Post-legislative scrutiny in the UK Parliament

The Post-Legislative Scrutiny Series, 1

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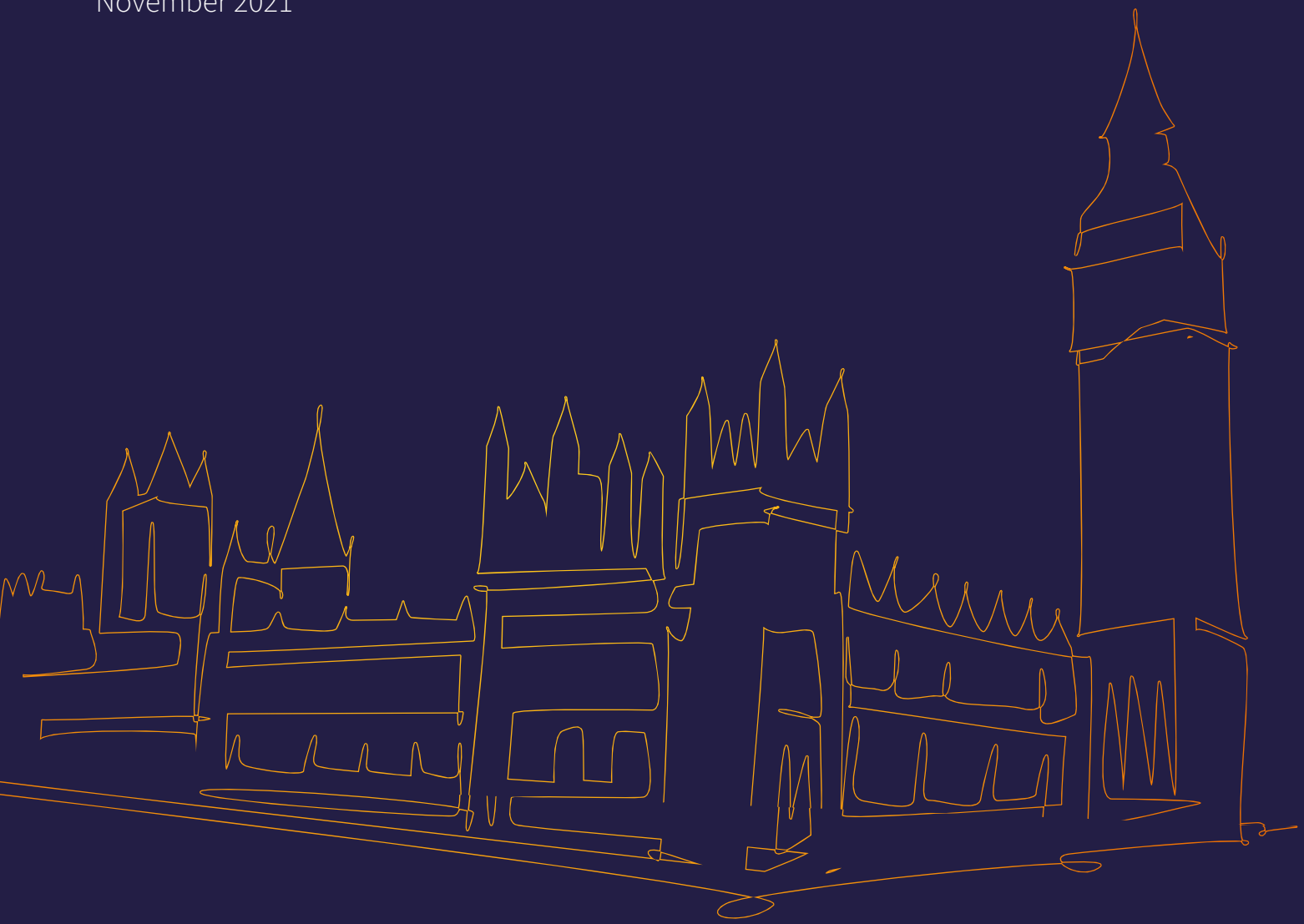

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Acknowledgements and rights

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List of acronyms, tables, boxes, and figures

Acronyms	
FCDO	Foreign, Commonwealth and Development Office
MP	Member of Parliament
No.	Number
PLS	Post-Legislative Scrutiny
UK	United Kingdom of Great Britain and Northern Ireland

Foreword

Until recently, the legislative process was seen very much as the introduction of a bill, debate on the bill by the legislature, and the giving of assent. A bill becoming an act was the end of the process. Recent years have seen a notable change in perception. The formal enactment is no longer the measure of legislative success, nor the end of the process. Rather, getting on to the statute book is now recognised as necessary, but not sufficient for an act to be deemed a successful measure. For that, it has to be shown to be achieving what it was designed to achieve. To know whether acts have achieved their purpose calls for systematic assessment. Recognition of that fact has expanded understanding of what constitutes the legislative process.

In 2004, the Constitution Committee of the House of Lords published its report on Parliament and the Legislative Process. I chaired the committee and used the chair's prerogative to draft the report. The report looked at the legislative process holistically, encompassing pre- and post-legislative scrutiny. The report was not the first to advocate the systematic use of post-legislative scrutiny, but it was distinctive in generating action. The government referred its proposal to the Law Commission, which endorsed it. The government responded by agreeing that acts of parliament should normally be subject to post-legislative review by the relevant government departments three to five years after enactment.

Since that time, the merits of post-legislative scrutiny have become more widely recognised internationally, not least due to the efforts of Westminster Foundation for Democracy (WFD), with various national legislatures implementing some form of post-legislative scrutiny or oversight.

In the UK, post-legislative scrutiny is undertaken by committees in the two Houses of Parliament. In the House of Commons, it depends on the initiative of individual committees. In the House of Lords, it is more systematic, with an ad hoc (now known as a special inquiry) committee appointed each year by the House to review a particular measure or measures. As this detailed study by Dr Tom Caygill, drawing on his extensive research of post-legislative scrutiny (PLS), shows, the bottle of parliamentary PLS is, if anything, only half full. There is post-legislative review undertaken, but only in respect of a small number of acts. There is much more that can be done to enhance PLS. As a result of his study, he advances several recommendations. These constitute a valuable contribution to debate and merit discussion in both Houses. Acting on the recommendations may strengthen both Houses considerably in undertaking a vital task.

Post-legislative scrutiny is essentially a public good. Legislatures, as Dr Caygill argues, should have ownership of the process. It can play to their strengths, and it can help ensure that law is good law.

Philip Norton
Lord Norton of Louth

Executive summary

Post-legislative scrutiny (PLS) is defined by the Law Commission of England and Wales[1] as:

> **"A broad form of review, the purpose of which is to address the effects of legislation in terms of whether intended policy objectives have been met by the legislation and, if so, how effectively."**
>
> **(Law Commission, 2006: 7)**

The need for PLS, the Law Commission argues, arises within the context of an increasing volume of legislation being enacted and the reduced parliamentary time available to scrutinise each piece (Law Commission, 2006). The drafting of legislation in the UK has also been criticised for starting too late and being rushed (Rippon, 1993). In addition, committee scrutiny of legislation in the UK House of Commons has frequently been criticised as ineffective due to executive dominance (Thompson, 2015). It is against this backdrop that the importance of PLS becomes apparent. Not only does it allow parliaments to assess whether legislation is meeting its key objectives, but it also allows parliaments to deal with potential problems arising from legislation as a result of the above issues. However, even with the best drafting and scrutiny regimes, there will always be problems with the enactment and implementation of legislation as not all policies translate easily into law. PLS is therefore an important tool available to parliaments for revisiting legislation, where the need arises.

As parliaments assume an awareness and a responsibility to monitor whether the laws they have passed are implemented as intended and have the expected impact, PLS is increasingly recognised as an important dimension within the oversight and legislative role of parliament as well as an integral part of the legislative cycle.

PLS holds two distinct functions. There is firstly a function relating to the monitoring of the implementation of legislation. Secondly, there is an evaluation function relating to whether or not the aims of an act are reflected in the results and effects of legislation once implemented (De Vrieze & Hasson, 2017). The main aims of PLS that follow from these functions are:

- to assess whether legislation is functioning as intended and to offer solutions if not;
- to increase focus on the implementation of legislation within government; and
- overall, to produce better legislation.

This report analyses the frequency and the outcomes of PLS that has taken place in the UK Parliament between 2008 and 2019, in order to provide an insight into how this form of scrutiny is being undertaken.

The research has shown that in total there were 23 full PLS inquiries. While in an ideal world most acts of parliament would receive post-legislative scrutiny, capacity will always be an issue in legislatures. The research shows that post-legislative scrutiny is being undertaken, and is possible, even when legislatures have capacity limitations.

However, there are some challenges which need to be acknowledged. There has been a decline in the number of post-legislative review memoranda, which provide a summary of the law's operation, published by government departments within three to five years of an act entering into law. As these memoranda are forwarded to the relevant departmental select committees in the House of Commons for further scrutiny, this decline in publishing may

mean committees are not receiving as many prompts to undertake PLS as they would usually receive. However, it should be noted that there is no requirement for committees to receive a post-legislative review memorandum before undertaking a PLS inquiry. The research has shown that during the period studied (2008-2019) there was bias in the legislation which was selected to receive PLS. Previous Labour governments (1997-2010) have been most likely to have their legislation reviewed, with only three acts passed during the 2010-2015 Coalition Government of Conservatives and Liberal Democrats having been assessed up to the 2019 General Election (December 2019). While this may seem obvious, the trend did not change much in the latter part of the period studied (2015-2019). This is a concern as while PLS is undertaken in an impartial manner, its selection does not appear to be impartial.

Despite some of the challenges listed above, the research has found that the most frequent recommendation that committees make is for a change in policy or practice, with 41% of recommendations calling for such action. The research also found that 85 recommendations out of 573 (15%) requested legislative action by the government. The study also considered the strength of action that committees call for in their recommendations. The data showed that 40% of recommendations published by committees in both Houses of the UK Parliament required little or no action on behalf of the government. This confirmed the arguments of both Aldons (2000) and Benton & Russell (2013) that committees tend to produce recommendations which require less action from the government (weaker), so the government is more likely to accept them. In a system where committees cannot force action and can only persuade, this may be considered by some an appropriate compromise in order to achieve change.

Our research showed that PLS has some impact in relation to acceptance of recommendations. The data showed that 40% of recommendations were accepted (either in full or in part) within two to three months of committees publishing reports. It should also be expected that over a longer period of time (perhaps between two to three years), further recommendations would be accepted as a result of policy debates and pressure that PLS brings (Rogers & Walters, 2015). Therefore, even if change and impact are not achieved immediately, there is still a benefit to undertaking routine PLS – even if the outcome is the government having to account for its actions. This can be a driver for change too.

PLS therefore has the potential to have a direct impact in terms of the government immediately agreeing with recommendations, but it also has the potential to have indirect impact, by feeding into broader policy debates which can see change occurring over a longer period of time. Here, following up on inquiries and pressing the government is important. However, it was also concluded that committees in the House of Commons as well as the House of Lords tend to not fully follow up on committee inquiries as well as they could. Focusing on follow up could further enhance the impact of PLS.

As a result of these findings, this report recommends that the House of Commons Liaison Committee[2] plays a more active role in ensuring committees are undertaking a greater range of core tasks,[3] including PLS, in order to try and encourage further PLS inquiries on a wider range of legislation.

In addition, the Committee Directorate in the House of Commons (which supports the work of committees in the House of Commons) should review the 2008 deal between the House of Commons and UK Cabinet Office. The deal requires government departments to review legislation within three to five years of it entering into law in order to examine its operation and

present findings in the form of a memorandum to the relevant departmental select committee. This deal should also be placed on a firmer footing to ensure that these reviews are taking place and are being presented to committees.

There should be a central repository of post-legislative memoranda hosted by the government which committees in both Houses of Parliament can access. The House of Lords Liaison Committee[4] should enable ad hoc committees to re-form after they have published their reports in order to allow them a chance to follow up, and the House of Commons Liaision Committee should encourage further follow up from select committees in order to push for greater acceptance and implementation of recommendations.

In order to ensure greater coordination with regards to PLS in the UK Parliament, it is recommended that a dedicated PLS committee be established, either as a joint committee of both Houses, or as a Lords Committee.

1. Introduction

One of the main roles of legislatures is to create laws. However, it is only more recently that legislatures have begun to consider formally evaluating whether these laws subsequently meet the objectives set at the time of passage (Norton & De Vrieze, 2021). In the UK Parliament, PLS has been, in various forms, one of the core tasks of departmental select committees (which shadow government departments) in the House of Commons since 2002.

PLS is defined by the Law Commission of England and Wales as:

> **"A broad form of review, the purpose of which is to address the effects of legislation in terms of whether intended policy objectives have been met by the legislation and, if so, how effectively. However, this does not preclude consideration of narrow questions of a purely legal or technical nature."**
>
> **(Law Commission, 2006:7)**

The Law Commission noted, in their report on PLS, that the vast majority of respondents to their consultation stated that PLS serves a much broader purpose than a narrow review of legal consequences.

1.1. PLS in the UK Parliament

The need for PLS, the Law Commission argues, arises within the context of an increasing volume of legislation being enacted in each session of parliament.

The definition provided by the Law Commission relates to what are considered to be the purposes and benefits of PLS. The main reasons and benefits cited by the Law Commission (2006) for the undertaking of PLS are:

- To **assess whether legislation is working out in practice** and, if not, to determine the reasons why and to offer solutions to rectify any problems.
- To **produce better regulations**. The Law Commission suggests that PLS should lead to better regulation due to the increased focus upon how acts and subsequent regulations operate.
- To **focus on implementation**. With the knowledge that PLS might one day be undertaken, it might concentrate the government's mind on the task of implementing legislation and its likely effects.
- To **improve the delivery of policy aims**, in the sense that it should provide a spur to those who work in the delivery of policy in ensuring that aims have been met.
- To **locate good practice** and disseminate it to help both the executive and legislature learn how to avoid creating legislation with unintended consequences.
- To **improve the quality of legislation** in the sense that with the knowledge that legislation could be formally reviewed, it might have the effect of improving the drafting and scrutiny of legislation.

It has been argued that PLS might be more effective if it were undertaken outside parliament in a non-parliamentary context. However, parliament is best placed to determine whether or not intended policy objectives have been met as this is a political judgement and as such, should be made by a political and accountable body. Additionally, it is parliament which passed the legislation in the first place and parliament which will be required to make legislative changes should they be required. It therefore makes sense for a political body to undertake such scrutiny, although there are consequences of doing so. For example, as parliament is inherently political, it can prove challenging to remove politics completely from the equation.

The Law Commission has warned against issues that could limit the effectiveness of PLS.

The first is the risk that PLS becomes a replay of the arguments that were put forward (or the debates that were conducted) during the original passage of the bill. If it becomes overly partisan, it is likely to divide scrutiny along party lines and render such scrutiny useless. Secondly, it is dependent upon political will and judgement, as without such will, parliament is not going to want to undertake such scrutiny. Finally, there is an issue with resources. The resources available to parliament are finite. This includes both time and money; and consideration needs to be taken as to how much of a demand PLS will place on resources.

The Law Commission ultimately suggested that PLS in the UK Parliament should be more systematic. However, the government disagreed with their suggestion of introducing a dedicated PLS committee. Instead, in 2008, the government agreed to introduce a systematic process of post-legislative review by government departments (or ministries). Legislation would receive a departmental review within three to five years of that act entering the statute books. Once such a review was completed, a memorandum containing its findings would be sent to the relevant departmental select committee in the House of Commons, for additional scrutiny if deemed necessary by the committee. This is the formalised system that the House of Commons has operated since 2008. Although it was rarely used to begin with, there has been an increase in the number of published memoranda by government departments. In addition, since 2012 ad hoc committees in the House of Lords have undertaken PLS, with a promise of at least one inquiry per session.

In relation to this systematic process of PLS, the government stated that the system must concentrate on appropriate acts and not focus upon reviewing every act passed by parliament. It should also avoid re-running the same policy debates that were conducted during the passage of the bill through the legislative process. Thirdly, such scrutiny should reflect the specific circumstances of each act including any relevant secondary legislation. Finally, it should complement existing scrutiny undertaken by House of Commons select committees. It is under these conditions that PLS in the UK Parliament operates.

1.2. PLS and committees

In the UK House of Commons, PLS is undertaken by departmental select committees (sessional committees) which shadow government departments. In the UK House of Lords, it is undertaken by ad hoc committees, created to undertake a specific function. There are important differences between these types of committees. Sessional committees are formed for a full parliamentary term which can be up to five years, whereas ad hoc committees cease to function after they have published their reports. The time available to committees differs. Sessional committees (such as departmental select committees) have other tasks to complete whereas ad hoc committees are given one task. This means they can spend more time on work such as PLS. There is also an important difference in that the Lords currently do not receive post-legislative review memoranda from the government unless they specifically request them. The process in the Lords provides the opportunity for members and clerks to bring forward ideas for PLS, outside the government's agreed memoranda process in the Commons.

Ad hoc committees in the House of Lords are popular, especially with members, as they allow for specific and topical issues to be examined without creating a permanent vehicle for doing so. One benefit of using such committees is that with nine months for one inquiry a more comprehensive, in-depth report is possible. There is a downside however, as they dissolve after they have reported and are therefore unable to follow up.

2. PLS between 2008 and 2019

Between 2008-19, twenty-three PLS inquiries had taken place in the UK Parliament. Fourteen had been undertaken in the House of Commons, eight had been undertaken in the House of Lords and one had been undertaken by a joint committee of both Houses.

Table 1: PLS in the UK Parliament between 2008-2019

Committee	No. of Acts	Act(s) scrutinised	Session
House of Commons Environment, Food and Rural Affairs Committee	1	Veterinary Surgeons Act 1966	2007-08
House of Commons Digital, Culture, Media and Sport Committee	1	Licensing Act 2003	2008-09
House of Lords Select Committee on Adoption Legislation	2	Adoption and Children Act 2002 Children and Adoption Act 2006	2012-13
House of Commons Justice Committee	1	Freedom of Information Act 2000	2012-13
House of Commons Digital, Culture, Media and Sport Committee	1	Gambling Act 2005	2012-13
House of Commons Public Administration and Constitutional Reform Committee	1	Statistics and Registration Service Act 2007	2012-13
House of Commons Public Administration and Constitutional Reform Committee	1	Charities Act 2006	2013-14
House of Commons Housing, Communities and Local Government Committee	1	Greater London Authority Act 2007	2013-14
House of Lords Select Committee on the Inquiries Act	1	Inquiries Act 2005	2013-14
House of Lords Select Committee on the Mental Capacity Act	1	Mental Capacity Act 2005	2013-14
House of Commons Health Committee	1	Mental Health Act 2007	2013-14
House of Commons Justice Committee	1	Serious Crime Act 2007	2013-14

Table 1 continued: PLS in the UK Parliament between 2008-2019

Committee	No. of Acts	Act(s) scrutinised	Session
Joint Committee on Human Rights	1	Terrorism Prevention and Investigation Measures Act 2011	2013-14
House of Lords Select Committee on Extradition Legislation	1	Extradition Act 2003	2014-15
House of Commons Justice Committee	1	Legal Aid, Sentencing and Punishment Act 2012	2014-15
House of Commons Home Affairs Committee	1	Regulation of Investigatory Powers Act 2000	2014-15
House of Lords Select Committee on the Equality Act and Disability	1	Equality Act 2010	2015-16
House of Lords Select Committee on the Licensing Act	1	Licensing Act 2003	2016-17
House of Commons Environment, Food and Rural Affairs Committee	1	Flood and Water Management Act 2010	2016-17
House of Commons Environment, Food and Rural Affairs Committee	1	Animal Welfare Act 2006	2016-17
House of Lords Select Committee on the Natural Environment and Rural Communities Act 2006	1	Natural Environment and Rural Communities Act 2006	2017-19
House of Lords Select Committee on the Bribery Act 2010	1	Bribery Act 2010	2017-19
House of Commons Education Committee	1	Children and Families Act 2014	2017-19

Table 1 shows that all but one of the PLS inquiries involved the review of one act. However, the one inquiry which did review two pieces of legislation looked at two similar acts; in this case the Adoption and Children Act 2002 and the Children and Adoption Act 2006. Indeed, this provides some confirmation that PLS is more likely to take place where legislation is free standing, and not linked to other acts passed successively in a single policy area.

Of the PLS inquires undertaken, only one act has been scrutinised more than once, suggesting that inquiries are not overlapping, or repeating scrutiny already undertaken by another committee. This is important, especially

in the House of Commons, as departmental select committees have a number of core tasks which compete for prioritisation.

The one exception to this is the review of the Licensing Act 2003 which was reviewed by the Culture, Media and Sport Committee in the 2008-09 session[5] of the 2005 parliament[6] and which was also reviewed in the 2016-17 session of the 2015 parliament, by an ad hoc committee in the House of Lords. There is a gap of seven parliamentary sessions between the first and second PLS inquiries into this act. The act had also been amended by the Policing Reform and Social Responsibility Act 2011, and by various pieces of secondary legislation, since the first inquiry. This would leave scope for a further review of the Licensing Act 2003 assessing its performance since these amendments. The first inquiry also concluded that it was too early to determine the full impact of the act and whether it was meeting its objectives.

Figure 1 shows that ad hoc committees (in the House of Lords) have undertaken the most PLS since the start of the 2005 parliament. This is due to the fact that since 2012, the House of Lords determined that it would create a number of ad hoc committees in each session to scrutinise specific issues and that at least one of those committees would be a PLS committee. There was one committee in each session, except in the 2013-14 session which had two. In terms of the House of Commons, the Justice Committee and the Environment, Food and Rural Affairs Committee have been the most active, with the Digital, Culture, Media and Sport Committee and the Public Administration and Constitutional Affairs Committee coming joint third with two inquiries each.

The other committees in Figure 1 have undertaken PLS once in that time period and not every parliamentary committee is part of the figure; indicating they have not undertaken PLS at all during this time period.

Figure 1: PLS inquiries by committee between 2008-19

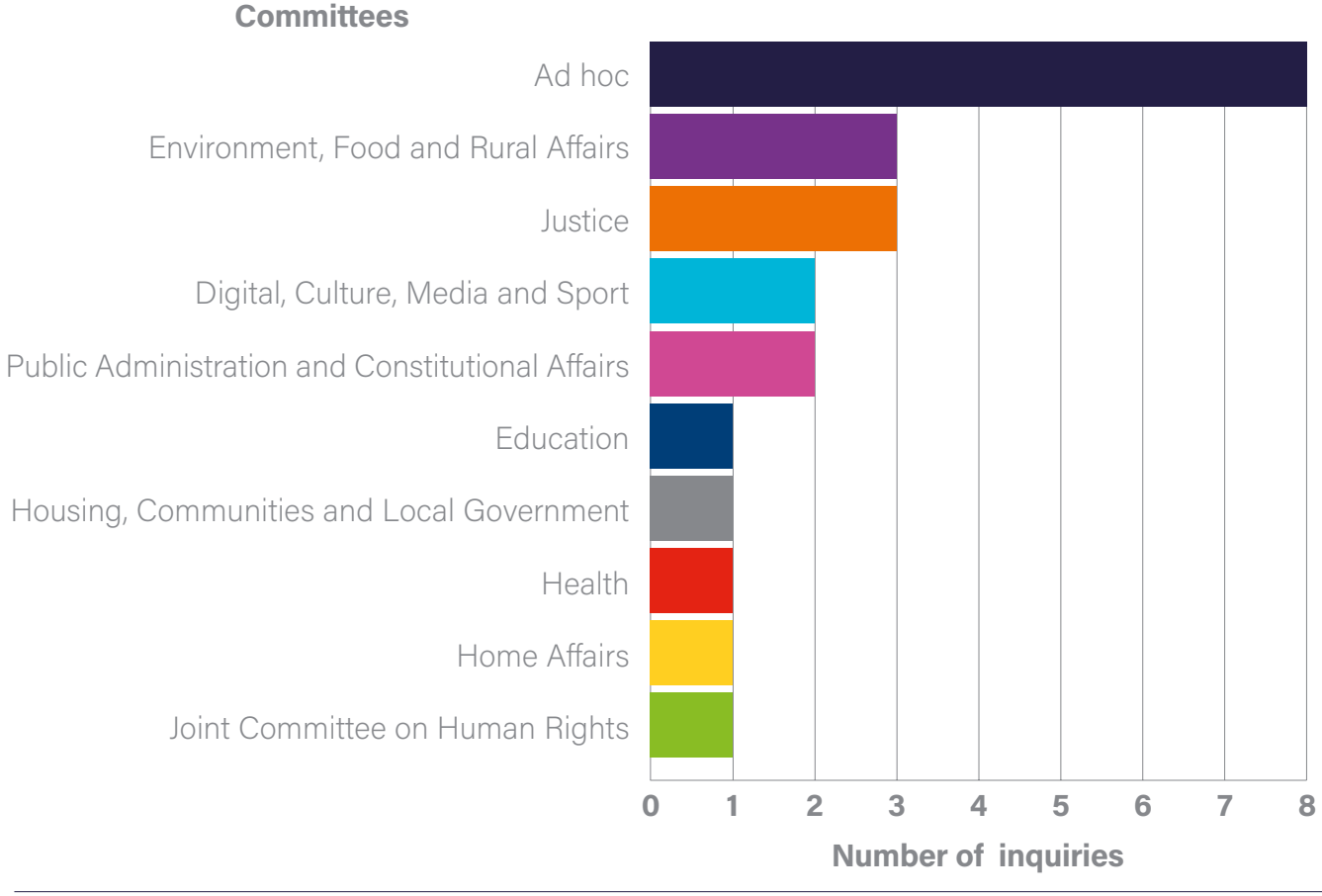


Table 2: Departmental select committees which have not undertaken a PLS inquiry between 2008-19.

Committees	
Business, Energy and Industrial Strategy Committee	Scottish Affairs Committee
Defence Committee	Transport Committee
Foreign Affairs Committee	Treasury Committee
International Development Committee	Welsh Affairs Committee
Northern Ireland Affairs Committee	Work and Pensions Committee

Table 2 shows the House of Commons departmental select committees that have not undertaken a PLS inquiry since 2008. The Foreign Affairs, International Development, Defence committees and the Northern Irish Affairs, Scottish Affairs and Welsh Affairs committees can be excused to some extent as these departments are not as legislatively intensive in comparison to the others. Nevertheless, the core tasks of departmental select committees are relevant to all departmental select committees, and PLS is one of those tasks.

Interviews undertaken during this research suggested that there were a number of reasons why some committees have not actively engaged with PLS. These reasons include committee planning being overtaken by events. These could be both political events like elections halting committee work or new policy announcements which divert the attention of the committee away from tasks such as PLS (Caygill, 2020). There is also the problem of the "legislative conveyer belt" which sees new acts being passed in quick succession in the same or a similar policy area. This often means that the legislation is not on the statute books long enough to receive PLS (Caygill, 2020).

Interviewees[7] during my PhD research also raised issues with long-term planning due to the turnover of committee membership. Turnover might not be the most important factor when determining whether or not to undertake PLS, but if a chair is ambivalent towards it, and a Member who is keen on PLS leaves the committee, it is unlikely to push it up the agenda (Caygill, 2020). Finally, there was also the challenge of the lack of Member interest in PLS; as committees in the UK Parliament are Member driven, it is important to engage them in the process early (Caygill, 2020).

Figure 2: PLS inquiries by parliamentary session between 2008-19[8]

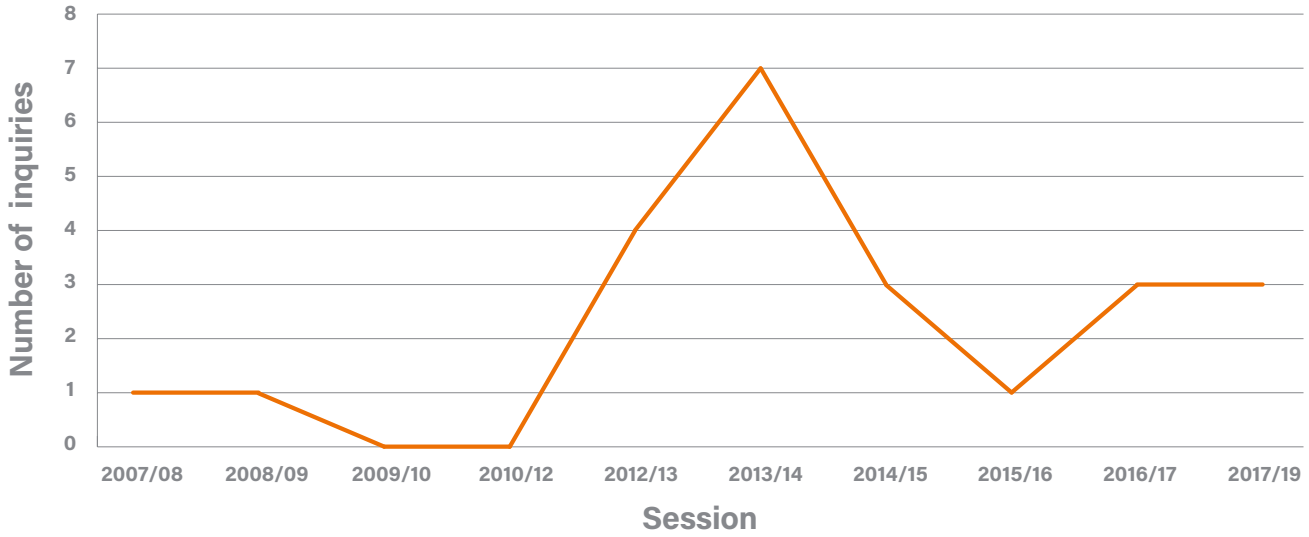


Figure 2 shows the number of PLS inquiries which have been completed per session since the 2007-08 session of the 2005 parliament. The 2007-08 and the 2008-09 sessions show one inquiry per session as the new systematic approach got underway and committees adapted to it. The pace did begin to increase in the 2012-13 session and peaked in the 2013-14 session towards the end of that particular parliament (towards a general election). This is likely due to post-legislative scrutiny being further down a committee's agenda and priorities.

There may be a trend in PLS being more of a focus towards the middle of a parliament. This could be down to the fact that in early sessions the new policy of a government may require scrutiny by departmental select committees, especially as flagship policy is likely to be announced rapidly following an election.

2.1. Party of government

Table 3 shows the party of government which introduced the legislation receiving PLS. It shows that twenty out of the twenty-three acts which have been subject to PLS between 2008-19 were introduced under Labour governments (1964-70, 1997-2001, 2001-05 and 2005-10). Only three pieces of legislation were introduced by the 2010-15 Coalition Government of Conservatives and Liberal Democrats. This can potentially be explained by the fact that the 2008 system required the production of a memorandum and as a result encouraged PLS of acts passed since 2005. During the first half of the 2010 parliament (2010-13), it would be Labour-introduced legislation which was receiving post-legislative review by the relevant government department.

However, by 2019 the vast majority of legislation introduced by the 2010-15 Coalition Government should have received departmental post-legislative review and had the respective memoranda passed to departmental select committees in the House of Commons. That being said, while these memoranda do act as prompts for committees, it should also be noted that not all PLS is driven by these memoranda as committees can and do select legislation to receive PLS without receiving a post-legislative memorandum first. There are no procedural obstacles that stop committees addressing the legislation of the 2010-15 Coalition Government.

This suggests that there may have been some bias in the selection of legislation that received PLS in the time period studied.

Table 3: Legislation receiving PLS by party of government between 2008-19.

Committee conducting PLS	No. of Acts	Act(s) scrutinised during PLS inquiry	Party of government that introduced the law	Session when PLS inquiry was completed
House of Commons Environment, Food and Rural Affairs Committee	1	Veterinary Surgeons Act 1966	Labour	2007-08
House of Commons Digital, Culture, Media and Sport Committee	1	Licensing Act 2003	Labour	2008-09
House of Lords Select Committee on Adoption Legislation (Lords)	2	Adoption and Children Act 2002 Children and Adoption Act 2006	Labour	2012-13
House of Commons Justice Committee	1	Freedom of Information Act 2000	Labour	2012-13
House of Commons Digital, Culture, Media and Sport	1	Gambling Act 2005	Labour	2012-13
House of Commons Public Administration and Constitutional Reform Committee	1	Statistics and Registration Service Act 2007	Labour	2013-14
House of Commons Public Administration and Constitutional Reform Committee	1	Charities Act 2006	Labour	2013-14
House of Commons Housing, Communities and Local Government Committee	1	Greater London Authority Act 2007	Labour	2013-14
House of Lords Select Committee on the Inquiries Act (Lords)	1	Inquiries Act 2005	Labour	2013-14
House of Lords Select Committee on the Mental Capacity Act (Lords)	1	Mental Capacity Act 2005	Labour	2013-14
House of Commons Health Committee	1	Mental Health Act 2007	Labour	2013-14

Table 3 continued: Legislation receiving PLS by party of government between 2008-19.

Committee conducting PLS	No. of Acts	Act(s) scrutinised during PLS inquiry	Party of government that introduced the law	Session when PLS inquiry was completed
House of Commons Justice Committee	1	Serious Crime Act 2007	Labour	2013-14
Joint Committee on Human Rights	1	Terrorism Prevention and Investigation Measures Act 2011	Conservative/ Liberal Democrat	2013-14
House of Lords Select Committee on Extradition Legislation (Lords)	1	Extradition Act 2003	Labour	2014-15
House of Commons Justice Committee	1	Legal Aid, Sentencing and Punishment Act 2012	Conservative/ Liberal Democrat	2014-15
House of Commons Home Affairs Committee	1	Regulation of Investigatory Powers Act 2000	Labour	2014-15
House of Lords Select Committee on the Equality Act and Disability (Lords)	1	Equality Act 2010	Labour	2015-16
House of Lords Select Committee on the Licensing Act (Lords)	1	Licensing Act 2003	Labour	2016-17
House of Commons Environment, Food and Rural Affairs Committee	1	Flood and Water Management Act 2010	Labour	2016-17
House of Commons Environment, Food and Rural Affairs Committee	1	Animal Welfare Act 2006	Labour	2017-19
House of Lords Select Committee on the Natural Environment and Rural Communities Act 2006	1	Natural Environment and Rural Communities Act 2006	Labour	2017-19
House of Lords Select Committee on the Bribery Act 2010	1	Bribery Act 2010	Labour	2017-19
House of Commons Education Committee	1	Children and Families Act 2014	Conservative/ Liberal Democrat	2017-19

3. Post-legislative review memoranda

In its report on "Parliament and the Legislative Process", the House of Lords Constitution Committee recommended that:

> **"...most Acts, other than Finance Acts, should normally be subject to review within three years of their commencement, or six years following their enactment, whichever is the sooner."**
>
> **(House of Lords Select Committee on the Constitution, 2004: 44).**

The House of Lords believed that there should be a set period following the passage of an act in which it should be reviewed again by parliament. While this is the set period they chose, they did acknowledge that it is a maximum period and that parliament should be free to review legislation before the maximum period has been reached, should they believe it necessary. Their reasoning for this timeframe is as follows:

> **"...we believe that there should be a review within a set number of years — we suggest three years — after the provisions of the Act have been brought into effect. We also believe that there should be a set period following the passage of the Act when it should be reviewed. We think six years would be appropriate. This is in order to cover cases where a minister may not have brought the provisions into force. A review would then force a minister to explain why it had not been brought into effect."**
>
> **(House of Lords Select Committee on the Constitution, 2004: 44).**

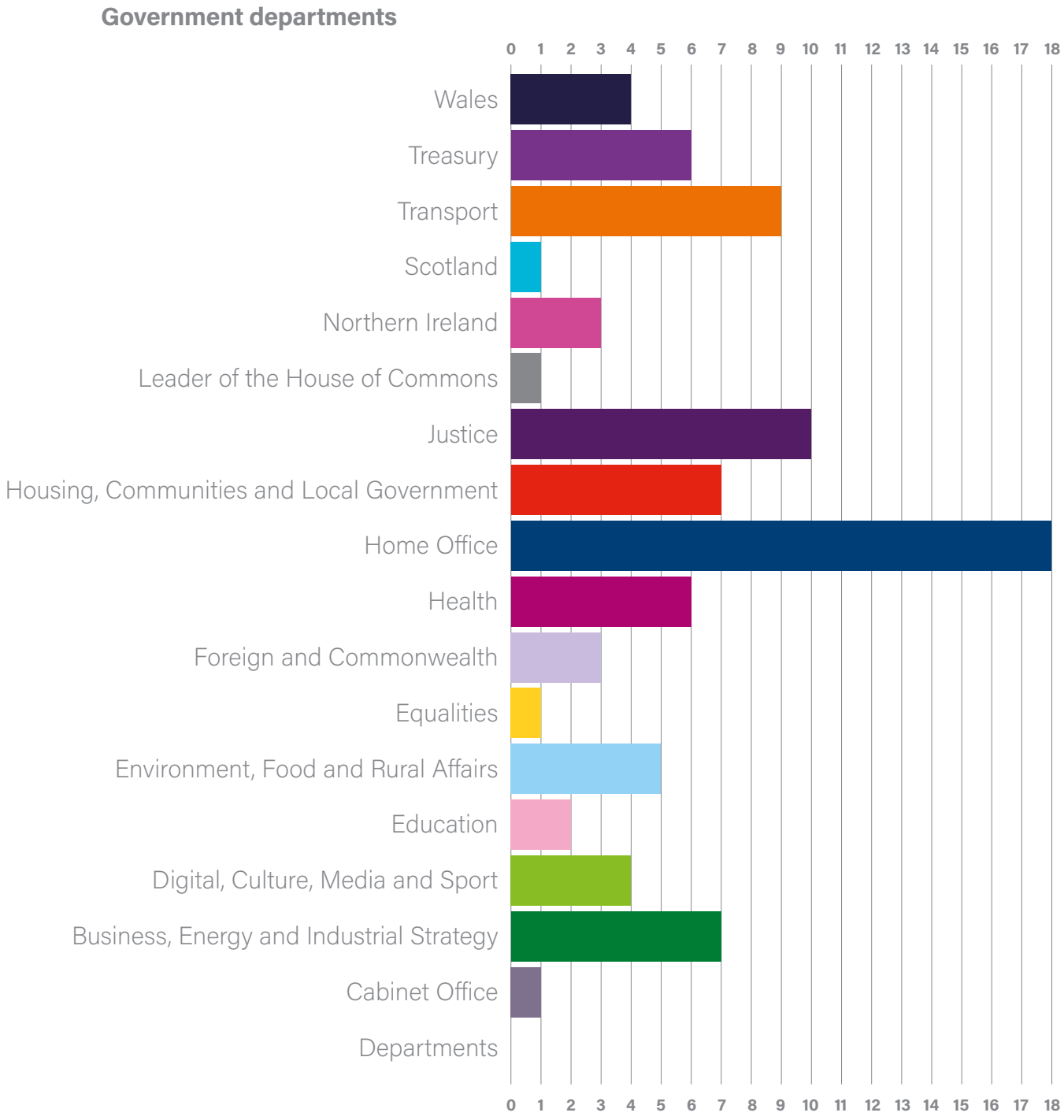
In the UK Government's response to the Law Commission's report on PLS in 2008, it set out the precise details of how this new systematic approach to PLS should operate. Its response stated that:

> **"The new requirement for an automatic departmental Memorandum to be published and submitted to the relevant departmental committee, generally between 3 and 5 years after Royal Assent..."**
>
> **(Office of the Leader of the House of Commons, 2008: 18).**

While this statement is directed at government departments it also means that departmental select committees will be receiving these memoranda within the same time frame and then determining whether or not they should be undertaking PLS on that particular piece of legislation. Nevertheless, it should be noted that not all PLS is triggered by a memorandum. In the case of the House of Lords, memoranda are often published and sent to the relevant House of Commons departmental select committee some time before the House of Lords decides to hold an inquiry. As a result the Lords may request a memorandum from the government (if the act was enacted before 2005, as they do not fall within the remit of the new system) or an updated one if the previous version is dated.

When assessing the post-legislative memoranda published by government departments, Figure 3 raises a number of issues. Firstly, the Home Office has published far more memoranda than the House of Commons Home Affairs Committee has taken up for PLS. While not all legislation will require scrutiny, with the Home Affairs Committee having only undertaken one inquiry in comparison to eighteen memoranda having been published, it does suggest that PLS might not be systematic from a parliamentary perspective. Additionally, for each of the committees listed in Table 2 (page 15) as not having undertaken any PLS, all of their respective departments (except International Development and Defence)[9] have been publishing memoranda (albeit some more than others).

Figure 3: Post-legislative memoranda published by government departments between 2008-19



A total of 91 post-legislative memoranda were published by government departments between 2008 and 2019 on the government's website (https://www.gov.uk/). However, this is some way below the amount of legislation that has gone on to receive royal assent. For instance, between the 2010-12 and 2013-14 session 102 pieces of legislation received royal assent; however, only 11 of them (11%) have received their post-legislative review memoranda, despite these acts falling into the three to five year time frame for post-legislative review agreed between the government and the House of Commons. Eight of those were on government bills and three on Private Members' Bills.[10]

Figure 4. Post-legislative memoranda published between 2008-19

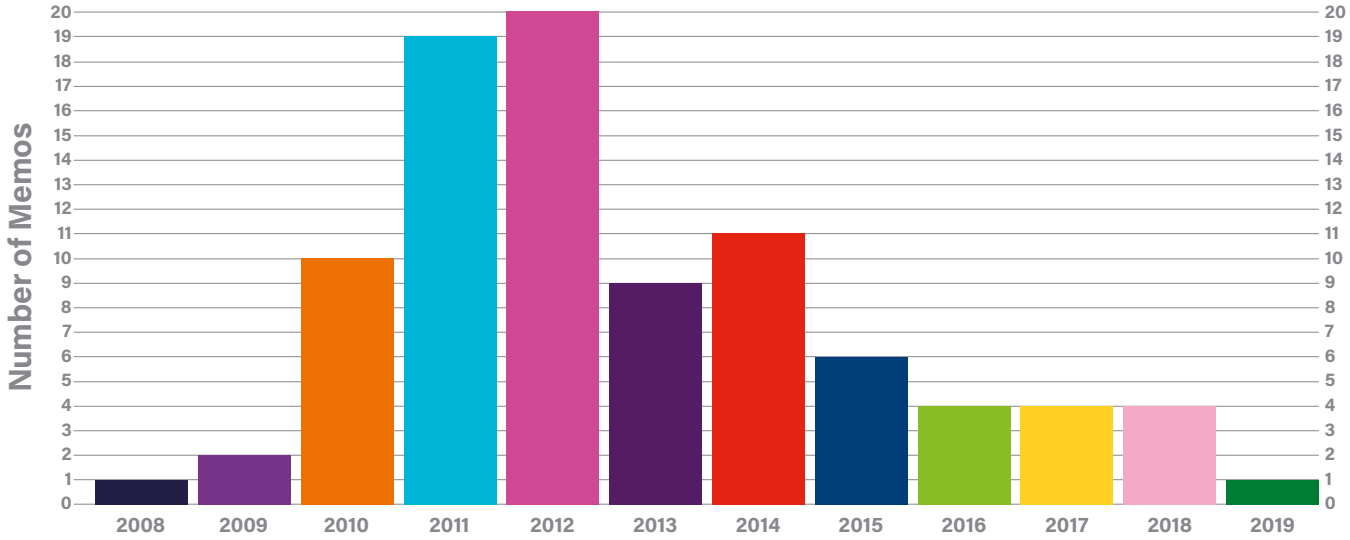


Figure 4 shows a steady increase in the publication of post-legislative review memoranda up until 2012; however, since then it has declined to single figures (except 2011) each year.11 It is between 2011 and 2014 that most memoranda were published; perhaps it is not surprising that in this time period it was Labour-introduced legislation that was within the (three to five year) timeframe for post-legislative review by government departments. It has been highlighted that there was some bias in the selection of legislation by parliamentary committees (during the period studied). However, perhaps there was a bias in relation to government departments as well, particularly as we see the number of memoranda decline as Coalition Government of Conservatives and Liberal Democrats legislation reached the point of requiring review. This in turn could also have had an impact upon the selection of legislation by committees (which are dominated by government backbench MPs) for PLS.

However, memoranda are not the only trigger for a PLS inquiry and there is nothing preventing committees launching one without a memorandum from the government. There is an additional factor affecting the 2017 to mid-2019 period and that is the pressure that the UK's exit from the European Union was putting on government departments (for example, staff being loaned from other departments to the Department for Exiting the European Union); so it is conceivable that post-legislative review has fallen off departmental radars.

There are arguments in both Houses of Parliament for the post-legislative review process to be extended beyond the current three to five years agreed. From the perspective of the House of Commons, the former Clerk of the Culture, Media and Sport Committee noted, in a 2016 research interview, that there is a tendency to put at least a parliament (around five years) between the legislation being passed and the undertaking of PLS. She also noted that it is possible that a time frame of seven to eight years would be necessary depending upon the policy area in question.

The Clerk of the Licensing Act 2003 (PLS) Committee suggested during a 2017 research interview that seven to eight years would need to pass before it was possible to see the full effects of the Act. This was on the basis that not all of the Act necessarily would come into force at the same time. Indeed, this view was shared by the Clerk of the House of Lords Liaison Committee who stated that the optimal time for PLS is somewhere between five and 10 years.

4. Recommendations from PLS inquiries

PLS in the UK Parliament follows the typical process of most committee inquiries. The start of any inquiry involves the committee deciding on a subject area on which to undertake scrutiny. Committees in the UK Parliament are independent and can decide to undertake scrutiny on any topic within their remit (for example, the House of Commons Transport Committee can scrutinise any aspect of the work of the Department for Transport). The next stage involves the committee agreeing terms of reference for the inquiry, this is to frame the scope of the inquiry and ensures there is a set focus (Rogers & Walters, 2015). These terms of reference are useful for potential witnesses[12] who want to know what the main interests of the committee will be. For example, in the terms of reference for the House of Lords Committee on the Equality Act 2010, it was determined that the inquiry would only focus on the aspects of the Act that related to disability.

The committee will then issue a general invitation (published on the parliament website) to submit evidence, and will prepare more specific requests for evidence from government departments and agencies. The committee and its staff will also begin the process of drawing up a list of likely witnesses to give oral evidence to the committee; this list is usually expanded following the submission of written evidence, particularly based on evidence which catches the eye of the committee and its staff. Oral evidence sessions will then typically follow; committee staff will prepare briefings for members and help to suggest questions that members may wish to ask their witnesses. Committee staff may also informally notify witnesses of areas the committee are interested in, so they know which areas they will be questioned on (Rogers & Walters, 2015).

Following the completion of oral evidence, committee staff with the support of the committee chair will begin to identify key themes and recommendations to include in the report. The committee will be presented with a rough draft of the report (often called "a heads of report") in order to get their views before the report is fully drafted. Drafting is undertaken by committee staff, including any specialist advisers, under the guidance of the committee clerk. The committee chair will then be presented with a draft of the report in order for them to offer their comments and suggestions before it is presented to the committee as a whole. The committee then has the opportunity to go through the report in order to reach an agreement (normally through consensus) on the final contents of the report, including any recommendations that the committee wish to make. Once agreement has been reached the report is published on the parliament website, press releases go out to media organisations and a copy of the report is sent to the relevant government department. Every committee report (regardless of the type of work they are doing) should receive a formal government response within two months of publication (Rogers & Walters, 2015).

Out of 23 (PLS) inquiries which took place between 2008 and 2019, 573 individual recommendations were made (see Box 1 for examples of PLS recommendations), which have been coded by type and strength of action called for; and corresponding responses to the recommendations from the government in terms of level of acceptance.

Box 1. Examples of recommendations from the PLS report published by the House of Lords Committee on the Equality Act 2010

We recommend that the Government lay before Parliament as Codes of Practice the technical guidance on the Public Sector Equality Duty, Schools, and Further and Higher Education that have already been drafted and extensively consulted on by the Equality and Human Rights Commission. (Paragraph 164)

We recommend that ministers report regularly to Parliament on the progress made (a) by the Premier League and by the Football League, and (b) on comparable action by the operators of other large stadia. (Paragraph 249)

The Government Equalities Office, the Office for Disability Issues, the Department for Business, Innovation and Skills and the EHRC should undertake joint work to encourage employers to respond positively to flexible working requests from carers of disabled people. (Paragraph 270)

The reasons offered by the Government for failing to bring section 165 of the Equality Act 2010 into force 20 years after its enactment are entirely unconvincing. Ministers should be considering the burden on disabled people trying to take taxis, not the burden on taxi owners or drivers. Section 165 and the remaining provisions of Part 12 of the Act should be brought into force forthwith. (Paragraph 311)

We recommend that the Government produce an assessment of the cumulative impact of budgets and other major initiatives on disabled people. It should be supported in this by the Government Equalities Office and the Office for Disability Issues. (Paragraph 372)

4.1. Types of recommendation

Table 4 shows the total number of recommendations coming from each of the 23 PLS inquiries. Only 85 recommendations out of 573 called for action related to legislation (15%). The table also shows that the most frequent type of recommendation called for is a change in policy or practice, with 41% of recommendations calling for such action. Policy is labelled differently to legislation, as policy is a specific approach a government chooses to take regarding an issue. While legislation can and does enact policies, they can be implemented and changed without legislative measures. The second most frequent type of recommendation which committees called for was for research to be conducted or a more extensive review to be undertaken.

In relation to legislative recommendations, you might expect that PLS would lead to more of them being made in comparison to other types of scrutiny. This is on the basis that PLS is focused on the implementation and functionality of legislation; however, legislative change (particularly primary legislative change) is arguably the costliest for governments in terms of time and political capital.

With regards to policy change recommendations being made most frequently, this can be explained by the fact that while such changes do use up political capital, they might be considered less costly. Committees therefore focus on what they are more likely to achieve, reinforcing the idea that politics is the art of the possible. Weaker recommendations are also more likely to be made if a committee struggles to find a consensus for stronger action.

Table 4: Types of PLS recommendations produced by committees in both Houses of Parliament between 2008-19

Code	No.	%
Policy/practice	236	41
Research/review	90	16
Legislative	85	15
Disclosure	41	7
Guidance	27	5
None of the above	20	3
Cooperation with other bodies	15	3
More than one of the above	16	3
Resources/funding	18	3
Recommendation to other bodies	14	2
Campaigns/public Information	11	2
Total	573	100

4.2. Strength of recommendation

When assessing the strength of recommendations, the data showed that 40% of recommendations stemming from PLS inquiries called for little or no action on behalf of the government. In total, those recommendations which called for some kind of medium action (lower, mid-range and upper; for example, a change in policy or a change in regulations) totalled 59%, and there were only seven recommendations out of 573 (1%) that were classified as calling for a large action (such as new primary legislation).

Box 2. Coding scheme for PLS recommendations

Coding employed a modified version of Russell and Benton's (2011) coding scheme (no/small, medium, and large change), with the scale increased to five on the basis of the types of changes that PLS calls for. The medium action category was expanded into three separate categories to account for the differences in action classified under the medium category (such as calls for more resources versus calls for the amendment of primary legislation). Additionally, the no/small category has been separated into no action and small action, to account for the difference between no change and small change.

Strength of recommendations:

0. **No action** – for recommendations which support or endorse existing policy and/or legislation.

1. **Small action** – for recommendations which call for information to be released, for guidance to be issued or amended and for reviews, assessments, and further consideration to be taken.

2. **Lower medium action** – for recommendations which call for a pause in a policy, for a pilot or trial run to be undertaken, for a change in procedure, for additional resources or training to be made available, for the implementation of parts of an act and for existing legislation to be utilised.

3. **Mid-range action** – for recommendations which call for policy changes, new regulations or for regulations to be amended and for minor amendments to be made to an act (such as for drafting purposes).

4. **Upper medium action** – for recommendations which call for substantial amendments (relating to powers) or for the repeal of specific clauses of an act, additionally for recommendations which call on the government to legislate but do not specifically call for primary legislation.

5. **Large action** – for recommendations that call for the repeal of all or part of an act or for new legislation to be introduced.

In terms of the figure for recommendations calling for little or no action, it is similar to what Benton & Russell (2013) found in their study (40% of recommendations calling for small or no action). The data from this study showed that committees tend to focus their recommendations on calling for small and medium action (58% - no, small and lower medium action); this could be a response to knowing they do not have the power to force the government to accept and implement their recommendations. This reflects the reality of scrutiny and the power relations between the executive and legislature. One way of explaining this particular behaviour of committees is that they wish to hedge their bets and recommend small and medium actions which are more likely to be accepted and implemented and thus have an impact. "It is better to achieve something than nothing", as one committee clerk put it to me. This is a strategy acknowledged by both Aldons (2000) and Benton & Russell (2013).

Table 5: Strength of PLS recommendations produced by committees in both Houses of Parliament between 2008-19[13]

Strength	No.	%
No action	15	3
Small action	209	37
Lower medium action	103	18
Mid-range action	188	32
Upper medium action	51	9
Large action	7	1
Total	573	100

4.3. Government acceptance of recommendations

In relation to the government acceptance of recommendations, the data shows that 40% of recommendations were accepted (either in full or in part) and that 37% of recommendations were rejected at least in part, if not outright, within two to three months of PLS report publication. There is a benefit from undertaking PLS if 40% of recommendations are being accepted outright. Although there is a tendency among committees to produce weaker recommendations, this still amounts to policy (and other) changes which would not happen otherwise. It should be expected that over a longer period of time (perhaps between two to three years), further recommendations would be accepted and implemented as a result of policy debates and pressure that such scrutiny brings (Rogers & Walters, 2015).

Table 6: Acceptance of PLS recommendations produced by committees in both Houses of Parliament between 2008-19

Acceptance	No.	%
No response	52	9
Rejected outright	142	25
Rejected in part	71	12
Neither accepted nor rejected	78	14
Accepted in part	80	14
Accepted outright	150	26
Total	573	100

There is, however, a general problem with the way in which some government departments respond to committee reports. Some responses are very long-winded, and it is not clear what the government intends to do with the recommendation. This may be a strategy by the government to skirt around issues which it does not want to tackle head on.

However, the government should ensure that it directly responds to each recommendation and states clearly what it intends to do. This would help with accountability further down the line, when a committee might follow up on recommendations that the government has accepted in order to check to see whether they have been implemented. Committees also need to ensure that the recommendations they produce clearly call for specific action, in order to allow the government to respond effectively. There were some recommendations that were hard to follow in relation to determining exactly what the committee wanted. This is likely a case of committees struggling to come to a decision on a single call for action, where the compromise to make the recommendation acceptable to the whole committee means a loss of directness in terms of the action called for.

4.4. Acceptance by strength of recommendations

In relation to trends in acceptance, Table 5 shows that recommendations are more likely to be accepted if they call for small or medium action, with those calling for greater action more likely to be rejected. There is more variation, however, in terms of recommendations which are partially accepted and partially rejected. When it comes to recommendations calling for no and small action, 73% and 55% of them respectively were either accepted in part or in full. "No action" was included in the table because although committees have called for no action to be taken, they often pass commentary on such recommendations, and as such the government does sometimes respond to that commentary. For recommendations which are classified under lower medium, 40% were accepted in part or in full and 39% were being rejected in part or in full.

Additionally, when focusing on the recommendations which call for stronger action, a greater percentage were rejected either in part or in full. For mid-range action, 43% were rejected, as opposed to 30% which are accepted. Mid-range also sees the largest number of recommendations which are neither accepted nor rejected. When it comes to recommendations classified under upper medium, 69% were rejected in part or in full in comparison to 16% of which that were accepted in part or in full. On recommendations calling for large action, which included the repeal of legislation as well as calls for new legislation, none were accepted in part or in full.

Table 7: Government's acceptance of PLS recommendations by strength of recommendations as a percentage (%) between 2008-19

	No action	Small action	Lower medium action	Mid-range action	Upper medium action	Large action
No response	20	10	11	9	2	0
Rejected outright	0	15	21	30	53	72
Partially rejected	7	8	18	13	16	14
Neither accepted nor rejected	0	12	10	18	13	14
Partially accepted	13	17	14	12	12	0
Fully accepted	60	38	26	18	4	0
N	15	209	103	188	51	7
%	100	100	100	100	100	100

Using Spearman's correlation method there is a moderate negative correlation between the strength of recommendations and their acceptance by the government. This means that the stronger the recommendation, the more likely it is to be rejected by the government.

5. Following up on PLS

Responses to committee reports are usually received within two months (60 days) of publication. This is a convention rather than a formal rule. When it comes to the content of a response, if a committee has been highly critical, the government is more likely to be defensive in its response. In addition to this, if a committee has produced challenging recommendations, then the government is going to be cautious. Rogers & Walters (2015), former officials in the House of Commons and House of Lords respectively and authors of "How Parliament Works", argue that there can be a delayed drop effect when it comes to recommendations.

What this means is that ambitious recommendations may change public debate and may contribute to a shift in policy two to three years after the report has been published. So even if the government initially says no, this does not mean that the recommendations will never be accepted or implemented.

Committees are more influential if they follow up on the recommendations they have made, with the government. While most departmental select committees run a continuous agenda, if they return to the detailed recommendations and apply some pressure to vague promises then they can achieve results.

5.1. House of Commons case studies

One of the main findings from this research is the admission that select committees are not good at following up. Philip Davies MP (UK MP and former member of the House of Commons Digital, Culture, Media and Sport Committee) noted that committees are not good at looking closely at government responses because by the time they have produced their report they are tired of the issue. It also raises questions about what the point of committees undertaking scrutiny is if they are not going to follow up on recommendations to ensure they are implemented.

The former clerk of the House of Commons Culture, Media and Sport Committee noted that, in relation to their inquiry on the Gambling Act 2005, the committee were aware that the government was unhappy with some of their recommendations, but the committee were not "willing to die in a ditch" over this issue. When it comes to scrutiny of the response, it is clearly about picking the right battles, suggesting there was a strategy at play here as well. As a rule, committees do not like getting into an argument with the government, as the government will usually win. Instead, they sometimes opt for a "magisterial silence" suggesting they were standing by their report, which the former clerk claimed is more dignified than getting into a war of words with the government. She argued that while this may look like backing down to outsiders, it might more accurately be named "picking your battles".

Despite the admission that committees are not good at following up, there is evidence of a limited amount of follow up taking place. However, this usually happens through means that are convenient to the committee. For instance, despite suggesting committees are not good at following up, the former clerk of the House of Commons Culture, Media and Sport Committee noted that when the committee was undertaking scrutiny of the Gambling Act 2005 it did follow up on the bits of that legislation relating to online gambling. Rather than there being a direct follow up inquiry, it was a follow up through an oral evidence session with the Gambling Commission. In addition to this example, the Health Committee in its inquiry into the Mental Health Act 2007 followed up through correspondence between the chair of the committee and the Secretary of State on significant issues.

5.2. House of Lords case studies

One of the biggest issues with follow up in the House of Lords is that ad hoc committees dissolve after the publication of their report, so they are not formally constituted when a response is published by the respective government department. One of the ways they deal with the challenges of follow up is to undertake informal coordination. The clerk of the Equality Act 2010 Committee noted that although the committee ceases to exist, the members continue to serve in the House of Lords and retain their interest. When the government's response came in it was circulated to members by the then former clerk. Although he was no longer clerk of that particular committee, he did still retain his interest in the issue. A meeting was also organised to discuss the response, although it was not a formal committee meeting. There was clearly an informal process going on here. Although they do not have the powers of the committee at hand, if members who retain an interest can organise and apply pressure themselves then they might achieve more than if they worked independently. The clerk views the lack of being able to reconvene as a committee following the government's response (and potentially later to follow up) as a major failure of PLS in the Lords. This informal process also occurred following the inquiry into the Licensing Act 2003.

While committees cease to exist after the publication of their report, members also have the ability to follow up on reports as individuals. One of the recommendations that came from the Equality Act 2010 Committee (PLS ad hoc committee) was for an amendment to be made to the Licensing Act 2003 so that local authorities, when giving permission for premises to sell alcohol, could apply conditions to that permission to ensure disabled access. As there happened to be a suitable bill going through in the 2015-16 session which was making amendments to the Licensing Act, the chair, Baroness Deech, tabled an amendment, which ultimately failed.

Debates on ad hoc committee reports forms an important route for some limited follow up and to keep up pressure on the government. There is always a debate on ad hoc committee reports and the government's response to the committee's report is the basis of it. Typically, the day after the report is published, the chair will table a motion for the House to take note of the report. However, the debate is not held until the government response is published. During the debate, committee members can raise points in the light of the government's response. A government minister should also respond. The clerk of the Equality Act 2010 Committee noted that this process doesn't necessarily take you any further forward in terms of getting the government to agree to your recommendations unless you get a commitment from them. Floor time in the House can bring publicity both within and outside the House, but it is questionable how much. While the chair acknowledged that it gave added publicity, she said it didn't really do anything to further the recommendations. Additionally, a skilled minister is probably not going to give anything away unless they want to. However, this still amounts to more floor time than House of Commons committees get.

In defence of debates, the clerk of the Licensing Act 2003 Committee noted that the debate following PLS of the Inquiries Act 2005 saw the minister face a lot of criticism from very distinguished former Law Lords. Following the clerk's reiteration that the government was rejecting certain recommendations and receiving sustained criticism for doing so, the minister spent considerable time talking to his civil servants trying to find a way out. In the end, he said that the government was prepared to look at this again. So, debates can have an impact.

6. Conclusion

Our research has shown that in total there were 23 full PLS inquiries between 2008-19. While in an ideal world, most acts of parliament would receive post-legislative scrutiny, capacity will always be an issue in legislatures. The research shows that post-legislative scrutiny is being undertaken, and is possible, even when legislatures have capacity limitations. However, while it is positive that PLS is being underaken despite capacity issues, the research also highlighted a number of challenges. There is certainly scope to increase the amount of post-legislative scrutiny taking place as the glass is only (at the very least) half full.

The research also concludes that PLS is currently limited to specific committees, and while some of the challenges that committees face when approaching PLS are valid, steps can be taken to address them. For instance, there is a need to reduce the turnover of committee membership as well as a need for committees to be more flexible in their approach to PLS. If the "legislative conveyer belt" is present, undertaking short but quick PLS inquiries would help to influence new legislation. To some degree parliament is reactive in these situations, and perhaps there is a need for it to be more proactive, certainly in relation to PLS.

The study has also shown that there was a bias in the selection of legislation for PLS in the time period covered in this research. Previous Labour governments were most likely to have had their legislation reviewed under the new systematic approach to PLS. Part of the reason for this is the lack of post-legislative review memoranda coming out of government departments (potentially showing the current government's own bias too as the major coalition partner in the 2010-15 government is still in office today). Again there is an issue with parliament being reactive here in relation to the publishing of memoranda; there is an argument that parliament needs to be more reactive both in terms of requesting memoranda if they don't receive them but also providing oversight of post-legislative review.

The study also considered the strength of action that committees call for in their recommendations. It can be concluded that committees produce weaker recommendations that require less effort on the government's behalf. The data showed that 58% of recommendations stemming from PLS inquiries called for no, small or lower medium action on behalf of the government. The research therefore showed that committees tend to focus their recommendations on calling for small and medium action. This reinforces the arguments of both Aldons (2000) and Benton & Russell (2013) that committees produce recommendations which are weaker, so the government is more likely to accept more of them. In a system where committees can't force action and can only persuade, some may consider this to be an appropriate compromise in order to achieve change on the basis that it is better to achieve something than nothing. However, there is a need to reflect on the fact that to some degree this is admitting defeat before engaging with the government. There are important power dynamics to acknowledge here but committees must feel able to highlight problems and solutions and use the tools available to them in order to push for the acceptance and implementation of their recommendations.

The research also concluded that PLS has some impact in relation to acceptance of recommendations. The data showed that 40% of recommendations were accepted (either in full or in part). There is a clear benefit from undertaking PLS if so many recommendations are being accepted within two months even if they are considered small and medium recommendations, on the basis that change is occurring which otherwise would not. It

is also important to highlight that making the government go through the process of PLS, and account for its actions, is a vital exercise. It should also be expected that over a longer period of time (perhaps between two to three years), further recommendations would be accepted and implemented as a result of policy debates and pressure that PLS brings (Rogers & Walter, 2015).

It was also concluded that the House of Commons, as well as the House of Lords, has a problem with following up on committee inquiries. Case studies showed that, if committees in the Commons do follow up, then they use convenient methods rather than undertaking a full follow up inquiry, with the Mental Health inquiry following up through written correspondence and the Gambling inquiry following up through annual oral evidence sessions. This makes sense given the time and resource pressures on House of Commons committees; however, there is certainly scope to do much more than this. The House of Lords does face different challenges in that ad hoc committees dissolve once they publish their reports and are not in a position to formally follow up. This does raise the question of how the potential impact of inquiries is being affected, particularly as impact doesn't always take place immediately and can take time.

When it comes to PLS in the UK, while there has undoubtedly been progress, the glass is (at the very least) only half full and there is scope to make further advancements here. We must ensure that PLS does not become tokenistic or a box ticking exercise. In order to achieve this, I believe that we must continue to ensure that PLS is rigorous; that it is evidence-based in order to convince government of the merits of change; and that committees are following up on their efforts to achieve the best results.

7. Recommendations

Based on the research, the following seven recommendations have been made which aim to both streamline and upscale PLS practices in the UK Parliament. These recommendations are realistic and achievable, and they build upon the existing mechanisms operating in Westminster.

1. **The House of Lords Liaison Committee should request that it receives copies of government post-legislative review memoranda, which are currently sent to departmental select committees in the House of Commons.** There would be no financial cost incurred from this recommendation and it would allow the Liaison Committee to focus more closely on when memoranda are published and identify ones which might be missing. The Lords can add value to PLS due to the expertise in the House and the benefits of its committee system. The Liaison Committee can also add a level of oversight here in relation to the post-legislative review process within government departments.

2. **The House of Commons Liaison Committee should play a more active role in ensuring committees are undertaking a greater range of their core tasks, particularly PLS.** While it is unreasonable to expect all legislation to receive PLS, there is scope to increase the frequency of it. However, it is important to maintain the independence of committees. At the very least, committees should account for the work they undertake. The Liaison Committee in the 2010-15 parliament is an example of a more proactive committee, in which its chair Alan Beith (now Lord Beith) emphasised the importance of the core tasks. This recommendation does not necessarily incur a financial cost but it does require the committee to alter its approach. The Liaison Committee should also encourage select committees to focus more on follow up to ensure the excellent work that they undertake is having the greatest possible impact.

3. **The Committee Directorate in the House of Commons should review the deal struck between it and the Cabinet Office in relation to PLS.** It is over 10 years since the new memoranda process was formally launched and it was done without an understanding of how committees undertake PLS. This review should consider a standardised formula for what should be included in government-produced memoranda and whether the timeframe used (three to five years after Royal Assent) is appropriate.

4. **There should be a central repository of post-legislative memoranda hosted by the government.** A central repository should be introduced where post-legislative review memoranda can be placed and where all committees who undertake PLS can access them. With the primacy of the House of Commons, departmental select committees should have "first refusal" when it comes to undertaking scrutiny on such memoranda. After that the House of Lords should have access to them when deciding what ad hoc committees to appoint. Such a repository would allow for greater post-legislative coordination between the two Houses, and ensure better coverage of inquiries.

5. **The central repository for post-legislative review memoranda should also be made publicly available** so outside bodies can also scrutinise their contents and provide their own memoranda to committees on how acts are working from their perspective. Improving the visibility of government memoranda could help to improve access to information for committees and aid them in determining whether PLS is necessary rather than relying upon government memoranda.

6. **The House of Lords Liaison Committee should consider reconvening ad hoc committees one year after the government responds to inquiries.** One of the conclusions of this research was that the ability for ad hoc committees in the Lords to follow up is limited. This has implications for the impact of these inquiries and ultimately upon accountability. It was also noted that former committee and secretariat members are meeting informally after a government response is received. One clerk noted that they circulated the government's response to members, and that although they were no longer clerk of that particular committee, they did still retain an interest in the issue. So there is clearly an informal process, albeit without the full powers of a committee. While it is positive that members can organise and apply pressure themselves, the inability to reconvene as a committee following the government's response (and potentially later to follow up) is a major failure of PLS in the Lords. It has been suggested that committees should be reconvened around one year after the government responds to a report. This recommendation is likely to come with a financial cost as all clerks are reassigned to other committees once their former committee has completed its work. While it is encouraging to see the Liaison Committee in the House of Lords undertaking follow up on behalf of ad hoc committees, the author still believes it is beneficial to bring former committee members and committee staff back together to undertake this follow up, based upon the expertise they gained during the initial inquiry.

7. **The House of Lords and House of Commons should consider the introduction of either a Joint Committee on PLS or the creation of a dedicated PLS committee in the House of Lords.** There is a lack of systematic scrutiny from both the government and parliament, and the creation of a dedicated committee with a well-defined remit could make progress in achieving systematic PLS. Whether that committee is joint or a sessional committee in the Lords, it would not absolve the House of Commons of its duty to continue undertaking PLS as a core task. A joint committee or sessional Lords committee should take up a sifting role in terms of assessing which acts have received departmental review and which might be in need of PLS. Indeed, it could also hold the government to account for not publishing memoranda. Whichever committee is appointed should also have the power to create two or three sub-committees to undertake PLS on selected acts. In addition to these roles, a dedicated PLS committee should undertake detailed follow up on the reports that the sub-committees undertake, in order to ensure PLS achieves maximum impact.

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Annex 2: About the author

Dr Tom Caygill is a Lecturer in Politics at Nottingham Trent University. His research and teaching focus is on British politics and in particular parliamentary politics. He completed his Economic and Social Research Council funded PhD on post-legislative scrutiny in 2019 and has published academic journal articles in the Journal of Legislative Studies and the European Journal of Law Reform. His is also Associate Editor of the Journal of Legislative Studies.

Annex 3: References

1 An independent body created to keep the laws of England and Wales under review and to recommend reform where it is needed.

2 A committee which oversees the House of Commons committee system and is made up of the chairs of committees in that chamber.

3 Core tasks refer to the key tasks that select committees should consider when putting their work programme together.

4 A committee which oversees the House of Lords committee system and is made up of chairs of committees in that chamber.

5 Sessions are parliamentary years which typically run for 12 months. During a full parliamentary term (five years) there can be up to five sessions.

6 2005 parliament refers to the year that particular parliament was elected. So the 2005 parliament ran from the 2005 General Election to the calling of the 2010 General Election.

7 From within the UK Parliament.

8 Parliamentary sessions 2010-12 and 2017-19 were double the usual length of a typical session (one year).

9 The Department for Exiting the European Union and the Department for International Trade have been excluded from this study on the basis that their legislation is not eligible for PLS.

10 PLS has not yet been undertaken on Private Members' Bills.

11 2016, 2017 and 2018 each include one memorandum requested by the House of Lords Liaison Committee for scrutiny by an ad hoc committee, therefore not officially part of the three to five timeframe set out by the government and the House of Commons.

12 A witness is a person invited to give oral information or evidence to a parliamentary committee.

13 See coding scheme in the appendix.

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