A critical analysis of post-legislative scrutiny in the UK Parliament.

By

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Author's Declaration

I declare that this thesis is my own account of my research and contains as its main content work which has not previously been submitted for a degree at any tertiary education institution.

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Abstract

Post-legislative scrutiny in the UK Parliament became a formal part of committee activity in 2008 and to date there have been no systematic studies either in the UK or elsewhere. The limited literature that does exist on post-legislative scrutiny is restricted mainly to parliamentary reports. As such this research helps to fill an important gap in the academic literature. The thesis contributes to the conceptual understanding of scrutiny, accountability and responsibility as well as how these concepts interact with and impact upon post-legislative scrutiny. The research follows a mixed methods approach, focusing upon the content analysis of post-legislative scrutiny reports with a particular focus upon the recommendations made and their acceptance by the government. These findings are supported by several case studies of post-legislative scrutiny inquiries. Drawing upon interviews with stakeholders, these case studies permit examination of the process of post-legislative scrutiny in much greater detail.

The research finds that while post-legislative scrutiny is more extensive than it first appears, the majority of committees do not engage with it formally. There is also a selection bias in terms of the post-legislative scrutiny undertaken thus far, which focuses upon the legislation of the 1997-2010 Labour Governments. There is a strong relationship between the strength of post-legislative recommendations and their acceptance. As a result it is argued that committees deploy a strategy of producing weaker recommendations order to get more of them accepted. Finally, the research finds that while there is evidence of post-legislative scrutiny having impact, there is also untapped potential for further impact should committees in both Houses start following up on their inquiries formally. While there is evidence of post-legislative scrutiny making a difference there is room for improvement in terms of its extent, selection and impact.

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Chapter 1 Introduction

One of the main roles of legislatures is to create laws. However it is only more recently that legislatures have begun to consider formally evaluating whether these laws subsequently meet the objectives set at the time of passage. In the UK Parliament, post-legislative scrutiny has been, in various forms, one of the core tasks of departmental select committees in the House of Commons (House of Commons Liaison Committee, 2012) since 2002.

Post-legislative scrutiny is defined by the Law Commission of England and Wales as;

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

This is an important definition. Both the UK Government and Parliament employed it when developing the current system of post-legislative review which underpins the post-2008 system of post-legislative scrutiny. As the Law Commission noted in their report on post-legislative scrutiny, the vast majority of respondents to their consultation stated that post-legislative scrutiny serves a much broader purpose than a narrow review of legal consequences (Law Commission, 2006).

De Vrieze & Hasson (2017) state that post-legislative scrutiny holds two distinct functions. There is firstly a function relating to the monitoring of the implementation of legislation. Secondly, there is an evaluation function relating to whether or not the aims of an Act are reflected in the results and effects of legislation once implemented.

These definitions provide us with a preliminary understanding of post-legislative scrutiny. However there is an absence of systematic study of post-legislative

scrutiny. We do not know how the process operates in practice. Currently we do not know how many times post-legislative scrutiny has been undertaken and we do not have a full understanding of which committees have and have not been undertaking it, and their reasons why. In addition we do not know what the outcomes of this scrutiny is in terms of what recommendations committees have been producing and whether or not the government has been accepting those recommendations. Indeed, we also know very little about how committees are undertaking this function and what their views are of this scrutiny.

The aim of this exploratory study is therefore to provide a detailed analysis of the extent and the outcomes of the post-legislative scrutiny undertaken by committees in the UK Parliament. In order to meet this aim, the thesis will answer the following research questions:

1. How extensively has post-legislative scrutiny been undertaken by committees in the UK Parliament
    a. How frequently has post-legislative scrutiny been undertaken between the 2005-10 and 2015-2017 Parliaments and what factors have determined this?
    b. Are there patterns regarding which committees undertake such scrutiny?
    c. What are the characteristics of the legislation reviewed by post-legislative scrutiny?

2. What recommendations have arisen from post-legislative scrutiny inquiries and how frequently have they been accepted by the UK Government?

3. What has the experience been of committees undertaking post-legislative scrutiny in the UK Parliament?

While it has been possible for some time for committees to scrutinise the implementation of legislation, the current approach has now been running for a decade in the House of Commons and for five years in the House of Lords without

an understanding of how it is actually operating. This is therefore a timely study. This thesis fills an important gap in our knowledge of how this particular function of committees in the UK Parliament is undertaken. It allows us to identify whether any modifications to the processes of post-legislative scrutiny are necessary. This study is also timely in the sense that post-legislative scrutiny is becoming more formalised in legislatures across the world, for example in South-Eastern Asia (De Vrieze & Hasson, 2017). Yet, formalised post-legislative scrutiny in legislatures elsewhere in the world is also under-studied. The assessment of post-legislative scrutiny provided in the UK has the potential to inform decisions taken in other legislatures about whether to adopt the UK's system of post-legislative scrutiny.

The UK Parliament is being studied as a case study more generally in this research. This was important due to the lack of literature on post-legislative scrutiny comparatively. In order to begin to develop this literature there is a need to undertake in-depth analysis of a singular case in which the details of how post-legislative scrutiny operates in practice can be assessed. Such a study could then be used as a foundation upon which other studies into post-legislative scrutiny can launch from (Gillham, 2000). Once an in-depth study is complete, there is research upon which future studies can compare their findings. While there are limitations with the perceived inability to generalise the findings of case study research (particularly in this case as parliamentary systems can differ quite broadly), being able to apply the findings of this research outside of the UK Parliament or other Westminster style legislatures is not the aim of this study.

1.1 Why is post-legislative scrutiny important and necessary?

It is important to place post-legislative scrutiny into the context of the legislative process in the UK Parliament, not because post-legislative scrutiny can solve every problem (it cannot) but because it provides parliament with an opportunity to think again about the legislation it has passed. The need for post-legislative scrutiny, the Law Commission argues, arises within the context of an increasing volume of legislation being enacted in each session of parliament (Law Commission, 2006).

Fox & Korris, (2010) and Korris (2011) have argued that the sheer number of bills being produced and initiated, combined with their increasing complexity, places pressure on the legislative process as well as parliamentary time and resources. Their argument is that the volume of legislation is having a detrimental impact upon the amount of scrutiny such bills receive and subsequently, upon their operation.

However research by Vollmer & Badger (2013) shows that there has in fact been a fall in the number of bills being introduced per session. Despite this fall in the number of bills, the length of legislation has increased (Greenberg, 2016). While the Law Commission argues that post-legislative scrutiny would not stem the flow of legislation from the government, it does necessitate a process of reflection (Law Commission, 2006). This reflection and the knowledge that Acts could be selected for review by a parliamentary committee, it is argued, would lead the government to take greater care when drafting legislation so as not to face criticism later in the Act's life.

The drafting of legislation has also been criticised for starting too late and being rushed (Rippon, 1993) in order to meet strict deadlines (Slapper & Kelly, 2015), which can lead to a lack of clarity within legislation. This leads to further criticism surrounding complex and difficult to follow legislation (Fox & Korris, 2010; Slapper & Kelly, 2015), in which lawyers struggle to comprehend laws. In essence the problem is with both demand and supply, an increasing level of complexity over the issues both government and parliament face, mixed with issues surrounding resources.

Public bill committees in the House of Commons are frequently criticised as being ineffective in terms of scrutinising legislation (Thompson, 2015). Brazier (2004) argues that public bill committees deliver weak and incomplete scrutiny, as substantial changes are not usually made to bills at this stage, and bills often leave committee without full line by line scrutiny. Greenberg (2015) has argued that public bill committees in the UK barely undertake clause by clause scrutiny of bills, never mind line by line scrutiny due to a lack of appetite from committee members. Research by Thompson (2013) showed that on average committees make 53

amendments per bill but the vast majority of these amendments are government sponsored. Indeed bills are rarely amended against the wishes of the government, given the membership of public bill committees is decided by the party whips. This ensures that even the most controversial bills get a relatively smooth passage (Brazier, 2003; Brazier, Kalitowski, & Rosenblatt, 2007; Rippon, 1993).

However, the government's strength is overstated and the influence of opposition and government backbenchers is often masked in public bill committees (Russell, Gover, & Wollter, 2016; Thompson, 2013). Russell et al. (2016) noted that most of the substantive amendments moved by the government are a result of parliamentary pressure. Russell & Cowley, (2016) also noted that around 75% of all government amendments contained little policy substance and were rather technical or clarification amendments. The House of Lords is also able to limit the executive's dominance over the process as it is not subject to programming, has no government majority and thus has greater flexibility over how it considers legislation and all amendments that are tabled are also debated and voted on (Norton, 2013).

While the legislative process is perhaps more effective than many suggest, it is still a process that sees legislation enter into law without full scrutiny. As such post-legislative scrutiny provides parliament with a mechanism to address legislation that for whatever reason, might not be operating as intended or achieving its objectives.

If bills are poorly drafted and lack thorough scrutiny, they are more likely to contain mistakes or problems. Consequently, government may be unable to effectively implement the legislation and ensure intended policy objectives are met. This provides a reason as to why post-legislative scrutiny is an important and necessary function for parliament to be able to undertake.

1.2 Post-legislative scrutiny in the UK Parliament

Having outlined the context that post-legislative scrutiny operates in and the research questions, it is important to outline how the formal process operates in the UK Parliament in order to provide some background knowledge of how the system is expected to operate. The definition provided by the Law Commission relates to what are considered to be the purposes and benefits of post-legislative scrutiny. The main reasons and benefits cited by the Law Commission (2006) for the undertaking of post-legislative scrutiny were;

- To assess whether legislation is working out in practice and, if not, to determine the reasons why and to offer solutions to rectify any problems.

- To produce better regulations. The Law Commission suggests that post-legislative scrutiny should lead to better regulation due to the increased focus upon how Acts and subsequent regulations operate.

- To focus on implementation. With the knowledge that post-legislative scrutiny might one day be undertaken, it might concentrate the government's mind on the task of implementing legislation and its likely effects.

- To improve the delivery of policy aims, in the sense that it should provide a spur to those who work in the delivery of policy in ensuring that aims have been met.

- To locate good practice and disseminate it in order to help both the executive and legislature learn how to avoid creating legislation with unintended consequences.

- To improve the quality of legislation in the sense that with the knowledge that legislation could be formally reviewed, it might have the effect of improving the drafting and scrutiny of legislation (Law Commission, 2006)

Rogers & Walters (2015) argue that post-legislative scrutiny might be better served if it were undertaken outside parliament in a non-parliamentary context. However, parliament is best placed to determine whether or not intended policy objectives have been met as this is a political judgement and as such, should be made by a political and accountable body. Additionally, it is parliament which passed the legislation in the first place and parliament which will be required to make legislative changes should they be required. It therefore makes sense for a political body to undertake such scrutiny, although there are consequences of doing so. For example, parliament is inherently political and it can prove challenging to remove politics completely from the equation.

The Law Commission has warned against issues that could limit the effectiveness of post-legislative scrutiny. The first is the risk that post-legislative scrutiny becomes a replay of the arguments that were put forward during the passage of the bill (Law Commission, 2006). If it becomes overly partisan, it is likely to divide scrutiny along party lines and render such scrutiny useless. Secondly, it is dependent upon political will and judgement, as without such will, parliament is not going to want to undertake such scrutiny. Finally, there is an issue with resources (Law Commission, 2006). The resources available to parliament are finite. This includes both time and money and consideration needs to be taken as to how much of a demand post-legislative scrutiny will place on resources.

The Law Commission ultimately suggested that post-legislative scrutiny in the UK Parliament should be more systematic. However the government disagreed with their suggestion of introducing a dedicated post-legislative scrutiny committee. Instead, in 2008, the government agreed to introduce a systematic process of post-legislative review by government departments. Legislation would receive a departmental review within three to five years of that Act entering the statute books. Once such a review was completed, a memorandum containing its findings would be sent to the relevant departmental select committee in the House of Commons for additional scrutiny, if it was deemed necessary (Office of the Leader of the House of Commons, 2008). This is the formalised system that the House of Commons has operated since 2008. Although it was rarely used to begin with, there has been an increase in the number of published memoranda by government

departments. Between 2008 and 2010 only seven memoranda were published. By January 2013, fifty-eight memoranda had been published (Kelly & Everett, 2013). In addition, since 2012 ad hoc committees in the House of Lords have undertaken post-legislative scrutiny, with a promise of at least one inquiry per session (House of Lords Liaison Committee, 2012). Now, every autumn, in an open call to Peers, the Lords Liaison Committee invites ideas for post-legislative scrutiny.

In relation to this systematic process of post-legislative scrutiny, the government stated that the system must concentrate on appropriate Acts and not focus upon reviewing every Act passed by parliament. It should also avoid re-running the same policy debates that were conducted during the passage of the bill through the legislative process. Thirdly, such scrutiny should reflect the specific circumstances of each Act including any relevant secondary legislation. Finally, it should complement existing scrutiny undertaken by Commons select committees (Office of the Leader of the House of Commons, 2008). It is under these conditions that post-legislative scrutiny in the UK Parliament operates.

1.2.1 Post-legislative scrutiny and committees

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

Ad hoc committees in the House of Lords are popular, especially with Members, as they allow for specific and topical issues to be examined without creating a permanent vehicle for doing so (Rogers & Walters, 2015). One benefit of using such committees is that with nine months for one inquiry a more comprehensive, in-depth report is possible. There is a downside however, as they dissolve after they have reported.

1.3 Methods

This section will address the different methods previous studies on the impact and effectiveness of parliamentary committees have undertaken as well as the advantages and disadvantages of these methods. Following on from this it will outline how these studies will help to shape the methodology of this research.

1.3.1 Researching parliamentary committees

To date there have been no systematic studies of post-legislative scrutiny and how it operates as a tool of legislatures. The literature that does exist on post-legislative scrutiny is limited to grey literature from think tanks (De Vrieze & Hasson, 2017; Law Commission, 2006) and from parliament itself (House of Lords Select Committee on the Constitution, 2004). There is therefore no direct theoretical or empirical literature on which to base this study. However there is a literature on parliamentary committees and their outcomes. These studies have been selected on the basis that they focus upon how committees undertake scrutiny and what impact they have. These studies provide a useful foundation to support the analysis of how committees engage with post-legislative scrutiny.

Academics have taken various approaches when studying and assessing the impact of scrutiny in the UK and also in other countries with a Westminster-style legislature (White, 2015b). Some have adopted a quantitative methodology and have measured the impact of committees using indicators, including; whether committee recommendations are being accepted by the government, whether

references are made to committee work during parliamentary proceedings, whether any amendments to bills stem from committee recommendations, as well as citations of committee work in judicial decisions and media coverage (White, 2015b).

For example, Tolley (2009) undertook a study assessing the work of the Joint Committee on Human Rights (JCHR). His research assessed the extent to which the JCHR contributes to more informed debates and prevents governments from passing legislation it wants without agreeing to any changes the JCHR recommends. His quantitative analysis measured how many references there were to the Joint Committee during floor debates in both Houses of Parliament and also the extent to which the Joint Committee's recommendations went on to influence legislative and judicial outcomes (Tolley, 2009). He concluded that the jury was still out on whether or not the Joint Committee was effective. In most cases, the committee was unable to get the government to consider its views during drafting and during the legislative process too (Tolley, 2009; White, 2015b). The problem with this approach is that referencing the report during a debate does not necessarily mean the debate is more informed, unless the key points the specific MP made in relation to the report are analysed.

Monk (2010) followed a mixed methods approach. He collected similar data to Tolley (2009) but analysed them through a methodology he developed (Monk, 2010). In this method, he identified six groups of actors whose subjective views should be heard. These are: government, bureaucracy, the legislature, external shareholders, the judiciary and the public (Monk, 2010; White, 2015b). He defined a basic level of influence a positive agreement on the impact and influence of a committee report from one of these actors (White, 2015b).

Others have also favoured a mixed methods approach. Hindmoor, Larkin, & Kennon (2009) when assessing how influential the House of Commons Education Committee was, identified a number of measures to assess the impact and influence of the committee on four sets of actors; government, parliament, the media and political parties (Hindmoor et al., 2009). These findings were contextualised by interviewing both politicians and civil servants. They concluded

that while there were examples of the committee having an impact on, and influencing policy, systematic influence was harder to pinpoint (Hindmoor et al., 2009; White, 2015b).

Following this research Benton & Russell (2013) undertook a comprehensive study of the policy impact of select committees in the House of Commons, using a mixed methods approach. Their aim was to assess how influential House of Commons select committees were in the policy process. Their methods included the coding of media coverage of select committees and the coding of recommendations, acceptance and the implementation of recommendations from the reports of seven select committees between 1997 and 2010 (Benton & Russell, 2013; Russell & Benton, 2011). 56 semi-structured interviews with committee chairs and members as well as committee staff and civil servants were also undertaken in order to explore less quantifiable parts of select committee influence (Russell & Benton, 2011). The study found that of the recommendations clearly aimed at central government, 40% were formally accepted. They also found that around 44% of measurable recommendations went on to be implemented (Benton & Russell, 2013). It is this study from which this research draws many of its foundations.

1.3.2 Methods used in this research

The research starts quantitatively, with an audit of post-legislative scrutiny. This audit was designed to answer the first research question, 'how extensively has post-legislative scrutiny been undertaken by committees in the UK Parliament', as well as its sub-research questions relating to the frequency of post-legislative scrutiny, which committees are undertaking it and the characteristics of the legislation reviewed. As there is limited data on post-legislative scrutiny, including on the total number of inquiries that have taken place, descriptive data was needed to lay a foundation for the rest of the study. This audit included the collation of data on the number of post-legislative scrutiny inquiries that have taken place, the session, the parliament and the legislation which has received post-legislative scrutiny. Data has also been collated on the number of Acts receiving post-legislative scrutiny in each inquiry and the time difference between the Act receiving Royal

Assent and receiving post-legislative scrutiny. This audit then moved on to address formal post-legislative scrutiny inquiries only (for definitions see page 80) and included data (data derived from sessional returns) on the time spent on the passage of legislation and the length of legislation (derived from the Acts themselves). Data was also collected on the sponsoring government department and on the primary legislative activity of government departments (derived from sessional returns), between 2005-2017. Data was also collated on the report output of committees in order to compare post-legislative scrutiny output and other committee output (data derived from the publication page of committee websites). Finally, data was collated for formal post-legislative scrutiny on whether legislation is contentious or uncontentious. The quantitative data collected has been stored and analysed on SPSS. This data is available from the UK Parliament website, as well as legislation.gov.uk. More detailed information regarding this audit can be found at the beginning of chapters 3 and 4.

This study utilises some of the tried and tested methods of assessing committee scrutiny devised by Benton & Russell (2013). In particular this approach is used to assist in answering the second research question; what recommendations have arisen from post-legislative scrutiny inquiries and how frequently have they been accepted. Specifically this work builds upon Benton & Russell's (2013) study in terms of measuring the output of post-legislative scrutiny through the acceptance of recommendations using ordinal logistic regression analysis. The dependent variables in this study are the strength of recommendations made by committees and the government's acceptance of recommendations. This involved the coding of committee reports and government responses from all the formal post-legislative scrutiny inquiries in both the House of Commons and House of Lords between 2005 and 2017. Committee recommendations were coded for type and strength, and government responses were coded for the level of acceptance. Specific details about the coding schemes and independent variables used in the regression analysis can be found at the beginning of chapter 5.

The research then moves on to findings drawn from qualitative study. This involves a case study analysis of five post-legislative scrutiny inquiries in order to analyse in greater depth the process of post-legislative scrutiny in a way in which quantitative

methods alone cannot. Multiple cases are therefore studied (Gillham, 2000). This final part of the research design aims to answer the final research question; what has the experience been of committees undertaking post-legislative scrutiny. This involved semi-structured interviews with a clerk, Member (typically the chair) and interest group which took part in each of the five post-legislative scrutiny inquiries (three interviews per inquiry). These interviews focused upon the selection of legislation, development of recommendations, the government responses as well as any follow up work the committees did.

A case study approach was deemed appropriate for this research on the basis that there was a limited amount of literature (Simons, 2009) about how post-legislative scrutiny operates, therefore a method which allows for the investigation of situations where little is known and where you can get 'under the skin' of an organisation to find out what is happening was important (Gillham, 2000). Such an approach also allows for the evaluation of human action in institutions, the influences that determine such action and the interrelationship of acts and consequences (Simon, 2009). This is important when studying committees as they are complex and there are a number of influences upon them and interrelationships too. This is particularly important when studying a type of scrutiny that we did not know much about. This allowed for in depth research and the creation of an in-depth understanding (Simons, 2009) which is not possible using experimental design or other quantitative methods. Although there are benefits to such methods, there are limitations too. For example it will not be possible to generalise fully from the case study findings (Simons, 2009). However it was not the aim of the research to be able to generalise between committees or between different parliaments. The aim is to present a snapshot of how post-legislative scrutiny is operating currently in the UK Parliament. That being said Flyvberg (2006) argues that being unable to generalise on the basis of a couple of cases is a misunderstanding of case study research. This is true of this research which finds common themes among the five case studies selected suggesting these themes might be common across these particular committees within the UK Parliament. There are also critiques about subjectivity, however Simons (2009) argues that the subjectivity of the researcher is part of the frame and rather than

being seen as a problem, it is monitored and disciplined as essential in understanding and interpreting the case. In relation to this research post-legislative scrutiny is not an issue where subjectivity poses a great challenge however achieving triangulation through interviews for each case has helped to achieve a more rounded analysis of the cases from differing viewpoints. Additionally questions were posed in neutral terms to help overcome potential subjectivity issues.

In addition to the interviews for the case study analysis, further semi-structured interviews were undertaken to support the research. The first was with the Head of the House of Commons Scrutiny Unit. This was important in assessing the focus of the unit on post-legislative scrutiny in the House of Commons and to assess what work is being done to promote and support committees undertaking post-legislative scrutiny. The clerk of the House of Lords Liaison Committee was also interviewed to assess their views on the process in the House of Lords. Finally two interviews took place with clerks from departmental select committees which did not undertake formal post-legislative scrutiny between 2012 and 2017 in order to assess why. In total 19 interviews were undertaken for this study. Specific details relating to the case studies can be found in chapters 6 and 7.

1.3.3 Data limitations

As in any study, there may be some limitations with the data that has been collected. This is not expected to reduce the validity of the research findings but it does require acknowledgement. There may be limitations with the data collected through the interviews as it relies upon the recollection of House staff from between 2-5 years previously. There is always the chance that their recollection is not completely accurate. This has been mitigated by interviewing different people involved in inquiries to ensure triangulation.

Formal post-legislative scrutiny (as defined on page 80) has also been fairly limited in terms of the number of cases. Further research will be necessary once post-legislative scrutiny is a mature process.

Informal post-legislative scrutiny (as defined on page 80) is often not recognised as post-legislative scrutiny until committees are conducting end of session reviews. The focus of this research is on formal post-legislative scrutiny and as such the data collected on informal post-legislative scrutiny is not as detailed, however it is important to acknowledge its existence and its extensiveness.

1.4 Contribution

In answering the research questions, this thesis makes a number of contributions. The thesis contributes to the conceptual understanding of scrutiny, accountability and responsibility and how these concepts interact with and impact upon post-legislative scrutiny. In addition the thesis also contributes to the literature on the impact of parliamentary committees, in particular by extending the research of Hawes, (1992); Hindmoor, Larkin, & Kennon, (2009); Monk, (2012); Russell & Benton, (2011); Tolley, (2009) to a particular type of scrutiny rather than addressing impact overall or by specific committees.

In addition, the thesis contributes to the limited literature on post-legislative scrutiny both in the UK in terms of how the UK Parliament undertakes such a function and more generally in terms of the comparative study of it. The thesis provides a detailed analysis of how this core task of parliamentary committees is undertaken and sheds light on how this process operates in practice and some of the challenges it faces. As well as contributing to the literature on post-legislative scrutiny, the thesis also contributes to the literature on the legislative process and the quality of that legislation. As post-legislative scrutiny assesses the overall quality of legislation, the findings of this research, based upon the outcomes of post-legislative scrutiny, sheds light on the legislative process and the quality of that legislation that has gone on to receive post-legislative scrutiny.

This research also contributes to our knowledge of the behaviour of committees in the UK Parliament. This particularly is in relation to how committees select topics and lines of inquiry, how they determine to undertake an inquiry and also in terms of the choices they make when formulating their recommendations. There is also

a practical contribution to be made by this thesis. It provides a detailed assessment of the procedures utilised in the UK Parliament which could be beneficial to other legislatures which are in the process of formalising post-legislative scrutiny into their procedures. The conclusion of this thesis notes the challenges that the UK system faces and therefore challenges other legislatures should attempt to avoid. In addition the conclusion also offers recommendations in order to overcome those challenges.

1.5 Outline of the thesis

Chapter two addresses the literature on the key concepts of this thesis; scrutiny, accountability and responsibility. These concepts are important as they provide a foundation for how parliament and its committees operate. With post-legislative scrutiny being a core task of committees (at least in the House of Commons) it is important to understand how they operate together and also how post-legislative scrutiny fits into such concepts. The chapter finds that scrutiny is the mechanism through which the executive can be held responsible and accountable for their actions. Accountability and responsibility are, therefore, essential components of scrutiny, in a parliamentary context, as without someone having to take responsibility for failure they cannot be held accountable for their actions. Also without responsibility, there would be no obligation to provide information, which underpins scrutiny. The chapter also develops a typology of scrutiny, based upon the conceptual analysis, which places post-legislative scrutiny firmly within it.

Chapter three is the first empirical chapter of this thesis. This chapter begins to answer questions relating to the extent and frequency of post-legislative scrutiny in the UK Parliament. This is also an important chapter in terms of practical contributions, as the data presented there has not been assessed before. It begins by determining the types of post-legislative scrutiny undertaken by committees in the UK Parliament. While there is a systematic process in terms of the departmental review memoranda being sent to departmental select committees, post-legislative scrutiny is also inherent in the wider work of these departmental select committees. This chapter also assesses, albeit briefly, where this informal

post-legislative scrutiny might be taking place. The chapter then addresses the frequency of such scrutiny under both types outlined above. It particularly addresses the sub-research question of whether there is a pattern in the undertaking of post-legislative scrutiny, and again does so for both types of scrutiny, in terms of how many inquiries there have undertaken and what proportion of committee activity is formal post-legislative scrutiny.

Chapter four concerns itself with the two final sub-research questions (from question one) relating to the selection of legislation. The chapter begins with a focus upon the process of post-legislative scrutiny, in particular the time elapsed between Royal Assent and Acts receiving post-legislative scrutiny. This is an important consideration as the government's time frame is for post-legislative review to take place three to five years after an Act has received Royal Assent. However, the House of Lords Constitution Committee recommends three to six years. The chapter then moves on to assess the time spent on post-legislative scrutiny. This is examined through the time that elapsed between the launch of terms of reference and the publication of a report. In the second half of the chapter, the legislation receiving formal post-legislative review is assessed. This is done through assessing the party of government whose legislation is receiving the most post-legislative scrutiny. This highlights a key finding that there is a bias in the legislation selected for review with the vast majority coming from the 1997 – 2010 Labour Governments, and with very little coming from the subsequent Conservative led Coalition Government between 2010 and 2015. This is despite more and more of that legislation falling into the recommended timeframes noted above.

The chapter then moves on to assess the government departments that have seen their legislation receive post-legislative scrutiny. This includes the legislative output of that department. This chapter also addresses the depth of scrutiny that the legislation received as it went through the legislative process, including an assessment of the number of amendments and defeats in the House of Lords as well as the number of sittings bills had in public bill committees in the House of Commons. The chapter ends with a discussion of what will be termed the post-legislative scrutiny gap. This thesis is focused upon the post-legislative scrutiny

that has taken place. However, it is also important to address whether there might be a gap in such scrutiny and in particular determine why departmental select committees might choose not to undertake formal post-legislative scrutiny.

Chapter five forms the third empirical chapter and addresses the research question of the recommendations that have arisen from post-legislative scrutiny inquiries and how frequently they have been accepted by the UK Government. The chapter begins with an assessment of the recommendations produced following post-legislative scrutiny inquiries. In particular, it focuses upon where recommendations were directed (for example, central or local government) the type of recommendations produced and the strength of action that a recommendation called for. In particular it finds that committees tend to produce recommendations relating to policy and procedure and recommendations that call for weaker action. The chapter also addresses the acceptance of recommendations by the government, by strength of action called for, as well as type of recommendation. Secondly the chapter addresses the differences between the House of Commons and House of Lords. This is important as they have different approaches and practices. These different practices feed into the type of inquiry committees undertake as well as the types of recommendations that they will produce. Finally the chapter concludes with an assessment of the factors that impact on the strength and acceptance of recommendations. This uses two ordinal logistic regressions. The chapter finds that there is a strong relationship between the acceptance of recommendations and the strength of them, with stronger recommendations being more likely to be rejected by the government. As such committees could be altering their behaviour to produce weaker recommendations as a result of the government being more prone to reject recommendations that are calling for strong action (such as legislative change). This chapter contributes to the existing literature on the impact of parliamentary committees and in particular what impacts upon the acceptance of recommendations by the government.

Chapters six and seven are the two final empirical chapters. These address five case studies of committees that have conducted post-legislative scrutiny in the UK Parliament. These two chapters deal with the research question relating to the

experience of committees that have undertaken post-legislative scrutiny. These chapters contribute to our understanding of the behaviour of committees when undertaking inquiries, from the perspective of post-legislative scrutiny. It is important in determining how committees view this type of scrutiny, and how it is undertaken, on top of highlighting any challenges they face under the current procedures.

Chapter six focuses upon the experience of committees undertaking post-legislative scrutiny in the House of Commons and assesses three case studies. This chapter assesses the Culture, Media and Sport Committee's inquiry into the Gambling Act 2005, the Justice Committee's inquiry into the Freedom of Information Act 2000 and the Health Committee's inquiry into the Mental Health Act 2007. In so doing this chapter deals with why the legislation was selected, the utility of government memoranda, the selection of witnesses and the role of evidence, the development of recommendations and finally the way the committees dealt with the government response and follow-up to the inquiry.

Chapter seven focuses upon the experience of committees undertaking post-legislative scrutiny in the House of Lords and examines two case studies, the Select Committee on the Equality Act 2010 and the Select Committee on the Licensing Act 2003, plus the role of the House of Lords Liaison Committee in post-legislative scrutiny. It starts with an overview of the role of the House of Lords Liaison Committee in the initiation and follow up of post-legislative scrutiny. The chapter then goes on to cover the issues discussed in the previous paragraph in relation to the House of Lords.

Chapter eight draws together the knowledge gained from the empirical research chapters and goes into further detail about the contribution and implications of this research both academically and practically for the UK Parliament. Given the limited knowledge on post-legislative scrutiny, the chapter ends by identifying what further research is necessary in this area and proposes recommendations to improve processes of post-legislative scrutiny in light of the findings of the previous chapters.

Chapter 2 Conceptual Framework

Scrutiny is the central concept of this thesis. As such without being able to understand and define scrutiny, as a concept, it will not be possible to fully understand post-legislative scrutiny. The aim of this chapter is to begin to develop an understanding of scrutiny from academic definitions and from how the term is used in specific types of scrutiny. In order to operationalise the concept effectively for the purposes of this research, a broader understanding is required beyond a general definition. In British political discourse, our understanding of scrutiny has changed, having previously been framed around the language of accountability (McAllister & Stirbu, 2007) with the two used synonymously. Therefore it is essential that the concept of accountability also be assessed, in order to enhance our understanding of scrutiny. Finally, due to the close links between accountability and responsibility (which are often conflated), responsibility will also be assessed. This will further enhance our understanding of scrutiny, as accountability and responsibility have an important relationship with scrutiny, particularly in a parliamentary context.

This chapter will argue that scrutiny is the core concept and it is only through scrutiny that accountability and, as a result, responsibility are delivered in a parliamentary context. Finally, a new typology of parliamentary scrutiny will be developed from the arguments and debates regarding each of these concepts and how they enhance our understanding of scrutiny.

2.1 Scrutiny

The term scrutiny is widely used by politicians and academics in discussions of the conduct of government and the practice of accountability. However, definitions of the concept are less readily available (Maer & Sandford, 2004). Indeed, our understanding of scrutiny has changed since the mid-1990s, with accountability and responsibility previously used between the 1970s and 1990s to describe the

relationship, for example, between ministers and parliament (Maer & Sandford, 2004). The term, scrutiny, was popular with the 1997 Labour Government, partially as a result of its constitutional reform programme with its focus on creating a more modern and effective House of Commons, as well as creating an open and transparent government (e.g. through the introduction of Freedom of Information). The focus upon scrutiny occurred for a number of reasons; the scandals which took place under the previous government and the lack of sanctions against those who had been involved; the rise in unaccountable quangos in the 1980s and 1990s; and the desire for a more effective House of Commons with a more open government (Dale, 2000). This suggests that our understanding of scrutiny has changed over time from a period where the term was framed around accountability and responsibility to a period where it also became framed around open and transparent government.

However, this is not just about open and transparent government. Previous government scandals led to a greater focus upon policy failures, with many noted by King & Crewe (2013), and a need for more accountability to hold those who made mistakes accountable but to also try to avoid mistakes in the first place. It could be argued here that there has been a shift in governance as a result of these events, with an initial focus less upon outcomes and more upon processes, audits and implementation. Conceptual change literature suggests that politics is a linguistically constituted activity and that political concepts go through changes related to political events (Farr, 1989). This would provide support to the arguments outlined above and that our understanding of scrutiny has changed over time, with scrutiny having previously been framed in the language of accountability. Our vocabulary around the concept has changed and this has led to an organisational change too.

Maer & Sandford (2004: 5) define scrutiny as 'the action of looking searchingly at something or as an investigation or critical inquiry'. There are similarities between this definition and the one which Centre for Public Scrutiny (2015) provides: 'the activity by one elected or appointed organisation or office examining and monitoring all or part of the activity of an institution'. From these two definitions

it is possible to draw out that scrutiny involves the examination, investigation or inquiry into an activity or person. However, there is a difference in that Maer & Sandford (2004) define it as having a critical purpose.

Thus, there is a general consensus from the definitions, that generally, scrutiny as an abstract concept involves an investigation, examination, review or inquiry of a body or an activity. While this definition does not encompass all scrutiny, it describes a broad process through which we can begin to categorise the phenomenon. There is, therefore, a need to operationalise this definition in order to better understand post-legislative scrutiny. Strictly speaking, it would be possible to operate with such an abstract definition of scrutiny for the purposes of this thesis. Post-legislative scrutiny is an examination of a body (government) in relation to the legislation that they have introduced and implemented. However, post-legislative scrutiny can be broader than this definition. For example, post-legislative scrutiny can include an element of policy development. Indeed, as one of the Law Commission's main reasons for undertaking post-legislative scrutiny (as noted in chapter one) states that if legislation is not working in practice, solutions should be offered to rectify such problems (Law Commission, 2006). Since this is the first systematic study of post-legislative scrutiny in the UK Parliament, it is important that we do not assume that the parameters of post-legislative scrutiny are rigidly or clearly set. It could mean ignoring aspects of post-legislative scrutiny which deserve attention. While post-legislative scrutiny would fall under the general definition, it does not encompass all the components of post-legislative scrutiny, such as monitoring the implementation of legislation or policy development. As such it is important to expand our understanding of scrutiny. These abstract definitions, while failing to explain various aspects of scrutiny, also fail to recognise that when scrutiny takes place is important, as are the aims of that scrutiny. Therefore, it is important to move on from the abstract idea of scrutiny and apply it to a political context. To be able to develop a better understanding of scrutiny we will assess how the term scrutiny is utilised within different contexts, such as in parliament and in local government.

The work of the Joint Committee on Human Rights suggests that there is an important monitoring role for scrutiny, it is not always about critical examination

(Tolley, 2009). The role of the Joint Committee on Human Rights is to consider matters relating to human rights within the UK. Included here is the monitoring of legislation for compliance with the Human Rights Act 1998 (Tolley, 2009). Unlike the academic definitions, considered above, this suggests something less rigorous but just as important. Without monitoring and the resulting gathering of, or access to information, which monitoring allows, it is difficult to see how scrutiny can take place. This is less rigorous in the sense that it does not necessarily lead to an investigation or inquiry. A committee could monitor government and come to the conclusion no concrete action is necessary. The information gathered by the committee is then often used by other bodies such as government (in order to amend legislation) and the courts (to support legal cases relating to legislation), before further action is taken. Indeed the aim is for the committee to monitor compliance independently of the government and the judiciary. This allows action to be taken by other bodies which may then involve critical examination. The monitoring role of scrutiny would need to come first before we reach the examination or investigation, as without information there would be nothing to examine or investigate. Therefore we can begin to argue that monitoring and the access to and gathering of information is integral for scrutiny to take place. Indeed it could be argued that this monitoring is the foundation of scrutiny.

The scrutiny of the European Union (EU) by national parliaments, sheds more light on the concept, and our understanding of it. Scrutiny of the EU by national parliaments suggests that there can be a monitoring and control aspect to scrutiny, in terms of attempting to influence the government's negotiating position as negotiations take place (ex-ante accountability) and holding the government accountable for outcomes (ex-post accountability) (Auel, 2007; Holzhacker, 2002). Indeed Bovens (2007) argues that accountability is not just about ex-post scrutiny, as actors will anticipate negative criticism and adjust policies accordingly. The Law Commission also inferred that this is an important aim of post-legislative scrutiny, since they claim it should lead to better implementation and delivery of policy (Law Commission, 2006). With this particular aim, there is an accountability element to post-legislative scrutiny. The control in the context of scrutiny of the EU is to try to control and influence the government's negotiating position and its

decision making (Holzhacker, 2002). This also suggests, that there is an accountability role for scrutiny here too, in terms of examining the government's negotiating position and also examining its actions.

In local government, scrutiny is often referred to in tandem with overview. Scrutiny is seen as the accountability side of its role with its other functions (e.g. policy development) being covered by overview (Ashworth & Snape, 2004). Scrutiny in local government is about both holding the executive to account but also supporting the executive in policy development (Ashworth & Snape, 2004) including the examination of policy and suggesting alternatives and changes. This has important implications for our understanding of this concept. It firstly links this concept back to accountability, (Ashworth & Snape, 2004; Martin, 2006). However it draws attention to an element of scrutiny that we have yet to consider, that of policy development. Scrutiny (in terms of local government) has developed from a narrow and inward looking process to a broad based policy focused process. Some such as Matthews & Flinders (2015) have touched upon the idea of 'scrutiny creep' in a parliamentary context, which has seen the role of scrutiny continue to broaden organisationally in recent years, and this would apply here. Matthews and Flinders (2015) refer to scrutiny creep as where committees have sought an expansion of their competencies, mainly in relation to public appointment hearings but this also has credence on scrutiny more broadly. It can be argued that scrutiny creep is in response to the change in vocabulary that we have seen in scrutiny since the mid-1990s. It is about both organisational change, in terms of parliament and its committees broadening their remits but it also has an element of conceptual change as well. This is on the basis that scrutiny creep is partly driven by a desire for parliament to find new ways of holding the government accountable and trying to rebalance the power relationship between the executive and legislature. This has implications for our understanding of the concept, but also for this research, as these scrutiny and overview committees in local government were developed to mirror parliamentary select committees in the UK (Coulson & Whiteman, 2012; Martin, 2006). As such the understanding of scrutiny provided by the literature on local government points to a broader concept than the abstract academic definitions of scrutiny. It also suggests that our understanding of

scrutiny has evolved, as it was previously framed around the language of accountability and responsibility.

The literature relating to the examination of public appointments also adds further to the understanding of scrutiny in terms of promoting the idea that scrutiny also offers legitimacy to bodies, decisions and activities (Auel, 2007; Hazell, Chalmers, & Russell, 2012; Holzhacker, 2002). For example, Hazell et al. (2012) found that public hearings gave appointees a sense of greater legitimacy which comes through parliamentary endorsement. This is extended to other types of scrutiny, through parliament examining policy and legislation and eventually agreeing to it, thus potentially providing greater legitimacy to that policy/bill.

The enhancement of accountability was the main aim for the creation of departmental select committees in 1979 (House of Commons Select Committee on Procedure, 1978). Indeed in the debate leading to the creation of committees, the Leader of the House of Commons, Norman St John Stevas, noted that one of parliament's first roles is 'to subject the executive to limitations and control' and that in the 20th Century 'parliament is not effectively supervising the executive' (HC Deb 25 June 1979, cc.36-77). It also remains the overall aim of departmental select committees to this day (House of Commons Liaison Committee, 2012). This again supports the argument that there has been a linguistic change but also an organisational one too, illustrated by the alteration of the core tasks of departmental select committees (House of Commons Liaison Committee, 2012) (see pages 64-65), supporting the idea of scrutiny creep (Matthews & Flinders, 2015). However it can be argued that these additional roles are supplementary to scrutiny rather than an integral part of it. Policy development is another role. This role has developed from the scrutiny of government policy and a desire to improve the policy making process. Again this extends our previous understanding of the concept. These committees have also expanded their remit to further enhance accountability through the scrutiny of government appointees, developed with the aim of enhancing accountability in the appointments process but also legitimacy (Hazell et al., 2012; Matthews & Flinders, 2015).

It is evident that accountability has an important relationship with scrutiny. This is down to the fact that scrutiny has previously been framed around the language of accountability (McAllister & Stirbu, 2007). While political events have led to linguistic change, practitioners, through organisational change have helped to develop our understanding of the concept over time and as such, scrutiny is no longer solely focused upon achieving accountability. Indeed White (2015b) notes that plenty of scrutiny does not involve accountability.

Further links between these two concepts come from the use of the term oversight, frequently used interchangeably with scrutiny. The literature on oversight suggests it is about control (Lees, 1977; McCubbins & Schwartz, 1984; Rockman, 1984) while Yamamoto (2007) defines it as 'the review, monitoring and supervision of government and public agencies, including the implementation of legislation and policy'. Such a definition has links to the academic definitions of scrutiny (such as White (2015b: 3) 'an activity which involves the examining of government expenditure, administration and policies'). It also describes a particular type of scrutiny, as it does not encompass all the components of scrutiny discussed previously. This definition also suggests there are some links between accountability and the holding of institutions to account, supporting the idea that accountability has a relationship with scrutiny and oversight might be the specific name for that particular type of scrutiny. This also has implications for local government, as scrutiny is described as the accountability side of its role. Perhaps it would be better to use the terms overview and oversight. Having begun to discuss the links between scrutiny and accountability, it is an appropriate time to fully introduce the concept of accountability.

2.2 Accountability

Accountability is a complex and contested concept. Definitions of accountability very much depend upon the context in which it is applied. (Cheung, 2005; Mulgan, 2000; Sinclair, 1995). Accountability, like governance, has become one of the buzzwords of debates in politics, policy and administration (Bovens, 2005; Griffith, 2005). As the concept of accountability has become more widely used it has been

taken for granted and it is assumed that everyone knows and understands what is meant by the concept (Dubnick, 1998).

Accountability can be viewed firstly as a relationship and secondly as a relationship involving power and control. Indeed Mulgan (2000: 555) defines accountability as 'the process of being called to account, to an authority, for one's actions' while Barlow & Paun (2013: 8) defines it as 'the requirement to give an account for individual or organisational performance, actions or decisions to another body which then has the power to act on that information'. This definition is supported by Beetham (2006), Brenton (2014) and Pelizzo & Stapenhurst (2014).

In turn, this also implies that scrutiny involves a relationship too. If we consider that access to information is important then there must be some kind of relationship between the body undertaking scrutiny and the body from which information is being sought, otherwise there would be no access to information. With accountability including power and control, you can argue that this is what accountability adds to scrutiny. This relationship which comes from accountability will be engrained into scrutiny through mechanisms such as select committees, which aimed to rebalance the power relationship between the executive and legislature but which now do more than just hold the executive to account. Indeed, although accountability as a concept is not intrinsic to post-legislative scrutiny, it is prevalent within it through post-legislative scrutiny being undertaken by committees.

The processes of what it means to hold someone to account further suggests links between accountability and scrutiny, which can enhance our understanding of scrutiny. Holding a person or body to account usually involves three stages, the obligation to inform, the right to interrogate/investigate and the right to pass judgement (Bovens, 2005; Brenton, 2014; Mulgan, 1997). The first stage is a duty held by those who are accountable while the final two stages are rights belonging to those who undertake the accounting (Mulgan, 1997). This links back to the idea that scrutiny has a monitoring role which is a foundation for all scrutiny (Maer & Sandford, 2004). This is important for scrutiny, as without monitoring and the ability to seek and access information, it is difficult to see how any investigation or

examination could take place (March and Olsen, 1995). A general definition of accountability can thus be provided: a relationship of power and control in which an agent is required to give an account for performance, actions and decisions to a principal, which then has the power to act on that information.

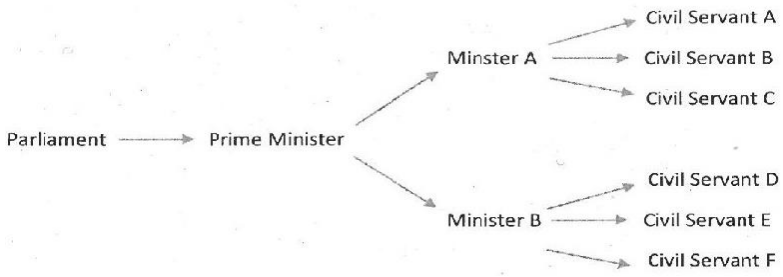
To better understand this concept and its links with scrutiny it is necessary to move on from abstract conceptual definitions. Dubnick (1998) outlines four types of accountability; legal, organisational, professional and political. Sinclair (1995) outlines five; political, public, managerial, professional and personal. However Sinclair (1995) does acknowledge that public and political accountability are complementary parts of the same process. In terms of this thesis, political/public accountability is most relevant.

Stewart (1984) notes that the concept of political accountability is a ladder which moves from 'accountability by standards to accountability by judgement' (Scarparo, 2008). However, while he notes five different types of accountability in this ladder, they could be better explained and presented in the context of this research, where accountability filters into the scrutiny undertaken by committees. For example, he notes accountability for probity and legality which aims to ensure that funds have been used according to previous plans, efficiency accountability through which value for money is determined and performance accountability which ensures that performance matches standards (Scarparo, 2008). These are all areas through which departmental select committees scrutinise the government and ultimately hold it to account.

Principal-Agent theory provides important insights into accountability, as it suggests what the accountability relationship looks like, and indeed what the scrutiny relationship looks like, at least in a political context. It therefore adds to our understanding of the concept. In terms of political accountability, the public servant (minister and/or civil servant) exercises power and authority on behalf of the elected representatives, who are directly accountable to the people. In regards to this thesis, there is a principal-agent relationship between voters and parliament, between parliament and the Prime Minister, between the Prime Minister and government ministers and also between government ministers and civil servants (see figure 2.1). Ministers are accountable to parliament and are

accountable for the actions of the civil servants in their departments (Scarparo, 2008). In this scenario the electorate would be the ultimate principal (Mulgan, 1997; Strom, 2000). In this case it is thus not a single relationship but rather a series of relationships (Beetham, 2006). In relation to post-legislative scrutiny, parliament would be the ultimate principal and the agents are government ministers and subsequently civil servants as they are ultimately responsible for the implementation of legislation and related policy.

Figure 2.1. Delegation and accountability under parliamentary government.



Source: (Adapted from Strom, 2000)

Beetham (2006) argues that the relationship between the voters and parliament is one of vertical accountability, while the relationship between parliament and the government is horizontal accountability. In terms of scrutiny, horizontal accountability is the most important. Brenton (2014) suggests that responsibility for actions is what links this chain (or series of chains depending upon how you view it) together. Principal-agent theory thus has implications for our understanding of scrutiny, if scrutiny is also a relationship then this would further suggest that accountability is the control within that relationship. Principal-agent relationships will be present, in all scrutiny, in some form considering that mechanisms such as select committees were created to address a power imbalance and a lack of control by parliament but now do more than just seek to control and limit the executive. For example, scrutiny involving policy development (which is a newer role) will involve such a relationship between bodies, despite the focus on cooperation because such relationships are engrained into the other roles which bodies, such as select committees, undertake.

This raises a number of issues, which will impact upon scrutiny. Principal-agent theory has implications for accountability and thus scrutiny, especially at the government department level with the delegation of tasks/responsibilities to civil servants. The lines of accountability begin to blur here because civil servants are not directly responsible to parliament and are restricted in what they can say/reveal during inquiries (Cabinet Office, 2014).

The movement from a government to a governance paradigm has impacted upon accountability and how it is conceptualised (Frahm & Martin, 2009). In the government paradigm, the executive is the major or sole actor who is responsible for both the creation and implementation of public policy. However, when it comes to governance models, the executive is only one of many actors, although it does play an important steering role (Frahm & Martin, 2009). This has implications for political accountability through parliament as it blurs the lines of accountability and suggests a hollowing out or weakening of accountability. This in turn has an impact upon scrutiny as well, if the lines of accountability become blurred, and scrutiny is the mechanism through which accountability is conducted, then it makes sense for scrutiny creep to occur, to try and find other areas of control and influence. Linked in with the blurred lines of accountability and the hollowing out of it also, are the Next Step reforms (or New Public Management initiatives) to the civil service introduced by Margaret Thatcher which blurred the lines of ministerial accountability within government departments with the creation of quangos and arms-length bodies to implement policy (Scarparo, 2008). All this has meant the concept of scrutiny has developed and changed from a greater focus upon accountability to an additional focus upon openness and transparency.

2.3 Responsibility

Links between accountability and responsibility were apparent in the previous discussion with Brenton (2014) suggesting that it is responsibility for actions that links the chain of accountability together. The aim of this section is to explore links between responsibility and scrutiny and, as a result identify how this enhances our

understanding of these concepts. As with accountability, responsibility is a contested concept however, not necessarily to the same extent.

The definitions of responsibility begin to illustrate links between the concepts and start to enhance our understanding of scrutiny. Thomas (1998: 351-2) outlines three definitions of responsibility. In the first instance he states that responsibility can be defined as 'an agency in which an actor is given a goal and the power to cause events to occur and is guided by a sense of obligation'. His second definition is 'an authoritative relationship in which an agent is answerable to a principal for performance and is subject to sanctions for failure'. His final definition is, 'an obligation that is moral and separate from the authoritative relationship'.

The first and third definitions point to responsibility involving an obligation. This raises the question of whether responsibility is thus an obligation in the accountability relationship, as how can you be held accountable for the work you carry out, if you are not responsible for it? While the second definition does not explicitly mention an obligation, if you are answerable to a principal then surely you have an obligation to provide that answer. This is important for scrutiny if, as we have argued, the ability to gather and access information is a foundation of all scrutiny, then the obligation to answer questions and provide information is important in scrutiny succeeding.

There are two further definitions which are worth addressing here, as they both reinforce points made previously in this section. Stabell (2014) supports the idea that responsibility is about an obligation, 'the obligation to make up or to compensate for the harm one has caused through one's own fault'. Finally the definition provided by Johansson (1994: 244) raises the point again regarding the obligation to provide an answer 'being the person who should respond or provide an answer or guarantee something'. This helps to enhance our understanding of scrutiny as responsibility adds an obligation to the accountability relationship, which thus impacts upon scrutiny.

In the UK, the concept of responsibility, especially in the context of politics, is understood through the prism of ministerial responsibility. It's important, due to the political nature of this research, to assess ministerial responsibility more

specifically. Ministerial responsibility is a convention which underpins the UK Parliament's ability to hold ministers and thus the executive to account. This supports the idea that responsibility (as an obligation) is a necessary component of accountability. This constitutional mechanism is split into two distinct areas, collective ministerial responsibility and individual ministerial responsibility. Collective ministerial responsibility is the constitutional convention by which cabinet and junior ministers must support government policy in public and in parliament. Should the convention be broken, it is expected that the offending minister will resign (Brenton, 2014). This could more accurately be called speaking with one voice, which in turn helps to keep the lines of accountability clear. Individual ministerial responsibility on the other hand is the mechanism by which ministers are responsible to parliament for everything that happens within their department. This does not necessarily mean that ministers must resign every time there is a problem but that they must be willing to inform or explain, apologise or take action (Gay, 2012). Resignation is the final option. This convention also applies to their own personal conduct as ministers (Brenton, 2014). While ministers can be held accountable for issues that they are not perhaps personally responsible for, the general principle sees them held accountable as the political head of the department. Without such a principle it is possible that the lines of accountability become blurred. There is a distinction to be made here between personal and political/constitutional responsibility.

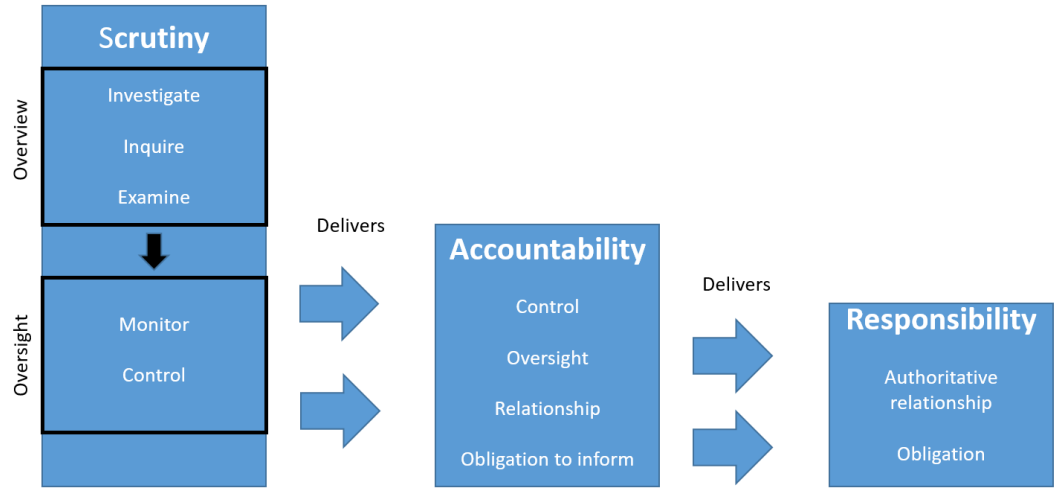
There is a difference in the understanding and interpretation of ministerial responsibility between parliament and government. Government focuses on its literal meaning, whereas parliament views it through the prism of parliamentary sovereignty (Woodhouse, 1994). In the case of select committees, the government believes that select committees can hold ministers responsible but only within the conventional framework of restrictions developed by modern government (Woodhouse, 1994). While on the other hand committees view ministerial responsibility through the prism of the sovereignty of parliament and its inherent right to scrutinise and control government (Flinders, 2001; Woodhouse, 1994). This difference in interpretation and understanding of the convention impacts upon the way both parliament and government approach responsibility and accountability

and thus it impacts on scrutiny. This difference in interpretation has an impact upon the aims and objectives which scrutiny has. Here government sees responsibility as providing answers but in no way constraining or sanctioning government, whereas parliament views responsibility through its connection to accountability, in the sense that a minister is responsible for the actions of his department and as a result is accountable for the actions of his department and can face sanctions. Indeed here it appears that parliament and government attach different aims, not just to responsibility but also to scrutiny.

In a 2007 report, the House of Commons Public Administration Committee (2007: 16) noted that "there is no consensus, either among politicians or officials, about the way in which ministerial and civil service responsibilities are divided. This means there can be no consensus about where accountability should lie". As such it is perhaps arguable that there has been a hollowing out or weakening of accountability with disagreements over where accountability should lie. This goes to show again that responsibility has an important relationship with accountability and the need to speak with one voice is vital to clearing the lines of accountability. It is perhaps this hollowing out of accountability, through the problems with responsibility that has helped to additionally advance the linguistic changes to the concept of scrutiny and also led to scrutiny creep and the need for committees, especially in the House of Commons, to expand the competences in order to find new routes to influence and scrutinise government.

Figure 2.2 is designed to illustrate how the three concepts link. As abstract concepts, scrutiny, accountability and responsibility are separate but in a parliamentary context they are interlinked and often hard to distinguish. Therefore the institutional context is vital in the understanding and operationalisation of concepts.

Figure 2.2: Conceptual definitions and their links



We noted earlier in this chapter that scrutiny involves an investigation, inquiry or examination. Through addressing the broader political/parliamentary literature on scrutiny we have also noted that it involves monitoring and access to information, as per the literature on the Joint Committee on Human Rights, control and oversight, as per the literature on local government, and scrutiny of the EU by national parliaments. It was through this discussion that the first links between scrutiny and accountability were made. We noted that accountability was about control and that it was a relationship. From the discussion about responsibility we noted that it was the obligation in that relationship (e.g. the obligation to provide information to select committees).

There were obvious links here with scrutiny, in terms of oversight and control forming parts of scrutiny, but not all scrutiny. As White (2015b: 3) has noted 'plenty of scrutiny does not involve accountability but some forms of scrutiny do take place in the context of formal accountability relationships'. We therefore concluded that there is a relationship between accountability and scrutiny, and that relationship helps to categorise a certain type of scrutiny. Indeed, accountability and scrutiny are different concepts in an abstract sense, but accountability is delivered through the undertaking of scrutiny and some of their core components can be seen to be similar, in a parliamentary context. However, the literature on accountability also touched upon responsibility, and that it is

responsibility that links the chains of accountability together. The literature on responsibility noted that it was an obligation and an authoritative relationship. An obligation that provides authority within the accountability relationship, as such responsibility is a core part of political accountability, as without responsibility the lines of accountability become blurred. Therefore, through accountability, responsibility is also delivered through scrutiny (i.e. the obligation within an accountability/scrutiny relationship).

We will now address the aims and objectives of these concepts, considering these objectives in terms of how they help us to categorise the different types of scrutiny available, but also solidifying the links between the concepts of accountability, scrutiny and responsibility.

2.4 Aims and objectives

2.4.1 Scrutiny

While we have a deeper understanding of the broader concept of scrutiny, discussion has shown that it includes different emphases of scrutiny, whether that is monitoring, policy development or accountability. The aims and objectives associated with the concept are also important in developing an understanding of it and should aid in the categorisation of the concept. It is clear that the work of the Joint Committee on Human Rights and the work of scrutiny of the EU, by national parliaments have different aims and as such, had we taken each of these positions on their own we would have a different understanding of what scrutiny is. Therefore the aims and objectives attached to scrutiny are important in being able to understand the broader concept and to be able to operationalise it.

Maer & Sandford (2004), White (2015b) and Yamamoto (2007) identify improvement in processes and outcomes as one of the aims of scrutiny, suggesting that scrutiny should be constructive. Unsurprisingly as a type of scrutiny, this reflects the aims of post-legislative scrutiny as set out by the Law Commission (2006), in that it should locate and disseminate good practice. This is supported further by Greer & Sandford (2003) and Maer & Sandford (2004) who suggest that

scrutiny should be constructive and should show value for money. At the same time Corrigan & Charteris (1999), Greer & Sandford (2003), Hull (2012), Pelizzo & Stapenhurst (2014) and White (2015b) identify holding bodies to account for their actions, as a further aim of scrutiny. This supports the discussion in previous paragraphs that accountability has a relationship with a distinct type of scrutiny (oversight).

The following aims are those set out by MacMahon (1943) and Yamamoto (2007); scrutiny should ensure administrative compliance with statutory intent, should guard against harsh and callous administration, should check dishonesty and waste and should evaluate implementation in accordance with legislative objectives. These aims are all different types of scrutiny. The latter half of this aim links closely to post-legislative scrutiny and the aims and objectives of it as set out by the Law Commission (2006) and by De Vrieze & Hasson (2017). These aims do not explicitly suggest that scrutiny should be a constructive action. Rather they suggest that it should be about checking power and restraining it. These aims also suggest control through key words such as ensure, guard and check. These aims and objectives further support the argument that there is a relationship between scrutiny and accountability. However, while the aims and objectives just outlined may not imply something constructive, from meeting them, there should be a constructive outcome, thus supporting the idea that scrutiny (including when it involves accountability) is a constructive concept. For example, when guarding against harsh and callous administration and acting as a check on dishonesty and waste, good government should be being promoted at the same time.

There is also some credibility to the idea that these aims and objectives are reliant, to some extent, upon each other being met. If you hope to hold bodies to account for their actions, you would also expect that if poor decisions had been made, that improved processes and outcomes would follow from that. Indeed Maer & Sandford (2004) suggest a further three aims which can be interlinked with the other aims and objectives outlined above. In their view, scrutiny should be independent, objective and inclusive. This is something scrutiny should be in order to produce its constructive outcomes. To be able to review and question decisions, it is necessary to first be able to seek information on key decisions which in turn is

important if you wish to check dishonesty and waste, improve processes and outcomes and hold bodies to account for their actions. As was argued earlier, the seeking of information is a necessary component of scrutiny. Indeed Geddes (2017) argues that oral evidence sessions held by committees serve as the foundation for conducting scrutiny. This supports the argument that the seeking of information and the monitoring involved here are common across all types of scrutiny. There is thus a core concept of scrutiny, which was defined earlier in this chapter, it is through this core concept that aims and objectives can be applied and types of scrutiny emerge.

Figure 2.3: Concepts, aims and types

We will apply these aims and objectives to categories once the aims and objectives of accountability and responsibility have been assessed.

2.4.2 Accountability

While the abstract concepts are separate, in a parliamentary context scrutiny and political accountability are clearly interlinked. The aims and objectives of political accountability provide further links between the two concepts in a parliamentary context. This connection matters as it is through these links that scrutiny becomes the vehicle by which accountability is delivered. The idea that accountability, should control abuse, corruption and misuse of public power (Bovens, 2007; Bovens, Schillemans, & Hart, 2008; Flinders, 2001; Uhr, 1993) refers to the aims of scrutiny as outlined by MacMahon (1943) and Yamamoto (2007), in particular that scrutiny should guard against harsh and callous administration. This also provides further support to the idea that accountability is a relationship about control. There is also further consensus that accountability should lead to an improvement in the efficiency and effectiveness of public policies and the enhancement of the

legitimacy of government (Bovens, 2007; Bovens et al., 2008; Flinders, 2001). This particular aim is linked the first objective of scrutiny, that it should improve processes and outcomes (Maer & Sandford, 2004; White, 2015a). The aim that accountability should provide assurance that public resources are being used in accordance with publicly stated aims and that public service values are being adhered to (Bovens et al., 2008; Flinders, 2001) supports the idea that scrutiny should check dishonesty and waste (MacMahon, 1943; Yamamoto, 2007). One final aim which refers to scrutiny is that accountability should be open and transparent (Brenton, 2014) which supports the idea that scrutiny should be independent, objective and inclusive. While they are not exactly the same, they are ideas which go hand in hand. The aims which match most closely are the ones which are also the aims of the type of scrutiny that we would term oversight, (e.g. should control of abuse, corruption and misuse of public power) which further supports the argument that oversight is a particular type of scrutiny which involves accountability. It also supports the argument that there are aims of scrutiny which operate together across the different types of scrutiny, such as the aim to improve processes and outcomes.

Accountability through oversight can be seen as an essential part of scrutiny, as without an accountability relationship between a person being held accountable and a body doing the accounting, it would leave scrutiny relatively toothless and unable to meet a number of its aims and objectives. The link between the two is perhaps best expressed by Mulgan (2003) when he suggests that the accountability of government can be increased when the executive is more open to legislative investigation. To increase accountability you must increase scrutiny (or more specifically oversight), as without the power to investigate and acquire information how can a body be truly held accountable for their actions (Brazier, 2000; Mulgan, 2003) unless information is freely available. Indeed Abels (2017) argues that there can be no control without information and informational asymmetries impact upon the scrutiny relationship, as such the information needs to be timely and sufficient.

This section has shown further links between scrutiny and accountability when it comes to their aims. As accountability operates outside of the political arena, scrutiny and accountability are not the same, however there are similarities between the two. As the third concept of this framework is responsibility, its aims will now be assessed before formally mapping the links between the concepts, via their aims.

2.4.3 Responsibility

The aims and objectives of responsibility shed more light on the links between these concepts and as a result further enhance our understanding of scrutiny. One objective which has been attached to the concept (collective ministerial responsibility) is to speak with one voice (Judge, 1984; Marshall, 1989). This objective supports the idea that responsibility helps to make the lines of accountability clearer, especially as speaking with one voice means that the government can be held collectively responsible. In this case responsibility enhances accountability. This has implications for scrutiny and the ability to effectively hold persons and bodies to account. Although it doesn't always make the lines of accountability clear, for example speaking with one voice would make it harder to find people individually responsible.

One further objective is to avoid misgovernment, misjudgement, and promote good decision making (Brazier, 1997; Uhr, 1993). This particular objective has connections with scrutiny through the aim to improve processes and outcomes (promote good decision making) and more specifically to guard against harsh and callous administration (avoid misgovernment and misjudgement). However, it is also connected to accountability through the control of abuse and corruption. This again points to the fact these concepts do operate together. Another objective which is connected to scrutiny, and enhances our understanding, is to provide information and answers about activities and actions (Judge, 1984; G Marshall, 1971), the role of scrutiny is to seek information and the role of responsibility here is to provide it, again this suggests that responsibility is an obligation.

Figure 2.4. Conceptual aims and their links

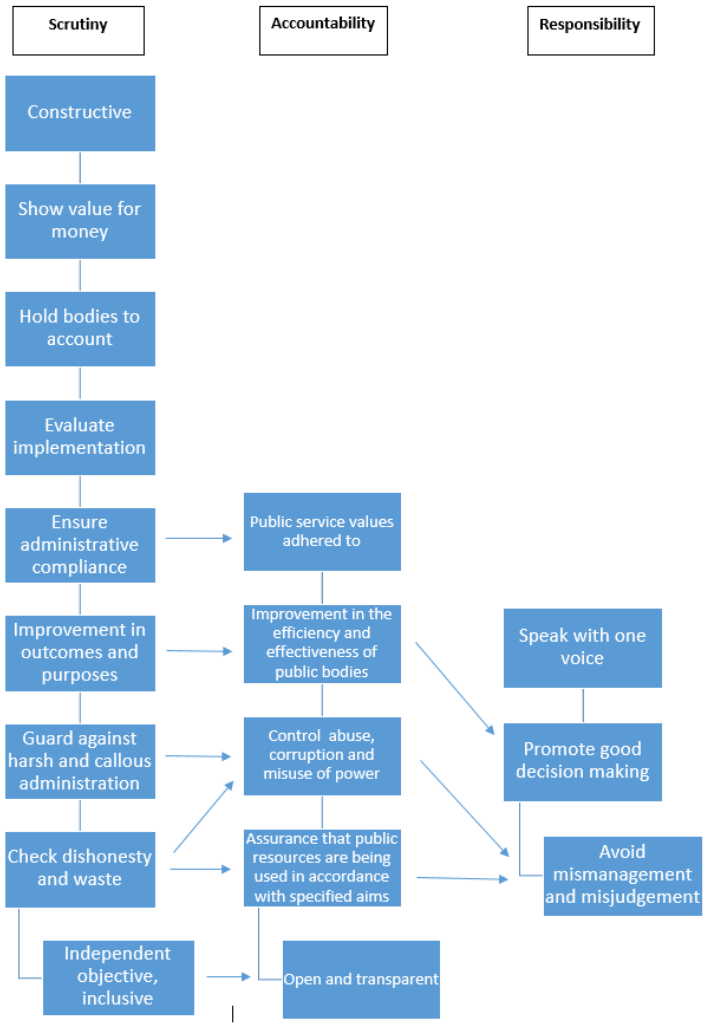


Figure 2.4 shows the aims and objectives for each of the three concepts and is designed to highlight the connections between the three concepts. As noted above the aim of scrutiny to be independent, objective and inclusive are linked to open and transparent as the aim of accountability. Additionally, to improve outcomes and processes is linked to the aim of accountability to lead to improvements. Indeed, these links help to support the evidence presented previously that there is a relationship between these three concepts and that relationship involves accountability and responsibility operating within the broader concept of scrutiny, depending upon the type of scrutiny being deployed. While they are not the same concepts, and can operate outside of the political arena and outside of scrutiny, they do align when undertaking particular types of scrutiny. As White (2015b) has noted, plenty of scrutiny does not involve accountability, however some of it does.

While it would not be correct to suggest that accountability is a part of scrutiny, the concept does operate with it in certain instances.

The literature presented in the previous sections suggests that there are different types of scrutiny, from the definitions and aims and objectives. The next section aims to support the continued development of our understanding of scrutiny through categorising scrutiny into its different types.

2.5 Typology of scrutiny: Oversight vs overview

The aim of this section is to present a typology of scrutiny which builds upon the discussion in the previous sections. The literature on scrutiny in local government suggests that scrutiny is separated into two areas, that of scrutiny and that of overview, with the literature suggesting that holding the council executive to account is the main aim of scrutiny. Considering the links to oversight here, it is a better term to use, rather than scrutiny which represents a more abstract idea. Overview, on the other hand covers the aspect of support which non-executive councillors give to the executive and policy making process (Ashworth & Snape, 2004; Martin, 2006). This then became the foundation for the creation of a new typology, as it provides scope for oversight to be that particular, distinct type of scrutiny that the literature describes but it also allows for the other types of scrutiny to be taken into account as well.

The aims and objectives discussed in previous sections also lend themselves to the idea that there are two distinct types of scrutiny, oversight and overview. The local government literature provides a particularly apt foundation for developing a typology of committee scrutiny, at least in the UK Parliament, as local government committees are designed to mirror the committee system in the House of Commons. Table 2.1 shows how these aims and objectives of scrutiny (as well as accountability and responsibility) support these different types of scrutiny.

Table 2.1. Aims and objectives of scrutiny via type of scrutiny.

Oversight	Overview
Hold bodies to account	Improve outcomes and purposes
Evaluate implementation	Constructive
Ensure administrative compliance	Independent, objective and inclusive
Guard against harsh and callous administration	
Check dishonesty and waste	
Speak with one voice	
Improvements in the efficiency and effectiveness of public bodies	
Open and transparent	

Table 2.1 shows that there a number of aims and objectives that fit into these two categories but that oversight has a broader range of aims and objectives. This supports further the idea that oversight is a particular type of scrutiny which has close links to accountability and responsibility. Indeed, when scrutiny is exercised with the aim of holding bodies or persons responsible and to account, that is oversight. When scrutiny is exercised without additional goals it is overview.

However, the problem with only having two types of scrutiny is that when taking into account other areas of scrutiny (such as scrutiny of the EU by national parliaments), overview becomes a very big category, essentially a catch-all category, and there is thus a need to separate these into other types. Otherwise, all that would be left is oversight and all the other types within one category. Sandford (2005) argues that there are five types of scrutiny; policy, accountability, audit, budget scrutiny, and legislative scrutiny. He also suggests that policy scrutiny and accountability are the mainstay of the scrutiny process (Sandford, 2005). However, there is the question of whether the two areas overlap. For example, when examining policy it is perfectly plausible that the body undertaking the scrutiny will be looking to hold the executive to account but also seeking to influence policy making and development. There is also an issue here with audit being a separate type of scrutiny, especially when the National Audit Office (responsible for auditing government departments and executive agencies) describes its role as being one of supporting the holding of government to account (National Audit Office, 2018).

Another example revealing that there is potentially an overlap between overview and oversight is that of post-legislative scrutiny. Indeed post-legislative scrutiny, as defined in chapter one, would draw upon the aims and objectives of both overview and oversight. Post-legislative scrutiny, as noted in chapter one, does involve some level of accountability (and as such oversight) as it is designed to evaluate the implementation of legislation, ensure administrative compliance with that legislation. If there are problems with the legislation under review it is also expected to improve processes and outcomes as well as be constructive. In the typology below an additional category has been created to take into account this type of scrutiny.

Table 2.2. Typology of scrutiny: Type and definition

Type	Definition	When Type Occurs	E.g.
Oversight (type 1)	The review, monitoring and supervision, of government and public agencies (usually including the implementation of legislation and policy) with the aim of holding them to account, post actions taking place[1].	Post (action)	Examination of expenditure and performance/Public appointments/Departmental Strategy.
Overview (type 2)	The review and monitoring of the policy making process with the aim of supporting the executive and legislature in policy development and in their other operations, prior to actions being taken.	Pre (action)	Pre-Legislative Scrutiny
Overview & Oversight (type 3)	A hybrid (including elements of type 1 and type 2). This involves, the review, monitoring and supervision, of the executive in policy development with the aim of holding the executive to account for their policy actions and also supporting the executive in future policy development.	Pre/Post (action)	Post-Legislative Scrutiny/Scrutiny of the EU by National Parliaments/ Examination of policy.
Legislative (type 4)	The examination of government and private members bills (including primary and secondary legislation), with the aim of ensuring such bills are sufficiently prepared to enter the statue books.	Current (action)	Legislative Scrutiny

[1] This includes both ex ante and ex post accountability. Ex-post meaning accountability after the outcome, ex-ante meaning accountability running simultaneously through a project (i.e. looking back at completed work but also questioning future plans).

This typology does two things; a) it creates categories of scrutiny which are more closely aligned to this research and b) it builds upon previous typologies, addressing their flaws. This new typology has four categories; oversight, overview, overview/oversight and legislative.

The difference between these first two categories is the focus upon accountability and policy development, which comes from the foundations provided by Ashworth & Snape, (2004) and Sandford, (2005). However, there is room for overlap, as these two categories do not catch all types of scrutiny. Indeed, the two categories outlined thus far do not account for scrutiny such as the scrutiny of the European Union by national parliaments, which as discussed in the section of scrutiny, involves both a policy development and an accountability element. Nor do these two categories hold another important type of scrutiny; post-legislative scrutiny. Post-legislative scrutiny may not focus solely upon accountability and certainly not direct accountability to a minister, as the legislation under review might have been passed by a previous administration. However, there is still accountability present in terms of the department being responsible and held accountable for the implementation and the drafting of legislation, regardless of whether it was drawn up under a previous government. The government would also be responsible and accountable for making any necessary changes to legislation, again regardless of whether they had anything to do with it originally. However there is also the potential for a policy development role for post-legislative scrutiny as well. This is why a third type of scrutiny has been created to encompass these types of scrutiny which do not necessarily fit into type one or type two.

The third type of scrutiny has been titled overview/oversight, as it combines elements of types one and two. Here examples include; post-legislative scrutiny and scrutiny of the EU by national parliaments. As this category combines elements from both type one and two, in terms of actions, it is concerned in some instances as pre and some as post decision making.

However, one final category of scrutiny is necessary. That of legislative scrutiny, legislative scrutiny is distinct to the first three categories as they are focused upon

scrutiny of government departments whereas legislative scrutiny is focused upon the scrutiny of bills. Legislative scrutiny is defined as, the examination of government and private members bills (including primary and secondary legislation), with the aim of ensuring such bills are sufficiently prepared to enter the statue books. In this instance, in terms of discussing when this type of scrutiny takes place, it is current, on bills (both government and Members) prior to them becoming Acts of Parliament. The important distinction here is that it is the scrutiny of bills and not acts, the focus is upon suggesting potential amendments on managerial and political grounds (Sandford, 2005). It is not focused upon holding government departments to account but rather quality control. This type of scrutiny in the UK Parliament has its own system of scrutiny separate from departmental select committees.

Table 2.2 also shows when the action occurs and examples of scrutiny taken from the core tasks of departmental select committees. Oversight occurs post action and other examples of this would be questions to ministers during departmental question time but also debates on government policy. Overview is pre-action taking place as scrutiny, such as pre-legislative scrutiny, is designed to help develop policy and legislation before it is formally introduced. Overview/Oversight can occur pre and post action, with all three examples there can be an element of holding the government to account for their actions but also a supporting role in policy development. It is a different pre and post action to oversight as the pre action does not necessarily relate just to ex ante accountability but also to policy development. Finally, legislative focuses on current action, i.e. on legislation that is making its way through the legislative process.

Table 2.3. Typology and presence of accountability and responsibility

Scrutiny Type	Name	Accountability	Responsibility
Type 1	Oversight	High	High
Type 2	Overview	Low	Low
Type 3	Overview/ Oversight	Medium	Medium
Type 4	Legislative	Low	Low

Throughout the analysis of accountability and responsibility, discussion turned to what these two concepts add to scrutiny. Table 2.3 shows the strength of these concepts within scrutiny in each of the typologies outlined above.

With regards to accountability and parliamentary scrutiny, oversight is a term which was used long before scrutiny became popular. Consequently, even though accountability is not the aim of type two and type four scrutiny, there is an underlying residue. For example with select committees, their main function, when set up, was to hold the government to account and to rebalance the power relationship between government and parliament. However their roles have developed over time but that original foundation of holding the government to account is present in virtually all of their activities, even if they do not hold that as the main aim of what they are trying to achieve. From this, oversight, because of its close links with accountability, has the strength of accountability at high, overview/oversight at medium because it contains an element of oversight, and overview and legislative have it at low rather than none. This is because accountability and the desire to hold government to account is engrained into the institution.

Responsibility is present in all types of scrutiny, as has been assessed in the section on responsibility. Here the table has oversight as high, because responsibility is a necessary component of oversight in order to hold the government accountable, as in order to be held politically accountable you need to be responsible first. In type three it is argued to be at medium, because in terms of overview/oversight, the element of oversight is still present. It is low for overview (type 2) because of the need for access for information (a foundation of scrutiny). In legislative, it is argued to be low, as the focus of this scrutiny is not as closely directed at government and access to information may come from other outside bodies presenting evidence, without direct request, through calls for evidence during public bill committees.

The overall aim of departmental select committees, as noted by the House of Commons Liaison Committee is to hold ministers and departments to account for their policy and decision making (House of Commons Liaison Committee, 2012).

However in 2002 a set of common objectives, core tasks, of select committees were created to ensure committees were aware of their broad range of responsibilities. The core tasks were reviewed in 2012 as some were deemed to be out of date and new responsibilities were absent. The core tasks pre-2012 are set out in table 2.4.

Table 2.4: Core tasks of departmental select committees pre-2012

	OBJECTIVE A: TO EXAMINE AND COMMENT ON THE POLICY OF THE DEPARTMENT
Task 1	To examine policy proposals from the UK Government and the European Commission in Green Papers, White Papers, draft Guidance etc., and to inquire further where the committee considers it appropriate.
Task 2	To identify and examine areas of emerging policy, or where existing policy is deficient, and make proposals.
Task 3	To conduct scrutiny of any published draft bill within the committee's responsibilities.
Task 4	To examine specific output from the department expressed in documents or other decisions.
	OBJECTIVE B: TO EXAMINE THE EXPENDITURE OF THE DEPARTMENT
Task 5	To examine the expenditure plans and out-turn of the department, its agencies and principal NDPBs.
	OBJECTIVE C: TO EXAMINE THE ADMINISTRATION OF THE DEPARTMENT
Task 6	To examine the department's Public Service Agreements, the associated targets and the statistical measurements employed, and report if appropriate.
Task 7	To monitor the work of the department's Executive Agencies, NDPBs, regulators and other associated public bodies.
Task 8	To scrutinise major appointments made by the department
Task 9	To examine the implementation of legislation and major policy initiatives.
	OBJECTIVE D: TO ASSIST THE HOUSE IN DEBATE AND DECISION
Task 10	To produce reports which are suitable for debate in the House, including Westminster Hall, or debating committees.

(Source: House of Commons Liaison Committee, 2012)

The core tasks of departmental select committees are designed to be taken into account by committees when they are planning their work programmes. However, it is not expected that all committees will meet every single one, for example, committees with a large amount of legislation to deal with will simply not have the time to cover everything (House of Commons Liaison Committee, 2012). That being said, committees are expected to try and meet these core tasks and report back to the Liaison Committee at the end of each session in order to reveal which core tasks have been met and which have not.

Table 2.5: Core tasks of departmental select committees post-2012

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	
Task 1: *Strategy*	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 ***[Oversight]***
Task 2: *Policy*	To examine policy proposals by the department, and areas of emerging policy, or where existing policy is deficient, and make proposals ***[Oversight & Overview]***
Task 3: *Expenditure and Performance*	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 ***[Oversight]***
Task 4: *Draft Bills*	To conduct scrutiny of draft bills within the committee's responsibilities ***[Overview]***
Task 5: *Bills and Delegated Legislation*	To assist the House in its consideration of bills and statutory instruments, including draft orders under the Public Bodies Act. ***[Legislative]***
Task 6: *Post-Legislative Scrutiny*	To examine the implementation of legislation and scrutinise the department's post- legislative assessments ***[Oversight & Overview]***
Task 7: *European Scrutiny*	To scrutinise policy developments at the European level and EU legislative proposals. ***[Oversight & Overview]***
Task 8: *Appointments*	To scrutinise major appointments made by the department and to hold pre-appointment hearings where appropriate. ***[Oversight]***
Task 9: *Support for the House*	To produce timely reports to inform debate in the House, including Westminster Hall, or debating committees, and to examine petitions tabled. ***[Overview]***
Task 10: *Public Engagement*	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 ***[Overview]***

(Source: House of Commons Liaison Committee, 2012)

In order to operationalise the typology, these core tasks were placed into table 2.6 in order to show where they fit within this typology. The pre-2012 and post-2012 tasks (House of Commons Liaison Committee, 2012) were placed together and table 2.6 shows that all ten of the select committee tasks (which now cover a broad area) fit into the categories provided here in this typology. What is also worth noting is the shift in where the tasks are placed in pre and post-2012 lists. With the movement towards overview post-2012, it is worth questioning whether this is evidence of the scrutiny creep (i.e. where committees have sought an expansion of their competences) which was discussed in the section on scrutiny. Although it might be better argued that part of the reason for the renewed core tasks was that scrutiny creep had occurred and as such with an expansion of committee

competences over time the previous tasks were no longer up to date. It might rather be termed overview creep in which committees are moving beyond the traditional accountability role, which is their main aim. Such movement could be a response to committees trying to find new roles to influence government, as they do not have the power to force governments to do anything. The idea being that while oversight may have been the main focus of scrutiny prior to the end of the 20th Century, this has now begun to change as the focus has shifted to other areas.

Table 2.6. Typology and departmental select committee core tasks

Scrutiny Type	Name	DSC Core Tasks (Pre 2012)	DSC Core Tasks (Post-2012)
Type 1	Oversight	4, 5, 6, 7, 8	1, 3, 8
Type 2	Overview	2, 3, 10	4, 9, 10
Type 3	Overview/Oversight	1, 9	2, 6, 7,
Type 4	Legislative	N/A	5

The aim of this section has been to create a typology of scrutiny which is better aligned to this thesis and which answers the questions raised in the analysis of scrutiny. A further aim has been to place post-legislative scrutiny within the broader system of scrutiny undertaken in parliament. In the process of putting together this typology, it has been able to show that there is evidence for the idea of scrutiny creep. It has also helped to answer questions which arose out of previous sections, that if oversight is a particular and distinct type of scrutiny, then what are the other types of scrutiny. This chapter has so far focused upon the conceptual and theoretical side of accountability, scrutiny and responsibility. However, there is a need to address the literature on scrutiny in practice, in relation to the UK Parliament and its committees.

2.6 Scrutiny in the UK Parliament

As the focus of this thesis is on the post-legislative scrutiny undertaken by committees, it is important to address some of the literature on committees in the UK Parliament. The literature on committees can provide an insight into the challenges and practicalities of undertaking scrutiny in a parliamentary setting.

There are a number of mechanisms available to parliament to undertake scrutiny. Not all are suitable for undertaking post-legislative scrutiny. In terms of debates, the rapid response required from ministers and the level of concentration in having to listen to numerous lengthy speeches can mean that responses might not always take into account everything that has been said and all the issues raised. However, debates do not necessarily take place in isolation and government ministers and their civil servants will have some understanding of what the MPs of different parties might say and therefore will focus upon a party's general thrust rather than all specific points raised by Members. It is not the most appropriate way of undertaking post-legislative scrutiny, especially if the focus is on technical details which require deeper thought. However, debates can be used to place the particular issue such as legislation requiring review on to the political agenda, and as a forum for airing views. Parliamentary questions can be a useful mechanism for highlighting particular issues, such as the impact and implementation of legislation. They can also be useful in bringing issues to a minister's attention and putting issues on to the agenda. However, as with debates, questions are not the most appropriate way of undertaking detailed scrutiny, especially in the House of Commons where backbench MPs are unable to ask follow up questions. Urgent questions in the House of Commons also allow for a series of questions on a particular topic, which again could be used to place issues on to the agenda. However, as with debates, parliamentary questions are not the most appropriate way of undertaking post-legislative scrutiny as the length of responses, either in writing or orally are restricted and as such so is detail.

The ability of committees to hold inquiries and hold one off evidence sessions means they are better equipped to undertake detailed scrutiny. It means there can be a more sustained questioning of ministers and other interested parties, which the other mechanisms do not allow for. Committees are also suitable for undertaking post-legislative scrutiny, as a working relationship should already be developed between departments and committees in the House of Commons in their usual day to day work. White (2015c) argues that this relationship is key to committee influence. This would allow a committee to have more influence than an individual member asking a question in the chamber which can be easily

deflected. The ability of committees to produce reports which the government is then required to respond to in writing, within two months, is a further advantage of committees, as governments must respond to their findings and recommendations and thus must be seen to consider them. It is for these reasons why select committees are the focus of this research on post-legislative scrutiny. While the other mechanisms could be useful for getting post-legislative scrutiny or the issues around it on to the agenda, it is select committees who are most able to undertake comprehensive scrutiny and see results, mainly through their broadly consensual nature and working relationship with government departments.

2.6.1 House of Commons – Departmental select committees

The Hansard Society (2001), as with other academics such as Longley & Davidson, (1998), Shaw, (1998) and Strom, (1998) regard departmental select committees as the main vehicle for promoting a culture of scrutiny and accountability. Select committees in the UK undertake a range of functions (see table 2.5).

Select committees perform an important scrutiny function but perhaps their success in holding the executive to account comes from the fact that from their creation through to 2011 these committees did not have power over things which greatly matter to government's survival, such as the passage of legislation and the budget. As they are less of a threat to the passage of government bills and the government's survival, they are treated in a different way to the chamber (Giddings, 1994; Hansard Society, 2001). This also suggests that they have soft power rather the hard power, in comparison to committees in the United States Congress. By hard power we mean the ability to coerce (e.g. power over the purse, the power to subpoena) and by soft power we mean the power to achieve goals through persuasion rather the coercion (e.g. power to embarrass) (Chafetz, 2017).

However it could be argued that since 2011, and the passage of the Fixed Term Parliaments Act, little stands in the way of a government's survival anymore, other than a vote of no confidence initiated under the requirements of that Act. While governments may not be impressed by critical committee reports, they very rarely threaten their existence, due to the bi-partisan nature of select committees but also

because, outside of parliament, these committee reports generally do not receive much attention. This all comes down to power, as noted above these committees, generally speaking, do not have coercive (hard) powers and instead must rely on the power to persuade (soft power) (Russell, 1986; Gordon & Street 2012; Heywood, 2013). However despite this governments are required to respond within 60 days to a committee report. From this committees have been able to deepen the accountability and scrutiny of the executive by adding a new dimension to previous traditional measures of scrutiny. This gives credence to the argument as noted by Matthews & Flinders (2015), that scrutiny creep has occurred. The deepening of accountability and scrutiny of the executive, suggests that accountability has a relationship with that broader scrutiny relationship, in this case, between committees and government departments. This is an important distinction for committees as their function is to scrutinise the expenditure, policy and administration of government departments and their related quangos and executive agencies (Barlow & Paun 2013). The emphasis was to enhance the role of individual MPs (as opposed to parties) in influencing decision making (Giddings, 1994). Select committees give backbenchers from both sides of the House the ability to contribute, in a less partisan manner, to the scrutiny of government. As such, committees have significantly improved the processes of scrutiny in ways in which the House of Commons chamber could not, e.g. the willingness of select committees to rigorously scrutinise government agencies, not just government departments, and request written and oral evidence from them (Hansard Society 2001).

Recent reforms have increased the importance and influence of select committees, these reforms included the election of committee chairs and members, removing the patronage powers of the whips and government in general (Russell 2011; Benton & Russell 2013). This has reduced criticisms laid at select committees' doors such as those of Flinders (2001) that the government could steer committees away from controversial issues of scrutiny. However it is possible that governments can find other ways to steer committees away from controversial issues, such as publishing draft bills for departmental select committees to scrutinise. While criticisms may remain, improvements have been made since 2010, which may mean that some of

the issues raised in literature prior to these reforms require qualification. This is also a step forward in terms of the general literature on parliamentary committees, which suggests such active committees are inherently at tension with the classic model of parliamentary government (Longley & Davidson 1998), and yet they are developing to an extent. This is true even if the UK is developing a stronger committee system at a slower rate than other parliaments, as suggested in research by Herbert Döring in the mid-1990s (Longley & Davidson 1998). This is where departmental select committees in the UK depart, slightly, from the majoritarian tradition of weak committees (thanks to the recent reforms). However a study by Bates, Goodwin, & McKay (2017) noted that despite the high praise the reforms have received, there was no statistical evidence to suggest that MPs were more engaged with committee work despite the claims about committee's higher status and significance. More research is, therefore, required in this area to better understand the full impact of the Wright Reforms.

Benton & Russell (2013) undertook an extensive study of the impact of select committees in Westminster. Their research concluded that although select committees could be more influential, their findings did challenge those who suggest that committees are ignored by government. In fact, their research showed that committees have become an integral part of policy making, due to their detailed approach of scrutinising government policy and actions. Government departments are thus more willing to engage with committees in order not to fall foul of them later on in the policy process. This is one of the underlying aims of scrutiny, as noted earlier in the chapter, to constrain the power of government as they know eventually that they will have to account for their actions later on. This can also be a way of muting criticism of government later on. Additionally, this was seen as one of the aims of post-legislative scrutiny by the Law Commission (2006).

2.6.2 House of Lords committees

At this stage it is also worth noting the role of select committees in the House of Lords. House of Lords select committees tend to cover more crosscutting areas and do not shadow government departments (Norton 2013). As with parliamentary

questions, the focus is on depth rather than breadth. Select committees in the House of Lords are seen as prestigious, especially the Constitution, Science and Technology, and Economic Affairs Committees. These investigative committees also tend to tackle more strategic, technical and longer term issues due to their cross cutting nature (Russell, 2013). The same rules apply to Lords committees as they do to Commons committees regarding the government responding to reports and they also face similar challenges that Commons committees do (Rogers & Walters 2015). They tend to be consensual in nature due to the nature of the House of Lords and their membership is often based on merit due the expertise present in the House (Norton 2013). Lords Committees also tend to be less adversarial in their relationship with the government, and their reports have a more academic research feel to them (Russell, 2013). Ad hoc committees also form an important part of the committee structure in the House of Lords and their number set up each session was expanded in 2012 (House of Lords Liaison Committee 2012). They are set up temporarily and disband after the publication of their reports. They are popular among Peers as they allow topical issues to be examined without a permanent committee being appointed, as they are an established part of the committee structure in the House of Lords, there is competition in terms of Peers bidding for committees covering their preferred area being set up (Rogers & Walters 2015)

As with House of Commons committees, House of Lords committees are regarded as an effective mechanism when it comes to scrutinising the government. It is therefore not surprising that the Hansard Society (2001), as with other academics such as Longley & Davidson, (1998), Shaw, (1998) and Strom, (1998) regard select committees as the main vehicle for promoting a culture of scrutiny and accountability. Although it should be noted that a combination of factors ensures that the House of Lords tends to tread with some caution, these factors being the lack of democratic election and the primacy of the House of Commons (Russell, 2013). We will draw more on the challenges committees face and how their behaviour impacts upon outcomes later in the thesis when addressing the outputs of post-legislative scrutiny.

2.6.3 Parliament and committees at the apex of scrutiny

Parliament and its committees especially do not undertake scrutiny of government in isolation (White, 2015b) and are in fact at the apex of a system of scrutiny (Hansard Society, 2001). As such it is important to situate committees in this literature on engagement with outside bodies, as it plays out most clearly in the process of committee inquiries and thus impacts upon scrutiny. It is also important to address as there are those who argue that post-legislative scrutiny, would be better undertaken outside of parliament (Rogers & Walters 2015). This section will address this web of scrutiny and argue why it is important that parliament maintains a leading role and why outside scrutiny is important in it maintaining that leading role.

The study of scrutiny by the Hansard Society (2001) found the quality of information which is provided to parliament, by government, is variable and committees especially rely on information in order to be able to undertake effective scrutiny. This is important as we noted earlier in this chapter that access to information underpins all scrutiny. This also shows the reality verses the theory of gathering information. It also noted that: the system of accountability was inadequate and disconnected, the scrutiny of government lacked rigour and there were no means to make sure that the government follows recommendations (Scarparo, 2008). All of this has implications for the practicality of undertaking scrutiny in parliament. As a result the work of outside bodies should be a valuable addition to parliament in terms of undertaking scrutiny, especially in relation to post-legislative scrutiny, with committees relying on government reviews of legislation (sometimes its own) when considering undertaking additional scrutiny. Scrutiny of government can be undertaken by a number of non-statutory actors, and may not be the sole or even the main purpose of their work but nevertheless it forms part of their work. The issue with these bodies is that they have no formal power (other than through press releases) to bring the results of their scrutiny to the attention of policy makers but, instead are reliant on personal and institutional networks and media attention. However, some can be successful, if they are reputable, if there is a gap in civil service experience, and public opinion is on their side (White 2015b).

There are of course various forms of scrutiny which take place outside of parliament. Firstly, there is the media. The media plays a role in disseminating the results of democratic scrutiny as well as conducting its own investigations and publishing information which officials do not want released. However, some argue that scrutiny undertaken by the media is rarely constructive and rarely matches the detailed scrutiny which democratic institutions can offer (Maer & Sandford 2004). Media exposure can also influence government because of its public reach, and it can also work with other forms of scrutiny such as parliament. For example, the Public Accounts Committee's (PAC) work on tax avoidance following investigative journalism into corporations such as Google (White 2015b). However there has been a decline in investigative journalism in recent years (McNair 2009), which will impact upon the media's ability to get access to information which government would rather not have in the public domain.

There is also legal accountability and judicial review, which has increased in recent years following the passage of the Human Rights Act 1998 and through the UK's membership of the European Union (EU) and as signatories to the European Convention on Human Rights. In England and Wales the High Courts can conduct judicial review examining whether a government has exercised its powers lawfully, and the European Court of Justice can also conduct scrutiny of UK primary legislation, in order to ensure it doesn't conflict with EU legislation, which takes supremacy (White 2015b). However, the High Courts do not have the power to strike down legislation, although they can make a statement of incompatibility with regards the Human Rights Act 1998, which leaves the government to decide whether to amend the legislation (Maer & Sandford 2004; Hansard Society 2001). Between 2000 when the Human Rights Act came into force and the end of the 2010-2015 Parliament there had only been 29 declarations of incompatibility of which 20 were final (Joint Committee on Human Rights 2015). This is another example of soft power. Also the courts are limited in that they can only undertake concrete review rather than abstract review, meaning the courts can only rule on an issue once it has become law and once a case has been brought to their attention. The courts and judiciary also have an important input role in terms of post-legislative scrutiny due to the focus on the implementation and operation of legislation. The

courts and judiciary will often have first-hand information of where the legislation is difficult to enforce.

Thirdly there is freedom of information (FOI). It provides a legal obligation for public bodies to release information, with an appeals procedure in place so challenges can be made if there is a refusal. However the Freedom of Information Act has been criticised for its limited nature and the number of exemptions available to the government (Maer & Sandford, 2004). Exempt material includes; the economy, commercial interests and the formation of government policy (Maer & Sandford, 2004). There are also fears that the Act is resulting in officials in Whitehall not recording meetings properly for fear that minutes could be released under FOI (Taylor, 2015; Hope, 2015). This also has implications for parliamentary scrutiny, as committees require access to documents during inquiries, if those documents are not available then it could impact on a committee's (and thus parliament's) ability to hold the government to account.

Finally, there is financial scrutiny and audit, designed to ensure that public funds are being used in line with policy, efficiently and effectively. The NAO is in charge of auditing the accounts of all central government departments and half of the executive agencies and all of its work is presented to parliament. Most of the other audit work is undertaken in the private sector. All of the parliaments and assemblies of the United Kingdom receive reports from audit bodies and have audit committees which can investigate the public accounts (Hansard Society 2001; Maer & Sandford 2004). Further financial scrutiny is undertaken by the Office of Budget Responsibility which provides independent analysis of public sector finances (Office for Budget Responsibility, 2015) and previously by the Audit Commission, however its roles have now been subsumed by the Cabinet Office, NAO and Financial Reporting Council (HM Government, 2015).

So alongside the growth of government has been a growth in these other forms of scrutiny, which are often better equipped than parliament in terms of resources and expertise to monitor government. The expansion in the number of these bodies' means there is more information available and accessible on the performance of government. However, the previous paragraphs also acknowledge

some of the limitations which the other bodies face and while parliament has certainly faced an array of challenges it does have the added benefit of having democratic legitimacy when undertaking scrutiny of government. Each of the forms of extra-parliamentary scrutiny outlined above adds value in one way or another, however none of them on their own would be sufficient in order to hold the government to account due to differences in focus, motivation and access to influence. With parliament being a democratically elected body, and with more scope to influence and question ministers, parliament is in a prime location to be at the apex of scrutiny in which these different bodies can feed into. However there is a need to ensure that better co-ordination takes place of the different scrutiny activities taking place (Scarparo, 2008).

While there is little direct literature on the relationships which parliament and in particular committees have with outside organisations, such as interest groups or regulators and how these organisations feed in to the scrutiny process, there is literature on relationships between committees and interest groups. Since their inception, committees have developed close working relationships with interest groups in terms of submitting written and oral evidence to inquiries (Hindmoor et al. 2009). Indeed a survey in 1986 found that 49% of interest groups had submitted oral evidence while 66% had submitted written evidence to committees (Norton 1999). Committees also hold lists of organisations and specialists in their area of interest who they can call upon during inquiries. There are thus close links between committees and interest groups.

However, there is no direct literature on how committees and parliament more generally deal with the information they are given, and little on how interest groups can influence and support committees in scrutiny outside of an inquiry setting. If these organisations are carrying out extra-parliamentary scrutiny, then surely they have to be able to influence scrutiny from its inception, through helping to set the agenda, rather than solely contributing to a pre-arranged inquiry. If these organisation's reports and studies were only accessible during pre-arranged inquiries then that could diminish the impact of their research, as once a committee has called for evidence, the evidence must be tailored to that specific inquiry. In research on post-legislative scrutiny in the Scottish Parliament, a survey

of Members of the Scottish Parliament showed that pressure from an interest group was the second most popular answer for which factors have influenced a committee's decision to undertake post-legislative scrutiny (Caygill 2014). The question is, does this relationship occur in Westminster too? Research by White (2015c) found that the Home Affairs Committee, while undertaking inquiries did at the end of each evidence session allow for a topical section, where organisations could provide evidence not related to the inquiry. So while there is evidence of these extra parliamentary bodies operating with the committee system in terms of shaping and taking part in scrutiny, it does not appear to be systematic. That being said the influence of interest groups is not necessarily always transparent. With the Home Affairs Committee, it appears to be an innovation undertaken by that committee. Further research will be required to see if other committees pick such innovation out as best practice (White 2015c).

As part of this apex of scrutiny, it is not only how parliament can access information but how parliament deals with this information that is important. The NAO and PAC produce reports which departmental select committees can use to guide their own scrutiny, however committee members are often not interested in scrutinising the finance of departments and therefore a low priority is given to finance (Hansard Society 2001).

2.7 Conceptual conclusion

As abstract concepts, scrutiny, accountability and responsibility are separate concepts, but in a parliamentary context they are intertwined and hard to distinguish. Scrutiny is the mechanism through which people can be held responsible and accountable for their actions. As such accountability and responsibility are important for certain elements of scrutiny, as without someone having to take responsibility for failure they cannot be held accountable for their actions. Without responsibility, there would be no obligation to provide information, which underpins scrutiny. This would obviously diminish the outcome of holding people accountable for their actions (Corrigan & Charteris, 1999; Greer & Sandford, 2003; Hull, 2012; Pelizzo & Stapenhurst, 2014; White,

2015b). Indeed, while scrutiny is an active process and relationship, accountability describes the authority, power and control within that relationship (White, 2015b) and responsibility provides the obligation. It was also noted how these concepts interact in terms of post-legislative scrutiny, in relation to scrutiny the aims outlined in this chapter match or mirror some of the aims of post-legislative scrutiny. The monitoring of implementation which forms part of the role of post-legislative scrutiny relates to oversight and accountability. So how these three concepts interact, does have an impact upon post-legislative scrutiny.

The aim of this conceptual analysis has been to assess the concepts and begin to develop an understanding of how accountability and responsibility enhance our understanding of scrutiny. From the academic definitions there was consensus that scrutiny involves an investigation, examination or inquiry. However, our assessment of how the term scrutiny is used in specific cases shows scrutiny to be much broader than the abstract academic definitions initially suggested, and that it is a concept that can be categorised. Accountability was about an authoritative relationship between a principal and an agent, with responsibility being the obligation within that relationship. As such if accountability is about a relationship then there must be a relationship in scrutiny, between the person being scrutinised and the body undertaking the scrutiny. The review discovered that some of the aims of accountability and scrutiny link together and that when they do it forms a particular type of scrutiny (oversight). The conceptual analysis has also shown the aims and objectives which participants in these concepts have attached to them, and includes a number of agreed aims within the concepts. However these aims and objectives are dependent upon context and help in the categorisation of scrutiny. The review also found links between the aims and objectives of each of the concepts, this points back to the argument that these concepts have an important working relationship within a parliamentary context through the different types of scrutiny identified in this chapter. Again, this feeds into the argument that responsibility and accountability enhance the scrutiny relationship. This conceptual framework has therefore contributed to the conceptual understanding of scrutiny, accountability and responsibility and how these concepts interact with each other.

Finally, the chapter addressed the literature on scrutiny in parliament, and in particular parliamentary committees. The section showed that challenges different scrutiny mechanisms face, as well as justified why committees are the most appropriate vehicle for post-legislative scrutiny. The section also showed the challenges that committees face when undertaking the scrutiny.

Chapter 3 Committees and post-legislative scrutiny

Having constructed a conceptual framework in the previous chapter, this chapter aims to provide a foundation for the study of post-legislative scrutiny.

The finer details of how post-legislative scrutiny is conducted, such as the legislation that has been reviewed, remain unknown. For example, to date there is no comprehensive list of post-legislative scrutiny inquiries and no consolidated list of legislation that has been reviewed through post-legislative scrutiny. The aim of this chapter is to begin to fill the gaps in our knowledge about post-legislative scrutiny starting with how many post-legislative scrutiny inquiries there have been. In particular, this chapter assesses how the formal processes of post-legislative scrutiny have been carried out. It begins by assessing how frequently post-legislative scrutiny has been undertaken between the 2005-2010 and 2015-2017 Parliaments and what factors have determined this, before moving on to assess whether there are patterns regarding which committees undertake such scrutiny.

This analysis has taken place through an audit of post-legislative scrutiny. This involved the collation of data on the number of post-legislative scrutiny inquiries that have taken place; the session; the parliament; and the legislation which has received post-legislative scrutiny. This allows for the assessment of post-legislative scrutiny, session by session, in order to analyse the progress post-legislative scrutiny has made. This data has been collated from committee reports.

This chapter therefore seeks to answer research questions one (a) and one (b) relating to the frequency of post-legislative scrutiny and patterns of committees undertaking it. The practical contribution in this chapter relates to the production of a comprehensive list of post-legislative scrutiny, the Acts reviewed, as well as the committees undertaking it. Without such a list it is not possible to keep track of when and where post-legislative scrutiny is taking place but also which legislation has been reviewed and which has not. This is important for future decisions made by committees in both Houses of Parliament.

The chapter finds that whilst post-legislative scrutiny is perhaps more extensive than previously thought, it cannot be described as frequent. It is also clear from this chapter that post-legislative scrutiny has still not become a regular part of committee work. In comparison to the amount of legislation that is passed by the UK Parliament, post-legislative scrutiny is still rather infrequent.

3.1 Frequency of post-legislative scrutiny

As there is no consolidated list of post-legislative scrutiny inquires thus far, this section will begin by addressing this. This list was drawn together by checking all of the committee inquiries on the UK Parliament website between the 2005/06 session of the 2005-2010 Parliament and the end of the 2015-2017 Parliament. The titles of the inquiries were checked along with the summary page of the inquiry report, for signs that the inquiry was post-legislative scrutiny. The key indicators were that post-legislative scrutiny was in the title or terms of reference of the inquiry or that the inquiry was dedicated to reviewing an Act of Parliament. The data collected is separated into the two types of post-legislative scrutiny undertaken by parliamentary committees, that have been identified so far, these are;

- Formal – a dedicated post-legislative scrutiny inquiry reviewing an Act or a number of Acts relating to a particular policy area.
- Informal – an issue based inquiry which includes an element of reviewing an Act or a number of Acts relating to a particular policy area.

The informal category was created, as a number of committee clerks noted that post-legislative scrutiny is inherent in some of the work that they undertake. Without this category, the study would miss a number of inquiries that involved an element of post-legislative scrutiny but where post-legislative scrutiny was not the main focus. Whilst the focus of this study is on formal post-legislative scrutiny, acknowledging the presence of another type of post-legislative scrutiny was important as this is an under researched area where additional research is required.

3.1.1 Frequency of post-legislative scrutiny in total

In total there have been 57 instances of post-legislative scrutiny since the start of the 2005 Parliament and end of the 2015 Parliament. There were twenty formal inquiries and thirty-seven informal instances of post-legislative scrutiny.

Table 3.1. Committees which have undertaken post-legislative scrutiny[2]

Committee	House	Formal	Informal[3]	*Totals*
Ad Hoc[4]	L	6	0	*6*
Business, Energy and Industrial Strategy	C	0	5	*5*
Housing, Communities and Local Government	C	1	2	*3*
Digital, Culture, Media and Sport	C	2	6	*8*
Defence	C	0	2	*2*
Environmental Audit	C	0	1	*1*
Environment, Food and Rural Affairs	C	3	3	*6*
Foreign Affairs	C	0	1	*1*
Home Affairs	C	1	6	*7*
Health and Social Care	C	1	1	*2*
International Development	C	0	2	*2*
Justice	C	3	0	*3*
Joint Committee on Human Rights	C/L	1	5	*6*
Northern Ireland Affairs	C	0	1	*1*
Public Administration and Constitutional Affairs	C	2	1	*3*
Petitions	C	0	1	*1*
Women and Equalities	C	0	4	*4*
Totals	N/A	*20*	*41*	*61*

Source[5]: (BEIS (2017a); BIS (2008, 2012a, 2013); CLG (2013, 2014a, 2017); CMS (2007, 2008, 2009, 2010, 2012, 2013a, 2013b, 2014a); D (2016a); D, FA, ID and TI (2007); EFRA (2008a, 2013a, 2014a, 2016a, 2016b, 2017c); EA (2014a); H (2010, 2013); HA (2008a, 2008b, 2012, 2014a, 2014b, 2016a, 2016b); ID (2016a); JCHR (2007a, 2008a, 2009, 2011, 2014a, 2014b); J (2012, 2013a, 2015); NIA (2013a); PE & WE (2017a); PA (2009, 2013a, 2013c); SCAL (2013); SCEL (2015); SCEAD (2016); SCIA (2014); SCLA (2017); SCMCA (2014); WE (2016, 2017a, 2017b).

[2] The House of Lords Delegated Powers Committee's report on the Legislative and Regulatory Reform Act 2006 is not contained in this study on the basis that the report did not conduct post-legislative scrutiny but rather the correspondence between the committee and the department regarding the departments memorandum on the Act. The report did go on to recommend that a future committee undertake post-legislative scrutiny on the Act – so far no committee has.

[3] Defence, Foreign Affairs, International Development and Trade and Industry Committees (2007) and the Women and Equalities & Petitions Committees (2017) were each one inquiry, however each committee has received acknowledgement in the table as having undertaken some post-legislative scrutiny. Hence why the total figure is 61.

[4] Committee names in the table relate to the name of the committee at the time of writing.

[5] The full name of sources abbreviated here and in other tables and charts as well can be found in appendix 6 and 7 on pages 321-322.

Table 3.1 shows the committees which have undertaken post-legislative scrutiny by type. It shows the most active committees in undertaking post-legislative scrutiny as a whole are the: Culture, Media and Sport Committee; followed by the House of Commons Home Affairs Committee; and the ad hoc committees of the House of Lords. Had this study solely focused upon formal post-legislative scrutiny, then the three top active committees would have been the ad hoc committees of the House of Lords and the House of Commons Justice Committee joint with the House of Commons Environment, Food and Rural Affairs Committee. Indeed if informal post-legislative scrutiny had been excluded from this study, incorrect conclusions may have been drawn regarding which committees are more or less active when it comes to post-legislative scrutiny. Looking at post-legislative scrutiny as a whole it is perhaps more extensive than it first appears with more committees engaging with it.

The following departmental select committees have not undertaken any post-legislative scrutiny in the 2005, 2010, or 2015 Parliaments; Education, Scottish Affairs, Transport, Treasury, Welsh Affairs, and Work and Pensions. However, these are a minority of committees. The Treasury Committee has not undertaken post-legislative scrutiny, this can be in part explained by the fact that financial legislation is not subject to post-legislative scrutiny. Whilst the Treasury does pass legislation related to finance not all legislation is budgetary in nature and as such, the Treasury does produce post-legislative memoranda suggesting that some Treasury legislation is eligible for post-legislative scrutiny. There are other non-departmental committees in the House of Commons that have not undertaken post-legislative scrutiny. However, post-legislative scrutiny is not one of their core tasks, although there is nothing to stop them undertaking it. For example, the Public Administration and Constitutional Affairs Committee is not a departmental select committee per say and is not expected to adhere to the core tasks set out by the Liaison Committee but has undertaken post-legislative scrutiny twice. However, for the other committees, post-legislative scrutiny is one of their core tasks and they shadow departments which do initiate legislation and which should be eligible for post-legislative scrutiny. For example, the Wales Office and Scotland Office initiate legislation relating to devolution (although infrequent) and the

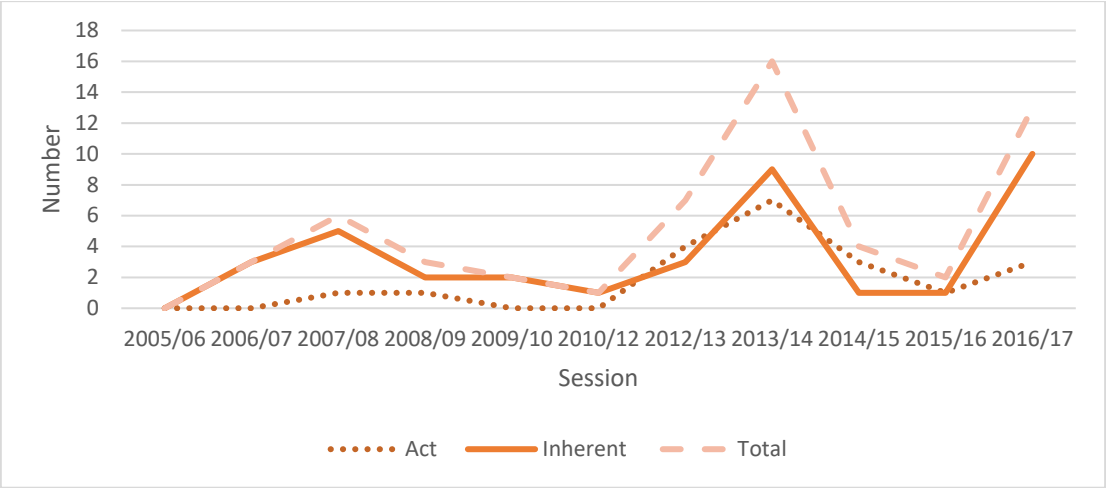
Department for Education legislates on education reform. There may be a number of reasons why they have decided not to undertake post-legislative scrutiny, such as legislation not requiring review or the committee not having the appetite to undertake post-legislative scrutiny. These issues will be explored in more detail in chapter four.

There are also a number of House of Lords committees which have not undertaken post-legislative scrutiny. Although they could undertake post-legislative scrutiny they are not expected to unlike Commons departmental select committees are. Furthermore, with ad hoc committees being set up to undertake post-legislative scrutiny in the House of Lords, and with their ability to draw upon a range of expertise, there is less pressure on the standing committees to undertake separate review.

Figure 3.1 shows the total amount of post-legislative scrutiny completed in each session, across all types. The figure shows that the most active parliamentary session for post-legislative scrutiny was the 2013-2014 session with 16 instances of post-legislative scrutiny taking place, seven of which were formal and nine of which were informal. This was also the peak during the 2010 Parliament. The peak during the 2005 Parliament was the 2007-2008 session with six instances of post-legislative scrutiny taking place. The peak in the 2015 Parliament, which was cut short, was the 2016-2017 session with 13 inquiries taking place, involving at least an element of post-legislative scrutiny. There appears to be a trend developing here in terms of post-legislative scrutiny activity increasing during the middle and later sessions of a parliament. However data will be needed for the current 2017 Parliament before such a trend could be confirmed. The figure shows the start of such a trend too, and suggests that there are peaks and troughs which follow a parliament, peaking at some point during the middle of the parliament. Such peaks and troughs can be explained by greater pressures on committee time at the start of a parliament, especially following the election of a new government which means post-legislative scrutiny is less of a priority at that particular time. Perhaps it is not until the pace of government begins to slow after the initial post-election rush that committees feel they have the opportunity to undertake such scrutiny. The trend line on figure 3.1 also suggests there is a modest increase in post-

legislative activity, but again more data will be needed from the remainder of the 2017 Parliament before any trend can be confirmed.

Figure 3.1. Post-legislative scrutiny by type and total



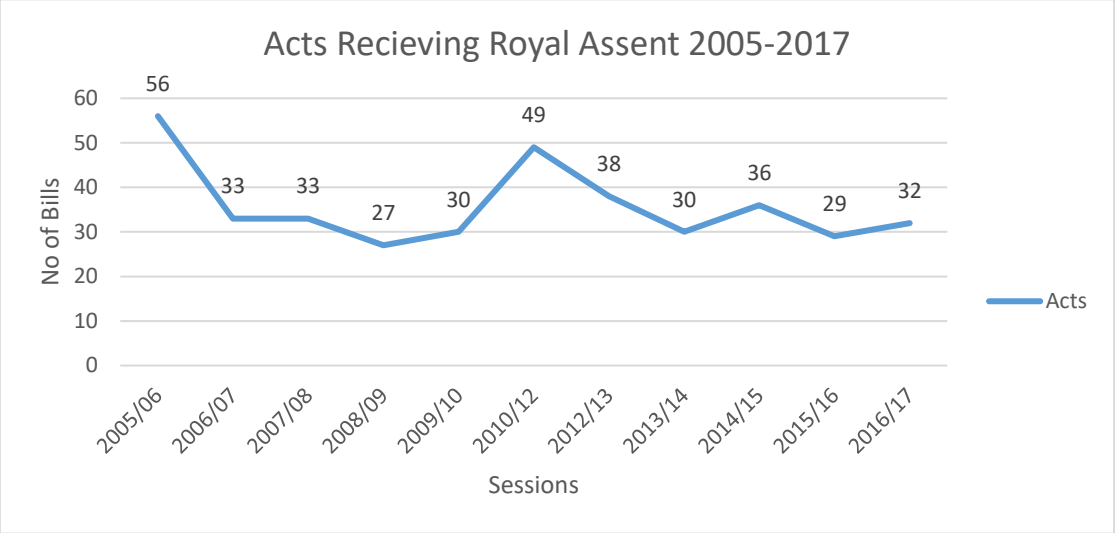
Source: (BEIS (2017a); BIS (2008, 2012a, 2013); CLG (2013, 2014a, 2017); CMS (2007, 2008, 2009, 2010, 2012, 2013a, 2013b, 2014a); D (2016a); D, FA, ID and TI (2007); EFRA (2008a, 2013a, 2014a, 2016a, 2016b, 2017c); EA (2014a); H (2010, 2013); HA (2008a, 2008b, 2012, 2014a, 2014b, 2016a, 2016b); ID (2016a); JCHR (2007a, 2008a, 2009, 2011, 2014a, 2014b); J (2012, 2013a, 2015); NIA (2013a); PE & WE (2017a); PA (2009, 2013a, 2013c); SCAL (2013); SCEL (2015); SCEAD (2016); SCIA (2014); SCLA (2017); SCMCA (2014); WE (2016, 2017a, 2017b).

Finally, in this section assessing the total post-legislative activity between the start of the 2005 Parliament and the end of the 2015 Parliament, it is important to compare review by post-legislative scrutiny to the amount of legislation being passed in each session. Whilst a direct comparison cannot be made because some of the Acts receiving post-legislative scrutiny pre-date the 2005 Parliament, it does allow for a basic comparison between the legislative output and post-legislative output.

Figure 3.2 shows the total number of government bills which have gone on to receive Royal Assent and become Acts of Parliament. It shows that there is a peak immediately after an election and a decline until the final session before an election where there is a rise. This could be down to governments rushing final pieces of legislation through before the election is called. This is in comparison to post-legislative scrutiny which peaks just after the half way point of a parliament, as noted above. It is not possible to say if the two are linked, due to the lack of data over a longer period of time. However in the 2010 Parliament only two pieces of

legislation from the coalition government were assessed. Looking at that session in isolation, there would not appear to be a link between the two in terms of post-legislative scrutiny peaking two-three years after an election in order to scrutinise the legislation from earlier sessions.

Figure 3.2. Bills which have received Royal Assent by session



Source: (House of Commons, 2007, 2008, 2009, 2010a, 2010b, 2012, 2013, 2014, 2015, 2016, 2017)

In total table 3.2 shows that 393 pieces of legislation were passed into law during the time period this study is focusing upon in comparison to 57 instances of post-legislative scrutiny. Of the 393 pieces of legislation introduced in this period, 26 of those have gone on to receive post-legislative scrutiny of some kind (6.6%), 11 of those (3%) were from formal post-legislative scrutiny. It is clear that whilst looking at post-legislative scrutiny as a whole there is more of it than perhaps first meets the eye. However, it is not frequent when compared to parliament's legislative output. Whilst it would not be possible, or even necessary, to conduct post-legislative scrutiny on every Act, this suggests that the current system of post-legislative scrutiny is not systematic. Post-legislative scrutiny is therefore still limited in its activity. The introduction of a dedicated post-legislative scrutiny committee has been noted before, particularly by the House of Lords Constitution Committee, and could help in terms of increasing the amount of post-legislative scrutiny that is undertaken in the UK Parliament.

However there are a number of reasons for this such as, a large number of Acts not requiring post-legislative scrutiny and some Acts not being eligible for post-legislative scrutiny on the basis of being financial in nature. Table 3.2 shows that out of 393 pieces of legislation, 49 were considered to be financial in nature (finance, consolidation of funds, appropriation and supply and appropriations acts), leaving 344 pieces of legislation eligible for post-legislative scrutiny. Out of the eligible Acts 7.6% of them have received either formal or informal post-legislative scrutiny and only 3.2% have received formal post-legislative scrutiny.

Table 3.2. Legislation passed between 2005 - 2017

Session	Total Bills	Private Members Bills	Government Bills	Finance related	Eligible for post-legislative scrutiny
2005/06	56	3	53	6	50
2006/07	33	2	31	4	29
2007/08	33	3	30	5	28
2008/09	27	5	22	4	23
2009/10	30	7	23	4	26
2010/12	49	7	42	8	41
2012/13	38	10	28	4	34
2013/14	30	5	25	3	27
2014/15	36	10	26	4	32
2015/16	29	6	23	3	26
2016/17	32	8	24	4	28
Total	393	66	327	49	344

Source: (House of Commons, 2007, 2008, 2009, 2010a, 2010b, 2012, 2013, 2014, 2015, 2016, 2017)

However, there are other reasons as to why not all of these remaining Acts will be considered suitable by committees. For example, if post-legislative scrutiny is not a priority for committees or there is not enough time to undertake multiple formal post-legislative scrutiny inquiries in the House of Commons. One additional factor could be the passage of a number of Acts in a particular policy area (e.g. education), this could discourage post-legislative scrutiny as little time may have passed between successive Acts for the legislation to be fully implemented and its impact to become known. Taking into account Acts which are financial in nature still leaves a large number of Acts which have not received post-legislative scrutiny. It may also be limited because some of the Acts are relatively new, however, despite the government's proposed timeframe for departmental review, Acts are eligible for post-legislative scrutiny regardless of time on the statute books.

3.1.2 Frequency by type: Formal post-legislative scrutiny

Table 3.3 shows that twenty formal post-legislative scrutiny inquiries have taken place since the 2005-2006 session of the 2005 Parliament and the end of the 2015 Parliament.

Table 3.3. Formal post-legislative scrutiny

Committee	No of Acts	Act(s) Scrutinised	Session
Environment, Food and Rural Affairs	1	Veterinary Surgeons Act 1966	2007/2008
Digital, Culture, Media and Sport	1	Licensing Act 2003	2008/2009
Select Committee on Adoption Legislation (Lords)	2	Adoption and Children Act 2002	2012/2013
	N/A	Children and Adoption Act 2006	N/A
Justice	1	Freedom of Information Act 2000	2012/2013
Digital, Culture, Media and Sport	1	Gambling Act 2005	2012/2013
Public Administration and Constitutional Reform	1	Statistics and Registration Service Act 2007	2012/2013
Public Administration and Constitutional Reform	1	Charities Act 2006	2013/2014
Housing, Communities and Local Government	1	Greater London Authority Act 2007	2013/2014
Select Committee on the Inquiries Act (Lords)	1	Inquiries Act 2005	2013/2014
Select Committee on the Mental Capacity Act (Lords)	1	Mental Capacity Act 2005	2013/2014
Health	1	Mental Health Act 2007	2013/2014
Justice	1	Serious Crime Act 2007	2013/2014
Joint Committee on Human Rights	1	Terrorism Prevention and Investigation Measures Act 2011	2013/2014
Select Committee on Extradition Legislation (Lords)	1	Extradition Act 2003	2014/2015
Justice	1	Legal Aid, Sentencing and Punishment Act 2012	2014/2015
Home Affairs	1	Regulation of Investigatory Powers Act 2000	2014/2015
Select Committee on the Equality Act and Disability (Lords)	1	Equality Act 2010	2015/2016
Select Committee on the Licensing Act (Lords)	1	Licensing Act 2003	2016/2017
Environment, Food and Rural Affairs	1	Flood and Water Management Act 2010	2016/2017
Environment, Food and Rural Affairs	1	Animal Welfare Act 2016	2016/2017

Source: (CLG (2013); CMS (2009, 2012); EFRA (2008a, 2016b, 2017c); H (2013); HA (2014b); JCHR (2014a); J (2012, 2013a, 2015); PACA (2013a, 2013c); SCAL (2013); SCEL (2015); SCEAD (2016); SCIA (2014); SCLA (2017); SCMCA (2014))

Table 3.3 also shows that all but one of the post-legislative scrutiny inquiries involved the review of one Act. However the one inquiry which did review two pieces of legislation looked at two similar Acts; in this case the Adoption and Children Act 2002 and the Children and Adoption Act 2006. Indeed, this provides some confirmation that post-legislative scrutiny is more likely to take place where legislation is free standing, and not linked to other Acts passed successively in a single policy area. As noted in the previous section, education would be a good example of this.

Table 3.3 also shows that, of the formal post-legislative scrutiny inquires, only one Act has been scrutinised more than once, suggesting that inquiries are not overlapping or repeating scrutiny already undertaken by another committee. This is important, especially in the House of Commons as departmental select committees have ten core tasks (House of Commons Liaison Committee 2012) which compete for prioritisation. While post-legislative scrutiny might not be at the top of their 'to do lists', it is important that the post-legislative scrutiny they undertake does not repeat the work of their predecessor committees or another committee.

The one exception to this is the review of the Licensing Act 2003 which was reviewed by the Culture, Media and Sport Committee in the 2008-2009 session of the 2005 Parliament and which was also reviewed in the 2016-2017 session of the 2015 Parliament, by an ad hoc committee in the Lords. There is a gap of seven parliamentary sessions between the first post-legislative scrutiny inquiry and the second. There is a chance for some overlap here, however, the difference in dates might make some difference in terms of the Act's assessment. For example, the consequences of some parts of the Act might not have become known until much later, after the Act has been enacted. The Act has also been amended by the Policing Reform and Social Responsibility Act 2011 and by various pieces of secondary legislation, since the first inquiry. This would leave scope for a further review of the Licensing Act 2003 assessing its performance since these amendments. The first inquiry also concluded that it was too early to determine the full impact of the Act and whether it was meeting its objectives (Select Committee on the Licensing Act, 2017). The House of Lords Select Committee on

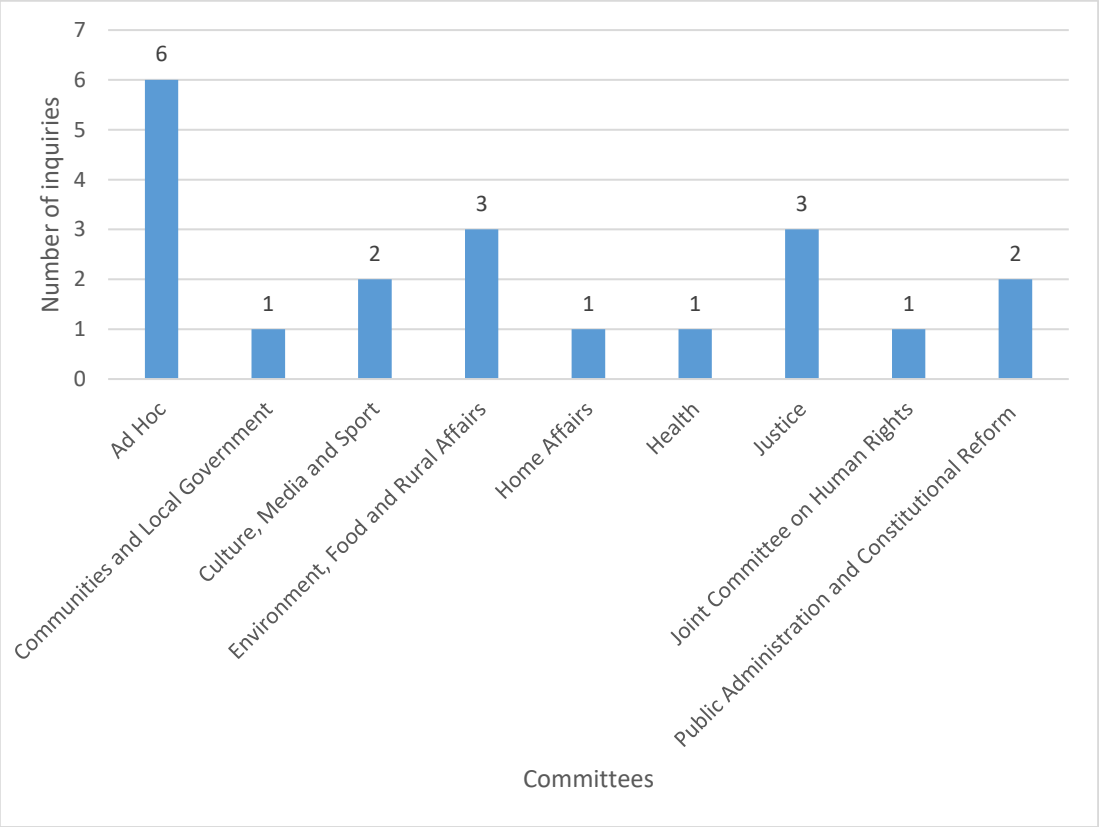
the Licensing Act noted that the Commons inquiry had made judgments on the Act when it had only been in force for three years which was not long enough to consider the full implications of the legislation. Subsequently, they determined an additional review would be beneficial as over ten years had now passed (Select Committee on the Licensing act, 2017).

The other difference is that the reviews are undertaken in different Houses which have different time pressures and expertise. One of the House of Lords' aims is to add value (Norton, 2007) and due to the nature of ad hoc committees and the fact they are set up for an entire parliamentary session to conduct (usually) a single inquiry means they can spend far more time on post-legislative scrutiny than departmental select committees. This is because they do not face the same time and workload pressures. The fact ad hoc committees can take up to a year to report back to the House of Lords means they can take and receive evidence from more witnesses and go into more detail than House of Commons committees. Hence, it could be a benefit to look at the Licensing Act 2003 again, in more detail. Table 3.2 also identifies the committees which have been undertaking post-legislative scrutiny and the amount of post-legislative scrutiny per session between the 2005-2006 session of the 2005 Parliament and the 2016/2017 session of the 2015 Parliament. However, to analyse this data more specifically it is broken down into the following two figures.

Figure 3.3 shows that ad hoc committees (in the House of Lords) have undertaken the most post-legislative scrutiny since the start of the 2005 Parliament. This is due to the fact that since 2012, the House of Lords determined that it would create a number of ad hoc committees each session to scrutinise specific issues and that at least one of those committees would be a post-legislative scrutiny committee (House of Lords Liaison Committee, 2012). There was one committee in each session, except in the 2013-14 session which had two. It is therefore excepted that, if the Liaison Committee keeps their pledge, at least one ad hoc committee to be appointed each session to undertake post-legislative scrutiny. In terms of the House of Commons, the Justice Committee and the Environment, Food and Rural Affairs Committee have been the most active, with the Culture, Media and Sport

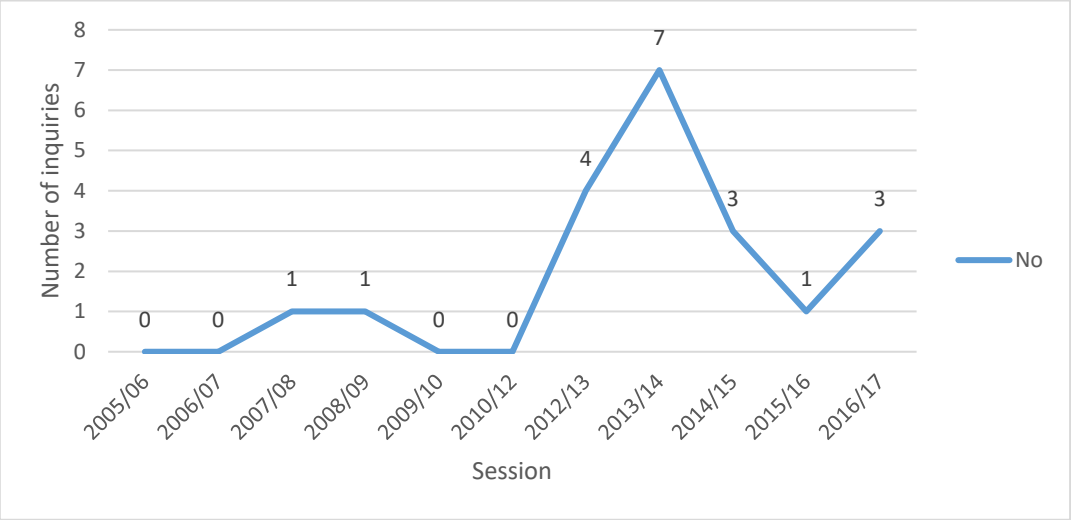
Committee and the Public Administration and Constitutional Affairs Committee coming joint third with two inquiries each.

Figure 3.3. Formal post-legislative scrutiny inquiries by committee



Source: (CLG (2013); CMS (2009, 2012); EFRA (2008a, 2016b, 2017c); H (2013); HA (2014b); JCHR (2014a); J (2012, 2013a, 2015); PACA (2013a, 2013c); SCAL (2013); SCEL (2015); SCEAD (2016); SCIA (2014); SCLA (2017); SCMCA (2014))

Figure 3.4. Formal post-legislative scrutiny inquiries by parliamentary session



Source: (CLG (2013); CMS (2009, 2012); EFRA (2008a, 2016b, 2017c); H (2013); HA (2014b); JCHR (2014a); J (2012, 2013a, 2015); PACA (2013a, 2013c); SCAL (2013); SCEL (2015); SCEAD (2016); SCIA (2014); SCLA (2017); SCMCA (2014))

The other committees in figure 3.3 have undertaken post-legislative scrutiny once in that time period and not every parliamentary committee is part of figure 3.3; indicating they have not undertaken formal post-legislative scrutiny at all during this time period.

Figure 3.4 shows the number of formal post-legislative scrutiny inquiries which have been undertaken per session since the 2005-2006 session of the 2005 Parliament. There was no formal post-legislative scrutiny undertaken in the 2005-2006 and the 2006-2007 sessions of parliament. However, the then Labour Government did not respond to the Law Commission's (2006) report on post-legislative scrutiny (published in October 2006) until March 2008. No explanation was given by the government for why it took seventeen months to respond to the Commission's report. However it could be argued from a parliamentary reform perspective, as there is a tendency to do nothing unless the conditions are right, that the government will be reluctant to cede any power to parliament unless it has to, especially around issues that may hold ministers more responsible (Kelso, 2009). This response set out the current, more systematic system of government departments undertaking post-legislative review and publishing memoranda

determining amongst other things whether an Act has met its key policy objectives (Office of the Leader of the House of Commons, 2008). It is these memoranda which potentially act as a trigger (depending upon the quality of the memoranda) for committees to undertake post-legislative scrutiny. The 2007-2008 and the 2008-2009 sessions show one formal inquiry per session as the new systematic approach gets underway and committees adapt to it.

The drop to zero formal post-legislative scrutiny inquiries in the 2009-2010 session can be explained by the 2010 General Election. However, it is somewhat surprising to see no formal post-legislative scrutiny being undertaken in the double 2010-2012 session especially as it is the first session of a new parliament with a change in the parties of government. It might be expected that more post-legislative scrutiny would take place following a change in government as such scrutiny would more likely focus upon the previous government's legislation. However, this lack of formal post-legislative scrutiny could be down to the fact committees were newly re-formed with new memberships and chairs who are 'finding their feet'. They also face a new government with completely different policies to the last, which may require their attention in terms of scrutiny time.

The pace does begin to increase in the 2012-2013 session and peaks in the 2013-14 session. There may be a trend in post-legislative scrutiny being more of a focus towards the middle of a parliament. This could be down to the fact that in early sessions the new policy of a government may require scrutiny by departmental select committees, especially as flagship policy is likely to be announced rapidly following an election. However it will not be possible before 2022 to determine whether such a trend continues as the 2015 Parliament was cut short by the 2017 General Election. That being said, there was an increase in post-legislative scrutiny in the second (and final) session of that Parliament. The trend line on figure 3.4 does show an upward trajectory, however, it remains to be seen what will happen in subsequent sessions and the impact that might have on the overall trend.

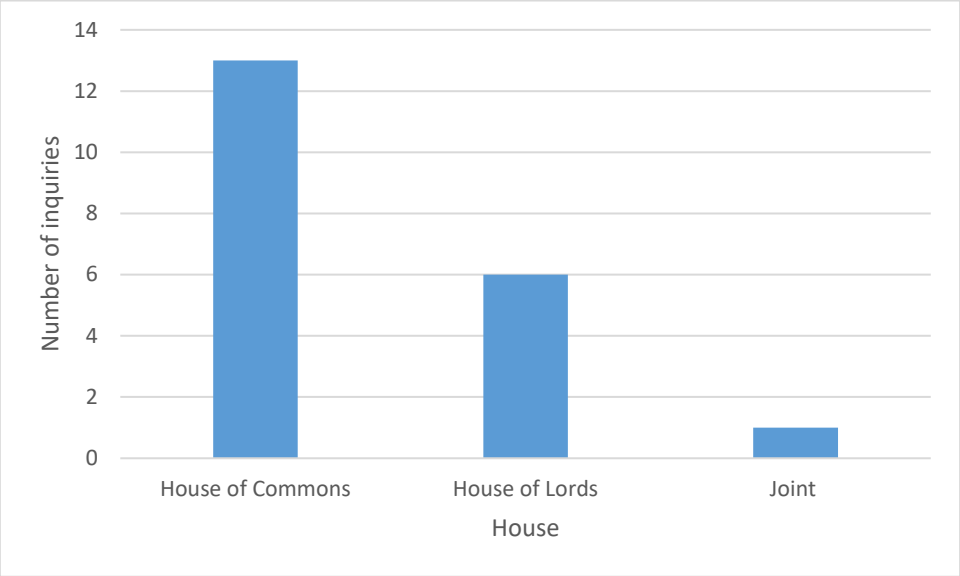
Table 3.4. Formal post-Legislative Scrutiny as a percentage of committee work between 2005 and 2015

Committee	Percent
CMS	3
J	3
EFRA	3
PA	1
H	1
HA	1
CLG	1
Total	2

Source: (UK Parliament, 2016b)

Finally, table 3.4 shows formal post-legislative scrutiny as a percentage of published committee reports between 2005 and 2017. Departmental Select Committees are only presented in the table as post-legislative scrutiny is one of their ten core tasks. Table 3.4 shows that post-legislative scrutiny forms a small part of a committee's output. Post-legislative scrutiny forms a greater proportion of committee work (although still small) for the Culture, Media and Sport Committee, Justice Committee and the Environment, Food and Rural Affairs Committee. The Justice Committee and Environment, Food and Rural Affairs Committee have undertaken three formal inquiries and the Culture, Media and Sport Committee has undertaken two inquiries, the figures therefore suggest a difference in their workload, with a greater number of reports being published by the Justice and Environment Committee than the Culture, Media and Sport Committee. This could point to the Culture, Media and Sport Committee having more time to undertake such scrutiny and the Justice Committee having a desire to undertake it when they can, and when they think it is valuable.

Figure 3.5. Formal post-legislative scrutiny inquiries by parliamentary session



Source: (CLG (2013); CMS (2009, 2012); EFRA (2008a, 2016b, 2017c); H (2013); HA (2014b); JCHR (2014a); J (2012, 2013a, 2015); PACA (2013a, 2013c); SCAL (2013); SCEL (2015); SCEAD (2016); SCIA (2014); SCLA (2017); SCMCA (2014))

It is also possible in this section dealing with formal post-legislative scrutiny to include an assessment of the frequency of formal post-legislative scrutiny inquiries by House. Figure 3.5 shows the distribution of formal post-legislative scrutiny inquiries by House. It shows that the House of Commons has undertaken just over twice as many inquiries as the House of Lords. This can be explained by post-legislative scrutiny being a core task of departmental select committees and has been formalised since 2008, whereas post-legislative scrutiny in the House of Lords has only been formalised since 2012 with the introduction of specific ad hoc committees to deal with individual inquiries. There might also be an expectation that the House of Lords might begin to narrow the gap regarding the number of inquiries on the basis that it has determined that at least one ad hoc committee will be created per session to undertake post-legislative scrutiny. Even in years when the House of Commons does not undertake any post-legislative scrutiny inquiries, there is a strong likelihood of at least one from the House of Lords.

3.1.3 Frequency by type: Informal post-legislative scrutiny

The next section will assess informal post-legislative scrutiny.

Table 3.5. Informal post-legislative scrutiny

Committee	No of Acts scrutinised	Act(s) involved	Year inquiry complete
CMS	1	Data Protection Act 1998	2013
CMS	13	Protection of Children Act 1978	2014
	N/A	Criminal Justice Act 1988	2014
	N/A	Criminal Justice and Order Act 1994	2014
	N/A	Criminal Justice and Immigration Act 2008	2014
	N/A	Coroners and Justice Act 2009	2014
	N/A	Communications Act 2003	2014
	N/A	Obscene Publications Act 1959	2014
	N/A	Human Rights Act 1998	2014
	N/A	Malicious Communications Act 1988	2014
	N/A	Offences Against the Person Act 1861	2014
	N/A	Computer Misuse 1990	2014
	N/A	Protection from Harassment Act 1997	2014
	N/A	Sexual Offences Act 2003	2014
CMS	1	Digital Economy Act 2010	2013
CMS	1	Human Rights Act 1998	2010
CMS	2	Criminal Justice and Public Order Act 1994	2007
	N/A	London Olympic Games and Paralympic Games Act 2006	2007
CMS	2	Lotteries and Amusements Act 1967	2007
	N/A	Gambling Act 2005	2007
BIS	2	Equal Pay Act 1970	2013
	N/A	Equality Act 2010	2013
BIS	1	Digital Economy Act 2010	2012
BIS	1	Housing Grants, Construction and Regeneration Act 1996	2008
BIS, D, FA, ID	2	Export Control Act 2002	2007
BEIS	1	Companies Act 2006	2017
CLG	1	Public Services (Social Value) Act 2012	2014
CLG	1	Care Act 2014	2017
D	2	Health and Safety at Work Act etc. 1974	2016
	N/A	Corporate Manslaughter and Homicide Act 2007	2016
EFRA	3	Animal Welfare Act 2006	2014
	N/A	Dangerous Wild Animals Act 1974	2014
	N/A	Pet Animals Act 1951	2014
EFRA	1	Dangerous Dogs Act 1991	2013
EFRA	1	Flood and Water Management Act 2010	2016
EA	1	Wildlife and Countryside Act 1981	2014

Committee	No of Acts scrutinised	Act(s) involved	Year inquiry complete
H	2	Licensing Act 2003	2009
	N/A	Policing and Crime Act 2009	2009
HA	2	Regulation of Investigatory Powers Act 2000	2014
	N/A	Telecommunications Act 1984	2014
HA	1	Misuse of Drugs Act 1971	2012
HA	1	Regulation of Investigatory Powers Act 2000	2008
HA	2	Domestic Violence, Crime and Victims Act 2004	2008
	N/A	Forced Marriage (Civil Protection) Act 2007	2008
HA	2	Proceeds of Crime Act 2002	2016
HA	1	Modern Slavery Act 2015	2016
ID	4	International Development Act 2002	2016
	N/A	International Development (Reporting and Transparency) Act 2006	2016
	N/A	International Development (Gender Equality) Act 2014	2016
	N/A	International Development (Official Development Assistance Target) Act 2015	2016
NIA	1	Northern Ireland Act 1998	2013
PA	3	Public Interest Disclosure Act 1998	2009
	N/A	Freedom of Information Act 2000	2009
	N/A	Official Secrets Act 1989	2009
JCHR	1	Children Act 1989	2014
JCHR	2	Extradition Act 2003	2011
		Police and Justice Act 2006	2011
JCHR	1	Public Order Act 1986	2009
JCHR	2	Nationality, Immigration and Asylum Act 2002	2007
	N/A	Asylum and Immigration (Treatment of Claimants etc.) Act 2004	2007
JCHR	1	Data Protection Act 1998	2008
WE	2	Equality Act 2010	2017
	N/A	Sex Discrimination (Election Candidates) Act 2002	2017
WE	2	Gender Recognition Act 2004	2015
	N/A	Equality Act 2010	2015
WE/PE	1	Equality Act 2010	2017
WE	2	Equality Act 2010	2017
	N/A	Licencing Act 2003	2017

Source: (BEIS (2017a); BIS (2008, 2012a, 2013); CLG (2014a, 2017); CMS (2007, 2008, 2010, 2013a, 2013b, 2014a); D (2016a); D, FA, ID and TI (2007); EFRA (2013a, 2014a, 2016a); EA (2014a); H (2010); HA (2008a, 2008b, 2012, 2014a, 2016a, 2016b); ID (2016a); JCHR (2007a, 2008a, 2009, 2011, 2014b); NIA (2013a); PE & WE (2017a); PACA (2009); WE (2016, 2017a, 2017b)).

The idea of informal post-legislative scrutiny has also been acknowledged by the Standards Procedure and Public Appointments Committee (2013) of the Scottish Parliament. Its report on post-legislative scrutiny stated;

> "It is also important to note that much of the routine work undertaken by committees contains elements of post-legislative scrutiny, even if it is not formally labelled as such. Most notably, many committee inquiries involve an element of post-legislative scrutiny, since they often focus on improvements which could be made to the legislative framework in a particular policy area" (Standards Procedure and Public Appointments Committee, 2013).

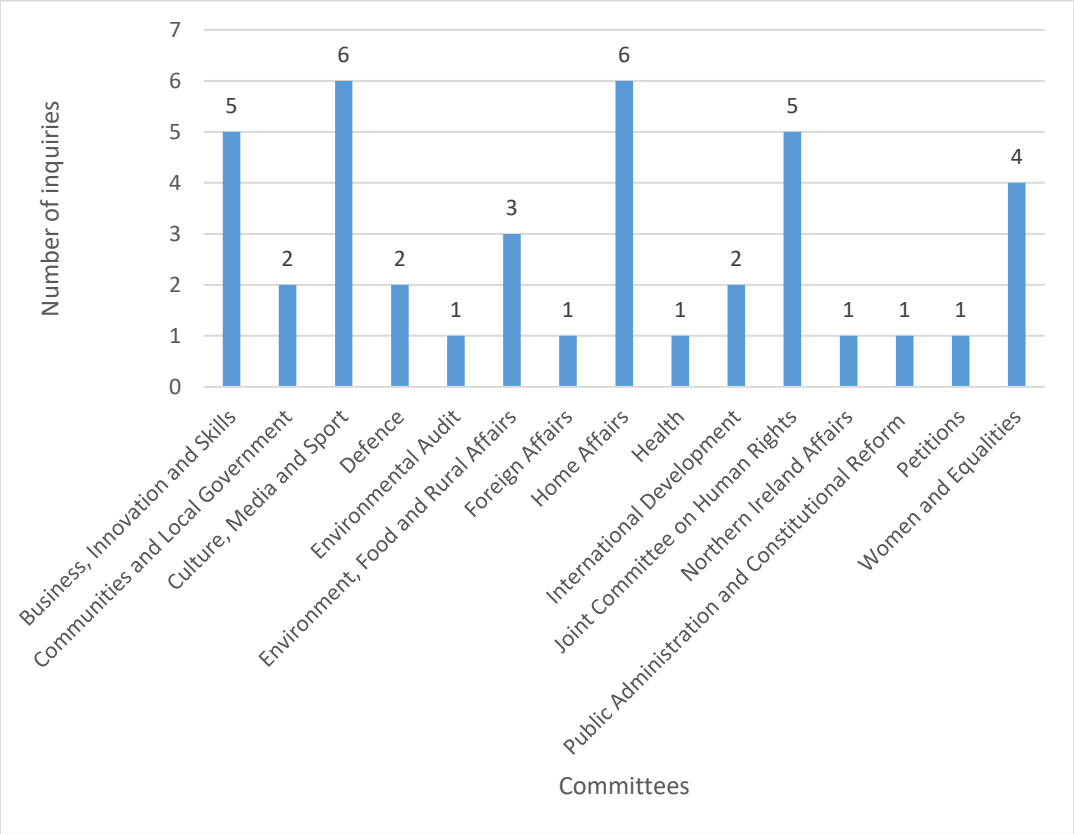
This is a key factor in why it is defined as having a less substantial element of post-legislative scrutiny. Committees often do not acknowledge they are undertaking post-legislative scrutiny as part of their inquiry until they are reporting back to the House of Commons Liaison Committee at the end of each parliamentary session, on the core tasks they have fulfilled during it.

Table 3.5 shows that there are thirty seven of these inquires between the 2005-2006 session of the 2005 Parliament and the end of the 2015 Parliament. Hence it is more frequent than the formal post-legislative scrutiny that has been assessed so far. This will be because post-legislative scrutiny has been inherent in the other work that parliamentary committees have been undertaking. What is also different from formal post-legislative scrutiny, is that it is more likely that several Acts are assessed in these inquiries.

The scrutiny of the Acts involved will be determined by the nature of the issue which the committee chose to inquire into and therefore might (depending upon the topic), skip over parts of the Act which are not relevant to the issue they are analysing. That is not to say that formal post-legislative scrutiny undertakes a detailed examination of an entire Act but rather they take a different approach in terms of looking for key problems within an Act rather than looking at wider policy issues and assessing Acts through that prism. Take the example of the Women and Equality Committee's inquiry into transgender equality. It looked at both the Gender Recognition Act 2004 and the Equality Act 2010 through the prism of transgender equality, meaning the Equality Act 2010 was only reviewed through that prism rather than in its entirety, as the Act also covers equality for women and those with a disability.

Another example here is the Culture, Media and Sports inquiry into nuisance calls. While this was not a post-legislative scrutiny inquiry, part of looking at the issue of nuisance calls included assessing what the legislation surrounding this (in this case the Data Protection Act 1998) involved and what is and is not covered in the Act. It is also notable that there is more of an overlap here with some legislation being reviewed more than once. This is to some extent to be expected as committees undertaking informal post-legislative scrutiny are not reviewing an entire Act, only the parts of it relevant to the issue under scrutiny. Whilst there is overlap in terms of Acts listed as being covered, it is likely that there is actually only a limited overlap in terms of the parts of the Act being reviewed, whether that is by different committees or by the same committee under a different inquiry. This does raise questions about where informal post-legislative scrutiny might be placed in the typology of scrutiny in the previous chapter. As informal post-legislative scrutiny is inherent, and is defined as an issue based inquiry then it would be taking place in a broader inquiry that is classified as overview (type 2), which sees low accountability and low responsibility (in comparison to medium levels in the overview/oversight classification which a formal post-legislative scrutiny inquiry would fall under). This is on the basis that post-legislative scrutiny in this context is unlikely to be focused upon holding the government accountable and responsible but rather locating a problem and offering solutions. As it is possible committees will not be conscious to the fact that they are undertaking a type of post-legislative scrutiny, there will be less impetus to focus upon accountability and responsibility.

Figure 3.6. Number of informal post-legislative scrutiny undertaken by committees[6]



Source: (BEIS (2017a); BIS (2008, 2012a, 2013); CLG (2014a, 2017); CMS (2007, 2008, 2010, 2013a, 2013b, 2014a); D (2016a); D, FA, ID and TI (2007); EFRA (2013a, 2014a, 2016a); EA (2014a); H (2010); HA (2008a, 2008b, 2012, 2014a, 2016a, 2016b); ID (2016a); JCHR (2007a, 2008a, 2009, 2011, 2014b); NIA (2013a); PE & WE (2017a); PACA (2009); WE (2016, 2017a, 2017b)).

Figure 3.6 shows the amount of informal post-legislative scrutiny undertaken by committees. Figure 3.6 shows that the Culture, Media and Sport Committee and the Home Affairs Committee have been the most active in undertaking this particular type of scrutiny, followed by the Joint Committee on Human Rights and the Business, Energy and Industrial Strategy Committee (formerly Business, Innovation and Skills Committees). Figure 3.6 thus shows a number of committees undertaking this type of post-legislative scrutiny which have not undertaken it through formal post-legislative scrutiny. This includes the Business, Innovation and Skills Committee (as it then was) and Defence Committee which have also undertaken a joint inquiry on export controls. This type of scrutiny may provide an avenue for parliamentary committees to undertake post-legislative scrutiny as

[6] D, FA, ID and TI (2007) and WE & PE (2017) were each one inquiry, however each committee has received acknowledgement in the chart as having undertaken some post-legislative scrutiny.

part of their routine inquiries without them having to forego another inquiry in order to undertake formal post-legislative scrutiny. This is then perhaps an advantage for committees. However, there is a challenge here too, as committees often do not realise they are undertaking informal post-legislative scrutiny until they are reflecting back upon the work they have undertaken over the past session. Therefore, there is the risk that this type of post-legislative scrutiny becomes a box ticking exercise without engaging fully with the aims and focus of post-legislative scrutiny. That being said, if committees are conscious of the fact that post-legislative scrutiny is inherent in some of the routine work they undertake it might produce more meaningful scrutiny.

This type of post-legislative scrutiny is less likely to be undertaken with a government memoranda. As a result it may be necessary for committees to receive additional guidance about how post-legislative scrutiny could be part of routine inquiries to ensure they are conscious of this fact and therefore engage properly with post-legislative scrutiny, where it does become part of a more routine inquiry.

3.1.4 Conclusion

To conclude, this chapter has found that in total there were 20 formal based post-legislative scrutiny inquiries of which, all but one involved the review of one Act. This was to be expected to some extent as these inquiries are often triggered by a government memoranda and as such focus upon the problems and issues in one Act of Parliament. The chapter also found that only one of the Acts scrutinised through formal post-legislative scrutiny has been scrutinised more than once, suggesting that generally speaking inquiries do not overlap or repeat by another committee. This is important as post-legislative scrutiny is usually not a priority as time is limited, therefore it is encouraging that committees are not overlapping on this type of post-legislative scrutiny.

In terms of informal post-legislative scrutiny, the chapter discovered that so far it had been undertaken 37 times. As a result, it is more frequent than formal post-legislative scrutiny. What is also different from formal post-legislative scrutiny, is

that it is more likely that more than one single piece of legislation is being assessed in these inquiries. This can be explained by the fact that these inquiries contain a less substantial element of post-legislative scrutiny and often skim over legislation leading (sometimes) to a number of Acts being covered by these inquiries.

The chapter also found that through informal post-legislative scrutiny, a number of committees can be seen to be undertaking this type of post-legislative scrutiny which have not undertaken it through formal post-legislative scrutiny. As a result informal post-legislative scrutiny gives committees an avenue to undertake post-legislative scrutiny in this manner as opposed to a formal post-legislative scrutiny inquiry which a committee may not have time for or the resources to undertake.

However, there is the risk that this type of post-legislative scrutiny becomes a box ticking exercise without engaging fully with the aims and focus of post-legislative scrutiny. This is because informal post-legislative scrutiny is often not apparent until a committee is reporting back to the House of Commons Liaison Committee on which core tasks it has met. As a result it may be necessary for committees to receive additional guidance about how post-legislative scrutiny could be part of routine inquiries to ensure they are conscious to this fact and therefore engage properly with post-legislative scrutiny, where it does become part of a more routine inquiry.

If this study had stuck to formal post-legislative scrutiny and not explored informal, it would have overlooked 37 instances of post-legislative scrutiny. Having assessed the two types of post-legislative scrutiny undertaken by committees it appears that as a whole, there is more of it taking place, however it cannot be described as extensive nor systematic. As further research is necessary into informal post-legislative scrutiny, this should not be seen as an excuse not to increase the amount of formal post-legislative scrutiny taking place.

This chapter has answered research questions one (a) and one (b) and has provided a practical contribution in terms of producing a consolidated list of post-legislative scrutiny. However what remains unclear is the types of legislation selected for review (other than the names of the Acts) and the characteristics of such legislation. The next chapter addresses such issues.

Chapter 4 The process of post-legislative scrutiny and legislation selected for review

In terms of assessing the descriptive data relating to the undertaking of post-legislative scrutiny, this chapter will address research questions one (c); how can we explain the types of legislation being selected for post-legislative scrutiny? This sub research question is important in terms of assessing the extensiveness of post-legislative scrutiny. Without understanding the legislation under review it is not possible to address whether any patterns have developed here.

This chapter will begin with an assessment of the process of post-legislative scrutiny including the time difference between royal assent and post-legislative scrutiny and the time committees have spent on post-legislative scrutiny; the legislation selected for review and the depth of scrutiny that legislation has faced. This is important, firstly, because this data has not been collected and analysed before. Secondly, it will provide an overview of the legislation that has been reviewed and will allow for reflection upon whether the legislation selected and the type of post-legislative scrutiny selected are appropriate. Finally, this data is important to analyse because much of the descriptive data which will be assessed in this chapter will go on to be employed as independent variables for use in regression analysis in chapter five.

This chapter will add to the practical contribution from the previous chapter in terms of finalising the audit of post-legislative scrutiny undertaken in the UK Parliament. It also contributes to our knowledge of committee behaviour in terms of the legislation they select and when they choose to undertake post-legislative scrutiny.

For this chapter, data has been collated for both formal and informal post-legislative scrutiny on the time difference between the Act receiving Royal Assent and receiving post-legislative scrutiny. This is to analyse the average timeframe from Royal Assent to post-legislative scrutiny in order to check whether parliament

is meeting guidelines, recommended by the House of Lords Select Committee on the Constitution (2004). This data has been collated from committee reports.

The rest of the data collection for this chapter applies to formal post-legislative scrutiny inquiries only, on the basis that informal post-legislative scrutiny is not usually identified as post-legislative scrutiny until after the inquiry has taken place. Indeed, informal post-legislative scrutiny was identified through scoping interviews and it was acknowledged that it is usually only certified as post-legislative scrutiny once committees complete their end of session report to state that they have met the core tasks set out by the House of Commons Liaison Committee. It is therefore not completely comparable with formal post-legislative scrutiny which is the focus of this study. While it does beg the question as to whether this is a tick box exercise as far as committees are concerned, the reports contained in this research do contain an element of post-legislative scrutiny through the scrutiny of Acts related to the policy area under discussion.

This audit (for formal post-legislative scrutiny only) also included data on the time spent on the passage of legislation (data derived from sessional returns), the length of legislation (derived from the Acts themselves) and the amount of time that legislation spent in committee and whether the legislation was passed in the wash-up. This allows for the analysis of how much scrutiny Acts received. Data was also collected on the sponsoring government department. This will be determined by which departments produced the explanatory notes for the legislation. The department is listed as both where the responsibility for that policy area currently lies and the department who introduced it, even if that department no longer exists. This is to see which of the former departments were most likely to see their legislation receive post-legislative scrutiny. Data was collected on the primary legislative activity of government departments (derived from sessional returns) between 2005-2017. This will allow for the analysis of which departments are most likely to see legislation receive post-legislative scrutiny and to delve deeper into the reasons why. Furthermore, data was also collected on the party of government which passed the legislation. Data was also collated on the report output of committees in order to compare post-legislative scrutiny output and other committee output (data derived from the publication page of committee websites).

However, it should be noted this was only possible for departmental select committees in the House of Commons, as House of Lords ad hoc committees are only established to inquire into one issue and expire once their report has been published.

Finally, data was also collated for formal post-legislative scrutiny on whether legislation is contentious or uncontentious. There are a number of ways in which legislation is defined as being contentious, including whether the official opposition calls for a formal division at Second and Third Reading, if a smaller party does the same and if there is a government/opposition rebellion. Contentiousness was then coded as (1) Division forced at Second Reading, (2) Division forced at Third Reading, (3) Division forced at both Second and Third Reading and (4) Rebellion by 5% of government or opposition MPs against their party's whip. The five percent threshold was selected to discount the times when only a couple of MPs (e.g. out of over 100) would vote against their party. A rebellion of five percent or more would signify that there was a problem within that party's parliamentary group and was not just the 'usual suspects'. Second and third readings were chosen as they are the opportunities MPs have to vote on Acts as a whole package. Rebellions on specific amendments/clauses were not included here as they signify disagreement a specific part of a bill rather than all of it. Russell & Cowley (2016) noted that amendments to bills were subject to very few rebellions in the Commons. In addition, if a specific part of a bill does force certain Members to rebel at report stage or committee stage, and are defeated they will likely rebel at third reading and their rebellion captured in that data.

4.1 Process of post-legislative scrutiny

First, we assess the time difference between an Act receiving royal assent and receiving post-legislative scrutiny, to determine whether it is meeting the recommendations set out by the House of Lords Constitution Committee and by the Leader of the House of Commons. This section will also assess the amount of time committees have spent on the inquiry. This will help to expand knowledge on

how post-legislative scrutiny is undertaken in terms of meeting recommendations for its undertaking and the time committees devote to it.

4.1.1 Time difference between Royal Assent and post-legislative scrutiny

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

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

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

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

However, if judging post-legislative scrutiny by this standard, then it is clearly failing as most legislation does not receive a review within three years of their commencement and six years of enactment. In the UK Government's response to the Law Commission's report on post-legislative scrutiny in 2008, it set out the

precise details of how this new systematic approach to post-legislative scrutiny should operate. Its response stated that;

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

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

4.1.2 Time difference: Formal post-legislative scrutiny

Table 4.1 shows that the average time frame for all formal post-legislative scrutiny between royal assent and the publication of a post-legislative scrutiny report is eight years and ten months. If you exclude the post-legislative scrutiny inquiry into the Veterinary Surgeons Act 1966, which is an outlier, then the average comes down to seven years, three months.

Both of these figures are therefore outside of the maximum limit recommended by the House of Lords Constitution Committee. It is also out of the time frame suggested by the UK Government however these inquiries include those that have not been initiated following the production of a memorandum and as such are therefore unlikely to follow the government led time frame. The fact that on average they do not meet the House of Lords maximum limit is interesting, especially as the creation of the new post-legislative scrutiny process might lead to the expectation that formal post-legislative scrutiny inquiries follow this guidance.

Table 4.1. The time difference between Royal Assent and the publication of a post-legislative scrutiny report.

Committee	Acts	Act(s) involved	Royal Assent	Inquiry Launch	Variation[7]	Variation with Memo[8]
Environment, Food and Rural Affairs	1	Veterinary Surgeons Act 1966	November 1966	July 2007	40 years, 7 months	
Digital, Culture, Media and Sport	1	Licensing Act 2003	July 2003	July 2008	5 years	
Digital, Culture, Media and Sport	1	Gambling Act 2005	April 2005	May 2011	6 years, 1 month	
Justice	1	Freedom of Information Act 2000	November 2000	December 2011	11 years	11 years
Public Administration and Constitutional affairs	1	Charities Act 2006	November 2007	July 2012	5 years, 8 months	
Health	1	Mental Health Act 2007	July 2007	February 2013[9]	5 years, 7 months	5 years, 7 months
Ad hoc (Lords)	2	Adoption and Children Act 2002	November 2002	June 2012	9 years, 7 months	
	N/A	Children and Adoption Act 2006	June 2006	June 2012	6 years	
Justice	1	Serious Crime Act 2007	October 2007	January 2013	5 years, 2 months	5 years, 2 months
Public Administration and Constitutional affairs	1	Statistics and Registration Service Act 2007	July 2007	June 2012	4 years, 11 months	4 years, 11 months
Housing, Communities and Local Government	1	Greater London Authority Act 2007	October 2007	December 2012	5 years, 2 months	5 years, 2months
Ad hoc (Lords)	1	Inquiries Act 2005	April 2005	June 2013	8 years, 2 months	

[7] Rounded to the nearest month.
[8] Where a memo has been cited as one of the reasons for an inquiry. There are memos for the Inquiries Act, for example, but it was requested by the ad hoc committee rather than it being published under the government's approach.
[9] First evidence session – no inquiry launch date could be located.

Ad hoc (Lords)	1	Mental Capacity Act 2005	April 2005	May 2013	8 years, 1 month	
Home Affairs	1	Regulation of Investigatory Powers Act 2000	July 2000	October 2014	14 years, 3 months	
Joint Committee on Human Rights	1	Terrorism Prevention and Investigation Measures Act 2011	December 2011	December 2014	3 years	
Ad hoc (Lords)	1	Extradition Act 2003	November 2003	June 2014	10 years, 7 months	
Justice	1	Legal Aid, Sentencing and Punishment Act 2012	May 2012	December 2013	1 year, 8 months	
Ad hoc (Lords)	1	Equality Act 2010	April 2010	June 2015	5 year, 3 months	
Environment, Food and Rural Affairs	1	Animal Welfare Act 2006[10]	November 2006	February 2016	9 years, 3 months	
Ad hoc (Lords)	1	Licensing Act 2003	July 2003	June 2016	13 years	
Environment, Food and Rural Affairs	1	Flood Water Management Act 2010	April 2010	January 2017	6 years, 10 months	6 years, 10 months
				Average	8 years, 10 months	6 years, 5 months

Source: (CLG (2013); CMS (2009, 2012); EFRA (2008a, 2016b, 2017c); H (2013); HA (2014b); JCHR (2014a); J (2012, 2013a, 2015); PACA (2013a, 2013c); SCAL (2013); SCEL (2015); SCEAD (2016); SCIA (2014); SCLA (2017); SCMCA (2014))

[10] A memoranda was published in 2010, 6 years prior to the committee deciding to conduct post-legislative scrutiny, hence it was not a trigger for this particular inquiry.

The table also shows the difference for those Acts which received a post-legislative memorandum. While the data shows that the difference is closer if a memorandum is present, such scrutiny is still taking place outside of the House of Lords' time frame (although only just). Out of twenty-one pieces of legislation to receive post-legislative scrutiny here, nine were conducted within the House of Lords Constitution Committees recommended time frame of 6 years after passage (48%). The data also shows that post-legislative scrutiny is taking place outside of the time frame which leads on from the government's memoranda. Although if the government produces a memorandum in the fifth year (assuming they produce them on time), it might take time for an opening to come up in a committee's work plan.

This is especially true for departmental select committees, which have a variety of tasks to fulfil. There is on average a one year difference between those which have received a memorandum from the government through the new approach and those which did not[11]. It would suggest that the memoranda process does bring down the average time, albeit by a year. Although there could be other factors at work here. For example, the UK Government's approach to post-legislative scrutiny was announced in 2008. However, this did apply to all those Acts which had been passed since the start of the 2005 Parliament. Therefore, for those Acts passed prior to 2008, when the memoranda were produced is important and will depend upon how long it took departments to go back through the previous three years' worth of legislation. The lack of inquiries hitting the recommended timeframe can be explained by the fact that clerks believe it is too short a time period. The former clerk of the House of Commons Culture, Media and Sport Committee noted that it needs to be five years at the very least, possibly seven or eight depending upon the policy area in question (Flood, 2017). The clerk of the Select Committee on the Equality Act 2010 and Disability noted that both recommended timeframes are too short and in fact, seven to eight years is more appropriate (Collon, 2017a). If committee clerks believe additional time is needed,

[11]Excluding the Veterinary Surgeons Act 1966 as it is an outlier.

and as there are no sanctions for not meeting the timeframes, then this explains why only 48% of formal inquiries to date have met the timeframe.

This does raise broader questions about the use of these time frames. Both the government's and the House of Lords' timeframe were developed prior to the introduction and subsequent operation of this system and have not been reviewed. As committees are not hitting these timeframes it suggests there might be a more appropriate one to deploy. For example, a number of clerks noted that a more realistic timeframe would be somewhere between five and ten years (Collon, 2017a; Flood, 2016). It also raises the broader issue of whether targets are useful at all. Proponents of targets (or formal timeframes) would argue that they provide direction and motivation but opponents would argue they suggest a specific mission and meeting them could come at the cost of other areas (Boyne & Chen, 2007). In the case of post-legislative scrutiny, they may have been important in motivating committees to take the new system more seriously, but ten years later, with the hindsight of the practicalities of undertaking this scrutiny, a review of them would be appropriate.

The table shows that legislation passed since 2007, which has gone on to receive post-legislative scrutiny, has all managed to hit the maximum limit as set out by the House of Lords Constitution Committee. There may, therefore, be a trend following the introduction of the new systematic approach by the UK Government. Such a trend could be confirmed following the undertaking of additional post-legislative scrutiny inquiries in the coming 2017 Parliament, and beyond. The table also shows two formal post-legislative scrutiny inquiries which were quite rapidly reviewed after enactment. The Legal Aid, Sentencing and Punishment Act 2012 and Terrorism Prevention and Investigation Measures Act 2011 were both reviewed three years after they had received royal assent. This shows that committees can act rapidly if they believe the legislation warrants a review as both of these Acts had not received post-legislative review by the relevant government departments by the time the inquiry was started. The Terrorism Prevention and Investigation Measures Act 2011 was reviewed at this time because the previous control order system received a yearly review but that was not a requirement for Terrorism Prevention and Investigation Measures (TPIMs). With the Home Office only

producing quarterly statistics the committee felt it was necessary to address the overall operation of the Act (Joint Committee on Human Rights, 2015). With regards to the Legal Aid, Sentencing and Punishment Act 2012, the Justice Committee noted that it was an early review but determined that because legal aid and access to justice are so important, the changes deserved to be closely monitored (House of Commons Justice Committee, 2015)

The data also reveals that committees are willing to take a longer-term view in terms of reviewing legislation. For example, the Veterinary Surgeons Act 1966 waited 42 years for a formal post-legislative scrutiny inquiry. It should be noted however that this Act was reviewed before the 2008 timeframes were implemented by the government and as it was passed in 1966 it would not fall under the 2005 cut off period for departmental review. In total six pieces of legislation were reviewed after ten years on the statue books. It is important to note that there will be advantages and disadvantages to reviewing legislation earlier and later following enactment. For example, if reviewed too early a committee may miss problems which are yet to develop as the legislation has not been on the statute books long enough. There is also the chance that early review might deter another committee or a successor committee from reviewing it again, so as not to cause an overlap. However, there are disadvantages of reviewing legislation after it has been on the statue books for a longer length of time. For example, the longer a piece of legislation has been on the statue books the greater the prospect is that the Act will be either repealed, substantively changed or superseded by new legislation. This means that some Acts which may warrant review during their lifetime in operation will not receive review. This may be seen as a positive but if an Act has been underperforming its aims for 7 years before it is repealed, that is 7 years when a review could have taken place and a solution sought. Furthermore, while a committee may come across a problem with the legislation, it raises the question of whether an earlier review would have also discovered it and dealt with the issue sooner. This is why there must be flexibility within the system in order to deal with such challenges and why committees should be able to undertake post-legislative scrutiny without a memorandum from the government. It means they can listen to issues that are being raised in order to better guide them, whether that be

through stakeholders or the media. Further details regarding why committees decide to initiate post-legislative scrutiny will be assessed in the coming chapters when analysing interview data on the individual experiences of committees undertaking post-legislative scrutiny.

The mode for the differences (all) is six. The mode is at the maximum limit of the House of Lords' recommendation. The mode for differences where a memorandum has been present is six and therefore within the limit of the House of Lords' recommendation. Overall when taking the average and mode into account the undertaking of post-legislative scrutiny is not terribly far away from the recommended time frame set out by the House of Lords. As discussed already most inquires take place within six years.

4.1.3 Time difference: Informal post-legislative scrutiny

Next, this section will discuss the mean and mode difference between royal assent and post-legislative scrutiny for informal post-legislative scrutiny. This is important in order to compare both types of post-legislative scrutiny and note how they are different. For this type of post-legislative scrutiny, only one set of data is needed as memoranda are a trigger for formal as opposed to informal post-legislative scrutiny.

The average time difference in table 4.2 is 15 years, 10 months. This could be due to inquiries being based around an issue and while reviewing legislation may fall into that inquiry, it is regardless of when it was passed by parliament. For example, the joint inquiry into export controls by the Business Innovation and Skills, Defence, International Development and Foreign Affairs Committees assessed legislation from both 2003 and 1979, which skews the data in terms of the average. This would suggest that the introduction of government memoranda was an appropriate step to take, to ensure that post-legislative scrutiny is not only more systematic but also more timely. Removing the Offences Against the Person Act 1861 brings the average time difference down to 13 years, 10 months.

Table 4.2. The time difference between Royal Assent and the publication of a post-legislative scrutiny report (informal)

Committee	No of Acts	Act(s)	Royal Assent	Inquiry Launch	Variation
Digital, Culture, Media and Sport	1	Data Protection Act 1998	July 1998	July 2013	15 years
Digital, Culture, Media and Sport	13	Protection of Children Act 1978	July 1978	August 2013	35 years, 1 month
	N/A	Criminal Justice Act 1988	July 1988	August 2013	25 years, 1 month
	N/A	Criminal Justice and Public Order Act 1994	November 1994	August 2013	18 years, 9 months
	N/A	Criminal Justice and Immigration Act 2008	May 2008	August 2013	5 years, 3 months
	N/A	Coroners and Justice Act 2009	November 2009	August 2013	3 years, 9 months
	N/A	Communications Act 2003	July 2003	August 2013	10 years, 1 month
	N/A	Obscene Publications Act 1959	July 1959	August 2013	54 years, 1 month
	N/A	Human Rights Act 1998	November 1998	August 2013	14 years, 9 months
	N/A	Malicious Communications Act 1988	July 1988	August 2013	25 years, 1 month
	N/A	Offences Against the Person Act 1861	August 1861	August 2013	152 years
	N/A	Computer Misuse 1990	June 1990	August 2013	23 years, 2 months
	N/A	Protection from Harassment Act 1997	March 1997	August 2013	16 years, 5 months
	N/A	Sexual Offences Act 2003	November 2003	August 2013	9 years, 9 months
Digital, Culture, Media and Sport	1	Digital Economy Act 2010	April 2010	October 2012	2 years, 6 months
Digital, Culture, Media and Sport	1	Human Rights Act 1998	November 1998	November 2008	10 years
Digital, Culture, Media and Sport	2	Criminal Justice and Public Order Act 1994	November 1994	May 2007	12 years, 6 months
	N/A	London Olympic Games and Paralympic Games Act 2006	March 2006	May 2007	1 year, 1 month
Digital, Culture, Media and Sport	2	Lotteries and Amusements Act 1967	July 1976	October 2006	30 years, 3 months
	N/A	Gambling Act 2005	April 2005	October 2006	1 year, 7 months
Business, Energy and Industrial Strategy	2	Equal Pay Act 1970	May 1970	September 2012	42 years, 3 months
	N/A	Equality Act 2010	April 2010	September 2012	2 years, 5 months

Business, Energy and Industrial Strategy	1	Digital Economy Act 2010	April 2010	August 2011	1 year, 4 months
Business, Energy and Industrial Strategy	1	Housing Grants, Construction and Regeneration Act 1996	July 1996	October 2007	11 years, 3 months
Business, Energy and Industrial Strategy; Defence; Foreign Affairs; International Development	2	Export Control Act 2002	July 2002	December 2006	4 years, 4 months
Business, Energy and Industrial Strategy	1	Companies Act 2006	November 2006	September 2016	9 years, 10 months
Housing, Communities and Local Government	1	Public Services (Social Value) Act 2012	March 2012	July 2013	1 year, 4 months
Housing, Communities and Local Government	1	Care Act 2014	May 2014	June 2016	2 years, 1 month
Defence	2	Health and Safety at Work Act etc. 1974	July 1974	October 2015	41 years, 3 months
	N/A	Corporate Manslaughter and Homicide Act 2007	July 2007	October 2015	8 years, 3 months
Environment, Food and Rural Affairs	3	Animal Welfare Act 2006	November 2006	December 2013	7 years, 1 month
	N/A	Dangerous Wild Animals Act 1974	July 1976	December 2013	37 years, 5 months
	N/A	Pet Animals Act 1951	June 1951	December 2013	62 years, 6 months
Environment, Food and Rural Affairs	1	Dangerous Dogs Act 1991	July 1991	May 2012	20 years, 10 months
Environment, Food and Rural Affairs	1	Flood and Water Management Act 2010	April 2010	January 2016	5 years, 10 months
Environmental Audit	1	Wildlife and Countryside Act 1981	October 1981	December 2013	32 years, 1 month
Health	1	Licensing Act 2003	July 2003	April 2009	5 years, 9 months
Home Affairs	2	Regulation of Investigatory Powers Act 2000	July 2000	July 2013	13 years
	N/A	Telecommunications Act 1984	April 1984	July 2013	29 years, 3 months
Home Affairs	1	Misuse of Drugs Act 1971	May 1971	January 2012	40 years, 8 months
Home Affairs	1	Regulation of Investigatory Powers Act 2000	July 2000	March 2007	6 years, 8 months
Home Affairs	2	Domestic Violence, Crime and Victims Act 2004	November 2004	July 2007	2 years, 8 months
	N/A	Forced Marriage (Civil Protection) Act 2007	July 2007	July 2007	0 years
Home Affairs	1	Proceeds of Crime Act 2002	July 2002	January 2016	13 years, 6 months
Home Affairs	1	Modern Slavery Act 2015	March 2015	January 2016	10 months
International Development	4	International Development Act 2002	February 2002	July 2015	13 years, 5 months

	N/A	International Development (Reporting and Transparency) Act 2006	July 2006	July 2015	8 years, 12 months
	N/A	International Development (Gender Equality) Act 2014	March 2014	July 2015	1 year, 4 months
	N/A	International Development (Official Development Assistance Target) Act 2015	March 2015	July 2015	4 months
Northern Ireland Affairs	1	Northern Ireland Act 1998	November 1998	December 2012	14 years, 1 month
Public Administration and Constitutional Affairs	3	Public Interest Disclosure Act 1998	July 1998	December 2008	10 years, 5 months
	N/A	Freedom of Information Act 2000	November 2000	December 2008	8 years
	N/A	Official Secrets Act 1989	May 1989	December 2008	19 years, 7 months
Joint Committee on Human Rights	1	Children Act 1989	November 1989	June 2014	24 years, 7 months
Joint Committee on Human Rights	2	Extradition Act 2003	November 2003	December 2010	7 years, 1 month
		Police and Justice Act 2006	November 2006	December 2010	4 years, 1 month
Joint Committee on Human Rights	1	Public Order Act 1986	November 1986	April 2008	21 years, 6 months
Joint Committee on Human Rights	2	Nationality, Immigration and Asylum Act 2002	November 2002	November 2006	4 years
	N/A	Asylum and Immigration (Treatment of Claimants etc.) Act 2004	July 2004	November 2006	2 years, 4 months
Joint Committee on Human Rights	1	Data Protection Act 1998	July 1998	November 2007	9 years, 4 months
Women and Equalities	2	Equality Act 2010	April 2010	August 2016	6 years, 4 months
	N/A	Sex Discrimination (Election Candidates) Act 2002	February 2002	August 2016	14 years, 6 months
Women and Equalities	2	Gender Recognition Act 2004	July 2004	July 2015	11 years, 1 month
	N/A	Equality Act 2010	April 2010	July 2015	5 years, 4 months
Women and Equalities; Petitions	1	Equality Act 2010	April 2010	June 2016	6 years, 3 months
Women and Equalities	2	Equality Act 2010	April 2010	August 2016	6 years, 4 months
	N/A	Licencing Act 2003	July 2003	August 2016	13 years, 1 month
				AVG	15 years, 10 months

Source: (BEIS (2017); BIS (2008, 2012a, 2013); CLG (2014a, 2017); CMS (2007, 2008, 2010, 2013a, 2013b, 2014a); D, FA, ID and TI (2007); D (2016a); EFRA (2013a, 2014a, 2016a, 2016b); EA (2014a); H (2010); HA (2008a, 2008b, 2012, 2014a); ID (2016); JCHR (2007a, 2008a, 2009, 2011, 2014b); NIA (2013a); PACA (2009); PE (2017); WE (2016, 2017a, 2017b)).

Timeliness appears important in a number of these informal post-legislative scrutiny inquiries and as such that arguably is the best time to undertake those inquiries rather than through an arbitrary timeframe. For example, in late 2015/early 2016 there were a series of floods caused by Storms Desmond and Eva (BBC News, 2016) and following this, the Environment, Food and Rural Affairs Committee held an inquiry on flood water management. In 2012 the same committee held an inquiry into dog control, after the government launched a consultation into this policy, following a spate of dangerous dog attacks (Bowcott, 2012).

Table 4.3. Memoranda and informal post-legislative scrutiny

Legislation	Published	Notes
Equality Act 2010	July 2015	Published at the request of an ad hoc committee for a formal post-legislative scrutiny inquiry and copied to the House of Commons Women and Equalities Committee
Animal Welfare Act 2006	December 2010	Published three years prior to the informal inquiry.
Companies Act 2006	January 2012	Published four years prior to the informal inquiry.
Flood Water Management Act 2010	January 2017	Published after the informal inquiry but triggered a formal inquiry.
Licensing Act 2003	June 2016	Published after the informal inquiry and at the request of an ad hoc committee for a formal post-legislative scrutiny inquiry.
London Olympic Games and Paralympic Games Act 2006	June 2011	Published five years after the informal inquiry.
Police and Justice Act 2006	October 2011	Published just after the informal inquiry.

Timeliness is, therefore, an important factor and points to the need to retain a flexible system of post-legislative scrutiny. The timeframes that are currently constituted do have their place in encouraging more formal post-legislative scrutiny but they are not concrete. Post-legislative memoranda are designed to ensure a process of departmental review but their publication sometimes Acts as a trigger for formal post-legislative scrutiny. None of the inquiries categorised under

informal post-legislative scrutiny have been triggered by memoranda, mainly because they contain elements of post-legislative scrutiny as part of a broader issue based inquiry. Data on memoranda are not contained within table 4.2. However, post-legislative memoranda do exist for seven of the Acts listed in table 4.3. The table contains the Act, when it was published and notes on its publication.

4.1.4 Time spent on post-legislative scrutiny

For the rest of this chapter, the data focuses on formal post-legislative scrutiny only, as it focuses on the characteristics of the legislation selected for full review. Table 4.4 shows the time spent on formal post-legislative scrutiny by the number of oral evidence sessions, witnesses and days between the inquiry launch and report publication.

The table shows that there is a clear difference between the time spent by Commons and Lords committees on post-legislative scrutiny. On average, House of Lords committees hold thirteen oral evidence sessions and take evidence from 47 witnesses per inquiry in comparison to House of Commons committees who on average hold five oral evidence sessions with 17 witnesses per inquiry. This will be down to the amount of time that ad hoc committees in the House of Lords have to undertake a post-legislative scrutiny inquires, in contrast to the numerous time and resource pressures that House of Commons committees face. However, the time difference between the inquiry launch and report publication can be deceptive. The three longest running post-legislative scrutiny inquiries were not in the Lords but in the Commons. However, it is important to note here that the top three committees have multiple tasks to complete and are likely juggling more than one at a time, in comparison to ad hoc committees in the Lords.

There is variation in the amount of time that committees spend on post-legislative scrutiny which can in part be explained by the number of tasks and other inquiries that they are potentially undertaking.

It could be argued that the more oral evidence sessions that are held, the more likely it is that the inquiry is a substantial one. This could show inquiries that are

planned well in advance or just planned well, in comparison to those who hold fewer oral evidence sessions which might suggest the inquiry has been squeezed into a tight agenda. However, not all inquiries include oral evidence, indeed the inquiries into the Flood Water Management Act 2010 and the Serious Crime Act 2007 took no oral evidence and lasted 90 and 241 days respectively.

In terms of which committees are more likely to undertake longer inquiries, the Justice Committee held seven and six oral evidence sessions, suggesting it undertakes more substantial inquiries. The other committees show a mixed picture which might suggest that post-legislative scrutiny is slotted into the agenda where and when committees deem it necessary rather than carving out specific time. The time allocated for those inquiries will depend upon a number of factors such as workload, resources and the scope of inquiry that they wish to undertake. However, the scope of the inquiry could also be limited by the previous two factors. This chapter will now move on to assess the legislation which is selected to receive post-legislative scrutiny.

Table 4.4. Time spent on formal post-legislative scrutiny by number of oral evidence sessions and panels

Committee	Acts	No of Witnesses	Oral evidence sessions	Inquiry length (Days)
Ad hoc (Lords)	Adoption and Children Act 2002, Children and Adoption Act 2006	33	25	260
Ad hoc (Lords)	Mental Capacity Act 2005	54	22	301
Ad hoc (Lords)	Equality Act 2010	53	20	274
Ad hoc (Lords)	Licensing Act 2003	65	20	278
Ad hoc (Lords)	Extradition Act 2003	43	16	271
Ad hoc (Lords)	Inquiries Act 2005	31	15	271
Digital, Culture, Media and Sport	Gambling Act 2005	50	14	440
Justice	Freedom of Information Act 2000	34	13	219
Digital, Culture, Media and Sport	Licensing Act 2003	35	12	300
Justice	Legal Aid, Sentencing and Punishment Act 2012	33	11	454
Environment, Food and Rural Affairs	Animal Welfare Act 2006	33	10	286
Public Administration and Constitutional Affairs	Charities Act 2006	20	9	322
Housing, Communities and Local Government	Greater London Authority Act 2007	8	5	300
Environment, Food and Rural Affairs	Veterinary Surgeons Act 1966	13	5	309
Home Affairs	Regulation of Investigatory Powers Act 2000	6	4	32
Health	Mental Health Act 2007	7	2	175
Public Administration and Constitutional Affairs	Statistics and Registration Service Act 2007	5	2	255
Joint Committee on Human Rights	Terrorism Prevention and Investigation Measures Act 2011	NA	1	399
Environment, Food and Rural Affairs	Flood and Water Management Act 2010	0	0	90
Justice	Serious Crime Act 2007	0	0	241

Source: (CLG (2013); CMS (2009, 2012); EFRA (2008a, 2016b, 2017c); H (2013); HA (2014b); JCHR (2014a); J (2012, 2013a, 2015); PACA (2013a, 2013c); SCAL (2013); SCEL (2015); SCEAD (2016); SCIA (2014); SCLA (2017); SCMCA (2014

4.2 Selection of legislation

This section will assess the party of government under which the legislation that has received formal post-legislative scrutiny was initiated. This section will also assess the departments that have introduced legislation which have gone on to receive formal post-legislative scrutiny. As informal post-legislative scrutiny often occurs within a broader inquiry without direct acknowledgement, they will not be assessed in this manner. The purpose of assessing the party of government and government departments is to see whether there are any trends in legislation receiving dedicated review. This is less likely to happen with informal post-legislative scrutiny as it is not necessarily driven by problems in legislation being raised. Rather it is part of a routine inquiry assessing a policy area in which it then becomes apparent that some of the problems lie with legislation. Finally, it will assess the contentiousness of the legislation in terms of whether there was a division at second and/or third reading, and in terms of whether or not there was a rebellion during those votes

4.2.1 Party of government

Table 4.5 shows the party of government which introduced the legislation receiving formal post-legislative scrutiny. It shows that 18 out of the 20 Acts which have been subject to formal post-legislative scrutiny were introduced under previous Labour Governments (1964-1970, 1997-2001, 2001-2005 and 2005-2010), with only two pieces of legislation being introduced by the 2010-2015 Coalition Government. This can potentially be explained by the fact that the 2008 system encouraged the production of a memorandum and thus encouraged post-legislative scrutiny of Acts passed since 2005. During the first half of the 2010 Parliament, it would be Labour-introduced legislation which was receiving post-legislative review by the relevant government department. However, we are now well beyond the first half of the 2010 Parliament. The legislation of the 2010-2015 Coalition Government should now be receiving departmental post-legislative review. There is a challenge

here with accountability as the government which introduced the legislation is no longer in office, as such any accountability is directed at the current administration, as a result of 'government' (regardless of who introduced it) being responsible for the implementation of legislation. As noted in the typology in chapter two, accountability is not ranked as being high in relation to post-legislative scrutiny (or type three scrutiny more broadly) because post-legislative scrutiny is about more than just accountability and this finding further supports the argument that accountability is not high in terms of presence.

It should also be noted that not all post-legislative scrutiny is driven by memoranda published by government departments under the systematic process, as committees can and do select legislation to receive post-legislative scrutiny without receiving a post-legislative memorandum first. There is no procedural obstacle that could stop committees addressing the legislation of the 2010-2015 Coalition Government. Recent reforms were supposed to have emboldened committees. However, this does not appear to be the case in relation to the selection of legislation to receive post-legislative scrutiny. Indeed Barlow (2013) suggested that committees needed to behave themselves and be less hostile with government departments. Even so, a potential effect of this (if committees have heeded such a warning) is that committees become reluctant to undertake scrutiny that the government frowns upon. This behaviour is in stark contrast to the literature on scrutiny in the conceptual framework which suggested that these committees were created to subject the executive to limitations and control (HC Deb 25 June 1979, cc.36-77). In reality, this experience shows the difference between scrutiny in theory (as a concept) and how scrutiny is delivered in practice, taking into account the power relations between the executive and legislature.

The above point again raises the issue of the powers of committees. The fact they are being told to 'behave themselves' shows how little hard power they have. As they rely on the power of persuasion (Gordon & Street, 2012), they obviously need to avoid irritating the body they are trying to influence.

This suggests that there might be some bias in the selection of legislation that receives post-legislative scrutiny on the basis that some of the legislation of 2010-

2015 Coalition Government now falls into the three-five year timeframe for post-legislative review by a government department. However, the subsequent memoranda from these reviews do not appear to be getting picked up by committees (the section later in the chapter on the post-legislative gap will explore this issue in more detail). This raises the question of whether this is a result of the party in government at the time. There may be an unwillingness among MPs from the governing party to subject their own government's legislation to post-legislative scrutiny. The bias here is not completely unexpected as parliament is a partisan body and as such is going to act in a partisan way. It is key however for parliament and especially committees to be aware of these inherent biases over selection and work to address them.

Table 4.5. Legislation receiving formal post-legislative scrutiny by party of government

Committee	No of Acts scrutinised	Act(s) involved	Party of Government
Justice	1	Legal Aid, Sentencing and Punishment Act 2012	Conservative/Liberal Democrat
Joint Committee on Human Rights	1	Terrorism Prevention and Investigation Measures Act 2011	Conservative/Liberal Democrat
Digital, Culture, Media and Sport	1	Gambling Act 2005	Labour
Justice	1	Freedom of Information Act 2000	Labour
Public Administration and Constitutional Affairs	1	Charities Act 2006	Labour
Health	1	Mental Health Act 2007	Labour
Ad hoc (Lords)	2	Adoption and Children Act 2002	Labour
	N/A	Children and Adoption Act 2006	Labour
Ad hoc (Lords)	1	Equality Act 2010	Labour
Ad hoc (Lords)	1	Extradition Act 2003	Labour
Ad hoc (Lords)	1	Inquiries Act 2005	Labour
Ad hoc (Lords)	1	Mental Capacity Act 2005	Labour
Ad hoc (Lords)	1	Licensing Act 2003	Labour
Digital, Culture, Media and Sport	1	Licensing Act 2003	Labour
Environment, Food and Rural Affairs	1	Veterinary Surgeons Act 1966	Labour
Home Affairs	1	Regulation of Investigatory Powers Act 2000	Labour
Justice	1	Serious Crime Act 2007	Labour
Public Administration and Constitutional Affairs	1	Statistics and Registration Service Act 2007	Labour
Housing, Communities and Local Government	1	Greater London Authority Act 2007	Labour
Environment, Food and Rural Affairs	1	Animal Welfare Act 2006	Labour
Environment, Food and Rural Affairs	1	Flood and Water Management Act 2010	Labour

Source: (HM Government, 1966, 2000a, 2000b, 2002, 2003a, 2003b, 2005a, 2005b, 2005c, 2006a, 2006b, 2006c, 2007a, 2007b, 2007c, 2007d, 2010a, 2010b, 2011, 2012)

4.2.2 Government departments and post-legislative scrutiny

Next, this section moves on to assess the frequency in which government departments have seen their legislation subject to formal post-legislative inquiry. Table 4.6 shows the Acts in question, as well as the department which currently holds responsibility for the legislation, so a comparison can be made. However, the department which it was introduced under is also included (even if this department has been abolished or merged). This is to assess whether certain departments which no longer exist in their original form at the time the legislation was introduced were likely to see their legislation reviewed.

Table 4.6 shows that the two departments which had their legislation reviewed by post-legislative scrutiny most often were the Ministry of Justice and the Home Office with five and four pieces of legislation reviewed respectively (when placing the legislation under the department which would be responsible for it today).

However, taking into account the original departments, the department most likely to see post-legislative scrutiny undertaken on its legislation is the Home Office with five pieces of legislation receiving scrutiny. The Home Office may be one of the most legislatively intensive departments here because of the political need to show the government is being tough on law and order. Indeed, research shows that between 2010 and 2017, the Home Office was the second most legislatively intensive department, after the Treasury (Institute for Government, 2018). This links back to the idea that successive governments have used the legislative process as a form of press release to show they are doing something (Fox & Korris, 2010). The difference can be explained by the fact that the Ministry of Justice was created in 2007 and took some of the Home Office's responsibilities on law and human rights and took all the responsibilities of the Department for Constitutional Affairs (responsibility for constitutional affairs now rests with the Cabinet Office since the Coalition Government). If the Ministry of Justice is most likely to see its legislation reviewed, then it would be expected that the Justice Committee is the departmental select committee which has undertaken the most formal post-legislative scrutiny.

Table 4.6. Legislation receiving post-legislative scrutiny by initiating government department

Committee	No of Acts scrutinised	Act(s) involved	Government Department (now)	Government Department (original)
Ad hoc (Lords)	2	Adoption and Children Act 2002	Department for Education	Department of Health
	N/A	Children and Adoption Act 2006	Department for Education	Department for Education and Skills
Public Administration and Constitutional Affairs	1	Charities Act 2006	Cabinet Office	Cabinet Office
Ad hoc (Lords)	1	Equality Act 2010	Government Equalities Office	Government Equalities Office; Department for Work and Pensions; Department for Children, Schools and Families; Department for Business, Innovation and Skills; Department for Transport
Ad hoc (Lords)	1	Extradition Act 2003	Home Office	Home Office
Environment, Food and Rural Affairs	1	Flood and Water Management Act 2010	Department for the Environment, Food and Rural Affairs	Department for the Environment, Food and Rural Affairs
Justice	1	Freedom of Information Act 2000	Ministry of Justice	Home Office
Digital, Culture, Media and Sport	1	Gambling Act 2005	Department for Digital, Culture, Media and Sport	Department for Culture, Media and Sport
Housing, Communities and Local Government	1	Greater London Authority Act 2007	Ministry of Housing, Communities and Local Government	Department for Communities and Local Government
Ad hoc (Lords)	1	Inquiries Act 2005	Ministry of Justice	Department for Constitutional Affairs
Justice	1	Legal Aid, Sentencing and Punishment Act 2012	Ministry of Justice	Ministry of Justice

Ad hoc (Lords)	1	Licensing Act 2003	Department for Digital, Culture, Media and Sport	Department for Culture, Media and Sport
Digital, Culture, Media and Sport	1	Licensing Act 2003	Department for Digital, Culture, Media and Sport	Department for Culture, Media and Sport
Ad hoc (Lords)	1	Mental Capacity Act 2005	Ministry of Justice / Department of Health and Social Care	Department for Constitutional Affairs / Department of Health
Health	1	Mental Health Act 2007	Ministry of Justice / Department of Health and Social Care	Ministry of Justice / Department of Health
Home Affairs	1	Regulation of Investigatory Powers Act 2000	Home Office	Home Office
Justice	1	Serious Crime Act 2007	Home Office	Home Office
Public Administration and Constitutional Affairs	1	Statistics and Registration Service Act 2007	Her Majesty's Treasury	Her Majesty's Treasury
Joint Committee on Human Rights	1	Terrorism Prevention and Investigation Measures Act 2011	Home Office	Home Office
Environment, Food and Rural Affairs	1	Veterinary Surgeons Act 1966	Department for the Environment, Food and Rural Affairs	Department for the Environment, Food and Rural Affairs
Environment, Food and Rural Affairs	1	Animal Welfare Act 2006	Department for the Environment, Food and Rural Affairs	Department for the Environment, Food and Rural Affairs

Source: (CO (2006); DCSF (2006); DCLG (2007); DFCA, DH (2005); DFCA (2005); DCMS (2003, 2005); DEFRA (1966; 2006; 2010); DH, MJ (2007); DH (2002); HMT (2007); HO (2000a, 2000b, 2003, 2007, 2011); MJ (2012); WEO (2010)

Table 4.7. Legislative output of departments whose select committees have undertaken formal post-legislative scrutiny.

	2005-2010 Parliament					**2010-2015 Parliament**				**2015-2017 Parliament**		
	2005-2006	*2006-2007*	*2007-2008*	*2008-2009*	*2009-2010*	*2010-2012*	*2012-2013*	*2013-2014*	*2014-2015*	*2015-2016*	*2016-2017*	***Total***
Department for Culture, Media and Sport	2	1	0	0	1	1	1	2	0	0	3	11
Ministry of Justice	3	5	2	2	2	2	4	3	1	0	0	24
Cabinet Office	3	0	1	2	0	5	2	2	3	1	0	19
Department of Health and Social Care	5	1	2	1	1	1	1	1	0	0	1	14
Home Office	8	3	1	2	1	5	2	2	4	2	2	32
Department for Environment, Food and Rural Affairs	3	0	0	1	1	1	0	1	0	0	0	7
Ministry of Housing, Communities and Local Government	1	3	2	2	0	3	2	1	0	2	1	17
Total	25	13	8	10	6	18	12	12	8	5	7	124

Source: (The National Archives (2016); UK Parliament, (2016a))

Table 4.6 established that the Ministry of Justice and Home Office were the departments which had the most legislation receive formal post-legislative scrutiny. This can be explained by the committees which have undertaken post-legislative scrutiny on their acts (not necessarily the correlated departmental select committee) might be more in favour and have more of an interest in post-legislative scrutiny. This is true of the Justice Committee under the chairmanship of Alan Beith (2007-2015). However, it can also be explained by the fact they are two departments which are legislatively intensive. With the Home Office being prominent in terms of the amount of legislation receiving post-legislative scrutiny it is then somewhat surprising to see the Home Affairs Committee having only undertaken one piece of formal post-legislative scrutiny. The reasons for and for not undertaking post-legislative scrutiny will be explored in more detail in chapters six and seven which deal with the experiences committees have had while undertaking post-legislative scrutiny.

Table 4.7 shows the legislative output of departments whose shadowing select committees have undertaken formal post-legislative scrutiny. This allows us to compare the legislative intensity of government departments in comparison to the most active departmental select committees. The Home Office and Ministry of Justice have the top two highest legislative outputs. If these departments have a high legislative output, then to some degree there is a greater chance that their legislation will receive post-legislative scrutiny because there are more of them in force. However, the Department for Culture, Media and Sport only introduced eight pieces of legislation between the start of the 2005 Parliament and end of the 2010 Parliament, yet there have been two formal post-legislative scrutiny inquiries. If the pattern occurs in previous parliaments, in terms of legislative output, it reflects the willingness of the committee to undertake post-legislative scrutiny, and a lighter workload of that committee in comparison to other committees. Take the example of the Home Affairs Committee, it shadows one of the most legislatively intensive departments yet it has only undertaken one piece of formal post-legislative scrutiny. While it is true some of the Home Office's responsibilities have been transferred to the Ministry of Justice, it also indicates an unwillingness

of the Home Affairs Committee to undertake formal post-legislative scrutiny, which will depend upon the preferences of committee members.

4.2.3 Contentiousness

There are a number of ways in which legislation can be defined as contentious, including whether the official opposition calls for a formal division at Second and Third Reading, if a smaller party does the same and if there is a government/opposition rebellion in one of those divisions. Table 4.8 shows whether or not the legislation which has received formal post-legislative scrutiny so far, was divided on at second and/or third reading in the House of Commons and also whether or not there was a rebellion by MPs during these divisions.

However, there are differing degrees of contentiousness and just because a piece of legislation passes second reading without a division does not mean it will not be seen as contentious further through the legislative process. To this end, table 4.7 also addresses whether there was a division at third reading. The table shows that there was a division forced at third reading for eleven out of twenty pieces of legislation (55%). Five of those bills (25%) saw a division at both second and third reading which would suggest a level of contentiousness not only on the general principles of the bill but also on the final Act itself. If a party or group of MPs are dissatisfied with the principles of a bill and vote against it at second reading, then they are unlikely to vote for it at third reading.

Finally, the table shows that only the Gambling Act 2005 saw a rebellion at these stages during its passage. This also points to a different type of contentiousness on the basis that MPs are rebelling against their party's position whether they are in government or opposition. Indeed, 28 Labour (government) MPs voted against the whip during the division on second reading and 24 Labour MPs voted against the whip during the division at third reading. The fact there was a rebellion on this legislation might mean efforts were made to revise the bill in order to accommodate the legislation's critics, more so than legislation which is challenged along party lines. There were no rebellions among opposition parties.

Table 4.8. Contentiousness of legislation by divisions and rebellions

Committee	No of Acts scrutinised	Act(s) involved	2R - D	3R - D	Rebellion
Ad hoc (Lords)	2	Adoption and Children Act 2002	N	N	N/A[12]
Public Administration and Constitutional Affairs	1	Charities Act 2006	N	N	N/A
	N/A	Children and Adoption Act 2006	N	Y	N
Ad hoc (Lords)	1	Equality Act 2010	N	Y	N
Ad hoc (Lords)	1	Extradition Act 2003	Y	Y	N
Environment, Food and Rural Affairs	1	Flood and Water Management Act 2010	N	N	N/A
Justice	1	Freedom of Information Act 2000	N	N	N/A
Digital, Culture, Media and Sport	1	Gambling Act 2005	Y	Y	Y
Housing, Communities and Local Government	1	Greater London Authority Act 2007	Y	Y	N
Ad hoc (Lords)	1	Inquiries Act 2005	N	N	N/A
Justice	1	Legal Aid, Sentencing and Punishment Act 2012	Y	Y	N
Ad hoc (Lords)	1	Licensing Act 2003	N	Y	N
Digital, Culture, Media and Sport	1	Licensing Act 2003	N	Y	N
Ad hoc (Lords)	1	Mental Capacity Act 2005	Y	Y	N
Health	1	Mental Health Act 2007	N	Y	N
Home Affairs	1	Regulation of Investigatory Powers Act 2000	N	N	N/A
Justice	1	Serious Crime Act 2007	N	N	N/A
Public Administration and Constitutional Affairs	1	Statistics and Registration Service Act 2007	N	N	N/A
Joint Committee on Human Rights	1	Terrorism Prevention and Investigation Measures Act 2011	N	Y	N
Environment, Food and Rural Affairs	1	Veterinary Surgeons Act 1966	NA[13]	NA	NA
Environment, Food and Rural Affairs	1	Animal Welfare Act 2006	N	N	N/A

12 N/A – not applicable
13 NA – not available

Source: (HC Deb 7 Dec 1999, c.714; HC Deb 6 Mar 2000, c.767; HC Deb 8 Mar 2000, c.610; HC Deb 5 Apr 2000, c.1119; HC Deb 29 Oct 2001, c.649; HC Deb 20 May 2002, c.97; HC Deb 24 Mar 2003, c.51; HC Deb 25 Mar 2003, c.243; HC Deb 16 Jun 2003, c.168; HC Deb 11 Oct 2004, c.22; HC Deb 1 Nov 2004, c.25; HC Deb 14 Dec 2004, c.1627; HC Deb 24 Jan 2005, c.126; HC Deb 15 Mar 2005, c.149; HC Deb 6 Apr 2005, c.1492; HC Deb 10 Jan 2006, c.248; HC Deb 9 Feb 2006, c.1048; HC Deb 2 Mar 2006, c.417; HC Deb 14 Mar 2006, c.1427; HC Deb 16 May 2006, c.960; HC Deb 20 Jun 2006, c.1280; HC Deb 26 Jun 2006, c.21; HC Deb 25 Oct 2006, c.1616; HC Deb 12 Dec 2006, c.751; HC Deb 8 Jan 2007, c.23; HC Deb 27 Feb 2007 c.880; HC Deb 13 Mar 2007, c.244; HC Deb 16 Apr 2007, c.52; HC Deb 12 Jun 2007, c.661; HC Deb 19 Jun 2007, c.1333; HC Deb 22 Oct 2007, c.117; HC Deb 11 May 2009, c.553; HC Deb 02 Dec 2009, c.1226; HC Deb 9 Dec 2009, c.39; HC Deb 15 Dec 2009, c.835; HC Deb 2 Feb 2010, c.174HC Deb 7 Jun 2011, c.69; HC Deb 29 Jun 2011, c.984; HC Deb 5 Sept 2011, c.132; HC Deb 2 Nov 2011, c.1042)

The table thus shows that there are Acts receiving post-legislative scrutiny which have a degree of contentiousness attached to them. This could be important as the more contentious a piece of legislation is, the more likely a government may be to protect that legislation as much as they can from amendment and too detailed scrutiny. It could be a type of legislation which is likely to require post-legislative scrutiny. So it is encouraging to see that 55% of the legislation which received formal post-legislative scrutiny had some degree of contentiousness, whether that is because it saw a division at second and/or third reading or because it saw a rebellion. In terms of understanding committee behaviour in this area, the willingness of committees to undertake review of contentious legislation when assessed in terms of divisions might be explained by most of the legislation having been introduced by a previous administration. As such it is not deemed to be as contentious now. This might explain the lack of legislation from the Coalition Government receiving review. There is contentious legislation, as defined by this thesis, which has not yet received review but were passed under the Coalition Government. These include the Health and Social Care Act 2012 which saw a division at both second and third reading, as well as with a rebellion by Liberal Democrat backbenchers at third reading. The Localism Act 2011 and the Protection of Freedoms Act 2012, saw no division at second reading but did at third. Partisanship therefore surely plays a role here and is to be expected to some degree as parliament is a partisan institution.

While there is always the case to argue for more post-legislative scrutiny, especially if it has been deemed to be contentious, committees have to decide for themselves which Acts warrant scrutiny. Furthermore, just because an Act is politically contentious, does not necessarily mean it is a bad piece of legislation. Indeed, a

greater consideration on a committee's mind in terms of deciding whether to undertake post-legislative scrutiny on a particular Act will be the level of contentiousness since the Act was signed into law and came into effect. This might include whether the Act is causing unintended consequences or (depending on the Act) whether the courts are able to utilise the Act in the manner to which it was intended.

4.3 Depth of Scrutiny

This section will assess the depth of scrutiny that the legislation, reviewed by post-legislative scrutiny received during the formal legislative process. This is important so that we can assess whether the depth of scrutiny which legislation received during the formal legislative process is linked to legislation which has gone on to receive post-legislative scrutiny. It might be expected that legislation which has not received as detailed scrutiny to be potentially in greater need of review. This section will look at the success rate of amendments in the House of Lords, along with the number of government defeats on each Act as well as how many Acts were caught up and passed during the wash-up period between elections being called and the dissolution of parliament. The section ends with an assessment of the length of legislation and the time each Act spent in committee.

4.3.1 Amendment success rate and government defeats in the House of Lords

Table 4.9 shows the success rate of amendments in the House of Lords and the number of government defeats that the legislation received during its passage through the House of Lords. Amendments in the House of Lords were selected for this section on the basis that the House of Commons does not keep records of amendments made to each bill. The table shows that there is a variance in the success rate of amendments. The Act with the highest success rate was the Charities Act 2006 with 61% of amendments being tabled, going on to be made and the legislation with the lowest success rate being the Terrorism Prevention and

Investigation Measures Act 2011 with only 7% of the amendments tabled going on to be accepted. The average success rate for amendments from these Acts is 28%. The success rate for the Charities Act 2006 is, therefore, high. This can be explained by the fact that the Act was deemed uncontentious by the measures used to assess contentiousness in table 4.8 and the government may be more willing to accept amendments. That being said the success rate for amendments to the Gambling Act 2005 was 45%, which is quite high for an Act which was divided upon at second and third reading. This will be an indication that an effort was made to revise the bill to try and accommodate critics in order to pass the Act before the 2005 General Election. There may not be a trend therefore between the number of amendments accepted in the House of Lords and the contentiousness of the legislation receiving post-legislative scrutiny. There may instead be a number of specific reasons per Act as to why some receive more amendments than others.

The government does not have a majority in the House of Lords, mainly due to the number of Crossbench Peers who do not take a party whip. The House of Lords is, therefore, willing to defeat the government on the finer details of bills (Norton, 2005). Government defeats in the House of Lords are far more common than in the House of Commons (Brazier, Kalitowski, & Rosenblatt, 2007). Indeed, in the 2010 Parliament, the government was defeated 100 times on legislation in the 2015Parliament the government was defeated 98 times (Constitution Unit, 2018). While the Gambling Act 2005 is seen as contentious, the success rate of amendments in the House of Lords on this particular Act is likely down to the government offering concessionary amendments to try and avoid defeat and ensure the legislation was passed before the end of the parliament. The fact the Act was being scrutinised in the 'wash up' will mean the government would be more willing to accept amendments to ensure the bill did not fall before dissolution, prior to the 2005 General Election.

The large number of amendments made to the Charities Act 2006 in the House of Lords could be explained by drafting issues or the government taking the chance to amend the legislation in the House of Lords in order to save face and avoid defeat in the Commons. As well as covering drafting issues, a lot of amendments tabled in the Lords come from the government in response to pressure from the

Commons or in order to avoid defeat (Norton, 2013; Russell, Gover, & Wollter, 2015; Thompson, 2015). It is not uncommon for the government to table amendments in the Lords which have developed from points made in the House of Commons. It is less embarrassing for the government to accept these amendments in the Lords than the Commons as it is less likely to be seen to climb down.

Table 4.9. Success rate of amendments and government defeats in the House of Lords

Committee	No of Acts scrutinised	Act(s) involved	Success rate of amendments in the Lords (%)	Government Defeats in the Lords
Public Administration and Constitutional Affairs Committee	1	Charities Act 2006	61	1
Digital, Culture, Media and Sport	1	Gambling Act 2005	45	1
Justice	1	Legal Aid, Sentencing and Punishment Act 2012	41	11
Ad hoc (Lords)	1	Extradition Act 2003	38	4
Home Affairs	1	Regulation of Investigatory Powers Act 2000	36	2
	N/A	Children and Adoption Act 2006	34	0
Ad hoc (Lords)	1	Equality Act 2010	31	3
Health	1	Mental Health Act 2007	31	6
Environment, Food and Rural Affairs Committee	1	Animal Welfare Act 2006	31	0
Justice	1	Freedom of Information Act 2000	28	0
Ad hoc (Lords)	2	Adoption and Children Act 2002	27	1
Ad hoc (Lords)	1	Mental Capacity Act 2005	27	0
Justice	1	Serious Crime Act 2007	24	2
Public Administration and Constitutional Affairs Committee	1	Statistics and Registration Service Act 2007	24	2
Ad hoc (Lords)	1	Inquiries Act 2005	23	2

Committee	No of Acts scrutinised	Act(s) involved	Success rate of amendments in the Lords (%)	Government Defeats in the Lords
Environment, Food and Rural Affairs Committee	1	Flood and Water Management Act 2010	20	0
Ministry of Housing, Communities and Local Government	1	Greater London Authority Act 2007	13	2
Digital, Culture, Media and Sport	1	Licensing Act 2003	7	9
Ad hoc (Lords)	1	Licensing Act 2003[14]	7	9
Joint Committee on Human Rights	1	Terrorism Prevention and Investigation Measures Act 2011	6	0
Environment, Food and Rural Affairs Committee	1	Veterinary Surgeons Act 1966	N/A	N/A

Source: (House of Lords Public and Private Bill Office, 2000; 2002; 2003; 2005; 2006; 2007; 2010; 2012)

To put these success rates into context, this can be compared with the number of government defeats on these Acts as they passed through the House of Lords. The Act with the most government defeats was the Legal Aid, Sentencing and Punishment Act 2012 which saw eleven defeats, followed by the Licensing Act 2003 with nine defeats. The Legal Aid, Sentencing and Punishment Act 2012 was deemed contentious with a division being forced at both second and third readings in the House of Commons. Those Acts which were not deemed contentious tend to see fewer government defeats. The Freedom of Information Act 2000 and Charities Act 2006, saw no defeats for the former and the latter only saw one. There is a trend here between the contentiousness of the legislation and the number of times that legislation is defeated in the House of Lords. However, the data is limited to a small number of cases and as such it will not be possible to generalise. It does follow that a lack of a government majority in the House of Lords might lead to more defeats

[14] The legislation is included twice in the table but for the purposes of analysis it will be counted as one Act.

on contentious legislation. If the legislation is not contentious then there is likely to be more agreement than disagreement.

4.3.2 Length of legislation and number of sittings

Before reaching the end of this chapter it is important to assess both the length of legislation and the number of sittings that took place at the committee stage. This is important because it may reveal the depth of scrutiny which the Act received in the House of Commons.

Table 4.10 and figure 4.1 show that there is, in fact, a positive correlation between the length of legislation and the number of sittings that piece of legislation receives during the committee stage of the legislative process.

Table 4.10. Length of legislation and number of sittings in public bill committee

Committee	No of Acts scrutinised	Act(s) involved	Bill Word Count	No of sittings in Committee
Justice	1	Legal Aid, Sentencing and Punishment Act 2012	121,074	18
Ad hoc (Lords)	1	Equality Act 2010	93,493	20
Digital, Culture, Media and Sport	1	Gambling Act 2005	92,278	20
Public Administration and Constitutional Affairs	1	Charities Act 2006	72,045	8
Ad hoc (Lords)	1	Licensing Act 2003	71,332	17
Digital, Culture, Media and Sport	1	Licensing Act 2003	71,332	17
Health	1	Mental Health Act 2007	63,428	12
Justice	1	Serious Crime Act 2007	59,849	9
Ad hoc (Lords)	1	Extradition Act 2003	58,116	9
Home Affairs	1	Regulation of Investigatory Powers Act 2000	50,262	11
Ad hoc (Lords)	1	Mental Capacity Act 2005	36,457	12
Justice	1	Freedom of Information Act 2000	31,713	14
Environment, Food and Rural Affairs	1	Flood and Water Management Act 2010	29792	10
Joint Committee on Human Rights	1	Terrorism Prevention and Investigation Measures Act 2011	22,989	10

Committee	No of Acts scrutinised	Act(s) involved	Bill Word Count	No of sittings in Committee
Housing, Communities and Local Government	1	Greater London Authority Act 2007	22,383	9
Environment, Food and Rural Affairs	1	Animal Welfare Act 2006	20,794	8
Public Administration and Constitutional Affairs	1	Statistics and Registration Service Act 2007	16,877	8
Ad hoc (Lords)	1	Inquiries Act 2005	13,494	3
	N/A	Children and Adoption Act 2006	11,166	6
Environment, Food and Rural Affairs	1	Veterinary Surgeons Act 1966	10,462	N/A
Ad hoc (Lords)	2	Adoption and Children Act 2002	N/A	24

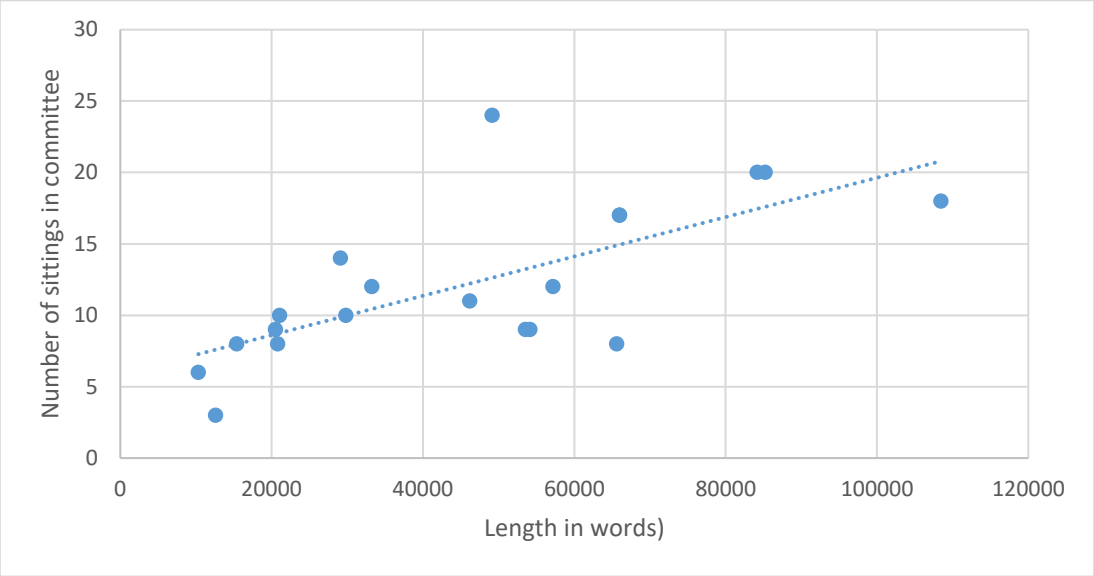
Source: (HM Government, 1966, 2000a, 2000b, 2002, 2003a, 2003b, 2005a, 2005b, 2005c, 2006a, 2006b, 2006c, 2007a, 2007b, 2007c, 2007d, 2010a, 2010b, 2011, 2012; House of Commons, 2001, 2003, 2013, 2004, 2005a, 2005b, 2007, 2008, 2009, 2010b, 2012)

The Committee Stage of the legislative process is where line by line scrutiny takes place. The longer an Act is, logically, the more time you would expect such an Act to spend in committee, if it is to undertake line by line scrutiny. However, Greenberg (2015) has argued that public bill committees in the UK barely undertake a clause by clause scrutiny of bills, never mind a line by line scrutiny due to a lack of appetite from committee members. If there is a disparity between the length of legislation and the time spent in committee, it might reveal a lack of scrutiny. This could develop into a reason for why post-legislative scrutiny was necessary on the Act because it did not receive extensive scrutiny during the formal legislative process

The overall trend is not completely linear, however. There are a number of factors which come into play when determining how long a bill will stay in committee for. These include the speed with which the government wishes to have the legislation passed (determined by the programme motion) and whether the bill originated in the House of Lords (if so it would have had extensive line by line scrutiny there). There are exceptions to the trend such as the Legal Aid, Sentencing and Punishment Act 2012 which was just over 121,000 words long and only received

eighteen days in committee while the Gambling Act 2005 which was just over 92,000 words received twenty days in committee.

Figure 4.1. Number of committee sittings by length of legislation



Source: (HM Government, 1966, 2000a, 2000b, 2002, 2003a, 2003b, 2005a, 2005b, 2005c, 2006a, 2006b, 2006c, 2007a, 2007b, 2007c, 2007d, 2010a, 2010b, 2011, 2012; House of Commons, 2001, 2003, 2013, 2004, 2005a, 2005b, 2007, 2008, 2009, 2010b, 2012)

Brazier (2004) argues that public bill committees deliver weak and incomplete scrutiny, as substantial changes are not usually made to bills at this stage, and bills often leave committee without full line by line scrutiny. This is, therefore, another factor that can impact the effectiveness of scrutiny and it could potentially reinforce why post-legislative scrutiny is a necessary and important task for committees to undertake. However, research by Russell et al. (2015) and Thompson (2015) argue that public bill committees have more influence than initially thought.

4.3.3 The wash-up

Another factor that will impact upon the depth of scrutiny given is whether legislation gets caught in the wash-up at the end of a parliament. The wash-up is the interval between an election being called and parliament being prorogued/dissolved (whichever comes first) (Newson & Kelly, 2011). Once parliament dissolves ahead of a general election, all parliamentary business that is

not complete falls (e.g. is a bill has not passed through all the parliamentary stages and received royal assent by dissolution, then it falls). The challenge with completing scrutiny comes from the fact that the wash-up interval is usually short. In both 2005 and 2010, there were only two sitting days to complete scrutiny and fourteen and seventeen bills respectively received royal assent in this time period thus leaving little time for final scrutiny (Newson & Kelly, 2011). Out of the Acts to receive formal post-legislative scrutiny, five completed their scrutiny during the wash-up.

The Acts are detailed in table 4.11. However, out of the five, two had passed their formal stages and were awaiting consideration of amendments. There are therefore differing degrees of impact here. An Act which has passed all its main stages, except consideration of amendments is, less disadvantaged in terms of scrutiny than an Act which was only part way through its committee stage. This means that in the example of the 2005 and 2010 elections, it meant completing the remaining stages in two sitting days. Therefore, having completed their final stages in a hurry could mean they are in greater need of receiving post-legislative scrutiny as the focus is upon what the frontbenches can agree to in order to get the legislation passed. However, only 20% of the Acts passed during the 2005 election wash-up and 12% from the 2010 election wash-up went on to receive post-legislative scrutiny.

Table 4.11. Acts which received post-legislative scrutiny and were caught in the wash-up period

Act (originating House)	Parliament	Date election announced	Date of prorogation	Stage reached prior to election announcement	Progress during the wash-up
Gambling (Commons)	2001-2005	5th April 2005	11th April 2005	Lords: Committee stage (10th March)	Lords: Committee stage and remaining stages completed (6th April. Commons: Lords amendments (7th April) Royal Assent: 7th April
Inquiries (Lords)	2001-2005	5th April 2005	11th April 2005	Commons: Committee stage (22nd and 24th March)	Commons: Remaining stages (6th April) Lords: Commons amendments (7th April) Royal Assent: 7th April
Mental Capacity Act (Commons)	2001-2005	5th April 2005	11th April 2005	Lords: Third reading (1st March)	Commons: Lords amendments (5th April) Royal Assent: 7th April
Equality (Commons)	2005-2010	6th April 2010	8th April 2010	Lords: Third reading (23rd March 2010)	Commons: Lords amendments (6th April) Royal Assent: 8th April
Flood and Water Management (Commons)	2005-2010	6th April 2010	8th April 2010	Lords: Committee stage, second sitting (24th March)	Lords: Committee stage (6th April), remaining stages (8th April) Commons: Lords amendments (8th April) Royal Assent: 8th April

Source: Newson & Kelly (2011)

4.4 The post-legislative scrutiny gap

The focus of this thesis is on the post-legislative scrutiny that has taken place. However, this raises an interesting question about what legislation is not receiving post-legislative scrutiny. Earlier in this chapter, the selection of legislation was addressed and in particular the party which introduced it. It showed that there is something of a party bias when it comes to the selection of legislation, with legislation introduced by the 2010-2015 Coalition Government not yet receiving much attention when it comes to post-legislative scrutiny with only two Acts having been reviewed so far. Indeed, the final three post-legislative scrutiny inquiries included in this research were on Labour introduced legislation (Animal Welfare Act 2006; Licensing Act 2003; Flood and Water Management Act 2010). There is clearly a gap here in the coverage of post-legislative scrutiny, especially if you consider that government departments are now required to complete their own post-legislative review 3-5 years after an Act has entered the statue books. This could be more accurately referred to as a post-legislative gap (i.e. what legislation is not receiving post-legislative scrutiny). While the government process appears to be systematic, the parliament side of it is less so.

At the time of writing, taking into account the 3-5 year post-legislative departmental review process, committees, as long as departments are producing their reviews on time, should now have received the reviews for the first two sessions of the 2010 Parliament. This is assuming that government departments take the full five years to produce the review. Indeed David Lloyd, Head of the House of Commons Scrutiny Unit noted that they tend to come towards the end of the given time period because of other departmental priorities (Lloyd, 2017). That totals 75 pieces of legislation[15] that should have received their departmental reviews and only 2 pieces of that legislation have received post-legislative scrutiny (2.6%).

[15] Not including financial legislation.

In terms of the lack of post-legislative scrutiny on the coalition government's legislation in the House of Lords, this might be explained by the longer time frame the Lords likes to take when undertaking post-legislative scrutiny. Interviews with clerks in the House of Lords pointed to a period of time greater than five years needing to pass before legislation is deemed suitable to undertake post-legislative scrutiny on an Act. Michael Collon, who was the clerk for the inquiries into the Licensing Act and the Equality Act suggested that seven to eight years would need to pass before it was possible to see the full effects of the Act (Collon, 2017b). This was on the basis that not all of the Act necessarily comes into force at the same time. Indeed, this view was shared by the clerk of the House of Lords Liaison Committee who stated that the optimal time for post-legislative scrutiny is somewhere between 5 and 10 years (Tudor, 2017). This would potentially explain why the House of Lords is not as yet addressing the legislation passed by the 2010-2015 Coalition Government if it is taking that long term view.

In justifying this longer term view Michael Collon noted that '3 years is too short a time as you can't really see what an Act is doing, what has been achieved and what hasn't' (Collon, 2017a). Again this ties in with the earlier point about Acts not necessarily coming into force at the same time. So while the government focuses upon the date of Royal Assent, it might, in fact, be better to focus upon the date of commencement, as the House of Lords Constitution Committee does. In relation to this point he raised the case of the Licensing Act 2003 which the House of Commons Culture, Media and Sport Committee scrutinised just three years after it the Act had come into force. The report ended up being short, on the basis that there wasn't much to say other than noting that it was too soon after the Act had been passed to make any concrete suggestions (Collon, 2017a). The House of Lords assessed the legislation again in the 2016/2017 session, 11 years after its enactment on the statute books.

One additional issue that might be influencing the House of Lords in this area is the general desire to avoid anything too politically controversial (Collon, 2017b). Such an aim might deter the House of Lords from addressing the legislation of governments that are still in office. This links back to points made in chapter three regarding the timidity of the House of Lords due to its unelected status and the

primacy of the House of Commons (Russell, 2013). This could explain why so few Acts from the Coalition Government have been assessed as well, indeed the House of Lords has not undertaken any post-legislative scrutiny at the time of writing into legislation passed by the Coalition Government. The challenge here is that potentially the legislation that is the most controversial or contentious is, in fact, the legislation in most need of review and the House of Lords with its more independent and consensual approach to legislation and scrutiny might be the better place to undertake such scrutiny.

From the perspective of the House of Commons, Elizabeth Flood, the former clerk of the Culture, Media and Sport Committee noted that there is a tendency to put at least a parliament (around five years) between the legislation being passed and the undertaking of post-legislative scrutiny. She also noted that it is possible that a time frame of seven to eight years would be necessary depending upon the policy area in question (Flood, 2017). So there is also the potential for a slightly elongated time frame in the Commons as well. If five years is the minimum from their perspective then this does fit with the government's framework of 3-5 years for post-legislative review by a department. However, only two Acts of the Coalition Government have been reviewed. With a time frame closer to the government's and with 75 pieces of legislation being eligible for review, the Commons does not have the same reasoning to avoid such legislation, especially as the government is accountable to the House of Commons and therefore for any problems with the Acts and their implementation.

For the time being, in relation to the legislation not receiving scrutiny, there is a post-legislative scrutiny gap. One other issue worth addressing here is a post-legislative gap in terms of the committees that have not undertaken formal post-legislative scrutiny since 2010. Table 4.12 shows the House of Commons departmental select committees that have not undertaken a formal post-legislative scrutiny inquiry since 2010.

Table 4.12. Departmental select committees which have not undertaken a formal post-legislative scrutiny inquiry.

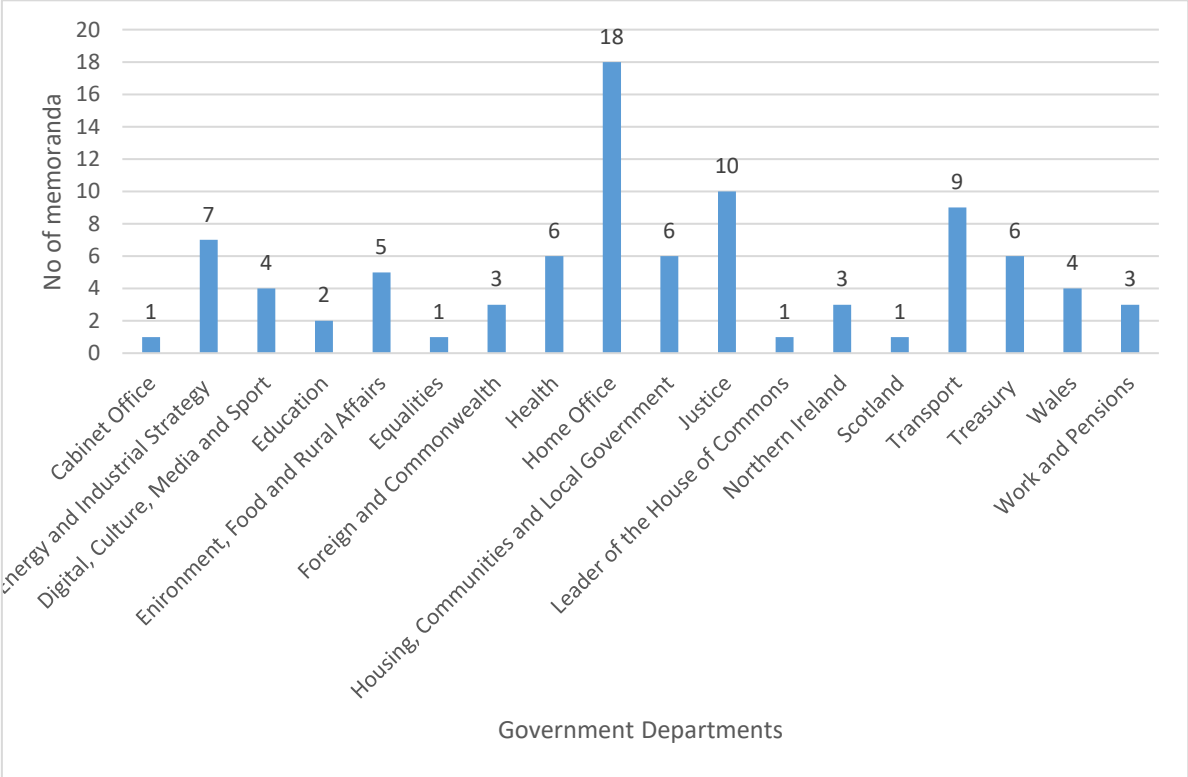
Committees
Business, Energy and Industrial Strategy Committee
Education Committee
Defence Committee
Foreign Affairs Committee
International Development Committee
Northern Ireland Affairs Committee
Scottish Affairs Committee
Transport Committee
Treasury Committee
Welsh Affairs Committee
Work and Pensions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

The Foreign Affairs, International Development, Defence and the Northern Ireland, Scottish and Welsh Affairs committees can be excused to some degree as these departments are not as legislatively intensive in comparison to the others. Additionally, the Treasury Committee could also be excused to a limited degree because financial legislation is currently not eligible for post-legislative scrutiny under the government's agreement with parliament, nor was it deemed eligible by the House of Lords Constitution Committee (House of Lords Select Committee on the Constitution, 2004; Office of the Leader of the House of Commons, 2008). However, questions have since been raised as to whether such exemptions should be made. Nevertheless, the core tasks of departmental select committees are relevant to all departmental select committees, of which post-legislative scrutiny is one of those tasks. That leaves an additional four committees which have not undertaken a formal post-legislative scrutiny inquiry. In relation to Business, Energy and Industrial Strategy it has undertaken a number of inquiries classified under informal post-legislative scrutiny whereas the other two committees have not.

However, when assessing the post-legislative memoranda published by government departments. Figure 4.2 raises a number of issues. Firstly, the Home Office has published far more memoranda than the Home Affairs Committee has taken up for post-legislative scrutiny. While not all legislation will require scrutiny,

with the Home Affairs Committee having only undertaken one inquiry in comparison to eighteen memoranda having been published, this again shows that post-legislative scrutiny is not systematic. Additionally, for each of the committees listed in the previous paragraph for not having undertaken any post-legislative scrutiny, all of their respective departments (except International Development and Defence)[16] have been publishing memoranda, albeit, some more than others. This suggests that the problem of a lack of post-legislative scrutiny is not down to a lack of memoranda coming from government. That is not to say that the government has produced all of the memoranda that they are required to. The data here has been sourced from gov.uk and has been collected assuming that all memoranda have been published as required on that website. At the time of completion 90 memoranda had been published by government departments.

Figure 4.2. Post-legislative memoranda published by government departments



(Source: gov.uk)

[16] The Department for Exiting the European Union and the Department for International Trade have been excluded from this study on the basis that at the time of writing they are two years old and their legislation is not eligible for post-legislative scrutiny, at least currently.

In order to understand why this post-legislative gap is occurring interviews were undertaken, with the clerks of two committees which have not engaged with post-legislative scrutiny. These committees were the Education Committee and the Work and Pension Committee. In terms of the Education Committee, the clerk noted that they came very close to launching a post-legislative scrutiny inquiry into the Children and Families Act 2014 but due to the surprise calling of the 2017 General Election this inquiry did not proceed (Ward, 2017). It remains to be seen whether this inquiry goes ahead in the 2017 Parliament. So there was a problem here of events taking over. This can be both political events like elections halting committee work or even new policy announcements which divert the attention of the committee away potentially from tasks such as post-legislative scrutiny. However, it appears that post-legislative scrutiny was on their agenda even if only lower down it. In terms of the Work and Pension Committee, attention is paid to what is likely to be published by the department in terms of post-legislative memoranda and discussions are held about what if anything the committee would like to move forward with but the committee does not usually make much further progress than that (Mellows-Facer, 2017). So it is clear that post-legislative scrutiny is on the minds of at least the secretariat but the committee does not make the leap into undertaking a full inquiry for a variety of reasons.

There is also the potential for committee work programmes to be overtaken by parliamentary and legislative cycles, in the sense that once one bill has been passed work starts on the next (Ward, 2017). There is then a conveyer belt of legislation, which a) undertakes some of its own post-legislative review in terms of looking back at the previous Act and amending it through a new one and b) means post-legislative scrutiny doesn't take place as the legislation is not on the statute books long enough before the next piece of legislation comes along and supersedes it. Ward (2017) notes that the Department for Education has been in a state of permanent revolution since 2010 with a near constant cycle of legislation coming out of the department. This means there is plenty of material to potentially look at but also makes the job of undertaking post-legislative scrutiny more challenging if it is superseding earlier laws. It also potentially eliminates some legislation from the running for post-legislative scrutiny. This problem was also raised in relation

to the Work and Pensions Committee, in that nearly every year a new Pensions Bill appears, potentially superseding or dealing with the challenges presented in the previous Act. As a result, the government department does not produce a memorandum or a review as it claims it reviewed the legislation when crafting the new bill (Mellows-Facer, 2017).

This does come down to power, to some extent, as the power to pull together and produce these memoranda rests with the government, and not parliament. Although parliament can call for papers they rely upon government for their production and for the information contained within them. While it was noted earlier that parliament has no coercive powers, it is also left weaker at being at an informational and resource disadvantage to government. In linking this back to the conceptual framework, access to information is a vital foundation for all scrutiny and the government led focus in terms of post-legislative scrutiny memoranda, could be a limitation to wanting to undertake it in the first place. In terms of power in this situation, parliament often relies upon convention and the creation of an obligation, and commitment from government what Lukes (1974) would term persuasion or manipulation. Boulding (1989) in Three Faces of Power refers to this as the kiss. Although, as the parliamentary reform literature notes, the government will be in no hurry to change this face and alter the balance of power (Kelso, 2009). This might to some extent explain the behaviour of committees over the lack of formal post-legislative scrutiny, although it should be noted that committees do not need a memorandum to launch a post-legislative scrutiny inquiry.

That being said both clerks, Ward (2017) and Mellors-Facer (2017), argued that their committees had undertaken post-legislative scrutiny in other ways. For the Education Committee, this included a number of sessions they had on the work of the Children's Commissioner for England which the clerk claimed had a clear and demonstrable link to the Children and Families Act 2014. In relation to the Work and Pensions Committee, Mellows-Facer (2017) argued that they did a lot of work that was driven by politics and driven by constituency mailbag issues. One of those issues related to the state pension age and the Women Against State Pension Inequality (WASPI) campaign. It was a very high profile politically driven inquiry

and in practice, a lot of what they focused upon was tantamount to looking at the legislation and whether it was achieving its objectives or whether policy was enacted in a way it ought to have been (Mellows-Facer, 2017). He argued that a lot of it was about communication and it bore quite a lot of the hallmarks of a post-legislative scrutiny inquiry. He also noted that he didn't think anyone involved was consciously thinking that at the time. However, in hindsight, you could see it in those terms (Mellows-Facer, 2017). This again highlights the issue that sometimes post-legislative scrutiny, especially if it is informal, is not located until after the inquiry has taken place and when committees are reporting back to the Liaison Committee at the end of a session. Both of these pieces of work were not picked up using the methods for identifying informal post-legislative scrutiny, although as was acknowledged in the methodology this was not a perfect method of detection, as informal post-legislative scrutiny is not easy to locate. This emphasises the need for additional research. They both specifically noted the challenges in identifying where post-legislative scrutiny has taken place.

Ward (2017) also noted a problem of Members' interest in relation to post-legislative scrutiny and the potential lack of interest as Members often want to address and look at the symptoms of a problem rather than looking at the root causes. Indeed Mellows-Facer (2017) argues that post-legislative scrutiny is often way down on the list of priorities of members and because they only maybe spend a couple of hours a week on committee work, it never rises much higher on the list of priorities. Indeed, a survey undertaken by the Hansard Society in 2011 found that MPs spent only 14% of their time on committee work (Korris, 2011). This is in comparison to 21% of time being spent in the Chamber and 59% spent on constituency related issues (campaigning, casework, and meetings) (Korris, 2011). Ward (2017) argued that interest in the study or review of legislation and the legislative process is probably restricted to the Members who are lawyers or who are more technically minded (Ward, 2017). He suggested that they would never refer to an inquiry as post-legislative scrutiny as it was a sure way to turn off Members and potentially miss an opportunity for public engagement (Ward, 2017). Instead, he noted that mentions of post-legislative scrutiny would be placed in the terms of reference so that witnesses would understand how to approach the

inquiry. As committees are Member driven, Member interest is important in terms of determining committee behaviour. Additionally, in not actively labelling post-legislative scrutiny just that, it becomes harder to locate where it is taking place.

There is also an additional problem raised by Mellows-Facer (2017) which has impacted upon the Work and Pensions Committee at least, and that is in relation to the turnover of committee membership. Data from the Institute for Government shows that turnover on the Work and Pensions Committee in the 2010-2015 Parliament was over 150%, which will have had a big impact upon the dynamic and interests of the Committee (Freeguard, 2015). That being said, the Justice Committee was active in terms of undertaking post-legislative scrutiny during the 2010 Parliament but had a turnover of just over 140% (Freeguard, 2015). The chair of the Justice Committee at the time, however, was committed to undertaking post-legislative scrutiny which will have had an impact upon its prevalence here despite the turnover in Members (Beith, 2017). Turnover might not be the most important factor when determining whether to undertake post-legislative scrutiny, but if a chair is ambivalent to it, turnover is unlikely to help push it up the agenda. He argued that you may at the start of a parliament plan to address a particular Act a few years down the line but if a number of Members' change (including those with the desire to do it) then that can cause a change to the work programme via Members' priorities (Mellows-Facer, 2017). This potentially ties in with events discussed earlier and a high membership turnover makes planning and sticking to a long term work programme more challenging. Members' interest is important here in determining committee behaviour but also in terms of new Members' interests as they join committees and dilute the earlier interests.

This, therefore, sheds some light on why post-legislative scrutiny in the case of the Education Committee has been limited. Ultimately it came down to events and Members' interest but also potentially the hidden nature of such work, especially if it is informal. There may also be a perception gap in terms of recognising informal post-legislative scrutiny when it is taking place, as well as a broader post-legislative scrutiny gap. In relation to the Work and Pensions Committee, in addition to the points raised above, the turnover of committee members has caused issues with long term planning. It is clear that both committee secretariats

have post-legislative scrutiny and their other core tasks in mind when trying to put together a work programme but the challenges outlined above have meant at least in terms of these committees, a post-legislative gap has been created.

4.5 Conclusion

The chapter found that formal post-legislative scrutiny is the closest type to meeting the House of Lords' recommended time frame for the undertaking of post-legislative scrutiny. This is important because this timeframe, to an extent, underpins the current system of departmental review, and as a result post-legislative scrutiny. In particular, it was found that those post-legislative scrutiny inquires which had received a memorandum in advance were much closer on average to meeting the recommended time frame. This could be explained by them having a greater access to information which as noted in the conceptual framework is a foundation of scrutiny, such additional information helps to trigger scrutiny. However, this will be because this is the type of post-legislative scrutiny that the recommendation is aimed at, as well as the nature of the inquiry and the new systematic memoranda process.

It was also discovered that previous Labour Governments have been most likely to have their legislation reviewed under the new systematic approach to post-legislative scrutiny. This can be explained by the fact that the system started under the 2005-2010 Labour Government. By 2010 there was an entire parliament's worth of legislation to review. It was also noted that there was a lack of review taking place on the legislation from the 2010-2015 Coalition Government which is now within the recommended time frame for departmental review and thus post-legislative scrutiny by committee. This section also found that the two departments most likely to see their legislation receive post-legislative were the Ministry of Justice and the Home Office, which can in part be explained by the fact that they are also the two most legislatively intensive departments.

Finally, this chapter addressed contentiousness and found that the majority of legislation that has received formal post-legislative scrutiny so far, has at least

some degree of contentiousness, whether that is a division being called at second and third reading or a rebellion. This is encouraging as contentious legislation is more likely to be protected by governments from over amendment and perhaps too detailed scrutiny. Such legislation is, therefore, more likely to warrant post-legislative scrutiny. In addition to this, the chapter also discovered that there was a trend between the length of legislation and the number of sittings the bill has in committee. However, it was further noted that a larger number of sittings in committee does not necessarily mean more effective line by line scrutiny.

This chapter addressed research questions one (c) and one (d), in so doing completing the assessment of the first research question relating to the extensiveness of post-legislative scrutiny in the UK Parliament. In particular, this chapter has made a contribution to the understanding of committee behaviour through the findings relating to the potentially biased selection of legislation. It has also made a practical contribution to the creation of an audit of post-legislative scrutiny undertaken by the UK Parliament. The next chapter moves on to address research question two in relation to the recommendations produced by post-legislative scrutiny inquiries. Much of the data collected in this chapter feeds into the next, with some of the characteristics forming independent variables utilised in the regression analysis.

Chapter 5 The making and acceptance of post-legislative scrutiny recommendations

Post-legislative scrutiny has been, in various forms, a core function of select committees in the House of Commons since 2002. However, it is as yet unknown what kind of recommendations committees are making and what proportion of such recommendations are being accepted and rejected. The aim of this chapter is to fill this gap in knowledge. In particular this chapter aims to address the following research question: what recommendations have arisen from post-legislative scrutiny and how frequently have these recommendations been accepted by the government?

Firstly, this chapter will assess the types and strength of recommendations made by committees before looking at the acceptance of these recommendations by the government. This will involve assessing descriptive statistics for both types of post-legislative scrutiny; formal and informal. This is important on the basis that while this data has been available to collect for some time (mainly in post-legislative scrutiny inquiry reports published by committees), it has never been analysed before. If the UK Parliament is to continue to undertake post-legislative scrutiny and even expand its use, then there is a need to understand what exactly committees are recommending through their inquiries. This analysis will also include a comparison between departmental select committees in the House of Commons and ad hoc committees in the House of Lords for formal post-legislative scrutiny inquiries. This is important as currently it is not known what difference (if any) there is between the recommendations that the two Houses produce. Following this analysis, the chapter goes on to address the factors that impact upon the strength of recommendations made and whether or not the government accepts them, with the use of two regression models. These regression models will only include data for the formal post-legislative scrutiny inquiries. This is on the basis that informal post-legislative scrutiny only forms a small part of a broader committee inquiry and as such it is different from formal post-legislative scrutiny. From a practical position while there are a number of instances of informal post-legislative scrutiny, the number of recommendations produced is limited and the

data is not yet suitable for a regression model. Additionally this area of post-legislative scrutiny requires further research and further conceptualisation.

This chapter contributes to the literature on the impact of parliamentary committees, in terms of the types of recommendations they make and whether they are accepted in relation to post-legislative scrutiny. It also contributes to our knowledge of committee behaviour in terms of understanding why they make recommendations they do, as well as the literature on post-legislative scrutiny as it is currently unknown what the outcomes of such scrutiny are. To an extent the chapter also contributes to the comparative study of post-legislative scrutiny by assessing how the UK's post-legislative scrutiny system operates in practice.

5.1 Chapter methods

This chapter features content analysis of committee reports and government responses. This involved the coding of 20 committee reports and 20 corresponding government responses from all the formal post-legislative scrutiny inquiries in both the House of Commons and House of Lords between 2005 and 2017. A further 37 reports and responses from informal post-legislative scrutiny were also coded. However as the latter classifications are from committee inquires which were focused upon policy issues but included an element of post-legislative scrutiny, only the recommendations and conclusions relevant to post-legislative scrutiny were coded.

The recommendations were selected from those appearing in the recommendation/conclusion section of a committee's report. Before the coding of recommendations could begin an initial coding of these reports was necessary in order to establish which points were recommendations directed at central government and which points were not. However it should be noted that these codes were not utilised in the regression analysis that follows. This exercise was to finalise the list of recommendations utilised in the regression analysis. These points were coded using codes based upon those used by Russell & Benton (2011) as they allow for some level of comparison and expectation of what might be found with regards to post-legislative scrutiny. However, some of these codes have had

to be adapted and modified to fit with this particular study on post-legislative scrutiny because this study is more specific in its focus. This has been done by ensuring the code descriptions focus upon issues related to post-legislative scrutiny (e.g. implementation, repeal of an Act or the amendment of an Act).

Recommendations and Conclusions:

1. Expression of approval - conclusions which are positively phrased, praising a particular action, which do not formally recommend any further action.

2. Expression of disapproval - conclusions which are negatively phrased, criticising a particular action, but which do not formally recommend any further action.

3. Recommendation (Government) – for points which clearly call for the government or one of its executive agencies to act. This can include the formal phrase 'we recommend' however it can also appear in other forms such as suggesting an action should take place or a calling for clarification. This includes recommending no action be taken.

4. Recommendation (Other) - for points which clearly call for an external body from UK central government to act (e.g. local authorities). This can include the formal phrase 'we recommend' however it can also appear in other forms such as suggesting an action should take place or a calling for clarification. This includes recommending no action be taken.

5. Explaining or justifying another recommendation – for points which support, justify or provide background information for other recommendations without recommending anything else.

6. Other type of point – for all other points including introductory statements or factual statements or general conclusions.

7. Not clear if a recommendation – for points that fall somewhere between a recommendation and a conclusion but do not express in strong, unambiguous terms for an action to be taken.

Following this set of coding it was determined that some recommendations called for more than one action. In order to ensure that government responses could be matched correctly with recommendations, they were broken down into their various calls for action. Following this there were 504 recommendations in total (n=504) from formal post-legislative scrutiny and 131 from informal post-legislative scrutiny. In the first instance recommendations were coded on the type of action that they called for. The codes here were developed from those used by Russell and Benton (2011). Initially the same coding scheme was used but it was noted early on that some recommendations were not being covered by the scheme in place. Policy and practice was included as an additional category, this is on the basis that policy and legislation are not the same thing. Policy refers to the aims and approach that a government takes on an issue. While legislation might be necessary to implement policy, it is not always required.

Type of Recommendation:

1. Legislation – This category was used for recommendations explicitly calling for legislative action, including amendment or repeal of existing legislation, putting things on a 'statutory footing', and changes to secondary legislation. Where legislation might have been required to implement a recommendation, but this was not explicitly stated, this category was not used.

2. Guidance - This includes recommendations for guidance, information or direction to be provided to any relevant bodies, including the NHS,

the Police, schools or local authorities. Again, although the word 'guidance' was not necessarily required to be used in the recommendation, the requirement for guidance or direction needed to be quite explicit.

3. Research or review - Recommendations which call on the government/parliament to investigate, conduct research, evaluations or impact assessments, trial, test, or for example set up a task force to review a policy area. Recommendations to government to 'consider' doing something were also placed in this category.

4. Promotional or public information campaigns - This option applied to recommendations where the committee suggested raising public awareness or undertaking public engagement on a particular issue, such as a new initiative or public health crisis.

5. Disclosure - Recommendations which ask government to make information more readily accessible, clearer, clarity, communicate better, or more complete, or call for new disclosure of information to the committee.

6. Resources/Funding - As with legislation, this category was used for recommendations explicitly calling for (additional) funding or savings, including the continuation of funding for existing programmes or reallocation of funding. Recommendations which might have required funding to implement, but did not explicitly call for this, were not placed in this category.

7. Attitude change - for recommendations couched in general terms and asking government to adopt a change in outlook or attitude.

8. Policy/Practice - This category was used for recommendations calling for a change in government approach to an issue but did not explicitly call for legislative change or funding.

9. Recommendations from other bodies – this category was used for recommendations calling for the recommendations of other organisations to be implemented.

10. Co-operation – This category was used for recommendations which called for greater cooperation between government departments (and their executive agencies), with other bodies such as local authorities or charities.

11. Other - This category was used for any other recommendation where the action required was clearly set out, but did not fall into any of the other specified categories. There appeared to be no single obvious missing category among those placed under this one.

12. More than one of the above[17].

The strength of action that the recommendation calls for in relation to the legislation being assessed was then coded. This employed a modified version of Russell and Benton's (2011) coding scheme (no/small, medium and large change), with the scale increased to five on the basis of the types of changes that post-legislative scrutiny calls for. The medium action category was expanded into three separate categories to account for the differences in action classified under the medium category (e.g. calls for more resources versus calls for the amendment of primary legislation). Additionally the no/small category has been separated into no action and small action, to account for the difference between no change and small change.

[17] For the regression analysis, this category saw recommendations broken down into their constituent parts.

Strength of Recommendations:

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

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

2. Lower Medium Action – for recommendations which call for a pause in a policy, for a pilot/trail run to be undertaken, for a change in procedure, for additional resources or training to be made available, for the implementation of parts of an Act and for existing legislation to be utilised.

3. Mid-range Action – for recommendations which call for policy changes, new regulations or for regulations to be amended and for minor amendments to be made to an Act (e.g. for drafting purposes).

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

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

To code the government responses, each response was matched with the corresponding recommendation. As with the codes for type of recommendation and strength of recommendation, the codes for government acceptance were based upon those utilised by Russell & Benton (2011). Here the code descriptions have been altered slightly to ensure relevance for post-legislative scrutiny but the scale has not been increased as with strength of recommendation.

Government Acceptance:

0. No response – for recommendations that did not receive a direct written response within the government's response, or for recommendations which are not acknowledged explicitly or implicitly in the government's response.

1. Rejected outright – for recommendations where the government states that it rejects or disagrees or through its response signals outright rejection.

2. Partially rejected – for recommendations that were part rejected and part ignored, or where the government dodged the point the recommendation made, including suggestions that the recommendation was not necessary. Additionally for recommendations where the government rejects but acknowledges frustration or where the government states that it has a policy/initiative (which is different to what the recommendation calls for) already in place to deal with the issue raised by the recommendation.

3. Neither accepted nor rejected – for recommendations which received lukewarm support (e.g. saying the recommendation required further consideration) or where it is not clear whether the recommendation is accepted or rejected.

4. Partially accepted – for recommendations where there was agreement with the general thrust (in principle) but not the finer detail which the committee called for. Also for recommendations which were accepted in part and ignored in part. Finally for recommendations where the government accepts the objective or principle of a recommendation but proposes an alternative policy or initiative to that recommended by the report.

5. Fully accepted – for recommendations where the government states that it accepts or agrees, or through its response signals full acceptance or for recommendations where the government claimed the committee's demands were already in progress.

As coding can be subjective it was important to ensure inter-coder reliability. To this end each of the recommendations and subsequent government responses included in the regression analysis (formal post-legislative scrutiny only) were double coded by the researcher to ensure that codes would not be changed upon a second reading of them. In addition to this measure a sample of the coding was blind checked by members of the supervisory team to further ensure coding reliability. For this sample, every third committee report and government response was blind checked. This is amounted to seven reports (35% of them overall).

5.1.1 Regression analysis

The independent variables[18] utilised in the regression analysis are split into three categories: the committee level, the legislative level (used in both strength and acceptance models) and the recommendation level (used in the acceptance model only). At the committee level, variables included: opposition chairman; Joint Committee; Justice Committee, Public Administration and Constitutional Affairs Committee; Environment, Food and Rural Affairs Committee. These dummy variables were selected on the basis that they were included in the research of Russell and Benton (2011) and of Caygill (2014), however the types of committee selected here are based upon those committees that had undertaken post-legislative scrutiny. The types of committee were included to assess whether any specific committees were significant in the acceptance (or indeed rejection) of recommendations. Finally whether committees had an opposition chairman, and

[18] The following independent variables were not included due to problems with multicollinearity (as measured by the VIF diagnostics in SPSS): party of government (which introduced the legislation); departmental select committees (as a combined category, although individual committees were included); ad hoc committees; Culture, Media and Sport Committee; length of Act (in words); time difference between Royal Assent and post-legislative scrutiny and time spent in the House of Commons.

whether they had a government majority were included to explore the impact that they might have on the acceptance of recommendations.

At the legislative level, variables included: number of sittings in committee stage (in the House of Commons)[19]; number of government defeats in the House of Lords[20], contentiousness and whether those bills got caught in the wash-up periods before elections. These variables were included on the basis that post-legislative scrutiny addresses legislation and as such, what happened to those Acts as they passed through the legislative process might have an impact upon the recommendations committees make and the government's acceptance of them. The number of sittings in committee could offer an insight into the depth of scrutiny an Act received as it passed through the House of Commons, and the number of defeats in the House of Lords could give an indication of the level of changes the Lords were willing to push for against the government's wishes in order to improve the Act. The contentiousness of the legislation during the legislative process was included to determine the impact of this variable on the likely acceptance of recommendations.

Finally, at the recommendation level, variables included the strength of recommendations and the different types of recommendations which include; action related to legislation; guidance; policy/procedural change; research; disclosure and resources. These variables were used by Benton and Russell (2013) and were included to explore the significance of the different types of recommendations upon their likely acceptance.

5.2 Formal post-legislative scrutiny

This section will begin by assessing the recommendations arising from formal post-legislative scrutiny inquiries. So far twenty formal post-legislative inquiries have

[19] For this particular variable, the post-legislative scrutiny inquiry into adoption legislation reviewed two pieces of legislation. To deal with this an average was taken of the number of sittings in committee. It was determined to be the best way to move forward without excluding or skewing the data.

[20] Note the footnote above, this time in relation to the number of government defeats in the House of Lords.

taken place. The recommendations of these twenty reports (and the subsequent government responses) will be assessed in this section.

5.2.1 Direction of recommendations[21]

The data shows that 78% of recommendations are directed at central government, with a further 11% of recommendations directed at the executive agencies of the central government (89% in total). However what is more surprising is the 9% of recommendations (local government, other and professional bodies combined) which have been directed at bodies which are not directly accountable to the UK Parliament. While committees have the power to call for persons and papers, they often have to rely on their soft power, such as embarrassment and negative media attention in order to entice private witnesses to attend hearings and produce evidence (Gordon & Street, 2012). Additionally if the government does not provide papers, committees rely on the House of Commons as a whole to order their release. This could be problematic with majority governments. As noted earlier, they rely upon convention, obligation and commitment from government. The power over witnesses at parliament's disposal are considered out of date and inoperable under human rights law (D'Arcy, 2012). Indeed White (2016) notes that 'historically, those found guilty of contempt could be fined or imprisoned, but those sanctions have not been used by the Commons since 1666 and 1880 respectively'. It also raises questions about whether these recommendations are worthwhile making on the basis that these bodies are not directly accountable to the respective committees. However it could be argued that it is a way of placing them under pressure. This question cannot be answered by this study but requires more research and not just in relation to post-legislative scrutiny.

5.2.2 Types of recommendation

Table 5.1 shows the total number of recommendations coming from each of the twenty formal post-legislative scrutiny inquiries. Only 79 recommendations out of 504 called for action related to legislation (16%). The table also shows that the most

[21] For full table, see appendix 1, page 320

frequent type of recommendation called for, is a change in policy or practice, with 39% of recommendations calling for such action. Policy is labelled differently to legislation as policy is a specific approach a government choses to take regarding an issue. While legislation can and does enact policy, policy can be implemented and changed without legislative measures. The second most frequent type of recommendation which committees called for was for research to be conducted or a more extensive review to be undertaken.

In relation to legislative recommendations it might be expected that post-legislative scrutiny would lead to more of them being made in comparison to other types of scrutiny. This is on the basis that post-legislative scrutiny is focused upon the implementation and operation of legislation, whether that is implementing an unimplemented part of an Act or amending or repealing part of an Act. That being said, legislative change is arguably the most costly for governments in terms of time and political capital. This figure is in comparison to Benton & Russell (2013), who found only 4% of recommendations called for legislative change, across seven committees suggesting that post-legislative scrutiny leads to an increase in legislative recommendations.

Table 5.1. Type of recommendation

Code	No.	%
Policy/Practice	199	39
Research/Review	85	17
Legislative	79	16
Disclosure	39	8
None of the above	19	4
Guidance	18	4
More than one of the above	14	3
Recommendation to other bodies	14	3
Co-operation with other bodies	13	4
Resources/Funding	13	3
Campaigns/Public Information	11	2
Total	**504**	**100**

Source: (CLG (2013); CMS (2009, 2012); EFRA (2008a, 2016b, 2017c); H (2013); HA (2014b); JCHR (2014a); J (2012, 2013a, 2015); PACA (2013a, 2013c); SCAL (2013); SCEL (2015); SCEAD (2016); SCIA (2014); SCLA (2017); SCMCA (2014))

With regards to policy change recommendations (which did not require legislative change) being made most frequently, this can be explained by the fact that getting a government to change the law is a costly way to spend political capital. Committees therefore focus on what they are more likely to achieve, reinforcing the idea that politics is the art of the possible. Weaker recommendations are also more likely to be made if a committee struggles to find a consensus for stronger action. In relation to recommendations calling for research and review this figure of 17% is lower than the 23% figure that Benton & Russell (2013) found in their study.

5.2.3 Strength of recommendation[22]

When assessing strength of recommendations, the data showed that 41% of recommendations stemming from formal post-legislative scrutiny inquiries called for little or no action on behalf of the government. In total, those recommendations which called for some kind of medium (lower, mid-range and upper) action (e.g. change in policy or a change in regulations) totalled 58% and there were only seven recommendations out of 504 (1%) that were classified as calling for a large action (e.g. new primary legislation).

In terms of the figure for recommendations calling for little or no action, it is similar to what Benton & Russell (2013) found in their study (40% of recommendations calling for small or no action). Although the coding schemes have been altered slightly for this study, it is still possible to compare generally. The data from this study showed that committees tend to focus their recommendations on calling for small and medium action; this could be a response to knowing they do not have the power to force the government to accept and implement their recommendations. This reflects the reality of scrutiny and the power relations between the executive and legislature in comparison to what is written about scrutiny conceptually (i.e. it is the difference between scrutiny in theory and scrutiny in practice). All committees have is the power to persuade and

[22] For the full table, see appendix 2, page 320

influence opinion (soft power) (Russell, 1986; Gordon & Street, 2012). One way of explaining this particular behaviour of committees is that they wish to hedge their bets and recommend small and medium actions which are more likely to be accepted and implemented and thus have an impact. This is a strategy acknowledged by both Aldons (2000) and Benton & Russell (2013). Perhaps one of the reasons the government helped to develop the current system of post-legislative scrutiny was on the basis that it would not cede power to parliament and any action following such scrutiny is entirely up to the government to decide. Such reforms were evolutionary and did not come following a critical juncture (Kelso, 2009; Collier & Collier, 1991), at least in terms of a particularly poor batch of legislation or legislative failure.

5.2.4 Government acceptance of recommendations[23]

In relation to the government acceptance of recommendations, the data shows that 39% of recommendations were accepted (either in full or in part). The data also showed that 36% of recommendations were rejected at least in part, if not outright. Finally the data showed that 10% of recommendations did not receive a direct response, in the government responses to the committee reports.

This is comparable with what Benton & Russell (2013) found in their study into the impact of oversight committees that 40% of recommendations went on to be accepted. This can be explained by the fact the majority of recommendations called for small or medium action.

With regards to the figure for no response, 10%, this is potentially a significant finding, as a substantial proportion of recommendations have not received a response from the government. There is also a general problem with the way in which some government departments respond to committee reports. Some responses are very long winded and it is not clear what the government intends to

[23] For full table, see appendix 3, page 320

do with the recommendation. This may be a strategy by the government to skirt around issues which it does not want to tackle head on.

However the government should ensure that it directly responds to each recommendation and states clearly what it intends to do. This would help with accountability further down the line when a committee might follow up on recommendations that the government has accepted in order to check to see whether they have been implemented. Accountability, as noted in the conceptual framework section of chapter two, is operationalised within post-legislative scrutiny and forms an important part of that scrutiny. This is especially true in relation to the responsibility of government to respond to parliamentary reports. The accountability relationship between government and parliament is important for the operation of select committees across their core functions. However committees also need to ensure that the recommendations they produce clearly call for specific action (White, 2015a), in order to allow the government to respond effectively. There were some recommendations that were hard to follow and determine exactly what the committee wanted. However, it could also be a case of committees struggling to come to a decision on a single call for action and the compromise to make the recommendation acceptable to the whole committee means a loss of directness in terms of the action called for.

5.2.5 Acceptance by strength of recommendations

Having assessed the strength and acceptance of recommendations separately, it is also important to assess if there is a relationship between the strength of recommendations and their acceptance by government. This is important to identify whether there is a trend in relation to stronger recommendations being rejected. Later in this chapter the regression analysis will assess how significant the relationship is between the strength of recommendations and their acceptance.

Table 5.2 shows that recommendations are more likely to be accepted if they call for small or medium action, with those calling for greater action more likely to be rejected. There is more variation however in terms of recommendations which are

partially accepted and partially rejected. When it comes to recommendations calling for no and small action 64% and 53% of them respectively are either accepted in part or in full. 'No action' was included in the table above because although committees have called for no action to be taken, they often pass commentary in such recommendations and as such the government does sometimes respond to that commentary. For recommendations which are classified under lower medium, 44% are being accepted in part or in full and 35% are being rejected in part or in full.

Table 5.2. Acceptance by strength of recommendations as a percentage (%)

	No response	**Rejected outright**	**Partially rejected**	**Neither accepted nor rejected**	**Partially accepted**	**Fully accepted**	**n**	**%**
No action	27	0	9	0	9	55	11	100
Small action	11	15	8	13	15	38	194	100
Lower Medium action	13	22	13	8	14	30	86	100
Mid-Range action	10	34	9	20	9	18	158	100
Upper Medium action	2	52	15	15	13	4	48	100
Large action	0	71	14	14	0	0	7	100

Source: (CLG (2013); CMS (2009, 2012); CO, (2013); DCLG, (2013); DCMS, (2009; 2013); DfE, (2013); DH, (2013); EFRA (2008a; 2008b; 2017a; 2017b, 2017c); H (2013); HA (2014a; 2015); HO, (2014; 2015b; 2017); JCHR (2014a); J (2012, 2013a, 2013b, 2015); MoJ (2012; 2014a; 2015); MoJ & HA, (2014); PA (2013a, 2013b, 2013c); SCAL (2013); SCEL (2015); SCEAD (2016); SCIA (2014); SCLA (2017); SCMCA (2014)); WEO, (2016a).

Additionally, when focusing on the recommendations which call for stronger action a greater percentage are rejected either in part or in full. For mid-range action 43% are rejected, as opposed to 27% which are accepted. Mid-range also sees the largest number of recommendations which are neither accepted nor rejected. When it comes to recommendations classified under upper medium, 67% were rejected in part or in full in comparison to 17% of which that were accepted in part or in full. On recommendations calling for large action, which included the repeal of legislation and calls for new legislation, although there are only seven

such recommendations, none were accepted in part or in full. Another interesting finding here is that the government is responding to committee recommendations which require no action to be taken. These recommendations are usually in favour of the status quo.

With regards to the figures for mid-range action in relation to neither accepted nor rejected, this can potentially be explained by the fact that at this level of strength the government may wish to delay the issue and hope that the committee forgets. There is thus a stronger tendency to reject recommendations which are calling for large action than there is to accept recommendations which are calling for limited action. This again is perhaps to be expected as the government would probably rather not make changes to policy unless it felt it absolutely necessary, either because there is a problem or because they want to accept weaker recommendations in order to cover themselves for rejecting stronger recommendations later in a report. While this does not prove that such a strategy is deployed by committees, the data might provide a reason for why committees may wish to deploy such a strategy. Again this goes to show that parliament is a relatively weak position as it cannot coerce or force the government to accept recommendations (Gordon & Street, 2012). Committees will want to develop a strategy to persuade government to accept recommendations and to get a commitment from them.

5.2.6 Acceptance by type of recommendations

Table 5.3 shows the acceptance of recommendations by the type of recommendation that committees have called for.

In terms of recommendations calling for change relating to legislation and its implementation, 59% of recommendations were rejected in full or in part while 20% of these recommendations were accepted in part or in full. In terms of the issuance of guidance, 61% of those recommendations were accepted either in part or in full while 33% were rejected either in part of in full. For recommendations which called for further research to be undertaken or a review to take place 45% of

those recommendations were accepted either in part or in full while 25% of them were rejected either in part or in full. Recommendations calling for public information campaigns saw 54% of them accepted either in part or in full and surprisingly for recommendations calling for additional resources and/or funding 53% of them were accepted in part or in full while 31% of them were rejected in part or in full. In terms of changes to government policy or the practice of that policy 41% of recommendations were rejected either in part or in full in comparison to 34% of which were accepted either in part or in full.

In relation to legislative recommendations, the rejection of them can be explained by the fact that changing legislation is going to take up time and resources from the government. There is therefore a resource problem both from the government's perspective but also from a committee perspective too. New amendments to an Act require new legislation, whether it is attaching an amendment to a bill currently making its way through the legislative process or introducing an amending act. If such resources are necessary, it would be expected that the government would be more likely to reject them. With regards to resources and funding these findings are surprising on the basis that whatever resources a committee is recommending be made available is going to cost money. It might, therefore, be expected that the government would try to avoid spending (although this would ultimately depend upon the scale of resources required). Indeed, White (2015a) notes that recommendations need to be financially realistic. However, it might be the case that an increase in resources is more preferable to a change in policy or legislation. Finally, in terms of recommendations calling for policy change, the findings are surprising as you might expect the government to be wary about changing policy unless it felt it absolutely necessary on the basis that once a government has formally backed a policy it is unlikely to want to appear to U-turn on any of it. Such recommendations were more likely to be rejected, although only just and it could be a reflection that the policy/practice changes suggested were small.

Table 5.3. Acceptance by type of recommendation as a percentage (%)

	No response	Rejected outright	Partially rejected	Neither accepted nor rejected	Partially accepted	Fully accepted	n	%
Change relating to legislation (and its implementation)	1	46	13	20	10	10	79	100
Issuing of Guidance	0	11	22	5	17	44	18	100
Research or Review	15	19	6	16	11	34	85	100
Campaigns or Public Information	9	0	18	18	18	36	11	100
Disclosure of Information	10	13	8	13	5	51	39	100
Resources or Funding	15	31	0	0	15	38	13	100
Changes to policy or practice	11	30	11	15	14	20	199	100
Recommendations from other bodies	7	21	7	7	14	43	14	100
Cooperation with other organisations	8	0	15	8	23	46	13	100

Source: (CLG (2013); CMS (2009, 2012); CO, (2013); DCLG, (2013); DCMS, (2009; 2013); DfE, (2013); DH, (2013); EFRA (2008a; 2008b; 2017a; 2017b, 2017c); H (2013); HA (2014a; 2015); HO, (2014; 2015b; 2017); JCHR (2014a); J (2012, 2013a, 2013b, 2015); MoJ (2012; 2014a; 2015); MoJ & HA, (2014); PA (2013a, 2013b, 2013c); SCAL (2013); SCEL (2015); SCEAD (2016); SCIA (2014); SCLA (2017); SCMCA (2014); WEO, (2016a)).

5.2.7 Comparison between the House of Commons and House of Lords

This section assesses whether there are any differences between the recommendations produced by departmental select committees and ad hoc committees, as well as any differences between the proportion of these recommendations being accepted or rejected. In terms of the breakdown of full formal post-legislative scrutiny, the House of Commons has undertaken thirteen inquires and the House of Lords has undertaken six. There was also one inquiry undertaken by the Joint Committee on Human Rights. As this cannot be placed in either category, it is not included in this section of analysis.

Table 5.4. Type of recommendations by House[24]

Type of Recommendation	House of Commons		House of Lords	
	N	**%**	***N***	**%**
Policy and Practice	85	37	111	48
Research/Review	58	25	25	11
Related to legislation	30	13	49	21
Disclosure	22	10	14	8
Co-operation	10	4	3	1
Recommendations from other bodies	9	4	3	1
Funding and resources	8	3	5	3
Campaigns/Public information	5	2	5	2
Guidance	3	1	15	6
Total	250	100	231	100

Source: (CLG (2013); CMS (2009, 2012); EFRA (2008a, 2016b, 2017c); H (2013); HA (2014b); JCHR (2014a); J (2012, 2013a, 2015); PACA (2013a, 2013c); SCAL (2013); SCEL (2015); SCEAD (2016); SCIA (2014); SCLA (2017); SCMCA (2014))

Before delving into the recommendations produced, it is worth mentioning the average number of post-legislative recommendations (directed at central government) that departmental select committees in the Commons and ad hoc committees in the Lords make. On average committees in the House of Commons produce 19 recommendations per report in comparison to 41 recommendations per report made by Lords committees. This difference can be accounted for by the ways in which the two different types of committees undertake post-legislative scrutiny.

[24] Note that the Joint Committee inquiry is not included here due to the committee not belonging to either chamber.

Unlike departmental select committees which have a large range of tasks, ad hoc committees have (usually) only the one task they were set up to undertake. They are, therefore, able to dedicate a full session to the inquiry and produce more detailed scrutiny. This in turn would the lead to a larger, more in-depth report with a greater proportion of recommendations than departmental select committees can make in the comparatively short time they have available among their other functions.

Table 5.4 shows the types of recommendations being made by both Houses of Parliament. Firstly the table shows that proportionally the ad hoc committees of the House of Lords are making more recommendations calling for action in relation to legislation. The table also shows that the ad hoc committees of the House of Lords are producing more recommendations relating to policy and practice

In relation to the production of more recommendations calling for action relating to legislation, this can be explained by the fact that the ad hoc committees that the House of Lords appoint to undertake post-legislative scrutiny are usually comprised of some members who have a first-hand experience of working in the specific area under review. Additionally the House of Lords often takes a more technical approach to scrutiny, as it does with the full line by line scrutiny it undertakes during the formal legislative process. Such technical scrutiny and professional knowledge of whether the Act is working as intended will lead to more legislative recommendations.

With regards to ad hoc committees producing more policy related recommendations, this could be a reflection that the House of Lords is willing to pressure the government with stronger recommendations on the basis that they can emphasise their expertise and experience. This is especially true if there are Members on a committee with particular experience of working in the field under examination, which would lead such reports and recommendations to carry more weight. For example, the Equality Act 2010 and Disabilities Committee included Peers who were disabled as well as disability campaigners and the Select Committee on Adoption was chaired by a former high court judge and had former

social workers among its Members. Additionally, House of Lords committees are not as prominent in the media as departmental select committees are. They may feel as if there is no need to develop a strategy of producing weaker recommendations as outlined by Benton & Russell (2013) because they do not need to project influence. Additionally, these committees disband after they report so there is no relationship to maintain and no continued media image to promote. However, it can be argued that departmental select committees have expertise as they shadow government departments and can call in expert witnesses, although those expert witnesses are not likely to be there when the committee is formally preparing its recommendations. Russell (2013) also argues that these committees benefit from the expertise that MPs bring as elected representatives.

Finally, there is also a difference in terms of recommendations calling for research and review, with the Lords calling for fewer such recommendations. This may be explained by the fact that committees in the Lords are able to hold an inquiry over an entire session and as such have more time to undertake more detailed review and potentially reach firmer conclusions than committees in the Commons.

Table 5.5. Strength of recommendations by House

Strength of Recommendation	**House of Commons**		**House of Lords**	
	N	***%***	***N***	***%***
No	9	4	2	1
Small	98	39	90	37
Lower Medium	41	16	43	18
Mid-range	74	30	82	34
Upper Medium	35	10	23	9
Large	3	1	4	2
Total	250	100	244	100

Source: (CLG (2013); CMS (2009, 2012); EFRA (2008a, 2016b, 2017c); H (2013); HA (2014b); JCHR (2014a); J (2012, 2013a, 2015); PACA (2013a, 2013c); SCAL (2013); SCEL (2015); SCEAD (2016); SCIA (2014); SCLA (2017); SCMCA (2014))

Table 5.5 shows that there is only a limited difference between the House of Commons and the House of Lords in relation to the strength of the recommendations that committees in both Houses are producing. This suggests that there is some consistency in terms of the strength of recommendations that are produced in both Houses. Aldons (2000) and Benton & Russell (2013) argue

that committees use a strategy of producing weaker recommendations so that the government accepts more of them and as a result they appear more influential. Interviews with committee clerks revealed that they sometimes take into account what the government will likely accept and reject before making recommendations (Flood, 2017; Collon, 2017a). Again, this highlights the fact that committees do not have the coercive (hard) powers to force governments to accept recommendations; they can only persuade (Gordon & Street, 2012).

Table 5.4 showed a larger proportion of recommendations calling for some kind of legislative action coming from the House of Lords, which are classed as stronger recommendations. However, with few recommendations calling for large action and similar proportions of recommendations calling for mid-range and upper medium action, it appears that the legislative recommendations that the House of Lords are making are not strong.

Table 5.6 shows there were fewer recommendations that did not receive a response from the government in the House of Lords than there were in the House of Commons. The table also shows a greater proportion of House of Lords recommendations being rejected outright. Additionally, the data showed a greater proportion of recommendations being accepted outright in the House of Commons than in the House of Lords.

Table 5.6. Government acceptance of recommendations by House

Acceptance of Recommendations	**House of Commons**		**House of Lords**	
	N	***%***	***N***	***%***
No response	38	15	13	5
Reject outright	60	24	68	28
Reject partly	22	9	26	11
Neither accept nor reject	36	14	35	14
Accept partly	22	9	41	17
Accept outright	72	29	61	25
Total	213	100	194	100

Source: (CO, (2013); DCLG, (2013); DCMS, (2009; 2013); DfE, (2013); DH, (2013); EFRA, (2008b, 2017b 2017b); HA, (2015); HO, (2014, 2015b, 2017); J, (2013b); MoJ (2012; 2014a; 2015); MoJ & HA, (2014); PA, (2013b); WEO, (2016a).

With regards to fewer Lords recommendations receiving no response, this is surprising as ad hoc committees dissolve following the publication of their report and as such the committee is not constituted to receive the response, scrutinise it and follow up with the government like departmental select committees can. However, the House of Lords Liaison Committee does follow up on behalf of ad hoc committees on priority recommendations. It's also likely that the Lords are producing clearer recommendations as committees are more likely to reach evidence based consensus due to the nature of the House and its membership.

The reasons for a greater proportion of recommendations receiving no response in the House of Commons can be explained by the government wanting to delay dealing with an issue as departmental select committees can hold government departments directly accountable. Departmental select committees do not have a follow up procedure like the House of Lords Liaison Committee when it comes to government responses. The government may therefore feel like it doesn't need to respond as effectively. That being said they do have an obligation to respond fully to committee reports. Again as has been noted already, responsibility and accountability do underpin these operations. It should be noted however that there is an issue with the ability of departmental select committees to undertake follow up work on top of the other inquiries and business they are trying to get through. Workload and available resources are important factors here.

In relation to a greater proportion of Lords' recommendations being rejected outright, part of this difference might be explained by the higher proportion of recommendations receiving no response in the House of Commons (i.e. the government might ignore recommendations so it doesn't have to reject them). The government may feel it is easier to reject recommendations in the Lords than the Commons and as such in the Commons it may ignore recommendations so a formal rejection does not have to be made.

In terms of a greater proportion of Commons recommendations being accepted outright, there is no obvious explanation for this as the strength of recommendations are quite similar between both Houses. However, it could be an indication that departmental select committees have produced recommendations

more palatable to the government because they tend to have a working relationship with their respective departments. Indeed White (2015c) noted that productive relationships are important if committees do not want to see their recommendations disregarded. These relationships are vitally important for committees that rely on the power of persuasion (soft power) (Heywood, 2012). That being said, the House of Lords shows a greater proportion of recommendations being accepted in part. Indeed taking into account both accepted in part and in full, the House of Commons sees a similar proportion accepted as the House of Lords (38% and 42% respectively). There is a difference however between the combined percentages for rejected in part and in full which shows 33% and 39% respectively. Overall the House of Lords sees more of a balance in the percentage accepted and rejected in comparison to the House of Commons which sees more recommendations being accepted than rejected.

Having assessed the recommendations and acceptance for formal post-legislative scrutiny, the chapter moves on to address the descriptive statistics for informal post-legislative scrutiny as well. While the focus of this research is to undertake a systematic review of formal post-legislative scrutiny, it is necessary to address the recommendations being made through other types. Even though they did not come from a formal inquiry into an Act, as they still form part of the broader post-legislative scrutiny processes within the UK Parliament.

5.3 Informal post-legislative scrutiny

This section will address the types, strength and government acceptance of recommendations from 37 informal post-legislative scrutiny inquires. These are preliminary findings as this type of post-legislative scrutiny requires further conceptualisation and further research.

5.3.1 Types of recommendation

Table 5.7 shows the pattern of recommendations produced by informal post-legislative scrutiny. The table shows that there is a greater proportion of recommendations relating to legislation coming from informal post-legislative scrutiny in comparison to formal. There are also fewer policy related recommendations coming from informal post-legislative scrutiny. One interesting finding is the proportion of disclosure recommendations coming from informal post-legislative scrutiny, this is a higher proportion than for formal post-legislative scrutiny.

Table 5.7. Type of recommendation (informal)

	Informal	
Code	*N*	*%*
Research/Review	39	29
Policy and Practice	33	25
Related to legislation	27	20
Disclosure	17	13
More than one of the above	8	6
Campaigns/Public information	3	2
Guidance	2	1
Recommendations from other bodies	2	1
Funding and resources	1	1
Co-operation	1	1
None of the above	1	1
Total	134	100

Source: (BEIS (2017a); BIS (2008, 2012a, 2013); CLG (2014a, 2017); CMS (2007, 2008, 2010, 2013a, 2013b, 2014a); D (2016a); D, FA, ID and TI (2007); EFRA (2013a, 2014a, 2016a); EA (2014a); H (2010); HA (2008a, 2008b, 2012, 2014a, 2016a, 2016b); ID (2016a); JCHR (2007a, 2008a, 2009, 2011, 2014b); NIA (2013a); PE & WE (2017a); PACA (2009); WE (2016, 2017a, 2017b)).

In relation to a greater proportion of recommendations relating to legislation coming from informal post-legislative scrutiny, this could reflect the nature of informal post-legislative scrutiny. This type of scrutiny forms only a very small part of an inquiry and does not usually produce many recommendations. Committees may wish to get straight to the point regarding any legislative challenges. As scrutiny of the Acts will not be deep, there may be an assumption that any problems are with the Act. As post-legislative scrutiny does focus upon legislation, the focus of a committee might be on whether the Act is working as intended in

relation to the inquiry they are undertaking and as such might focus upon legislative outcomes. This assumes that committees are viewing such scrutiny as post-legislative scrutiny.

Fewer policy related recommendations coming from informal post-legislative scrutiny might be explained by the lack of detailed scrutiny that informal post-legislative scrutiny provides because it does form a small part of a committee's inquiry. This is in comparison to a larger proportion of such recommendations coming from formal post-legislative scrutiny.

Finally in terms of the proportion of disclosure recommendations coming from informal post-legislative scrutiny, the committees undertaking this type of post-legislative scrutiny may feel as if they needed more information in relation to the Act and its surrounding policy.

5.3.2 Strength of recommendations (informal)[25]

The data for strength of recommendations showed that 49% of recommendations called for little or no action. This is a large difference in comparison to formal post-legislative scrutiny. In relation to the data for recommendations calling for small action, this could again be providing evidence of a strategy deployed by committees to produce weaker recommendations in order to have more of them accepted. Without judging the rest of the non-post-legislative scrutiny elements of the report, the same cannot be said for the reports as a whole. This reflects the lack of time spent on post-legislative scrutiny during these reports, and the committee wishing to keep stronger amendments for the broader aspects of the inquiry.

Recommendations calling for medium (lower, mid-range, upper) action (e.g. changes to policy or new regulations) totalled 49%. This figure is 9% less than for formal post-legislative scrutiny and can be accounted for through the larger proportion of recommendations calling for no or small action. There is similarity between both types of post-legislative scrutiny with only 1% of recommendations

[25] For the full table, see appendix 4, page 321.

calling for large action. This is further evidence of committees avoiding recommendations calling for large change and could be a sign of a deliberate strategy being at play.

5.3.3 Government acceptance of recommendations (informal)[26]

The data for government acceptance showed that 3% of recommendations from informal post-legislative scrutiny are not receiving a direct response from the government, this is in comparison to the number of non-responses for formal post-legislative scrutiny (10%). However the data shows that there is a greater proportion of recommendations that are neither accepted nor rejected (25%) especially in comparison to the proportions for formal post-legislative scrutiny (15%). In terms of the acceptance (in part and in full) and the rejection (in part and in full) of recommendations the data shows a greater proportion of those recommendations being accepted than rejected (44% accepted, 28% rejected).

The findings in relation to the lower proportion of no responses will be related to the style of post-legislative scrutiny. Here it forms a small part of a broader inquiry and as such the recommendations are couched around other non-post-legislative scrutiny related recommendations and the government might not feel under so much pressure regarding the Act. Additionally, it may be a result of the relationship between some of the committees and the government on the basis that, as was noted in previous chapters, this type of post-legislative scrutiny also include committees which have not undertaken formal post-legislative scrutiny.

With regards to the greater proportion of recommendations that are neither accepted nor rejected, this is an indication that while the government is responding to more recommendations they are at the same time being more non-committal to the ones they are responding to and as such hoping to delay taking action on those issues. In terms of the greater proportion of recommendations being accepted, this is due to the types of recommendations that informal inquiries were making with a greater percentage of recommendations calling for little or no

[26] For the full table, see appendix 5, page 321.

action (49%). It is much easier to accept recommendations which do not require the government to do much.

This section has been important in assessing the type, strength and acceptance of recommendations published by committees that have undertaken informal post-legislative scrutiny. However, informal post-legislative scrutiny will not form part of further analysis into post-legislative scrutiny, but this type of post-legislative scrutiny does require further research. Throughout the thesis thus far, it has been important to address this type of post-legislative scrutiny as it is one of two routes that committees take when undertaking post-legislative scrutiny, even if it is not necessarily as visible as formal post-legislative scrutiny. The next section moves on to analyse some of the factors that impact upon the strength and acceptance of recommendations coming from formal post-legislative scrutiny inquiries.

5.4 Factors that impact upon the strength and acceptance of recommendations

Before going on to outline the findings from the two regression models it is first important to hypothesise what we might expect to see from previous studies regarding the relationship between some of the independent variables and the dependent variables of strength of recommendation and government acceptance.

Benton & Russell's (2013) study and the methods deployed by the studies discussed earlier in the thesis have been used as a foundation for this research. Benton & Russell's (2013) study did not address what factors might impact upon the strength of recommendations however they did address the factors that impact upon government acceptance. Some of the variables for this study have therefore been identified based on the findings of Benton and Russell (2013). As noted in the methods section of this chapter, the independent variables used in this study have been drawn from the committee level, the recommendation level and the legislative level, with the committee and legislative level variables being utilised as variables for strength of recommendations as well.

5.4.1 Hypotheses

The following hypotheses have been made in relation to the independent and dependent variables assessed in the subsequent regression analysis.

Committees chaired by opposition MPs have previously been found to be a statistically significant predictor in terms of opposition chairs being more successful than government chairs in getting their recommendations implemented. Benton & Russell (2013) found this in their study on the impact of parliamentary oversight committees and it was also found by the present researcher during a study into post-legislative scrutiny in the Scottish Parliament (Caygill, 2014). However, the latter found it statistically significant on the acceptance of recommendations. Benton & Russell (2013) included the variable on the basis that they expected government chairs would have a higher level of success (in getting their recommendations implemented). In fact they found the opposite and suggested that it might be a result of opposition chairs perhaps working harder to build consensus and make reasoned amendments based on evidence in order to avoid appearing too obstructive. It might be expected in cases where committee chairs are wanting to have influence, that they might take a more conciliatory tone with the recommendations that they propose. This could also be a result of an opposition chair working with a government majority. It is argued that the strength committees have comes from their unanimity, if it can be achieved (Rogers & Walters, 2015; White, 2015a). It is also argued that in the hunt for unanimity, recommendations can get watered down and become quite bland (White, 2015c). This ensures they are more palatable to the government and makes them weaker and therefore more likely to be accepted. As such the following hypothesis has been made:

> H1 - Committees chaired by opposition MPs will be more likely to see recommendations accepted than government chairs.

Committees with a government majority might produce recommendations more favourable to the government. This is not a variable that Benton & Russell (2013)

included in their study but was used by the present author in his study on post-legislative scrutiny in the Scottish Parliament (Caygill, 2014). Although committees are supposed to work consensually, party politics will still be present and will play a role from time to time (White, 2015a), especially if junior members are seeking a future ministerial career. Government backbenchers may therefore be more likely to propose recommendations that are more acceptable to the government or ask others to be reworded in order to be less critical and or demanding. Indeed, the hunt for consensus can lead to a watering down of amendments and an airbrushing of dissent (White, 2015c). As committees vote on a paragraph by paragraph basis on reports (Rogers & Walters, 2015), if government backbenchers are in the majority they would have the ability to vote down parts of reports that they do not like or amend a report via votes. However, it should be noted that a good chair will avoid division, which could mean (depending upon the strength of feeling) that government backbenchers can have parts of reports removed in order to achieve consensus. With more effectiveness coming from consensus being struck (Rogers & Walters, 2015), such changes are likely to be made. It is also likely that a committee with a governing majority will be seen more favourably than a committee without one.

> H2 - Committees with a government majority will be more likely to make recommendations that the government accepts.

Benton & Russell (2013) noted in their research that committees deploy a strategy of producing weaker recommendations so that the government is willing to accept more of them and as a result make committees appear more influential. This is also a strategy that is acknowledged by Aldons (2000). This strategy is expected to have developed due to an unwillingness from the government to accept recommendations that are calling for substantial changes in legislation. This relates to the power balance between parliament and the executive, in which parliament (and its committees) do not have hard (coercive) powers to force the government to take action (Gordon & Street, 2012). Committees rely on the power of persuasion (Chafetz, 2017). If such a strategy exists then it might be expected

that stronger recommendations would be more likely to be rejected. Norton (2013) recognises that the impact of committees does not usually extend to the introduction of significant new polices or large-scale changes. Indeed, Rogers & Walters (2015) note that recommendations which are highly critical of the government are likely to receive a defensive response and the government is likely to take its time over recommendations it considers challenging.

> H3a - The stronger action that a recommendation calls for, the more likely it is to be rejected.

Benton & Russell (2013) used disclosure and guidance as variables and found that they were statistically significant predictors and were more likely to be accepted. Disclosing information is part of the main relationship between government departments and committees as access to information, as noted in the conceptual framework, is a foundation of scrutiny. These recommendations should, therefore, be seen as a routine request. Additionally, it might be expected that recommendations calling for disclosure and guidance would be ranked as weaker recommendations. This is because they will generally require less political capital than recommendations calling for legislative change and as a result be more likely to be accepted because they are weaker, and as such are more palatable to the government. Indeed, Rogers & Walters (2015) note that critical and challenging amendments are likely to be viewed with suspicion by the government or dismissed outright if overly critical. Therefore weaker amendments which are less challenging such as calling for disclosure would be more likely to be accepted.

> H3b - Recommendations calling for disclosure and guidance will be more likely to be accepted by the government.

Due to the nature of post-legislative scrutiny and the focus on legislation, calls for action relating to legislation will be more likely to be rejected on the basis of the resources (including time and political capital) that such changes would require. This is linked to the strength of recommendation categories that

recommendations calling for action relating to legislation are likely to fall under. They are likely to fall under the stronger recommendation categories and as a result of H3a, and the strength of such recommendations, be more likely to be rejected by the government. This is on the basis that any legislative change is going to require some political cost in terms of capital and resources. A new bill would require space in the government's legislative programme and amendments to an Act would either need a new amendment act or a suitable piece of legislation to attach it to. As such political costs would be higher than calls for the disclosure of information. Indeed as noted in H3a, Rogers & Walters (2015) argue that recommendations which are highly critical of the government are likely to receive a defensive response or be rejected outright and the government is likely to take its time over recommendations it considers challenging. Any recommendation calling for action that is high in political cost is likely to be rejected. Benton & Russell (2013) also tested this variable although it was not found to be statistically significant. However, with post-legislative scrutiny focusing on legislation, and as legislative style recommendations are more prevalent this could lead to a more significant relationship.

> H3c - Recommendations calling for action relating to legislation will be more likely to be rejected by the government.

If legislation is deemed to be contentious, then the government would be more likely to protect its legislation from amendment during the formal legislative process which could result in stronger action being necessary during post-legislative scrutiny to improve the Act. Indeed Peter Riddell (former director of the Institute for Government) noted that 'the more important and controversial the Bill, the less likely is parliament to play a creative part in its scrutiny' (Brazier, 2004: 18). As the legislative process is dominated by partisan loyalty (Brazier, 2004) any vote against the bill at second reading will be seen by the government as the opposition being completely against the bill. As a result, the government is less likely to want to accept opposition amendments on the basis that they do not want the bill to pass in the first place. In a study using twelve case study bills, Russell,

Gover, & Wollter (2016) found that only 0.7% of opposition tabled amendments to legislation are accepted. They may view any attempt to amend, even if sincere, as a vehicle to try and derail the bill. As such stronger recommendations through post-legislative scrutiny may be necessary to counteract any problems that were not dealt with during the formal legislative process. In terms of government acceptance, in line with what is hypothesised in H3a, it is expected that bills considered to be contentious will be more likely to see their recommendations rejected on the basis that they are likely to be stronger. It is probable that the government will not want to reopen issues that are considered closed following the completion of the formal legislative process. This will also likely be true if there has been a change in government, as a new government will unlikely want to have to give up some of its precious legislative time, unless it agreed strongly that the legislation needed changing. There is also the potential for the partisanship of the formal legislative process to spill over into post-legislative scrutiny, especially if the government is being asked to consider recommendations on its own legislation. Indeed White (2015c) argues that committees and departments can sometimes view each other as the enemy, and as such that partisan divide does spill over into the relationship between parliament and government which is vital for recommendations being accepted. Although it is argued that partisan loyalty is not as strong as it used to be, we should at the same time not exaggerate its decline, as cohesion is still a marked part of parliamentary behaviour (Norton, 2013).

> H4 - If a bill is labelled as contentious it will be more likely to receive stronger recommendations, and,
>
> H5 – If a bill is labelled as contentious it will be more likely to have recommendations rejected by the government.

5.4.2 Regression analysis: Strength of recommendation

The ordinal logistic regression analysis shows two variables that are significant (Justice Committee and government defeats in the House of Lords) both at the $P<0.01$ level. This tells us that there are statistically significant relationships

between these independent variables and the strength of recommendations produced. The Cox & Snell R-squared for this model is .035 however this model is not designed to be predictive. The categories used to measure strength of recommendation are; (0) no action, (1) small action, (2) lower medium action, (3) mid-range action, (4) upper medium action and (5) large action.

Table 5.8. Ordinal logistic regression: DV = strength of recommendation[27] [28]

	Estimate	**S.E.**[29]
Committee-level variables		
Chairman (Opposition)	-.104	.245
Committee Type (Joint)	-.257	.272
Committee (Justice)	-1.041**	.390
Committee (Public Administration and Constitutional Affairs)	-.720	.544
Committee (Environment, Food and Rural Affairs)	-.144	.506
Legislation-level variables		
Sittings in Committee (House of Commons)	.49	.487
Government defeats in the House of Lords	.075**	.075
Contentiousness	-1.016	.705
Wash-Up	-.097	.260
Cox & Snell R-squared	.035	
n	504	

*P<0.05 ** P<0.01

The analysis shows that the Justice Committee, is significant at the P<0.01 level. The directionality indicates that the committee is producing weaker recommendations. In attempting to explain committee behaviour here, this suggests that there might be a strategy here from committees, acknowledged by both Aldons, (2000) and Benton & Russell (2013), in terms of committees producing weaker recommendations on the basis that they are more likely to be

27 As it was originally envisaged that an OLS Linear regression would be used, one was run. The following differences were noted between that model and the logit model. There were no changes in directionality, however there was two changes in significance, sittings in committee was no longer significant and Justice Committee was significant at the P<0.05 level.

28 The following independent variables were not included due to problems with multicollinearity (as measured by the VIF diagnostics in SPSS): party of Government (which introduced the legislation); departmental select committees (as a combined category, although individual committees were included); ad hoc committees; Culture, Media and Sport Committee; length of Act (in words); time difference between Royal Assent and post-legislative scrutiny and time spent in the House of Commons.

29 Clustered standard errors.

accepted by the government and as a result make committees look like they are having more of an impact than actually might be the case. Again this comes down to the power committees have; without coercive force they rely on persuasion and attraction in order to get the government to act. It also explains why committees would want to develop such a strategy.

It can also be explained by the fact that the legislation, that has received post-legislative scrutiny by those committees so far, has not been in need of large change and is perhaps operating as intended at the time of enactment. Indeed, it was noted during an interview with the clerk of one of the ad hoc committees in the House of Lords that no committees so far have argued that the underlying legislation has been flawed (Collon, 2017a). However, the academic literature on the legislative process suggests it produces deficient legislation (Brazier, Kalitowski, & Rosenblatt, 2007; Fox & Korris, 2010; Rippon, 1993; Slapper & Kelly, 2015). This points instead to deficient legislation not being selected for review, as noted in chapter four. Additionally, with the analysis suggesting that recommendations calling for smaller action are being made by these committees, it suggests that the legislation under review only needs small changes to enhance its operation. The directionality for Joint Committee and Environment, Food and Rural Affairs Committee is also negative, supporting the arguments made above, that committees are producing weaker recommendations. Although no formal hypotheses were directed at these particular variables, from the arguments presented by Aldons (2000) and Benton & Russell (2013) this would be in line with expectations.

Finally, the number of government defeats in the House of Lords was significant at the $P<0.01$ level and its directionality is positive, showing that as government defeats in the House of Lords increase, the stronger recommendations get. The more government defeats there are in the House of Lords suggests that those Acts were in need of improvement; as such this is an indication of the challenges with Acts that still require improvement following their implementation.

Having assessed some of the factors what impact upon the strength of recommendations that committees make, the next section moves on to address the factors that impact upon the government's acceptance of recommendations.

5.4.3 Regression analysis: Government acceptance

The ordinal logistic regression analysis shows that five variables are statistically significant, four at the P<0.01 level and one at the P<0.05 level. The Cox & Snell R-Squared for this model is 0.194. Again this model is not designed to be predictive.

The categories used to measure government acceptance are; (1) rejected outright, (2) rejected in part, (3) neither accepted nor rejected, (4) accepted in part and (5) accepted outright.

Table 5.9. Ordinal logistic regression: DV = government acceptance

	Estimate	S.E.
Committee-level variables		
Chairman (Opposition)	-.558*	.234
Committee Type (Joint)	-1.019**	.367
Committee (Justice)	-.338	.232
Committee (Public Administration and Constitutional Affairs)	.863**	.292
Committee (Environment, Food and Rural Affairs)	-.437**	.161
Legislation-level variables		
Sittings in Committee (House of Commons)	.040	.032
Government defeats in the House of Lords	-.012	.025
Contentiousness	-.024	.452
Wash-up	.376	.223
Recommendation-level variables		
Strength of recommendation	-.564**	.104
Recommendation calling for action relating to legislation	-.506	.447
Recommendation calling for guidance	-.228	.331
Recommendation calling for research and review	-.471	.354
Recommendation calling for disclosure	.129	.538
Recommendation calling for resources and funding	-.035	.836
Recommendations calling for policy and procedure	-.457	.361
Cox & Snell R-squared	.194	
n	452[30]	

* P<0.05 ** P<0.01

[30] As the model is measuring the level of acceptance, recommendations which received no response were listed as missing for the purpose of this model. There were fifty-two recommendations which received no response.

Strength of recommendations is statistically significant at the P<0.01 level in this model. The directionality of this variable is negative meaning that stronger recommendations are more likely to be rejected than accepted. This is in line with H3a. As stated in earlier sections this is intuitive to some degree as you would expect the government to find weaker recommendations more palatable, especially as committees do not have the power to force the government to accept stronger recommendations. These findings are also in line with the findings of Benton & Russell (2013) in their study on the impact of parliamentary oversight committees. This could also suggest that if committees do deploy a strategy as suggested by Aldons (2000) and Benton & Russell (2013), then they are perhaps not completely wrong to do so. The time committees have to undertake their variety of functions is limited and if they were producing recommendations calling for stronger action which were subsequently being rejected then a feeling could develop that there was no point in doing such scrutiny if the main recommendations are just going to be rejected anyway. Subsequently they make weaker ones that are more likely to gain traction with the government. This will have implications for accountability as such findings, suggest that accountability is not such an important part of post-legislative scrutiny, if committees are willing to brush past recommendations which would require greater action. As a result, if such a strategy is being utilised then it shouldn't necessarily completely be seen as a bad thing. The down side, if this strategy is being used, is that committees are to an extent overstating their influence. So committee behaviour in this area will be being influenced by government actions (i.e. they may know the chances of getting stronger recommendations accepted are limited), but also by institutional constraints such as the finite amount of time that departmental select committees have especially.

However, rather than a deliberate strategy at play of couching recommendations in terms that the government can more readily accept, interviews suggested that committees are producing weaker recommendations due to internal political compromise on the committee, as a unanimous report is more influential (White, 2015a) (all of the reports in this study were agreed unanimously). That sometimes means that they prefer a weaker recommendation on which they can all agree,

rather than a stronger one which would cause a division. Although this is still a strategy, it is a different one. Additionally, the desire to seek compromise with the government will have an impact here too, as committees recognise that they won't get everything they want and judge that it would be better to get something than nothing. Finally a lack of evidence on which to develop a recommendation would also lead to a committee producing weaker recommendations.

The regression analysis also showed that joint committees were significant at the P<0.01 level. The directionality of the variable is negative, suggesting that recommendations coming from joint committees are being rejected by the government. This correlation can be explained by the nature of the inquiry undertaken by the committee in question. The inquiry was on terror legislation and as a result of it being a sensitive area, the government will, as a result, be more likely to reject changes to the Act and its operation.

The Public Administration and Constitutional Affairs Committee (PACAC) and Environment, Food and Rural Affairs Committee was statistically significant at the P<0.01 level. The directionality of the PACAC variable is positive, suggesting that recommendations coming from this committee are being accepted by the government. The previous model for strength of recommendations showed the Public Administration and Constitutional Affairs Committee were more likely to produce weaker recommendations which would make their acceptance more appealing to government. Whereas the EFRAC variable is negative suggesting that recommendations coming from this committee were being rejected despite the committee offering weaker recommendations.

Committee chairman was significant at the P<0.05 level and the directionality was negative meaning opposition chairs were more likely to see their recommendations rejected than accepted. This was not in line with H1 or Benton & Russell's (2013) findings. This can be explained by the nature of post-legislative scrutiny in reviewing legislation. For example, the legislative process is partisan and that partisanship on the part of the government may creep into this particular task.

While the following recommendations were not significant at any level their directionality does warrant reporting on the basis that hypotheses were made. For recommendations calling for some sort of action relating to legislation, there was a negative effect suggesting they were more likely to be rejected by the government. This is in line with H3c. This was on the basis of the time and political capital that might be needed to amend a piece of legislation or repeal part of an Act, which unless you have a suitable bill you can attach such amendments too, means new legislation is required. Recommendations calling for guidance saw a negative effect. The direction is therefore not in line with H3b or with the findings of Benton & Russell (2013) who found a positive effect and statistically significance. However, recommendations calling for resources and funding, again although not statistically significant, had a positive effect and thus more likely to be accepted by the government. One final recommendation in this category of variables is recommendations calling for the disclosure of information. Again this was not statistically significant but its directionality was positive, which is in line with H3b and what was found by Benton & Russell (2013). The reason for a positive effect could be that the basic scrutiny relationship involves access to information. As a result requests for information by committees to government departments are not going to be unusual.

5.5 Conclusion

The findings in this chapter have covered the direction of recommendations as well as the type, strength and acceptance of recommendations across the two types and between both Houses of Parliament. Finally the chapter assessed the factors that impact upon strength and acceptance.

The data showed that the most frequently called for recommendation is a change in policy or practice, with 39% of recommendations calling for such action. The research also found that although only 79 recommendations out of 504 called for action related to the legislation and its implementation (16%), this is a 12% increase in comparison to what Benton and Russell (2013) found in their study, which included seven committees across all their functions. This suggests that post-

legislative scrutiny leads to more legislative recommendations. However, with an academic literature suggesting that the legislative process in the UK produces deficient legislation, there isn't much sign of it if only 16% of recommendations recommend legislative action.

41% of recommendations stemming from formal post-legislative scrutiny inquiries called for little or no action on behalf of the government. This is a similar proportion to what Benton and Russell (2013) found in their study (40%). The research therefore showed that committees tend to focus their recommendations on calling for small and medium action. This provided evidence to support the arguments of both Aldons (2000) and Benton & Russell (2013) that committees produce recommendations which are weaker so the government is more likely to accept more of them. This is a strategy that appears to be supported somewhat by other findings from the research. Indeed, the ordinal logistic regression analysis showed that the Public Administration and Constitutional Affairs Committee and the Justice Committee, were significant and producing weaker recommendations. This reflects the reality through which scrutiny takes place in the UK Parliament, in which parliament is weaker vis-à-vis the executive.

In terms of the ordinal logistic regression analysis for government acceptance, the analysis showed that strength of recommendation was statistically significant at the $P<0.01$ level, suggesting that there is a very strong relationship between the strength of recommendations and their acceptance. The directionality of this variable is negative meaning that stronger recommendations are more likely to be rejected than accepted. This finding suggests that if committees do deploy a strategy as suggested by Aldons (2000) and Benton & Russell (2013), then they are perhaps they are not completely wrong to do so on the basis that the analysis shows that stronger recommendations are more likely to be rejected.

The research contained in this chapter has helped to fill an important gap in knowledge in terms of the types of recommendations committees undertaking post-legislative scrutiny are making, their strength, whether they are being accepted and finally what factors impact upon their strength and acceptance. It has shown where data is comparable with Benton and Russell's (2013) study and

where it diverges. It has also provided evidence to support the arguments made by Benton and Russell (2013) and Aldons (2000) that committees have a strategy to produce weaker recommendations in order so the government will accept more of them.

This chapter, in answering the second research question, contributes to the literature on the impact of parliamentary committees, in terms of the types of recommendations they make and whether they are accepted (in relation to post-legislative scrutiny) and their likelihood to be weaker. It also contributes to our knowledge of committee behaviour in terms of understanding why they make recommendations they do, such as there being a deliberate strategy at play. In addition it also contributed to the literature on post-legislative scrutiny as it was unknown what the outcomes of such scrutiny are, we now know there is a strong relationship between the strength of a recommendation and its acceptance. To an extent the chapter also contributes to the comparative study of post-legislative scrutiny by assessing how the UK's post-legislative scrutiny system operates in practice. This is important as more legislatures deploy procedures to undertake post-legislative scrutiny it is important to assess such processes to determine if they should be replicated.

The next chapter goes on to address the third research question relating to the experience of committees undertaking post-legislative scrutiny.

Chapter 6 Undertaking post-legislative scrutiny in the House of Commons

This chapter will focus upon the qualitative experience of three committees in the House of Commons which have undertaken post-legislative scrutiny. This addresses the final research question of what has the experience been of committees undertaking post-legislative scrutiny in the UK Parliament? It also supports and confirms the findings of the proceeding chapters as well as providing answers to some of the questions raised in previous chapters such as why committees are making the recommendations they are and how legislation gets selected by committees. The subsequent chapter on the House of Lords will answer the final part. This chapter, in providing the first part of this answer will follow the process of a typical committee inquiry as set out by Rogers & Walters (2015). It addresses the start of an inquiry, evidence, the report, as well as the response and any related follow up. The findings for each of these stages in relation to post-legislative scrutiny will be presented and analysed in order to assess the actual operation of the inquiries in comparison to how Rogers & Walters (2015) suggest they should operate in theory as well as locating any areas of success and failure in this process.

The chapter focuses on three case studies; the Culture, Media and Sport Committee's inquiry into the Gambling Act 2005; the Justice Committee's inquiry into the Freedom of Information Act and the Health Committee's inquiry into the Mental Health Act 2007. The subsequent chapter will address committees involved in post-legislative scrutiny in the House of Lords in order to provide separate and in-depth analysis. This comparison will be useful as the processes and committees which undertake post-legislative scrutiny in both Houses are slightly different (e.g. the time committees have to undertake post-legislative scrutiny inquiries).

As post-legislative scrutiny has not been subject to systematic academic scrutiny before now, the aim of the case study analysis is to gain a greater knowledge about the process of post-legislative scrutiny. The individual inquiries examined in this chapter were selected on the basis of the most similar systems design. Most similar systems design was selected on the basis that it is considered the best fit for

exploratory studies as there were no outcomes to assess until the research had been completed. The following criteria were deployed in order to aid selection; the committees have undertaken a formal post-legislative scrutiny inquiry (systematic post-legislative scrutiny); which took place either in the 2010-2015 or the 2015-2017 Parliaments (so that Clerks would still be around and the inquiry wouldn't be a too distant memory). For each committee, a representative of the committee secretariat, membership and pressure groups who took part in the inquiries were interviewed. Such criteria for this chapter left six committees to choose from.

During scoping interviews it was suggested that the Public Administration and Constitutional Affairs Committee was not appropriate to assess as the staff had left the House of Commons. Additionally, the then clerk of an additional committee noted they would only give an interview if it were anonymous, which would be challenging with a case study approach focusing upon specific inquiries. That left four committees, however and the Environment, Food and Rural Affairs Committee didn't undertake its inquiries until after the selection had been made for the research.

The final choices came down to the availability of interviewees and access to committee staff and members. In total 8 semi-structured interviews were undertaken[31] and the transcripts of these interviews were analysed to determine key themes through NVivo. These case studies account for 27% of inquiries undertaken in the House of Commons in the time period 2010-2017.

In practical terms, this chapter contributes to our knowledge of post-legislative scrutiny as a function of parliamentary committees and how committees deal with such scrutiny. Additionally, it provides an assessment of the procedures utilised in the House of Commons with the voices of those who have taken part in the process. It also contributes to our knowledge of the behaviour of committees and on the impact of parliamentary committees, this time it is through the clerks and

[31] Only two interviews were undertaken for the Health Committee case study as no Members were willing to be interviewed.

committee members regarding specific inquiries and the issues they took into account when undertaking such scrutiny.

6.1 Introduction to case studies

First, the chapter will give an outline and some context to the three case studies. This is to develop a better understanding of the inquiries themselves and the context of the legislation that was under review at the time.

6.1.1 Culture, Media and Sport Committee: Gambling Act 2005

The Culture, Media and Sport Committee announced its inquiry into the Gambling Act 2005 on the 17th May 2011. This was not the first post-legislative scrutiny inquiry that the Culture, Media and Sport Committee had undertaken. In the 2008-2009 session, the committee looked into the 2003 Licensing Act but concluded that it was too early to see the full ramifications of the Act. A House of Lords ad hoc committee completed post-legislative scrutiny on the Act in the 2016-2017 session and concluded that the legislative framework was not ideal (Collon, 2017b).

The announcement of the inquiry into the Gambling Act came before the Department for Culture, Media and Sport had published its own memorandum. With the recommended time frame being between three to five years following the Act receiving Royal Assent (Kelly and Everett, 2013), the government's final deadline for producing its memorandum was September 2012 (Kelly and Everett, 2013), so the committee began the inquiry within but before the end of the formal period of government post-legislative review and the inquiry focused upon reviewing the Act as a whole. The government did, however, provide a post-legislative memorandum at the request of the committee which was received in time for the start of the inquiry in October 2011 (Department for Culture, Media and Sport, 2011).

The Gambling Act 2005 came into force on 1 September 2007 and was broadly designed to consolidate existing gambling legislation. However, it also aimed to update the regulatory framework for casinos, online gambling, and Fixed Odds Betting Terminals (FOBTs) (House of Commons Culture, Media and Sport Committee, 2012). In addition, the Act created a new industry regulator called the Gambling Commission (House of Commons Culture, Media and Sport Committee, 2012).

6.1.2 Justice Committee: Freedom of Information Act 2000

The Ministry of Justice published its memorandum containing its post-legislative assessment of the Freedom of Information Act 2000 in December 2011 and presented it to the Justice Committee (Kelly and Everett, 2013). During the course of the inquiry into the Freedom of Information Act, the committee received over 140 pieces of written evidence and took oral evidence from thirty-seven witnesses over the course of seven oral evidence sessions. The call for evidence sent out by the committee focused upon three questions; 'does the Freedom of Information Act work effectively?; what are the strengths and weaknesses of the Freedom of Information Act; and is the Freedom of Information Act operating in the way that it was intended to?' (House of Commons Justice Committee, 2012). In this case, the committee knew what issues they needed to focus upon because the government was keen on changing the Act and had made its wishes somewhat clear before the inquiry. A focused call for evidence was therefore useful. This isn't always the case with inquiries. The memorandum from the Ministry of Justice highlighted the four key objectives of the Act: accountability; better decision making; openness and transparency; and public involvement in decision making, including increased public trust in government (House of Commons Justice Committee, 2012) and the committee published its post-legislative scrutiny report on 26th July 2012 (Kelly and Everett, 2013). The Act had also come under some criticism from ministers in government and from the civil service. Sir Jeremy Haywood, the Cabinet Secretary suggested that the Act had a chilling effect in terms of officials being less likely to provide frank opinions and discussion (Rosenbaum, 2016). Former Prime Minister

Tony Blair called himself a 'nincompoop' for his role in the legislation (House of Commons Justice Committee, 2012) and David Cameron had suggested that the Act impeded the process of governing (Rosenbaum, 2016). With all of this criticism, this was something the committee wanted to investigate.

6.1.3 Health Committee: Mental Health Act 2007

In July 2012 the Department of Health published its post-legislative memorandum of the Mental Health Act 2007 (Kelly and Everett, 2013). Following the publication of this memorandum the Health Committee announced it would conduct its own post-legislative scrutiny inquiry into the Act (Kelly and Everett, 2013). In its inquiry, the committee noted that the purpose of the scrutiny was not to repeat the policy debates that occurred during the original passage of the Act but rather to assess the implementation and operation of the Act (House of Commons Health Committee, 2013). The Mental Health Bill was introduced to parliament during the 2006-07 session to amend and update the Mental Health Act 1983 which was the cornerstone of mental health legislation in both England and Wales (House of Commons Health Committee, 2013). The Act established a single definition of mental disorder, which included some conditions not covered in the 1983 Act, as well as reforming existing law covering compulsory detention and treatment (House of Commons Health Committee, 2013). It completed its passage through parliament and received Royal Assent in July 2007 with the majority of its provisions coming into force during November 2006. (House of Commons Health Committee, 2013).

6.2 Start of an inquiry

At the start of an inquiry, committees decide what subject they want to scrutinise and set out the terms of reference for the inquiry (Rogers & Walters, 2015). However, Rogers & Walters (2015) note that these terms of reference do not bind committees and that a committees' focus will often change during the course of an inquiry on the basis that evidence points to areas of particular importance. At the

start of an inquiry, there is also the opportunity to publish press notices as well as issues and questions papers to stimulate debate (Rogers & Walters, 2015).

6.2.1 Case studies

The former clerk of the Culture, Media and Sport Committee noted that the start of post-legislative scrutiny inquiries are different to other committee inquiries in the sense that with post-legislative scrutiny clerks can never be sure where the problems with an Act might be before committees start undertaking scrutiny (Flood, 2017). This is in contrast to other inquiries where committee staff usually have an idea of what the problem is and can begin to probe this from the beginning. She noted that although the terms of reference published at the start of an inquiry can change, committees tend to be addressing the same issues at the end as at the beginning (Flood, 2017). The implication here is that this is not the case with post-legislative scrutiny and committees need to start with broad terms of reference before they can begin to assess the Act more deeply for its flaws. This has implications for the undertaking of post-legislative scrutiny and it would make sense for committees undertaking it to issue preliminary terms of reference so that an initial assessment can be made prior to formal terms being agreed based upon where issues have been highlighted in the written evidence. This would help to narrow down the parameters of an inquiry and avoid a case, as with the Gambling Act inquiry, of a committee undertaking a complex and lengthy inquiry into a large Act.

In terms of selecting the topic or legislation to receive post-legislative scrutiny, Members' interest was raised as an important point in interviews. The former clerk of the Culture, Media and Sport Committee noted that the committee was not very enthusiastic about scrutinising the Gambling Act. Although a number of Members were interested in the gambling industry, they were less interested in looking at the Gambling Act as a whole because it was seen as a little dry (Flood, 2017). As noted in chapter four, Member interest is vital for successful inquiries. There was, therefore, a difference of opinion about whether it would be appropriate and useful to look back at the Act in its entirety (Flood, 2017). This raises the issue of how best

to approach post-legislative scrutiny, as Members may be interested in the topic area of the Act but their interest may not extend to its finer details. However, this does raise questions about why MPs choose to serve on select committees and how this might impact their level of interest. Searing (1994) would argue that MPs who see themselves as policy advocates (aiming to influence government policy) and who are most likely to seek committee membership to achieve their aims, tend to dislike the behind the scenes, attention to detail work that post-legislative scrutiny often requires. Philip Davies MP, when interviewed for this research stated that despite scrutinising the Gambling Act, he had never had a constituent raise the issue of gambling for the whole time he has served as an MP and there was little political interest at the time (Davies, 2017). That being said, because of his well-known views on the subject, constituents may have felt it was pointless to approach him about it.

Another example of where Members' interest is of importance was noted by, the former chair of the Justice Committee, Lord Beith. He stated that in the case of the inquiry into the Freedom of Information Act 2000 there was a reasonably high level of interest among the Members (Beith, 2017), particularly as the committee had previously assessed whether departments were ready for freedom of information. Interest is, therefore, key to engaging Members in the process and it impacts not just upon what legislation you select but also upon whether committees undertake post-legislative scrutiny at all.

However, it could be argued that committees surrender to Member preferences too easily. Although post-legislative scrutiny might not be the most newsworthy in their constituencies, one of their roles is to act as legislators and post-legislative scrutiny is a core task of departmental select committees. Focusing on Member interest too much is also likely to mean that committees focus upon Members' pet projects when it comes to undertaking inquiries more generally but also when it comes to selecting legislation for post-legislative scrutiny. Such an approach could potentially mean overlooking legislation which is in need of review for a piece of legislation whose topic interests a particular Member.

Representation from interest groups was also another issue, noted in the interviews, that impacts upon the selection of Acts, and whether committees undertake post-legislative scrutiny. The Culture, Media and Sport Committee noted in its report on the Gambling Act 2005 that it announced its inquiry into the Act following 'a large number of representations from the gambling industry' (House of Commons Culture, Media and Sport Committee, 2012). The industry was concerned that legitimate commercial interests were being interfered with and that the Act was difficult to interpret due to its complexity (House of Commons Culture, Media and Sport Committee, 2012). It is fair to say therefore that part of the reason for the triggering of the inquiry was the representations from the gambling industry. Indeed Kingdon (1995) notes the role that interest groups can play in agenda setting, suggesting that the louder they 'squawk' the higher issues that interest them climb on the policy agenda. Indeed, Philip Davies noted that it is common for organisations to approach committees with their concerns and problems (Davies, 2017). Alternatively, it could be argued that interest groups become more interested in issues that are on the policy agenda. This does raise issues around committees being led or unduly influenced by an outside interest.

The Health Committee's inquiry into the Mental Health Act 2006 is another example where representations (of a sort) from interest groups impacted upon the decision to undertake an inquiry. The committee had received a memorandum from various charities and bodies interested in mental health which also commented on the operation of the Act (Lloyd, 2017). From the perspective of the secretariat, this meant that the cost of setting up an inquiry was reduced. This could potentially fall into the problem centred model of agenda setting as with the Justice Committee's inquiry, on the basis that both the government and stakeholder memoranda will have conveyed where there were problems with the Act and its operation (Kingdon, 1995; Robinson, 2000). In this model, these problems usually become apparent to government and parliament through feedback from programmes or other organisations (Béland & Howlett, 2016). Additionally, with the publication of a stakeholder memorandum, again this points towards the role interest groups can play in agenda setting (Kingdon, 1995).

Allison Cobb, from Mind[32] (but who worked on the inquiry for the Mental Health Alliance) noted that it was their initiative to send their memo to the committee and that they had also provided evidence for the government's post-legislative assessment with the aim of achieving more impact. She also noted that they felt the inquiry was going to go ahead anyway, so they were not seeking an agenda-setting role from the submission of their memo (Cobb, 2017). Again this reiterates the role that interest groups can play in pushing issues on to a committees' agenda as well as how important access to information is as noted in the conceptual framework.

Asking stakeholders to produce their own memoranda on Acts that have received government ones is potentially a useful model for committees to follow. This is important as one of the key benefits for committees from interest/pressure groups is that they provide information meaning committees are not reliant upon the government (Norton, 1999). In this case, it improved the committee's access to information, which as discussed in chapter two is an important foundation for scrutiny. This helped the committee to better understand the challenges and to make a preliminary assessment as to whether the government was right in its own assessment of the Act. This could come as a request from a committee, or through making the publication of memoranda more explicit so organisations can locate them and then respond to them. Having that additional memorandum was an additional incentive to undertake the inquiry, so it could be another way of increasing the uptake of post-legislative scrutiny. That being said this could raise issues around the types of groups that have had access to the committee during the course of the inquiry. It raises questions about whether these groups were insider groups and the extent to which the presentation of such a memorandum limited access for other groups. However Norton (2013) notes that 70% of external groups find access through committees to be fairer than through departments, so there is perhaps a little less reason for concern here. This is supported by Grant (2000) who argues that outsider groups make a substantial input to the evidence received by committees. The points made by both Grant, (2000) and Norton (2013) would support the pluralist approach to some extent in that there is some sort of

[32] Mind is a mental health charity that supports those with mental health problems.

equal access for groups, at least in terms of parliamentary committees (Watts, 2007). Additionally, the Clerk did note that he felt the stakeholder group encompassed everyone they needed for the inquiry (Lloyd, 2017). Overall representations from industry have implications not just for post-legislative scrutiny but also for other committee inquiries more generally. Such representations, while important in some instances, could have an impact upon inquiries in terms of committees being led by the concerns of a particular interest group.

Other issues these committees took into account when deciding what legislation to select for post-legislative scrutiny include the output from the respective departments that they shadow. This output includes both legislative output in terms of the amount of legislation the department sponsors and which the corresponding select committee has a right to scrutinise after its passage through the legislative process, as well as post-legislative review memorandum produced three to five years after an Act has received Royal Assent. The former clerk of the Culture, Media and Sport Committee noted this as a factor in their selection of the Gambling Act 2005 on the basis that the Department of Culture, Media and Sport has a low legislative output. Indeed in chapter four, table 4.5 showed that only eleven Acts had been introduced by the department between 2005 and 2017. It is not a department that sponsors many bills and legislative changes often are tacked on to other bills from other departments e.g. school sports being added to bills from the Department for Education (Flood, 2017). The Gambling Act was, therefore, an obvious candidate if the committee wanted to perform post-legislative scrutiny (Flood, 2017). Since departments are different in terms of their legislative output, some committees are going to have less opportunity to undertake post-legislative scrutiny. Therefore, there should be different expectations of committees based upon the legislative intensity of the departments that they shadow. However, it should also be noted that legislatively intensive departments can also obstruct post-legislative scrutiny by introducing new legislation in the same area frequently which supersedes previous Acts. This was noted in chapter 4 when addressing the post-legislative gap. This is because if the Act is always changing it wouldn't necessarily meet the systematic timeframes but

also governments could claim that in the drafting of the new Act they undertook some sort of post-legislative scrutiny into the previous Act.

So while legislative output is important, so are the memoranda produced by government departments which sometimes Act as triggers for an inquiry. For the Freedom of Information inquiry, the committee lead noted that they looked quite closely at the memorandum and that it was moderately helpful. In this case, the memorandum contained a lot of self-interest based upon what the government would like to see happen with that legislation (Stewart, 2017). The government set out the problems it felt there were with the Act and then set out potential solutions to those perceived problems. The chair noted that like most of the documents the government produces it did not provide a foundation for, or back up the changes that the government wanted to do (Beith, 2017), and therefore was not convincing in its arguments. The committee lead noted that they did end up doing a lot of research beyond the evidence provided by witnesses (Stewart, 2017). Whether that is simply having a starting point for an inquiry by stating what the government's position is on the effectiveness of the legislation or by putting an issue on to the political or parliamentary agenda. Despite the issues with the memoranda, in this case, the chair noted that normally memoranda are very helpful because the process is fairly systematic and it brings together quite a lot of information including from within government and usually provides some structure to organise the committee's inquiry (Beith, 2017). Access to information is a foundation of scrutiny and evidently has a role to play in terms of post-legislative scrutiny and encouraging committees to undertake it.

From the perspective of the Health Committee, the clerk noted that the committee received a memorandum from the government, as well as from the Mental Health Alliance. They took oral evidence which was not particularly extensive from some of those people representing the Mental Health Alliance who put forward the other memorandum (Lloyd, 2017). In total, they heard from eight witnesses and received three pieces of written evidence, including the memo from those representing mental health groups. This is not many considering the number of witnesses the other inquiries heard from.

This is an interesting way of dealing with the memorandum and of course, will have been helpful to hear the views of others and be able to question them. Perhaps this is something committees should be encouraged to do, as making an assessment on whether to undertake post-legislative scrutiny or not based purely on what the government has said could mean overlooking specific problems. This would at least ensure memoranda are properly scrutinised and make it clear for other committees and other Houses when they are scoping for what to do. However, this also does raise a point about the capacity of some groups to influence and access committees in comparison to others. So memoranda have their purpose: they force the government to be reflective, they give committees a launch pad to begin an inquiry, and give committees something to work with in terms of developing ideas for where the problem areas in an Act may lie. The implication of this is that memoranda can influence committee behaviour and potentially allow the government to shape the scope of the inquiry, which is problematic considering the committee is scrutinising the government department that is trying to influence its agenda.

The saliency of an issue was also raised in terms of determining the selection of Acts. The issues around the Freedom of Information Act 2000 were salient at the time as the government was proposing to make changes to the Act in terms of narrowing the scope of and restricting the use of it (Beith, 2017). Kingdon (1995) and Robinson (2000) would argue that this would be part of a problem centred model of agenda setting in which the agenda is set by the evolution of a problem, in this case, the government's perceived problems with the freedom of information regime. This was not the first time a government had wanted to make changes to the Act. In 2006 the government tried to introduce application fees and in the 2007-2008 session, a private members bill attempted to exclude cabinet papers from the remit of the Act (Worthy & Hazell, 2016).

When deciding whether to undertake post-legislative scrutiny on the Mental Health Act 2006, the Health Committee considered whether there were gaps in their work programme as well as whether it was a policy area that had been scrutinised previously. The clerk noted that at the point at which the Department

of Health's memorandum came through, the committee had not done any inquiries into mental health issues in the 2010 Parliament (Lloyd, 2017), as they were keen to cover areas of policy that had not received scrutiny. This was also the first time in the time period studied that the Health Committee had undertaken post-legislative scrutiny. The clerk noted that the committee were also very conscious of that fact that it was a neglected area and there was a concern that there had been few, if any, inquiries into mental health in the previous parliament (Lloyd, 2017). As a result, this was particularly timely and was something the committee was conscious that it had not done.

So there are a variety of factors that the committees took into account when deciding whether or not to undertake post-legislative scrutiny and also what legislation they selected. However, there were other issues at the start of an inquiry that are worthy of discussion. The first is how to scrutinise the legislation.

With regards to the Culture, Media and Sport Committee, there was a difference of opinion about whether it would be appropriate and useful to look back at the Act in its entirety (Flood, 2017). This also raises questions of how best to approach post-legislative scrutiny, as Members may be interested in the topic area of the Act but their interest may not extend into the finer details of the Act. As the Gambling Act was wide-ranging there were suggestions that it might not be appropriate to look at the Act as a whole. The post-legislative scrutiny guidance from the House of Commons Committee Office leaves some room for committees to decide how to undertake post-legislative scrutiny and what they focus upon (House of Commons Committee Office, 2015). This guidance includes the options of undertaking review of the Act as a whole or parts of the Act if there is a case for it (House of Commons Committee Office, 2015). Some inquiries look at Acts as a whole while others address only parts, Member's interest as well as where the evidence points to problems, will help to guide such decisions. The length of an Act and its complexity should also be used to guide decisions, especially in the House of Commons where committees have limited time.

The Gambling Act 2005 was, to an extent, a consolidation Act bringing together gambling legislation into one Act. However, it did contain a number of new

initiatives. The former clerk of the committee noted that in retrospect, if she had realised how complex the Act was and how difficult it would be to adequately cover, she wouldn't have pushed the committee to scrutinise the entire Act, and would have allowed them to pick out topics to look at (Flood, 2017). She also noted that the inquiry took far longer and was far more complicated than anybody had thought and that the report was 'an absolute swine to write because everything was interconnected' (Flood, 2017). This suggests that it might make sense in the future, when reviewing a consolidation Act, to focus on a number of aspects within the Act rather than the Act as a whole, not only to try and keep Members engaged but also because such consolidation Acts are often large and would, therefore, be hard to scrutinise in the limited amount of time that departmental select committees have. Instead, changes should be made to accommodate the scrutiny of such consolidation Acts (for example, sending them to an ad hoc committee). However complexity will only be one of the issues at play here, additionally, the resources available to committees and their willingness to dedicate the limited resources they have to the scrutiny of complex Acts will also have an impact upon whether they scrutinise such Acts, as well as how they do it. The core tasks of select committees are also likely to have implications here in terms of the style of post-legislative scrutiny that can be undertaken. With ten of them to complete, there is a lot of competition on committee time, as such it would make the undertaking of an inquiry into a full Act difficult to square with the other tasks that the committee needs to address. The core tasks will limit the style of post-legislative scrutiny to be undertaken.

Philip Davies noted that focused inquiries tend to be more successful and with the Gambling Act inquiry covering a lot of areas, it probably didn't focus at all (Davies, 2017). He also noted that if the inquiry was to be undertaken again at the present time, that it would most likely focus upon fixed odds betting terminals (Davies, 2017). In this case, it appears that the committee should have been able to shape the inquiry it wanted. It could have still looked at the interesting and deficient areas without looking at the whole Act.

Finally, in terms of determining how to scrutinise the legislation the former clerk of the Culture, Media and Sport Committee noted that her predecessors', own line

manager had said that if they were going to do it they had to do the entire Act. This has implications upon who influences committees. As Norton (2013) notes they are supposed to be responsible for determining their own agendas. Indeed Rogers & Walters (2015) note that a departmental select committee should have a wide discretion about what it inquiries into and also flexibility about how it inquires.

There are other issues that could impact upon the selection of legislation as well as the ultimate decision as to whether or not to undertake post-legislative scrutiny. One of those issues is the preferences of the chair when it comes to post-legislative scrutiny. The former chair of the Justice Committee noted that he was strongly in favour of post-legislative scrutiny (Beith, 2017). His view was that it is very important that laws passed by parliament be scrutinised to see whether they have been implemented correctly and whether they have worked (Beith, 2017). While committees themselves decide the subject of investigations, the chair's views will be highly influential (Rogers & Walters, 2015). The views of the chair are, therefore, going to be vital to the undertaking of post-legislative scrutiny and the selection of legislation. Under the chairmanship of Alan Beith, the Justice Committee undertook three post-legislative inquiries in the 2010-2015 Parliament, in relatively quick succession, spurred on no doubt by his views on the importance of post-legislative scrutiny. However, the committee has not undertaken any post-legislative scrutiny since he stood down from his role. This has implications in terms of the selection of chairs. While the election of committee chairs has granted them more legitimacy from the perspective of having the support of the whole House of Commons, their election will make them sensitive to the House as a whole when it comes to undertaking their tasks. As such, there is an argument that committee chairs could become less interested in undertaking scrutiny such as post-legislative and financial scrutiny which is less likely to grab headlines and engage the wider House in its work. There is also no formal training for select committee chairs, so unless MPs are already engaged and have a broader knowledge of select committees they must rely upon the secretariat to guide them, as well as the interests of the broader committee membership to determine what they are and are not going to scrutinise.

When it comes to agenda setting Kingdon (2001) notes that there are three streams that run through governmental organisations. The first stream is 'problems', there is a focus upon certain problems over others and there is a process by which they are decided upon. The second stream is 'policy', the proposal and refining of policy proposals and the third stream is that of 'politics', political events. Kingdon (2001) notes that all these streams develop independently from one another, policy proposals are developed regardless of whether there is a problem, problems are acknowledged regardless of whether there is a solution and political events have their own dynamics (Kingdon, 2001). The biggest policy changes take place when the three streams are activated at once. Advocates, such as interest groups, are important in this process, they spot opportunities to join these three streams together usually with pre-prepared ideas, proposals and rationales. This has important connotations for committee agenda setting, and for the post-legislative case studies. For example, in terms of the Freedom of Information Act inquiry, problems with the Act were noted by the government and solutions to those problems were highlighted, activating two of the streams. The political stream may have been activated due to the recent change in administration and as a result, the political climate may have felt right. However while this worked to put the issue onto the Justice Committee's agenda it did not end in the outcome that the government wanted. Another example can be provided through the Gambling Act inquiry. Interest groups had noted there were problems with the Act, the political stream was likely activated due to the committee majority's pro-gambling stance at the time of the inquiry so the political climate was right. The Gambling industry also came with ideas for how the problems could be solved meaning that all three streams were activated. However, the government rejected the overall thrust of the liberalised approach to gambling (Webster, 2018).

6.3 Evidence

Once a topic of inquiry has been selected and initial terms of reference have been agreed, committees will usually issue a general invitation to submit evidence. As well as issuing a general invitation, committees will often issue specific requests

for written evidence to government departments and key players in the policy area concerned (Rogers & Walters, 2015). At the same time the committee will also begin to draw up a list of witnesses they would like to hear from, usually starting with academics and experts in the field in question. However, the list of witnesses is usually expanded upon once written evidence is received to include those who have submitted written evidence, so that the committee can question more deeply what they have submitted (Rogers & Walters, 2015). The witness list typically ends with ministers and civil servants so that the committee can raise issues from the broader findings of the inquiry. Prior to the oral evidence sessions taking place, Members will receive a detailed brief covering the background to the hearing as well as the key points raised in written evidence. They are also likely to receive a list of areas that require further explanation and exploration (Rogers & Walters, 2015).

6.3.1 Case Studies

Following the general introduction to the process of collecting evidence, both written and orally, we move on to address the key points and findings in relation to the three post-legislative scrutiny case studies.

With regards to the inquiry into the Gambling Act 2005, one of the issues raised in interviews was the role of specialist advisors. For the inquiry into the Gambling Act the Culture, Media and Sport Committee had two specialist advisors, and the committee was influenced by their thoughts on whom the committee needed to take evidence from during the course of the inquiry (Flood, 2017). Specialist advisors in the committee sense, are outside experts who are appointed for the duration of an inquiry to help advise the committee. Specialist advisors know more about the issue than the committee staff or Members. However, this means placing trust in specialist advisors who provide advice on the selection of witnesses, although they will not be the only source of witnesses.

Inquiries are evidence driven, therefore a poor selection of witnesses can limit access to evidence and potentially impact upon the committee's recommendations. The problem is that specialist advisors may not always be

impartial (Flood, 2017) and as such their recruitment is worthy of study. Unless there is a specialist advisor who takes the opposite view or Members who are particularly obstinate then evidence can get skewed (Flood, 2017). So specialist advisors and, of course, more permanent committee staff are a key influence on the behaviour of committees. Although this did not happen for certain during the Gambling Act inquiry, the clerk felt that the general gist of the inquiry was libertarian (i.e. the public should be free to gamble with limited intervention from the state), along with the views of the chair and the majority of committee members (Flood, 2017). If these were the views of the chair and the majority of the committee, this would mean the committee was approaching the subject from a position of bias. This raises the issue of bias in committee inquiries, not only from specialist advisors but also from the Members themselves. That being said Philip Davies stated that he felt they had a good spread of evidence and heard from both sides of the argument, in fact, he noted that the Culture, Media and Sport Committee is the best committee he has served on in terms of the balance of witnesses (Davies, 2017).

However, coming from a libertarian stand point on Gambling, he perhaps would not question the spread of evidence. The Evangelical Alliance who gave evidence noted that 'the committee had a set view and that was that gambling was an activity that should be permitted and promoted through regulation' (Webster, 2018). Their view was that while they are not in favour of the prohibition of gambling, the Gambling Commission should take the challenges and problems that result from gambling, more seriously (Webster, 2018). This suggests that there was some bias in the way they approached the inquiry. Indeed Danny Webster of the Evangelical Alliance noted that their presence was tolerated and felt that they were invited because the committee felt obliged to invite views from the other side of the argument (Webster, 2018). Overall for this inquiry, the committee invited forty-nine witnesses to six oral evidence sessions and also received 109 pieces of written evidence (House of Commons Culture, Media and Sport Committee, 2012).

There is the potential for committees to be unduly influenced, not only by representations from interest groups but also by their selection of specialist advisors. This has implications for committee inquiries since if committees are

being steered in a particular direction by an advisor, it could impact upon their ability to produce an evidence-driven report and this will of course impact upon the recommendations that they make. Bias from committee membership also has implications, especially for post-legislative scrutiny. If you don't recognise a particular flaw because of your world-view then it will not be raised as a problem and is unlikely to receive a recommendation for action. Take the example of the Gambling Act 2005 and the inquiry's work or perhaps lack of it on fixed odds betting terminals. The concern that they were problematic in terms of addiction was dismissed as requiring more research but six years after that report the government announced it is going to severely reduce the fixed odds betting terminal stakes. (Davies, 2018). The Evangelical Alliance noted that the government rejected a lot of what was proposed by the committee on the basis that it was too libertarian and the government was becoming concerned about the broader impact of gambling (Webster, 2018).

In terms of the inquiry into the Mental Health Act 2007, the clerk noted that witness selection, in this case, was a little different than for other inquiries. Normally a committee would put out a call for evidence, receive a memorandum from the government and use that to inform witness selection (Lloyd, 2017). However, because a stakeholder group had already prepared a memorandum for them, the stakeholder group were approached. With stakeholder groups providing their own memorandum to the committee alongside the governments', this meant the committee had a self-contained inquiry and the committee felt that everyone they needed to speak to was covered in the umbrella group (Mental Health Alliance). However, the committee during the course of the inquiry heard from only eight witnesses, which is lower than the other inquiries that form case studies in this chapter. Allison Cobb noted that one of the potential weaknesses of the inquiry was the lack of wider engagement with stakeholder groups. She also acknowledged the broader point that the umbrella group probably covered the main views on mental health in this area (Cobb, 2017). Although no mention of this was made in this interview, the fact that committees can be unduly influenced by specialist advisors, also means they could be unduly influenced by such memoranda as well. Therefore, as with all inquiries, care needs to be taken in terms

of the evidence collected. A limited spread of evidence also means a limited inquiry and this of course also impacts upon the recommendations that committees make as well.

Although there were specific challenges with the other case studies, for the Freedom of Information Act inquiry, it followed the general process as set out in the introduction to this section. Witnesses for the inquiry were selected based primarily on the basis of the written evidence sent to the committee, but the committee did also make sure they drew the existence of the inquiry to the attention of people they thought they would want and need to hear from (Stewart, 2017). The committee lead noted that it was a well-publicised inquiry and that they had received a great response from the call for written evidence which meant the committee felt that they had picked the people they needed to hear from (Stewart, 2017). One of the benefits of having the committee's legal expert run the inquiry was her familiarity with the legal ramifications of the legislation and as a result, there was less of a need for specialist advisors to be hired for this inquiry. The committee lead noted that they received evidence from users, and from people who respond to Freedom of Information requests. They also took evidence from people who had concerns and they heard from people who felt it was working perfectly, as a result, it was regarded as a good selection of witnesses (Stewart, 2017). Alexandra Runswick felt that the committee listened to the concerns and views that Unlock Democracy presented and noted that she felt they were genuinely looking at the concerns of the government to see if there was any evidence of them but ultimately found none (Runswick, 2018). This appears to be an exemplar inquiry from an evidence perspective taking into account what Rogers & Walters (2015) noted was typical from the gathering of evidence.

6.4 Reports

Towards the end of an inquiry, the committee secretariat will prepare a 'heads of report' paper based upon the evidence they have received and heard. This report is designed to outline the main themes of the inquiry as well as tentative recommendations (Rogers & Walters, 2015). Following this heads of report, the full

report is drafted and presented to the chair of the committee for their comments and suggestions before it is shared with the wider committee (Rogers & Walters, 2015). Most committees go through draft reports informally and then agree to a whole report in a single decision.

6.4.1 Case studies

There is a general process which committees go through when writing their final report. As post-legislative scrutiny inquiries, rightly or wrongly, follow the process of any other committee inquiry, these processes are also followed. However, there are some issues which arose from the interviews for the three post-legislative case studies around the preparation of reports that need to be addressed.

In terms of the development of recommendations, the clerk of the Culture, Media and Sport Committee noted that committee staff can often pick up from the line of question of Members and from discussions with the chair, which way they think the inquiry is going and as a result begin to draw up tentative conclusions and develop ideas that the committee might want to recommend. This was noted by Rogers & Walters (2015) as the typical process. The clerk also noted that this can happen quite early on in the inquiry (Flood, 2017). Once a heads of report is developed from the evidence and guidance from the chair, it is up to the committee to decide on a final version. This process has implications, not just for post-legislative scrutiny but for other inquiries too. It raises the question of whether this process is a technocratic and bureaucratic run one, with little involvement from the Members. It appears that the heads of report forms the foundation of the final report, while some changes will be made during agreement process with the wider committee, the framework of the report will already have been drafted by the secretariat with guidance from the chair. This also raises implications about the engagement of Members within inquiries, not just in terms of preparing the heads of report but also when it comes to the final agreement. The average attendance at oral evidence sessions for the Gambling Act was 73%, the same figure for attendance at the meeting in which the draft report was agreed. This figure does suggest a high level of engagement but it does not take into account how long

Members stayed at meetings nor their contribution to the meeting. Attendance alone does not tell us everything about engagement.

In the case of the Gambling Act, although there were some deep disagreements, there was a general consensus on the issues that needed to be highlighted (Flood, 2017). Indeed in relation to the Freedom of Information Act it was noted that the report overall was consensual and unanimous, despite there being some disagreements which were dealt with through a number of redrafts (Stewart, 2017), although the former chair could not think of any particular issues that were tricky (Beith, 2017). However, a large number of discussions would indicate some initial disagreement but also a willingness to reach a compromise and consensus which is important for select committee reports, if they are to have any weight with the government. Just because there were no formal divisions, does not mean there were no disagreements. As noted previously a good chair will seek consensus and avoid divisions as committee reports have more force if they are agreed unanimously (White, 2015b). The fact that there were no formal divisions in committee for the Gambling Act inquiry, would suggest that there was nothing particularly contentious included in the report. This would support the findings outlined in chapter five which showed that the majority of recommendations made by committees called for no, small or lower medium action. This also suggests that due to the lack of contentiousness, committees are not creating recommendations that are likely to make a great deal of difference. Another broader implication here is that the need for consensus dampens the potential impact of post-legislative scrutiny as the focus is in achieving a unanimous report rather than changes to legislation or policy that might be necessary to improve outcomes.

The need to reach a consensus is also likely to lead committees to 'fudge' recommendations when they become too politically challenging to receive unanimous agreement. Indeed, an example from the Gambling Act inquiry suggests that in places of disagreement committees are hedging their bets based on the information and evidence they have at the time.

The former clerk of the Culture, Media and Sport Committee noted this particular example:

> 'The committee was very torn over the evidence in relation to Fixed Odds Betting Terminals and how harmful those were. Though there was some evidence, there wasn't a huge amount and a number of the committee members had a gut feeling that these things were bad, that people did get addicted to them and spend a huge amount of money on them. And others said unless you've got a clear picture that there is addiction then you are infringing on the personal liberty of adults, to restrict it. So we did recommend that more work was done in that area' (Flood, 2017).

Here debate among Members led to a softer recommendation, partly due to a lack of data. There is some evidence here of how Member discussions, in order to achieve a unanimous report, can lead to weaker recommendations being produced. This supports comments made by Clerk A (2017), in chapter 5, who stated that in the process of agreeing on a unanimous report the language in recommendations can be toned down in order to achieve consensus and the process can lead to weaker and less clear recommendations. Again this suggests that a 'fudge' was made here to try and ensure that there was no division in committee. A further implication of this approach is that the wish to produce a unanimous report and to avoid divisions can be used by government MPs on committees to force weaker recommendations and ones which are more acceptable to the government, leading to weaker scrutiny overall.

One important issue which was raised during the interviews for this case study was the extent to which committees take into account the government's likely response to recommendations before they make them. The clerk of the Culture, Media and Sport Committee admitted that they 'have discussions about this…quite frequently' (Flood, 2017) although Philip Davies stated that they didn't consider this at all and that it was all determined by the weight of evidence (Davies, 2017). However, this difference in viewpoint might reflect the discussions that went on behind the scenes between the chair and the clerk before the report was presented to all committee members. If this is the case, then the government's behaviour is impacting upon the committee's and as such impacts upon the scrutiny

relationship between the committee and department. However, the government's behaviour is underpinned by the fact that committees rely on the power of persuasion and cannot coerce the government into action (Gordon & Street, 2012). While accountability might not be the main aim of post-legislative scrutiny, especially in practice as the government under which the Act likely passed is no longer in office, it is part of post-legislative scrutiny. Even so, there is limited evidence of it being about power and control if committees are actively taking into account what the government will and will not accept. This is not surprising to some extent on the basis that the quantitative data shows that there is a strong relationship between the strength of a recommendation and its acceptance. There is, of course, a difference between conclusions and recommendations, and generally speaking, the clerk couldn't think of many occasions where a committee has toned down its conclusions to save face with the government (Flood, 2017). This might suggest that the criticism is left for the conclusion and a potential solution is the focus of the recommendation. Potentially a solution that is agreeable to both government and committee.

With regards to the Freedom of Information Act inquiry, the Justice Committee were aware that because governments aren't very keen on freedom of information, if they suggested changes (for example a fee charging system such as they have in Ireland) that they would probably be readily accepted by the government (Stewart, 2017). The committee lead noted that there was quite a strong feeling that it was probably a report that would have a certain amount of influence (Stewart, 2017). If the committee recommended a weakening of the present system, the government would most likely use the committee as cover for it. The government's anticipated response was taken into account but not because the government would likely reject stronger recommendations, this time it was because the government would readily accept certain ones. This meant that from the committee's perspective that the government was on test and had to set out a convincing case to alter the legislation (Beith, 2017). This supports the point raised from the example of the Gambling Act inquiry, yet, the context is different. While it is taking into account the government's likely reaction, it is from a position of readily accepting

recommendations rather than rejecting recommendations that call for stronger action out of hand.

In relation to developing recommendations for the Freedom of Information Act inquiry, the Justice Committee focused upon the provisions within the Freedom of Information Act that had received the most criticism from witnesses and the government, as well as practical solutions to deal with the challenges posed by technical changes (House of Commons Justice Committee, 2012). The committee was in the unusual position of having a government actively want change and it had suggested through its memorandum exactly what changes it wanted to make. The committee had heard a lot of evidence about commercial organisations using freedom of information, particularly journalists as a short-cut to research, and organisations wanting data put in a very specific way so the recipient doesn't effectively have to do the work (Stewart, 2017). While they looked at these issues, because of the value to civil society, the committee decided that it's actually worth keeping the regime as it was even though there is inconvenience and it takes up resources of public sector organisations. (Stewart, 2017). In most cases, while the committee received evidence of problems with the Act, they were also getting evidence that suggested the problems were manageable and proportionate to the value of the right in itself (Stewart, 2017). The former chair noted that from the evidence the committee concluded that some of the changes the government proposed wouldn't achieve the desired improvements, for example discouraging requests from media organisations or commercial organisations (Beith, 2017). Secondly, the committee concluded that the Act already contained adequate means of dealing with frivolous and vexatious requests. Although the government was concerned about this, it couldn't produce any data of widespread unexpected costs or paralysing processes resulting from the implementation of the Act (Beith, 2017). As such the evidence didn't appear to back up the government's claims. While some tweaks to the freedom of information regime were suggested around ministerial exceptions (Stewart, 2017), on the whole, the committee asked the government not to take specific action. This is an example of where accountability is actively present in post-legislative scrutiny, in comparison to the Culture, Media and Sport Committee case study, at least in terms of accountability being about

power and control. The Justice Committee did, through soft power means, exercise control over the executive in helping to stop them amending the Act.

In terms of the inquiry into the Mental Health Act, one particular issue that caught the attention of Members was place of safety, in particular people with mental health issues being held in police cells as a place of safety. That was something that came up in the evidence but also one of the members of the committee was very strongly opposed to that (Lloyd, 2017). So place of safety was an important area for the committee and an example of Members' interest and evidence working together to produce recommendations. One of the main ways of developing recommendations is through the evidence presented to the committee, the other way being Members who have a pre-existing interest in a particular issue (Lloyd, 2017). It is not surprising that issues raised in evidence presented to committees or that came out of the memorandum from interest groups in oral evidence are important in terms of developing recommendations. Additionally, this case has shown that the pre-existing interest of Members is another reason why Member interest is vital. Without it, developing recommendations would be more challenging. Nevertheless, there is an implication of focusing recommendations upon areas of Members' interest and that is they will focus upon their pet projects at the expense of the other areas that potentially require solutions.

6.5 Response and follow up

Having addressed the development of recommendations and the publication of the report, the next stage in the inquiry process is receiving of the government's response to the inquiry. Responses to committee reports are usually received within two months (60 days) of publication (Rogers & Walters, 2015). This is a convention rather than a formal rule but it is noted in Erskine May (May, 2004). When it comes to the content of a response, if a committee has been highly critical, the government is more likely to be defensive in its response. In addition to this, if a committee has produced challenging recommendations then the government is going to be cautious (Rogers & Walters, 2015). This would explain why committees tend to produce weaker amendments. However, Rogers & Walters (2015) note that

there is a delayed drop effect when it comes to recommendations. What they mean is ambitious recommendations may change public debate and may contribute to a shift in policy two to three years after the report has been published. They also noted that committees are more influential if they follow up on the recommendations they have made, with the government. While most departmental select committees run a continuous agenda, if they return to the detailed recommendations and apply some pressure to vague promises then they can achieve results (Rogers & Walters, 2015).

6.5.1 Case studies

It is against this backdrop that we assess the response and follow up stage of the three post-legislative scrutiny case studies.

One of the key findings from this research is the admission that select committees are not good at following up. In relation to the inquiry into the Gambling Act, both the former clerk and former member of the committee, Philip Davies MP noted that committees are not good at looking closely at government responses because by the time they have produced their report they are tired of the issue (Flood, 2017; Davies, 2017). Although the clerk did not make a direct link between this point and the inquiry into the Gambling Act 2005, having admitted looking into the whole Act was a mistake, it is perhaps not too much of a push to suggest that this may have happened with the Culture, Media and Sport Committee in this case. This is going to have implications for the impact that post-legislative scrutiny can have, as Rogers & Walters (2015) note, follow up is important to ensure pressure is applied to the government. It also raises questions about what the point of committees undertaking scrutiny is if they are not going to follow up on recommendations to ensure they are implemented. However, a lack of hard power will likely deter committees from following up, unless they think the government is open to persuasion because they cannot force the government to take action (Gordon & Street, 2012). They may feel that their time and resources are better spent elsewhere if they do not believe they can persuade the government.

Another implication of the point above is that Members are tired of an issue and want to move on after a report has been published. This once again raises the issue of Member interest and perhaps, due to a lack of it, a technocratic and bureaucratic approach is being taken by committee staff. The former clerk of the committee noted that even if the committee members themselves don't focus upon the government response, the staff do (Flood, 2017). Although it is true that Members have a number of responsibilities and would need support when scrutinising the response it does not seem constructive for the staff to focus on the response without Member involvement. That being said, the former clerk noted that Members are more likely to pay attention to it, if they have a specific interest in what the government has said, especially to something controversial (Flood, 2017). Members' interest is vital, not just in the preparation of the report but also in the scrutiny of the response. This lack of Member engagement, especially at this stage has implications for post-legislative scrutiny and scrutiny more broadly. If government departments know that only committee staff are going to be reviewing the response in detail and that generally speaking committee members are not particularly engaged in the process, there is little incentive for them to take recommendations seriously, especially ones they do not like.

Only one of the case study committees had not undertaken any follow-up but their case was different from the other committees. The Justice Committee did not do any official follow up to the freedom of information inquiry but the option was always available if the committee wanted to (Stewart, 2017). This is on the basis that there was not a great deal to respond to, as the Freedom of Information Commission was undertaking further scrutiny of the freedom of information regime (Beith 2017; Stewart, 2017). The chair added that it simply wasn't necessary at that stage to follow up because the government did back off and left things as they were (Beith, 2017). The committee lead noted that if they had recommended some significant amendments they would have followed up on how those amendments had played out and how the government had used the cover of the recommendations to make amendments to the Act (Stewart, 2017).

There is, however, evidence of committees deciding not to chase the government up on particular recommendations. The former clerk of the Culture, Media and

Sport Committee noted that the committee were aware the government was unhappy with their recommendations relating to casinos but they weren't 'willing to die in a ditch' (Flood, 2017) over this issue. When it comes to scrutiny of the response it is clearly about picking the right battles, suggesting there was a strategy at play here as well. As a rule, committees do not like getting into an argument with the government as the government will usually win (Flood, 2017). This goes to highlight the relative weakness of parliamentary committees, in forcing action, relying solely on soft power. There was the potential to issue a special report addressing the response, but the committee didn't take that option this time. Instead, they opted for a 'magisterial silence' (Flood, 2017) suggesting they were standing by their report, which the former clerk claimed is more dignified than getting into a war of words with the government. She argued that while this may look like backing down to outsiders, it might more accurately be named 'picking your battles' (Flood, 2017). Ultimately the committee was more interested in what the government had agreed to and what action they were going to take (Flood, 2017). This again underlines the points made in earlier paragraphs regarding committees not being very good at following up. This has implications for post-legislative scrutiny, and scrutiny more generally on the basis that if the government knows a committee is not going to want to get into a fight with them over their response to recommendations, there is less incentive to take them seriously.

Despite the admission that committees are not good at following up and the subsequent evidence suggesting that committees avoid following up in certain scenarios, there is evidence of a limited amount of follow up taking place but this usually happens through means that are convenient to the committee. Despite suggesting committees are not good at following up, the former clerk of the Culture, Media and Sport Committee noted that the committee was interested in following up on the bits of legislation that were brought forward in relation to online gambling (Flood, 2017). Although no legislative recommendations were formally made, the committee did shine a spotlight on the online gambling industry and the government did go on to take action to deal with the legislative framework in relation on online gambling. The committee also followed it up with evidence from the Gambling Commission and trawled through previous reports to

find any recommendations they wanted to follow-up on with the Gambling Commission (Flood, 2017). Rather than there being a direct follow up inquiry, it was follow up through other convenient means, as the committee often hears from the Gambling Commission and the legislation conveniently came along. In addition to this, the committee also did some pre-legislative scrutiny into advertising (Flood, 2017), although this wasn't formally recommended in the inquiry report, it allowed them to follow up on advertising for gambling and they noticed the draft bill was in line with what they had recommended. If during these actions they feel that there are still problems, they can pencil future inquiries into their diaries. Committees tend to take a holistic view with regards to the fact that a lot of the work they do will overlap with other inquiries. They do not want to lose sight of what they have recommended but they do not necessarily think it is helpful to get a minister in and go through a list of recommendations (Flood, 2017).

In addition to this example, the Health Committee in its inquiry into the Mental Health Act 2007 followed up through correspondence between the chair of the committee and the Secretary of State on key issues (Lloyd, 2017). The former clerk of the Health Committee also noted that the inquiry that the committee held on children and adolescent mental health followed on from the post-legislative scrutiny inquiry because one of the things that the committee were particularly concerned about was children and young adults being kept in police cells. It was only one part of the original report but as a consequence of the inquiry, it made the committee go on and do other things relating to mental health (Lloyd, 2017). As a result, this inquiry has acted as a catalyst for other inquiries into mental health and allowed additional follow up through the committee's continuous work programme. There are implications for committees undertaking follow up through continuous work programmes or using convenient methods rather than a more detailed look through the recommendations. As noted at the start of this section committees are more influential if they follow up on the recommendations in detail and apply some pressure to vague promises. The use of the methods outlined above potentially blunts their impact here, as written correspondence is not going to be effective if you cannot put a minister on the spot. If you are undertaking an oral evidence session, following up on recommendations is likely to be pushed

down the agenda by more topical issues and the recommendations of a previous inquiry are unlikely to be a committee's headline ones in a new report. The lack of follow up in relation to post-legislative scrutiny does a disservice to the time and effort that committees put into the inquiry in the first place.

6.6 Overall impact

Having assessed the typical process through which committees undertake inquiries, and having applied the findings from the three post-legislative scrutiny case studies to these processes, the chapter now moves on to address the impact of these inquiries. This is important. If committees are going to continue to undertake such scrutiny, then there needs to be some sort of return for them. Additionally, with the findings of this research suggesting that committees are producing weaker recommendations in order to get more of them accepted and the government is likely to reject stronger recommendations, it raises questions about where committee impact, is coming from. However, it is important to place impact with some context. Impact can take a long time to become apparent and different policy areas will have different time frames through which impact might be visible. Take education policy as an example, it will not be possible to see the full effects of an educational policy change until the first cohort of students to fully see those changes have completed further education and have entered the world of work. It could take over a decade from such policies being passed to seeing any benefits from it. As such it is long term.

One area of impact noted from the case studies was that of stopping or persuading the government to not take action. In relation to the inquiry into the Freedom of Information Act, the committee lead noted that the Freedom of Information inquiry was successful because nothing happened, and the committee gave the act essentially a clean bill of health (Stewart, 2017). The overall impact was the government didn't amend the Freedom of Information Act, bar some minor things (Stewart, 2017). Although the Commission and other voices will have played an important role, (indeed the government backed off after the Commission had reported), the committee report will have had its impact too, at least in the

government trying another avenue to seek changes and ending back up in the same place. Although the topic was already on the agenda, the committee did play a role in altering the government's course. This was through the use of soft power as opposed to hard power. Indeed the committee was just one of many voices lobbying the government on this and the Freedom of Information Commission probably heard from similar people as the Justice Committee. Alexandra Runswick from Unlock Democracy agreed with such an impact, in terms of helping to stop the government alter the legislation (Runswick, 2018). Additionally, she noted it had an impact in terms of potentially influencing the Commission as the inquiry had undertaken serious, up to date research when dismissing the government's concerns (Runswick, 2018). This has implications for other inquiries and other committees. If an inquiry, post-legislative or not, can undertake serious, up to date research then there is a potential longer lasting impact. There is the potential that these reports could become seminal pieces of work which future committees and/or governments utilise to push for or halt changes to legislation. Post-legislative scrutiny should, therefore, try to avoid the 'hit and run' approach committees in the Commons have been described as taking (Russell, 2013). There is also clearly an avenue for committees to influence government as part of a wider group of organisations. This links back to previous discussion regarding parliament being at the apex of scrutiny and that parliament needs to better utilise the work of other organisations to undertake scrutiny but also work together to apply pressure to ensure action is taken. There is also an implication in terms of time, it is clear that it took some time between the committee reporting, the commission's review and then the government making a decision. Impact can be long term and as such, time, patience and the ability to apply some pressure will be needed.

Another area of impact that became apparent during the research was putting an issue on the political agenda. This was noted for both the Gambling Act and Mental Health Act inquiries. In relation to the Gambling Act, the agenda setting impact was on online gambling. The focus of the inquiry on online gambling, the clerk claimed, led to an increased focus from the government on it. The government went on to produce legislation in an attempt to start regulating the area and bring the online sector far more into line with the real world (Flood, 2017). While it is

not clear how influential the committee was here in the government eventually legislating, the report was probably one of many voices highlighting the problems of online gambling to the government and to the regulators (Flood, 2017). As such adding pressure will have played a role. In addition to putting the issue of online gambling onto the political agenda, the inquiry also highlighted issues like the proliferation of betting shops on the high-street which was a perverse result of limiting the number of FOBTs in betting shops (Flood, 2017). This issue is now higher on the political agenda than it was at the time of the post-legislative scrutiny inquiry. Although it is still not a problem that has been resolved it did give a boost to local authorities who did feel isolated and showed them that a parliamentary committee understood their views (Flood, 2017). The former clerk of the Health Committee felt that the inquiry into the Mental Health Act 2007 did put the issue of mental health onto the parliamentary agenda, and there was a least one further inquiry which was related to the original post-legislative scrutiny inquiry in this area (Lloyd, 2017). This style of impact is relatively weak and gives the indication that the inquiries were of little consequence. If an inquiry has created a further agenda for a topic it would suggest it did not solve issues. As committees do produce a number of recommendations for research and review, this would explain why an agenda setting role appears to be prevalent, at least in these case studies. If you are requesting more research and the government is accepting that point, then you are inevitably putting an issue on the agenda for further review.

Linked to there being an agenda setting role, the Mental Health Alliance felt that the impact of the inquiry was that the important issues they had raised in evidence had been brought to the attention of both parliament and government (Cobb, 2017). So there is potentially a safety valve function for post-legislative scrutiny as well. Although an important parliamentary function, as noted by Packenham (Norton, 2005), it does not suggest an impact that will make a difference in the lives of those people affected by the legislation. However, there are difficulties in assessing impact. It can take many years for policy ideas like ones generated through post-legislative scrutiny, to be assessed and make their way through the policy making process. It can take years to see an outcome, especially to anything that is legislative in nature (as there will be a need for either a new bill or a suitable

bill to attach amendments). Additionally, it could also take a change in government to drive forward impact from such inquiries, as governments which introduced a particular piece of legislation are unlikely to admit they made a mistake or that their legislation is somehow faulty. Furthermore, opposition parties will not have the same arduous policy making processes that the government and civil service have, meaning they can more readily pick up select committee recommendations which match their vision or aims. Just because there has been limited impact from these inquiries to date, does not mean there will no impact at all in the coming years.

Points were also raised in these case studies regarding a lack of impact all round. Philip Davies, a former member of the Culture, Media and Sport Committee noted that although the Gambling Act inquiry was a large and expensive one (involving overseas visits), the inquiry did not have much impact (Davies, 2017). This view was also held by the Evangelical Alliance (Webster, 2018). Although as noted in the previous paragraph, impact can be long term and is perhaps yet unseen. The difference in opinion in comparison to the former clerk could be down to the different roles played by clerks and Members. It is the job of the committee secretariat to keep an eye on issues relevant to their committee whereas Members' focus is likely to be elsewhere. But it does suggest that there was no obvious impact if a committee member with a keen interest in the gambling industry could not see any. Indeed, except putting an issue onto the agenda the former clerk of the Health Committee felt that there was no overall impact from the Mental Health Act inquiry that he could really think of. This could be a result of the length of time that it can take for the impact of inquiries to become apparent, of course depending upon what the committee has recommended. These findings suggest that there has been limited impact from these committees in relation to post-legislative scrutiny. This has implications for post-legislative scrutiny on the basis that if there is no discernible impact, then committees could in future decide to focus upon areas where they can have an impact. To an extent, it could undermine the willingness of committees to undertake post-legislative scrutiny. However the fact that committees rarely follow up formally on post-legislative scrutiny will have affected the level of impact that a committee can have. This is also tied in with the

recommendations that committees are producing, if a committee actively produces weaker recommendations that call for limited action, then they are also limiting their own impact.

6.7 Conclusion

To conclude, this chapter has addressed the experience of committees in the House of Commons which have undertaken post-legislative scrutiny. It has assessed this experience through the typical flow of a committee inquiry, in order to assess how these committees have been operating but to also highlight any challenges these post-legislative case studies have had along the way.

At the start of an inquiry, we noted some of the criteria and factors that the committees took into account when deciding whether to undertake post-legislative scrutiny and which legislation should be selected. There is a focus upon Members' interests, representations from interest groups and also government departmental outputs. It was noted that the implication of these pressures is that committees can get led by MP's pet projects or by the views of government and interest groups. Such leading could be detrimental to scrutiny and especially the selection of legislation for post-legislative scrutiny. There is a need for the selection of legislation to receive post-legislative scrutiny to be more open and committees need to be alert to the fact that such organisations have their own reasons and motives for suggesting certain action. That being said the Freedom of Information Act inquiry is a good example of where a committee has potentially been led by the government into undertaking an inquiry, but at the same time has, through thorough scrutiny, rebuffed the government's position. There were also particular challenges to note from deciding how to scrutinise an Act. The experience of the Culture, Media and Sport Committee when undertaking scrutiny of the Gambling Act 2005 highlighted the challenges of scrutinising an Act as a whole, especially for a departmental select committee. Although part of the problem with this particular Act was the fact it was a fairly large consolidation one. While the committee was told to undertake a full review of the Act it was clear from the experience of the clerk and the Members that this was not the correct approach to take. One way to

avoid such problems in the future would be for a committee to publish preliminary terms of reference when launching an inquiry so they can scope the legislation for problem areas, before publishing final terms of reference once problems have been identified and the scope of the inquiry narrowed down. This would be an important and useful addition to post-legislative scrutiny inquiries on the basis that it was noted that going into such inquiries you do not always know where the problems with the legislation lies.

The collection of evidence also highlighted interesting implications for both post-legislative scrutiny and broader scrutiny. There were challenges at this stage in terms of the appointment of specialist advisors as well as bias among committee members. It is important for these scrutiny processes to be objective and independent of parties so as not to replicate scrutiny on the floor of the House. There is a need to ensure the process of selecting specialist advisors is open and transparent and that committees listen to a balanced spread of evidence.

Challenges were also noted in the subsequent step in the inquiry process, the development of recommendations and the publication of a report. The drafting of the report being focused on the secretariat and the chair of the committee, suggests a bureaucratic and technocratic process and raises questions about wider Member engagement in this process. The analysis also found evidence of committees taking a government's likely response into account before making a recommendation. This supports the findings in chapter five and provides an explanation for why committees produce weaker recommendations. There is also a potential problem of recommendations focusing solely on areas of Member interest, as this could mean important areas of the Act have not been scrutinised properly. There is thus a balance to be struck between a potential bureaucratic approach and a Member interest approach to developing recommendations. That balance might be achieved by Members who are more willing to undertake required scrutiny as legislators rather than focusing solely on their personal and constituency interest.

There are also problems at the government response and follow up stage of an inquiry. This mainly focuses around committees not being very good at following up due to a lack of Member interest but also because they utilise convenient

methods of follow up such as annual oral evidence sessions, where post-legislative scrutiny recommendations are likely to be low on the priority list. This has implications for scrutiny on the basis that if the government knows a committee is not necessarily going to follow up directly there is less of an incentive for them to take recommendations seriously. There should be a requirement for committees to spend more time following up rather than the typical 'hit and run' approach that Russell (2013) notes they take. This all has implications for the overall impact that committees can have. The analysis showed that impact in these cases has been limited, partly because the committees have not been following up effectively. Both Rogers & Walters (2015) and the former clerk of the Health Committee noted that pressure is needed to ensure change, just because a committee makes a recommendation does not mean it will be accepted (Lloyd, 2017).

Chapter 7 The experience of undertaking post-legislative scrutiny in the House of Lords

This chapter moves on to address the process in the House of Lords. In so doing, it answers the final part of research question three (i.e. what has the experience been of committees undertaking post-legislative scrutiny?). The processes in both Houses of Parliament, when it comes to post-legislative scrutiny, are different. So it is not possible to generalise from the findings of the House of Commons chapter. In the House of Lords, post-legislative scrutiny is undertaken by ad hoc committees, created to undertake a specific function, in comparison to sessional committees in the Commons. As noted earlier in the thesis, there are important differences between these types of committees but it is worth revisiting them here. Sessional committees are formed for a full parliament whereas ad hoc committees cease to function after they have published their reports. Other differences include the time available to committees. Sessional committees (such as departmental select committees) have other tasks to complete whereas ad hoc committees are given one task. This means they can spend more time on work such as post-legislative scrutiny. There is also a key difference in that the Lords do not receive post-legislative review memoranda from the government, unless they specifically ask for one. The process in the Lords leaves space for Peers and clerks to bring forward ideas for post-legislative scrutiny, outside of the government's agreed memoranda process in the Commons.

From these differences, we might expect follow up in the House of Lords to be even less effective than in the House of Commons due to the nature of ad hoc committees dissolving following the publication of their report. This is due to the fact that over a long inquiry, committee staff develop a working relationship and foster contacts with government departments which the Liaison Committee (when they follow up in writing on the ad hoc committee's behalf) does not necessarily have. The full powers of a dedicated committee are not available to former committee members when it comes to following up on the inquiry. Additionally, with nine month long inquiries it might be expected that the House of Lords will

produce more recommendations on average and that there will be a greater focus upon technical aspects of post-legislative scrutiny. However, it is expected that committees will avoid making stronger recommendations which are more likely to be rejected due to the primacy of the House of Commons. It might also be expected that with the greater independence that the House of Lords has, that Acts will be selected upon their need for review.

This chapter will therefore focus upon the experience of the House of Lords Liaison Committee, which oversees the process in the House, and the experience of two ad hoc committees which have undertaken post-legislative scrutiny. These ad hoc committees are the Select Committee on the Equality Act 2010 and Disability and the Select Committee on the Licensing Act 2003. The ad hoc committees in this chapter were selected using the same criteria as the committees for the previous chapter. There were six inquiries to select from in the House of Lords and this selection accounts for 33% of inquiries undertaken by the Lords between 2010-2017. Beyond the formal criteria used (see pages 194-195), final selection came down to the availability of committee staff and members. In total, seven interviews were undertaken for this chapter with the clerk of the House of Lords Liaison Committee as well as the clerk, chair and an interest group for both case studies. The clerk of both of these committees was Michael Collon. Two separate interviews were undertaken with Michael for the purposes of this research, one for each committee he had clerked for. It is common in the House of Lords for the same clerk to be appointed to lead numerous post-legislative scrutiny inquiries.

In practical terms, this chapter contributes to our knowledge of post-legislative scrutiny as a function of parliamentary committees and how committees deal with such scrutiny. Additionally, it provides an assessment of the procedures utilised in the House of Lords with the voices of those who have taken part in the process. It also contributes to our knowledge of the behaviour of committees in terms of the development of recommendations and follow up to government responses. It also contributes to the impact of parliamentary committees, through the clerks and committee members about specific inquiries and the issues that were considered when undertaking such scrutiny. Finally, it contributes to the existing literature on

the modernisation of the UK Parliament. Specifically how the House of Lords ad hoc committees are undertaking this newly formalised task.

7.1 House of Lords Liaison Committee

The chapter begins with an assessment of the role that the House of Lords Liaison Committee plays initiating post-legislative scrutiny and following up recommendations. This analysis of the Liaison Committee is placed in this chapter assessing the process of post-legislative scrutiny in the House of Lords on the basis that it forms an important part of that process. To understand the experience of the ad hoc committees, you also need to assess the role the Liaison Committee plays in selection and follow up. Since 2012, the House of Lords Liaison Committee has been appointing at least one ad hoc committee per session to undertake post-legislative scrutiny. Ad hoc committees are popular, especially with Members, as they allow specific and topical issues to be examined without creating a permanent vehicle for doing so (Rogers & Walters, 2015). These committees are appointed for one session to undertake that particular task and then dissolve once they have reported. One benefit of using such committees for post-legislative scrutiny is that they can focus for an entire nine months on one inquiry, unlike sessional committees which will have several different tasks/inquiries to be completing in a similar timeframe. There is a downside however, in that ad hoc committees are not formally constituted to receive the government's response or to follow up as a committee.

7.1.1 Role of the Liaison Committee

The Liaison Committee in the House of Lords is more proactive when it comes to post-legislative scrutiny, than its House of Commons equivalent, in that it formally recommends which committees are set up and what topics are examined (Tudor, 2017). Indeed, the Head of the House of Commons Scrutiny Unit noted that the House of Commons Liaison Committee in the 2015 Parliament was rather less

active than previously, so there was less reinforcement and, as a result, less incentive for committees to follow up on their core tasks (Lloyd, 2017).

Each autumn, the Liaison Committee, in an open call to Members, invites ideas on both post-legislative scrutiny and on other more general ad hoc committees. In the case of post-legislative scrutiny, the committee office also does research to see what legislation is suitable for post-legislative scrutiny (Tudor, 2017). They do this to check what has or has not been done by the Commons, to give greater choice to the Liaison Committee when deciding and to avoid overlap between the two Houses (Tudor, 2017). With the current lack of post-legislative scrutiny in both Houses, overlap by accident would be difficult to achieve. They also do this because Members themselves tend mostly to focus on more general policy proposals rather than proposals for post-legislative scrutiny (Tudor, 2017). There is opportunity for this process to be improved, for example, with the use of public engagement (as used by the Scottish Parliament's Public Audit and Post-Legislative Scrutiny Committee) to ensure a wider variety of Acts are shortlisted for review. That is not to say that Members do not put forward ideas, but the supplementation of ideas is welcome.

In terms of researching what memoranda have been published, the clerk noted the most central single source they have is the House of Commons Library memo on the subject. The second is through contacting individual House of Commons committee clerks (Tudor, 2017). This is viewed as important as the House of Commons has primacy and, as such, there is a reluctance to stray into what might be the remit of a Commons committee. The relationship with the House of Commons thus impacts the behaviour of the House of Lords. This is not necessarily the most productive way of finding out what has or has not been scrutinised. The House of Commons Library note on post-legislative scrutiny has not been updated since 2013. Indeed, the clerk noted that sometimes they discover these memos by doing an internet search on Google.

The clerk also noted that there is a difference between some committees in how they view government memoranda, as some departmental select committees feel that because the memos are submitted to them, they belong to them (Tudor, 2017).

The remit of House of Commons committees means that they receive the memoranda from the governmental department. Commons committees are protective of that remit and feel that because the memos are submitted to them, they have first pick as to whether to undertake additional scrutiny on the memo. The House of Commons should have first refusal as the memoranda are currently sent to them, but after that, any committee should be able to take it up if they so wish.

The Liaison Committee also plays a role in the follow up of post-legislative recommendations with the government. This follow up usually occurs one year after the publication of the report or one year after the government's response to the report has been published, to allow the government some time to implement the recommendations. This is important for the impact of Lords' ad hoc committees, as without such work, it would be difficult for them to exert influence as even if Members wish to follow up individually, they do not have the power and resources of a committee behind them. The fact that ad hoc committees dissolve after the publication of their report is one of the weaknesses, if not the main weakness of House of Lords ad hoc committees (Tudor, 2017). This severely limits the ability to do follow up, which is in sharp contrast to a sessional committee. Sessional committees can have a rolling work programme, which if the committee is so inclined can involve a series of follow up evidence sessions.

Consequently, the Liaison Committee has developed various methods to follow up on behalf of ad hoc committees. The main method is to follow up on specific recommendations in writing with the relevant government department. At the end of each inquiry, the Liaison Committee will ask the ad hoc committee to highlight the recommendations they want followed up (Tudor, 2017). The reason for identifying the most important recommendations is Lords committees, perhaps partly due to the length of their inquiries, frequently produce many recommendations. Indeed, data in chapter five showed that on average Lords' committees produce 41 recommendations in comparison to 19 in the Commons. A downside to that is government responses can then look as if they are accepting quite a lot of recommendations, but not necessarily the most important ones (Tudor, 2017). Another downside is that it may signal to the government that there

are going to be certain recommendations that the committee will not follow up on and subsequently create an incentive for inaction in these areas.

The Liaison Committee has also experimented with debates on reports. However, a limitation of this is that the time on the floor of the House is limited. The clerk of the Liaison Committee noted that there was nothing she or the committee could do that would ever likely be enough for Members in general (Tudor, 2017). The Liaison Committee here has shown initiative in terms of identifying a weakness in the processes and developing ideas to try and provide mechanisms for some follow up. That being said, a written letter to a department is unlikely to be the most effective way of following up with the government, as committees cannot put a minister on the spot like they can in an oral evidence session.

When asked whether the follow up processes were perceived to work, the clerk said probably not as some chairs would like to reconvene the committee formally so meetings could take place and they could access support, including drafting support (Tudor, 2017). The clerk also noted that she and her team do not have the civil service contacts and relationships that chairs and their secretariat build up during a nine-month inquiry (Tudor, 2017). The expertise is held by the secretariat who, by this point, have moved on to another committee. This makes the process even more challenging. However, there is still guaranteed follow up on the most important recommendations. As was noted in the previous chapter on the House of Commons, follow up rarely goes beyond routine questioning of ministers at an annual oral evidence session or through written correspondence. Potentially with powers to reconvene, the ad hoc committees in the Lords could lead the way in terms of conducting follow up. It is, however, unlikely the government would be thrilled by the reform on the basis that it benefits from committees not being able to effectively follow up. Kelso (2009) argues that institutional context impacts upon potential for reform, and if a government benefits from a particular situation, it is unlikely to seek or support change. For example, parliament struggles to secure effective ministerial accountability, and as the executive benefits from that situation, it is unlikely to seek institutional change to correct it (Kelso, 2009: 22). One of the key pillars of the Westminster system of government is strong party government, and the executive are not going to want to weaken that. There is

therefore a reform inertia in parliament and this will impact on the recommendations made in this thesis too. For reform to occur, Norton (2000) argues that there needs to be a window of opportunity, a coherent reform agenda and leadership.

However, it should also be noted that Members themselves can take up the cause and table oral and written questions on the issue, and they can also table relevant amendments to legislation. Despite the criticisms, there is some, albeit limited follow up with the government, which potentially would not be there without the committee.

7.1.2 Factors the committee considered when selecting legislation

The Liaison Committee plays an important role in the initiation and follow up of post-legislative scrutiny inquiries. But this raises the question of how the committee decides what legislation to select for post-legislative scrutiny.

One of the key factors that the committee considers is whether the inquiry would make the best use of the expertise of Members of the House of Lords (Tudor, 2017). Indeed, one of the claimed benefits of the second chamber is that it contains many people with expertise in different sectors. When undertaking post-legislative scrutiny, it is important to tap into that expertise. Another important criterion for the committee is whether or not the inquiry can reasonably be completed within nine months (Tudor, 2017). An example of this was the Equality Act Committee, which focused upon the disability elements of the Act on the basis that a full review could not be undertaken in nine months (Tudor, 2017). However, there is the potential that this leads to only certain types of inquiries taking place, ones that fit a nine-month window.

One other obvious criterion is whether the Act or topic has been or is likely to be considered by a Common's committee. This is an important consideration; while resources are stretched, it is critical to ensure that there is as little overlap as possible between the two Houses. While the two Houses may approach inquiries from different angles, the House of Commons with its primacy gets first pick of the

legislation due for review (usually selected as a consequence of having received a post-legislative review memorandum from the government). There is more than enough work for both Houses to be doing (Tudor, 2017). However, this does raise questions about self-regulation. The House of Lords is limited by asymmetrical bicameralism and sees its role as adding value to the political process, as well as complementing the work of the Commons rather than conflicting with it (Norton, 2017). If the House of Commons is not undertaking this work then surely such scrutiny would be complementary rather than conflicting with the Commons. There is no formal rule that requires the House of Lords to avoid inquiries likely to be undertaken by the House of Commons but this practice has developed into a norm (Shepsle, 2006). Such norms develop from the timidity of the House of Lords in terms of its legitimacy and from the threat of reform (Russell, 2013). This does not meet the expectations in the introduction of this chapter on the basis that committees appear to actively avoid certain Acts.

Timing is also another important factor. The clerk noted that there is an optimal time for post-legislative scrutiny and that is five to ten years after it has come into force (Tudor, 2017). This is different from the time frame that the Cabinet Office guideline suggests (three-five years). It was also noted in the previous chapter on the House of Commons that clerks felt that this was too short a period. Linking this back to the point about overlap between the two Houses, a downside of assessing too early is that it might deter committees from reassessing an Act at a future point, because it had received review before. One example of timing that the clerk gave was that one of their early ad hoc committees, a committee on small-medium enterprises and exports, recommended post-legislative scrutiny be undertaken on the Bribery Act. The Liaison Committee has considered that recommendation two or three times and still felt at the time of the interview that the legislation is not yet ready for scrutiny on the basis that the Act is still novel and needs time to settle on the statue books (Tudor, 2017). However, this Act was reviewed in the 2017/19 session. One other point to note here is the discussions that clearly go on regarding what is ready and what is not, appears to be a process that the Liaison Committee takes seriously. Having considered the proposal a number of times also suggests that there is a keenness among Members to review

this Act. The Liaison Committee then appears to be acting as a brake. On the issue of timing, the clerk noted that the timeframe is not set in stone and that it operates more like guidance (Tudor, 2017). Within an individual Act of Parliament, different sections can be brought into force at different times. Three to six years after Royal Assent is not necessarily three to six years after bringing it into force. Flexibility is needed to ensure that legislation is assessed at the most beneficial time.

In relation to the selection of legislation by the Liaison Committee, the clerk of the Licencing Act 2003 Committee noted the following additional criteria that are often considered. He suggested, firstly, that the Act should be a major one that has reformed the law in a substantial way, rather than an Act that has made minor amendments to the statute books. Secondly, it should have been in force for a substantial period of time (Collon, 2017b). The clerk's view was that it should have at least been five years since the Act was enacted but preferably seven to eight years minimum (Collon, 2017b). Additionally, since resources are limited, post-legislative scrutiny should, generally speaking, be focused upon Acts that have made a substantial contribution, although this raises the question of what counts as a substantial contribution. However, legislation such as amendment Acts which are usually limited are unlikely to need a full nine-month review in the Lords. The Liaison Committee does produce a list of suggested ad hoc committees and during the open call for ideas for the 2016-2017 session, the Legal Services Act 2007 and the Animal Welfare Act 2006 were considered for post-legislative scrutiny. Indeed, there appears to be a routine in place now where inquiries are determined at a certain time in the year. However, this also raises the question of what happens if the need for an inquiry arises just after the start of a new session? Do they wait for the following year or do they launch an immediate inquiry?

The third criteria for the House of Lords is to avoid anything too politically controversial because the focus of post-legislative scrutiny is more on the Act itself rather than looking at the underlying politics of the policy (Collon, 2017b). This behaviour will link back to the timidity of the House which stems from its unelected status and the primacy of the House of Commons (Russell, 2013). This restricts the House of Lords in terms of potential post-legislative scrutiny inquires. One other criterion the clerk noted was to avoid legislation that is about to be

substantially amended because there would not be much point in conducting a full review (Collon, 2017b). However, surely there is an argument that if an Act were to be amended (even through another Act), that a post-legislative inquiry might help to inform such amendments. This raises questions about the appointment of ad hoc committees at the start of a session. If an Act warrants attention during the middle of a session, then there should be a procedure to appoint a committee, rather than waiting until the start of the next session, by which time the government may have already acted. This is also a particular characteristic of the Lords, wanting to avoid anything too partisan. However, there is general guidance from the Leader of the House of Commons suggesting that post-legislative scrutiny should not be a rerun of previous policy debates (Office of the Leader of the House of Commons, 2008). This raises questions again about the House of Lords being self-regulating on the basis that they are excusing themselves from specific Acts, even if they may require review. This would not be such a problem if the Commons were willing to tackle more partisan legislation.

While the data in chapter four suggests that some contentious legislation is receiving review, there is also data suggesting that parliament is avoiding the legislation of the 2010-2015 Coalition Government. This might be viewed as partisan legislation on the basis that the major party in that Coalition is still in office. The House of Lords should not rule out scrutiny based upon when the legislation was passed as the House could potentially review Acts more objectively than the House of Commons because there is less executive and party dominance. Such an ethos developed from the presence of the Crossbench Peers, who remain free of party to express their opinions, and from the partisan model of bicameralism in which there is a purposeful difference in which parties hold majorities in both Houses (Russell, 2013). However, structural issues also affect behaviour in the House of Lords, for example their appointment for life impacts upon their willingness to listen to their whips. Their unelected status, and questions about legitimacy, can also lead to some timidity. (Russell, 2013)

7.2 Introduction to ad hoc committees and post-legislative scrutiny

Having addressed the role of the House of Lords Liaison Committee in the initiation and follow up of post-legislative scrutiny in the House of Lords, the chapter moves on to address these points, plus others in the context of the Select Committee on the Equality Act 2010 and Disability and the Select Committee on the Licensing Act 2003. From this point, it mirrors the structure of the previous chapter and addresses how these case study committees undertook post-legislative scrutiny by following the process of a typical inquiry. As the same rules apply to Lord's committees as they do to Common's committees (Rogers & Walters, 2015) and they tend to follow the same process, this section will address the start of the inquiries, the evidence gathered, the reports, the response and follow up, as well as the overall impact of the inquiries. We start with an introduction to each of the case studies, to provide some context.

7.2.1 Select Committee on the Equality Act 2010 and Disability

The post-legislative inquiry undertaken by the Select Committee on the Equality Act 2010 came five years following the enactment of the Equality Act 2010. The Act brought together all major equality reforming legislation into one statute, including the Sex Discrimination Act and the Disability Discrimination Act (Select Committee on the Equality Act and Disability, 2016). However, as the report noted, the Equality Act was not just a consolidating Act. The Act: "expanded the anti-discrimination law applying to race, sex and disability, and applied the same principles to age, gender reassignment, marriage and civil partnership, religion or belief, sexual orientation, and pregnancy and maternity" (Select Committee on the Equality Act 2010 and Disability, 2016: 7). Therefore, this was a landmark piece of legislation in terms of promoting and protecting equality.

The Equality Act received Royal Assent on 8 April, 2010 and most of its main provisions were brought into force by 1 October, 2010. In its report, the committee noted that post-legislative scrutiny of the Act was not just desirable, but essential (Select Committee on the Equality Act 2010 and Disability, 2016). In March 2015, in

preparation for the setting up of the committee, the clerk of the committee, requested that the government's Women and Equalities Office prepare a Memorandum on the Equality Act (Collon, 2017a; Select Committee on the Equality Act 2010 and Disability, 2016).

The memorandum that the committee received from the government covered the Act as a whole. However, the committee was only interested (for the purposes of the inquiry), with the provisions relating to disability on the basis of the remit that the Liaison Committee had set (Select Committee on the Equality Act 2010 and Disability, 2016). This is an example of post-legislative scrutiny which focuses on specific parts of an Act, as opposed to the Act as a whole.

Overall, the committee didn't face any major problems during the inquiry. The main challenges were practical ones linked to the nature of the inquiry. There were Members and witnesses who had disabilities. However, the chair noted that she thought they managed those challenges well (Deech, 2017). Linking back to the point the clerk of the Liaison Committee made about ad hoc committees innovating, the Select Committee on the Equality Act 2010 and Disabilities held one session in British Sign Language so they were able to take evidence from those with speech difficulties (Deech, 2017). The committee hearings were, therefore, accessible to the witnesses regardless of disability, and special permission was granted to the disabled members of the committee who were able to vote in divisions from committee rooms so they didn't have to move between committee rooms and division lobbies (Deech, 2017). However, Terry Riley of the British Deaf Association argued that from his perspective, this was just tokenism (Riley, 2018). This shows that parliament can be accessible to everyone, at least in terms of attending committee hearings, which should be standard for sessions and other events.

7.2.2 Select Committee on the Licensing Act 2003

The Licensing Act 2003 came fully into force in November 2005 (Select Committee on the Licensing Act, 2017). The Act transferred the control of the sale of alcohol

from justices of the peace to local authorities through licensing committees. The previous regime had been in place for over 500 years and was created through the Vagabonds and Beggars Act 1494 (Select Committee on the Licensing Act, 2017). The Act also made several other changes which included, the introduction of criteria against which licenses would be granted, creating the dual system of personal and premises licenses, relaxing the hours during which alcohol can be bought and it ended the need for temporary licenses for one off events (Select Committee on the Licensing Act, 2017). The House of Lords Liaison Committee selected the Act for scrutiny on the basis that it had been in force for 10 years and that it would be a fruitful topic to undertake post-legislative scrutiny on as more time had passed since the House of Commons Culture, Media and Sport Committee reviewed the legislation (Collon, 2017b).

The committee's report noted that timing was particularly important as in March 2008 the Department for Culture, Media and Sport produced their post-legislative assessment evaluating the Act which was then taken up for scrutiny by the House of Commons Culture, Media and Sport Committee (Select Committee on the Licensing Act, 2017). Their report was published in May 2009 when the Act had been in force for just over three years and concluded that it was too early to make firm conclusions on the operation of the Act. The committee noted that for an Act which made such major changes, they thought that the 10 years which had elapsed since its entry into force would provide them with a better foundation for a more in-depth and fruitful examination (Select Committee on the Licensing Act, 2017).

The committee did not just confine its assessment to the Act itself but also the implementation of it, the secondary legislation stemming from it, and also other relevant legislation. Such an approach to post-legislative scrutiny matches one of the government's aims for their system, that it should include necessary secondary and supplementary primary legislation (Office of the Leader of the House of Commons, 2008). This was particularly important for this inquiry based on the number of times the Licensing Act 2003 has been amended by other Acts (Select Committee on the Licensing Act, 2017; Collon, 2017b). In particular, the Liaison Committee suggested that the committee might want to consider the following issues as part of its inquiry: To what extent has the Licensing Act met its objective

of balancing rights and responsibilities?; Are the four licensing objectives underpinning the Act the right ones?; Has the Act proved sufficiently flexible to address changing circumstances?; and What lessons can policy makers draw from the changes made to the licensing regime since its implementation in 2005? (Select Committee on the Licensing Act, 2017).

7.3 Start of an inquiry

At the start of an inquiry, committees usually decide what subject they want to scrutinise and set out the terms of reference for the inquiry, which set out the main areas of interest that they are going to focus upon (Rogers & Walters, 2015). However, when it comes to ad hoc committees in the House of Lords, as noted earlier, it is the Liaison Committee which makes decisions upon what topics ad hoc committees scrutinise and in the case of post-legislative scrutiny, what legislation receives review. This is an advantage to some extent as there are broader deliberations on what legislation should be selected for post-legislative scrutiny and there is essentially a ground-up attempt (through the inclusion of Peers) in terms of what Act receives post-legislative scrutiny in any given session. There can be potential pitfalls as the Liaison Committee can also determine the broader remit of the committee. Indeed, having a strict remit set before anyone has scoped evidence, as was the case with the Equality Act 2010 Committee, might not be the best approach. After all, as noted in the previous chapter, the House of Commons Culture, Media and Sport Committees was told that if they were going to undertake post-legislative scrutiny into the Gambling Act 2005, then they had to review the whole Act, which was much more challenging than anyone had realised at the time (Flood, 2017). The clerk of the Select Committee on the Equality Act and Disability noted that the committee would have struggled to assess the Equality Act in its entirety (it was a consolidation Act too), so ultimately the Liaison Committee in this case made a reasonable decision.

However, once the inquiry into the Equality Act got underway the clerk understood why it was limited to the disability elements of the Act, as the inquiry would have been too wide an inquiry to look at all the disadvantages (Collon, 2017a). Ultimately it was believed that the correct decision had been made in terms

of not overburdening the inquiry (Tudor, 2017). The point still stands that there needs to be caution in relation to directing committees to look at certain issues before the committee understands the foundations of the issue under review. By looking solely at disability, it raises a question of whether there are further issues with the Equality Act 2010, in relation other provisions which have not been assessed yet. The Equality Act 2010 also dealt with, transgender rights[33] as well as racial and gender discrimination, but these were not included in this particular review.

In the case of the Licensing Act 2003, the committee was able to undertake a full review and decide for itself which particular parts of the Licensing Act they wanted to address. The clerk noted that it was a detailed piece of legislation and that it was a fairly compressed topic, therefore there was no difficulty in dealing with it in one inquiry (Collon, 2017b).

At the start of an inquiry the memoranda committees receive from government departments often acts as a foundation for an inquiry. As the Liaison Committee determines which Acts receive scrutiny, government memoranda do not act as a trigger for inquiries in the House of Lords. Indeed, through the government's agreed three to five-year process for producing memoranda, Lord's committees do not receive these memoranda and instead request their own once an Act has been selected for scrutiny.

Memoranda can play an important role in the undertaking of an inquiry in the Lords, despite not being a trigger. The clerk of the Equality Act Committee noted that in terms of the usefulness of the memorandum they received, they incorporated what the government had said within it, in the planning of questions to witnesses and, in particular, the questions to officials of government departments and at the end questions to ministers themselves (Collon, 2017a). This is something that the chair of the committee, Baroness Deech, also noted during the interview (Deech, 2017). The memoranda obviously played an important role

[33] It should be noted that the House of Commons Women and Equalities Committee undertook an inquiry into transgender issues in the 2015-2016 Session of the UK Parliament, and did undertake some limited post-legislative scrutiny into the provisions of the Equality Act relating to gender recognition and transgender rights.

in the planning of inquiries in both Houses, especially in terms of the questions to witnesses including officials and ministers, as noted in the previous chapter.

The clerk of the Licensing Act Committee agreed with the sentiments that memoranda are generally quite helpful but they take some time to arrive. The clerk noted that it would have been useful if the committee had received the memorandum before the call for evidence (Collon, 2017b). Unfortunately, with the way the process works in the House of Lords, the government is not going to be aware of what Act is due to receive review before the Liaison Committee decides and a committee secretariat is appointed to make the memorandum request. There might be an argument for the Liaison Committee to make such post-legislative scrutiny decisions earlier in a session so the government could provide memorandum before the start of an inquiry. Despite requesting the memorandum at the end of April/beginning of May, it was not received until mid-July when the call for evidence had already been sent out (Collon, 2017b). In practice the clerk and chair noted that in this case it wouldn't have changed very much because the questions in the call for evidence were very much questions that needed answering (Collon, 2017b; McIntosh, 2018). There might be a case, however, where a government memorandum requires additional questions to be asked. There remain plenty of opportunities to ask those questions or to send out additional questions as part of the call for evidence. Additionally, the government needs time to draft such memoranda, so perhaps any changes need to be made in terms of when the Liaison Committee announces its inquiries for the subsequent session. The chair of the Licensing Act Committee noted that the memorandum was treated with some scepticism and questioned how useful they really are seeing as it is a box ticking exercise (McIntosh, 2018). However, at the same time she acknowledged, at the very least, that they were useful for background information (McIntosh, 2018). Baroness Henig, a member of the committee, noted that it was a very long memorandum and was not as focused as some Members would have liked (Henig, 2018).

In terms of Member interest in the memoranda, the clerk of the Equality Act 2010 Committee noted that all Members received a copy and the chairman scrutinised it carefully. But as with any committee, some Members looked at it more carefully

than others (Collon, 2017a). The workloads of Members could be significant here as peers do not have to fulfil the representative function that MPs do, potentially giving them more time to focus upon such tasks, depending upon what outside tasks they undertake away from the House.

There was also evidence in the Lords of committees scrutinising the memoranda, which again cements their importance in the post-legislative scrutiny process. The Licensing Act 2003 Committee was also keen to get supplementary written evidence from the government on the basis that the government's memoranda did not answer/cover all the questions the committee put out in its call for evidence (Collon, 2017b). The committee also took oral evidence from officials during its first evidence session and they also had ministers give oral evidence as well (Collon, 2017b). There appears to have been some in-depth scrutiny of the memoranda here by the committee in terms of seeking additional evidence from ministers and officials. However, a representative from an interest group which gave evidence to the inquiry noted that they had not seen the memoranda which suggests that at least in the Lords, government memoranda are not widely accessed (Interest Group A, 2018).

So, the start of inquiries in the Lords are different to the Commons in the sense that there is a difference in who selects legislation as well as differences in the criteria used. There are similarities, however, in the sense that memoranda do seem to play an important role in both Houses, but in different ways.

7.4 Evidence

Evidence, as noted in the previous chapter assessing inquiries in the House of Commons, is vital for parliamentary inquiries on the basis that they are evidence driven. Once a topic of inquiry has been selected and initial terms of reference have been agreed, committees will usually issue a general invitation to submit evidence. As well as issuing a general invitation, committees will often issue specific requests for written evidence to government departments and key players in the policy area concerned (Rogers & Walters, 2015).

In the House of Lords, as in the House of Commons there is a need to appoint specialist advisors. One of the first things the Equality Act 2010 Committee did was to appoint a specialist advisor. The clerk noted that they interviewed a number of possible specialist advisors. They appointed a barrister specialising in disability (Collon, 2017a). As she was knowledgeable about the topic and had many contacts who knew about the topic, she gave the committee a lot of ideas (Collon, 2017a). As was noted with the Commons Culture Committee, specialist advisors appointed by the committee play an important role in locating witnesses. Although no problem was highlighted in this case, caution should be taken when selecting an advisor in order so the committee does not approach an inquiry in an overly biased manner. However, the experience and expertise of Peers on the committee could potentially act as a brake in terms of the committee veering off in one direction. Even though the expertise of the Lords is important, the role of specialist advisors is also important for an ad hoc committee which is set up for a one off inquiry. This is because the committee staff do not have time to develop a broader understanding of the policy area that they would on a sessional committee in the Lords or a departmental select committee in the House of Commons.

Additionally, regarding specialist advisors, the clerk of the Licensing Act 2003 Committee noted that they utilised the following process; draw up a long list of those with the relevant expertise, put the long list to the chairman for approval, and then create a short list of four to interview (Collon, 2017b). Additionally, the clerk noted that because post-legislative scrutiny involves the scrutiny of an Act it is very helpful to have a lawyer. In the case of this inquiry they thought it would be helpful to have a lawyer who did know something about licensing (Collon, 2017b). Three of the four applicants that the committee interviewed were barristers in licensing and one of those was appointed. This raises another important point of the need for lawyers. As was noted in the previous chapter, most House of Commons committees do not have lawyers who form part of their committee secretariat, and as such they might be at a disadvantage from a lack of legal knowledge around the Acts that they are scrutinising. Legal expertise and/or knowledge of the Act in question would be useful on the basis that it would allow for the location of legal and drafting difficulties that a technical review would

require and is often not in the skills set of Members or clerks. Indeed, it was seen as a benefit for the Justice Committee to have their legal expert leading on their inquiry into the Freedom of Information Act.

The number of witnesses was another important issue raised during the interviews with clerks in the Lords. In terms of the Equality Act 2010 inquiry, as well as the policy analyst searching for and identifying possible witnesses, Members of the committee also had suggestions and in the end the committee had more possible witnesses than they could cope with (Collon, 2017a). With a nine-month inquiry, ad hoc committees in the Lords can speak to more people (forty-seven on average) than a departmental select committee in the Commons can (nineteen on average). However, the pool of potential witnesses was still large. Over the course of the inquiry they heard from fifty-three people through oral evidence and overall, counting written and oral evidence, they heard from 166 people and organisations (Select Committee on the Equality Act 2010 and Disability, 2017).

Regarding the evidence that committees heard and whether they felt they had heard from the relevant actors to draw fair conclusions, the clerk of the Licensing Act 2003 Committee noted that committees never have enough time to hear from all the witnesses they would like to (Collon, 2017b). However, he noted that they had a lot of evidence to rely on. This is a common theme and even during inquiries in the House of Lords which run for longer than in the Commons, there is still a challenge with time. The ability for any person or group to submit written evidence is an important access point, and ensures that all views can be heard by the committee.

7.5 Report

Following the collection and analysis of evidence, committees, as noted in the previous chapter, move on to develop recommendations and prepare their report.

One of the biggest issues to arise from the interviews in the Lords in terms of their reports was that the post-legislative scrutiny inquiry into the Licensing Act 2003 was different to the others undertaken in the Lords (Collon, 2017a). Additionally,

it was also different from those in the Commons too on the basis that this was the first inquiry to conclude that there were problems with that statutory framework. The report stated as follows:

> 'Previous committees of this House conducting scrutiny of statutes have found that the Act in question is basically satisfactory, but that its implementation is not. In the case of the Licensing Act our conclusion is that, while the implementation leaves a great deal to be desired, to a large extent this is caused by an inadequate statutory framework whose basic flaws have, if anything, been compounded by subsequent piecemeal amendments. A radical comprehensive overhaul is needed, and this is what our recommendations seek to achieve' (Select Committee on the Licensing Act 2003, 2017: 5).

This raises questions around whether the Acts most in need of post-legislative scrutiny are being selected, especially as some of the academic literature on the UK legislative process suggests that it is producing deficient legislation (Brazier, Kalitowski, & Rosenblatt, 2007; Fox & Korris, 2010; Rippon, 1993; Slapper & Kelly, 2015).

The committee, during the course of the inquiry, heard a lot of evidence about the way licensing committees worked and the clerk noted that some of it was scandalous (Collon, 2017b). The committee heard an example of a chairman of a licencing committee cross-examining his wife as an independent witness. They heard of a licensing committee chairman telling a barrister who had been dealing with an applicant for a licence and who had not been granted one, not to worry as they would win on appeal, essentially admitting that they had deliberately come to the wrong decision (Collon, 2017b). While the clerk noted that these were not typical, they were several other examples that the committee were given of where the system was not working. There was clearly a problem with the operation of the Act. If such actions can be taken, it raises questions about the fairness and transparency of the process and as such brings the whole system into question. The committee therefore viewed this inquiry as being different from previous post-legislative inquiries, at least in the House of Lords, as there was something clearly wrong with the Act itself. Indeed this provides an example of locating legislative

bad practice and offering solutions to the problems, as set out in the aims of post-legislative scrutiny (Law Commission, 2006).

Another important issue to arise in interviews for these case studies in the Lords is the recommendations they tend to avoid making. The clerk and chair of the Equality Act 2010 Committee noted that there is no point in making recommendations which you anticipate are not going to be taken on board and, in particular, this relates to recommendations which are going to cost a lot of money or require legislative change (Collon, 2017a; Deech, 2017) on the basis that it is better to achieve something than nothing. This therefore potentially limits the scrutiny and effectiveness of post-legislative scrutiny. White (2015a) does note that recommendations need to be financially realistic. There is some consideration here of what the government might and might not accept, this ties in to an extent with the findings in the previous chapter and committees softening their recommendations so they are more acceptable to the government. Again, this does go on to highlight the weakness of parliament in terms of being able to influence and change government policy. As noted earlier in the thesis, these committees rely on soft power, the power to persuade (or embarrass), create a sense of obligation and commitment from government. There are also structural factors that might be impacting upon their behaviour, for instance there is a degree of timidity from the Lords based on its unelected basis and the constant threat of reform (Russell, 2013). This might explain their reluctance to make stronger recommendations as well. As the clerks of the Equality Act and Licensing Act Committees were the same, this is an approach that was shared across both committees.

In turn, the clerk of the Equality Act 2010 Committee recommended and the committee agreed that it was worth mentioning in the report things which needed doing that were going to cost money but there wasn't much point in making formal recommendations to the government (Collon, 2017a). In this case although they backed off from making formal recommendations relating to money, they did still raise the issue with the government.

The clerk and chair of the Equality Act 2010 Committee both noted that they tried to focus on recommendations which in their view were going to make a difference but were still practical for the government to implement (Collon, 2017a; Deech, 2017). It could be argued that such an approach is sensible, considering the data in chapter five showed that there was a strong relationship between the acceptance of recommendations and their strength. Linked to this issue, the committee also included in the appendix of the report, recommendations that required legislative changes (Collon, 2017a). This included some changes needing primary legislation but also ones that could be done with secondary legislation (Collon, 2017a). The chair added that recommendations calling for legislative change were just not realistic, so they tried to avoid making them and instead focused upon recommendations that could be carried out by existing agencies and authorities (Deech, 2017).

Such recommendations are likely to be seen as stronger recommendations by the government and are more likely to be rejected because of the time it takes to pass primary legislation. There may be a desire to achieve something rather than nothing (Clerk A, 2017). It perhaps is not worth getting into a fight with the government when you could focus on other less contentious recommendations that can make a difference. However, in terms of taking the government's likely response into account before making a recommendation the clerk noted that if the committee feels that a recommendation needs to be made, regardless of the strength or the government's likely response to it, then they will make such a recommendation. (Collon, 2017a).

The main recommendation that the Licensing Act 2003 Committee made in response various problems was to trial the transfer of licensing powers from licensing committees to local authority planning committees which have more professional training and have a better framework to support staff (Collon, 2017b; McIntosh, 2018). These changes from licensing to planning committees constituted substantial recommendations and would ultimately need primary legislation to make the necessary changes.

In the case of the Licensing Act 2003 Committee the clerk noted that there was no way of getting around the fact that the committee's main recommendation in relation to the licensing committees would need primary legislation. So, this is an example of where a committee concludes that a recommendation is necessary and is going to make it regardless of whether the government is likely to reject it or not. Indeed, he also noted that if you played that strategy, you wouldn't make many recommendations at all and you'd never get anywhere even if changes were desperately needed (Collon, 2017b). Baroness Henig, noted that in one case the committee was so unimpressed by the evidence the minister gave that they were determined to put forward recommendations (Henig, 2018). While it can be argued the Lords can be timid, this is an example of where that timidity should not be taken for granted.

Despite the main recommendation requiring primary legislation, the clerk of the Licensing Act 2003 Committee noted that there are plenty of changes that can be made by secondary legislation, including one change which everyone says requires primary legislation but actually does not and that is applying the Act airside at airports (Collon, 2017b; McIntosh, 2018). Once you have gone through customs at an airport, the Licensing Act does not apply and that is why there is nothing to stop alcohol being sold at six in the morning or midnight, or to people who are already drunk. The committee received evidence of all these things happening (Collon, 2017b). The Act states that the legislation is not enforceable in international airports but the minister must designate airports. There have been 19 designations and the minister could un-designate them tomorrow for the purposes of licensing (Collon, 2017b). There would be a political cost to this, in terms of the potential anger from those who hold licenses and the general public. Therefore, there are recommendations that would not take the government as much time and resources as the main recommendation relating to licensing committees. There were objections from ministers during oral evidence sessions about the cost of security clearance for inspectors, which the committee took with a large pinch of salt because of the hundreds of staff at airports who will also have had to go through security clearance procedures (Collon, 2017b). The committee expected push back on this recommendation as well.

In terms of the Equality Act 2010 Committee, it also made recommendations that in terms of action required, should not have been too strenuous for the government. The clerk noted that the inquiry found that there were provisions on disability which have not been brought into force (Collon, 2017a). This was not just five years on from the passing of the act, as some of those provisions were taken into the Equality Act from the Disability Discrimination Act 1995 and as such they had been sitting on the statue books for twenty years without being brought into force (Collon, 2017a). This is an important example, as post-legislative scrutiny is not just about making recommendations to change legislation or policy, it is also about assessing whether the government has actually implemented the legislation properly. This is why post-legislative scrutiny is important and it shows that accountability is an important component in our understanding of post-legislative scrutiny. If parliament is going to spend finite time legislating on many important issues, then surely, they should also take the time to ensure that the government has implemented the laws they are passing.

This particular example was on the issue of the accessibility of taxis for disabled people (Collon, 2017a). When committees are preparing to publish their reports, they send out an embargoed copy of the report to relevant department the day before it is published. At 6 o'clock the same evening that the Department of Transport received their report, it issued a press release saying they were going to bring that provision into force. This is important to highlight as it raises the question of how many other pieces of important legislation on the statue books have provisions that have not come into force, for whatever reason. This example also highlights the government trying to get out in front of a story before it becomes a critical headline. If a story arising out of a post-legislative scrutiny inquiry is likely to be negative then it gives leverage to the committee in terms of getting the government to act. This emphasises comments made by the House of Lords Constitution Committee when stating that parliament's role in legislation should not come to an end with the formal legislative process (House of Lords Select Committee on the Constitution, 2004). There is clearly a need for accountability post-Royal Assent and post-enactment.

One final issue worth touching upon in terms of the development of recommendations and the publication of a report is how committees determine what recommendations to make. The clerk of the Equality Act 2010 Committee noted that most ideas come from the witnesses. The committee asked witnesses if they could name their top ideas that could be done to make life easier for people with disabilities, it was then up to the committee to consider which were the most useful and practical, and ones that they wanted to recommend (Collon, 2017a). Indeed, this is something that Baroness Deech, the chair of the committee noted during her interview (Deech, 2017).

7.6 Response and follow up

Having addressed the development of recommendations and the publication of the report, the next stage in the inquiry process is receiving the government's response to the inquiry. As noted earlier in the chapter, the same rules apply to Lords committees as to Commons committees so responses to committee reports are usually received within 60 days of publication (Rogers & Walters, 2015).

One of the biggest issues with follow up in the Lords is that ad hoc committees dissolve after the publication of their report, so they are not formally constituted when a report is published by the respective government department. While this was covered in detail in the section outlining the Liaison Committee's role in post-legislative scrutiny, this section will deal with how the then former committees dealt with this challenge.

One of the ways they deal with the challenges of follow up is to undertake informal coordination. The clerk of the Equality Act 2010 Committee noted that although the committee ceases to exist, the Members continue to serve in the Lords and retain their interest (Collon, 2017a). When the government's response came in it was circulated to Members by the then former clerk. Although he was no longer clerk of that particular committee, he did still retain his interest in the issue (Collon, 2017a). A meeting was also organised to discuss the response, although it was not a formal committee meeting (Collon, 2017a). There was clearly an informal

process going on here. Although they do not have the powers of the committee at hand, if Members who retain an interest can organise and apply pressure themselves then they might achieve more than if they worked independently. The clerk views the lack of being able to reconvene as a committee following the government's response (and potentially later to follow up) as a major failure of post-legislative scrutiny in the Lords (Collon, 2017a). There is a desire to undertake follow up here. The procedures just do not allow ad hoc committees to do so. Instead they are meeting informally to take issues forward, without the powers of a committee. This process also occurred following the inquiry into the Licensing Act 2003 (Collon, 2017b).

While committees cease to exist after the publication of their report, Members have the ability as individuals to follow up on reports too. One of the recommendations that came from the Equality Act 2010 Committee was for an amendment to be made to the Licensing Act 2003 so that local authorities, when giving licenses for licensed premises, could apply conditions to them in terms of ensuring disabled access. As there happened to be a suitable bill going through in the 2015-2016 session which was making amendments to the Licensing Act, the chair, Baroness Deech, tabled an amendment, which ultimately failed. The chair noted that she was very disappointed that the amendment was rejected and she was particularly disappointed that the Labour Party in the Lords wouldn't vote for it (Deech, 2016). This is a clear example of where committee Members can use their own influence to follow up and try to ensure recommendations are implemented. However, it also shows where this individual influence can fail. One of the benefits of procedure in the House of Lords is that any Member can table an amendment, and all tabled amendments must be considered (something that does not happen in the House of Commons). Although ad hoc committees cease after they report, there are ways for Members to achieve results regardless. This might also explain why the Licensing Act 2003 was suggested as an option for the following session's post-legislative scrutiny ad hoc committee.

In relation to the Licensing Act 2003 Committee, the chair noted that Lord Brooke and Baroness Henig, both members of the committee, had been successful in keeping the pressure on government over the recommendations made (McIntosh,

2018). As with the Equality Act inquiry, there is plenty of scope for individual members to undertake follow up, before or on top of the Liaison Committee's work.

Debates on ad hoc committee reports forms an important route for some limited follow up and to keep up pressure on the government. There is always a debate on ad hoc committee reports and the government's response to the committee's report is the basis of it. Typically, the day after the report is published, the chair will table a motion for the House to take note of the report. However, the debate is not held until the response is published. During the debate committee members can raise points in the light of the government's response. A government minister also should respond. The clerk of the Equality Act 2010 Committee noted that this process doesn't necessarily take you any further forward in terms of getting the government to agree to your recommendations unless you get a commitment from them (Collon, 2017a). Floor time in the House can bring publicity both within and outside the House, but it is questionable how much. While the chair acknowledged that it gave added publicity, she said it didn't really do anything to further the recommendations (Deech, 2017). Additionally, a skilled minister is probably not going to give anything away unless they want to. However, this still amounts to more floor time than House of Commons committees get.

In relation to the Licensing Act 2003 Committee, the publication of the government's response to this inquiry was delayed by the 2017 General Election and was eventually published on the 9th November 2017, six months after the General Election (Collon, 2017b). The clerk also noted that he believed there would be quite a few Members interested in this particular debate (Collon, 2017b). The debate took place on the 20th December 2017 on the penultimate sitting day before the Christmas recess which may have played a role in the lack of enthusiasm (Henig, 2018) as only fourteen Members spoke in the debate (HC Deb 20 Dec 2017, c.2145). The chair of the committee noted that one downside in this debate was that a government whip responded to it rather than a specific departmental minister (McIntosh, 2018). This is one of the downsides of senior ministers, for the most part, being based in the House of Commons.

In defence of debates, the clerk of the Licensing Act 2003 Committee noted that the debate following post-legislative scrutiny of the Inquiries Act 2005 saw the minister face a lot of criticism from very distinguished former Law Lords (Collon, 2017b). Following his reiteration that the government was rejecting certain recommendations and sustained criticism for this, the minister spent considerable time talking to his civil servants trying to find a way out (Collon, 2017b). In the end, he said that the government was prepared to look at this again. While there appeared to be a change in the government's position in terms of going from ruling out action, to looking again at the recommendation, this did concern the clerk as this tends to mean that the issue will be kicked into the long grass (Collon, 2017b). In relation to that inquiry, nothing has happened at the time of writing but the clerk believes something may yet happen as the issue has been taken up by the House of Commons Treasury Committee (Collon, 2017b). The example above of the Inquiries Act debate might provide an example of where the House can apply pressure but it didn't necessarily lead to any substantial change in government policy, at least immediately from the clerk's perspective.

Overall, in terms of the role that the Liaison Committee plays following up priority recommendations, the clerk of the Equality Act 2010 Committee noted that while some formal follow up is better than none, he doesn't think it makes a great difference (Collon, 2017a). The chair of the Liaison Committee writes to the relevant minister and the minister writes back but that is the end of it (Collon, 2017a). It is questionable how effective such a mechanism can be as through writing a single letter is unlikely to apply much pressure on the government to act. The clerk noted that unless the pressure applied to a minister is sufficient then there's nothing much further that can happen, whereas a sessional committee can ask a minister to come back and give evidence. There is clearly some annoyance here in terms of the lack of capacity for ad hoc committees to follow up, on the basis it is not a committee any more, again supporting the expectations made relating to follow up.

There are clearly problems here in relation to following up on committee reports. The problem for the most part is procedural in terms of ad hoc committees dissolving after the publication of their report. However, there is evidence of

former committees taking action into their own hands in terms of informally coordinating action. It is clear that follow up in both Houses leaves a lot of be desired but the difference between the Commons and the Lords, at least in terms of the case studies presented in the thesis, is that in the Lords there is a clear desire to see improvements here. There might be an additional argument here for a dedicated post-legislative scrutiny committee (previously mentioned in chapter 3) which could not only boost the number of Acts receiving post-legislative scrutiny but also provide a boost to follow up activity. We next move on to discuss the impact that these two case study committees have had.

7.7 Overall impact

Generally speaking, impact takes time to appear and this is an important issue to bear in mind when judging the outcome of post-legislative scrutiny or indeed any scrutiny. Post-legislative scrutiny is not like pre-legislative scrutiny where the government will want to introduce a bill shortly after a committee has reported. For post-legislative scrutiny, especially if it is a major exercise that needs primary legislation, it will take years (Collon, 2017a). There are clearly a variety of impacts that committees can have in terms of post-legislative scrutiny.

Baroness Henig, who was a member of the Select Committee on the Licensing Act 2003 noted that the clearest impact to date on this inquiry was that the acceptance of recommendations and more time was needed before the full impact of the inquiry was known (Henig, 2018). The clerk of the committee was interviewed before the government responded to the report however in his interview he defined success as the government accepting the main recommendation of planning committees taking upon the role of licensing but the government rejected it in full (Collon, 2017b). Defining success in these terms would see the inquiry deemed unsuccessful. However, he also picked out the lack of training of licencing committee members, which, as noted above, the government appears willing to move on (Collon, 2017b). It is probably best to describe the success as mixed but the overall impact of the inquiry is not yet known. This is a crude measure of impact but the government accepting recommendations is a low level of impact,

as acceptance does not necessarily mean implementation. Even if a government rejects a recommendation initially, there is a chance it could be implemented later.

There was an impact in terms of the Equality Act 2010 inquiry on the basis that provisions within the Act, originally in the Disability Discrimination Act, were brought into force. It is safe to say that without the inquiry the fact there were provisions relating to the accessibility of taxis that had not been brought into force might not have been discovered and rectified for some time.

There was impact in terms of the Licensing Act 2003 Committee with the government launching a consultation on applying the Act airside. Baronesses McIntosh and Henig noted that this was despite the committee having provided a lot of evidence already. Baroness McIntosh reiterated that legislation is not required to make such changes as was noted earlier in the chapter (McIntosh, 2018). Additionally, she noted positive responses from the government in relation to stopping the serving of drunk people (McIntosh, 2018) and dealing with air rage (Henig, 2018). Progress has also been made on more training for those who sit on local authority licensing committees (McIntosh, 2018). She also noted the willingness of the government to move forward, at least in terms of considering the evidence from Scotland in relation to the minimum pricing of alcohol. While the time for impact since the inquiry has not been long, there has been some positive movement since the publication of the report and only time will tell if such verbal progress equals action on these points. A representative from an interest group which gave evidence to the inquiry noted that they saw the inquiry as a useless exercise except for informing the committee of where they believed the problems with the Act lay (Interest Group A, 2018). So, there appears to be less enthusiasm from the interest group than from the Members and secretariat when it came to the impact of this inquiry. It is, however, in its early days.

One of the other impacts that the Equality Act 2010 Committee had was that during the course of the inquiry one of the themes they touched upon was that Crossrail was being built with a considerable number of stations which were not going to have disabled access (Collon, 2017a). This is something the committee thought was ridiculous and that if they didn't point it out while the platforms were being built,

some would not be fully accessible to disabled people at all (Collon, 2017a). In the end, Transport for London (TfL) said they were working to ensure all the stations are accessible for wheelchairs (Collon, 2017a). It is not clear, as with other inquires, how influential the committee was on its own in achieving these concessions from TfL. It was likely to be one of many voices pressuring TfL. It is probable that most of the organisations highlighting these problems to the committee will have also highlighted them to TfL previously. However, the clerk did note that he felt that this is an example of where the report did make a difference. So, there is impact here in terms of the committee being able to help influence an outside body.

Additionally, another form of impact generated from the Equality Act 2010 inquiry was that there was a lot of interest in the report, particularly from people involved in disability work and from disabled people (Collon, 2017a). For them it was regarded as heartening (Deech, 2017) because it showed that a parliamentary committee supported their view and it adds to the punch that they can pack in terms of calling for changes on a particular issue (Collon, 2017a). The chair described this as 'pushing their issues to the forefront' (Deech, 2017). Terry Riley of the British Deaf Association argued that he was disappointed with the inquiry on the basis that it ruled the Act was sufficient in terms of the use of British Sign Language. There is a way for the committee to make a difference in terms of providing evidence based and moral support to a cause and essentially giving prominence to an issue which might not be in the thoughts of both the public and the government. The clerk noted that such a difference cannot be quantified (Collon, 2017a).

Finally, in terms of the Equality Act 2010 inquiry, the clerk noted that the House of Commons Women and Equalities Committee had agreed to take on board some of their recommendations (Collon, 2017a). The chair noted that she held a discussion with Maria Miller MP, chair of the House of Commons Women and Equalities Committee so they were prepared to seize the opportunity to propose amendments if any bills came through that were relevant (Deech, 2017). It is encouraging that there is co-operation between the two Houses in this case, as the level of co-operation between them is usually limited. This is also an important boost for the report into the Equality Act on the basis that the ad hoc committee ceased to exist,

so there was at least one parliamentary committee that could continue their work and follow up on specific issues. There is potentially an argument to be made that until changes can be made to allow ad hoc committees to re-convene, they should seek co-operation from Commons committees in terms of pushing their recommendations.

There is therefore a variety of impacts that a committee can have following the undertaking of post-legislative scrutiny, from the acceptance of recommendations to liaising with other committees to push your recommendations. There is also untapped potential in terms of impact due to procedures in the Lords and if ad hoc committees were able to reconvene there would be additional avenues to achieve impact. This is not likely to be something that the government would welcome based upon parliamentary reform literature.

7.8 Conclusion

This chapter has addressed post-legislative scrutiny in the House of Lords. First, it noted the vital role that the House of Lords Liaison Committee plays in the undertaking post-legislative scrutiny. Its role is important not just in selecting the legislation that will receive review, and appointing the committee but it also plays an important role in the follow up of these inquiries in the House of Lords, due to ad hoc committees dissolving once a report has been published. However, the chapter noted some of the challenges that committees in the House of Lords face. For example, while it does provide the only follow up likely at the moment in the Lords, it is limited to written follow up only. Changes could be made to make the process run more smoothly, such as allowing ad hoc committees to reconvene after a report has been published, and perhaps a year later for follow up.

In relation to the case studies, the chapter looked at two different Acts, distinct in terms of their selection and focus, and different in terms of the recommendations they produced. Regarding the selection and focus of the inquiries there was similarity in terms of the Liaison Committee selecting the legislation but there were differences in terms of the remit of each committee. The Liaison Committee

had placed a narrow remit on the Equality Act Committee due to the size and scope of the Equality Act. On the other hand, the Licensing Act Committee was able to determine its own agenda. There was a general agreement that memoranda are beneficial, especially in helping committees to plan their inquiries and to get an overview of the government's position. However, there were differences in how they were scrutinised, with the Licensing Committee requesting additional supplementary written evidence from the government and going on to question ministers and officials on the contents of their memoranda. There also appears to be a challenge with the timing of such memoranda, as committees must request their own (different to the Commons) and perhaps the Liaison Committee should consider announcing the next session's inquiries, or at least post-legislative inquiries, earlier

In terms of the selection of witnesses and the role of evidence, there was an important use in both inquiries of specialist advisors. This is particularly important for ad hoc committees as the secretariat teams only come together for one inquiry and as such do not have the opportunity to build up the expertise that committee secretariats do in sessional committees. Again, the processes through which advisors are appointed is important and it appears, at least in the case of the Licensing Act Committee, that there was some sort of systematic process for their appointment. The importance of written evidence was also raised in both inquiries, on the basis that a) it helps to locate potential witnesses for oral evidence and b) it provides an important access point for all, especially as time is limited and committees cannot hear from everyone in person. Regarding the development of recommendations there was agreement that committees should shy away from making recommendations with large financial implications or which would require primary legislation because the government will likely reject them. The focus instead should be on producing practical recommendations that could be implemented and make a difference to those affected, unless a good case can be made for making such recommendations, for example with the Licensing Act inquiry and the abolition of licensing committees. There was also evidence from both inquiries showing the worth of post-legislative scrutiny in terms of shining a light on areas of legislation that have not been implemented and also on parts of

Act which are not working. Without these post-legislative scrutiny inquiries, it is possible these problems would not have made their way onto the political agenda. The chapter showed there was a variety of impacts that committees can have following to post-legislative scrutiny.

Chapter 8 Conclusion

This chapter draws the conclusions of this thesis together. It begins by providing a summary of the key findings in each chapter. It then identifies recommendations that follow from these findings as well as the further research that is necessary. The chapter then addresses the contributions the thesis has made in more detail.

8.1 Summary

This thesis set out with the aim of providing a detailed assessment of the extent and the outcomes of the post-legislative scrutiny undertaken by committees in the UK Parliament.

The following research questions were answered to achieve this aim. The summary of key findings will address each question in turn.

1. How extensively has post-legislative scrutiny been undertaken by committees in the UK Parliament
    a. How frequently has post-legislative scrutiny been undertaken in the 2005-10 and 2015-2017 Parliaments?
    b. Are there patterns regarding which committees undertake such scrutiny?
    c. What are the characteristics of the legislation reviewed by post-legislative scrutiny?
2. What recommendations have arisen from post-legislative scrutiny inquiries and how frequently have they been accepted by the UK Government?
3. What has the experience been of committees undertaking post-legislative scrutiny in the UK Parliament?

8.2 Key findings and conclusions

This section provides a summary of the key findings and conclusions contained in this thesis. **Chapter three** answered questions 1a and 1b (how frequently has post-legislative scrutiny been undertaken in the 2005-10 and 2015-2017 Parliaments; are there patterns regarding which committees undertake such scrutiny?). It was concluded that post-legislative scrutiny is not particularly extensive. It found that in total there were 20 full formal post-legislative scrutiny inquiries. All but one of these involved the review of single Acts. This wasn't unexpected. Inquiries are often triggered by a government memoranda (43% of House of Commons inquiries) and focus upon the problems and issues in one Act of Parliament. The chapter also discovered that only one of the Acts has been formally scrutinised more than once. This suggests that, generally, inquiries are not overlapping or repeating scrutiny already undertaken by another committee. This is important as post-legislative scrutiny is not a priority, therefore it is encouraging that there is limited overlap in this area.

In terms of informal post-legislative scrutiny the chapter discovered that this has taken place more frequently than formal post-legislative scrutiny (37 times). This chapter also found that a number of committees, which had not undertaken formal post-legislative scrutiny, had undertaken the informal type. Informal post-legislative scrutiny allows committees to undertake scrutiny without committing the time or the resources required for a formal inquiry. Post-legislative scrutiny is therefore perhaps more extensive than it first appears.

However, there are problems with informal post-legislative scrutiny. There is a risk that informal post-legislative scrutiny becomes a box ticking exercise without engaging fully with the aims and focus of post-legislative scrutiny. This is because informal post-legislative scrutiny is often not apparent until a committee is reporting back to the House of Commons Liaison Committee on which core tasks it has met.

The chapter also found that the most active committees undertaking formal post-legislative scrutiny were: Justice; Environment, Food and Rural Affairs; and Culture, Media, and Sport in the House of Commons. These committees account

for eight out of thirteen inquiries in the House of Commons. It can be concluded that post-legislative scrutiny is currently limited to specific committees. The most active in terms of informal post-legislative scrutiny were Culture, Media and Sport and Home Affairs in the House of Commons, in addition to the Joint Committee on Human Rights.

Chapter four, contributed to answering of question 1c (what are the characteristics of the legislation reviewed by post-legislative scrutiny?). There is currently a bias in the selection of legislation for post-legislative scrutiny. Previous Labour Governments have been most likely to have their legislation reviewed under the new systematic approach to post-legislative scrutiny. This can be explained in part because the current system started under the 2005-2010 Labour Government and by 2010 there was an entire parliament's worth of legislation to review. However it was also noted that there is a lack of review taking place on the legislation from the 2010-2015 Coalition Government which is now within the recommended time frame for departmental review and thus post-legislative scrutiny by committee.

It was also concluded that post-legislative scrutiny is addressing some contentious legislation. This chapter found that the majority of legislation that has received formal post-legislative scrutiny so far, have had a degree of contentiousness in terms of a division either being called at second and third reading or a rebellion at these stages. This is encouraging as there is an incentive for governments to protect contentious proposals from amendment and detailed scrutiny during the legislative process. Such legislation is arguably more likely to warrant post-legislative scrutiny.

The chapter also addressed the depth of scrutiny that the legislation received during the legislative process. It found varying degrees of success in terms of amendment acceptance in the House of Lords and the time legislation spends in committee in the House of Commons. Finally, the chapter also addressed a gap in post-legislative scrutiny and shed light on some of the reasons why committees are not undertaking this work. These included unexpected events and Member turnover impacting upon committee work programmes. From this it can be

concluded that there are legitimate reasons for why some committees may struggle to identify suitable legislation and undertake post-legislative scrutiny.

Chapter five contributed to answering research question two (what recommendations have arisen from post-legislative scrutiny inquiries and how frequently have they been accepted by the UK Government?). It found that the most frequent recommendation from formal post-legislative scrutiny is a change in policy or practice, with 39% of recommendations calling for such action. The research also found that although only 79 recommendations out of 504 called for action related to the legislation and its implementation (16%). However, this is 12% more than Benton and Russell (2013) found in their study, which included seven committees across all their functions.

The chapter also considered the strength of action that committees call for in their recommendations. It can be concluded that committees produce weaker recommendations that require less effort on the government's behalf. The data showed that 41% of recommendations stemming from formal post-legislative scrutiny inquiries called for little or no action on behalf of the government. This is a similar proportion to what Benton and Russell (2013) found in their study (40%). The research therefore showed that committees tend to focus their recommendations on calling for small and medium action. This confirmed the arguments of both Aldons (2000) and Benton & Russell (2013) that committees produce recommendations which are weaker so the government is more likely to accept more of them. This is a strategy that appears to be supported by other findings from the research.

The chapter also concluded that post-legislative scrutiny has some impact in relation to acceptance of recommendations. The data showed that 39% of recommendations were accepted (either in full or in part). This can be explained by the fact that the majority of recommendations called for small or medium action. Again this was a similar proportion to Benton and Russell's findings (40%). This might suggest that post-legislative scrutiny does not operate completely differently to other committee outputs, both in terms of the strength and

acceptance of recommendations. However, impact is more complicated than just accepting recommendations.

It was also concluded that governments are more likely to reject recommendations calling for stronger action. The ordinal logistic regression analysis for government acceptance suggested that there is a high probability of a relationship between the strength and acceptance of recommendations. The directionality of this variable meant that stronger recommendations are more likely to be rejected than accepted. This is in line with what was hypothesised and this finding was also in line with the findings of Benton & Russell (2013) in their study on the impact of parliamentary oversight committees. This finding could also suggest that if committees do deploy a strategy as suggested by Aldons (2000) and Benton & Russell (2013), then they are perhaps not completely wrong to do so on the basis that the analysis shows that stronger recommendations are more likely to be rejected.

Chapters six and seven answered research question three (what has the experience parliamentary committees have had when undertaking post-legislative scrutiny?). In **Chapter six** it was concluded that memoranda play an important role in the operation of the new systematic approach to post-legislative scrutiny in the House of Commons. For two of the case studies (Freedom of Information and Mental Health) the memoranda operated as a catalyst for undertaking the inquiry. However, there were other reasons as to why the inquiries were undertaken; these included interest from the media and government in terms of Freedom of Information, and the lack of scrutiny generally in terms of Mental Health. Although the Gambling inquiry was not triggered by a memorandum, it did provide a useful launch pad in terms of discovering potentially where some of the problems were; this was true for the other two case studies as well.

It was also concluded that the House of Commons has a problem with following up on committee inquiries. Case studies showed that, if committees do follow up, then they use convenient methods rather than undertaking a full follow up inquiry, with the Mental Health inquiry following up through written correspondence and the Gambling inquiry following up through annual oral evidence sessions. This

makes sense given the time and resource pressures on House of Commons committees. However this does raise the question of how the potential impact of inquiries is being affected, as committees cannot force action, they can only persuade. There was no follow up to the Freedom of Information inquiry as the government took no action, so follow-up was deemed unnecessary.

Finally, it was concluded that impact is varied and is more complex than just accepting recommendations. The impact of these post-legislative scrutiny inquiries varied. For the Gambling inquiry, the main impact was to focus government upon online gambling in a way it had not before. This helped to put the issue onto the government's agenda and led to some of the problems highlighted by the committee being addressed. In terms of the Freedom of Information inquiry, the main impact was that the government did not weaken freedom of information provisions. The Mental Health inquiry on the other hand had impact in terms of putting mental health on to the parliamentary agenda, with additional inquiries being undertaken as a result of the post-legislative scrutiny. Although subsequent inquiries only related slightly to the original post-legislative scrutiny inquiry, it was recognised that they would not have happened without the original.

Chapter seven noted the vital role that the House of Lords Liaison Committee plays. The House of Lords Liaison Committee has made a positive contribution to the undertaking of post-legislative scrutiny but challenges remain in terms of realising the full potential for impact. Its role is important in selecting the legislation that will receive review, and appointing the committee. It also plays an important role in the follow up of these inquiries in the House of Lords, due to ad hoc committees dissolving once a report has been published.

However, the chapter noted some of the challenges that committees in the House of Lords face. For example there is no single source of post-legislative scrutiny inquiries or government memoranda that the Liaison Committee can draw upon, and as a result it often has to rely upon dated briefing notes and Google. This is suboptimal. Indeed the process of follow up is not without challenges either. The only follow up likely at the moment in the Lords it is limited to written follow up.

Additionally the selection criteria used creates an incentive to undertake a particular type of post-legislative scrutiny inquiry, namely one that fits the nine-month window. This raises questions about what other Acts are not receiving post-legislative scrutiny because of the selection criteria. This suggests that there is also a post-legislative scrutiny gap in the House of Lords.

The two case studies looked at different Acts. These were distinct in terms of their selection and focus, and the recommendations they produced. Regarding the selection and focus of the inquiries there was similarity in terms of the Liaison Committee selecting the legislation but there were differences in terms of the remit of each committee. The Liaison Committee placed a narrow remit on the Equality Act Committee due to the size and scope of the Equality Act. This proved an appropriate decision according to the clerks of both the Liaison Committee and the Equality Act Committee. On the other hand, the Licensing Act Committee was able to determine its own agenda as the Act was more contained in comparison to the broad focus of the Equality Act. In terms of comparing the committee's views on memoranda, there was a general agreement that such memoranda are beneficial, especially in helping committees to plan inquiries and to get an overview of the government's position. This supports the conclusion made in chapter six.

Regarding the development of recommendations there was agreement that committees should shy away from making recommendations with large financial implications or which would require primary legislation because the government will likely reject them. The focus instead should be on producing practical recommendations that could be implemented and make a difference to those affected. There was also evidence from both inquiries showing the worth of post-legislative scrutiny in terms of shining a light on areas of legislation that have not been implemented and also on parts of Act which are not working. Without these post-legislative scrutiny inquiries, it is possible that these problems would not have made their way onto the political agenda. Indeed the chapter showed there were a variety of impacts that committees can have in relation to post-legislative scrutiny.

8.3 Recommendations

Several implications flow from these findings. There are a number of issues that nevertheless need to be borne in mind when making recommendations. The first is that additional action usually comes at a cost, either financially or through time. The second issue is that of feasibility. The approach taken in the development of these recommendations has been for them to be realistic based upon how parliament operates and to avoid a drain on already scarce resources. As the literature on parliamentary reform notes, evolutionary change is more likely to succeed than revolutionary change (Pierson, 1996). As such the recommendations presented in this section are designed to be compatible with, for the most part, the former. They are arranged based upon their expected cost implications.

8.3.1 Low cost

The House of Lords Liaison Committee should require that copies of government post-legislative review memoranda, which are currently sent to departmental select committees in the House of Commons, are also copied to the committee. There would be no financial cost incurred from this recommendation.

The House of Commons Liaison Committee should play a more active role in ensuring committees are meeting their core tasks, including post-legislative scrutiny. One of the implications of this research is that post-legislative scrutiny is not systematic. Such a recommendation might improve this. Although the independence of committees is important, core tasks have been developed for a reason. There should be an expectation that core tasks are undertaken at least once during the duration of a parliament (although there may be challenges with early general elections). At the very least committees should account for the work they undertake in relation to the core tasks. The Liaison Committee in the 2010-2015 Parliament is an example of a more proactive committee, in which its chairman Alan Beith emphasised the importance of the

core tasks. This recommendation does not necessarily incur a financial cost but it does require the committee to alter its approach.

The Committee Office in the House of Commons should review the deal struck between it and the Cabinet Office in relation to post-legislative scrutiny. It is 10 years since the new memoranda process was formally launched and it was done without an understanding of how committees undertake post-legislative scrutiny. This review should consider a standardised formula for what should be included in government-produced memoranda and whether the timeframe used (three to five years after Royal Assent) is appropriate. Many of those interviewed argued that three years after Royal Assent was too short a time given that Royal Assent does not mean enactment. This has implications for post-legislative scrutiny. If government departments are reviewing legislation too early, they may not find problems with the legislation and such problems may develop later outside of the current timeframe. This could result in later issues not being brought to a committee's attention and that dysfunctional legislation is not addressed.

There should be a review of committee guidance on post-legislative scrutiny. Lord Beith suggested that a proper framework for the undertaking of post-legislative scrutiny would be useful. It was suggested that the framework should contain details of what to focus on, including examining what the bill was for; whether the Act achieved its aims and whether there were other effects, especially unintended or unpredicted effects. There should also be guidance on who to take evidence from including those; who are affected by the Act, who have to administer the Act, who benefited from the Act and who should have benefited from it but did not. Assembling such information, he said, would have many benefits, including helping to determine whether changes to an Act are needed. It would also act as a reminder to legislators of the pitfalls of badly considered and over ambitious legislation. One of the implications of this research is that post-legislative scrutiny is not particularly extensive and improved guidance for committees would be useful especially for new clerks and committees at the start of a parliament. In addition to this, if guidance is updated, **Erskine May should also be updated to expand its current section on post-legislative scrutiny**

and provide more detail about its operation. Again these recommendations do not have to come with a financial cost. The next edition of Erskine May could easily be updated and a review does not necessarily require additional staff to undertake it.

There should be improved training for MPs who are elected to serve on committees which includes education on the core tasks of departmental select committees. One of the conclusions of this research was that Members' interest in post-legislative scrutiny is limited and this has implications for the uptake of post-legislative scrutiny. Making Members more aware of the impact of legislation might help to make it more engaging. Additionally, being able to provide examples of where post-legislative scrutiny is tied to current live policy questions would help in terms of improving Member engagement. This recommendation may incur a financial cost, although it should not be a major one as it could be modelled upon the training new MPs receive when they first take their seats in the House.

The House of Lords Liaison Committee should trial making decisions on what post-legislative scrutiny committee(s) it is going to establish earlier. This is so necessary documents can be requested and received from government departments in a timely manner**.** While it was generally believed that government post-legislative memoranda, prepared at the request of an ad hoc committee, are useful especially in helping committees to plan their inquiries and to get an overview of the government's position. The main issue appears to be the time it takes for such memoranda to arrive after being requested. This has implications for the start of inquiries and it was noted that it would be useful if committees received such memorandum before the call for evidence is sent out. Therefore there may be a need to view post-legislative scrutiny committees in a different light to the other ad hoc ones based upon the time it takes to set up the committees on top of the time it takes to request and receive an updated memorandum from the relevant government department. This recommendation should not come with a financial cost, as it requires the committee to go through the process of selecting legislation slightly earlier than at present.

The House of Lords Liaison Committee should consider the timeframe it utilises for the undertaking of post-legislative scrutiny and consider scrutinising legislation that is currently deemed to be politically contentious. The basis for this recommendation comes from the fact that very few Acts passed by the 2010-2015 Coalition Government have been reviewed. The implications are that there is a bias in the selection of legislation and it is having an impact upon systematic scrutiny. If the Lords' role is to add value and complement the scrutiny of the House of Commons then it should be willing to fill a gap in such scrutiny. While such legislation might be seen as politically contentious (given the largest party of the coalition is still in office) that should not disqualify their legislation from post-legislative scrutiny. While the House of Lords does take a longer term view of most scrutiny work it undertakes, greater flexibility would allow for a greater coverage of scrutiny in this area. This lack of scrutiny in relation to the 2010-2015 Coalition Government's legislation is a problem. This recommendation does not incur a financial cost.

8.3.2 Medium cost

There should be a central repository of post-legislative memoranda hosted by the government. This recommendation is developed from the findings in chapter seven. This found that the House of Lords Liaison Committee was resorting to Google searches to find memos. This is not a suitable way for a legislature to find out what has and has not been done and could easily mean legislation is missed from potential scrutiny. A central repository should be introduced where post-legislative review memoranda can be placed and where all committees who undertake post-legislative scrutiny can access them. With the primacy of the House of Commons, departmental select committees should have 'first refusal' when it comes to undertaking scrutiny on such memoranda. After that the House of Lords should have access to them when deciding what ad hoc committees to appoint. Such a repository would allow for greater post-legislative coordination between the two Houses, and ensure better coverage of inquiries. This recommendation need not incur a financial cost if civil servants or

parliamentary staff upload documents to an existing website, such as a dedicated space on GOV.UK.

The central repository for post-legislative review memoranda should be made publicly available so outside bodies can also send their own memoranda to committees on how Acts are working from their perspective. Improving the visibility of government memoranda could help to improve access to information for committees and help them to determine whether post-legislative scrutiny is necessary.

The House of Lords Liaison Committee should consider reconvening ad hoc committees one year after the government responds to inquiries. One of the conclusions of this research was the limited ability for ad hoc committees in the Lords to follow up. This has implications for the impact of these inquiries and ultimately upon accountability. It was also noted that former committee and secretariat members are meeting informally after a government response is received. One clerk noted that they circulated the government's response to Members and that although they were no longer clerk of that particular committee they did still retain an interest in the issue. So there is clearly an informal process, without the full powers of a committee. While it is positive that Members can organise and apply pressure themselves, the inability to reconvene as a committee following the government's response (and potentially later to follow up) is a major failure of post-legislative scrutiny in the Lords. It has been suggested that committees should be reconvened around one year after the government responds to a report. This recommendation is likely to come with a financial cost as all clerks are reassigned to other committees once their former committee has completed its work. However as a result of the UK leaving the EU there may be an argument to reduce the number of sub-committees to the Lords European Union Committee, potentially increasing the pool of available House staff.

The House of Lords should consider appointing both short and long term (full session) ad hoc committees. The current appointment process, as was noted in chapter seven, might lend itself to a particular type of post-legislative

scrutiny, and this has implications for the selection of legislation. The challenge here is that not all Acts will require the same length/level of scrutiny; some may take less than nine month and some may take more. For example the Equality Act inquiry was limited in its remit to only the disability elements because it was believed that it was not possible to scrutinise the whole Act in nine months. However this excluded other elements of the Act relating to gender and sexuality from post-legislative scrutiny. There is also a need for flexibility so that the Lords can respond to issues that arise during the course of a session. While the House of Commons might be expected to pick up anything urgent, with a lack of Member interest, such issues might go unresolved. There would be cost implications of this recommendation, as the pool of available House staff is currently limited with committee staff from ad hoc committees being reassigned after the former committee has reported. However as noted earlier, a reduction of EU sub-committees following the UK's departure from the EU could increase the pool of available staff.

8.3.3 High cost

The House of Lords and House of Commons should consider the introduction of either a Joint Committee on post-legislative scrutiny or the creation of a dedicated post-legislative scrutiny committee in the House of Lords. This final recommendation is a long-term one and one which represents a shift away from evolutionary change. However it is worth raising the prospect of a dedicated post-legislative scrutiny committee as scrutiny is currently unlikely to become systematic. The government approach to post-legislative scrutiny might be systematic with a departmental review three to five years after Royal Assent but the approach in parliament is not systematic. The creation of a dedicated committee with a well-defined remit could make progress in achieving systematic post-legislative scrutiny. Whether that committee is joint or a sessional committee in the Lords, it would not absolve the House of Commons in its duty to continue undertaking post-legislative scrutiny as a core task. A joint committee or sessional Lords committee should take up a sifting role in terms of assessing what Acts have

received departmental review and which might be in need of post-legislative scrutiny. Whichever committee is appointed should also have the power to create two or three sub-committees to undertake post-legislative scrutiny on selected Acts. In addition to these roles, a dedicated post-legislative scrutiny committee should undertake detailed follow up on the reports that the sub-committees undertake, in order to ensure post-legislative scrutiny achieves maximum impact.

8.4 Contribution

In answering the research questions, this thesis has made a range of contributions.

It has contributed to the conceptual understanding of scrutiny, accountability and responsibility and how these concepts interact with each other and how they impact upon post-legislative scrutiny. The thesis has also developed a typology of scrutiny based upon this conceptual analysis. This contribution is important as parliamentary committees, especially those in the House of Commons, engage with these concepts on a daily basis. Any enhancement in our understanding of these concepts ultimately will aid the understanding of how committees operate and the relationship between them and the government.

This thesis has also contributed to the literature on the impact of parliamentary committees, in particular by extending the research of Hawes, (1992); Hindmoor, Larkin, & Kennon, (2009); Monk, (2012); Russell & Benton, (2011); Tolley, (2009) to a particular type of scrutiny rather than addressing impact overall or by specific committees. The findings of this study were closely aligned with the findings of Benton & Russell (2013) both in the strength and acceptance of recommendations. It contributed by showing that to some extent post-legislative scrutiny doesn't appear to be too different in comparison to other inquires when it comes to recommendations and acceptance. This suggests that government and parliament perhaps do not treat the output of such scrutiny differently to other inquiries.

Additionally, this thesis has contributed to the literature on post-legislative scrutiny which is currently limited. This thesis is the first systematic assessment of post-legislative scrutiny in the UK Parliament and perhaps of post-legislative

scrutiny more broadly. It has made a contribution to the literature not just in terms of developing an understanding of post-legislative scrutiny, but also in assessing a specific way of undertaking post-legislative scrutiny. There is also a contribution to the comparative study of post-legislative scrutiny, as this thesis has assessed one particular system and way of undertaking post-legislative scrutiny. It therefore provides a benchmark on which to assess other systems.

There is a contribution also to the literature on the legislative process and the quality of that legislation. As the majority of post-legislative scrutiny inquiries have concluded that the Acts reviewed have been operating as intended, this suggests that the poor quality of the legislative process and the poor quality of legislation could be over exaggerated. There could also be a problem of selection here. However in nineteen out of 20 acts to be formally scrutinised, the conclusions drawn from the inquiries indicated that the legislation is mostly operating as intended, it suggests the problem is not as extensive as some would have us believe. This could be explained by the increase in resources for legislative drafters (Greenberg, 2015; Norton, 2013), the willingness of the House of Lords to press for amendments (Norton, 2013; Russell, 2013), and there being more influence in the legislative process than first thought (Russell et al., 2015; Thompson, 2015). An alternative explanation for this phenomenon is that committees are producing weaker recommendations in order to get more of them accepted by the government.

This thesis has also contributed to the knowledge of the behaviour of committees in the UK Parliament in terms of how they undertake inquiries and develop recommendations. In particular, it contributes to our knowledge of the behaviour of committees in relation to the development of recommendations and the relationship between the government and committees. Additionally, this thesis has contributed to the knowledge of post-legislative scrutiny as a function of parliamentary committees and how committees deal with such scrutiny. This is an important contribution as it reveals the likelihood of committees continuing to undertake such scrutiny. Indeed the research found that all those interviewed (both Members and officials) were broadly supportive of the process and thought

that post-legislative scrutiny should become more frequent. However the challenge is finding ways to do so.

There is also a contribution to be made to the literature on the differences between both Houses of the UK Parliament. Despite there being differences in the way both Houses operate, the findings in chapter five showed the two Houses producing recommendations that were very similar in terms of their strength.

There were also practical contributions to this research. It provided a detailed assessment of the procedures utilised in the UK Parliament to the benefit of other legislatures in the process of formalising post-legislative scrutiny into their procedures. This links to the contribution to the comparative study of post-legislative scrutiny. As legislatures around the world begin to introduce more systematic procedures to undertake post-legislative scrutiny, the findings of this study will be of use to those deciding whether or not the UK system is something worth replicating. This has the potential to impact upon the rollout of post-legislative scrutiny in other legislatures. Finally, it also provides a detailed assessment for the UK Parliament in terms of the procedures it utilises to undertake post-legislative scrutiny and offers recommendations to improve such scrutiny. This is an important practical contribution. Before this study, the vast majority of the data included within it had not been collected before. There was no consolidated list of inquiries, making it harder to see what had and had not been scrutinised. There was also no aggregate indication of what committees were recommending and whether or not they were being accepted. This study has contributed to parliament's understanding of its own procedures and outlines what changes could be made to improve the process.

8.5 Implications and further research

This thesis has reported findings from exploratory research into the operation of post-legislative scrutiny in the UK Parliament. It has provided a snapshot of how post-legislative scrutiny is undertaken, with what frequency and with what consequence, in both Houses of Parliament. However it has also raised a number

of questions and implications for the academic study of the UK Parliament and also for the future operation of post-legislative scrutiny, not just in the UK but in other legislatures too.

It is clear from the research that our knowledge of post-legislative scrutiny is incomplete. This was not unexpected as this research forms one of the first academic studies of post-legislative scrutiny. While the research focused upon formal post-legislative scrutiny it also began to uncover a more informal style of post-legislative scrutiny that select committees in the House of Commons were undertaking. This research in relation to informal post-legislative scrutiny provides the first steps into trying to locate such scrutiny. Additional research in this area is important for a number of reasons, firstly because post-legislative scrutiny is more extensive than is perhaps conventionally thought and there is a lack of knowledge on how best to locate this scrutiny. Secondly, the lack of understanding of informal post-legislative scrutiny has implications for those undertaking it. Additional research could lead to parliamentary committees developing processes to better identify when they are undertaking post-legislative scrutiny and improve its quality. Additional research could also assist in building upon the definition of informal post-legislative scrutiny utilised in this thesis and ultimately improve its conceptualisation.

This research has focused solely on the parliamentary side of post-legislative scrutiny in the UK. Again, this reinforces the point that our knowledge of post-legislative scrutiny is not yet complete. The government's role in the production of memoranda is unstudied. As the government plays a role in the initiation of post-legislative scrutiny, at least in the House of Commons, further research is necessary into the full role that the government plays. In particular it is will be important to study how departments develop memoranda and how many are presented to select committees within the required timeframes (especially as they often trigger committee inquiries). It will also be important to assess how government departments react to post-legislative scrutiny reports and develop their responses to them. This will be vital in developing a broader view of the process and would recognise that not all responsibility lies with the legislature with regards to post-legislative scrutiny. Indeed in a parliamentary system in which the executive

initiates the vast majority of legislation, the legislature is not the sole actor in the legislative process.

Furthermore, our knowledge of post-legislative scrutiny remains incomplete as this research is solely UK-focused. This research has just focused upon one way of undertaking post-legislative scrutiny, the UK approach. In order to fully appreciate what is the most appropriate and impactful way to undertake post-legislative scrutiny it is necessary to research how it is undertaken in other legislatures around the world. It will be of particular importance for the continued development of post-legislative scrutiny to assess how such scrutiny is undertaken in other parliamentary systems in order to locate best practice for the benefit of all legislatures, not just the UK Parliament. Although post-legislative scrutiny is becoming more widespread, it is still in its infancy and to ensure its continued development as a tool to improve the quality of legislation and also to hold governments to account for the implementation of legislation, additional research is necessary.

One of the other implications to flow from this research has been that 19 out of the 20 Acts to have received post-legislative scrutiny between 2008 and 2017 have essentially been given 'a clean bill of health' and are operating as intended. This does not match the expectations from the literature on the legislative process and the quality of the legislation that this process produces. Indeed this literature is noted in the introductory chapter and states that the legislative process is a flawed one which produces flawed legislation. At least from this research's perspective this does not appear to be the case. The first interpretation of this finding is that potentially the academic literature is overstating the challenges with the legislative process, which academics such as Thompson (2013; 2015), Russell, Gover, & Wollter (2015) and Russell & Cowley (2016) have noted in their own research. However these academics did not suggest that the legislative process was perfect, only that the executive was not as dominant as is often assumed and that public bill committees in the House of Commons have more influence over amendments than conventional wisdom suggests. The second interpretation is that there is a problem with the selection of Acts which receive post-legislative scrutiny. Considering the findings of this research point to how partisan this process can be when it comes

to the selection of legislation, it is not unreasonable to suggest that the problem is most likely with the selection of legislation. That being said, there is scope for further research into both of these implications in order to discover what is occurring.

One of the other implications of this research has is the impact that specialist advisors have on committees as well as the inquiries that they undertake, not just in relation to post-legislative scrutiny. Chapter six highlighted potential pitfalls in the use of specialist advisors, due to them having their own agendas and their own biases. This has implications for committee independence and direction. The role of committee specialist advisors warrants attention, especially from those interested in the behaviour of committees and in the impact that committees have. Such research could have an important impact on the way they are appointed and the influence that they have on committees.

There is a further implication that is worth reflecting upon and this touches upon the point raised about partisanship. In the introductory chapter the thesis noted how the Law Commission (2006) warned against issues that could limit post-legislative scrutiny and the commission focused upon ensuring this process did not become overtly partisan. It was a noble aim but partisanship is impossible to remove completely, even in a select committee setting. There are partisan interests present in terms of the selection of legislation as well as the development of recommendations. It is therefore clear that this process is not free from partisanship. It raises the question noted by Rogers & Walters (2015) of whether post-legislative scrutiny is best served by being undertaken by parliament. This thesis has, however, shed light on this particular dilemma and although the assessment of the impact of legislation is a political judgement, which is best made by parliament, further thought and work is needed to ensure that post-legislative scrutiny is not just a tick box exercise and can bring about the change envisaged by the Law Commission (2006). Although the literature on the legislative process may overstate how poor the quality of legislation is, the truth is no government or legislative draftsman is perfect and no one can see into the future to see what impact a particular piece of legislation will have. As such post-legislative scrutiny will remain an important mechanism to locate and deal with flaws in Acts of

Parliament. It is therefore worth engaging with these challenges to ensure it is as impactful as possible.

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Appendices

Appendix 1: Direction of Recommendations – formal post-legislative scrutiny

Direction	No.	%
Local Government	20	4
Parliament	3	1
Other (universities/police)	8	2
Professional bodies (regulators/representative bodies)	11	2
Central Government	357	78
Executive agencies	48	11
Both Central Government + Executive Agency	8	2
Central Government + Other	2	0
Total	457	100

Appendix 2: Strength of Recommendations – formal post-legislative scrutiny

Strength	**No**	**%**
No Action	11	3
Small Action	194	38
Lower Medium Action	86	17
Mid-range Action	158	31
Upper Medium Action	48	10
Large Action	7	1
Total	504	100

Appendix 3: Acceptance of Recommendations – formal post-legislative scrutiny

Acceptance	**No**	**%**
No Response	52	10
Rejected outright	131	26
Rejected in part	51	10
Neither accepted nor rejected	74	15
Accepted in part	63	13
Accepted outright	133	26
Total	504	100

Appendix 4: Strength of Recommendations – informal post-legislative scrutiny

Strength	No	%
No Action	3	2
Small Action	63	47
Lower Medium Action	20	15
Mid-range Action	30	22
Upper Medium Action	16	12
Large Action	2	1
Total	134	100

Appendix 5: Acceptance of Recommendations – informal post-legislative scrutiny

Acceptance	No	%
No Response	4	3
Rejected outright	26	19
Rejected in part	12	9
Neither accepted nor rejected	33	25
Accepted in part	15	11
Accepted outright	44	33
Total	134	100

Appendix 6: Key for Committee abbreviations

Abbreviation	Full Committee Name
Ad hoc (L)	Ad hoc committee
BEIS	Business, Innovation and Industrial Strategy Committee
BIS[34]	Business, Innovation and Skills Committee
CLG	Communities and Local Government Committee
CMS	Culture, Media and Sport Committee
D	Defence Committee
DPRRC (L)	Delegated Powers and Regulatory Reform Committee
EA	Environmental Audit Committee
EFRA	Environment, Food and Rural Affairs Committee
FA	Foreign Affairs Committee
H	Health Committee
HA	Home Affairs Committee
ID	International Development Committee
J	Justice Committee
JCHR	Joint Committee on Human Rights

[34] Now the BEIS Committee

SCAL	Select Committee on Adoption Legislation
SCEAD	Select Committee on the Equality Act 2010 and Disability
SCEL	Select Committee on Extradition Law
SCIA	Select Committee on the Inquiries Act
SCLA	Select Committee on the Licensing Act 2003
SCMCA	Select Committee on the Mental Capacity Act
TI[35]	Trade and Industry Committee
NIA	Northern Ireland Affairs Committee
PA[36]	Public Administration Committee
PACA	Public Administration and Constitutional Affairs Committee
PE	Petitions Committee
WE	Women and Equalities Committee

Appendix 7: Key for departmental abbreviations

Abbreviation	**Full Department Names**
BEIS	Department for Business, Energy and Industrial Strategy
BIS	Department for Business, Innovation and Skills (Old)
CO	Cabinet Office
DCLG	Department for Communities and Local Government
DCMS	Department for Culture, Media and Sport
DCSF	Department for Children, Schools and Families (Old)
DfE	Department for Education
DEFRA	Department for Environment, Food and Rural Affairs
DFCA	Department for Constitutional Affairs (Old)
DFES	Department for Education and Skills (Old)
DFT	Department for Transport
DH	Department of Health
DWP	Department for Work and Pensions
HMT	Her Majesty's Treasury
HO	Home Office
MoJ	Ministry of Justice
WEO	Women and Equalities Office

[35] Now part of the BEIS Committee
[36] Now the PACA Committee