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Select Committee on the Constitution

8th Report of Session 2008–09

Pre-Legislative Scrutiny in the 2007–08 Session

Report

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Contact Details

All correspondence should be addressed to the Clerk of the Select Committee on the Constitution, Committee Office, House of Lords, London, SW1A 0PW.

The telephone number for general enquiries is 020 7219 1228/5960

The Committee's email address is: constitution@parliament.uk

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Pre-Legislative Scrutiny in the 2007–08 Session

Introduction

1. In 2004 the Committee published a major report on *Parliament and the Legislative Process*, which included a chapter on pre-legislative scrutiny.¹ In that report, the Committee welcomed the use of pre-legislative scrutiny, and wished to see it “improved and extended.”²
2. Yet in the years following the publication of the 2004 report, the amount of pre-legislative scrutiny declined markedly. In response to this disappointing decline, we announced that we would produce and publish statistics on the volume of draft bills at the end of each session, “along with any comment that we feel to be necessary.” This is the second such report, following *Pre-Legislative Scrutiny in the 2006–07 Session*, published in January 2008.³

Pre-Legislative Scrutiny in 2007–08

3. We now consider the incidence of pre-legislative scrutiny in the 2007–08 session and look ahead to the draft bills promised for the current session. We also analyse the trends that these figures reveal.

i) Draft Bills Published in the 2007–08 Session

4. As we noted in our 2006–07 report, the Government announced that they intended to publish seven draft bills in the 2007–08 session.⁴ In the event, nine draft bills were published during the session, including all seven of those initially envisaged. The Government’s Draft Legislative Programme also stated that a draft Communications Data Bill would be published in 2007–08, but in the event this was held over to the list of planned draft bills for the 2008–09 session.⁵ Further details of the nine draft bills that were published are set out below:
 - **Draft Apprenticeships Bill:** published 16 July 2008 and scrutinised by the House of Commons Innovation, Universities, Science and Skills Committee and the Commons Children, Schools and Families Committee. Both Committees published their reports on 5 December.⁶ In addition, the Government held their own consultation process, which closed on 8 October.⁷ A more wide-ranging bill, to reform education, training and apprenticeships, was announced in the Queen’s Speech⁸, and

¹ 14th Report (2003–04): *Parliament and the Legislative Process* (HL 173). See especially Chapter 3.

² *ibid.*, paras 25, 28.

³ 4th Report (2007–08): *Pre-Legislative Scrutiny in the 2006–07 Session* (HL 43). See especially para 3.

⁴ *ibid.*, para 9.

⁵ Office of the Leader of the House of Commons, *Preparing Britain for the Future: The Government’s Draft Legislative Programme 2008/09*, Cm 7372, Chapter 4, para 8 (p 73). See para 5 below.

⁶ Innovation, Universities, Science and Skills Committee, 7th Report (2007–08): *Pre-legislative Scrutiny of the Draft Apprenticeships Bill* (HC 1062); and Children, Schools and Families Committee, 4th Report (2007–08): *The Draft Apprenticeships Bill* (HC 1082).

⁷ http://www.dius.gov.uk/consultations/apprenticeships_bill

⁸ HL Deb 3 Dec 2008 col 2.

the Apprenticeships, Skills, Children and Learning Bill was introduced to the House of Commons on 4 February 2009.

- **Draft Constitutional Renewal Bill:** published 25 March 2008 and scrutinised by a Joint Committee of both Houses of Parliament. The Joint Committee published its report on 31 July.⁹ Elements of the draft Bill were also scrutinised by the Commons Justice Committee (report published 24 June) and the Commons Public Administration Committee (report published 4 June).¹⁰ The Government have yet to publish their response to these reports. The Queen's Speech stated that the Government would "continue to take forward proposals on constitutional renewal, including strengthening the role of Parliament and other measures", although there was no specific commitment to a bill.¹¹ However, the Lord Chancellor, Jack Straw MP, told us that "the hope is that we can bring forward the Constitutional Reform Bill as a bill for legislation later this session ... almost certainly as a carry-over bill."¹²
- **Draft Construction Contracts Bill:** published July 2008. The draft Bill was not subject to parliamentary scrutiny, although the Commons Business and Enterprise Committee did refer to it in its report, *Construction Matters*.¹³ The Government held their own consultation process, which closed on 12 September 2008.¹⁴ The Government's Draft Legislative Programme announced that improving the operation of construction contracts would form one element of the proposed Community Empowerment, Housing and Economic Regeneration Bill.¹⁵ However, the Government have since announced that the Community Empowerment Bill will be published in draft in the 2008–09 session.¹⁶
- **Draft Counter-Terrorism (Temporary Provisions) Bill:** published 13 October 2008, after the Government withdrew their proposals under Schedule 8 of the Counter-Terrorism Bill to extend the maximum period of detention to 42 days. The Home Secretary announced that she had prepared the draft Bill, which would extend the period of detention to 42 days, so that "should the worst happen" it was "ready to be introduced if and when the need arises."¹⁷ The draft Bill has not been subject to pre-legislative scrutiny, and has not been introduced to Parliament.
- **Draft Cultural Property (Armed Conflicts) Bill:** published January 2008 and scrutinised by the Commons Culture, Media and Sport Committee. The Committee published its report on 22 July.¹⁸ The Government also conducted a parallel online consultation¹⁹, and their

⁹ 1st Report (2007–08): *Draft Constitutional Renewal Bill* (HL 166/HC 551).

¹⁰ Justice Committee, 4th Report (2007–08): *Draft Constitutional Renewal Bill (Provisions Relating to the Attorney General)* (HC 698); and Public Administration Committee, 10th Report (2007–08): *Constitutional Renewal: Draft Bill and White Paper* (HC 499).

¹¹ HL Deb 3 Dec 2008 col 2.

¹² Corrected Oral Evidence given by Rt Hon Jack Straw MP, Lord Chancellor, 28 January 2009, Q 2.

¹³ 9th Report (2007–08): *Construction Matters* (HC 127), paras 153–54.

¹⁴ Department for Business, Enterprise and Regulatory Reform, *The Draft Construction Contracts Bill*, July 2008, p 3.

¹⁵ *Draft Legislative Programme 2008/09*, op. cit., p 66.

¹⁶ <http://www.commonleader.gov.uk/output/Page2669.asp>

¹⁷ HC Deb 13 Oct 2008 col 624

¹⁸ 9th Report (2007–08): *Draft Cultural Property (Armed Conflicts) Bill* (HC 693).

¹⁹ Department for Culture, Media and Sport, *Draft Cultural Property (Armed Conflicts) Bill*, January 2008, p 3.

response to both consultations was published on 20 October.²⁰ The Government's Draft Legislative Programme stated that provisions would be included in the prospective Heritage Protection Bill (see below).²¹

- **Draft Heritage Protection Bill:** published 2 April 2008 and scrutinised by the Commons Culture, Media and Sport Committee. The Committee published its report on 30 July.²² The Government also conducted a parallel online consultation, and their response to both consultations was published on 20 October.²³ The Government's Draft Legislative Programme made reference to a prospective Heritage Protection Bill, also incorporating the provisions of the draft Cultural Property (Armed Conflict) Bill (see above).²⁴ However the Bill was not announced in the Queen's Speech, and the Culture, Media and Sport Committee claimed that the Bill had been dropped from the legislative programme.²⁵
- **Draft (Partial) Immigration and Citizenship Bill:** published 14 July 2008. On 22 July, the Commons Home Affairs Committee announced that it was extending the terms of reference of its inquiry on *Managing Migration: the Points-Based System* to allow for detailed scrutiny of the draft (partial) bill.²⁶ This inquiry is ongoing. In the meantime, the Queen's Speech announced that a bill would be brought forward to "strengthen border controls, by bringing together customs and immigration powers."²⁷ The Borders, Citizenship and Immigration Bill was introduced to the House of Lords on 14 January 2009, although many elements of the draft Bill are not included in this Bill. However, it has been suggested that "a further draft Immigration Bill, implementing the rest of the Government's proposals, is expected in the autumn."²⁸
- **Draft Marine Bill:** published 3 April 2008, and scrutinised by a Joint Committee of both Houses of Parliament. The Joint Committee published its report on 30 July.²⁹ The Commons Environment, Food and Rural Affairs Committee also conducted an inquiry into the draft Bill's proposals on coastal access provisions. Its report was published on 22 July.³⁰ The Government conducted an online consultation, which closed on 26 June.³¹ The Government published a joint response to both reports and the consultation process on 25 September.³² A Bill was announced in the Queen's Speech, and the Marine and Coastal Access Bill was introduced to the House of Lords on 4 December 2008.

²⁰ Department for Culture, Media and Sport, *Government Response to the Culture, Media and Sport Committee Reports on the Draft Heritage Protection Bill and Draft Cultural Property (Armed Conflicts) Bill*, Cm 7472, October 2008.

²¹ *Draft Legislative Programme 2008/09*, op. cit., pp 13, 36–38.

²² 11th Report (2007–08): *Draft Heritage Protection Bill* (HC 821).

²³ *Government Response to the Culture, Media and Sport Committee Reports*, op. cit.

²⁴ *Draft Legislative Programme 2008/09*, op. cit., pp 13, 36–38.

²⁵ 2nd Report (2008–09): *Work of the Committee 2007–08* (HC 188), paras 13, 24.

²⁶ Home Affairs Committee press release, 22 July 2008. See http://www.parliament.uk/parliamentary_committees/home_affairs_committee/hacpn080722no56.cfm

²⁷ HL Deb 3 Dec 2008 col 2.

²⁸ <http://services.parliament.uk/bills/2008-09/borderscitizenshipandimmigration.html>

²⁹ 1st Report (2007–08): *Draft Marine Bill* (HL 159/ HC 552).

³⁰ 9th Report (2007–08): *Draft Marine Bill: Coastal Access Provisions* (HC 656).

³¹ <http://www.defra.gov.uk/corporate/consult/marinebill/>

³² Department for Environment, Food and Rural Affairs, *Taking Forward the Marine Bill: The Government Response to Pre-Legislative Scrutiny and Public Consultation*, Cm 7422, September 2008.

- **Draft Marine Navigation and Port Safety Bill:** published on 6 May 2008, and scrutinised by the Commons Transport Committee. The Committee published its report on 19 July.³³ The Government also conducted their own consultation process, which closed on 25 July. The Government’s response was published on 20 October, which stated that the Government intended “to introduce the Bill when Parliamentary time allows”.³⁴ A Bill was not announced in the Queen’s Speech, and no Bill has as yet been presented to Parliament.

ii) Prospective Pre-Legislative Scrutiny for 2008–09

5. The Government have announced that they expect to publish seven draft bills during the 2008–09 session³⁵:

- Antarctica
- Bribery
- Civil Law Reform
- Communications Data
- Community Empowerment
- Floods and Water
- Immigration Simplification (see above)

iii) Analysis of the Trends in Pre-Legislative Scrutiny

6. Parliamentary support for pre-legislative scrutiny, to which we referred in our previous report, has remained strong. A number of the Commons departmental committees that conducted pre-legislative scrutiny in 2007–08 affirmed its value.³⁶ The Commons Liaison Committee stated that “Committees are keen to contribute their specialist knowledge to the legislative process through both the scrutiny of draft bills and of other legislation.”³⁷ The Joint Committee on the draft Constitutional Renewal Bill stated that the decision to present the draft Bill for pre-legislative scrutiny “is the right thing to do for a bill of this nature.”³⁸
7. The Government, too, have continued to express their commitment to pre-legislative scrutiny. The Draft Legislative Programme stated that:

“The Government fully endorses the value of pre-legislative scrutiny of draft bills as a means of improving the quality of bills subsequently introduced to Parliament ... for many [bills] it can be extremely valuable—where the subject matter is of particular interest to Parliament and where Committees can improve texts on the basis of expert evidence.”³⁹

³³ 9th Report (2007–08): *The Draft Marine Navigation Bill* (HC 709).

³⁴ Transport Committee, 7th Special Report (2007–08): *The Draft Marine Navigation Bill: Government Response to the Committee’s Ninth Report of Session 2007–08* (HC 1104), p 1.

³⁵ HC Deb 4 Dec 2008 col 13WS

³⁶ Transport Committee, *The Draft Marine Navigation Bill*, op. cit., para 2; Culture, Media and Sport Committee, *Draft Cultural Property (Armed Conflicts) Bill*, op. cit., para 2; Environment, Food and Rural Affairs Committee, *Draft Marine Bill: Coastal Access Provisions*, op. cit., para 2.

³⁷ 3rd Report (2007–08): *The Work of Committees in 2007* (HC 427), para 18.

³⁸ *Draft Constitutional Renewal Bill*, op. cit., para 7.

³⁹ *Draft Legislative Programme 2008/09*, op. cit., Chapter 4, paras 7, 10 (p 73).

8. At Second Reading of the Marine and Coastal Access Bill in the Lords, the Minister, Lord Hunt of King's Heath, told the House "how helpful the process of pre-legislative scrutiny has been in developing this Bill ... As a result of this pre-legislative scrutiny process, a good draft bill has been improved—made stronger and more transparent."⁴⁰ The Secretary of State for Justice and Lord Chancellor, Jack Straw MP, told us that, in terms of the legislative process, "on the whole it has certainly been working better than before we had pre-legislative scrutiny." However, he did add that "the main problem with pre-legislative scrutiny is getting people to give the same scrutiny to bills in draft as they do later on. There have been plenty of examples where there has been something in a bill which is potentially explosive but the dog does not bark until the last moment ... The lesson is that you have to stir the dog." When asked if he thought this was happening at the moment, he said "to a degree it is, but I think that sometimes it is not."⁴¹
9. In last session's report, we produced a table showing the number of draft bills that had been published in each session, comparing it with the number of Government bills introduced. This table was based upon statistics provided by the Government in answer to a written question from the Committee Chairman.⁴² We have reproduced the table below, adding the figures for 2007–08.

TABLE

Session	Government statistics		Ratio of draft bills to Government bills
	Number of Government bills introduced into at least one House ⁴³	Number of draft bills published	
1997–98	53	3	1:18
1998–99	31	6	1:5
1999–2000	41	6	1:7
2000–01	28	2	1:14
2001–02	39	7	1:6
2002–03	36	9 ⁴⁴	1:4
2003–04	37	12	1:3
2004–05	34	5	1:7
2005–06	58	4 ⁴⁵	1:15
2006–07	36	4	1:9
2007–08	31	9	1:3

⁴⁰ HL Deb 15 Dec 2008 col 648.

⁴¹ Corrected Oral Evidence given by Rt Hon Jack Straw MP, *op. cit.*, QQ 27–29.

⁴² HL Deb 29 Nov 2007 cols WA134–35.

⁴³ Figures include tax law rewrite Bills, Law Commission Bills and Consolidation Bills (all of which will have been published in various kinds of draft form or are pre-existing legislation, but are not included in the list of draft bills in column 3) and Consolidated Fund Bills. Some bills are carried over from one Session to the next and therefore appear in figures for both Sessions.

⁴⁴ Excludes draft clauses on the Gambling Bill published in this Session, for which the main draft Bill was published in the 2003–04 Session.

⁴⁵ Excludes draft clauses on the Company Law Reform Bill published in this Session, for which the first substantial body of draft clauses was published in the 2004–05 Session.

10. In our previous report, we noted with concern that both the number and proportion of draft bills had fallen between the 2003–04 session and the 2006–07 session, in spite of the Government’s 2005 commitment “at least to maintain the proportion of bills published in draft.”⁴⁶ In their response, the Government stated that they had also “been disappointed at the lower numbers of draft bills published in recent sessions. But ... it will not be possible to give a general undertaking to publish most bills in draft or regularly to achieve the figures reached in 2003–04. The main practical obstacle remains the need to have the freedom to bring forward much legislation on a timetable which does not allow for publication of the proposed legislation in draft form.”⁴⁷ The Draft Legislative Programme stated that whilst the Government were “committed to publishing as many bills as possible in draft ... publication in draft is not suitable for every bill.”⁴⁸
11. We therefore welcome the fact that in 2007–08, the number of draft bills, and the ratio of draft bills to Government bills, were at their healthiest since the high water mark of 2003–04. We are also pleased to see that a further seven draft bills are planned for the 2008–09 session (although only one of them had been published when we agreed this report). It is imperative that the progress made in the 2007–08 session is maintained.
12. **We reaffirm our strong support for pre-legislative scrutiny and our desire to see it used more routinely. We welcome the increase in the number of draft bills published in 2007–08 from the low levels of previous sessions, and call on the Government to maintain this progress in 2008–09.**

Analysis of the Pre-Legislative Scrutiny Process

13. In our report for 2006–07, we reflected upon problems with the pre-legislative scrutiny process, including the short period of time for scrutiny, the “bunching” of the publication and scrutiny of draft bills between Easter and the summer recess, and the Government undertaking additional consultation after pre-legislative scrutiny had begun.⁴⁹ Whilst the increase in pre-legislative scrutiny is welcome, it is clear that some problems persist. We now turn to consider some specific issues that have been raised in 2007–08.

i) Time Provided for Pre-Legislative Scrutiny

14. In our report for 2006–07, we expressed our concern that draft bills were not being published in adequate time, and called on the Government to ensure that all draft bills were published in good time (allowing twelve weeks for scrutiny at the very minimum, and if possible considerably more).⁵⁰
15. In their response, the Government stated that they remained “committed to the principle set out in the Cabinet Office *Guide to Legislative Procedure* that there should ideally be at least three months available to a parliamentary

⁴⁶ *Pre-Legislative Scrutiny in the 2006–07 Session*, op. cit., paras 13, 16. See also Constitution Committee, 6th Report (2004–05): *Parliament and the Legislative Process: The Government’s Response* (HL 114), Appendix 1, para 11.

⁴⁷ Constitution Committee, 8th Report (2007–08): *Pre-Legislative Scrutiny in the 2006–07 Session: Follow-up* (HL 129), Appendix (p 5).

⁴⁸ *Draft Legislative Programme 2008/09*, op. cit., Chapter 4, paras 7, 10 (p 73).

⁴⁹ *Pre-Legislative Scrutiny in the 2006–07 Session*, op. cit., paras 17–21.

⁵⁰ *ibid.*

committee to conduct pre-legislative scrutiny ... The Government accepts that this has not always been achieved and that this can create difficulties for parliamentary committees and individual members of either House. It is inevitably the case that the highest priority in legislative support work—which involves the commitment of the resources both of legislating departments and of parliamentary counsel—is given to bills which have been introduced or are being prepared for introduction. There will on occasion therefore be slippage in the intended publication times of draft bills.”⁵¹

16. Although some Commons committees which undertook pre-legislative scrutiny in 2007–08 expressed concerns about the limited time available for scrutiny⁵², the Commons Liaison Committee “welcome[d] the fact that draft bills were published earlier in the 2007–08 session than has sometimes been the case in the past.”⁵³ Regrettably, as the Liaison Committee pointed out, in the case of the two Joint Committees, any benefit accruing from earlier publication of the draft bills was immediately mitigated by the delay in establishing the two Committees.⁵⁴ The Joint Committee on the draft Marine Bill said:

“There was a gap of almost six weeks between publication of the draft Bill and the establishment of this Committee. This delay meant that we had only nine sitting weeks to carry out pre-legislative scrutiny of a lengthy and complex piece of draft legislation, which led to a very tight timetable for taking evidence and consideration of this Report. This falls some way below the three month minimum period for a pre-legislative inquiry set out in the Cabinet Office *Guide to Legislative Procedure*, to which the Government, we understand, ‘remains committed’. There was no clear reason for the lengthy interval between publication and appointment and the pressure on our timetable inevitably meant that we were not able to give the draft Bill the full scrutiny we would have liked. Serious and productive pre-legislative scrutiny ideally requires at least 12 sitting weeks, and more if possible, and we recommend that the Government commit itself to providing this in future when publishing draft Bills and establishing ad-hoc Joint Committees.”⁵⁵

17. There was an equally long delay in establishing the Joint Committee on the draft Constitutional Renewal Bill.⁵⁶ The Joint Committee’s report made similar points:

“The Cabinet Office’s *Guide to Legislative Procedures* accepts that ‘a committee will normally require at least 3–4 months to carry out its work’ (para 18.1). We were, however, given just 10 sitting weeks to conduct our inquiry ... Pre-legislative scrutiny is not intended to be merely a general examination of policy proposals, but should examine the detail of the Draft Bill, its merits, and whether it will work as intended ... There is a risk that such a constricted timetable may not

⁵¹ *Pre-Legislative Scrutiny in the 2006–07 Session: Follow-up*, op. cit., Appendix (pp 5–6).

⁵² Children, Schools and Families Committee, *The Draft Apprenticeships Bill*, op. cit., para 3; Culture, Media and Sport Committee, *Work of the Committee 2007–08*, op. cit., paras 23–24.

⁵³ 1st Report (2008–09): *The Work of Committees in 2007–08* (HC 291), para 31.

⁵⁴ *ibid.*

⁵⁵ *Draft Marine Bill*, op. cit., para 4.

⁵⁶ Liaison Committee, *The Work of Committees in 2007–08*, op. cit., Table 7.

have allowed us, or for that matter the Government, to realise the full potential of the pre-legislative scrutiny process.”⁵⁷

18. In our own memorandum to that Joint Committee, we expressed our disappointment that only two months were allowed for pre-legislative scrutiny.⁵⁸
19. The Commons Liaison Committee suggested that the “unsatisfactory” delay had been caused by what “appears to have been a failure by the ‘usual channels’ to get the committees up and running promptly.” The Committee argued that “pre-legislative scrutiny, if it is not to be rushed, takes a good twelve weeks. Anything short of this will either place unreasonable demands on Members, Peers and staff, or compromise the depth of the joint committee’s consideration.”⁵⁹
20. **Whilst we welcome the Government’s stated commitment to allowing at least three months for pre-legislative scrutiny, the adverse comments of committees that have undertaken pre-legislative scrutiny, both in 2007–08 and in previous sessions, indicates that the Government are too often failing to meet this commitment. There was unnecessary delay in setting up the two Joint Committees on pre-legislative scrutiny in 2007–08. Given how tight the timescale for scrutiny is in the first place, it is imperative that such delays are avoided. We acknowledge that there may on occasion be slippage in the timetable for producing draft legislation, but such occasions should be the exception not the norm. We therefore call on the Government to redouble their efforts to ensure that adequate time (that is to say, three months at the very minimum, and preferably more) is allowed for pre-legislative scrutiny in all but the most exceptional of circumstances, and to ensure that such needless delays do not occur again in the future.**

ii) “Bunching” of Publication of Draft Bills

21. In our previous report, we called on the Government to ensure that wherever possible the release of draft bills was spread throughout the parliamentary year.⁶⁰ The Government’s response acknowledged that “ideally ... draft bills would be published at different times during the parliamentary year”, but that “timing considerations may mean that there is a choice between publication late in the session or not publishing at all.”⁶¹ However, the Government’s response to a Commons Liaison Committee report suggested that the “bunching” of publication of draft bills around Easter was less a matter of circumstance than a deliberate policy decision:

“The Cabinet Office guidance on the legislative process ... makes clear that the intention is to seek to publish bills where possible before or around Easter time, leaving in effect three months before the summer recess.”⁶²

⁵⁷ *Draft Constitutional Renewal Bill*, op. cit., para 7.

⁵⁸ Joint Committee on the Draft Constitutional Renewal Bill, 1st Report (2007–08): *Draft Constitutional Renewal Bill—Volume II: Evidence* (HL 166—II/ HC 551—II), p 372.

⁵⁹ *The Work of Committees in 2007–08*, op. cit., paras 29–31.

⁶⁰ *Pre-Legislative Scrutiny in the 2006–07 Session*, op. cit., para 21.

⁶¹ *Pre-Legislative Scrutiny in the 2006–07 Session: Follow-up*, op. cit., Appendix (pp 5–6).

⁶² Liaison Committee, 2nd Special Report (2007–08): *The Work of Committees in 2007: Government Response to the Committee’s Third Report of Session 2007–08* (HC 595), p 2.

22. The evidence of 2007–08 and 2008–09 gives no indication that the “bunching” trend will be alleviated. All but one of the draft bills in 2007–08 were published in or after March, whilst the first of the proposed draft bills for 2008–09 to be published was the draft Bribery Bill, on 25 March.
23. **Whilst we note the Government’s statement that draft bills should ideally be published at different times during the parliamentary year, we are concerned that in practice this is not happening. We do not believe that the “timing considerations” that the Government refer to are insurmountable. In the interests of good scrutiny, we call on the Government to increase their efforts to spread the publication of draft bills throughout the parliamentary year.**

iii) Government Liaison with Committees

24. There was also discontent at the Government’s lack of consultation with departmental Commons committees, both in terms of how scrutiny would fit into their wider programme of work⁶³, and in terms of the process of setting up joint committees.⁶⁴ The Commons Liaison Committee expressed concern that when the draft Marine Bill and draft Constitutional Renewal Bill were allocated to Joint Committees, the “keen interest” of departmental committees in undertaking scrutiny “did not appear to have been taken into account by the Government ... Unfortunately, the extent and nature of consultation in the 2007–08 session left much to be desired ... The end result was that—as in 2006–07—draft bills were considered by both joint committees and departmental select committees.”⁶⁵
25. In their response to the pre-legislative scrutiny of the draft Marine Bill, the Government stated that “consultation with all interested parties is important and, ultimately, no Joint Committee can be established without the agreement of both Houses. In practice, most draft bills are considered by the Commons departmental select committees which have a standing responsibility for examining the work and output of the relevant department. But there will be cases in which it will be appropriate for both Houses to be involved and for the expertise of the House of Lords also to be brought to bear. Following the establishment of the Joint Committees on draft Bills in the current session, the Government has indicated to the Liaison Committee new arrangements to improve the consultations with the departmental committees which will take place ahead of any proposals for a Joint Committee being put to Parliament.”⁶⁶
26. The Commons Liaison Committee acknowledged that the Leader of the House of Commons had “responded constructively to our concerns over the present arrangements for consulting interested parties in both Houses about the scrutiny of draft bills. The Leader already writes to us at the start of each session with a list of the draft bills the Government plans to publish, so that

⁶³ Innovation, Universities, Science and Skills Committee, *Pre-legislative Scrutiny of the Draft Apprenticeships Bill*, op. cit., paras 6–7; Modernisation Committee, 1st Report (2007–08): *Scrutiny of the Draft Legislative Programme* (HC 81), paras 30, 35.

⁶⁴ Justice Committee, *Draft Constitutional Renewal Bill (Provisions Relating to the Attorney General)*, op. cit., para 10; Environment, Food and Rural Affairs Committee, *Draft Marine Bill: Coastal Access Provisions*, op. cit., para 4.

⁶⁵ *The Work of Committees in 2007–08*, op. cit., paras 24–26.

⁶⁶ *Taking Forward the Marine Bill*, op. cit., para 2.2.

we can consult among committee chairmen and inform her of what interest they have in undertaking pre-legislative scrutiny. In addition, the Leader proposed that she inform us of the outcome of her soundings among the usual channels, including indications of any interest in joint committee scrutiny. Further discussions would take place as necessary, with a view to agreeing a programme of scrutiny satisfactory to all parties ... If the Government is serious about consulting the House, there needs to be a more transparent and better-organised process for deciding upon arrangements for pre-legislative scrutiny than has been the case in the past. We therefore welcome the Leader of the House's commitment to us to engage in genuine consultation about the programme of pre-legislative scrutiny."⁶⁷

27. **We acknowledge the vital role that departmental House of Commons committees play in scrutinising draft bills, and welcome the Government's commitment to "engage in genuine consultation" with the Commons Liaison Committee about the programme of pre-legislative scrutiny. However we would also wish to affirm the value which this House can bring to pre-legislative scrutiny, not least through the forum of joint committees on draft bills. It may also be appropriate for sessional committees to engage in pre-legislative scrutiny—during the last session our own Committee took a close interest in the draft Constitutional Renewal Bill. We therefore call on the Government to commit to "engage in genuine consultation" with this House about the pre-legislative scrutiny programme. We suggest that the most appropriate means for such consultation would be for the Leader of the House of Lords to engage with the House of Lords Liaison Committee.**

iv) The Fate of Draft Bills after Pre-Legislative Scrutiny

28. Another concern related to the fate of draft bills after they had been scrutinised. The Government's Draft Legislative Programme stated that "publication in draft in one parliamentary session does not guarantee introduction in the next session, as the Government will need to consider its priorities at the time. Publication in draft does however indicate the Government's intention to legislate in a particular area as soon as time allows." In relation to the draft bills published in 2007–08, it stated that all but one were included in the draft legislative programme for 2008–09, with the exception of the Marine Navigation Bill, which would "be brought forward as soon as the parliamentary time allows."⁶⁸
29. Subsequent to this, the draft Cultural Property and draft Heritage Bills, both scrutinised by the Commons Culture, Media and Sport Committee, were left out of the Queen's Speech. The Committee stated that it was "extremely disappointed that having worked hard to meet the Government's timetable for scrutiny of the two draft bills, the Government then decided to drop them from the legislative programme. This decision has caused consternation amongst all those bodies involved in heritage and undermines the whole pre-legislative scrutiny process."⁶⁹

⁶⁷ *The Work of Committees in 2007–08*, op. cit., paras 27–28.

⁶⁸ *Draft Legislative Programme 2008/09*, op. cit., Chapter 4, paras 9, 11 (pp 73, 74).

⁶⁹ *The Work of the Committee 2007–08*, op. cit., paras 23–24.

30. We are also concerned that the convention for replying to committee reports in good time is not always being fulfilled in relation to scrutiny of draft bills. The Joint Committee on the draft Constitutional Renewal Bill published its report on 31 July 2008, and, eight months later, no Government response has been published. Neither have the Government as yet responded to the reports of the Commons Justice and Public Administration Committees on aspects of the draft Bill. When we asked Jack Straw about this, he told us:
- “The reason I have delayed issuing a response was until I pinned down ... colleagues in Government about what we were saying and the programme of the Bill. It could have met the timetable but it would have been less precise.”⁷⁰
31. We do not find this explanation satisfactory. The Government have undertaken to provide a written response to reports, if possible, within two months of publication. If it is deemed necessary to delay a response, then a formal response to the report in question to explain the delay would be in order.
32. Whilst we recognise that changes in policy and priorities will inevitably occur, we are concerned at the possibility of draft proposals sinking without trace. In such cases where there is a change of plan, for instance when a draft bill is not to be pursued in legislation for the time being, where the provisions of a draft bill are substantially amended or combined with other proposals, or where there is cause to delay a response to a committee report on a draft bill, we call on the Government to make a formal response to the relevant report, outlining the change of plan and the reason for such changes being made.

⁷⁰ Corrected Oral Evidence given by Rt Hon Jack Straw MP, *op. cit.*, Q 3.