

# Parliamentary Scrutiny of Government

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## Summary

Considerable parliamentary time and effort goes into scrutinising government. In this briefing note we define what the task involves, look at what it is trying to achieve and consider how we might know if it has been successful.

In the first part of the note we look at scrutiny in general. Defining scrutiny as any activity that involves examining (and being prepared to challenge) the expenditure, administration and policies of the government of the day, we argue that its primary purpose should be to improve processes and outcomes. We describe the web of scrutiny within which parliamentary scrutiny operates, and identify the key actors who play a role in scrutinising government.

We propose a definition of impact as an occasion on which scrutiny of policy, practice or outcomes can be identified as having had influence. Drawing on this definition we put forward a framework of seven types of positive impact that scrutiny can have on government, as well as identifying some examples of potential negative impacts that may arise from scrutiny. This leads us to a discussion of what 'good scrutiny' might look like.

In the second part of the note we focus specifically on parliamentary scrutiny. We begin by considering the factors that, taken together, make parliamentary scrutiny distinctive. We examine whom it has an impact upon and consider the key mechanisms that produce that impact – debate, questions and committees – discussing what types of impact they are best placed to deliver. Finally we look at how we might assess the impact of parliamentary scrutiny and draw some conclusions about routes to enhance its beneficial impact on government.

## Introduction

'Good scrutiny makes for good government', wrote Robin Cook, when he was Leader of the House of Commons.<sup>1</sup> While there is general agreement on this point there is relatively little analysis of the actual role that scrutiny plays in the effective functioning of democratic government. What does 'good' scrutiny look like? How does it actually have an impact on government? And how can its beneficial impacts be maximised to promote effective government?

These are significant questions for the wide variety of organisations that engage in some form of scrutiny of government, not least for Parliament, for which scrutiny is a key responsibility. Parliament's scrutiny activities are informed by and contribute to the investigations and analysis undertaken by a complex web of statutory and non-statutory bodies, among which a common aim is to improve the effectiveness of government.

This briefing note has been produced as part of the Institute for Government's ongoing research into Parliament and the political process. It describes Parliament's role within the UK's scrutiny landscape and analyses the impact scrutiny can have on government.

- Part one examines what scrutiny of government is, who engages in it and how it produces impact on government.
- Part two looks specifically at the impact of parliamentary scrutiny on government.

The note is based on a literature review combined with informal consultation with observers from academia and Westminster. The author is a House of Commons clerk with 10 years' experience within the House service, currently on secondment to the Institute for Government.

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<sup>1</sup> Cook, R., *Modernisation of the House of Commons*, December 2001, <[www.publications.parliament.uk/pa/cm200102/cmselect/cmmodern/440/44003.htm](http://www.publications.parliament.uk/pa/cm200102/cmselect/cmmodern/440/44003.htm)>

## Part One: Scrutiny

In order to understand the scrutiny role played by Parliament, it is important first to establish what we mean by scrutiny of government, what its purpose is, which actors are engaged in it, and how it might have an impact on government.

### 1. What is scrutiny of government?

Scrutiny of government can be defined as *any activity that involves examining (and being prepared to challenge) the expenditure, administration and policies of the government of the day.*<sup>2</sup> It often includes examining the wider context in which government is operating, in order to identify opportunities and risks that may currently lie outside the ambit of government. Scrutiny can take place at any point – it may be forward looking, retrospective or assess ongoing activity.

To scrutinise and challenge the work of government is generally understood to be one of the three key roles of Parliament, the others being passing legislation and enabling the government to vote financial supply (that is, authorising government expenditure).<sup>3</sup> For the purposes of our discussion in this briefing note we are excluding the scrutiny of legislation that takes place during the course of its passage through Parliament (in debates and committees) from our definition of scrutiny of government.

Scrutiny is related to both transparency and accountability but not identical to either. While scrutiny is an active process, ‘accountability’ describes a formal relationship, and ‘transparency’ a state of affairs. Plenty of scrutiny does not involve accountability but some forms of scrutiny do take place in the context of formal accountability relationships: that is, certain individuals, organisations or institutions can hold representatives of government (ministers or civil servants) accountable.<sup>4</sup> This means that legally or by convention the scrutiny body can require the representative of government to explain or justify their individual or organisational decisions, actions and performance in relation to the expenditure, administration or policy of the government.<sup>5</sup>

Likewise, while some scrutiny involves examining information that has not been intentionally shared, other scrutiny is facilitated by transparency – an actor deliberately operating in such a way that it is easy for others to see what is done. For example, government may choose to publish data to allow the public to understand and ask questions about its decisions and performance.

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<sup>2</sup> On its own website Parliament provides a definition focusing on the specific scrutiny activities it undertakes: ‘Scrutiny of the government: Parliament checks the work of the government on behalf of UK citizens through investigative select committees and by asking government ministers questions. The House of Commons also has to approve proposals for government taxes and spending.’ retrieved 4 November 2014, <[www.parliament.uk/about/how/role/parliament-government](http://www.parliament.uk/about/how/role/parliament-government)>

<sup>3</sup> <[www.parliament.uk/about/how/role](http://www.parliament.uk/about/how/role)>

<sup>4</sup> From September 2012 to December 2013 the Institute for Government ran a programme of work on the issue of accountability in central government – a major theme of the Government’s civil service reform agenda (See Paun, A., and Harris, J, *Accountability at the Top*, Institute for Government, 2014 retrieved 7 January 2015, <<http://www.instituteforgovernment.org.uk/publications/accountability-top>>).

<sup>5</sup> Some would argue that accountability entails an ability on the part of the scrutiny body to sanction, reward or require remedial action by the government. Our view is that although such powers may form part of some accountability relationships, they are not integral to the basic concept of accountability (see Philp, M., ‘Delimiting Democratic Accountability’, *Political Studies*, vol. 57, 2009, pp. 28-53).

The practice of scrutiny normally involves:

- **identifying which aspects** of government activity should be subject to scrutiny
- **gathering and examining evidence** in order to develop an understanding of what the government is (or is not) doing under the democratic mandate it has been given by the electorate and what the outcomes of that activity (or inactivity) have been, including by **requiring explanation** from representatives of government
- **undertaking analysis** and drawing conclusions about whether the Government is spending taxpayers' money wisely, administering itself efficiently and developing and implementing policies that achieve desirable outcomes
- **attempting to influence government** directly or indirectly (via other actors, including the media and the public) to take account of the evidence found and conclusions reached through scrutiny.

The Institute for Government argues that the primary purpose of scrutinising government should be to improve its effectiveness in terms of processes and outcomes.<sup>6</sup> It is useful to distinguish the impact of scrutiny on process from its impact on outcomes. *Scrutiny of process* asks the question, 'Did those in authority do what they were required to in reaching this decision?' This is important to ask because processes are generally put in place to safeguard the quality and legitimacy of government decision making. Processes can guard against decisions that are inappropriately influenced, lack appropriate consultation, overstep powers and so on. On the other hand, *scrutiny of outcome* asks, 'Was the outcome what the Government intended?', 'Could that outcome have been achieved more effectively?' and 'Was that outcome the best possible one?'

This distinction between scrutiny of process and scrutiny of outcome is relevant when considering the risks of different approaches to scrutiny. For example, scrutiny of outcomes may tend to underplay the importance of respecting the process to achieve the right outcome (as long as the right outcome has happened, it doesn't matter how), or place blame on the process for what is seen as an 'undesirable' outcome.

Scrutiny may be undertaken by actors with a largely apolitical standpoint (expert or lay scrutineers) or by those with an ideological perspective on what good government processes and outcomes might look like (political scrutineers). There are strengths and weaknesses to each model. The scrutiny of experts or lay people will be shaped by the nature of their expertise and experience. A possible risk is that this form of scrutiny does not pay sufficient attention to the political viability of the recommendations it makes.

Where political scrutiny is concerned, the particular political beliefs of scrutineers will affect their analysis of the evidence they collect and the conclusions they draw. For example, advocates of 'big' and 'small' government usually see very different routes to overcoming problems identified in the operation of the Civil Service. Although select committees normally

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<sup>6</sup> Scrutiny may also have other purposes, such as promoting openness or increasing public trust in the democratic system.

try to achieve a cross-party consensus on their reports, party-political motivations may well affect areas of inquiry and lines of questioning pursued with witnesses.

Aside from their political beliefs the actors involved in scrutiny may have a host of personal and other motivations for their work, alongside the purpose of improving the practice of government. For example, an MP who is a member of select committee may be motivated by personal ambition and relationships, party loyalty, the needs of their constituency, and practical considerations, as well as their wish to make government more effective. These additional motivations are not necessarily invalid and will not necessarily compromise the effectiveness of scrutiny, but they may do so. Transparency of process and clarity about the interests of those engaged in scrutiny are important protections against any inappropriate effects.

## 2. Who scrutinises government?

In this briefing paper our primary interest is in the role of Parliament in scrutinising government. Parliament does not undertake its scrutiny of government in isolation. In a country such as the UK with a well-developed civil society and firmly established models of governance and accountability, most parliamentary scrutiny draws on and feeds into other forms of scrutiny. The scrutiny landscape is perhaps best understood as a web of interconnecting activity that produces and builds on a wealth of information and evaluation with the potential to improve the effectiveness of government. Scrutiny processes are constantly interacting with each other as well as with instances of transparency and relationships of accountability – frequently facilitated by the media. Sometimes this web of scrutiny can create an environment that has a pre-emptive impact on the decisions of those who are scrutinised – motivating them to behave in ways that anticipate the potential impact of scrutiny rather than waiting for those impacts to happen. But often there are big gaps in the web – areas where there is little expectation that government will be subject to scrutiny, – where no pre-emptive incentive to improve is created.

The box below uses the example of the recent phone-hacking scandal to illustrate the interconnectedness of the scrutiny landscape.<sup>7</sup> The narrative shows how parliamentary scrutiny of the issue of phone hacking, which included a high-profile inquiry undertaken by the Commons Culture, Media and Sport Select Committee, was enmeshed within a web of other scrutiny and investigative mechanisms which were triggered by different aspects of the scandal.

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<sup>7</sup> Public interest in the inquiry was doubtless increased by an incident at one of the committee's evidence sessions in which a custard pie was flung by a protester at Rupert Murdoch. A video clip has been watched more than two million times on YouTube.

### Parliament's role within the web of scrutiny: the phone-hacking scandal

The phone-hacking scandal came to light in the mid-2000s with the publication in the newspapers of stories that those involved alleged journalists could have known about only by illegally accessing their voicemails. In 2007, following a police investigation, a *News of the World* (NOTW) journalist and a private investigator working for the NOTW were jailed on charges relating to phone hacking. Subsequent investigations, including by *The Guardian* newspaper, revealed that up to 3,000 phones had been hacked, among them those of politicians. The self-regulatory body for the print media, the Press Complaints Commission (PCC), conducted an investigation and concluded there was 'no evidence' that phone hacking was ongoing. At this point the **Commons Culture, Media and Sport Select Committee (CMS committee) conducted an inquiry** that concluded that the publishers of the NOTW suffered from 'collective amnesia' over the extent of the illegal phone-hacking their reporters had conducted.

In 2010 a subsequent Scotland Yard inquiry led the Crown Prosecution Service to conclude there was 'no admissible evidence' to support a further prosecution. It later reviewed this position following the launch of civil actions against the NOTW, and publicity generated by a *New York Times* article about phone hacking. The think-tank the Media Standards Trust called for reform of the PCC and for a proper investigation into phone hacking.

In early 2011 media coverage of the scandal led to the resignation of Andy Coulson, head of communications at 10 Downing Street and former editor of the NOTW. A fresh Metropolitan Police inquiry (Operation Weeting) and a number of arrests followed. Politicians raised their concerns about the scandal through articles in the press and **questions in Parliament**. In May 2011 Lord Prescott, Chris Bryant MP, Brian Paddick and the journalist Brendan Montague won a High Court ruling for a judicial review of the police inquiry.

In the following months further stories of phone hacking emerged in the media, and the NOTW settled damages and costs over several cases of voicemail interception. The Independent Police Complaints Commission took over a police investigation into allegations that police officers had been paid for stories by the NOTW. After *The Guardian's* July 2011 revelation that the phone of the murdered schoolgirl Milly Dowler had been hacked, News International announced that the NOTW would be closed down. Andy Coulson was arrested and the Prime Minister announced a two-part judge-led inquiry into the scandal. The campaign group Hacked Off lobbied for a public inquiry and reform of press regulation.

Partly as a result of concerns raised by the scandal and partly on media plurality grounds, News Corporation's bid to take full control of BSkyB was referred by the Government to the Competition Commission. Rupert and James Murdoch agreed to give evidence to the **CMS committee, which was investigating phone hacking**. Two senior Met police officers resigned over criticism of their links to the NOTW.

Beginning in November 2011, the Leveson Inquiry into the 'culture, practices and ethics' of the press took evidence from victims of phone hacking as well as journalists, police and politicians. Rebekah Brooks (former editor of the NOTW and former chief executive of News International) and Andy Coulson were brought to trial. Brooks was eventually cleared of conspiracy to intercept voicemails, two counts of conspiracy to pay public officials and two counts of conspiracy to pervert the course of justice. Coulson was found guilty on one count of conspiracy to intercept voicemails.

Lord Justice Leveson published his report in November 2012 recommending a new system of independent press regulation backed by law. Making **statements in the House**, the Prime Minister rejected the idea of a new law, but Nick Clegg and Ed Miliband supported it. Cross-party talks led to agreement on a Royal Charter on press self-regulation, which established an independent panel to verify arrangements for a new press regulator, as recommended by Leveson. A number of newspapers subsequently established the new self-regulatory Independent Press Standards Organisation, which has not sought recognition from the panel established under the Royal Charter. A rival independent self-regulator, Impress, was subsequently set up by a group of high-profile free-speech campaigners, with the aim of becoming compliant with Leveson's requirements.



This example illustrates the wide range of actors with a remit to undertake scrutiny within the UK – both of government and of other actors and individuals within society. Moving beyond this example but focusing on scrutiny of central government, we can divide the key actors involved into broad groups. Their scrutiny roles are discussed in more detail in Annex A, but briefly they include:

**Statutory bodies:** Parliament undertakes its scrutiny alongside an assortment of independent regulators, internal and external auditors, ombudsmen, commissions and service inspectorates, which are now responsible for monitoring the delivery of government services. The Hansard Society has argued that Parliament should sit ‘at the apex’<sup>8</sup> of these statutory monitoring bodies. Key among them is the National Audit Office, a parliamentary body responsible for auditing central government departments, government agencies and non-departmental public bodies, and for auditing the value for money of public administration. Other independent bodies set up under legislation, such as the Committee on Climate Change and the Office for Budget Responsibility, scrutinise government performance against specific targets in their policy area, among other responsibilities.

**The courts:** Besides Parliament, the other key constitutional entity with the power to scrutinise central government is the judiciary. In England and Wales the high courts (including the High Court, Court of Appeal and Supreme Court) can conduct judicial review – examining whether a government authority has exercised its powers lawfully. The EU judiciary can also conduct binding scrutiny of UK primary legislation.<sup>9</sup>

**European Commission:** As a member of the European Union, the United Kingdom must ensure timely and correct application of the *acquis* (EU regulations, directives and treaties) into domestic law. The Maastricht Treaty tasked the European Commission with scrutinising member state compliance with this requirement, creating a formal accountability relationship.

**Ad-hoc inquiries:** Temporary bodies may be set up specifically to scrutinise a particular incident or issue, usually in response to an event of widespread concern with implications for public policy. Inquiries into government policy or actions may be set up under the Inquiries Act 2005 or other statutes, as Royal Commissions,<sup>10</sup> as non-statutory ad hoc inquiries within or by government departments,<sup>11</sup> or as independently sponsored inquiries.<sup>12</sup>

**Non-statutory bodies:** Scrutiny of government is undertaken by an array of non-statutory actors and bodies including academic researchers, non-profit organisations and charities, think-tanks, pressure groups and the media. This scrutiny may not be the sole or even the main purpose of these actors’ work.

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<sup>8</sup> Brazier, A., [Parliament at the Apex: Parliamentary scrutiny and regulatory bodies](http://www.hansardsociety.org.uk/wp-content/uploads/2012/10/Parliament-at-the-Apex-2003.pdf), Hansard Society, February 2003, retrieved 8 August 2014, <www.hansardsociety.org.uk/wp-content/uploads/2012/10/Parliament-at-the-Apex-2003.pdf>

<sup>9</sup> For example, the European Court of Justice ruling in *Garland v. British Rail Engineering Ltd (1977)* led to amendment of the Equal Pay Act 1970.

<sup>10</sup> One example was the Royal Commission on Reform of the House of Lords, chaired by Lord Wakeham, which reported in 2000.

<sup>11</sup> The Cabinet Office called a departmental inquiry into the ‘Plebgate’ scandal, led by the Cabinet Secretary, Sir Jeremy Heywood. The Home Affairs Committee also conducted an inquiry into the episode.

<sup>12</sup> An example was the independent public inquiry into the supply of contaminated blood and blood products, chaired by Lord Archer of Sandwell which reported in 2009.

**Media:** The entire web of scrutiny is connected by the activities of the media and the public. As well as conducting its own independent scrutiny based on investigations by journalists, the media plays a key role in bringing scrutiny to public attention. Media exposure is often particularly effective in influencing government because of its public reach. The media can also work in concert with other forms of scrutiny, an example being recent Public Accounts Committee work on tax deals between HM Revenue and Customs (HMRC) and major corporations, including Google, which was prompted by the scrutiny of investigative journalists and whistleblowers within HMRC.<sup>13</sup> This in turn generated extensive media coverage, which raised public concern about the issue.

**The public:** Public scrutiny of government has been encouraged in the past 15 years by the introduction of Freedom of Information legislation and moves towards ‘open data’, intended to facilitate greater transparency of government activity. In fact, although a great deal of raw data has been released, difficulties with its usability have limited the activity of the ‘armchair auditors’ that the Government had sought to mobilise.<sup>14</sup> Some mechanisms have been created to facilitate citizen feedback, such as the NHS Choices service.

Government itself is one of the key factors determining the effectiveness of scrutiny, for example by:

- the institutional structures it puts in place to scrutinise and regulate its operations, which scrutiny bodies can draw on (e.g. the creation of regulators and oversight bodies)
- the powers it gives to scrutiny bodies (e.g. the power of select committees to send for persons, papers and records)<sup>15</sup>
- the extent of its openness and engagement with scrutiny processes (e.g. whether it releases information to select committees, listens to their findings and is willing to act on their recommendations).

Having identified the main actors involved in scrutiny, we need to consider the mechanisms by which their activities may actually have an impact on central government.

### 3. How does scrutiny have an impact on government?

#### How do we define impact?

The question of how to define and demonstrate impact is being addressed in a wide range of fields. Our thinking in this area has been particularly informed by the work of academics, who are increasingly required to demonstrate the impact of their work by Research Councils and other funding bodies. The challenge faced by academics is analogous to that faced by bodies such as parliamentary committees in demonstrating the impact of their scrutiny. Most

<sup>13</sup> Public Accounts Committee, ninth report of session 2013-14, *Tax Avoidance – Google*, HC112, June 2013.

<sup>14</sup> Wheeler, B., ‘Government online data ignored by “armchair auditors”’, BBC News, 9 November 2012, retrieved 4 November 2014 <[www.bbc.co.uk/news/uk-politics-20221398](http://www.bbc.co.uk/news/uk-politics-20221398)> ‘Within weeks of coming to power in 2010, the coalition released all items of local authority spending over £500. Communities Secretary Eric Pickles, speaking at the time, said the move would “unleash an army of armchair auditors and quite rightly make those charged with doling out the pennies stop and think twice about whether they are getting value for money”.’

<sup>15</sup> Technically this is a power granted by Parliament to its committees but in practice the Standing Orders that provide for this power would not have been passed without a government majority voting for them.

individuals, bodies and institutions engaged in scrutiny do not have any power to compel the Government to change what it is doing. Scrutiny relies instead on the power of influence, exerted through analysis, example or by virtue of the scrutiny body's characteristics and position, to achieve its impact.

It is almost never the case that the Government or another actor will change what it is doing because of a single instance of scrutiny. The effects of scrutiny (as with research) are usually multiple and overlapping and may often be delayed.<sup>16</sup> Actual change is always attributable to numerous intersecting forces and influences, and therefore it would be unrealistic to claim any causal link from a single scrutiny activity. So the impact on government cannot simply be judged by whether there is a change in what government is doing (its activities and outputs) as a result of that influence, still less by whether there is a change in the outcomes of its actions. In line with the definition developed by the Public Policy Group of the London School of Economics, we therefore define an impact of scrutiny as *an occasion on which scrutiny of policy, practice or outcomes can be identified as having had influence*.<sup>17</sup>

This definition avoids the tendency when considering impact to focus exclusively on what can be measured about the outputs of the scrutiny process. It makes it easier to think about how the process of scrutiny or its cumulative effects over time may influence the Government or another actor, instead of looking at a specific output from a scrutiny exercise. It also covers the pre-emptive effect created by the web of scrutiny that surrounds the Government. While it may be difficult to identify any specific instance of scrutiny as most significant in influencing the Government's behaviour, it may nonetheless be possible to identify that this behaviour has been influenced by the various interconnecting forms of scrutiny and accountability to which the Government is subject. Such pre-emptive influence may be positive (driving up standards or preventing government from doing something that would be subject to criticism) or negative (generating an unwillingness to tackle difficult issues for fear of a backlash). Having offered a definition of impact, it is useful to articulate the other positive and negative influences it may have on government.

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<sup>16</sup> In a parliamentary context this has been described as the 'delayed-drop' effect (Rogers, R., and Walters, R., *How Parliament Works*, fifth edition, 2004).

<sup>17</sup> After LSE Public Policy Group *Maximising the impacts of your research: a handbook for social scientists*, April 2011, retrieved 10 December 2014 <[http://www.lse.ac.uk/government/research/resgroups/LSEPublicPolicy/Docs/LSE\\_Impact\\_Handbook\\_April\\_2011.pdf](http://www.lse.ac.uk/government/research/resgroups/LSEPublicPolicy/Docs/LSE_Impact_Handbook_April_2011.pdf)>

#### 4. What positive impacts can scrutiny have on government?

It would be naive to attempt to prescribe exactly what impact scrutiny bodies should be trying to achieve through their work. This is primarily because the different actors involved may not agree on what impacts would be desirable. The box below provides an example:

<b>Desired impacts of scrutiny: a debate on a new government policy in the House of Lords</b>	
<b>Actor</b>	<b>Desired impact</b>
Government spokesman	Policy receives broad political endorsement and constructive criticism, which will improve the success of its implementation
Opposition spokesman	Policy is demonstrated to be flawed and opposition policy to be a more effective alternative
Backbench peer	Government hears about concerns of an interest group who have lobbied the peer and reflects these in future development of the policy

However, it is possible, and potentially useful, to articulate the types of impact that scrutiny can have. We would argue that there are seven key ways in which scrutiny may have a positive impact on government. These can be divided into those that are **direct** (the scrutiny activity or output itself influences government) and those that are **indirect** (the scrutiny activity or output influences a third party, whose reaction or response influences government). While it is somewhat artificial to separate out impacts in this way (most scrutiny activities will do more than one of these things), it is nonetheless useful to articulate the different influences scrutiny can have when thinking about how the benefit of each of these activities can be maximised.

##### **Direct**

- a) **Evidence:** Give the Government new evidence that improves its evidence base for decision making, for example about issues, risks or opportunities. The onus is on the Government to take account of the evidence. *E.g. A select committee holds a hearing on a previously overlooked issue and publishes a report including the oral evidence. Civil servants read the evidence and discuss whether they ought to prepare a policy response.*
- b) **Analysis:** Assist the Government's analysis of its evidence base by providing a new or different analysis (which may include political opinion), which influences the Government's view about what it is doing. *E.g. A charity publishes a report analysing a social issue, which is picked up by a backbencher and used to press the Government via parliamentary questions and debates. Civil servants are prompted to consider the report's proposals, which help shape an amendment to current practice or legislation.*
- c) **Openness:** Facilitate government openness by obliging civil servants and ministers to explain and justify what they have done. *E.g. A series of parliamentary questions to all departments about their expenditure on consultants prompts the Cabinet Office to conduct a review of the rationale for the use of consultants across Whitehall.*
- d) **Learning:** Identify lessons about past mistakes or successes by reviewing government expenditure, administration and the development and implementation of policy. *E.g. A select committee takes evidence from civil servants and former*

ministers to inform the writing of a research report on the pitfalls of policy implementation. The report is read by key people inside government, who apply the lessons learnt in their future policy implementation work.

- e) **Processes:** Prompt higher standards or better processes in government through the act of conducting effective scrutiny. *E.g. A minister is challenged during a debate about the weak evidence base for a policy. The next time civil servants propose a shift in policy, the minister is more demanding in their analysis of the evidence base they put forward.*

## Indirect

- f) **Context:** Shift the context of government activity by influencing the views and actions of other actors – MPs, the media, public, judiciary, industry, civil society, think-tanks, etc., including by building relationships and creating coalitions. *E.g. A select committee undertakes an inquiry that raises public awareness of a potential public health crisis. Public interest mobilises a civil society campaign. Government feels pressure to take note of this campaign and develops a policy response.*
- g) **Democracy:** Affect the democratic system within which government operates, including wider trends relating to trustworthiness and legitimacy. The openness and transparency generated by scrutiny can also encourage the public to participate in, or at least buy into, government decision making. *E.g. If people think a government department is being effectively scrutinised, it may strengthen their belief in the trustworthiness of government (even if the facts that scrutiny reveals undermine their expressed levels of trust).*

## 5. What negative impacts can scrutiny have on government?

Robin Cook's statement about the causal relationship between good scrutiny and good government highlights an important issue – that not all scrutiny is necessarily beneficial. Scrutiny may have negative impacts on government.

It is important for everyone involved in the scrutiny process to be aware of these potential negative impacts, in order to avoid them where possible. In addition to straightforward failures to achieve the positive impacts outlined above, negative impacts from scrutiny may include:

- a) **reducing innovation and risk-taking** by inducing an excessive fear of failure and public criticism
- b) **limiting openness** by creating a defensive reaction
- c) **restricting lesson-learning** by focusing on blame and scapegoating
- d) **creating unnecessary costs** (financial and other) through the burden of scrutiny
- e) **shifting government priorities** away from important areas to those areas that are the focus of scrutiny
- f) **creating unhelpful incentives**, for example by artificially accelerating response times or encouraging decision making to aim for short-run successes at the cost of longer-term stability
- g) **inappropriate politicisation**, especially of process issues.

Given that scrutiny can have both positive and negative impacts on how government works, an important question to consider is how we might start to define 'good scrutiny'.

## 6. What does 'good' scrutiny look like?

Observers have identified certain characteristics that could be taken into account when judging the effectiveness of individual instances and ongoing processes of scrutiny. The table below maps a number of these characteristics against the framework of seven types of positive impact that we have argued scrutiny can have on government. In each case we have identified a key characteristic of scrutiny in an ideal world, and observations about ways these may operate in the real world. This table draws on insights from the Centre for Public Scrutiny, Liaison Committee reports on select committee scrutiny and academic research on accountability.<sup>18</sup> It is intended to be illustrative rather than comprehensive.

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<sup>18</sup> Centre for Public Scrutiny, 'Practice guide: Overview of Scrutiny', June 2014, retrieved 23 October 2014, <[www.cfps.org.uk/domains/cfps.org.uk/local/media/downloads/pg00 - intro.pdf](http://www.cfps.org.uk/domains/cfps.org.uk/local/media/downloads/pg00 - intro.pdf)>; Liaison Committee, second report of session 2010-12, 'Select Committee effectiveness, resources and powers' HC697, 25 October 2012; Philp, M., 'Delimiting Democratic Accountability', op. cit.

Scrutiny of government		
Impact	Scrutiny in an ideal world would...	Scrutiny in the real world may...
Evidence	Draw on the opinions of the widest possible range of relevant people, institutions and actors	<ul style="list-style-type: none"> <li>• Fail to take opportunities to engage broader constituencies in its work, only drawing on the views of 'the usual suspects' because it already has established relationships with and regard for the expertise of these people</li> <li>• Only draw on the views of those likely to have similar viewpoints to each other or to the body undertaking scrutiny, because of a lack of interest in having preconceived views challenged</li> </ul>
	Tackle issues on which the body, institution or individual undertaking scrutiny can add most value, and be clear about division and hierarchy of respective responsibilities with other scrutiny bodies	<ul style="list-style-type: none"> <li>• Tackle issues it may not be well suited to address due to lack of expertise or capacity but which are attractive to investigate for other reasons, such as public or media concern</li> <li>• Address issues where it does not bring any particularly different expertise or perspective, because of a wish 'to do something' on an important issue</li> <li>• Address issues that are already being effectively scrutinised by another body, through lack of awareness</li> <li>• Fail to address issues that are its responsibility to address because other issues are of greater interest</li> </ul>
Analysis	Undertake fair and thorough evaluation of the way in which civil servants and ministers have met their responsibilities	<ul style="list-style-type: none"> <li>• Be unfair in its analysis of what has been done because of prejudice or a failure to investigate the whole picture</li> <li>• Erode the autonomy of civil servants and ministers by establishing a set of incentives and sanctions that lead office holders to address the requirements of scrutiny instead of the duties of their office. For example, by asking an unreasonable number of detailed questions about a problem while its effects are still being mitigated</li> <li>• Scapegoat individuals because of a wish to show that someone has been held to account</li> <li>• Be overtly or covertly partisan</li> </ul>
	Undertake an appropriate degree of analysis for the significance of the issue	<ul style="list-style-type: none"> <li>• Spend excessive time and effort investigating and analysing an issue because of a failure to consider the balance between cost and benefit</li> <li>• Spend inadequate time and effort on an issue</li> </ul>
Openness	Set an example by being proactively transparent to enable people and institutions outside the scrutiny process to contribute to and understand what has gone on	<ul style="list-style-type: none"> <li>• Be secretive or encourage secretiveness</li> <li>• Fail to realise the benefits of transparency and to prioritise it, preventing others from contributing to and understanding the scrutiny process</li> </ul>
	Ask effective questions that promote openness and reflection	<ul style="list-style-type: none"> <li>• Ask questions that create a defensive reaction because of a wish to demonstrate that witnesses are being held to account</li> </ul>

Learning	Be appropriate and timely – take account of other factors that determine when scrutiny will be most likely to be useful and productive and lead to learning	<ul style="list-style-type: none"> <li>• Undertake scrutiny because of external drivers such as media attention, ignoring whether the process will help or hinder the problem at any given moment</li> <li>• Artificially shorten time frames for scrutiny because of a wish to find short-term solutions, thereby encouraging decision makers to aim for short-run successes at the cost of longer-term stability</li> </ul>
	Review government expenditure, administration and the development and implementation of policy, based on a clear understanding of the responsibilities and formal obligations of civil servants and ministers	<ul style="list-style-type: none"> <li>• Hold government responsible for matters outside of its control because of a wish to find someone to hold to account or to whom to assign blame</li> </ul>
Processes	Be regular and systematic in its coverage – creating an expectation of scrutiny that itself drives better decision making and processes in government – and clear about responsibility for follow-up	<ul style="list-style-type: none"> <li>• Be intermittent or patchy – focusing on subjects of interest to the media or certain interest groups and leaving other areas of responsibility only superficially covered or completely unexamined. This may create an expectation that government will ‘get away with’ areas of poor practice</li> <li>• Fail to take responsibility for following up on previous recommendations or assurances from government because of a desire to tackle new and different areas of inquiry</li> </ul>
	Be prepared to challenge accepted approaches	<ul style="list-style-type: none"> <li>• Default to the status quo because it may be difficult to envisage approaches outside an established paradigm – especially if this is supported by powerful interests</li> </ul>
Context	Tackle issues that are relevant to the constituency on whose behalf the body, institution or individual is undertaking scrutiny	<ul style="list-style-type: none"> <li>• Ask questions that are of interest to the scrutiny body but of limited interest or relevance to others, particularly the constituency on whose behalf the body, institution or individual is undertaking scrutiny</li> </ul>
	Primarily seek to add value or make a positive difference to the work of government	<ul style="list-style-type: none"> <li>• Pursue personal, party-political, public or parliamentary motivations to the detriment or exclusion of the objective of improving government</li> </ul>
	Make the public better informed about the scrutiny process and the legal and political culture within which it sits	<ul style="list-style-type: none"> <li>• Not make the effort to promote public understanding, perhaps because of a perceived lack of time or resources</li> </ul>
	Appropriately draw on and contribute to other forms of scrutiny	<ul style="list-style-type: none"> <li>• Ignore the outcomes of other forms of scrutiny because of an introspective approach</li> <li>• Be ‘captured’ by a prevailing narrative emerging from the wider web of scrutiny</li> </ul>
Democracy	Be perceived as effective by the general public, improving levels of trust in government	<ul style="list-style-type: none"> <li>• Be perceived as ineffective because of the way it conducts the scrutiny process and therefore fail to command the confidence of the public</li> </ul>



## Part Two: Parliamentary scrutiny

In Part Two of this briefing note we look specifically at parliamentary scrutiny and its impact on government.

### 1. The distinctive role of parliamentary scrutiny

Scrutiny of government [by Parliament] is the process of examining expenditure, administration and policy in detail, on the public record, requiring the government of the day to explain itself to parliamentarians as representatives of the citizen and the taxpayer, and to justify its actions. **(Robert Rogers and Rhodri Walters, *How Parliament Works*, p. 339)**

Parliament has long played a central role in our system of government – as the forum in which government must explain itself and be held to account. The two houses of Parliament fulfil their scrutiny role through three key mechanisms: debate, questions and committees. There is no single aspect of parliamentary scrutiny that is unique within the scrutiny landscape we discussed in Part One. Nonetheless, there are a number of factors that *taken in combination* do make parliamentary scrutiny distinctive.

Perhaps most obviously, unlike almost all other forms of scrutiny, parliamentary scrutiny is **undertaken by politicians**, mainly by members of Parliament or peers who are not part of the executive (although they may be members of the same political party). This means that political scrutiny is sensitive to the political ideologies and practicalities that shape government actions, in contrast to other forms of scrutiny, which are sometimes criticised for producing worthy but politically unworkable solutions. Politicians' political antennae and networks normally enable them to check the acceptability of recommendations before they are made. In comparison with other actors involved in scrutiny, politicians have real opportunities to influence the Government's agenda. However, the fact that parliamentary scrutiny is undertaken by politicians means that it is shaped by many motivations besides the ambition to improve the effectiveness of government. These may compromise the effectiveness of scrutiny. For example, a backbench government-party MP might treat a minister gently in a select committee hearing or ask a helpful question at Prime Minister's Questions in order to enhance their own career prospects. More seriously, they might ask a question to serve outside interests for personal gain. This is not to imply that other actors engaged in scrutiny are not motivated by such factors, but to highlight the potential range of conflicting motivations in a political context.

The MPs who undertake scrutiny do so in their capacity as the **democratically elected representatives** of the taxpayer and citizen. An awareness of this contributes legitimacy and importance to the process. Parliamentary scrutiny is bolstered by certain powers (including the power to send for 'persons, papers and records', which facilitates the gathering of evidence) available by virtue of Parliament's role within the constitution (as a check on the power of the executive). The traditions and procedures that circumscribe the processes of parliamentary scrutiny (for example, limiting questioning to areas of specific ministerial responsibility) are designed where possible to produce straightforward answers. In comparison, the media's tendency to stray across public and private boundaries and confuse responsibilities with political judgement is arguably more likely to produce evasion and 'spin'.

Relatively speaking, parliamentary scrutiny attracts more **attention from the media** than other activity within the scrutiny landscape (except perhaps scrutiny by media itself) because Parliament is the centuries-old heart of our system of government. The presence of the executive within Parliament gives the media a further incentive to pay attention to what goes on there, although the extent of media interest in Parliament may be affected by the electoral make-up of the Commons.<sup>19</sup> Media attention contributes to the impact of parliamentary scrutiny by lending weight to its process and outcomes in the eyes of ministers, civil servants and the public. Thus media interest in parliamentary scrutiny increases its influence on government. However, the media focuses heavily on activity deemed to be ‘newsworthy’, which means nonetheless important scrutiny often goes unreported.

Parliamentary scrutiny involves an **accountability** relationship: Parliament can ‘require’ an explanation from ministers of their performance, decisions and actions in relation to the expenditure, administration or policy of the Government. As we discuss in more detail below, however, the enforceability of the ‘right to ask questions’, which is generally understood as a key power of parliamentary committees, is uncertain in practice.<sup>20</sup>

The vast majority of parliamentary scrutiny proceedings take place in public and are a **matter of public record**, although committees deliberate about their conclusions in private and very occasionally take evidence behind closed doors. The awareness that scrutiny activity is visible to the public (and to the media) unquestionably influences the behaviour of those involved in the process. For example, politicians questioning a witness may focus more on responding to a public desire to see somebody held to account for a scandal than on learning the detailed lessons that may avoid it being repeated. Witnesses with something to lose may be less forthcoming in public than they might feel able to be in private.

## 2. Who is influenced by parliamentary scrutiny?

The answer to the question, ‘Whom is Parliament seeking to scrutinise and influence?’ depends on whom you ask. Academics working in this area, including Michael Tolley, Andrew Hindmoor and his co-authors, and David Monk, identify government as Parliament’s key subject of scrutiny.<sup>21</sup> But as the Liaison Committee concluded in 2012: ‘While committees’ primary purpose is to scrutinise government, it is sometimes in the public interest for them to extend their scrutiny to other organisations.’<sup>22</sup> It highlighted select committees’ role in addressing the ‘accountability gap’ created by the increasing involvement of the private sector in delivering public services, by scrutinising private sector companies and professional bodies, as well as international entities, such as the European Commission.

<sup>19</sup> The Institute for Government has found evidence that media attention to scrutiny migrated away from Parliament between 1997 and 2005, when the Labour Party had a substantial majority and was able to exert a high degree of control over activity there, which made it of less interest (Harris, J., and Rutter, J., *Centre Forward*, 2014).

<sup>20</sup> Liaison Committee, ‘Select Committee effectiveness, resources and powers’ op. cit.

<sup>21</sup> Tolley, M., ‘Parliamentary Scrutiny of Rights in the United Kingdom: Assessing the Work of the Joint Committee on Human Rights’, *Australian Journal of Political Science*, vol. 44, no. 1, 2009, pp. 41-45; Hindmoor, A., Larkin, P., and Kennon, A., ‘Assessing the Influence of Select Committees in the UK: The Education and Skills Committee, 1997-2005’, *The Journal of Legislative Studies*, vol. 15, no. 1, 2011, pp. 71-89; and Monk, D., ‘A Framework for Evaluating the Performance of Committees in Westminster Parliaments’, *The Journal of Legislative Studies*, vol. 16, no. 1, 2010, pp. 1-13.

<sup>22</sup> Liaison Committee, ‘Select Committee effectiveness, resources and powers’ op. cit. paragraph 13.

In terms of the intended audience for the outcomes of scrutiny, government is again universally acknowledged to be the most important (with ministers and civil servants treated separately or grouped together in different studies). However, parliamentary scrutiny is often aimed at influencing other audiences as well. A study of select committees undertaken by University College London found that 26% of the recommendations made by the committees it tracked were not aimed at government.<sup>23</sup> Other intended audiences include Parliament itself, the judiciary, the media, political parties, interest groups, industry and the public.

### 3. What are the mechanisms of parliamentary scrutiny?

The procedures of the two houses of Parliament have evolved to provide a large variety of scrutiny mechanisms tailored to the particular item or person being scrutinised. The two tables in Annex B and Annex C summarise, for each House, what is scrutinised and by what mechanism. Although these tables inevitably simplify many of the intricacies of parliamentary procedure, they nonetheless illustrate the range of tools used for different scrutiny tasks.<sup>24</sup>

For example, there are two main mechanisms for direct scrutiny of the decisions and performance of the Prime Minister. These each deliver different impacts for different constituencies. The first is the weekly Prime Minister's Questions (PMQs) – a high-profile occasion prior to which every MP has an equal chance of being drawn out of a ballot to ask a question (potentially putting the Prime Minister on the spot about any matter across the full range of his government's responsibilities). PMQs is also an orchestrated party-political occasion, during which the leader of the main opposition party will be called on by the Speaker to question the Prime Minister on six occasions. It attracts significant media attention. The second scrutiny mechanism is a more recent innovation – the triannual oral evidence sessions held by the Liaison Committee with the Prime Minister. These sessions are less high profile than PMQs and participation is restricted to the chairs of select committees who make up the Liaison Committee, but in theory at least, they allow for more considered and in-depth questioning of the Prime Minister than the political spectacle of PMQs. They usually attract relatively little media attention.

For the purposes of our discussion in this section we have simplified the detailed categorisation in the tables to create three broad categories:<sup>25</sup>

- **debate** (in the main Chamber of each House, Grand Committee (Lords) and Westminster Hall (Commons), Scottish, Welsh and Northern Ireland Grand Committees in the Commons);
- **questions** (oral and written – both Houses)
- **committees** (select and other scrutiny committees; Committee of the Whole House; joint committees).

<sup>23</sup> Russell, M., and Benton, M., *Selective Influence: The Policy Impact of House of Commons Select Committees*, The Constitution Unit, UCL, June 2011, p. 67, retrieved 30 June 2014, <[www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/153.pdf](http://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/153.pdf)>

<sup>24</sup> For a more detailed account, consult Jack, M. (ed.) *Erskine May: The law, privileges, proceedings and usage of Parliament*, 2011 or the *Companion to the Standing Orders and Proceedings of the House of Lords*, 2013, available here <<http://www.publications.parliament.uk/pa/ld/ldcomp/compos.htm>>.

<sup>25</sup> These categories may overlap somewhat – for example, debate can take place in committee. There are some other mechanisms which, for reasons of brevity, we do not consider here in detail. These include petitions, Early Day Motions, examiners and ministerial letters.

Any analysis of the relative impacts of these different scrutiny mechanisms would be necessarily subjective. The impact of each mechanism varies according to how it is conducted, in terms of both process and style. Nonetheless some are obviously better suited to producing certain sorts of impact than others. In this section we draw on research and experience to identify the main features of these mechanisms and make some broad generalisations about what they are best at delivering.

## Debate

Most parliamentary proceedings involve debate, which may be about legislation, other aspects of government activity such as policy or implementation, or more general issues of public concern. Subjects for debate may be chosen by the Government, Opposition or backbenchers, with each group allocated time for this purpose. The creation in June 2010 of the Backbench Business Committee (BBCom) – responsible for allocating time for debate on subjects proposed by backbench members – gave backbenchers greater control over the business of the House on approximately one day a week. The creation of BBCom was one of the proposals of the ‘Wright Committee’ on reform of the House of Commons, which reported in November 2009.<sup>26</sup> Any member can choose to participate in debate taking place in the main chamber of either House, in the additional chambers of Westminster Hall (Commons) and Grand Committee (Lords) or in committees. While any member can vote on debates in the main chambers<sup>27</sup> (whether or not they have listened to the debate), when debate takes place in committee it is usually only members appointed to that committee who are allowed to vote.

For government the purpose of debate is often to showcase the political argument or philosophy behind a particular policy or approach to an issue, or to test opinion on it. For the Opposition and backbenchers it provides an opportunity to demand an explanation of why a particular policy has been pursued, to identify weaknesses in the evidence base or formulation of a policy, or to provide new evidence or analysis. Participants may wish to highlight alternative answers to the questions being posed by government or even argue that the questions being asked are the wrong ones, providing a form of check on the power of the executive. Those participating have the opportunity to marshal their arguments at relative length and in detail. Backbench and opposition participants have a captive audience with whichever minister has been selected to answer the debate.

The occasion of a debate exposes policies and actions to the light, compelling or enabling the Government to set out its view and its policy (or lack thereof) in public. Particularly where the subject of debate is not chosen by the Government, there is the opportunity to bring new subjects to its attention. Debate allows an individual MP to represent within Parliament the views of particular groups of constituents, industries, regions or other entities. This may increase public engagement in Parliament and even build trust in the democratic process, which relies for its legitimacy on the electorate feeling connected with the political process. Where a debate is covered by the media, it may contribute to public debate about an issue. However, only the most high-profile debates are usually covered in the media, and without

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<sup>26</sup> The Committee on Reform of the House of Commons (known as the Wright Committee after its chair, Tony Wright) was a Commons select committee established in 2009 to examine the procedures and relevance of Parliament. Its report, *Rebuilding the House*, was published on 12 November 2009.

<sup>27</sup> There cannot be votes in the additional chambers.

media coverage many individuals and groups are likely to be unaware that a debate has taken place.

The impact of a debate could be to force ministers and civil servants to clarify the rationale behind, evidence base for, and details of their position and policy solution, and to prompt them to reflect on whether they are appropriate and reasonable.

On the other hand, a debate called by backbenchers or the Opposition may force the Government to make a decision about a policy approach before it is ready to do so, which may not facilitate the policymaking process.

Debate has other potential disadvantages as a scrutiny mechanism. Debates tend to be a form of performance and are often confrontational occasions. Ministers are asked to respond rapidly to the evidence and argument offered by other participants. This means they may not have the opportunity or incentive to reflect fully on what they have heard. In fact, the confrontational style of debate may dissuade ministers from agreeing with the arguments of political opponents even where they believe they have merit. And once a minister has articulated a position in the public forum of a debate, they may be more reluctant to change that position in future, for fear of being criticised for making a U-turn.

### Parliamentary questions (PQs)

The practice of asking specific questions of government evolved first in the House of Lords (starting in 1721) and then in the Commons (from the 19th century). To begin with, all questions were asked orally, with written questions being a later development (introduced in the Commons in 1902). Questions in the House of Lords are always addressed to 'Her Majesty's Government' rather than to a specific minister and there are few rules restricting the purpose of questions – it being up to the House as a whole to determine what is 'in order'. The rules are stricter in the Commons, where the purpose of questions must be either to obtain information or to press for action within the scope of a specific minister's responsibilities (or when the Prime Minister is being questioned, within the scope of the Government's responsibilities). This means they cannot be used to ask about the policies of opposition parties, to offer information or make arguments. The supplementary questions available to follow up on oral questions are often used for these purposes. In general, however, questions are a poor mechanism for improving the Government's evidence base for, or analysis of, an issue.

The great benefit of PQs is to compel the Government to put certain information on the public record. This mechanism was more important before the introduction of the Freedom of Information (FOI) Act but still retains certain advantages. Information can now be demanded more quickly via PQs than via FOI. Prior to 2007-08 some members expressed concern that the notice periods required within the PQ system left them unable to ask questions about issues that had arisen immediately before a departmental question time. This led to the introduction during the 2007-08 session of a reserved period of 10-15 minutes at the end of each question time for 'topical questions' relating to any subject within a department's responsibilities. Furthermore, John Bercow has been more willing than his predecessors as Speaker to grant applications from backbenchers for Urgent Questions leading to a marked increase in the number of ministers required to come before the House the same day to explain matters deemed 'urgent and important'.

The publication of answers to PQs online (previously they were published in Hansard) means that they are automatically made available to the public (whereas an FOI questioner or responding body may or may not choose to make an answer public).

Although at times the government approach to answering PQs seems to be to reveal the minimum possible amount of information to avoid giving the questioner any unnecessary political advantage, the process of answering a PQ may have beneficial effects. For example, it may prompt a civil servant or minister to reflect on specific aspects of their work or identify mistakes made in terms of either policy or process. Answering PQs often seems to be a mechanical process on the part of the Civil Service, but the discipline of having to respond may encourage departments to be more proactively transparent about their work.

PQs are not a very media-friendly scrutiny mechanism because answers often lack the context and rationale that journalists need to create a story. Unless they are part of a wider news story or campaign they are rarely newsworthy in themselves. Occasionally a PQ or a series of PQs does bring matters to public attention. For example, in October 2009 Paul Farrelly MP tabled a written parliamentary question concerning a super-injunction obtained by Trafigura, the commodity trading group. Trafigura's solicitors informed *The Guardian* that it would breach the injunction if it reported the question. *The Guardian* then reported that it was unable to report a parliamentary question, creating a media news story around the issues of parliamentary privilege raised by the lawyers' intervention.

## Committees

Systematic scrutiny of government by committee is a relatively recent innovation in parliamentary terms. It was only in June 1979 that the current system of departmental select committees was established by the House of Commons following a 1978 Procedure Committee report. Committees in themselves were not new – since at least the end of the 16th century, small groups of MPs had been asked to investigate, advise or consider complex matters on behalf of the House as a whole, usually as part of ephemeral or sometimes more permanent committees. An example of the latter was the Committee of Public Accounts, established in 1861 at the instigation of William Gladstone, then Chancellor of the Exchequer, to examine the propriety of government expenditure.

What changed in 1979 was the creation of a systematic committee system, with one select committee charged with examining the 'expenditure, administration and policy' of each of 14 government departments. The new departmental committee system was a significant boost to the capacity of the House of Commons to scrutinise government, which was otherwise based on the traditional methods of debate and questioning. In the years that followed, the gaps in the initial framework of committees were filled with other 'cross-cutting' committees, including Environmental Audit, European Scrutiny and Liaison, and 'legislative' committees,<sup>28</sup> which are concerned with particular aspects and types of legislation, including the Joint Committee on Human Rights and the Regulatory Reform Committee. The House also continues to establish ad hoc committees as required, including joint committees with the House of Lords.

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<sup>28</sup> We do not include in this category Public Bill Committees – temporary committees established to examine specific pieces of legislation during their 'committee stage'.

In 2002 the Liaison Committee agreed a set of 10 'core tasks' for select committees as a guide to encourage them to cover the full range of departmental responsibilities, although it remained the responsibility of each individual committee to determine its own programme. By the end of the decade, the workload and responsibilities of committees had developed to the extent that it was felt necessary to revise these core tasks. The revised list agreed by the Liaison Committee in November 2012 was as follows:

### Revised select committee core tasks for departmental select committees

**Overall aim:** To hold ministers and departments to account for their policy and decision making and to support the House in its control of the supply of public money and scrutiny of legislation

#### STRATEGY

**Task 1** To examine the strategy of the department, how it has identified its key objectives and priorities and whether it has the means to achieve them, in terms of plans, resources, skills, capabilities and management information

#### POLICY

**Task 2** To examine policy proposals by the department, and areas of emerging policy, or where existing policy is deficient, and make proposals

#### EXPENDITURE AND PERFORMANCE

**Task 3** To examine the expenditure plans, outturn and performance of the department and its arm's-length bodies, and the relationships between spending and delivery of outcomes

#### DRAFT BILLS

**Task 4** To conduct scrutiny of draft bills within the committee's responsibilities

#### BILLS AND DELEGATED LEGISLATION

**Task 5** To assist the House in its consideration of bills and statutory instruments, including draft orders under the Public Bodies Act

#### POST-LEGISLATIVE SCRUTINY

**Task 6** To examine the implementation of legislation and scrutinise the department's post-legislative assessments

#### EUROPEAN SCRUTINY

**Task 7** To scrutinise policy developments at the European level and EU legislative proposals

#### APPOINTMENTS

**Task 8** To scrutinise major appointments made by the department and to hold pre-appointment hearings where appropriate

#### SUPPORT FOR THE HOUSE

**Task 9** To produce timely reports to inform debate in the House, including Westminster Hall or debating committees, and to examine petitions tabled

#### PUBLIC ENGAGEMENT

**Task 10** To assist the House of Commons in better engaging with the public by ensuring that the work of the committee is accessible to the public.<sup>29</sup>

The committee system in the House of Lords was deliberately developed to be cross-cutting and thematic in order to avoid competing with or duplicating the Commons system. The

<sup>29</sup> Liaison Committee 'Select committee effectiveness, resources and powers', op. cit. paragraph 20.

cross-cutting committees of both houses have an advantage over more siloed government departments when it comes to considering the many issues that extend beyond the limits of a single policy area.

As with the Commons, the House of Lords had long used committees to undertake certain tasks better suited to small groups of members, but from the early 1970s this ad hoc approach was developed into a more sophisticated arrangement, with a number of select committees reappointed every session to scrutinise different aspects of public policy. The European Union Committee, with its six sub-committees (lettered A to F), is the most complex of these sessional committees, and has now been joined by the Science and Technology, Economic Affairs and Constitution committees. The House of Lords also establishes ad hoc committees to consider the merits of bills or other matters of public interest.

The 2010 Parliament has brought significant change to the committee work of both Houses. Many believe that the capacity of the Commons to conduct scrutiny has been enhanced by the implementation of some of the recommendations of the Wright Committee, including the election of select committee chairs and members. In the House of Lords the implementation of a number of recommendations from a Leader's working group on working practices has affected scrutiny practices. Most notable has been the increasing number of ad hoc committees established to examine cross-cutting issues. It is intrinsic to the nature of committees that each involves only a small subset of parliamentarians, which means many are excluded from detailed scrutiny of any particular subject. They are also relatively under-resourced – by comparison with the Civil Service but also with their peer committees in other legislatures (US congressional committees being the most frequently cited example).<sup>30</sup> Although parliamentary committees are occasionally criticised for their lack of expertise in considering the subject matter before them, their relatively small size means that those who are members feel more imperative to engage and build their expertise. And there is often value in complex technical issues being subjected to the discipline of a sense check from an informed lay perspective.

Of all mechanisms for parliamentary scrutiny, committees have the greatest potential to be constructive and consensus-building.<sup>31</sup> Although their practices, such as oral evidence sessions, may be confrontational occasions, many members show a greater willingness to be non-partisan in their committee work than in other areas of their political lives. Obviously, committee members are always politicians first, and politics may often override their desire for consensus. It may not be possible for a committee to reach consensus on every issue, and a consensus may not be worth reaching if it ends up as the lowest common-

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<sup>30</sup> The median number of staff per House of Representatives standing committee is 61.5 (range over 20 committees: 4-207), based on Institute for Government analysis of Ornstein, N., Mann, T., Malbin, M., Rugg, A. and Wakeman, R., *Vital Statistics on Congress*, Brookings Institution and American Enterprise Institute, July 2013, retrieved 20 October 2014, <[www.brookings.edu/research/reports/2013/07/vital-statistics-congress-mann-ornstein](http://www.brookings.edu/research/reports/2013/07/vital-statistics-congress-mann-ornstein)>. By comparison, fewer than 200 FTE staff were employed across all 46 House of Commons select committees during the 2013-14 parliamentary session (based on Institute for Government analysis of House of Commons Sessional Returns: Session 2013-14, 12 September 2014, retrieved 22 October 2014, <[www.publications.parliament.uk/pa/cm201415/csession/1/1.pdf](http://www.publications.parliament.uk/pa/cm201415/csession/1/1.pdf)>

<sup>31</sup> Other forms of parliamentary scrutiny also involve the building of coalitions and consensus to achieve greater impact. One example is when an MP tables an amendment to a bill or a motion, which is then 'signed' by other members in order to signal their support. A large number of signatories, particularly if they are cross-party, will be taken into account by the Speaker when deciding how to allocate the time available for debate. They may also influence the Government to take the issue seriously, perhaps persuading it to look again at a policy question.



denominator view. Nonetheless, committees are aware that consensual reports have a greater impact on government. This is not least because, if a cross-party committee manages to come to agreement on an issue, that is often a good test of a more broadly politically workable solution, to which the Government should pay attention. On the other hand, where consensus cannot be reached, this may help the Government to understand the strength and breadth of political viewpoints on an issue.

It is surprising how often cross-party committees manage to agree strong conclusions even on politically charged subjects. This may be due to a number of factors:

- The culture of consensus that has grown up as part of select-committee working practices means that most committees work hard to avoid minority reports or even formal votes on their conclusions, being aware that these can dilute the force of their recommendations.
- Select committees are established for a whole parliament rather than ad hoc to deal with specific issues. Although the membership of committees does change when committee members become ministers or frontbench spokespeople, the permanent nature of select committees enables members to build working relationships with each other, which may make it easier to achieve consensus.
- Committees can deliberate about their conclusions in private, enabling them to expose their differences and explore potential compromises without fear of embarrassment or criticism.
- There is a strong emphasis on committee reports being based on evidence, primarily that collected by the committee itself, which may make their conclusions and recommendations harder to disagree with.
- Some have argued that there has been a decline in partisanship as a result of the elections of chairs and members, introduced following the recommendations of the Wright Committee.<sup>32</sup>

Most committees are standing entities that undertake their work over a period of weeks, months or years. This means they are able to gather evidence and look in depth at issues, although on some occasions they may also choose to work at speed. The potential impact of parliamentary committees' scrutiny of government is increased by the power government delegates to its committees to send for evidence in the form of 'persons, papers and records' (PPR). In theory, this means that committees have the formal power to require witnesses to attend, answer questions and provide any documentary evidence the committee wants to see. If necessary, such requests can be supported by an order to attend (or supply documents), which is formally served on the witness. These powers go beyond those of most other scrutiny bodies.

There are, however, some limitations to them. In terms of 'papers and records', civil servants cannot be forced to give a committee information against the wishes of their minister. Although a committee can ask a minister for information, it cannot demand it. Technically the House could do so through an address to the Crown (because Her Majesty's Government holds the information) but in practice this would be very unlikely to happen.

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<sup>32</sup> Tyrie, A., *Government by Explanation*, Institute for Government, April 2011, pp. 11-12, retrieved 26 June 2014, <[www.instituteforgovernment.org.uk/sites/default/files/publications/Government%20by%20Explanation.pdf](http://www.instituteforgovernment.org.uk/sites/default/files/publications/Government%20by%20Explanation.pdf)>

MPs and peers cannot be compelled to give evidence. Nor can committees compel a specific named official to appear, because it is up to the minister who should attend a committee on their behalf.<sup>33</sup> This rule was challenged recently by the Public Accounts Committee (PAC), which succeeded in compelling a former permanent secretary to return to give evidence about matters that had occurred in her department before she moved on.<sup>34</sup> In its most recent revision to the Osmotherly Rules, the Government agreed that Senior Responsible Owners who have taken responsibility for major government projects are directly accountable to Parliament, alongside the departmental Accounting Officer, for implementation and delivery of the project for which they are responsible and for their own actions.<sup>35</sup>

PPR powers apply only to witnesses within the jurisdiction of Parliament, which means that committees cannot compel witnesses who are overseas to attend. This was why Irene Rosenfeld, chief executive of Kraft, was able to refuse to appear before the Business Information and Skills Committee to give evidence about her company's takeover of Cadbury. Other international figures (such as Rupert Murdoch and his son James, who in theory might have used the same rationale to avoid giving evidence to the Culture, Media and Sport Committee about the phone-hacking scandal) seem eventually to have calculated that the negative publicity resulting from a refusal to attend a select committee hearing would likely outweigh that resulting from their appearance. In the case of the Murdochs, as their company News Corporation was one of the largest shareholders in BSkyB, a refusal to appear might conceivably have affected the view of the regulator, Ofcom, as to whether BSkyB was 'fit and proper' to retain its broadcasting licence.

This example highlights the main weapon Parliament wields when seeking to collect evidence – that of publicity. Although a witness could in theory be reported to the House for a contempt for refusing to attend a committee or to supply information requested, this is a last resort, which most committees would be reluctant to use and which, even if they did, would not be guaranteed to work.<sup>36</sup> The last time a non-member was summoned to the bar of the House of Commons to apologise for a contempt was in 1957.<sup>37</sup> Instead of testing their powers, committees today prefer to engineer a situation in which the negative publicity generated by a witness consistently refusing to appear before them becomes more embarrassing than agreeing to do so.

All committees have the power to take evidence on oath under the Parliamentary Witnesses Oaths Act 1871. This power, which would potentially render a witness subject to a charge of perjury, rather than a contempt, for misleading a committee, is rarely exercised. When the PAC controversially resorted to it when questioning Anthony Inglese, the top lawyer at

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<sup>33</sup> The Government's internal guidance states that where there is a disagreement between a minister and a committee about who should appear, the minister should appear personally.

<sup>34</sup> Public Accounts Committee, Twenty-eighth report of Session 2010-11, 'Accountability for Public Money', HC740, March 2011.

<sup>35</sup> Cabinet Office, 'Giving evidence to select committees: guidance for civil servants', October 2014.

<sup>36</sup> Street, A., and Gordon, R., *Select Committees and Coercive Powers – Clarity or Confusion?*, The Constitution Society, 2012, [www.consoc.org.uk/wp-content/uploads/2012/06/Select-Committees-and-Coercive-Powers-Clarity-or-Confusion.pdf](http://www.consoc.org.uk/wp-content/uploads/2012/06/Select-Committees-and-Coercive-Powers-Clarity-or-Confusion.pdf) retrieved 10 December 2014.

<sup>37</sup> This was not for failure to attend a committee but for failure to apologise sufficiently to the Committee on Privileges for publishing a disrespectful newspaper article about MPs.

HMRC, about corporate tax deals in 2011, it was the first time the power had been exercised in more than a decade.<sup>38</sup>

Committees have become a relatively high-profile aspect of Parliament's work, which in turn increases their power to attract new voices into the debates with which they engage. As a media-friendly form of scrutiny they may also raise issues up the public agenda, helping to summarise or clarify a debate. The media attention that increases the impact of their scrutiny may also prove a disadvantage for committees, though. As politicians are motivated by seeing their work reported in the media, this can create an arguably unhelpful feedback loop – making committees more likely to prioritise subjects and modes of scrutiny that are media-friendly and to ignore more 'boring but important' subjects and methods of evidence-gathering.

Like any other scrutiny mechanism, committees may create perverse incentives for those being scrutinised. For example, they may encourage the Government to shift disproportionate resources to areas likely to be more closely scrutinised. While committees have the potential to facilitate openness and provide a forum in which lessons can be learnt from past events, there is a parallel risk that they restrict lesson-learning and make witnesses defensive by appearing more interested in assigning blame.

#### 4. How might we assess the impact of parliamentary scrutiny?

'Effectiveness of parliamentary committees is largely in the eye of the beholder. Various observers will emphasise diverse and often conflicting criteria to appraise the performance of committees.'<sup>39</sup>  
**Paul Thomas, University of Manitoba, 1993**

There have been various approaches by academics to assessing the impact of parliamentary scrutiny in the UK and other countries with a Westminster-style parliament. Those adopting a primarily quantitative methodology have sought to measure impact using indicators including: the number or proportion of report recommendations accepted by government; references to reports during other parliamentary proceedings; amendments to bills made following the recommendations of reports; citations of reports in judicial decisions; and mentions in the media of select committees and their work.

Tolley, for example, examined the impact on Parliament, government and the judiciary of the Joint Committee on Human Rights (JCHR) using quantitative measures.<sup>40</sup> For Parliament, he measured the number of references to the committee during floor debates. For government, he measured the proportion of government bills that were amended as a result of the committee's reports. For the judiciary, he tallied the number of cases that cited or otherwise referenced JCHR reports. He concluded that '... the jury is still out on the JCHR's effectiveness. In most instances ... the JCHR is unable to get the Government to consider its views during the drafting stage. And, in most instances, the JCHR is unable to prevent the Government from passing the bills it wants.'

<sup>38</sup> [www.parliamentlive.tv/Main/Player.aspx?meetingId=9349](http://www.parliamentlive.tv/Main/Player.aspx?meetingId=9349)

<sup>39</sup> Thomas, P., 'Effectiveness of parliamentary committees', *Parliamentary Government*, vol. 44, 1993, pp. 10–11: 10.

<sup>40</sup> Tolley, M., 'Parliamentary Scrutiny of Rights in the United Kingdom: Assessing the Work of the Joint Committee on Human Rights', *op. cit.*

Another example of the quantitative approach is the Constitution Unit's report *Selective influence: The policy impact of House of Commons select committees*, the most systematic quantitative assessment of select committee impact to date.<sup>41</sup> Collecting and coding quantitative data on government acceptance of recommendations made in the reports of seven select committees between 1997 and 2010, the study found that of those recommendations clearly aimed at central government, around 40% of its sample were formally accepted through a written response. This study also sought to contextualise quantitative findings with qualitative interviews.

Others have emphasised the benefits of a qualitative approach to assessing the impact of parliamentary scrutiny. Monk, for example, created a methodology that could be used for further study of the political influence of select committees.<sup>42</sup> He identified six sets of political actors whose subjective opinions, he argued, should be gathered: government, bureaucracy, the legislature, external stakeholders, the judiciary and the public. He defined positive agreement on the influence of a committee report from one of these bodies as evidence of a basic level of influence. Where other sets of actors concurred with this assessment, he defined this as evidence of further influence.

Yet others have advocated a mix of qualitative and quantitative measures. For example, Hindmoor et al. identified a number of quantitative measures to assess the influence of the Education Committee on the four sets of actors.<sup>43</sup> They also contextualised their figures with qualitative interviews with civil servants and politicians. The report concluded that while concrete examples of select committee impact on policy could be identified, an overarching pattern of influence was harder to evidence.

As the wider literature on performance measurement makes clear, there are advantages and risks to both quantitative and qualitative approaches to the evaluation of impact. Quantitative assessments can capture very specific elements of influence in a way that is standardised and comparable across committees or even between legislatures. This is useful if the things you can measure are good indicators of the type of impact you are interested in measuring. The risk is that you measure what is measurable rather than what is important and that you end up with a simplistic representation of the influence scrutiny can have. For example, an assessment of a committee's influence based on accepted recommendations may either under- or overestimate its actual impact. A positive government statement in its response to a select committee report will not necessarily translate into immediate action, and committees are notoriously poor at following up to check what has happened. Too often a department can be relatively confident that the assertions it makes in its response to a committee report will not be systematically revisited. Equally, the impact of the committee may be underestimated if, for example, partly influenced by facts that are brought to light during an evidence session, the Government makes a change the committee would have asked for before the committee has a chance to publish its report. Quantitative measures are particularly poor at disaggregating the influence of scrutiny from the myriad other influences on political decision making.

<sup>41</sup> Russell, M., and Benton, M., '*Selective Influence: The Policy Impact of House of Commons Select Committees*, The Constitution Unit, UCL, June 2011, p. 67, retrieved 30 June 2014, <[www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/153.pdf](http://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/153.pdf)>

<sup>42</sup> Monk, D., 'A Framework for Evaluating the Performance of Committees in Westminster Parliaments', *The Journal of Legislative Studies*, vol. 16, no. 1, 2010, pp 1-13.

<sup>43</sup> Hindmoor, A., Larkin, P. and Kennon, A., 'Assessing the Influence of Select Committees in the UK: The Education and Skills Committee, 1997-2005', *The Journal of Legislative Studies*, vol. 15, no. 1, 2011, pp. 71-89.

Qualitative assessment, on the other hand, is strong at providing context, nuance and detail – getting at the subtle reality of how influencing actually happens, rather than producing a binary assessment of whether something has changed. Its disadvantage is that it is often anecdotal rather than systematic and so its outcomes can be difficult to generalise. The most effective analyses often seem to be those that draw on a combination of methodologies, producing quantitative data that can be interpreted using qualitative evidence. This is a common finding in almost all performance measurement literature across a range of fields.

No system of measurement will be perfect or completely free from subjective judgement. This is particularly true in an area such as parliamentary scrutiny, where explicit (or even implicit) objectives are rarely formulated, let alone used as the basis for evaluation. And as discussed above, different actors will have different but equally valid objectives for the same instance of scrutiny. Kelly Blidook's analysis of individual MPs in Canada highlights the fact that the MPs who serve on select committees usually wear several hats, beyond simply those of policy advocates.<sup>44</sup> The scrutiny they undertake is influenced by these multiple motivations. While it might make sense to an external observer to assess the impact of that scrutiny against the objective they believe the members concerned should be seeking, in practice this is an overly simplistic approach.

In posing the question of how the impact of parliamentary scrutiny can best be assessed, it is important to acknowledge the way in which measurement can influence behaviour. Where explicit or implicit rewards or sanctions follow from measurement (be these hard or soft, financial or reputational), behaviour may change. Sometimes this can be a force for good – driving up expectations and standards – but sometimes it can have a negative impact. For example, if the members of a select committee assess its impact, using quantitative measures, in terms of media coverage, this may lead them to seek publicity for its own sake, regardless of its nature. A more nuanced approach would be to make a qualitative as well as quantitative assessment of media coverage – in which less but better-quality coverage would be valued over a greater quantity of superficial coverage. This would point towards behaviour intended to engage the media in the committee's evidence and arguments rather than simply maximising coverage.

## 5. A possible framework

In practice it seems that a relatively simple outcomes analysis is likely to be the most appropriate means of assessing the impact of parliamentary scrutiny on government. The table below uses our previous list of seven key potential impacts as a framework to structure such an analysis. For each of our seven categories it frames the sorts of questions that might be asked in making a qualitative assessment of whether that type of impact had occurred. A thorough analysis of an instance of scrutiny would seek answers to these types of question from three key categories of actor: those conducting the scrutiny, those subject to scrutiny, and other interested parties. The final two columns list the types of measure that could provide qualitative and quantitative evidence of these impacts.

An analysis like this could be used to measure the comparative impact of different types of scrutiny activity on government, or assess the impact of a particular innovation or change in an activity. In combination with an assessment of the time or other resources devoted to any

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<sup>44</sup> Blidook, K., 'Exploring the Role of "Legislators" in Canada: Do Members of Parliament Influence Policy?', *The Journal of Legislative Studies*, vol. 16, no. 1, 2010, pp. 32-56.

particular activity, it could offer a crude analysis of the cost-effectiveness of different activities. For example, analysis could be undertaken of the time and resources spent by a particular committee on each of its 10 core tasks and the impact achieved. Linking to other Institute for Government work on making effective policy, this type of analysis could be used to assess the contribution made by scrutiny to ensuring that government has a robust evidence base for its policy and decision making.<sup>45</sup>

What this framework ignores is the motivations for scrutiny that compete with what we have argued should be its core purpose – to improve the effectiveness of government in terms of its processes and outcomes. In reality, as we have highlighted in this briefing note, those engaged in parliamentary scrutiny are seeking to achieve a variety of impacts in addition to, or sometimes even instead of, improvements in government effectiveness. These normally relate to the legitimate advancement of particular interests, including politicians' own but also those of party, constituency, industries or interest groups. To be useful, any analysis of the impact of political scrutiny must take account of these competing motivations. It must also take account of the key role that relationships between politicians can play in determining whether influence can happen.

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<sup>45</sup> See the seven 'policy fundamentals' in the Institute's *Making policy better: improving Whitehall's core business*, April 2011.

Table 1: Impact Indicators

Impact	Questions for qualitative assessment	Possible qualitative evidence	Possible quantitative evidence
Evidence	Has the scrutiny ... ... drawn on any original research? ... contributed to the evidence on which government policy was based (e.g. by making relevant new voices heard)? ... prompted the Government to gather different/more up-to-date evidence?	Analysis of documentary sources, focus groups, workshops or interviews may be used to discern the views of: <ul style="list-style-type: none"> <li>those subject to scrutiny</li> <li>those conducting scrutiny</li> <li>third parties in the scrutiny process</li> </ul>	<ul style="list-style-type: none"> <li>Amendments to bills or regulatory changes made following recommendations in a report</li> <li>Number/proportion of report recommendations accepted</li> <li>Evidence of novel research conducted</li> <li>Quantifiable financial savings arising from recommendations</li> <li>Quantifiable non-financial benefits or trends, such as reductions in numbers of PQs or FOI requests</li> <li>Numbers of references to parliamentary scrutiny in government documents, the media, parliamentary proceedings, judicial proceedings, think-tank reports, etc.</li> <li>Independent assessments of impact, e.g. Theyworkforyou polls on adequacy of answers to PQs</li> <li>Quantitative surveys of interested parties</li> </ul>
Analysis	Has the scrutiny ... ... highlighted any previously unrecognised trends in the evidence? ... identified the salience of particular issues? ... highlighted a weight of opinion on the evidence, of which the Government was unaware? ... changed the perspective of key decision makers in government on an issue?		
Openness	Has the scrutiny... ... improved the quality of information provided by government? ... increased the quantity/breadth of information provided by government?		
Learning	Has the scrutiny ... ... caused the Government to review or question its own actions or policies? ... identified lessons that can help improve policies and how they are implemented? ... created a positive environment in which lessons can be learnt?		
Processes	Has the scrutiny ... ... changed the Government's approach to policymaking or to planning policy implementation? ... changed the Government's risk appetite? ... made government more proactively open? ... made ministers and civil servants prioritise their own effectiveness?		
Context	Has the scrutiny ... ... made other actors aware of a previously unrecognised issue? ... changed other actors' evaluation of an issue? ... helped build relationships or coalitions in support of certain perspectives on an issue? ... influenced trust in government?		
Democracy	Has the scrutiny ... ... affected levels of public trust in the political system?		

## Conclusion

This paper has examined the part scrutiny plays in the effective functioning of democratic government. It has considered what impacts – good and bad – scrutiny can have on government and what ‘good scrutiny’ might look like. Finally it has looked at the key mechanisms of parliamentary scrutiny and how the impact of these might be measured. In concluding, we want to offer some thoughts about routes to enhance the beneficial impacts of parliamentary scrutiny on government.

Our first observation is very simple – **there should be more evaluation of the impact of parliamentary scrutiny**. Granted there is a risk that evaluating human processes such as scrutiny means quantifying the unquantifiable and creating a misleading sense of precision in analysis. We would argue, however, that the benefits derived from imposing an analytical framework outweigh this risk, particularly if the methodology for evaluating impact foregrounds the importance of qualitative data. Institutions such as Parliament need to take responsibility for understanding what they are doing and with what results – positive and negative.

Some internal evaluation of scrutiny does go on within Parliament, but it is limited. It often focuses on outputs (e.g. reports made and recommendations taken up) rather than actual outcomes and impacts. With multiple pressures on their time, most parliamentarians understandably prioritise the next inquiry, or question or debate, over evaluating the impact of their last piece of scrutiny. If they do evaluate this, they normally do so only from their own (political) perspective and rarely seek input from a wide range of interested parties. In practice, most evaluation and review of committee work is undertaken by staff, with relatively little input from members.

Just like any other activity, scrutiny has costs in terms of money, time and human resources. We therefore need to be confident that these costs are being expended appropriately in order to achieve the maximum beneficial impact. This is not to say that we think there should be a single prescription for the way scrutiny ought to be conducted – far from it – plurality of approach is essential to match the right sort of scrutiny to any given activity. It is dangerous to assume, however, that scrutiny is having the impacts we desire without ever stopping to check if this is the case.

Our second observation is that **understanding the first-hand experience of people who have been scrutinised – ministers and civil servants – is an essential aspect of assessing the impact of parliamentary scrutiny on government**. Those evaluating scrutiny should try to find out what the experience is like. How does it feel? What does it add? What does it change? How could it be more constructive? Such views are subjective but nonetheless informative. They could also be enriched by an understanding of the views of third parties in the scrutiny process. These are the individuals and organisations who may be influenced by parliamentary scrutiny either directly (through evidence-gathering processes or targeted recommendations) or indirectly (because of the impact of scrutiny on government). Triangulating an assessment of the influence of scrutiny using the views of such third parties is likely to add robustness and richness to any evaluation. This sort of



information could be used to assess and improve the tools and techniques of parliamentary scrutiny, alongside quantitative measures.

So why does this not happen more often? Although the experience of being scrutinised may be discussed in private or, in extreme cases, in the media, parliamentarians rarely seem to seek formal feedback from government. This could be because they are not particularly interested but is more probably because they assume that those whom they scrutinise might find the exercise problematic: they would not want to antagonise their scrutineers by criticising them, draw more exhaustive scrutiny on themselves by critiquing what had been done in the past, or draw criticism by revealing problems that scrutiny has failed to uncover. Even where scrutiny has had a positive impact on policy or practice they may be unwilling to admit its influence, preferring to give the impression that they had made improvements proactively.

Knowing, rather than guessing, what influence an instance of scrutiny really had on an individual or organisation would be tremendously valuable in improving future efforts. So it is worth developing techniques to overcome the sorts of difficulties mentioned above. The experiences and views of the scrutinised could be sought through quantitative methods such as surveys, but a richer, more nuanced picture is likely to be gained by qualitative techniques such as semi-structured interviewing and focus groups. To enable the scrutinised to speak freely, the results of such evaluation would need to be effectively anonymised and/or generalised. This should not be impossible.

Our third observation is that **evaluation should be practically focused and lessons should be shared**. While it may be intellectually interesting to know that committee A had 32% of its recommendations accepted by government as compared with committee B, which had only 26%, the more important questions are about what it was that enabled either committee to get any of its recommendations taken up. That said, comparisons between different instances of scrutiny can be revealing. Identifying and sharing of best practice is also important. Just as evaluation of scrutiny is relatively under-developed in Westminster, so are mechanisms for sharing the learning derived from evaluation. The Liaison committees of both houses play a role in this, publishing regular reports addressing the effectiveness of committees, but there is scope for more imaginative ways of letting committees know about what has worked and had impact for others. Such mechanisms should extend to both staff and members.

Finally, for those seeking to maximise any particular impact or set of impacts of parliamentary scrutiny (in our case, on government effectiveness), it is important not only to acknowledge the competing motivations of those engaged in the process but also to think about their potential. The multiple motivations of politicians should not be seen as a regrettable inconvenience but as a key feature of political scrutiny. Wherever possible **the aim should be to identify win-wins, where those engaged in scrutiny can achieve impacts that satisfy multiple objectives**. An example might be the use of rapporteurs by select committees – identifying an individual member as the lead on a particular area of policy. This mechanism can help the member concerned to build their expertise and develop their personal reputation while also improving the capacity of the committee as a whole to scrutinise that area of policy. Identification of ways in which instances of political scrutiny can

meet the multiple objectives of those engaged in it has the potential to strengthen the practice and its impact on the effectiveness of government.

The Institute for Government is embarking on a research project that aims build on these observations to identify ways in which the beneficial impacts of select committees on government might be increased. The project is examining case studies of select-committee inquiry work during the 2010-15 Parliament, talking to the staff and members of committees, and the third parties who have interacted with them, to build a rounded picture of the impact committees are able to have. The project outputs will aim to identify good practice and facilitate lesson-learning between committees.

## Annex A: Actors engaged in scrutiny of government

A broad definition of government in the UK would include both local and devolved government. It might also include some of the private and voluntary sector organisations responsible for delivering public services through the public service markets that have developed over the past 30 years. In the body of this paper we have focused on scrutiny of central government departments and their arm's-length bodies (ALBs), and the public services they are directly responsible for delivering. In this annex we also include information about the scrutiny of local and devolved government.

**Parliament:** Scrutiny and challenge of the work of government is generally understood as one of the three key roles of Parliament – the others being passing legislation and enabling the Government to vote financial supply. The two Houses of Parliament fulfil their scrutiny role through three key mechanisms: debate, questions and committees.

**Statutory bodies:** Parliament does not undertake its scrutiny role alone. The Hansard Society has argued that Parliament should sit 'at the apex'<sup>46</sup> of the assortment of independent regulators, internal and external auditors, ombudsmen, commissions and inspectors responsible for monitoring the delivery of government services. These statutory bodies have been created to expand the time, resource and expertise available to keep watch over the extensive, complex and fragmented entity which is modern government. Most provide evidence Parliament can use to hold government to account, and many have a responsibility to report to Parliament – formally bringing the results of their scrutiny to the attention of the legislature and executive.

Key among these statutory bodies is the National Audit Office (NAO), a parliamentary body responsible for auditing central government departments, government agencies and non-departmental public bodies, and for auditing the value for money of public administration. The NAO has a close relationship with the Commons Public Accounts Committee and produces briefings to assist the scrutiny undertaken by other select committees.

**The courts:** Alongside Parliament, the other key constitutional entity with the power to scrutinise central government is the judiciary. Most but not all of the scrutiny conducted by the courts involves a formal relationship of accountability. In England and Wales the high courts (including the High Court, Court of Appeal and Supreme Court) can conduct judicial review – examining whether a government authority has exercised its powers unlawfully, perhaps because it has violated the rights of an individual. The court can set aside a government decision, award damages to the individual concerned and compel an authority to do its duty or stop it from acting illegally. On occasion the Government has been forced to amend secondary legislation where the courts have deemed it to be incompatible with the enabling legislation.<sup>47</sup> Amid some controversy the Government has recently introduced two tranches of changes that restrict the circumstances in which judicial review can be sought.

<sup>46</sup> Brazier, A., [Parliament at the Apex: Parliamentary scrutiny and regulatory bodies](#), op. cit.

<sup>47</sup> For example, a divisional court unanimously struck down a government attempt to create a residency test for legal aid eligibility. The ruling in *R (On the Application of the Public Law Project) v Secretary of State for Justice (2014)* held that the secondary legislation was incompatible with the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

The EU judiciary can also conduct binding scrutiny of UK primary legislation, which is another subject of controversy at present.<sup>48</sup>

Unlike in some other countries, the doctrine of parliamentary sovereignty means that UK primary legislation cannot be judicially reviewed unless it is contrary to the law of the European Union.<sup>49</sup> If it is deemed contrary to the Human Rights Act 1998 (and by extension the European Convention of Human Rights) the court issues a *declaration of incompatibility* but the legal position does not change until the Government amends the relevant primary legislation or passes a new act. The European Communities Act 1972 requires UK courts to disapply UK primary legislation deemed inconsistent with directly enforceable EU law. So unlike most other scrutiny bodies, the courts have some real power to make the Government change what it is doing.

**European Commission:** Another body with real powers to scrutinise and change what the Government is doing is the European Commission. As a member of the EU, the United Kingdom must ensure timely and correct application of the *acquis* (EU regulations, directives and treaties) into domestic law. The Maastricht Treaty tasked the European Commission with scrutinising member state compliance with this requirement, creating a formal accountability relationship. The Commission does this partly through its own monitoring practices but also acts on non-compliance complaints from EU citizens and organisations, European Parliament petitions and MEP questions. When a serious breach of compliance is identified, the Commission attempts to work with the relevant member state to reach a remedy. When remedy cannot be reached informally, Commission may file a complaint with the European Court of Justice (ECJ) under the Lisbon Treaty's formal infringement procedure.

If the legal process is likely to persist for too long (usually more than two years), the Commission may (rarely) request the ECJ impose temporary measures on the member state to avoid permanent damage. If a member state ignores an ECJ judgment against it, the Commission may ask the court to impose a fine. The fine may be a lump sum and/or a daily payment levied until compliance is attained.

**Ad-hoc scrutiny bodies:** Temporary bodies may be set up specifically to scrutinise a particular incident or issue, usually in response to an event of widespread concern with implications for public policy. The Inquiries Act 2005<sup>50</sup> provides the statutory basis for ministers in Westminster and the devolved legislatures to set up public inquiries. Ministers are empowered to call the inquiry, set terms of reference, appoint the chairman and certain additional members, and keep the relevant parliament or assembly apprised of these

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<sup>48</sup> For example, the European Court of Justice ruling in *Garland v. British Rail Engineering Ltd (1977)* led to amendment of the Equal Pay Act 1970.

<sup>49</sup> Parliamentary privilege prevents the courts examining proceedings in Parliament, for example the debates and votes that took place when a bill was passed.

<sup>50</sup> The Act has come under considerable fire from human rights advocates for the powers it affords ministers over content and duration of inquiries. Providing evidence to the Public Administration Select Committee, Sir Menzies Campbell said of the Act: 'I think it is a reaction to [the] Saville [Inquiry], and there may be questions of management, but we should not allow questions of management to intrude on the principle of Parliament being able to hold the executive to account', <[www.parliament.uk/briefing-papers/SN06410.pdf](http://www.parliament.uk/briefing-papers/SN06410.pdf)>

actions. Statutory inquiries set up under the Act are usually judge-led and have the power to compel witness attendance and document submission.<sup>51</sup>

A number of types of public inquiry into government policy or actions may also be set up outside the jurisdiction of the Act.<sup>52</sup> Royal Commissions are called by government to investigate or advise on broader policy issues, rather than a specific event or series of events.<sup>53</sup> Non-statutory ad hoc inquiries within or by government departments normally lack formal powers and are generally called when a department or public body is already facing investigation by the police or another authority.<sup>54</sup> Independently sponsored inquiries into government are also sometimes set up by organisations or individuals, without government funds or sanction.<sup>55</sup>

**Non-statutory bodies:** Scrutiny of government is undertaken by an array of non-statutory actors and bodies, including academic researchers, non-profit organisations and charities, think-tanks, pressure groups and the media. This scrutiny may not be the sole or even the main purpose of these actors' work, but nonetheless forms part of their activity. These non-statutory actors do not have any powers to bring the results of their scrutiny to the attention of policymakers, so are reliant on alternative strategies such as personal networks or media attention. Nevertheless, some are very successful in influencing government, either because of a deficit of civil service expertise in their area of experience, the reputation they have established for their work (e.g. the NSPCC) or through their mobilisation of public opinion (e.g. the One campaign against extreme poverty and preventable disease). Where non-statutory actors have a close (and financial) relationship with government, their ability to conduct effective scrutiny may be compromised.

**Devolved legislatures:** In the late 1990s Parliament passed legislation that devolved some of its powers and its responsibility for scrutinising the exercise of those powers to the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly and the Greater London Authority.<sup>56</sup> Each of the devolved legislatures has different powers and each has set up different systems for scrutinising their respective executives, but all involve meetings of both the entire Assembly or Parliament and of individual committees. These systems, as well as those of the Westminster Parliament, are likely to adapt in response to whatever consequences play out from the devolution debate triggered by the 'No' vote in the Scottish independence referendum.

The Scottish Parliament has established a number of committees following the Westminster model. Parliamentary scrutiny is central to the devolution settlement and includes direct strategic oversight of the police, the justice system, NHS Scotland and other agencies of the Scottish Government. The Welsh Assembly has a similar remit and committee model.

<sup>51</sup> A recent example was the Leveson Inquiry: Culture, Practices and Ethics of the Press.

<sup>52</sup> Oonagh, G., and Sear, C., '[Investigatory Inquiries and the Tribunals of Inquiry \(Evidence\) Act 1921](#)', House of Commons Library research paper SN/PC/02599, 3 September 2012.

<sup>53</sup> One example was the Royal Commission on Reform of the House of Lords, chaired by Lord Wakeham, which reported in 2000.

<sup>54</sup> The Cabinet Office called a departmental inquiry into the Plebgate scandal, led by Sir Jeremy Heywood, the Cabinet Secretary. The Home Affairs Committee also conducted an inquiry into the episode.

<sup>55</sup> An example was the independent public inquiry into the supply of contaminated blood and blood products, chaired by Lord Archer of Sandwell which reported in 2009.

<sup>56</sup> The Institute for Government is examining the latest developments in devolution through its 'Governing after the referendum' research project.

Implementation of the proposals made by the Commission on Devolution in Wales (the Silk Commission) about the revenue-raising and decision-making powers of the Welsh Assembly are likely to involve commensurate enhancements in the power and role of scrutiny. Scrutiny at the Northern Ireland Assembly is also based on the Westminster model, using ad hoc, departmental and standing committees to cover the areas of Stormont's responsibilities. The London Assembly scrutinises the work of the directly elected Mayor (who holds executive power) through meetings of the full assembly and scrutiny committees. Their scrutiny covers the work of the GLA itself and its organisations (including the Metropolitan Police Authority and Transport for London).

**Local government:** The separation between the scrutiny and executive functions of local government was formalised by the Local Government Act 2000.<sup>57</sup> The Government's intention in passing the Act was to replicate the Westminster model of select committees holding the executive to account in the local authority context, by creating standing 'overview and scrutiny committees'.<sup>58</sup> In practice, much local authority scrutiny is carried out by ad hoc 'task and finish' groups established by the overview and scrutiny committee for a specific purpose for a limited time.<sup>59</sup>

From 1983, scrutiny of various local government functions was undertaken by the independent Audit Commission for Local Authorities in England and Wales.<sup>60</sup> Over time, its remit over local authorities expanded to cover matters including: inspections of best value authorities, scrutiny of registered social landlords and providers of social housing, and oversight of fire and rescue authorities, as well as comprehensive performance assessments of English local authorities. However, the Audit Commission was abolished by the Local Audit and Accountability Act 2014, and is to be replaced by 2016-17 with a local auditing framework.<sup>61</sup>

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<sup>57</sup> *Local Government*, Centre for Public Scrutiny, 2014, retrieved 30 July 2014, <[www.cfps.org.uk/local\\_government/](http://www.cfps.org.uk/local_government/)>

<sup>58</sup> Leach, S., *Party Politics and Scrutiny in Local Government: clearing the hurdles*, Centre for Public Scrutiny, May 2009, retrieved 30 July 2014, <[www.cfps.org.uk/domains/cfps.org.uk/local/media/uploads/steveleachs.pdf](http://www.cfps.org.uk/domains/cfps.org.uk/local/media/uploads/steveleachs.pdf)>

<sup>59</sup> Local Government Association Briefing: 'Restoring Accountability for Schools to Councils', Local Government Association, 24 June 2014, retrieved 30 July 2014, <[www.local.gov.uk/documents/10180/5533246/LGA+Briefing+-+Accountability+in+Schools.pdf/a65ceadf-0a47-48b1-bfeb-cb7ed05199ea](http://www.local.gov.uk/documents/10180/5533246/LGA+Briefing+-+Accountability+in+Schools.pdf/a65ceadf-0a47-48b1-bfeb-cb7ed05199ea)>

<sup>60</sup> Gash, T., and Timmins, N., *Dying to Improve: The Demise of the Audit Commission and Other Improvement Agencies*, Institute for Government, 2014.

<sup>61</sup> 'About us', Audit Commission, 2014, retrieved 31 July 2014, <[www.audit-commission.gov.uk/about-us/](http://www.audit-commission.gov.uk/about-us/)>

Scrutiny by the House of Commons

What is scrutinised/ who is held accountable?		How is it scrutinised/ how are they held accountable? <sup>1</sup>															
		Select committee (investigative)		Scrutiny committees (do not take evidence)	Legislative committee				Grand Committees (Scottish, Welsh, Northern Ireland) <sup>3</sup>	Debate in the Chamber	Questions		Petitions	Early Day Motions (EDMs)	Examiners	Specific role for an external body	
		Commons select committee	Joint committee (Commons and Lords)		Public bill committee	Private bill committee	General committee	Committee of the Whole House			Oral	Written					
Scrutiny	Draft bill	Relevant departmental select committee can scrutinise draft bills, e.g. Draft Energy Bill scrutinised by Energy and Climate Change Committee.	Ad hoc joint committees are usually appointed to scrutinise draft bills e.g. Draft Modern Slavery Bill.														
	Public bill	Departmental committees can decide to inquire into public bills on their own initiative (e.g. Foreign Affairs Committee 2008 inquiry into foreign policy aspects of the Lisbon Treaty). If a bill is committed to a select committee it can consider and amend clauses before reporting it to the House for report stage (e.g. Select Committee on the Armed Forces Bill).	Joint Committee on Human Rights reports on every bill for HRA compatibility. The Joint Committee on Tax Law Rewrite Bills examined a series of bills consolidating tax law. <sup>2</sup>	Joint Committee on Consolidation, & Bills scrutinises all consolidation bills (which bring together a number of existing statutes into a single Act).	Ad hoc committee set up to take oral and usually written evidence and make amendments e.g. Public Bill Committee on the Finance Bill.			Committee of the Whole House may be used for consideration of all or part of a public bill - normally bills of major constitutional importance, emergency legislation, very uncontroversial legislation (e.g. consolidation bills), finance bills, very controversial clauses of certain bills.	The respective Grand Committees may have bills relating exclusively to Scotland, Wales or Northern Ireland referred to them.	Following a formal first reading (title of the bill read out) the whole House debates public bills at second reading (agreeing the general principle and committing them to a committee), report stage (line by line scrutiny) and third reading (only very minor amendments).							
	Private bill		The Chair of the Joint Committee on Human Rights may write to the chair of a committee on a private bill to draw attention to any significant human rights issues it raises.	The Standing Orders (Private Bills) Committee (Commons) considers whether to dispense with Standing Orders on Private Business that have not been complied with by proponents of a private bill.		If a private bill is opposed a private bill committee will hear petitions for and against it and could make amendments. Unopposed bills are referred to the Unopposed Bill Committee.				All private bills are debated in the Chamber at second reading; only opposed private bills are debated at report stage and third reading; unopposed bills are dealt with formally.					Examiners of Petitions for Private Bills check that proponents of the bill have complied with relevant standing orders.	Government departments are required to scrutinise all private bills.	
	Legislation																
	Hybrid bill	Ad hoc select committees are established to hear public petitions against hybrid bills and make amendments before reporting them to the House for report stage e.g. High Speed Rail (London - West Midlands) Bill select committee (Commons).	In rare cases, ad hoc joint committees have examined hybrid bills (most recently Roosevelt Memorial Bill in 1946).		Following select committee scrutiny, hybrid bills are committed to a public bill committee which conducts line by line scrutiny (or occasionally committed to Committee of the Whole House for the same treatment).				A hybrid bill could in theory be committed to Committee of the Whole House for line by line scrutiny following scrutiny in a select committee.		As with a public bill, following a formal first reading (title of the bill read out) the whole House debates hybrid bills at second reading (agreeing the general principle and committing them to a committee), report stage (line by line scrutiny) and third reading (only very minor amendments).					Examiners of Petitions for Private Bills check for hybridity before the bill is introduced to determine what procedure should be followed.	
	Public secondary (orders, rules, regulations, schemes, statutes or codes)	A select committee could choose to examine the merits of a piece of secondary legislation either in draft or in operation, either alone or as part of a broader policy inquiry e.g. Business Innovation and Skills Committee inquiry into the Government's proposed statutory code for pub companies and tenants.	Joint Committee on Human Rights considers proposals for remedial orders including those made under the Human Rights Act 1998 and can draw the attention of the House to them.	Joint Committee on Statutory Instruments considers all secondary legislation and reports to the House; Regulatory Reform Committee considers legislative reform orders.			Delegated Legislation Committees debate a motion for approval of any secondary legislation subject to affirmative procedure and any subject to negative procedure which has been objected to within a certain time limit.		Grand Committees can consider relevant delegated legislation.		Occasionally secondary legislation subject to affirmative procedure or negative instruments which have been objected to may be debated in the House instead of in Delegated Legislation Committee.	A question could seek information or press for action in relation to secondary legislation.	A question could seek information or press for action in relation to secondary legislation.	A petition could press for an alteration to secondary legislation.	An EDM could address the operation of secondary legislation.		General Synod agrees Church of England Measures before sending them to the Ecclesiastical Committee (statutory body with members of both Houses), after which they are submitted to the House for approval.
	Acts	A select committee could choose to scrutinise a post-legislative memorandum produced by the government department it scrutinises.	A joint committee could be set up to undertake post-legislative scrutiny of an Act.								The merits or operation of an Act could be a subject for debate.	A question could seek information or press for action in relation to an Act.	A question could seek information or press for action in relation to an Act.	A petition could press for an alteration to the general law.	An EDM could address the operation of an Act.		
	Estimates	Select committees usually examine the estimates produced by the department they scrutinise, in whole or part. The Speaker's Committee on the Electoral Commission and the Speaker's Committee on IPSA consider the estimates of those bodies.									Liaison Committee recommends particular estimates for debate on three days each session by means of a debate on a select committee report. Amendments symbolically reducing the estimate are allowed.						
	Finance																
	Budget	The Treasury Select Committee reports on the Budget.			The Finance Bill is introduced on the Budget resolutions and committed partly to public bill committee and partly to Committee of the Whole House.			The Finance Bill is introduced on the Budget resolutions and committed partly to public bill committee and partly to Committee of the Whole House.			The Budget debate continues for around one week before the House is asked to agree questions on the Budget resolutions, only the first of which is amendable.	A question could seek information or press for action in relation to public expenditure and taxation set out in the Budget.	A question could seek information or press for action in relation to public expenditure and taxation set out in the Budget.	A petition could press for action in relation to public expenditure and taxation set out in the Budget.	An EDM could address the public expenditure and taxation set out in the Budget.		
	Resource accounts	The Public Accounts Committee and relevant select committee scrutinise the resource accounts of each government department (with the support of the Scrutiny Unit).															The National Audit Office makes a report which is laid with the accounts of each department.
European policy and documents	The opinion of the relevant select committee on a European document may be sought by the European Scrutiny Committee.					Documents recommended by the European Scrutiny Committee are debated in an ad hoc European Committee.				Occasionally documents are recommended by the European Scrutiny Committee for debate by the whole House.							
Appointments	Select committees can hold pre-appointment hearings for certain public appointments e.g. Treasury Committee hearing with the candidate selected as governor of the Bank of England. The Speaker's Committee on IPSA and the Speaker's Committee on the Electoral Commission scrutinise appointments to those bodies.																
Issues/ subjects of public significance/ concern	Select committees often scrutinise issues of public concern.	Joint committees may be set up to consider issues of public concern e.g. Parliamentary Commission on Banking Standards.						Grand Committees may debate matters relating exclusively to their region in short and adjournment debates.		The whole House often debates issues of public concern on a government, opposition or backbench motion.	Questions may address issues of public concern if they fall within the remit of a minister.	Questions may address issues of public concern if they fall within the remit of a minister.	Petitions may address local or personal grievances.	EDMs may address issues of public concern.			
Internal	Backbench Business Committee considers proposals for debate. Procedure and Privilege committees consider relevant issues and the Liaison Committee considers select committee working practices.	Ad hoc joint committees may scrutinise internal issues (e.g. Joint Committee on Parliamentary Privilege).								The whole House may debate matters of internal administration.	Questions about internal administration are directed to the House of Commons Commission.	Questions about internal administration are directed to the House of Commons Commission.				The Independent Parliamentary Standards Authority is responsible for administering and holding members to account for their use of expenses.	
Accountability	Civil servants (policy, expenditure, administration of departments)	Select committees may question civil servants.	Ad hoc or permanent joint committees may question civil servants e.g. Parliamentary Commission on Banking Standards or Joint Committee on Human Rights.					A Grand Committee could debate an area of civil service responsibility relating to its specific region.		The whole House could debate an area of civil service responsibility, on a government, opposition or backbench motion.		Civil servants supply answers to questions on behalf of ministers.	Petitions may oppose administrative decisions or seek redress of local grievances.	An EDM could relate to civil service responsibilities.		The National Audit Office (NAO) scrutinises the value for money achieved by civil servants.	
	Ministers	Relevant select committees take oral and written evidence from ministers, relating to their area of responsibility.	Joint committees may take oral and written evidence from ministers, relating to their area of responsibility.		In public bill committee, ministers defend legislative proposals and propose government amendments as necessary during line by line scrutiny.		In Delegated Legislation and European committees ministers speak in favour of secondary legislation and European documents respectively.		In Committee of the Whole House ministers defend legislative proposals and propose government amendments as necessary during line by line scrutiny.		MPs can call on ministers to answer urgent questions. Ministers are required to answer oral questions on a rotational basis.	Ministers can be called on to answer written questions relating to their area of responsibility, via their department.	A petition could challenge a ministerial decision.	An EDM could relate to an area of ministerial responsibility.			
	Prime Minister	The Liaison Committee calls the Prime Minister to give oral evidence three times a year.									MPs have the opportunity to question the Prime Minister every week for around 30 minutes.						

<sup>1</sup> This table sets out formal procedures for scrutiny. Members may also seek to scrutinise and hold the Government to account through other means, including writing letters and otherwise lobbying ministers and joining all-party parliamentary groups.

<sup>2</sup> Rarely, a public bill is committed to a joint committee of the two houses.

<sup>3</sup> Devolution has now significantly diminished the role of Grand Committees in the House of Commons.

Scrutiny by the House of Lords

What is scrutinised/ who is held accountable?			How is it scrutinised/ how are they held accountable? <sup>1</sup>										
			Select Committee (Investigative)		Scrutiny committees (do not take evidence)	Legislative committee			Debate in the Chamber	Questions		Petitions	Examiners
			Lords select committee	Joint committee (Commons and Lords)		Grand Committee	Unopposed Bill Committee	Committee of the Whole House		Oral	Written		
Scrutiny	Legislation	Draft bill		Ad hoc joint committees are usually appointed to scrutinise draft bills e.g. Draft Modern Slavery Bill.	The Delegated Powers and Regulatory Reform Committee is normally invited to submit observations to any joint committee conducting pre-legislative scrutiny.								
		Public bill	The Constitution Committee examines the constitutional implications of all public bills.	The Joint Committee on Human Rights reports on every bill for HRA compatibility. <sup>2</sup> The Joint Committee on Tax Law Rewrite Bills examined a series of bills consolidating tax law.	The Delegated Powers and Regulatory Reform Committee considers all bills (other than consolidation, money and supply) and reports to the House on the powers they contain. The Joint Committee on Consolidation, &c Bills scrutinises all consolidation bills.	Grand Committees normally conduct line by line scrutiny of public bills (where they can only be amended by unanimity) unless they are committed to Committee of the Whole House or are money or supply bills (which are not committed). <sup>3</sup>		Line by line scrutiny of public bills is sometimes conducted in Committee of the Whole House although more usually they are committed to Grand Committee. <sup>3</sup>	The whole House debates public bills at second reading (agreeing the general principle), report stage (line by line) and third reading (tidying amendments). The Lords does not debate or amend supply bills.				
		Private bill	An ad hoc select committee is established to consider any opposed private bill.	The chair of the Joint Committee on Human Rights may write to the chair of a committee on a private bill to draw their attention to any significant human rights issues it poses.	The Standing Orders (Private Bills) Committee (Lords) considers whether to dispense with Standing Orders that have not been complied with by the proponents of a private bill.		An Unopposed Bill Committee is established to examine any unopposed private bill.		Private bills can be recommitted to a Committee of the Whole House in order to assure attention to bills also affecting public interests.	The whole House debates the principle of a private bill at second reading (but does not affirm that principle as with a public bill); there is no report stage for private bills and debate and amendment at third reading are rare.			Examiners of Petitions for Private Bills check that petitioners have complied with relevant standing orders.
		Hybrid bill	Ad hoc select committees are established to hear public petitions against hybrid bills and make amendments before reporting them to the House for report stage.	In rare cases, ad hoc joint committees have examined hybrid bills (most recently Roosevelt Memorial Bill in 1946).					When hybrid bills have been reported by a select committee they are usually recommitted to Committee of the Whole House.	The whole House debates the principle of a hybrid bill at second reading to agree its principle (as with a public bill) and refer it to a select committee. Hybrid bills are also debated by the whole House at report stage and third reading (as for a public bill).			Examiners of Petitions for Private Bills check for hybridity before the bill is introduced.
		Public secondary (orders, rules, regulations, schemes, statutes or codes)	A select committee could choose to examine the merits of secondary legislation, including as part of a broader policy inquiry.	The relevant committee must report before House can be asked to approve an affirmative instrument. <sup>4</sup>	Joint Committee on Statutory Instruments considers most affirmative instruments (all aspects except merits) and reports to the House. Lords Merits of Statutory Instruments Committee may draw the House's attention to instruments of particular importance or interest or inappropriate measures.	Secondary legislation is debated on the floor of the House or in Grand Committee (after the latter if it needs approval that must happen in the House).			Secondary legislation is debated on the floor of the House or in Grand Committee (after the latter if it needs approval by the House).	A question could seek information or press for action in relation to secondary legislation.	A question could seek information or press for action in relation to secondary legislation.	A petition could press for an alteration to secondary legislation.	
		Acts		Post-legislative scrutiny could be undertaken by a joint committee.					The merits of an Act could be a subject for debate by the whole House.	A question could seek information or press for action in relation to an Act.	A question could seek information or press for action in relation to an Act.	A petition could press for an alteration to the general law.	
	Finance	Estimates	A select committee could choose to investigate any aspect of a department's estimate. <sup>5</sup>						The whole House could debate any aspect of a department's estimate. <sup>5</sup>				
		Budget	A select committee could choose to investigate any aspect of the Budget or Finance Bill. <sup>5</sup>						The whole House usually holds a general economic debate on the second reading of the Finance Bill. The remaining stages are taken formally (with no debate).	A question could seek information or press for action in relation to public expenditure and taxation set out in the Budget.	A question could seek information or press for action in relation to public expenditure and taxation set out in the Budget.	A petition could press for action in relation to public expenditure and taxation set out in the Budget.	
		Resource accounts	A select committee could choose to investigate any aspect of the resource accounts of a department. <sup>5</sup>						The whole House could debate any aspect of a department's resource accounts. <sup>5</sup>				
	European policy and documents		The European Union Committee and its six sub-committees consider European Union documents and other matters relating to the EU.						The European Union Committee sometimes makes a report for debate by the whole House.				
	Issues/ subjects of public significance/ concern	Lords select committees often scrutinise issues of public concern.	Joint committees may be set up to consider issues of public concern eg. Parliamentary Commission on Banking Standards.						The whole House often debates issues of public concern on a government or opposition motion.	Questions may address issues of public concern if they fall within the remit of Her Majesty's Government.	Questions may address issues of public concern if they fall within the remit of Her Majesty's Government.	Petitions may address local or personal grievances.	
	Internal	Procedure and Privileges and Conduct committees consider relevant issues and the Liaison Committee considers the structure and resourcing of select committees.	Ad hoc joint committees could scrutinise internal issues (e.g. JC on Parliamentary Privilege).						The whole House may debate matters of internal administration.				
Accountability	Civil servants (policy, expenditure, administration of departments)	Select committees may question civil servants.	Ad hoc or permanent joint committees may question civil servants e.g. Parliamentary Commission on Banking Standards or Joint Committee on Human Rights.						The whole House could debate an area of civil service responsibility, on a government or opposition motion.		Civil servants supply answers to questions on behalf of ministers.	Petitions may oppose administrative decisions or seek redress of local grievances.	
	Ministers	Select committees may take oral or written evidence from ministers relating to their area of responsibility.	Joint committees may take oral or written evidence from ministers relating to their area of responsibility.			In Grand Committee ministers defend legislative proposals.		In Committee of the Whole House ministers defend legislative proposals and propose government amendments as necessary during line by line scrutiny.	In the House, ministers may need to defend government policy.	Secretaries of state sitting in the Lords may be called on to answer oral questions.	Peers can table written questions to ministers for answer within 14 days.	A ministerial decision could be a subject for petition.	

<sup>1</sup> This table sets out formal procedures for scrutiny. Peers may also seek to scrutinise and hold the Government to account through other means, including writing letters and otherwise lobbying ministers and joining all-party parliamentary groups.

<sup>2</sup> Rarely, a public bill is committed to a joint committee of the two houses.

<sup>3</sup> In certain cases bills may be committed to other types of committee e.g. public bill committees, special public bill committees or select committees. Bills committed to select committee are then recommitted to Committee of the Whole House.

<sup>4</sup> For draft orders made under the Legislative and Regulatory Reform Act 2006, the relevant committee is the Delegated Powers and Regulatory Reform Committee. For remedial orders under the Human Rights Act 1998, the relevant committee is the Joint Committee on Human Rights. For most other affirmative instruments the relevant committee is the Joint Committee on Statutory Instruments.

<sup>5</sup> The financial pre-eminence of the Commons in matters of legislation does not mean that the Lords are inhibited in discussing or investigating financial subjects.