

<b>Institution:</b> University of Hull		
<b>Unit of Assessment:</b> 19 - Politics and International Studies		
<b>Title of case study:</b> Post-legislative scrutiny in the United Kingdom, 2014-2020		
<b>Period when the underpinning research was undertaken:</b> 2000-2020		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b> Prof Lord Norton of Louth	<b>Role(s) (e.g. job title):</b> Professor of Government	<b>Period(s) employed by submitting HEI:</b> 1977 to date
<b>Period when the claimed impact occurred:</b> 2014 to 2020		
<b>Is this case study continued from a case study submitted in 2014?</b> N		
<p><b>1. Summary of the impact</b></p> <p>Lord Norton's research has shifted the UK Parliament from an ad hoc to a holistic process of post-legislative scrutiny (PLS), especially in the House of Lords. The implementation and normalisation of PLS during the current REF period means that Royal Assent is no longer the end of the legislative process. Rather, it is one stage in an iterative process whereby UK legislation is continually review and improved. In particular, Norton's research and advocacy have:</p> <ul style="list-style-type: none"> <li>• <b>Embedded PLS.</b> The PLS process is now not simply words on a page. It is has evolved into a key part of the everyday work of UK Parliament, especially the House of Lords;</li> <li>• <b>Transformed the scrutiny, transparency and quality of law.</b> The quality of UK legislation has improved significantly, due to the far greater scrutiny by Parliament, the Executive and the third sector of the actual effects and hence adequacy of enacted legislation; and</li> <li>• <b>Internationalised PLS.</b> Norton's system of PLS is spreading to other Westminster-based parliaments, thereby promising important improvements in the scrutiny and quality of law (e.g., Indonesia, Lebanon, Montenegro).</li> </ul>		
<p><b>2. Underpinning research</b></p> <p>Lord Norton's REF2014 case study established that since the 1990s his research laid the foundations of the new system of post-legislative scrutiny (PLS) that was introduced at Westminster in 2008. The present REF2021 case study establishes that, building on this impact and using additional research, Norton's research has played key roles in embedding and normalising PLS across and beyond the UK legislative process. Norton's published research on post-legislative scrutiny (PLS) first appeared in the 1990s. The key publications, underpinning this new case study, include academic and Parliamentary publications, notably the Report of the Commission on Strengthening Parliament (the 'Norton Commission'). Together, these publications developed and propagated Norton's conception of PLS in Westminster-based parliamentary systems; recommending that PLS become the norm in Westminster. This represented a fundamental shift from the established practice where Royal Assent was treated as the end of the legislative process.</p> <p>The Norton Report made some 90 recommendations, and fulfilled the Commission's remit 'to examine the cause of the decline in the effectiveness of Parliament in holding the executive to account, and to make proposals for strengthening democratic control over the Government' [R1, p.2]. Norton's chairing of this high-profile Commission led to his appointment in 2001 as the first chair of the House of Lords Constitution Committee [R2]. As chair of this committee, he led the Parliamentary inquiry, conducted the key research and drafted the published report. The resultant 2004 report <i>Parliament and the Legislative Process</i> [R3] was significant for promoting PLS within a holistic re-framing of the legislative process, which he argued would have three key benefits.</p> <p><b>2.1. Embedding scrutiny and transparency through PLS</b></p> <p>Norton's research highlighted the need to <u>embed investigation of the effects of enacted legislation</u> into parliamentary procedure. It also emphasised <u>the need to widely disseminate the results of those investigations</u>, through the publication of reports detailing committees' evidence, reasoning and conclusions. Each report should highlight areas where legislation failed to meet its intended purposes (which should be detailed in the Act's Explanatory Notes [R3, para 176]) or had unintended consequences. As stated in the Norton Report, "Regular scrutiny will determine if Acts have done what they were intended to achieve." [R3, para.170]. PLS should occur either three years after an Act's commencement of the Act or six years after its enactment, "whichever is the sooner." [R3, para.180]</p>		

## 2.2. Securing executive, parliamentary and public review of legislation's effects

Norton's research argued that PLS should hold the government to account, ensuring *"that those who are meant to be implementing the measures are, in fact, implementing them and in the way intended."* [R3, para.170] Moreover, Government should be required to respond publicly to the reports' various conclusions, reasoning and evidence [R4]. This would tend to *"impose much greater discipline on Government...[Ministers] may engage in greater circumspection if they knew that in future the measure of their success was not so much getting a measure on to the statute book as the effect that it had."* [R3, para.171] Parliament should consult with the public [R3, para.185], debate the reports' conclusions, enriching knowledge bases and discussion within civil society organisations and the wider population [R5, R6].

## 2.3. Improving law, policy and practice

Norton recommended that this scrutiny should set in motion amendments to the legislation and other corrective actions, to ensure that legislation was having the effects intended by Parliament. As he noted, PLS is important because *"Citizens...need a body that can ensure that their voice is heard by government when they have a grievance, be it about the impact of a policy or the absence of a policy. They need the security of knowing that, if there is a problem, there is a body to which they can turn for help, a body that can force public officials to listen."* [R1, p.5]

## 3. References to the research

[R1] Commission to Strengthen Parliament [aka, the Norton Commission], *Strengthening Parliament: The Report of the Commission to Strengthen Parliament* (Conservative Party, 2000).

[R2] 'Reforming Parliament in the UK: The Report of the Commission to Strengthen Parliament', *Journal of Legislative Studies*, 6:3 (2000), 1-14.

[R3] House of Lords Select Committee on the Constitution, *Parliament and the Legislative Process*, 29 October 2004, HL 173-I 2003-04.

[R4] 'Parliament and Legislative Scrutiny', in A. Brazier (ed), *Parliament, Politics and Law Making* (London: Hansard Society, 2004), pp.5-13.

[R5] 'Post-legislative scrutiny in the UK Parliament: Adding value', *Journal of Legislative Studies*, 25:3 (2019), 340-57.

[R6] with F. De Vrieze, 'The significance of post-legislative scrutiny', *Journal of Legislative Studies*, 26:3 (2020), 349-61.

## 4. Details of the impact

The REF2014 case study established the impact of Lord Norton's research as ensuring Royal Assent is no longer the end of the legislative process. This new case study highlights: the embedding of the PLS reforms at Westminster; the cumulative impacts of Norton's research on the quality of legislation and the legislative process in the UK; and its international impact.

### 4.1. The pathway to impact: The UK's adoption of post-legislative scrutiny

Norton's research has led to the adoption of a holistic model of post-legislative scrutiny (PLS) in the UK Parliament, which is spreading to other Westminster-based systems. Systematic assessment of the effectiveness of UK legislation did not occur prior to the implementation in 2008 of the PLS reforms driven by Norton's research. Norton's leadership of the Conservative's Commission on Strengthening Parliament led to his appointment in 2001 as the first chair of the Lords Constitution Committee. As chair, he led the Parliamentary inquiry into the effectiveness of the legislative process, conducted the key research and drafted the published report. His successor Lord Holme acknowledged Norton's role, describing him as both a *"hands-on chairman"* and a *"hands-on-keyboard chairman"* [HL Deb (2 Dec 2004), col.585]. In reply to the Lords Constitution Committee report, the Government referred the issue of PLS to the Law Commission. That Commission endorsed the Constitution Committee's recommendations, explicitly acknowledging the centrality of Norton's research, which it cited 25 times, endorsing all his major recommendations. It cited the Constitution Committee report a further five times [S1]. In 2008, the Government accepted the case for post-legislative review, citing the Norton Report eight times in its statement of its new approach [S2]. It committed itself to undertaking post-legislative review three to five years after enactment.

Now, select committees in both Houses review specific Acts, selecting Acts partly on the basis of the Post-Legislative Scrutiny Memoranda that the relevant ministries are required to produce [S3]. Thirty PLS reports were published between 2014 and 2020. The Commons Liaison Committee set PLS as a policy task of all its select committees. Their work is supported by the Scrutiny Unit of the Commons Committee Office. Usually PLS forms part of a wider Commons scrutiny process. The Lords has been more systematic in undertaking PLS. Each session, it appoints a committee to undertake non-partisan scrutiny of an Act or group of related measures. In July 2019, the Liaison Committee called for closer collaboration between the two Houses, a reform that will complete Parliament's implementation of Norton's system. Prof. McEldowney notes, *'Lord Norton's analysis and support for post-legislative scrutiny has been pivotal to the acceptance and development of an important constitutional means of oversight of legislation. Parliament is very much in his debt for the public duties he has performed with such enthusiasm and expertise.'* [S4].

#### **4.2. Embedding scrutiny and transparency through UK post-legislative scrutiny**

In line with Norton's recommendations, every PLS report published since 2014 has detailed the Committee's conclusions, reasons and evidence, highlighting areas where legislation fails to achieve its intended purpose or has produced unintended consequences. Between 2014 and 2020, eight Commons and joint committees undertook PLS ten times, for legislation including Terrorism Prevention and Investigation Measures Act 2011, Serious Crime Act 2007, and Children and Families Act 2014 [aka "SEND"]. In the House of Lords, ten pieces of legislation have been subjected to PLS since 2014 [S5], including: Inquiries Act 2005 [S6], Mental Capacity Act 2005 [S7, including an "Easy read" version for wider impact], European Arrest Warrant Opt-in [S8], Equality Act 2010 [S9], Licensing Act 2003 [S10], Natural Environment and Communities Act 2006 [S11], and Bribery Act 2010 [S12]. In 2020, the House of Lords began to scrutinise the Electoral Registration and Administration Act 2013, receiving the formal submission of evidence from the Minister of State for the Constitution and Devolution on 7 October 2020 [S13]. Each of the House of Lords' dedicated scrutiny reports is substantial [S6-12] both in detail and in length.

#### **4.3. Securing executive, parliamentary and public review of legislation's effects**

The vast majority of feedback from PLS has received detailed responses from the relevant Government ministers. On average, Government responses S6 to S12 are 37 single-spaced and closely argued pages in length. These are published with the report and debated together in the House that produced the report, usually at significant length. The official transcripts of the debates appear in Hansard, making them available to the public without restriction. Frequently, the reports, responses and/or debates receive media coverage and wider debate in civil society, some of which is detailed and featured prominently [e.g., S14]. Consequently, the authoritative status of PLS reports and their capacity to generate more data and critical reflection has fed into the public domain and debate on numerous occasions since 2014, for example in relation to the review of the highly controversial Terror Prevention and Investigation Measures (Tpims). Moreover, PLS reports have prompted and given a focus for key organisations working on family rights, environmental management, and the UK equality and diversity regimes.

#### **4.4. Improving UK law, policy and practice**

The Norton-derived PLS process has led to many practical improvements within and outside Parliament. These have varied in significance and scope, but many have led to significant improvements in the lives of citizens and the practice of government. Indicatively, ranging from the Government committing itself: to enforcing more of the provisions of the Equality Act 2010, for example in relation to the rights of disabled taxi users [S9, response]; to improving effectiveness of the Licensing Act 2003 "by amending the statutory guidance and looking at the provision of good quality training to licensing committee members" [S10, Government Response, p.8]; to ensuring consistency in Natural England's *"protected landscapes panning advice"*, greater transparency in the commercial disbursement of Natural England's income, and more effective consultation and communication by Natural England [S11, Government Response, pp.10-20].

The impact of Norton's research into the holistic nature of PLS informed the Lords Liaison Committee's 2019 report *Review of House of Lords Investigative and Scrutiny Committees* [S15]. Chapter 5 (paras. 100-01) of that pivotal 2017 report includes the following striking observations, encapsulating the key benefits Parliament's implementation of PLS, outlined above: *"In the light of the House of Lords Select Committee's [PLS] report and the Cheshire West decision, the*

*Department of Health originally asked the Law Commission to undertake a limited review of deprivations of liberty in supported living arrangements and other community settings, and to consider the learning that could be applied to the DoLS [Deprivation of Liberty Safeguards]. The project was included as part of the Law Commission's 12th programme of law reform published in 2014. Following subsequent engagement and discussion with stakeholders, Ministers agreed that it would be more appropriate for the Law Commission to consider the legislation underpinning the DoLS in its entirety."* [S15] Lord McFall, the Lords' Senior Deputy Speaker, highlights this passage as a significant indication of the effectiveness of Lords' PLS [S5]. It is also evidence that the transparent system of PLS has evolved into an iterative scrutiny and reform mechanism. Thirdly, as Lord McFall also notes, *"this key passage shows that such reiteration tends to deepen the scrutiny process, which extends the range and significance of the resulting reforms of law, policy and process"*.

#### **4.5. The evolving constitutional impact of Norton's post-legislative scrutiny research**

Consequent to its acceptance by the UK Government, Westminster-style PLS has spread to many other jurisdictions. For example, PLS was adopted by the Scottish Parliament in 2016 [S26]. Norton continues to research and promote PLS through plenaries to parliamentarians and academics, with his work impacting (as noted De Vrieze's supporting letter [S16]) the OECD, Research Service of the European Parliament, European Consortium for Political Research, and European Centre for Parliamentary Research and Documentation. Norton was an invited speaker at the Pontifical *Judge's Summit on Human Trafficking*, held at the Vatican in 2016. Professor McEldowney, member of the Pontifical Academy of Social Sciences, notes the impact of Norton's research and advocacy at that important event and of its *"central"* influence on Judge Marrinan's review of Hate Crime Legislation in Northern Ireland. He continues: *"The role of post legislative scrutiny will be critical to the success of the law in Northern Ireland"* and the UK's *"flagship"* Modern Slavery Act 2015 [S4]. Norton also works with the Westminster Foundation for Democracy to brief parliaments and hold training sessions around the globe, as well as producing the London Declaration on Post-Legislative Scrutiny [S17-19].

Dr Jonathan Murphy (INTER PARES) writes: *"The movement to institutionalise and expand PLS has been driven particularly from the Westminster parliament, with Lord Norton of Louth playing a key role"* [S20, p.486]. As Franklin De Vrieze of the Foreign, Commonwealth and Development Office-affiliated Westminster Foundation for Democracy (WFD) notes: *"Post-Legislative Scrutiny has become a recognizable feature of the oversight role of parliament, in Westminster and beyond, due to the work of Lord Norton of Louth...As Senior Governance Adviser in WFD, I relied on the publications by Lord Norton on Post-Legislative Scrutiny in my travels to, meetings with and conferences for the parliaments of Ukraine, Georgia, Albania, Serbia, Kosovo, Montenegro, Bosnia and Herzegovina, North Macedonia, Lebanon, Morocco, South Africa, Uzbekistan, Armenia, Myanmar, Indonesia, Nepal, Laos, Sri Lanka, Philippines and more."* [S17] Dr Murphy cites Norton's research as the basis of his advocacy work in jurisdictions ranging *"from Bhutan, to Gambia, to Malaysia and the Maldives."* [S20] Consequently, parliaments in the Westminster tradition and more widely have introduced PLS, with its adoption in Indonesia, Lebanon and Montenegro promising important improvements in the quality of their law and government [S21]. Hence, Dr Murphy notes 'the real, substantial, and continuing impact of Professor Norton's work' on post-legislative scrutiny [S20].

#### **5. Sources to corroborate the impact**

[S1] Law Commission, [Post-Legislative Scrutiny](#), Law Com. No. 302, Cm 6945.

[S2] Office of the Leader of the House of Commons (HC), [Post-legislative scrutiny – The Government's approach](#), March 2008, Cm 7320.

[S3] Kelly, R. and M. Everett, [Post-Legislative Scrutiny](#), Parliament and Constitution Centre, HC Library, 23 May 2013, **AND** HC Liaison Committee, [The effectiveness and influence of the select committee system](#) (Fourth Report of Session 2017–19), 9 Sept. 2019 HC 1860.

[S4] Letter: John F. McEldowney, Pontifical Academy of Social Sciences, 12 Jan. 2021.

[S5] Letter: Lord McFall of Alcuith, Senior Deputy Speaker, House of Lords, 12 Feb. 2021

[S6] House of Lords, Select Committee on the Inquiries Act 2005, House of Lords, [The Inquiries Act 2005: Post-legislative scrutiny](#), Session 2013–2014, HL Paper 143; 120pp. **AND** Government



- response: Lord Chancellor & Secretary of State for Justice, '[Government Response to the Report of the House of Lords Select Committee on the Inquiries Act 2005](#)', June 2014, Cm8903; 24pp.
- [S7]** House of Lords Select Committee on the Mental Capacity Act 2005, House of Lords, [Mental Capacity Act 2005: Post-legislative scrutiny](#), Session 2013–2014, HL Paper 139; 143pp. **AND** Government response: Lord Chancellor and Secretary of State for Justice, and Secretary of State for Health, [Valuing Every Voice, Respecting Every Right: Government response to the House of Lords Select Committee report on the Mental Capacity Act 2005](#), June 2014, CM 8884; 56pp. Official 'Easy read' version: N. Lamb MP and S. Hughes MP, [Valuing Every Voice, Respecting Every Right. Our reply to the House of Lords Report on the Mental Capacity Act](#), 51pp.
- [S8]** House of Lords Select Committee on Extradition Law, House of Lords, [The European Arrest Warrant Opt-in](#), 1st Report (2014-15), **AND** House of Lords Paper 63; [Extradition: UK law and practice](#), 2nd Report (2014-15), HL Paper 136; 28pp.
- [S9]** House of Lords Select Committee on the Equality Act 2010 and Disability, [The Equality Act 2010: the impact on disabled people](#), Report (2015-16), HL Paper 117; 171pp. **AND** Government response: Minister for Women and Equalities, 'Government Response to the House of Lords Select Committee on the Equality Act 2010 and Disability, [The Equality Act 2010: The impact on disabled people](#)', July 2016, Cm 9283; 39pp.
- [S10]** House of Lords Select Committee on the Licensing Act 2003, [The Licensing Act 2003: Post-legislative scrutiny](#) (2016-17), HL Paper 146; 186pp. **AND** Government response: Home Secretary, 'The Government Response to the Report from the House of Lords Select Committee on the Licensing Act 2003 (2016-17) HL Paper 146, [The Licensing Act 2003: Post-legislative scrutiny](#), November 2017, Cm 9471; 52pp.
- [S11]** House of Lords Select Committee on the Natural Environment and Rural Communities Act 2006, [The countryside at a crossroads?](#) (2017-19), HL Paper 99; 96pp. **AND** Government response: '[NERC Government Response](#)', May 2018, 27pp.
- [S12]** House of Lords Select Committee on the Bribery Act 2010, [The Bribery Act 2010: Post-legislative scrutiny](#), (2017-19), HL Paper 303; 127pp. **AND** Government response: Lord Chancellor & Secretary of State for Justice, '[Government Response to the House of Lords Select Committee on the Bribery Act 2010](#)', May 2019, CP 96, 32pp.
- [S13]** [House of Lords Select Committee on the Electoral Registration and Administration Act 2013, 2019–2020](#) **AND** Evidence: [Minister of State for the Constitution and Devolution](#), 7 Oct. 2020.
- [S14]** Examples of media coverage and discussions that were spawned by PLS reports
- Travis, A., "[Six people are subject to Tpins, Home Office reveals](#)", *Guardian*, 26 Oct. 2016
  - National Children's Bureau, "[Statement on the new Government review of SEND support](#)", National Children's Bureau, 6 Sept. 2019
  - British Ecological Society, "[House of Lords examines the Natural Environment and Rural Communities Act: Have your say](#)", British Ecological Society, 25 July 2017
  - Equally Ours, "[Cloisters: House of Lords Select Committee report on the Equality Act and disability](#)", Equally Ours, 15 April 2016
- [S15]** House of Lords Liaison Committee, [Review of House of Lords Investigative and Scrutiny Committees](#), 6<sup>th</sup> Report (2017-19), 17 July 2019, HL Paper 398.
- [S16]** Scottish Parliament, [Post-legislative Scrutiny](#), Scottish Parliament, 29 Sept. 2016.
- [S17]** Letter: Franklin DeVrieze, Senior Governance Adviser, Technical Advisory Unit, Westminster Foundation for Democracy (WFD), 12 Jan. 2021.
- [S18]** Letter: Dr Jonathan Murphy (Visiting Professor, Jyväskylä University, Finland), INTER PARES, EU-funded global parliamentary strengthening programme of international IDEA, Stockholm, 15 Jan. 2021.
- [S19]** WFD, '[The London Declaration on Post-Legislative Scrutiny](#)', 19 Dec. 2018, WFD.
- [S20]** Murphy, J., '[Towards parliamentary full cycle engagement in the legislative process: innovations and challenges](#)', *Journal of Legislative Studies*, 26:3 (2020), 469-93.
- [S21]** Moulds, S., '[A deliberative approach to post-legislative scrutiny? Lessons from Australia's ad hoc approach](#)', *Journal of Legislative Studies*, 26:3 (2020), 362-86.