



Parliamentary Monitor II

In the December 2002 *Bulletin*, Omar Khan presented an overview of the various Committees in Parliament, as well as examining two specific Bills. In this issue, he explores the role of Private Members' Bills, followed by the example of the Equality Bill as proposed by Lord Lester. We hope this series will contribute to a wider understanding of the sometimes opaque workings of Parliament as well as indicating what the role of the public might be in contributing to the lobbying and the legislative processes.

Table 1. Private Members' Bills Passed 1992–2001

Session	Presentation Bills	Ten Minute Rule Bills	Ballot Bills	Lords Bills	Total
1992–3	3	2	6	5	16
1993–4	2	-	8	6	16
1994–5	1	3	9	4	17
1995–6	1	1	12	3	17
1996–7	-	1	14	7	22
1997–8	2	1	5	2	10
1998–9	-	-	7	1	8
1999–2000	-	-	5	1	6
2000–1*	-	-	-	-	-
2001–2	-	2	5	1	8
TOTAL	9	10	71	30	120

*Due to the election in 2001, this was an unusually short parliamentary session.
Note. Observant readers will have noticed a definite decrease in the number of overall bills since Labour won the 1997 election, even excepting 2000–1. I have been unable to determine a satisfactory reason for this development but the following may be suggested as an incomplete list:

- 1 the large size of the Labour majority, discouraging Private Members from thinking that their proposals will pass;
- 2 the large number of new MPs recently elected, particularly in 1997, who are relatively unfamiliar with parliamentary procedure and who may also be more ambitious to gain recognition within the political party, in contrast to older MPs who either have no such ambitions or realise that they are unlikely to be fulfilled;
- 3 the decline in Lords Bills could represent the Labour Government's minority in that chamber, but this would have to be compared to the Callaghan and Wilson periods;
- 4 the greater success by Labour whips in the past 5 years, especially compared to the divisions in the Conservative Party during the Major years;
- 5 the Labour Government might be proposing more legislation or simply taking on board the suggestions of its backbenchers; though this would be hotly contested, it is difficult to rule it out.

Table 2. Trends in Private Members' Bills since 1948

Time period	Presentation Bills (%)	Ten Minute Bills (%)	Ballot (%)	Lords (%)	TOTAL
Last 10 years	9 (7.50)	10 (8.33)	71 (59.17)	30 (25.00)	120
Last 30 years	62 (16.62)	17 (4.56)	221 (59.25)	73 (19.57)	373
1948–71	65 (19.58)	49 (14.76)	180 (54.22)	38 (11.45)	332
Since 1948	127 (18.01)	66 (9.36)	401 (56.88)	111 (15.74)	705

Note. The periods have been chosen to indicate the variant trends in Private Members' legislation since they were first introduced in 1948. The total figures mask some important developments, especially the decline in presentation and especially Ten Minute Bills in the last 30 years, as well as a corresponding increase in Lords Bills. Ballot Bills have remained fairly constant, but otherwise 1948–71 seems to constitute a different historical period. It is probably reasonable to expect the recent trends to continue, and analysts of the first two decades may find that there was a different conception of the role of such legislation, or that members of parliament were exploring the various prospects in the earlier years.

1. Private Members' Bills

Although most legislation in Parliament is initiated by the Government, Private Members' Bills represent an opportunity for backbenchers or Opposition members to suggest legislation not on the Government's agenda. Such legislation is often presented by members who have a particular interest or expertise in a specific issue, but it can also represent concerns from the public that are not being considered by Government. In both of these ways Private Members' Bills contribute to the democratic process and it is important that we are aware not only of their procedure but also of how they can be influenced.

Like other bills, Private Members' Bills have a first and a second reading. Those that gain significant support are given a Committee stage where the details of the legislation are worked out before they are given a final reading and proceed to a vote in parliament. As will become clear below, some Private Members' Bills are passed quite quickly, without formalisation of all of these processes, but they are in the minority. In fact, there are four different types of Private Members' Bills, originating in a different manner and often representing different aims. These are:

1. Ballot Bills (57% of all bills since 1948)
2. Lords Bills (16%)
3. Presentation Bills (18%)
4. Ten Minute Rule Bills (9%)

Table 1 shows the numbers of each type of bill passed in the decade 1992–2001, and Table 2 presents data on overall trends since Private Members' Bills were first introduced in 1948. As both tables indicate, the overall numbers are not insignificant, with 705 bills of this sort passed in total, or over 13 per year.

Ballot Bills

The most successful bills, and those that often attract the most public attention, have historically been 'Ballot Bills'. At the beginning of the session each year, around 400 MPs submit their names for the ballot and 20 are chosen at random. While some MPs who are awarded ballots have clear ideas about the legislation they might propose, many do not have unambiguous preferences. For this reason, and



because Ballot Bills have a decent chance of success, individuals and organisations often lobby the ballot-winning MPs, especially the top five, in the hope that their particular issue can be considered.

Government concerns generally take priority in parliamentary debates, meaning that there is little time for these bills to be considered seriously. Nevertheless, seven Friday afternoons are set aside for Ballot Bills, meaning that the MPs with the top seven ballots have an advantage in seeing their legislation passed. The other ballots are forced to find additional time in a tight parliamentary schedule, but many are still successful. Table 3 indicates the success rates of the various types of Private Members' Bills, demonstrating that over 40% of all Ballot Bill proposals have been passed since 1983–4, constituting nearly 60% of all Private Members' Bills passed in this period.

Lords Bills

As evidenced by their title, these bills originate in the House of Lords. Their success depends in no small measure on the support of Government, but they have been relatively successful in the last 20 years (as Table 3 indicates, over 40% are passed) and are currently the second most common form of Private Members' Bills to become law in Britain. Such bills get their first and second readings in the Lords, and those that are given Committees have the additional advantage of hearing experts give evidence. However, they still have to clear the hurdle of passage in the Commons, where parliamentary time can be limited, especially with Ballot Bills and other procedures crowding for competition. In addition, it requires considerable effort, expertise, and often resources to draft these bills as well as lobbying to ensure that they become law.

Presentation Bills

Any member of parliament may present a bill on whatever subject of their choosing as long as they give due notice. These are called 'presentation bills', and are often fail to be debated due to time constraints. Yet, as Table 2 indicates, since 1948 Presentation Bills have been the second most numerous form of successful Private Members' Bills, with 127 passed – though they are increasingly rare, with only nine in the past 10 years. While the types of bills presented in this manner are quite varied, many seem to be introduced on the basis that they are non-controversial. For example, the parliament.uk website factsheet mentions the Protection of Birds (Amendment) Bill, 'which went through all its stages in the Commons in 67 seconds at a Friday sitting in July 1976'.

Ten Minute Bills

These are the most infrequent and least successful of all forms of Private Members' Bills. As Table 3

indicates, just over 1% of all proposed Ten Minute Bills become law, and in the past 30 years, none have been proposed in 20 sessions (they were more common in the 1950s and 1960s when nearly 50 were passed, even more than Lords Bills during the corresponding period). However, as the parliament.uk website factsheet makes clear, these bills can serve an important purpose in democratic procedures:

'The process is used much more as a means of making a point on the need to change the law on a particular subject. Motions under this rule may also provide the opportunity for a Member to test Parliamentary opinion on a subject upon which he/she or other Members may seek to legislate in later sessions.'

As this explanation indicates, the poor level of success rate for such bills may be misleading, particularly where the government accepts the need for reform in a certain area or where a later proposal puts forward many of the ideas contained in an earlier Ten Minute Bill. As Table 3 illustrates, nearly half of all *proposed* Private Members' Bills in

Table 3. Success rates of various Private Members' Bills since 1983/4

Session	Ballot	Presentation	Ten Minute	Lords	TOTAL
1983–4	9/20	2/21	0/66	2/11	13/118
1984–5	11/20	4/28	2/42	4/7	21/97
1985–6	13/20	4/31	0/56	4/5	21/112
1986–7	7/20	4/29	0/30	4/6	15/85
1987–8	9/20	2/37	0/58	2/4	13/119
1988–9	6/20	2/64	0/54	1/3	9/141
1989–90	8/19	2/54	0/48	1/5	11/126
1990–1	10/20	8/48	0/46	1/5	19/119
1991–2	8/20	2/17	0/17	3/4	13/58
1992–3	6/20	3/63	2/74	5/9	16/166
1993–4	8/20	2/37	0/49	6/10	16/116
1994–5	9/20	1/32	3/52	4/9	17/113
1995–6	12/20	1/17	1/43	3/9	17/89
1996–7	14/20	0/23	1/26	7/7	22/76
1997–8	5/20	2/27	1/88	2/12	10/147
1998–9	7/20	0/18	0/55	1/11	8/104
1999–2000	5/20	0/20	0/57	1/7	6/104
2000–1*	0/20	0/17	0/24	0/2	0/63
TOTAL	147/359 (41%)	39/583 (7%)	10/885 (1%)	51/126 (40%)	247/1953 (13%)

*Short session due to 2001 election

Note. As in Table 1, it is clear that overall numbers have declined since Labour came to power; see the note to that Table for possible reasons. Here it is further clear that success rates have also declined, and that 2000–1 skews the overall results somewhat. If that year is dropped, there are only 3 years of current statistics from which to judge the current Labour Party in government, but the trends are unmistakable, if difficult to explain, especially when updated to include the 2001–2 session. For example, only 28% of Ballot Bills, 3% of Presentation Bills, 0.5% of Ten Minute Bills, and 13% of Lords Bills have passed since Labour's election, compared to 47% of Ballot Bills, 7% of Presentation Bills, 1.4% of Ten Minute Bills and 50% of Lords Bills in the period 1983–97.



the last two decades have been of the ten minute type, even if only just over 4% of those passed have originated in this manner.

Later Stages

As suggested above, one of the biggest hurdles for Private Members' Bills is the lack of time allotted to them for debate. While the top seven Ballot Bills at least have the chance of a considered hearing on the Friday afternoons reserved for Private Members' Bills, this necessarily crowds out time for other forms. Furthermore, procedure dictates that a single member of the house can object, preventing the motion from being considered.

It is also often difficult to garner support for the bill by having at least 100 members vote in favour of the motion, necessitating informal whipping especially where such votes are taken late in the day on Fridays. Parliament's own factsheet makes for some sobering reading, the undoubted success of certain bills notwithstanding:

'A Bill whose sponsoring Member was placed very low in the Ballot, or one introduced under the Ten Minute Rule or SO No 57 [Presentation Bills] or brought from the Lords, will always have to take its chance at 2:30 pm. From this it follows that such a Bill is very unlikely to make any further progress unless its contents are such as to arouse absolutely no dissent.'

2. Equality Bill

An examination of the Equality Bill introduced in the House of Lords elucidates UK legal and institutional responses to inequality as well as clarifies the role of Private Members' Bills in Parliament. Lord Lester, a Liberal-Democrat peer with a distinguished history of involvement in anti-discrimination in the UK and Europe, introduced the Equality Bill on 14 January 2003. Further information on the background, reasoning and full text of the Equality Bill can be obtained by contacting the Odysseus Trust or by visiting its website [<http://www.odysseustrust.org>]. Some readers may also be interested in the study by Hepple, Coussey and Choudhury which served as an important foundation text for the content of Lord Lester's bill.¹

Although a number of arguments have been advanced in favour of the Equality Bill, the Odysseus Trust's press information document concisely lists the following six reasons:

1. Existing anti-discrimination law is incoherent, piecemeal and complex
2. Existing law places insufficient emphasis on the importance of organisational culture as a driver of change
3. Existing law is under-inclusive and fails to provide protection for groups which do experience discrimination
4. The Government's Draft Regulations

implementing the EC discrimination Directives are unduly restrictive

5. Existing anti-discrimination law does not promote equality of opportunity
6. The existing legal framework, which divides responsibility for the monitoring and enforcement of anti-discrimination law among three different Commissions, is not as efficient as it could be

The Equality Bill as introduced in the House of Lords attempts to remedy all these problems. As these reasons indicate, the complicated and disconnected nature of contemporary law, where there are different criteria for disability, gender and race, is often a barrier for anti-discrimination claims as well as remedial action by employer organisations. By establishing a single framework, existing law will become more accessible and consistent. This will obviously advantage victims of discrimination, but it will also enable employers – often confused or unaware of the specifics of anti-discrimination law – to meet their obligations more easily.

In order to facilitate this possibility, the Equality Bill also recommends a positive duty to promote equality, going beyond the current legislation in all areas. At the same time, the bill is duly concerned that organisations take control of these responsibilities by focusing on the role of institutional change. While this has recently become a much discussed tactic for ameliorating a number of entrenched practices, establishing such a principle in law would be an enormous step forward in the effort to eliminate forms of discrimination.

If the above paragraph demonstrates the intrinsic need to reform existing anti-discrimination law, recent developments at the European level illustrate the timeliness of Lord Lester's proposed Equality Bill. Specifically, recent EC Directives require member-states to legislate for discrimination based on age, religion or belief and sexual orientation. While current UK law is specific, if somewhat complex, about discrimination based on disability, gender and race, substantial reform will be necessary to meet the requirements with regard to age, religion or belief and sexual orientation. Rather than adopting additional legislation in these areas to add to the complexity of existing anti-discrimination law, the Equality Bill suggests a uniform application in this area.

Significantly, it takes the highest standard and applies it to all circumstances of discrimination, assuring that new legislation will not be 'levelled down' to the minimum. Indeed, the extension of positive duties to ensure equality of opportunity represents an important advance on the current legislation, which focuses on negative duties. In this context, it is clear that the two prime foci of the bill are:

1. elimination of all forms of discrimination; and
2. promotion of equality.

¹ *Equality: A New Framework. The Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation*, Cambridge Centre for Public Law (Hart Publishing, July 2000).

As mentioned above, the Hepple report's review of existing UK anti-discrimination law served as the initial basis for the Equality Bill. However, the Odysseus Trust requested a number of consultations, with 45 detailed submissions presented by Ministers, politicians, civil servants, NGOs, equality agencies, employers, religious organisations, independent academics and others. This ultimately led to some changes in the bill presented in January 2003 and demonstrates how legislation can be affected by independent bodies and individuals. An executive summary of some of the issues raised in this process can be downloaded from the Odysseus Trust website [www.odysseustrust.org].

One major concern for equality agencies was that a single Equality Bill would require a single Equality Commission. This is clearly recommended in the proposed bill, with additional provision for the immediate elimination of the Equal Opportunities Commission and the Commission for Racial Equality. Due to a number of concerns raised by the Disability Commission, the bill recognises its unique remit but suggests that these can be accommodated by the Single Equality Commission and that the DRC should cease to exist 3 years after the passage of the legislation. All of section 4 is devoted to other issues concerning the financing, structure, aims and functioning of the Equality Commission, though there is considerable room for interpretation as long as the overall goals of the bill and the variable nature of the different grounds for discrimination are clearly recognised.

Form and Significance of the Equality Bill

For those interested in the specifics of the bill, it can be downloaded directly from the parliament.uk website or via a link from the Odysseus Trust website. Since it runs to over 100 pages, I will limit myself to a brief outline of its form before turning to the significance and opportunities of the bill as well as some difficulties.

The bill itself is divided into six parts, with part one establishing the 'Purpose and General Principles', including an unequivocal rejection of the concept of 'levelling down' and a caution against excessively wide exemptions. Part two, 'Measures to Target Particular Behaviour or Arrangements', states what sort of conduct is unlawful and to which provisions they apply. The third part deals with 'Measures to Facilitate General Progress Towards Equality', especially including positive duties by organisations and individuals. As summarised above, part four establishes the Equality Commission and specifies its functions. In recognising the need for remedial action, part five establishes 'Enforcement' procedures. Finally, part six, entitled 'Miscellaneous and Supplemental', contains a number of schedules, including an important one on which areas are excluded from the bill.

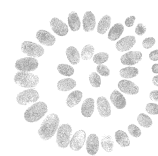
The idea that anti-discrimination law needs to be

both more consistent and more rigorous would be heartily welcomed by many readers of the *Bulletin*, as would the suggestion that positive duties and organisational change are necessary to guarantee a more equitable society. The proposed Equality Bill makes a number of positive steps in this direction and would probably lead to a more just Britain. However, the bill is unlikely to become law due to Government's lack of support for it. Lord Lester was unable to secure a Committee for the bill, and although he will proceed with a second reading and further debate and pressure on Government, it is disappointing that the Labour Party in government has not taken the opportunity to demonstrate its commitment to social justice in a more explicit and progressive manner.

All of this is not to say that the Equality Bill is flawless. Some have disagreed with the idea of a single equality commission on grounds that the specific expertise of the various grounds requires different institutions to exist to maintain a sense of identification between the discriminated groups and the various public bodies that represent their interests. It certainly seems to be true that the CRE and DRC are immediately recognised by black and minority ethnic and disabled Britons, but the form of the Equality Commission might ensure a similar allegiance in time.

Others are concerned about the specifics of the enforcement powers and the exclusions allowed by the Home Secretary, but these might also be amended in the future to ensure that the law properly fulfils its objectives. Since the Race Relations (Amendment) Act of 2000 provides the basis for the minimum standard in the proposed Equality Bill, it is also subject to any critiques or failings attached to that legislation.

Most of the above concerns could perhaps be debated or ironed out if the bill were to receive a fair hearing in the Lords and eventually the Commons. Lord Lester is to be commended for demonstrating that it is neither utopian nor unfeasible to draft a reasonable Equality Bill with a new Equality Commission given much less time and fewer resources than are available to Government. It is to be hoped that this will encourage Government to re-consider its own legislation and think more broadly about the application of equality in British society, rather than adopting a piecemeal attitude. (After all, British contributors to [EHRC] Article 14 were influential in its drafting and pleased with its outcome.) It would be unfortunate if Government were to allow the opportunity for improving the coherence of UK legislation provided by such effort and input to pass them by. The proposed Equality Bill demonstrates the possibilities and advantages that accrue from thinking holistically, and is a good example of how Private Members' Bills can point the way towards valuable legislation where Government is not itself so moved. □



GOVERNMENT

'Existing anti-discrimination law is incoherent, piecemeal and complex'

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