Are Public Bill Committees in need of reform or replacement?

What’s the story?
A report produced by the Constitution Unit at University College London has highlighted a number of significant problems with Public Bill Committees in the House of Commons, which the authors argue seriously undermine the scrutiny of legislation.

Public Bill Committees are temporary committees formed to scrutinise a particular bill after it has successfully completed its second reading. Until 2007, they were known as ‘standing committees’, however, the committees were given their new title after reforms were introduced that allowed them to begin taking oral and written evidence from outside experts while scrutinising bills.

For government bills, Public Bill Committees include the responsible government minister, the equivalent shadow minister, party whips, relevant Parliament Private Secretaries, and then additional backbench members. Membership of Public Bill Committees can vary from a minimum of 16 members, to a maximum of 50, but are generally around 20 members. Members of Public Bill Committees are chosen by the Committee of Selection, which the report claims is dominated by party whips, and has its membership agreed privately, “between the ‘usual channels’ at the start of each parliament”. This means that backbench MPs have no control over the membership of Public Bill Committees.

One of the issues highlighted by the report is that, according to Standing Order 86(2), the Committee of Selection is required to “to have regard to the qualifications of those Members nominated and to the composition of the House”. Therefore, the membership must reflect the strength of each party in the House; so if the Conservatives hold the most seats in the House, they must hold the most seats on the Committees. However, the report criticises the fact that while the Committee of Selection must consider the composition of the House, there is no requirement “to respect the balance of opinion in the House on any particular Bill”. The report cites the Higher Education Bill 2004, which provoked rebellions from 72 Labour MPs (17% of the party), yet only one of these MPs was included on the Higher Education Bill Committee.

The report also argues that although Standing Order 86(2) states that the Committee of Selection is required to consider the “qualifications” of the members it appoints, in practice the whips often avoid MPs who have direct experience and a clear interest in the Bills being scrutinised. As an example, it cites the controversial exclusion of the MP Sarah Wollaston from the Health and Social Care Bill Committee. Wollaston had applied to be on the Committee as she had relevant experience from working as a GP, and yet, despite being a qualified doctor, she argued she was excluded because she was not prepared to promise the party whips that she would support the Bill. Wollaston later told the Guardian newspaper "It is made very clear to you that if you are on a Bill committee you support the government. I was not prepared to accept that."

Test yourself!
Q) What are Public Bill Committees?
Q) How are Public Bill Committees different the ‘standing committees’ that existed prior to 2007?
Q) How does the report criticise the composition of Public Bill Committees?
Q) How does the report criticise the expertise of members working on Public Bill Committees?
How does this fit into your exams?

The extent to which Parliament is able to successfully scrutinise the government, and create legislation, is a common issue for exam questions, and the issues surrounding Public Bill Committees, in contrast to the increasingly positive reputation of Select Committees, is an useful example.

Until 2010, the Committee of Selection also proposed members for the Departmental Select Committees; however, this has since been reformed to allow members to be selected by vote. These reforms have been widely hailed as a success, helping these committees to become more independent and better at working across party lines. However, while there have been substantial changes to Select Committees, less has been done to address concerns over Public Bill Committees. The 2007 reforms, that replaced the old ‘standing committees’ with the new Public Bill Committees, were an important step, as they allowed these new committees to take evidence to better inform their scrutiny of Bills. However, it has been argued that the benefits of these changes have been restricted by the remaining problems - particularly the temporary nature of the committees, and the dominance of the party whips over who sits on them. By their nature as temporary committees, it is argued that Members do not gain the experience and expertise that members of Select Committees do; they are also unable to build strong working relationships, which can be particularly important when trying to reach agreements across party lines. Equally, with the selection process dominated by party whips, it seems inevitable that Public Bill Committees will not feature many independent minded MPs, who might have valid criticisms about the Bill, but will instead feature an abundance of loyal backbenchers, or frontbenchers who will stick to the party line. This is in stark contrast to the newly elected Select Committees, who tend to be led by very independently minded MPs, who are willing to challenge the government, even when they are in the government’s party.

As evidence of how little effective scrutiny takes place, the report cites an amazing statistic that from 2000-2010, only 88 non-government amendments were successfully made in Public Bill Committees, despite opposition MPs proposing 17,468 amendments. This means that only 0.5% of opposition amendments have any success at the committee stage of our legislative process. In contrast, the report claims that almost all of the 7322 government amendments were successful over this same time period. The report contrasts the adversarial dynamic of the Public Bill Committees with the much more ‘cross party’ work of Departmental Select Committees, where members of multiple parties are considered to work well together and where final reports tend to have the unanimous support of members.

Think about how you could use this case study in the following questions...

1) **In the style of AQA** – “The legislative process in the House of Commons is dominated by the frontbenches.” Discuss. (25 Marks)

2) **In the style of Edexcel** – To what extent does the House of Commons successfully fulfil its responsibilities? (25 Marks)

3) **OCR students** – Using the sources and your own knowledge, discuss the need for parliamentary reform. (30 Marks)
What recommendations does the report make?

Most importantly, the report argues that the Public Bill Committee system needs to be reformed, so that the Committees are more permanent allowing the MPs working on them to gain greater expertise and build stronger cross-party relationships. The report also concludes that the selection process for members for Public Bill Committees also urgently needs reform, with a more transparent and legitimate process introduced that reduces the power of the party whips, and helps to ensure that more independent and critical voices make it onto the committees, rather than just loyal supporters.

One key problem that the report identifies is that different government departments have very different rates of producing draft legislation. From 2005-2012, the Treasury produced on average 10 Bills per parliamentary session, while 10 other departments only produced 1 Bill on average. This means that it is difficult to simply create new permanent committees that are each expected to scrutinise the legislation of a particular department, as some departments would create a much bigger workload for the Committees responsible for scrutinising their Bills.

Therefore the report argues that there is not a ‘one-size-fits-all’ solution, and that different models could be used for different departments, depending on how much legislation they produce.

Model A – for heavy legislating departments
Create new, permanent, specialist committees, that would operate in parallel to Departmental Select Committees

Model B – for medium legislating departments
Use a reformed version of the current Public Bill Committees, with more continuity of membership

Model C – for light legislating departments
Allow the relevant Select Committee to scrutinise legislation in cases where Bills are infrequent and where doing so would not disturb the Committee’s existing work

Finally, the report argues that members for Model A Committees should be elected by secret ballot, members for Model C Committees can simply be drawn from existing Select Committees, and all other committees could continue to have their memberships decided by the Committee of Selection, but the lists should be put to the Chamber for approval, and the Committee of Selection should feature more backbenchers.

Debate - What do you think?

1) Are the three models suggested by the Constitution Unit a good enough replacement for the existing Public Bill Committees? Is there a one-size-fits-all alternative?

2) Should members of Public Bill Committees be elected by secret ballot, or is it acceptable for the Committee of Selection to make the decisions?

3) If you were an MP, would you rather work on a Select Committee, or on a Public Bill Committee?
How does our legislative scrutiny compare with the procedures in the US Congress?

There are a number of similarities between the UK Parliament and the US Congress. Both are bicameral legislatures, with the UK Parliament divided in the House of Commons, and the US Congress divided into the House of Representatives and the Senate. Both use committees to scrutinise legislation, and both allocate spaces on these committees according to the relative strength of each political party. However, there are significant differences between how these bicameral legislatures scrutinise legislation. Whereas the UK uses temporary Public Bill Committees, which last only as long as needed, the House of Representatives and Senate each have 20 permanent 'standing committees' that then divide responsibility for their large policy areas into additional sub-committees.

In contrast to the procedures in Parliament, where committees only scrutinise Bills after their second reading, all Bills introduced to Congress are immediately referred to the relevant standing committee. These have the power to either allow Bills to proceed to the next stage, or they can be put to one side and proceed no further. Bills that have particular support from members of Congress are then given a hearing, where evidence will be heard in support of or against the Bill. As the members of the standing committees are considered to have substantial expertise over their particular policy area, they are free to debate and vote on any amendments to the Bill. Finally, the committee votes on whether the Bill should be ‘reported’ to the Chamber, and, as long as they are successfully timetabled, it is only then that the rest of the House is able to debate and vote on the Bill.

In addition to scrutinising Bills, these standing committees also conduct inquiries, scrutinising the actions of the executive branch and other agencies and programs that fall under their particular policy area. Therefore, the standing committees utilise their expertise to also perform a similar role to the UK Parliament’s Departmental Select Committees. As such, while the work of our Public Bill Committees has been heavily criticised, the work of Congressional standing committees is fundamental to the workings of Congress. As the US President Woodrow Wilson said – "Congress in session is Congress on public exhibition, whilst Congress in its committee-rooms is Congress at work"

Additional reading:

1) You may read the full "Fitting The Bill" report by downloading it from - http://www.ucl.ac.uk/constitution-unit/research/parliament/legislative-committees/tabs/Fitting_the_Bill_complete_pdf.pdf