1. Thank you for the opportunity to submit evidence to the inquiry. This document responds selectively to your questions, as indicated by the headings below. It draws on several research projects conducted over recent years at the UCL Constitution Unit. The most obviously relevant was a major analysis of the Westminster legislative process, which we carried out jointly, representing the largest study of parliament’s scrutiny of bills in over 40 years. This resulted in our co-authored book *Legislation at Westminster: Parliamentary Actors and Influence in the Making of British Law* (Oxford University Press, 2017).

2. Given the obvious relevance of this project it is worth summarising briefly what it comprised. We studied the passage of 12 government bills through both chambers over the period 2005-12. These were selected to be as representative as possible for such a small sample: comprising large and small bills, of greater and lesser controversy, from different departments, and starting in the Commons and the Lords. We analysed every amendment proposed (a total of 4361), paying particular attention to connections between amendments at different stages and from different ‘actors’ (e.g. opposition and government frontbench). We also conducted over 120 interviews with parliamentarians, civil servants, outside group representatives and others. Finally, we drew extensively from documentary evidence – including the Hansard record, relevant committee reports, government white papers, pressure group briefings and media reports. The central question addressed in the book was the extent of parliament’s policy impact in the legislative process.

**How effectively does Parliament scrutinise bills?**

3. This is a difficult but fundamentally important question. In considering it, the starting point is the place of parliament in the wider legislative process – as clearly acknowledged by the Committee’s four-stage inquiry. The preparatory stages, already discussed by the Committee in its report of October 2017, are crucial.¹ Our research demonstrates how these should not be seen as separate from the parliamentary stages, and how in fact each influences the other. In contemplating legislation, and preparing it for introduction, the government is clearly cognisant of the fact that any bill must pass through parliament, making parliament potentially a significant constraint. This ‘power of anticipated reactions’ is widely acknowledged in the academic literature, and was reflected frequently in comments to us by our interviewees (particularly those drawn from government).²

4. As acknowledged in the Committee’s October 2017 report, formal mechanisms for consulting parliament during the preparation of government bills have increased in recent years (though could still usefully increase further). In addition, numerous informal communication mechanisms exist – most obviously within political parties, but also through personal relationships across party lines with acknowledged specialist parliamentarians, through APPGs, select committees, and indirectly through outside interest groups (which work with

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both government and parliamentarians). Government hence has many ways, by accident or design, of gauging what parliament will accept. It also now has formal mechanisms, through preparation of written ‘parliamentary handling strategies’, of exploring possible pressure points and how they will be dealt with. This is freely acknowledged in the Cabinet Office *Guide to Making Legislation*.  

5. In addition, our research shows that parliament can be influential on government in encouraging the introduction of legislation. Some matters are legislated for following long campaigns by parliamentarians themselves (examples in our sample included the ban on smoking in public places and the introduction of corporate manslaughter legislation). Others follow the recommendations of select committees. Parliament hence sometimes acts as the agenda setter.

6. In this context, it becomes clear that assessing parliament’s effectiveness solely in terms of the degree of change wrought to government bills through amendment would be misguided – although this often appears to be the working assumption of those who dismiss parliament as ineffective. Instead, parliament publicly scrutinises and tests proposals which have often (but not always) already been well tested both with specialist audiences and with parliamentarians themselves. This formal public testing stage does not represent the ‘making’ of the legislation, but the last crucial step before it is considered ready for Royal assent.

7. While there is always room for improvement, in many ways this process works well. The use of numerous ‘probing’ amendments at committee stage in both chambers may appear inefficient, but the anticipation of this process causes government officials to draft legislation that is as watertight as possible, and the process itself subjects ministerial arguments to scrutiny on the public record. As indicated below, the addition of evidence-taking in Commons public bill committees has enhanced this further. The report stage, as all involved know throughout, provides an opportunity to return to any issues where ministerial responses were unconvincing, and to press harder for change; in the House of Lords this is repeated at third reading. Throughout the process (as also discussed below) external groups observe government responses, and brief parliamentarians on matters where they consider these to be weak. If serious difficulties emerge, the media may join in asking difficult questions and raising the public profile of these issues. Even where few changes are ultimately made to a bill, this definitely amounts to a testing process for ministers and their policy proposals.

8. Where there are clear policy weaknesses, parliament often also serves as a forum where these are resolved through amendments. The multistage nature of the process provides opportunity for reflection and rethinking, and also for momentum to build up behind demands for change. Most policy disagreements are ultimately resolved through government amendments, often following non-government amendments on the same issue at one or more previous stages. Our research found that 60% of ultimately agreed government amendments that were not merely technical or clarificatory responded to such pressure. Changes are greatest where preparation has been poor. Among the bills that we studied, the coalition’s Public Bodies Bill was the clearest example: ill-thought through and put together in a rush, the parliamentary scrutiny stages resulted in very substantial changes.

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To what extent does each House have a separate role in the legislative process?

9. Despite much ostensible similarity, the contributions to the legislative process by the two chambers are in important ways very different. Clearly there are procedural differences (e.g. the forum for committee stage, selection of amendments, amendments at third reading), and compositional differences (usually a government partisan majority in the Commons but not in the Lords, presence of Crossbenchers). There are also important cultural differences, flowing from these and from the House of Lords’ unelected basis. To oversimplify slightly, the big political arguments take place in the Commons, where the opposition can attract attention, but the government usually win the votes; more technical discussions of detail take place in the Lords, where the government must be capable of winning the argument. But this is, clearly, a simplification: discussion of detail in Commons committees should not be underestimated.

10. Considering their proximity, the two chambers can sometimes appear surprisingly insulated from each other. In particular, understanding of the House of Lords’ procedures and role can often be weak in the Commons. Nonetheless, connections between the two chambers are also significant (if often indirect), and they must be seen as collective system.

11. In the majority of cases bills begin in the House of Commons, where the first questions and objections are raised. Those which are unresolved will continue into the Lords, where they may well result in government concessions. Hence while the Lords is the site of more concessionary amendments, these often respond to concerns raised by MPs. Opposition frontbench teams provide an important channel for communication of ideas between the chambers, as do APPGs and informal subject networks. Crucially, outside pressure groups working on bills also often provide crucial links, by lobbying in one chamber and then the other. Certain technical issues will be seen as ‘Lords issues’, but if there has been questioning on these in the Commons this can boost peers’ legitimacy to press the government hard. Where government responses are unconvincing, the likelihood of defeat is obviously far higher in the Lords than in the Commons. But a Lords defeat is only an invitation to MPs to ‘think again’; where MPs clearly back the government such defeats are likely to prove ineffective (so may not even be attempted), but where the government’s Commons majority is at risk, policy change is likely to result. Hence the House of Commons is always the ultimate arbiter.

12. The dynamic is different where bills begin in the Lords, though the nature of such bills is also different as they are generally less ‘political’. It is harder for peers to gauge MPs’ opinions in such cases, which may encourage caution. On the other hand, since MPs have not yet explicitly backed the government on the policy, there is no immediate challenge to legitimacy if peers raise fundamental concerns. This occurred, for example, on the Public Bodies Bill – which began in the Lords, and where most major changes were made in the Lords. Although our research on Lords-starting bills has been relatively limited, it appears that MPs are less prone to follow through on concerns initially raised by peers than is the case the other way around.

What has been the impact of changes to the legislative process since 2004?

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13. Our research has not specifically focused on this question, but the study of the legislative process did uncover some of the effects of public bill committee evidence. Evidence from outside experts at this stage can be influential in shaping parliamentarians’ amendments at the later stages, and is also often quoted in support of change during later debates. This is a pattern which Louise Thompson has also catalogued.\(^6\) Like evidence to select committees, and the reports of these committees, this kind of evidence can be used both by ministers and their critics in an attempt to legitimise their own policy positions (which should be seen as positive, as it indicates that decision-making is evidence-based). Nonetheless the public bill committee process, including the process for choosing witnesses and the shortage of time between stages, has been criticised – including in other Constitution Unit research.\(^7\)

14. In addition, the growth of pre-legislative scrutiny (PLS) can be seen as having a similar effect. Our case studies showed that recommendations from committees conducting PLS, even if not incorporated by the government in a bill before introduction, do not necessarily ‘fail’. Often they result in change through influencing amendments from non-government parliamentarians during the formal process, and can be successfully cited in debate in support of such amendments. We found several cases of such recommendations ending in government concessions. This dynamic has also been noted by other researchers.\(^8\)

Should there be greater select committee involvement in legislative scrutiny?

15. Select committee involvement can be very beneficial to the quality of legislative scrutiny, and is already more substantial than generally assumed.\(^9\) Our analysis found that around one in six changes agreed to the 12 bills involved some kind of select committee influence. Furthermore, mentions of select committees in debate on bills were very frequent – amounting to over 1700 in total. As already indicated, committee positions are often cited by ministers in support of the policy in a bill, as well as by non-government parliamentarians in support of change. The actual changes made, perhaps unsurprisingly, were dominated by proposals from those select committees tasked with conducting legislative scrutiny – including the DPRRC, Constitution Committee and committees involved in PLS. However this was not universally the case. A clear counterexample was the toughening up of the ban on smoking in public places in the Health Bill 2005-06, following a short inquiry by the Health Select Committee and an amendment proposed at report stage by committee members. This resulted in removal of the exemption for private members’ clubs and pubs not serving food – which reversed a government manifesto commitment. Hence select committees can be powerful adversaries in the legislative process if they choose to get involved. This example suggests that select committee amendments should be encouraged, though perhaps at some risk of ‘ politicising’ the committees. It implies support for the proposal from the Commons Procedure Committee that select committee chairs, subject to appropriate safeguards, be allowed to table amendments on behalf of their committees.\(^10\)

\(^10\) Procedure Committee (2009), Tabling of Amendments by Select Committees (Fifth Report of Session 2008-09), HC 1104
16. One option sometimes mooted for reform is that responsibility for the committee stage of legislation (at least in the Commons) should be given to select committees. The UK parliament is undoubtedly out of step with most comparators around Europe, as well as others such as the US, in taking committee stage in a temporary, nonspecialist committee rather than a permanent and specialist one. However, this should not be seen as an argument for giving such responsibility to the Commons departmental committees, for a number of reasons. First, these committees already have very full agendas and retain the ability to set their own agendas, rather than having to react to government initiatives. Second, they retain a valuable culture of cross-party working. Both of these are unusual in international terms, and (although difficult to verify empirically) our select committees are probably unparalleled in their level of independence and the quality of their proactive inquiries. This could easily be compromised by taking on day-to-day involvement in the legislative process. Nonetheless, other steps to enhance both permanence and policy specialism on the Commons committees dealing with government bills are desirable, as was proposed in a 2013 Constitution Unit report.¹¹

Stakeholder involvement

17. As already indicated, engagement in the parliamentary legislative process by external groups is both extensive and important to that process.¹² Opposition frontbenchers, plus backbenchers in general, are very dependent on such groups for briefing material. This can raise concerns, both about overreliance and about the unequal distribution of resources between different kinds of groups. However, both our research and that of others suggests that parliamentarians are more open to influence from public and voluntary organisations than from business interests.¹³ Outside groups clearly also have other channels of influence into parliament which may influence the legislative process less directly, for example through select committees.

18. As with the parliamentary legislative process in general, group engagement with parliament should not be considered wholly separate from group engagement with government during the preparatory stages. Frequently outside groups will engage first with government, in seeking to shape the legislation as introduced, and then with parliament to shape it further. Even groups which were successful at the initial stages may consider it necessary to lobby parliament to ensure that policy is not overturned under pressure from opposing groups (what pressure group specialists call ‘counteractive lobbying’). In effect, parliament serves partly as a public forum in which arguments between competing groups are tested. If the government has ignored legitimate concerns from groups in the preparation of its legislation, these arguments will often win out in parliament – which in turn influences how government conducts its pre-legislative stakeholder engagement. Consequently parliament provides, to an extent, a forum of public accountability for groups themselves. Arguments that will not bear public scrutiny may be largely silenced. For example, there was very little public airing of the interests of the tobacco companies during debates on the Health Bill 2005-06, compared to those from trade unions, health professionals and anti-smoking groups.

Communicating the legislative process more effectively

19. As is indicated by the comments above, the dynamics of the legislative process are very complex – and far more so than suggested by the already somewhat labyrinthine procedures of parliament. Influence occurs throughout the process, from agenda setting all the way to Royal assent. Despite the relatively public nature of the process (in comparison to government decision-making) much of this influence is barely visible, thanks to ‘anticipated reactions’, the subtle interrelationships between different groups, and the innumerable private meetings in which policy is discussed and concessions negotiated.

20. There is perhaps more that could be done to communicate how bills change through amendments. The parliament website already includes some ‘tracked changes’ versions of bills. Possible extension could include publishing such documents at every legislative stage, showing change across the entire passage of a bill in a single document, and/or labelling which amendments were responsible for the changes. But showing change to the bill itself in real time will only ever tell a limited story, as more subtle indicators will appear in ministerial reassurances in debate that change is coming, or off the record in private meetings. Such indicators might therefore not be as useful as they appear to the public and external groups. Greater use of statistics might also help transparency in a limited way: the Lords already publishes figures on the number of amendments proposed and agreed to on each bill in annual Public Bill Statistics documents\(^\text{14}\), but to our knowledge the Commons does not.

21. Taking this further, our analysis relied on linking amendments at different stages (in what we called ‘legislative strands’), to make more explicit the extent to which changes at later stages (often by government) responded to proposals at earlier stages (often from the opposition, government backbenchers or nonparty peers). Arguably, an officially published version of this kind of analysis could aid understanding after the event of how parliament influenced the process. However, such analysis is time-consuming and potentially contentious, relying on a degree of interpretation (e.g. was the final government proposal more similar to an amendment from a backbencher or an opposition frontbencher? Was a government concession sufficiently similar to a proposal from a select committee to credit that committee?). In any case, changes wrought through concessions are at best a very crude indicator of parliamentary influence, and at worst are positively misleading. An added complication is that routinely publishing this kind of information would inevitably result in behavioural change – potentially making government less receptive to opposition proposals, and perhaps even resulting in ‘planted’ backbench amendments.

22. In our view one of the major challenges faced by parliamentarians, parliamentary officials and scholars of parliament is how to communicate parliamentary influence and effectiveness. Parliaments are uniquely open and transparent participants in the policy process, yet much of their most important influence is invisible and behind-the-scenes. In an age when the legitimacy of parliament and other democratic institutions is often questioned, this conundrum presents a major challenge. We hope that the kind of in-depth research that we have conducted, at least in a small way, helps.