



HOUSE OF LORDS

Leader's Group

Review of Working Practices

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The Leader's Group

The Group was appointed by the Leader of the House with the remit “to review the procedural changes agreed by the House in July 2002 and to make recommendations to the Procedure Committee for their retention, modification or reversal, with any associated changes”.

Membership

The Members of the Leader's Group are:

- Baroness Amos (Lord President of the Council and Leader of the House)
- Lord Brooke of Alverthorpe
- Lord Cope of Berkeley
- Lord Craig of Radley
- Lord Grocott
- Lord Roper
- Lord Strathclyde
- Lord Waddington
- Baroness Williams of Crosby
- Lord Williamson of Horton

Contacts for the Procedure Committee

All correspondence should be addressed to the Clerk of the Procedure Committee, House of Lords, London SW1A 0PW.

The telephone number for enquiries regarding the Group's work is 020 7219 8796.

REPORT FROM THE LEADER'S GROUP – REVIEW OF WORKING PRACTICES

Introduction

1. On 24 July 2002¹ the House agreed to implement, for an experimental period of two sessions, a package of new working practices recommended by the Procedure Committee² following a report from a Leader's Group³. The experimental period will come to an end with the current session, so the House needs to decide how to proceed thereafter.
2. The appointment of the present Leader's Group was announced in a Written Statement⁴ on 26 May this year, and we have met 7 times since then. Our remit was "to review the procedural changes agreed by the House in July 2002 and to make recommendations to the Procedure Committee for their retention, modification or reversal, with any associated changes". We were specifically charged to "include September sitting, but not the terms of reference of the Statutory Instruments Merits Committee (because these are to be reviewed separately after the first year), nor matters relating to the Speakership of the House".
3. In June the Procedure Committee took note of our intended work, and agreed to consider our report after the summer recess, and to make recommendations to the House before the end of the current session⁵. It is not therefore expected that this report will be debated in the House, but that a debate will take place, and a decision be made, on the basis of those recommendations from the Procedure Committee.

Consultation

4. We were very conscious that the experimental working practices have aroused mixed feelings among members, and were keen to hear varying points of view. We therefore invited every member of the House to let us have their views and we are grateful to those who responded. We took into account the responses we received, since clearly it is desirable that the outcome of the present exercise should command the widest possible support. However, we recognise that we cannot please everybody – the responses we received ranged from those who wished to return to the *status quo ante* to those who wished to make the experimental package permanent in its entirety and those who wished to make further change. In our recommendations we have sought to achieve a balance which reflects those views widely held in the House but also takes account of practical implications.

¹ HL Deb, 24 July 2002, col 371.

² 5th Report (2001–02), HL Paper 148.

³ Report by the Group appointed to consider how the working practices of the House can be improved, and to make recommendations, (2001–02), HL Paper 111.

⁴ HL Deb, 26 May 2004, col WS 53.

⁵ 2nd Report (2003–04), HL Paper 99.

Pre-legislative scrutiny

5. The experimental package provided that “virtually all major government bills” should as a matter of course be subject to pre-legislative scrutiny by Parliament. In 2002–03, 9 bills received such scrutiny; in 2003–04, 11 bills up to the end of the September sitting. On some occasions the scrutiny has been conducted by a departmental select committee in the House of Commons, on other occasions by a joint committee of both Houses.
6. It is difficult at this stage to make an objective assessment of the value of pre-legislative scrutiny, but the overwhelming majority of respondents to our consultation supported it. There was a general sense that such scrutiny improves the quality of subsequent legislation, and that the involvement of interested parties from outside Parliament is valuable. It was recognised, however, that it would not be worthwhile in instances of strong party political division. The implications for resources are considerable, not least the level of commitment required from those who conduct the scrutiny.
7. **We welcome the growth in pre-legislative scrutiny, which is a significant innovation and has notably altered the way in which the legislative programme is structured. We recommend that this approach should continue. However, we conclude that the aspiration that “virtually all major Government bills” should receive such scrutiny is unrealistic. A variety of constraints – business management requirements, political considerations, resource implications – lead us not to stipulate a target for continued growth in pre-legislative scrutiny, though we expect that it will become an increasingly useful part of the parliamentary cycle. We support the continued consideration on a case-by-case basis of the appropriate forum for pre-legislative scrutiny, but would favour greater use of joint committees and of Lords’ committees where appropriate.**

Carry-over

8. The experimental package provided that a Government bill which had received pre-legislative scrutiny should be eligible for carry-over whatever stage it had reached in its passage through Parliament, though clearly agreement between the Houses would be necessary where a bill to be carried over was in the second House. Some respondents to our consultation expressed the view that carry-over undermines the effectiveness of the opposition’s weapon of delay. Others suggested that judicious use of carry-over could help to smooth the peaks and troughs of the legislative programme. The current position is that carry-over is possible whenever there is general agreement that it would be in the interests of good legislation. It is worth noting that the only bill in respect of which carry-over has in the event been considered, the Constitutional Reform Bill [HL], is not a bill which has received pre-legislative scrutiny (though it was referred to a select committee after second reading).
9. **We recommend that the existing arrangements for carry-over, as described above, should be continued. Eligibility of individual bills is settled by discussion through the usual channels, and a bill is then carried over by an *ad hoc* motion in the House. We also note the example of the Constitutional Reform Bill [HL], as demonstrating the flexibility which exists where there is general agreement about the desirability of a bill being carried over.**

Scrutiny of the Finance Bill

10. The experimental package provided for the Select Committee on Economic Affairs to appoint a sub-committee to consider the Finance Bill. In order not to encroach upon the financial privileges of the Commons, it was made clear that the sub-committee should address only technical issues of tax administration, clarification and simplification, and should be prohibited from investigating the incidence or rates of tax. In each session of the experimental period the sub-committee has reported, and the report has been debated together with the second reading of the Bill.
11. This is an issue of some sensitivity between the two Houses. Concern was expressed in the Group about this and about the feasibility of maintaining a clear distinction between policy and administration. It is inevitable that there will be differences in interpretation of the remit of the sub-committee. Nevertheless, **we endorse the recommendations previously agreed to by the House. We recommend that the Sub-Committee should continue to conduct its activities with full regard to the sensitivities involved and in particular to the traditional boundary between the two Houses on fiscal policy.**

Starred questions

12. The experimental package increased the number of starred questions on Tuesdays and Wednesdays to 5 (the additional question each day to be a topical question) and extended the time limit on those days from 30 to 40 minutes. Although intended to increase the opportunities for the House to hold the Government to account, in practice these changes have not been popular. The House noticeably empties after 30 minutes, slots for starred questions remain unfilled more often than in the past and the demand for topical questions is so low that a ballot is frequently unnecessary. There is also confusion in the House on occasion because the pattern and timing of starred questions differs from day to day. Respondents to our consultation overwhelmingly called for a return to previous arrangements in this area, with very few respondents in favour of the extended question time.
13. **We therefore recommend that the House should return to 4 starred questions each day, with a limit of 30 minutes. We recommend that the number of topical questions be reduced to 3, one each on Tuesday, Wednesday and Thursday. This would allow 2 of each week's topical questions to be tabled in the week that they would be asked, which might encourage greater topicality. We recommend that the clerks should discourage members from tabling questions which are clearly not topical and should indicate to members which questions have already been submitted for ballot. We endorse the existing limit of 4 topical questions per member per session.**

Ministerial "free days"

14. The previous Leader's Group recommended that each minister should be allowed one day a week free of starred questions. That recommendation was not endorsed by the Procedure Committee and so was not implemented as part of the experimental package.
15. **We do not recommend that that issue should be re-opened, but the House must then accept that ministers cannot always be present to**

answer questions. We draw to the attention of the House the recommendation of the Procedure Committee that “It should be left to ministers to decide whether to answer questions themselves or leave them to be answered by a Whip if, for example, they are absent from the House on official duties”.

Grand Committees

16. The experimental package provided for greater use of Grand Committees and this element of the experiment has been very fully explored. In session 2002–03, 11 bills were committed to Grand Committee, taking roughly 144 hours. In the current session so far 17 bills have been committed to Grand Committee, taking roughly 230 hours. (A total of 34 bills had been committed to Grand Committee in the previous 8 sessions). This represents a significant change in the way in which the House deals with legislation and was bound to attract some controversy.
17. A number of respondents to our consultation supported the use of Grand Committees. It was suggested that the more informal atmosphere provided a better opportunity for productive dialogue and sometimes enabled ministers to be more responsive. The easy access to officials and advisers was thought to be of advantage to all sides. Although Grand Committees attracted participation from only a small number of members, attendance was no lower than it might be for Committee of the Whole House. There was no evidence to support the perception that report and third reading were prolonged following a Grand Committee. The increased use of Grand Committee has a clear relationship to the rising time of the House, which we consider below, and to the scope for early announcement of recess dates.
18. On the other hand, other respondents criticised Grand Committee as a talking shop with no opportunity to improve a bill. It was suggested that Grand Committee could be used simply to afford time for more government legislation. It was also suggested that members might feel inhibited from participating, partly because of the physical layout in which “regulars” had their own seats and occasional attenders could not easily find a place.
19. We considered whether the current arrangements for determining which bills should be committed to a Grand Committee are satisfactory, or whether there should be a more systematic process for the commitment of bills. **We concluded that arrangements for bills going to Grand Committees are broadly acceptable and we recommend that the present arrangements, whereby decisions about commitment of a bill are made after discussion in the usual channels and a motion is moved after second reading of each bill, should be continued.** Some bills work better in Grand Committee than others, largely because of the subject matter of the bill and the chemistry of those involved, and decision-making on a case-by-case basis makes it possible to take account of that.
20. We note that for a Grand Committee to sit beyond the rising of the House is unpopular. This is in part a seasonal issue, and in any event since Grand Committees do not normally sit beyond 7.30 pm (7 pm on Thursdays) the demands on members are not onerous. **We recommend that Grand Committees should continue to sit for the times agreed in advance, irrespective of the rising of the House.**

21. The physical conditions of the Moses Room have been much improved and are now broadly acceptable. During the summer recess this year the roof has been renovated, reupholstering of the chairs to improve their comfort will be completed by the end of October and new uplighters have been provided to enhance the lighting. In the longer term, once the temporary ceiling is removed and requirements assessed, further work may be required on lighting, acoustics and air handling. The possibility of providing bespoke furniture will be considered. **We recommend that consideration should be given to altering the layout to make it more accessible to members who might wish to attend a Grand Committee briefly or intermittently.**
22. We considered the potential for televising Grand Committees from the Moses Room, but concluded that the costs would be very high and hard to justify. The Director of Parliamentary Broadcasting advised that a more cost-effective way forward would be to link the Moses Room microphone system to the broadcasting network so that automated sound coverage of Grand Committees could be carried on the internet as part of Parliament's own webcasting service. **We recommend that this course should be further pursued.**
23. Building on the success of the Grand Committee on Northern Ireland orders, **we recommend that other types of business could be taken in the Moses Room, including some other delegated legislation and debates of some select committee reports. The Procedure Committee may also wish to consider whether unstarred questions could also be taken in the Moses Room from time to time, given the pressures on the Floor of the House and the evident demand for additional opportunities for unstarred questions.**

Target rising time

24. The experimental package coupled the increased use of Grand Committee with a target rising time for the House of 10 pm on Monday to Wednesday. This reflected the widespread feeling that it was undesirable for the House routinely to sit late at night to consider legislation.
25. In practice it has taken a little time for the target to become established. In session 2002–03, of 174 sitting days the House sat beyond 10 pm on 67 occasions, on 10 of them beyond midnight. In the current session, to the end of July, of 123 sitting days the House has sat beyond 10 pm on 33 occasions. Of those, on 10 occasions the over-run has been only 15 minutes or less, and the House has not sat beyond midnight at all. **We conclude that the increased use of Grand Committees has greatly contributed to increased success in meeting the target rising time, as has the greater experience of the usual channels in working to a specific target.**
26. Most respondents to our consultation welcomed the target rising time and **we conclude that the House would no longer find it acceptable routinely to sit late into the night.** On the other hand, a number of members emphasised the need for some flexibility, not least because faster progress is often made later, and because on occasion it may be in the interests of the House to continue where, for example, there is little business remaining to complete a stage of a bill. At present the *Companion to Standing*

Orders states “It is a firm convention that the House normally rises by about 10 pm on Mondays to Wednesdays”⁶. **We recommend that the current arrangements for the 10 pm target rising time should continue, because they are flexible enough to allow the House to sit later by agreement in cases where that is desirable. Responsibility for meeting that target rests not only with the business managers, but with all members of the House through self-regulation. A target rising time can only be achieved in practice if, for example, members refrain from making “second reading” type speeches at other stages of bills, and from repeating at length arguments which have already been fully stated.**

Time for debates

27. The experimental package provided that three additional Wednesdays in each session should be allotted to backbench debates, and this has been done. It also provided that more debates on select committee reports and general topics should be held in prime time on the floor of the House. This has been more difficult to achieve, sometimes because committee chairmen are unavailable on dates offered. However, significant demands for debate have been accommodated, for example on Iraq, the European Union Constitutional Treaty, the Hutton inquiry and the Speakership of the House.
28. We have recommended above the taking of more routine business in the Moses Room as that would reduce pressure on time in the Chamber, and permit more politically significant issues to be adequately debated. **We recognise that that will not be universally popular, but time in the Chamber is at a premium and it should be acknowledged that some business must be accommodated elsewhere.**
29. **We also recommend that committee chairmen should be rigorous in recommending reports either for debate or information. We hope that recommendations for debate could be confined to those subjects which are likely to attract interest and participation from the wider House, and those instances where it is desirable that a Government response should be given in debate rather than in writing. Recommending more specialised select committee reports for debate has an impact on the time available to debate matters of more general interest.**

Thursday sittings

30. The experimental package initially provided that on Thursdays the House should sit from 11 am to 1.30 pm for public business, then following an adjournment should sit again at 3 pm beginning with starred questions. After one session, it became apparent that that sitting pattern was not a success so, after a survey of members, the Procedure Committee recommended that from the start of 2004 the House should sit from 11 am to about 7 pm, with starred questions taken at the beginning of business. A lunch break from the main business could be used for other business, in the same way as the dinner break on other days⁷.

⁶ Companion, paragraph 3.01.

⁷ 1st Report (2003–04), HL Paper 6 (agreed to by the House on 17 December 2003, HL Deb col 1159).

31. Responses to our consultation were strongly divided on this issue. Morning sittings were considered to deter participation by members with commitments outside the House; to have an adverse effect on attendance at party meetings; to make it harder for members to conduct meetings with outside bodies; to result in a clash between starred questions and Cabinet; and to have resulted in a lack of interest in Thursday's proceedings. Some members proposed still further variations in the timings. On the other hand, other members welcomed the early rising time on a Thursday, which allowed members from outside London to travel home and still use Friday productively. The new arrangements were thought to be working well and to be generally satisfactory to the House as a whole.
32. **We acknowledge the chequered history of this issue, and the fact that some members are still strongly averse to the morning sitting on Thursday. But that body of opinion is not generally representative of feelings in the House, and we take the view that the present pattern of Thursday sittings is now fairly widely accepted. This is an issue on which interests differ, and no solution would meet all the demands of members' varying personal circumstances. On the whole, we conclude that the current arrangements for Thursday sittings are successful. We recommend that the House should continue to sit at 11 am on Thursdays with starred questions as first business, and aim to rise at around 7 pm.**
33. A number of responses to our consultation urged us to consider reversing the business on Wednesdays and Thursdays, so that general debates would be taken on Thursday with Monday, Tuesday and Wednesday used for legislation. The House will recollect that this proposal has been debated and voted on twice in recent years⁸. It was not part of the experimental package which we have been invited to review, but **we acknowledge that the House may wish to revisit the issue of swapping Wednesday and Thursday business in future.**
34. **We recommend that Grand Committees should not normally sit on a Thursday morning, except by agreement where exceptional circumstances make it desirable.**
35. One response to our consultation noted the difficulties occasioned by taking third reading of a bill on a Thursday, when publication of the marshalled list of amendments on that morning allowed very little time for agreement of the groupings. **Whilst publication of the marshalled list on the previous day would be of little practical advantage if further amendments are tabled at the last minute, we recommend that earlier publication of the marshalled list should be explored.**

September sittings

36. The experimental package provided for the House to sit in September, in return for longer recesses at other times. This has now happened in two consecutive years, on the basis of a motion in the House early in each session. Opinions on September sittings vary enormously, depending on the personal circumstances of members. For some, recesses which mirror school

⁸ Procedure Committee 1st Report (1998–99) HL Paper 33 (debated 22 March 1999, HL Deb col 960) and Procedure Committee 1st Report (2000–01) HL Paper 16 (debated 23 January 2001, HL Deb col 135).

holidays more closely are desirable, for others the opportunity to take holidays or undertake other commitments during September is important. Aside from the preferences of members, there are other considerations on both sides. Whilst the House of Commons continues with its experiment in September sittings (until the end of the current Parliament) for the two Houses to keep to roughly the same sitting patterns has clear advantages for security costs, for the works programme and for any bicameral activity such as meetings of joint committees. Moreover a September sitting reduces the lengthy period when the government is not subjected to any parliamentary scrutiny, and when a costly emergency recall could otherwise be required. On the other hand, sitting for two weeks in September incurs additional difficulty and costs in arranging the works programme and it has implications for members and staff involved in preparation for sitting days, for whom more short recesses are less advantageous than fewer long ones. The experimental package provided for Grand Committees to sit in September whether or not the House was sitting, and the Procedure Committee drew to the attention of the House a number of procedural issues which would need to be resolved first, including the implications for minimum intervals between stages. As yet Grand Committees have not sat during recesses.

37. **We recognise the strong feelings in the House on this issue, and also the arguments on practical and cost grounds. We endorse the original recommendation that the House should be willing to sit in September, but this should be reconsidered if the House of Commons discontinues September sittings in due course.**