1. This evidence draws on the extensive research into the legislative process which I have carried out over the last 10 years, including an examination of over 140 pieces of government legislation and over 30,000 amendments tabled by MPs. I focus in particular here on committee and report stage in the House of Commons, but this research also highlights some issues pertinent to legislative scrutiny in both Houses. In summary, the key points made here are as follows:

- Parliament generally performs legislative scrutiny well, but its work and impact often go unseen and underestimated. This is partly the product of the political environment in which scrutiny takes place and partly the way in which the stages of scrutiny are viewed in isolation. It is not the fault of parliamentary procedure, but rather the manner in which scrutiny is presented to those outside the institution. Parliament should find ways to express the true nature of scrutiny more clearly to the public.

- The introduction of public bill committees (PBCs) in the Commons has strengthened the scrutiny of legislation with regards to the policy knowledge of members and has helped to place MPs on a more equal footing with well-resourced and informed ministers. It has changed the behaviour of MPs and government in committee. Greater care should be taken to ensure a wide range of voices are heard during evidence sessions.

- The lack of time available for scrutiny in the Commons is the area most in need of reform. Further time is needed to discuss amendments at report stage and there should be a longer period of sitting days between each legislative stage, to enhance the opportunities for amendments to be tabled in response to oral or written evidence and to increase the opportunity for dialogue between the government and MPs/peers.

2. Contemporary scrutiny of legislation

2.1 Analysis of government legislation scrutinised in the Commons since 2000 demonstrates four key trends in legislative scrutiny¹:

- MPs are tabling more amendments than ever before, averaging around 125 amendments per bill.
- Government is tabling more amendments to its own legislation. It is also having increasing success in doing so (99.9% of government amendments are accepted).

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The majority of bills are amended during their Commons committee stage, but these amendments are increasingly made by government. In the period studied here, 88% of bills left PBC in an amendment form. But only 20% of bills left with amendments being made by non-government MPs (either from government backbenchers or from the opposition parties).

The likelihood of amendments drafted by opposition or backbench MPs being accepted has fallen dramatically. During the scrutiny of the 150 bills which formed part of this research (2000 – 2012 sessions) a total of 17,370 amendments were discussed in Commons committees. Only 103 of these were accepted by the government, giving a success rate of less than 1%. If we compare this with previous research on the legislative process carried out by John Griffith in 1974\(^2\) we see that the success rate today is much lower. Indeed, the number of successful non-government amendments at committee stage has fallen from an average of 44 per session (1967-71) to just 5 (2000-2012). A similar though less dramatic fall can be seen for amendments tabled by government backbenchers, which have reduced from an average of 13 per session to just 3.

2.2 On the surface these statistics suggest that the Commons is exerting huge effort in tabling large numbers of amendments to government bills, but that this effort is bringing little tangible return for MPs. However, my research also demonstrates the need to rethink the way in which we view the legislative process. Rather than seeing each stage in isolation, we should be looking at the process in its entirety. A minister may resist an opposition amendment during the committee stage of a bill, but this amendment may subsequently be introduced by the same minister at the bill’s report stage. Here, the ownership of the amendment has changed for party-political reasons, but the effect on the legislation is the same. The bill has been improved and this has happened as a direct result of parliamentary scrutiny. Analysis of the report stage of bills between 2000 and 2012 showed that ministers explicitly referred to over 1400 amendments at report stage in the Commons as being prompted by debate at the committee stage (approximately ten changes per bill). This is far higher than the number of changes made in this way which Griffith reported in his earlier study\(^3\).

2.3 We should draw three important conclusions from this. Firstly, that amendments made by government are just as important as amendments made by MPs or Peers. They are not necessarily a sign of government dominance, but can be interpreted as a sign of government reflection and response to sound parliamentary debate. Where bills have begun their passage in the Lords, government amendments in the commons (at committee stage or at report) can be a sign of ministerial reflection on the Lords debate and the address of concerns raised by peers (or vice-versa).

2.4. Secondly, it should matter less who successful amendments to legislation come from in terms of whether they are tabled by government ministers or opposition/backbench MPs. What matters much more is that essential changes to bills are made, that legislation is stronger as a result and that parliamentary scrutiny has facilitated these changes.


\(^3\) Griffith reported an average of 3 changes per bill coming as a direct result of the committee stage debate.
2.5. Thirdly, it means that large numbers of government amendments are not necessarily a bad thing.

2.6. The challenge for Parliament here is perhaps one of education and information: challenging traditional assumptions from outsiders about the way in which the relationship between the legislature and the executive should work. Scrutiny of legislation is not necessarily about conflict; it should also be about cooperation and agreement. It is also not necessarily very visible. But this does not mean that it is not happening. Reading Hansard accounts of debates in either chamber does not necessarily convey to outsiders the degree of dialogue which has taken place between parliament and government.

3. **The impact of changes made to committee stage in the Commons**

3.1 The introduction of oral and written evidence taking as standard in PBCs in the 2006-07 session brought an opportunity to strengthen the scrutiny of legislation in the Commons. Over 1400 witnesses were called to give evidence to bill committees between 2007 and 2012 and over 2000 pieces of written evidence were received. The initiative got off to something of a slow start. MPs took time to adjust to the new procedures and were less adept at questioning, something highlighted most notably by Philip Cowley and Mark Stuart. But there was a general consensus that the new committees were a good thing. MPs described them as ‘enlightening’ and ‘exciting’ and MPs due to retire in 2010 said that they wished that oral evidence had been introduced to committees much earlier.

3.2 Over time it has become clear that oral and written evidence is an incredibly useful information tool. My analysis of bill committees from 2007 and interviews with MPs who participated in them illustrates the importance of evidence taking to better inform those backbench or opposition MPs who are appointed to PBCs. Committee members comment that oral evidence helps them ‘to hit the ground running’ and that it puts them in a stronger position when it comes to the line by line scrutiny. Not only do they understand the proposed legislation more comprehensively, they are also able to understand and follow the debate on amendments. In this way, evidence taking places MPs on a more level playing field when debating legislation with better resourced and information rich government ministers.

3.3 Evidence taking has also had a visible impact on the behaviour of MPs in bill committees, enabling them to better scrutinise government bills. Oral evidence in particular can aid MPs in the drafting of amendments, helping them to identify areas of the bill which require improvement. My research identified over 100 occasions between the introduction of committees in 2007 and 2010 in which MPs moving amendments in committee described how oral evidence had prompted them to draft an amendment. Evidence taking also acts as an amendment supporter. In the same period I identified 454 occasions in which evidence

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4 The two academics criticised the first oral evidence sessions, noting that the questioning ‘very little of the questioning would have impressed Perry Mason’. See P Cowley and M Stuart, ‘Better than nowt, but still a missed opportunity’, Revolts Blog, 9 November 2008.
was used to support an MP’s arguments. Ministers confirm that it can be more difficult to resist changes proposed by MPs if they are backed up by oral evidence from eminent organisations and individuals.

3.4 As a result, we see that MPs table around 50% more amendments to government bills in committees which have taken oral or written evidence. There is no notable increase in the success of these amendments, but there is a corresponding increase in the number of government amendments moved in these committees too (again, by around 50%). Oral evidence is thus not only of value to non-government MPs; it is of much value to the government too, prompting it to make changes to its own legislation at an earlier stage of the legislative process than it may otherwise have chosen to do so.

3.5 The scrutiny of the Health and Social Care bill (2007-08 session) is a good example of how evidence taking has increased parliament’s capacity to scrutinise legislation. In the bill’s second evidence session Liberal Democrat MP Sandra Gidley asked a witness (Lady Justice Smith) if she would make any other changes to the legislation. Lady Smith replied that the definition used in the bill to describe those selected to serve on fitness to practice panels should say ‘legally qualified’ instead of the ‘professionally qualified’ which was being used in the bill (2nd sitting, 8 January 2008, c37). This issue had not been raised at all by MPs during the bill’s second reading debate and may not have come to light without the evidence session. It went on to have an enormous impact on the bill’s scrutiny. An amendment to this effect was introduced by the Opposition in the line-by-line scrutiny sessions, where the government minister conceded that the amendment was worthwhile. The minister promised to redraft the amendment and introduced it again at the report stage of the bill where it was passed. In his speech he described the change as ‘a good example of how the evidence taking process is adding value to the system of parliamentary scrutiny’ (HC Debs, 18 February 2008, c94).

3.6 The new evidence taking procedures available to PBCs are a step forward, but they are far from perfect. The issue of time is paramount and poses problems for the use of written and oral evidence (see below), but the selection of witnesses also poses problems. The process itself is somewhat opaque, but seemingly dominated by government. Those selected to appear before committees are usually government-approved witnesses, often described by MPs as ‘the usual suspects’. There is often a degree of repetition, with organisations or individuals giving evidence during a bill’s pre-legislative scrutiny or consultation phase being asked to give further evidence to the bill committee. Written evidence is not always extensive and is again often dominated by well-known organisations. Publicising these calls for evidence further and seeking out a broader pool of witnesses would boost the value of evidence taking and provide alternative perspectives on legislation.
4. Timetabling of legislative scrutiny

4.1. Those in opposition to government will always seek additional time to debate legislation. Parliamentary time is obviously limited, but two areas of concern arising from my research on legislative scrutiny are:

4.2. The number of sitting days between stages in the Commons is too short: In particular, there may only be a few days between the end of the oral evidence sessions and the beginning of line by line scrutiny. This gives little time for MPs to digest the evidence they have heard and to table relevant amendments in time for the line by line scrutiny. The same applies to the number of sitting days between second reading and committee stage and between committee and report. The period between committee and report is an extremely important one in the Commons. Where a minister has given an undertaking in PBC to reconsider or ‘think again’ about an amendment, the author of the amendment will usually spend time lobbying the minister (formally or informally) and may meet with the minister and other interested groups. Increasing the number of days between committee and report would maximise the opportunities for this type of dialogue to take place.

4.3. More time is needed for debate at report stage. As noted above, the reluctance of government ministers to accept amendments at committee stage means that there are usually a very large number of amendments to be debated at report. A significant proportion of these do not get debated. Not only do MPs lose the opportunity to discuss issues which may be very important to them, but it can also make it harder to understand where government amendments have come from. Where little time is available and large numbers of amendments are voted on at the end of report stage without debate, there is no opportunity for a government minister to explain the reasons behind the amendments, or to acknowledge that they have been prompted by parliamentary debate or by an MP’s amendment in committee.

4.4. The addition of more time between stages as well as at report stage would enable MPs to properly read and digest written and oral evidence and would provide additional time for dialogue between MPs and government on important amendments. In sum, it would maximise the potential for parliament to have an impact on government legislation.

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5 If for example, oral evidence finishes on a Tuesday sitting, a PBC would begin line by line scrutiny on the Thursday morning.