurately the resource implications of the process. However, I believe that we should have some idea from the outset of what the measure of success or failure will be.

The production of explanatory statements has significant resource implications. For Parliamentary Counsel, it is additional work that is usually carried out when they are up against a tight deadline for the tabling of amendments. For the Public Bill Office, there is the additional vetting process, and the House must also bear the additional printing cost. This inevitably consumes resources, mostly in the form of officials' time, which would otherwise be devoted to other aspects of the legislative process. There is some danger that it might compromise the first-rate service that Ministers receive from Parliamentary Counsel and that the House receives from the PBO. This is not something that can easily be addressed by the deployment of additional staff, as the drafting and vetting of the amendment and statement go hand-in-hand and need to be carried out by the same person.

We would therefore want to be absolutely confident that the extent to which resources were diverted from the core tasks of drafting, tabling, processing and printing amendments was proportionate to the benefits achieved. This means that we also need to see clear evidence of benefit. This might be, for example, if the greater use of the process by back-bench Members enabled Ministers to give fuller responses in debates in committee, or if there were other evidence that Members found the Government statements more useful than other forms of briefing which the Government might supply to them or other services which the PBO might provide.

I also think we need to be able to bring the trial swiftly to an end if there is evidence that it is causing acute problems in the offices concerned.

I would not like this to become too formal an exercise. Hard outcome measures are difficult to come by and any appraisal of the process will depend to a large extent on the judgement of public bill committee members.

But I think we should be clear that this is a test of the costs and benefits of the process and we should be prepared to conclude, if that is where the evidence points, that the necessary resources could be of more use to Members if they were deployed in other ways.

I am copying this letter to the Chairman of Ways and Means, the Clerk of Legislation and First Parliamentary Counsel.

December 2008

Letter from Chris Bryant MP, Deputy Leader of the House of Commons (P 26, 2008–09)

I understand that my officials and the officials of the House of Commons have been in touch with each other about when the trial suggested in my letter of 17 December should start.

Parliamentary Counsel had made arrangements to attach statements to Government amendments put down from the beginning of this week, though they have experienced some inconvenience as a result of new software being introduced in the Cabinet Office. But it seems to me more sensible if slightly more time is given to departmental Bill teams and Parliamentary Council and also to backbench Members to prepare themselves for the trial. I think it is important that the trial should start for everyone at the same time.

So what I suggest is that an announcement is made that the trial should apply to all amendments tabled during or after the constituency week recess (ie after the House adjourns on 12 February). That is certainly practicable so far as Government amendments are concerned, and it will also give the Public Bill Office some time to alert opposition and backbench Members to what is happening and to encourage them to participate.

I am copying this letter to the Chairman of the Procedure Committee, the Clerk of Legislation and First Parliamentary Council.

February 2009

Members' Responses on Explanatory Statements (P 46, 2008–09)

EMAIL FROM CHAIRMAN OF THE COMMITTEE TO MEMBERS OF PUBLIC BILL COMMITTEES BILL

I understand that you have been appointed to the public bill committee considering the [Coroners and Justice] Bill.

As you may be aware, the Leader of the House has agreed with the Procedure Committee that amendments to all bills in public bill committees this Session may be accompanied by an explanatory statement from the tabling Member, outlining the intended effect of the amendment. This is part of an experiment to determine whether the benefits of such statements in helping Members prepare for debates outweigh the costs.

Once the Bill has been reported and the committee stage concluded, if you have any views on the usefulness of explanatory statements on amendments, I should be grateful if you would let me know, as this would be of great assistance to the Procedure Committee in determining whether to recommend that such an experiment should be made permanent.

February 2009

Meg Munn MP

We've just finished committee. We only had a few amendments where there was an explanation and these were all government amendments.

I put down a few amendments myself but didn't add an explanation—this was because I was unfamiliar with the procedure and there was no particular prompt for me to do so. The issue of explanations was referred to by the Clerk in one memo but no particular guidance was given. I think if guidance had been there then backbenchers might have been more inclined to put down explanations.

I'm not sure whether opposition spokes people think they are a good idea—we didn't have any amendments from them with explanations. The nature of many amendments is to be probing—not sure how much they would want to reveal this beforehand.

Where explanations were used by the government they were useful.

I certainly think the experiment should be continued for the time being but that it needs to be brought to the attention of committee members more formally at the time they are appointed to the committee.

March 2009

David Kidney MP

The ability to give an explanation alongside the amendment did not seem to be used much during the Committee Stage of this Bill but I still think the idea is sound and sometimes it helps other members of the Committee when an MP gives an explanation for an amendment which otherwise seems somewhat obscure.

April 2009

Memorandum submitted by Simon Patrick, Clerk of Bills (P 4, 2009–10)

1. In 2006 the Modernisation Committee recommended an experiment to permit Members to table short explanatory statements (ESs) with their amendments to bills being considered in public bill committees.⁹ Under arrangements approved by the Procedure Committee and the Chairmen's Panel, there were experiments with the Legal Services Bill [*Lords*] in Session 2006–07, the Energy Bill, the Pensions Bill and the Planning Bill in Session 2007–08, and with all Bills before a public bill committee (except the Finance Bill) since February 2009. (The Committee hoped that widening the experiment would increase the take-up of the facility by opposition and backbench Members.) The ESs are printed on the amendment papers, as the Committee will have seen, in 10 pt italic type under the amendments (which are in 11 pt type) (an example is attached [not printed]). For the 2009 experiment, they have also appeared in the *Official Report*.

2. The facility has *not* been available for amendments dealt with on the floor of the House, that is in Committee of the whole House, at report stage, or during consideration of Lords amendments.

⁹ Modernisation Committee, First Report, Session 2005–06, HC 1097, The Legislative Process, paras 81–2.

3. This paper examines the extent to which the ESs have been tabled in the 2009 experiment so that the Procedure Committee can consider the future of the practice. It follows previous papers (P 41, 2006–07 and P 58, 2007–08). *The Committee might also wish to survey the extent to which the ESs were found helpful to the work of the Committees and seek the view of Parliamentary Counsel on the extra time they take to produce them.*

4. Most but not all Government amendments and new Clauses tabled for public bill committees have come with explanatory statements. These are provided in electronic form and do not cause extra work for the Public Bill Office (PBO). The Editorial Supervisor of the Vote Office (ESVO) estimate that it takes them about 60 seconds' extra work per Government ES. The additional costs to the House are limited to a slightly raised additional page count for the amendment papers (both the blue "notices given" papers and the white papers provided for each committee sitting) and for Hansard.

5. Parliamentary Counsel draft a separate note for each amendment, even though many Government amendments in committee fall into natural groups. The Procedure Committee's guidelines allow a single ES to appear under the first amendment in a group, with cross-references to it appearing under the others.

6. The Opposition front bench rarely produce ESs, even though they might have been expected to do so given their resources in support staff. The Liberal Democrat front bench produce them more often than not. A few backbenchers have tabled ESs, eg Mr John Mason on the Equality Bill and Mr Graham Stuart and Ms Karen Buck on the Child Poverty Bill. Where ESs are tabled other than by Parliamentary Counsel, they require re-keyboarding by the ESVO and insertion in the correct place. They also need to be checked in the PBO to ensure that they are in conformity with the rules laid down by the Procedure Committee (eg that they are not argumentative, and do not exceed 50 words). This can be a significant burden if a large number of ESs come in on the same day. The ESVO estimated the extra processing time as five minutes for each non-Government ES.

7. The Committee will wish to consider whether the facility for ESs is worth the extra work involved. If the process is to continue in one form or another, the Committee may wish to consider if there is a stronger case for such statements to be available (instead of in Public Bill Committees) on Report or in Committee of the whole House, where there may be many Members not as familiar with the Bills as in a small public bill committee, and where there may on occasions be no other opportunity for Ministers to explain their amendments before they are decided *en bloc* under a programme order.

November 2009

Memorandum submitted by Rt Hon Sir George Young Bt, MP, Shadow Leader of the House of Commons (P 16, 2009–10)

Many thanks for your letter, and I plan to circulate it to my colleagues in the Shadow Cabinet, to remind them of this facility to table short explanatory statements, and to see whether they would like to make better use of the opportunity that this provides.

Coming to this afresh, my view is that the facility should be extended to the floor of the House for the benefit of those Members who haven't served on the Public Bill stage, and I am writing to Sir Michael Spicer to see whether this is a subject which the Executive of the 1922 Committee might reflect on.

November 2009

Memorandum submitted by Stephen Laws CB, First Parliamentary Counsel (P 18, 2009–10)

1. Thank you for your letter of 2 December asking for a note to the Procedure Committee on the additional time and cost involved in producing explanatory statements for government amendments to bills. You also asked me to draw the Committee's attention to any additional points of which I thought they should be aware.

2. I have canvassed views from colleagues who worked on last session's bills, both within OPC and in instructing departments. What follows sets out what has emerged from this.

3. The process of drafting and checking explanatory statements, and the administrative process of incorporating them into a batch of amendments for tabling, has been time-consuming, both for parliamentary counsel and departments. On bills where there have been only a few government amendments in public bill committee this has not proved too much of a burden. On bills where the number of government amendments in public bill committee has been into the dozens or even hundreds (uncommon in the last session but less so in the previous session, when as you will be aware a more limited experiment was conducted), the preparation of explanatory statements has been a considerable extra burden, in particular as it is not uncommon for the terms of the amendments themselves not to be settled until shortly before they are tabled.

4. I expect the Committee will want to consider whether the time and effort involved in preparing explanatory statements is outweighed by the benefit they are seen as providing, both to Ministers and to opposition and back-bench members of a public bill committee.

5. On this point, departments did not think Ministers found explanatory statements on government amendments useful, relying instead on the more detailed briefing provided by the department. (The departments themselves have, though, sometimes found the process of preparing an explanatory statement to be a useful discipline, in that it has required them to focus on exactly what an amendment is intended to achieve.)

6. When tabling government amendments, the practice of departments has been to write to public bill committee members about the substance of the amendments. These letters have been able to put the amendments in the context of the policy discussions that have been taking place in a way that the limited format of explanatory statements has not allowed. Departments think that opposition and back-bench committee members will have found these letters more useful than explanatory statements. In support of this, we are not aware of any occasions where committee members have referred in debate to an explanatory statement. Explanatory statements are, though, made public in a way that these letters are not and so may perhaps have been of use to interested lobby groups.

7. Departments have commented that they would have found it useful if opposition and back-bench committee members had tabled explanatory statements with their amendments. This would have made it easier to ascertain what non-government amendments were aiming to do, and so would have enabled Ministers to be briefed in a way that addressed the point more effectively. It seems that there were only a very few occasions last session on which explanatory statements were tabled by anyone other than the government.

8. It does seem that a significant element of the help that is derived from explanatory statements relates to the way in which they can indicate which amendments are to be read together as different parts of the same story. However care is needed with this to avoid pre-empting decisions of the chair on the selection and grouping of amendments. It may be that this help could be provided by means of other changes that would impose less of a burden on government and House officials, for example in connection with the numbering and indexing of amendments.

9. If the Committee were minded to recommend that the experiment with the use of explanatory statements should continue, there are a few other points that the Committee might wish to consider:

- Some limited flexibility on the 50-word limit might make the process of preparing explanatory statements less time-consuming and the terms of the statements more helpful.
- With Explanatory Notes, the guidance is that no note is required for something that does not need an explanation. Could this also apply to explanatory statements, so that no statement would be required for an amendment the effect of which was clear on its face?
- It would be helpful if the Committee could consider specifically whether the experiment should apply in the case of Private Member's Bills.
- The Committee might like to consider how the practice of making statements could be encouraged in the case of non-government amendments (where there is no alternative help provided about what is intended), or perhaps, in the light of the alternative help provided by Ministers, whether the use of explanatory statements should be confined to non-government amendments.
- If the Committee are considering recommending the extension of the experiment to cover amendments tabled on consideration of a bill (as well as in public bill committee), they should be aware that the timing issues would be much more significant in this case, because these amendments are typically tabled over a much shorter period than are amendments for public bill committee.

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