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# Parliament and Policy: Predicting Success and Failure

Summary Report by The Lincoln Policy Group\*

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## The research

Given the challenges and uncertainties facing contemporary societies, the quality of government legislation, and consequently parliamentary scrutiny, is of great importance. Drawing on insights from a range of literatures, this research analysed the passage through Parliament, and subsequent evaluations of 'success' or 'failure' from the perspectives of those centrally involved with them, of two pieces of legislation – the National Minimum Wage Act 1998 and the Academies Act 2010. This summary provides a brief overview of the work.

## Aims

Our primary aim was to use these two cases to assess the extent, nature and accuracy of predictions that are made about pieces of legislation prior to and during their passage through Parliament. Alongside this, we sought to:

- evaluate the effectiveness of parliamentary scrutiny in identifying and addressing potential policy shortcomings and strengths in the legislation;
- compare activities in the House of Commons and the House of Lords and examine any differences in the types of claims made and the source and nature of any evidence or expertise referred to;
- provide input into debates about the impact of MPs and Peers, and the role of outside experts, on the scrutiny of legislation;
- contribute to considerations of how the success (and failure) of policies might be assessed;
- add to discussions about theories that emphasise the role played by informal actors in the formulation, development and implementation of policy, such as 'policy network' and 'epistemic community' approaches.

## The literature

The project drew on three distinct areas of the literature in order to assess the effectiveness of legislative scrutiny. These can be characterised as concerned with:

- policy 'success' and 'failure';
- the role of experts and evidence in the policy making process;
- the impact of the legislative process on policy development.

## Methods

The National Minimum Wage Act 1998 and the Academies Act 2010 were chosen as they represented different political control of government during two time periods, being flagship policies of the Labour government elected in 1997 and the Coalition government elected in 2010. Each reflected considerable work done by the parties in Opposition, and was intended to have significant impacts on key policy areas. The National Minimum Wage Act has widely been viewed as a 'success', while the Academies Act has resulted in a significant increase in the number of Academy schools, although judgements on its impact on educational achievement are currently more varied.

In analysing the two case studies the research was influenced by the approach used by the Hansard Society in *Law in the Making* (Brazier et al., 2008), which tracked five pieces

of legislation in detail as they proceeded through Parliament. Our methods involved three broad components:

1. the identification of claims and predictions of potential policy outcomes prior to and during the passage of each bill through Parliament;
2. a comparison of the predictions with the evidence available on the outcomes of the implementation of the legislation;
3. the creation of a framework to allow the recording of predicted outcomes against subsequent outcomes to provide a basis for examining other legislation.

In order to achieve this we undertook detailed examination of the parliamentary scrutiny of each piece of legislation, including all debates and proposals for amendments, and in depth interviews with many of those who were closely involved, including politicians, special advisors and civil servants (nine for the Academies Act and twelve for the National Minimum Wage Act).

There are clearly some limitations with this approach, particularly in relation to assessments of parliamentary influence. Nevertheless, this focus and these methods do allow the research to make a distinctive contribution to our knowledge and understanding of parliamentary scrutiny of legislation, and provide insights into a range of associated issues.

## **Preliminary findings**

The passage of the National Minimum Wage Act was long and complex. The bill initially consisted of 53 clauses and 3 schedules, with the number of clauses later increasing to 56. Its principle purpose was to introduce the National Minimum Wage and to give statutory basis to the Low Pay Commission. In contrast, the Academies Bill was a much shorter measure with 16 clauses and 2 schedules, increasing to 20 clauses and 2 schedules following amendments during its passage. Its aim was to enable all maintained schools to become academies, including by removing the requirement to consult with the local authority before opening an academy, and to allow for the opening of many more free schools.

Considerable preparatory work for each bill was done in Opposition. Both governments used international comparators to support their measures, with Labour drawing on the case of the United States for the National Minimum Wage, and the Coalition government on the Swedish system, including free schools, and the performance of charter schools in the United States.

In both cases the legislation perhaps had greater apparent legitimacy as it was introduced by a newly elected government and had been foreshadowed in manifesto promises. The incoming government was able to claim a mandate for change, and the Opposition was affected at least to some extent by an election loss and ongoing or recent leadership contest.

Changes external to Parliament perhaps also aided the government parties in both instances, with the Conservatives receiving little or no lobbying from business interests to support them in their opposition to the minimum wage, while the teaching unions did not appear to be as active as might have been anticipated in supporting the opponents of the Academies Bill, and similarly local authorities did not present a united front on the reforms.

Neither bill was subject to formal pre-legislative scrutiny. While pre-legislative scrutiny has become more common, it is not yet the norm, and in these cases because each new government had done considerable work on its proposals, was confident in its mandate, and saw an urgent need for reform, they were perhaps less likely to allow pre-legislative scrutiny or more detailed consultation.

In both cases, parliamentary scrutiny was dominated by broad philosophical ideas and related arguments rather than detailed discussions or concerns. However, the two governments made very different arguments in relation to the politics of the two bills. In 1997, Labour felt strongly that they had 'won' the argument over the idea of a minimum wage, and that it was widely supported in the country, including by much of the business community. In contrast, in 2010 the Coalition government argued that the Academies Act was building on Labour's own reforms and the introduction of academies, rather than suggesting that the measure was both qualitatively and quantitatively different from the work of its predecessor.

It is possible to identify some differences in the nature of the arguments in the two Houses. In particular, those in the House of Lords could be seen to be less 'political' and more 'technical' than those in the House of Commons, although the claims of supporters and critics were broadly the same in both Houses.

The scrutiny of the Academies Bill did appear to have some impact, including through the government's own amendments. That these were made in the House of Lords may have implications for understanding the role of each House, and the relative expertise of Parliament in relation to a number of important issues, or it may simply have been related to political factors (such as governments being less willing to make concessions in the House of Commons) or the parliamentary timetable. However, it is unlikely that they dramatically altered the working of the Act. In the case of the National Minimum Wage Bill, while the government made changes to the measure, it is much less clear that these were linked to parliamentary scrutiny, and indeed they arguably resulted as much from pressures and discussions within the government.

In both case studies, the Opposition (and other critics in Parliament) tended to identify a number of issues early on and focused on them throughout the scrutiny process. Despite the preparatory work done on both bills, there were few apparent references to evidence, experts or expertise by supporters or critics. Perhaps the most notable examples were the claims about the success, or otherwise, of 'free' and 'charter' schools in the United States and Sweden, and their relevance as a model, in relation to the Academies Bill, and some references to whether or not there were likely to be job losses in debates on the National Minimum Wage Bill.

There were few references to anticipated outcomes in a form that might be measured at some point in the future, perhaps because governments are unwilling to create potential hostages to fortune for the future. This clearly has implications for the nature of legislative scrutiny, and indeed for subsequent assessment of the extent of success or failure of policies, including in any post-legislative scrutiny within Parliament. However, our analysis has suggested a broad conceptual framework using 'targets' (specific outcomes, potentially measurable), 'aims' (more general aims or claims by ministers, perhaps measurable to a degree) and 'processes' (procedures or mechanisms that enable targets and aims to be met), that could usefully contribute to attempts to judge the success or failure of these, and other, policies.

## Conclusions

This research highlights that even with major pieces of legislation the aims may be somewhat unclear, even as outlined in Parliament. There are a number of explanations for this, including: firstly, from a pragmatic political perspective, a failure to achieve specific outcomes would enable future criticism of a government; secondly, if policies are introduced primarily for ideological reasons, then specific, measurable, outcomes are likely to be less important than the policy itself; and thirdly, given the range of individuals and interests that may be involved in the preparation of particular pieces of legislation, it is not unlikely that their aims will sometimes be potentially different, or even contradictory, so that arguments based upon vaguer and more philosophical positions may enable those views to be captured and unified in ways that would not be possible if more detailed statements of aims and outcomes were made.

However, while understandable, this appears likely to result in scrutiny in both Houses tending to be dominated by debates drawing upon broad philosophical positions, or particular mechanisms proposed in the legislation, rather than detailed arguments about the best means to achieve particular ends.

These results also have implications for post legislative scrutiny, whether by Parliament or others, as unless the aims of a bill are made relatively clear and specific, post legislative scrutiny is likely to have to rely on post hoc judgements of intentions and how these might be measured.

Finally, despite these challenges, the research suggests that it may be possible to apply ideas of 'targets', 'aims' and 'processes' to policies and to develop assessments of the relative extent of success or otherwise to each of those.

## Further reading

### *From this project*

Begley, P., Bochel, C., Bochel, H., Defty, A., Gordon, J., Haux, T., Hinkkainen, K., Kisby, B., McKay, S. and Strange, G. (2015) 'Evidence informed or value based? Exploring the scrutiny of legislation in the UK Parliament: two case studies', paper presented to the Political Studies Association Annual Conference, Sheffield, 20 March to 1 April.

### *Other reading*

Bochel, H. and Duncan, S. (eds) (2007) *Making Policy in Theory and Practice*, Bristol, Policy Press.

Brazier, A. *et al.* (2008) *Law in the Making*, London, Hansard Society.

McConnell, A. (2010) *Understanding Policy Success*, Basingstoke, Palgrave Macmillan.

Rutter, J. (2010) *Evidence and Evaluation in Policy Making*, London, Institute for Government.

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