

# **MANAGING PARLIAMENT BETTER?**

**A Business Committee  
for the House of Commons**

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with contributions from  
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## **Preface**

This briefing has benefited from the input of many people. Most importantly Elizabeth McLeay, John Uhr and Barry Winetrobe contributed much of the material on New Zealand, Australia and Scotland respectively. In addition, Oonagh Gay contributed material on the House of Commons, Lucinda Maer helped in preparation of an early draft and Mark Glover provided research assistance on Germany. We are also grateful to the individuals who were interviewed in each of the respective countries for the project, and to the parliamentary staff and others who helped with our enquiries.

The briefing forms part of the output of the Constitution Unit's project on the Governance of Parliament, which is funded by the Nuffield Foundation. We are very grateful for their support. The project seeks to learn lessons from the four other parliaments considered here in considering how the House of Commons might improve its procedures. In particular we are interested in whether there are changes that could be made to give parliament collectively a greater control of its own business, and greater independence from the executive. This is the first major output from the project and we hope it will spark debate. Comments are invited on the issues raised in the paper.

Further details of the project can be found on the Constitution Unit website, at:  
[www.ucl.ac.uk/constitution-unit/research/parliament/governance-of-parliament.html](http://www.ucl.ac.uk/constitution-unit/research/parliament/governance-of-parliament.html)

## Executive Summary

- The House of Commons is often criticised for being too controlled by the government. Parliamentary business is organised through the ‘usual channels’ – informal negotiations primarily between the whips of the two main parties. The provisions of Standing Order 14 mean that the bulk of parliamentary time is at the government’s disposal, though regular opposition and private members’ business is also protected. Appointments to committees are largely in the hands of the whips, though membership of select committees must be agreed by the House, and varying levels of internal accountability also exist within the parties.
- One proposed reform is to create a cross-party ‘business committee’ with formal powers over the allocation of parliamentary time and committee appointments. This briefing considers the possibility of creating such a committee, by looking at lessons from business committees in four other parliaments. We discuss the operation of existing cross-party business committees in the parliaments of New Zealand, Germany, Scotland and Australia.
- The origin of these four bodies varies significantly. The German committee can be traced back to the Reichstag of the late nineteenth century. That of New Zealand was created following the shift to proportional representation while the Scottish body was established along with the new parliament in 1999. The Australian committee is weaker and emerged following dissatisfaction with the lack of opportunities for backbench members’ business.
- In terms of functions, the Australian business committee has the most limited role, with a remit to allocate non-government business only. The other three are responsible for proposing the timetable for all business and also have significant responsibilities relating to committee membership.
- All four business committees are dominated by whips, though in Germany these are elected by members of the party groups. In all cases backbench representation is limited or nonexistent, and smaller parties and independent members may also be excluded. In any case, major party whips can control the agenda by meeting informally outside of the business committee, sidelining smaller groups and backbenchers. Ultimately, business committees tend to resemble institutionalised versions of the usual channels.
- All four committees seek to operate by consensus, though only in New Zealand is there a formal requirement for decisions to be taken by unanimity or ‘near unanimity’. In New Zealand and Australia, business committee decisions are automatically adopted while in Germany and Scotland they are subject to ratification and amendment in plenary.
- In practice, we find that existence of a business committee does not necessarily enhance parliament’s control of its own timetable and committees. Governments are likely to get their way over the opposition where majoritarian voting rules apply. The extent of minor party influence is primarily dependent on the balance in the parliament, and on the rights provided in standing orders.
- Given these findings, we suggest that creating a business committee for the House of Commons would have limited impact. At best, such a body could enhance the transparency of decision-making arrangements and guarantee minor parties and backbenchers some input. In fact in some respects the Commons offers a positive example of parliamentary autonomy, for instance in the chamber’s ability to overturn proposed membership of select committees.
- We conclude that procedural changes other than the creation of a business committee might yield greater rewards. Possible reforms to consider could include requiring the timetable to be proposed in an amendable motion rather than a government statement, increasing the rights of minority groups or committees to place items on the agenda, and improving transparency of appointment to standing committees.

## Introduction

This briefing discusses the possibility of establishing a new committee at Westminster to oversee the management of parliamentary business, such as the parliamentary *timetable* and the membership and operation of parliamentary *committees*. The paper is primarily aimed at discussing reform for the House of Commons, but the issues could also have resonance in the House of Lords.

Although management of parliamentary business is rarely a headline-grabbing topic, there have been a number of recent controversies in this area. One of the most prominent was the argument over appointment of the select committees after the 2001 election, which resulted in a parliamentary rebellion and, later, in a failed bid to reform. After the May 2005 election (and more so in 1997), there was some disquiet on the backbenches concerning the long delay before the establishment of the new select committees, which essentially meant that serious committee work could not start until the autumn. There are also regular complaints from within parliament about the timetabling of legislation (particularly under the ‘programming’ arrangements, instituted under the first Blair government as part of its ‘modernisation’ agenda) and the lack of time for discussion of non-government business such as select committee reports and private members’ bills. Another high profile case arose in September 2002 when the government came under pressure to recall parliament early from its summer recess to allow a debate on the Iraq situation. Although the government eventually acceded to these requests, attention was drawn to its extensive discretion over such decisions – leading to calls for reform.

In general there is concern about the degree of control which government has over the parliamentary agenda. One thing that some have suggested would alleviate this is creation of a cross-party committee to implement a more transparent alternative to the current ‘usual channels’ arrangements. This could offer certain advantages to the opposition parties, and potentially to backbenchers. But from government’s point of view it might also have the advantage that the opposition would have to share some of the responsibility for difficult parliamentary decisions.

The existence of ‘business committees’ on this model is relatively common in other parliaments. These committees have varying powers with respect to the parliamentary agenda, and often also take some responsibility for committee appointments. This paper draws lessons from four such arrangements – the Business Committee in the New Zealand Parliament (unicameral), the Parliamentary Bureau in the Scottish Parliament (unicameral), the *Ältestenrat* or Council of Elders in the German Bundestag (lower house) and the Selection Committee in the Australian House of Representatives (lower house). These we shall refer to collectively and individually as business committees.

Three of these four parliaments (with the Bundestag the exception) have been heavily influenced by Westminster, although in the case of the Scottish Parliament, Westminster has been invoked as much as a negative template as a model to be followed. The parliaments of New Zealand and Australia were closely modelled on that of the UK but both have since diverged from the Westminster model. Particularly significant was New Zealand’s 1996 introduction of proportional representation, which had major ramifications for the management of parliamentary business. Despite having different roots the Bundestag is an interesting comparator, as in addition to being of comparable size to the Commons, it is generally seen as combining Westminster-style stable majority (if coalition) government with a more consensual political culture. It may therefore represent a plausible model for parliamentary reformers.

The current paper briefly describes the arrangements in these four parliaments – who sits on the business committees, and what they do, before going on to discuss their effectiveness and whether such an arrangement might be suitable for the House of Commons. First the paper

summarises the way in which business is currently organised in the Commons, and recent proposals for reform.

## The Organisation of Business in the House of Commons

Before turning to the operation of business committees in our four comparator parliaments, we briefly review the organisation of the House of Commons in terms of the key responsibilities that a new business committee might be assigned. These fall into two main areas, both of which have been subject of recent controversy: the management of the timetable of business in the chamber, and the control over specialist committees.

### The Timetable

In the absence of a business committee in the House of Commons, parliamentary business is arranged through ‘the usual channels’, a term used since at least 1905.<sup>1</sup> The key to arranging the timetable is the text of Standing Order 14 on the ‘Arrangement and Timing of Public and Private Business’, and particularly SO 14(1), which states that ‘Save as provided in this order, government business shall have precedence at every sitting’. This enables the government to ensure that its business can be dealt with in the House.

According to *Erskine May* the usual channels in the House of Commons comprise the government Chief Whip and the Chief Whip from the main opposition party.<sup>2</sup> However, there are others who are also involved in behind-the-scenes negotiation of the timetable. A wider definition of the usual channels might include:

- Government Chief Whip (cabinet member)
- Opposition Chief Whip(s)
- Private Secretary to the Government Chief Whip (civil servant)
- Leader of the House (cabinet member)
- Opposition Leader(s) of the House.

There are regular weekly meetings of the key figures to discuss arrangement of business, and daily contact to deal with ongoing issues, but all of these discussions tend to take place on a bilateral basis. At the start of the week the proposed business for the subsequent fortnight is agreed by the government ‘business managers’ (Leader of the House and Chief Whip). Once agreed this is discussed with the Opposition Chief Whip and separately with the Liberal Democrat Chief Whip, and may occasionally be amended in the light of comments. It is then shown to the Shadow Cabinet and announced to government backbench members. Behind the scenes much of the negotiation is done by the Private Secretary to the Government Chief Whip, and all discussions are bilateral. There is no forum where representatives of all the party groups in the House discuss the business together, until it is formally announced.

This formal public announcement is made by the Leader of the House in a statement to parliament on Thursdays, and comprises firm business for the subsequent week and ‘provisional’ business for the week after. This is followed by questions, generally lasting around an hour, starting with the Shadow Leader of the House and Liberal Democrat Shadow Leader and followed by backbench members on all sides. However, as the business is simply announced in an oral statement, there is no opportunity for members to amend the programme, and there is no vote to approve it. Occasionally the business for the coming week may be changed in response to

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<sup>1</sup> For a recent account of the work of the usual channels see Michael Rush and Clare Ettinghausen, *Opening Up the Usual Channels*, London: Hansard Society (2002).

<sup>2</sup> D. Limon, and W. R. McKay, *Erskine May: Parliamentary Practice (22nd Edition)*. London: Butterworths (1997).

circumstances – but this will be agreed through the usual channels and generally reported in a further short business statement by the Leader of the House.

The Leader of the House also announces the dates of recesses in a business statement, and until recently this was done at relatively short notice. In October 2002, as a result of recommendations from the Modernisation Committee, it was agreed to improve transparency and planning for those inside and outside the House by announcing an annual calendar. The calendar for the 2002-03 session, with provisional dates for recesses, was announced shortly afterwards. However, the timing of such announcements remains at the discretion of the government.

In setting the business, government is constrained by the time allocated in Standing Orders to certain items. Question time (on a rotating basis to different government departments) has a fixed slot at the start of the sitting on Monday to Thursday. At the end of each sitting day there is a half hour ‘adjournment’ debate, with subjects chosen by backbench members through a ballot. The House now normally only sits on only 13 Fridays per year, when SO 14(4) provides that Private Members’ Bills have precedence over government business (the timing and organisation of this business is a cause of much frustration amongst members). In addition, on 20 days the opposition parties are entitled to fix the topic for debate (SO 14(2)). Seventeen of these 20 days are allocated to the main opposition party and three to the third party (meaning that the minor parties have no guaranteed days at their disposal, though they are occasionally given a slot at the discretion of other parties).<sup>3</sup> Finally, Standing Orders provide that three days per year are allocated to the ‘consideration of estimates’, which in practice usually means debates on select committee reports selected by the Liaison Committee of committee chairs.<sup>4</sup>

Despite this range of constraints, the government still has considerable latitude. In consultation with the usual channels it decides timing of all government bills and general debates – including whether time in addition to the estimates days is dedicated to debating select committee reports – and on which dates the 20 opposition days fall. The government may also announce at short notice its intention to make a statement on a subject of its choosing after question time (which results in changes to the timing of subsequent business). However, where there is a topical issue and no statement is forthcoming, a member may also table an ‘urgent’ question to call government to the House, with the Speaker deciding which such requests are granted. Since 1997 an average of just under 12 such requests were granted per session.<sup>5</sup>

Since 1997, the informal process of negotiation with respect to government bills has been supplemented by a formal procedure for programme motions, which allocate time for some or all stages of a bill. This was initially set out in renewable sessional orders but in October 2004 the Commons voted to make the procedure part of Standing Orders, giving it a greater degree of permanence.<sup>6</sup> In addition, the government can use guillotine motions as a reserve power to bring debate to an immediate close and move to a vote. Programme motions began as a consensual initiative, but now represent a formalised means of ensuring that government bills have time for all their stages and are regularly opposed by the opposition.<sup>7</sup> In general, there is disappointment with the outcome of programming since 1997. The initiative is not considered to have improved scrutiny of bills and there is concern that backbenchers are squeezed out by frontbenchers who take up the limited time available on a series of clauses. On the other hand, backbenchers may

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<sup>3</sup> By way of comparison, in 2003-04 (the last normal length session), parliament sat in total for 157 days.

<sup>4</sup> House of Commons Standing Order 54.

<sup>5</sup> Annual House of Commons Sessional Information Digests (1997-2005). London: House of Commons. These questions were previously known as Private Notice Questions.

<sup>6</sup> House of Commons Hansard, 26 October 2004, Cols. 1308-1405. The relevant changes to standing orders were opposed by all major opposition parties and a small group of Labour MPs.

<sup>7</sup> See Modernisation of the House of Commons Select Committee, *Programming of Legislation and Timing of Votes: Report and Proceedings of the Committee*, Second Report of Session 1999-2000, HC 589. This report advocated a more formalised procedure for programme motions. It was opposed by the Conservative minority on the committee.

sometimes feel freer to speak when a programme motion is in force, as by so doing they are not delaying the legislation. In practice, programming has had a minimal effect on executive domination of the timetable and is now no more based on consensualism than was the use of guillotine motions.

The usual channels can break down, the most recent example being in 1993-94; but the withdrawal of co-operation is usually a tactical decision by the opposition for political reasons and is short-lived. The arrangement tends to suit both sides and there is no pressure for change from frontbenchers.

The latest statistics available for a full session not interrupted by an election are for 2003-04. The time spent in the chamber breaks down as follows<sup>8</sup>:

- Business initiated by government (including legislation, debates, statements): 57.6 per cent
- Business initiated by the opposition: 11.6 per cent
- Business initiated by backbenchers (including questions, legislation, select committee debates and adjournment debates): 28.0 per cent
- Other business (including daily prayers): 2.8 per cent

Time in the chamber is thus dominated by government business. But new opportunities have been made available for private members in other forums. The modernisation process has created Westminster Hall – a parallel chamber allowing extra time for select committee reports to be debated and private members to raise constituency and specialist matters. Westminster Hall sits on Tuesdays, Wednesdays and Thursdays whenever Parliament is in session. Standing Order 10(13) specifies that up to six Thursdays per session should be set aside for the debate of select committee reports chosen by the Liaison Committee of select committee chairs. A longer-standing form of parallel chamber is the grand committee, which exists in three territorial guises (for Scotland, Wales, Northern Ireland). The usage and functions of these have varied but as a general rule meet only when business is explicitly referred to them by the House, in effect guaranteeing that government decides what role if any these bodies play.

## **The Committee System**

The whips also have significant control over the appointment of parliamentary committees, and where there is consultation, this largely takes place through the usual channels. Only government can move a motion to change Standing Orders, so a government motion is needed to create a new select committee or change the remit of an existing committee. However, once select (investigative) committees are established they can decide their own agendas without reference to the plenary chamber.

There is a strict convention that places on select committees and standing (legislation) committees be allocated as proportionately as possible between the parties.<sup>9</sup> Nominations for places are mainly decided through the usual channels, though formally the Committee of Selection has a major role. This committee currently comprises seven whips and two backbenchers, with the government in a five to four majority. However its meetings are very short and in practice consist of approving the names already agreed. With respect to select committees the plenary chamber itself must approve the names, but with respect to standing

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<sup>8</sup> Source: House of Commons Sessional Returns Session 2003-04, Table 3C (Distribution of time on the floor of the House between principal types of business). We have categorised the raw data following Robert Blackburn and Andrew Kennon with Sir Michael Wheeler-Booth, *Parliament: Functions, Practice and Procedures*. London: Sweet & Maxwell (2003, 2<sup>nd</sup> Edition), table 1.022.

<sup>9</sup> Standing Order 86(2) requires the Committee of Selection to 'have regard to...the composition of the House' in nominating standing committee members. This explicit requirement is not repeated in the section on select committee appointments.

committees the decision of the Committee of Selection is final.<sup>10</sup> Both the initial membership of select committees, and any subsequent changes in membership, are put to the House in government motions.

The decision about which party should hold the chair of which select committee (with an expectation that these too will be shared out more or less proportionately) is in practice taken by the usual channels. The party whips decide who they want to chair the committees, though as the committees themselves are formally responsible for electing their chairs they do potentially have some discretion.

The select committees are re-established at the start of each parliament, though as noted above, this may not happen for some months after an election. When the government moved the motion to establish select committees in July 2001 there was a revolt by backbenchers that defeated the attempt by the whips to remove from their committees two long-standing Labour chairs – Gwyneth Dunwoody and Donald Anderson. This was followed by a failed attempt at reform (discussed in the following section). Since then Standing Orders have been changed so that committee chairs can serve no longer than eight years.<sup>11</sup> The main change made in terms of selection of committee members was in the Standing Orders of the Parliamentary Labour Party (PLP), which gave greater power to backbenchers to influence the party's nominees before they were proposed to the full chamber. In 2005 the members of the PLP Parliamentary Committee were said to have exerted significant influence over the names put forward, in negotiation with the whips. This is a type of formal accountability which does not exist in the Conservative Party, though in both parties it remains hidden from public view.

## Past Proposals for Reform

There are various problems with the current system of timetabling business, which is opaque and, save for the bilateral negotiations that take place between whips, presents parliament with its agenda on a take it or leave it basis. The House can debate and criticise but not amend or reject the business statement presented by the Leader of the House. The system for allocating seats on select committees has also led to controversy, although the Commons can debate, amend and vote upon motions to establish select committees.

The Liberal Democrats and the other minor parties have been the most vociferous in calling for reform to the procedures for timetabling. The usual channels system is predicated on a two party system, and the conduct of bilateral negotiations not only gives the official opposition greatest negotiating power but potentially allows government to 'divide and rule' its opponents. There have also been problems between the smaller parties themselves with the SNP and Plaid Cymru at one point choosing to deal directly with the Government Whips' Office in usual channels negotiations, believing that the Liberal Democrats could not represent their interests fairly.

There have been various proposals for reform made in the past by expert groups outside parliament. The Hansard Society Commission on the Legislative Process (the Rippon Commission), which published its report *Making the Law* in 1992, recommended establishment of two new cross-party committees, one to deal with the overall sessional timetable, and the other with detailed allocation of time to each bill.<sup>12</sup> In the past there have also been proposals for a committee which would sift private members' bills and prioritise their timetabling to reflect the

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<sup>10</sup> House of Commons Standing Order 86.

<sup>11</sup> House of Commons Standing Order 122A.

<sup>12</sup> Hansard Society Commission on the Legislative Process, *Making the Law*. London: Hansard Society (1992).

interests of members.<sup>13</sup> More recently the Conservative Party's Commission to Strengthen Parliament, under the chairmanship of Professor the Lord Norton of Louth, echoed the need for an independent committee to allocate time on government bills.<sup>14</sup> A later Hansard Society Commission on Parliamentary Scrutiny proposed in 2001 that there should be a cross-party parliamentary steering committee with responsibility for managing the parliamentary timetable. This, it was suggested, would 'put the management of business on a formal footing and overcome many of the problems inherent in the informal agreements of the "usual channels"'.<sup>15</sup>

Both the matter of more cross-party consultation on parliamentary business, and of giving greater parliamentary accountability to select committee appointments, were considered in the 2001-05 parliament by the Modernisation Committee under Robin Cook. Following the revolt over the Dunwoody and Anderson appointments, the whole system of nomination to select committees was reviewed by the Modernisation Committee. It brought forward proposals to reform the system, by establishing a new Committee of Nomination chaired by the Deputy Speaker, with cross-party backbench representation. However these proposals were defeated on a free vote on 14 May 2002.<sup>16</sup> There were concerns about some of the details of the reforms (for example the exclusion of newer members of the House from the proposed new committee), but it is generally acknowledged that the whips on both sides played a behind-the-scenes role in orchestrating opposition to the proposals.<sup>17</sup>

The Modernisation Committee also considered the introduction of a business committee to create a more consensual and open approach to timetabling as part of the wider reform package put to the Commons on 29 October 2002. This initiative was particularly pressed on the committee by the Liberal Democrats, but cabinet opposition prevented the idea from being formally included in the report. Instead the report included a much vaguer commitment to 'collective consultations with other parties in the House on the broad shape of the legislative year, those bills intended to be published in draft, those bills intended to be carried over and which bills are expected to be introduced in the Commons, including discussion on the likely dates of recesses and related matters such as Friday sittings and Opposition days'.<sup>18</sup> This small victory was seized on by the Liberal Democrats as presaging an 'embryonic business committee' though in the event only a single meeting was ever held, in December 2002. No official decisions were taken and no minutes were kept.

In 2003, the cross party backbench group Parliament First also proposed that there should be a business committee for 'managing the parliamentary timetable' and to 'ensure that the Commons determine[s] its own Standing Orders and protect the Commons' interests against any encroachment by the Executive'.<sup>19</sup>

More recently still, the House of Lords Constitution Committee, in its wide-ranging report on *Parliament and the Legislative Process*, suggested that Westminster was an outlier in comparative

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<sup>13</sup> D. Marsh and M. Read, *British Private Members' Balloted Bills: A Lottery with Few Winners, Small Prizes, but High Administrative Costs*, Essex Papers in Politics and Government, University of Essex (1985).

<sup>14</sup> Commission to Strengthen Parliament, *Strengthening Parliament*. London: The Conservative Party (2000).

<sup>15</sup> Hansard Society Commission on Parliamentary Scrutiny, *The Challenge for Parliament: Making Government Accountable*. London: Hansard Society (2001), p. 26.

<sup>16</sup> For full background on the reform proposals see Modernisation of the House of Commons Select Committee, *Select Committees*, First Report of Session 2001-02, HC 224; and Liaison Committee, *Select Committees: Modernisation Proposals*, Second Report of Session 2001-02, HC 692.

<sup>17</sup> For an account of the votes see Alexandra Kelso, 'Where were the Massed Ranks of Parliamentary Reformers?' – "Attitudinal" and "Contextual" Approaches to Parliamentary Reform', *Journal of Legislative Studies*, 9:1 (2003), 57-76.

<sup>18</sup> Modernisation of the House of Commons Select Committee, *Modernisation of the House of Commons: A Reform Programme*, Second Report of Session 2001-02, HC 1168-I, paragraph 44.

<sup>19</sup> Parliament First, *Parliament's Last Chance* (2003).

terms in the level of government domination of the legislative timetable.<sup>20</sup> The committee argued that the existence of business committees elsewhere ‘does not prevent Government from getting its business, but it does ensure greater openness and time for the proper scrutiny of Government’<sup>21</sup>. Consequently it recommended ‘that consideration be given to the establishment of business committees at Westminster’ (that is, for both Commons and Lords).<sup>22</sup> The government responded to this recommendation as follows: ‘The option of a business committee in the House of Commons has been considered over the years. The Government does not believe it would offer significant advantage over current arrangements’.<sup>23</sup> The remainder of this briefing seeks to use evidence from some other parliaments where business committees are already in operation to assess whether this is in fact the case.

## Four Business Committees and their Roles

In numerous parliaments overseas, cross-party committees exist which allow consultation on the timetable of parliamentary business, committee appointments, and other matters relating to the general management of parliament. Proponents of business committees as opposed to the House of Commons ‘usual channels’ approach tend to make a threefold argument. First, that *parliamentary control* over the agenda would be enhanced at the expense of executive dominance, increasing democratic accountability. Second, that business committees typically entail a greater degree of *inclusiveness* in terms of the actors involved in the agenda-setting process. And third, that the process of setting the timetable and establishing committees would benefit from the greater *transparency* of an official business committee.

This paper focuses on four business committees, in Scotland, Germany, New Zealand and Australia. The first three of these have far-reaching powers in relation to parliamentary management. The committee in Australia has a more limited remit to deal with organisation of non-government business. In examining the membership, powers and operation of these four bodies, the paper will seek evidence to test the government’s recent assertion that a business committee would not ‘offer significant advantage over current arrangements’.

### The Business Committee of New Zealand

The House of Representatives in New Zealand has 120 seats. Following electoral reform in 1993 it has been elected by the Mixed Member Proportional (MMP) system (or Additional Member System), with 69 members representing constituencies and 51 elected from national party lists. Under this arrangement, unlike the previous ‘first past the post’ arrangement, single party majority governments are unlikely. There are currently eight parties represented in parliament, with the Labour Party being the largest group and governing with the support of minor parties. The main opposition is the National Party.

The Business Committee in New Zealand dates back to the introduction of the new electoral system. A review of parliamentary Standing Orders was conducted in anticipation of the change and recommended the establishment of such a body. Its purpose would be to deal with the ‘greater complexity in party arrangement in an MMP Parliament’, and to introduce more ‘forward planning’ into the proceedings of the House.<sup>24</sup> Before 1995, the ‘Whips’ Committee’ was formally

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<sup>20</sup> House of Lords Committee on the Constitution, *Parliament and the Legislative Process*, 14<sup>th</sup> Report of Session 2003-04, HL 173-I, paragraph 116.

<sup>21</sup> Ibid. paragraph 118. This point was originally made in House of Lords Committee on the Constitution, *Devolution: Inter-Institutional Relations in the United Kingdom*, Session 2002-03, HL 28, paragraph 146.

<sup>22</sup> House of Lords Committee on the Constitution, *Parliament and the Legislative Process*, op cit, paragraph 123.

<sup>23</sup> House of Lords Committee on the Constitution, *Parliament and the Legislative Process: The Government’s Response*, 6<sup>th</sup> Report of Session 2004-05, HL 114, paragraph 40.

<sup>24</sup> New Zealand House of Representatives Standing Orders Committee, *Review of Standing Orders: Report of the Standing Orders Committee*. Wellington: House of Representatives (1995), p. 20.

responsible for House business. But in fact it never met, and informal meetings between whips and leaders dictated the running of Parliament, much as they do in the UK. The Standing Orders review noted that national assemblies in the Netherlands, Denmark, Norway and Germany had all successfully used a form of business committee to keep parties informed of the business of the House and to enable them to contribute to decisions on the legislative programme.

The original objectives for the new committee were:

- to recommend to the House a programme of sittings for each calendar year;
- to determine the order of business to be transacted and the times to be spent on it in the coming week's sittings;
- to operate as a committee of selection in respect of recommending the personnel to serve on select committees (but see below); and
- other duties as the House decides from time to time.<sup>25</sup>

### **The Council of Elders (Ältestenrat) in the German Bundestag**

In Germany negotiation between party representatives over the parliamentary agenda and composition of committees can be traced back to an informal body existent in the Prussian parliament in the 1860s. This emerged because while the parliamentary parties recognised the importance of dividing up parliamentary resources between them, parliamentary rules did not formally acknowledge the parties' existence. Initially this body consisted of one representative per party and operated by consensus. It came to take on a range of roles, including allocation of parliamentary time, the order of speakers in debates, size of committees, allocation of committee members and chairs. It was chaired by the President of the Reichstag, and included no government members as the executive did not at that time sit in parliament. A similar arrangement developed in the Reichstag of the Weimar Republic and took on the name Council of Elders.<sup>26</sup>

The rules of the Bundestag are today little changed since these arrangements. The fact that the Council of Elders has maintained most of its powers in the post-war period when government sits in parliament is an indication of the extent to which it had become an accepted part of the institution. The Bundestag, like the New Zealand Parliament, is elected using the Mixed Member Proportional system, and government is normally by a coalition, since 2005 a 'grand coalition' of the two major parties.

The Rules of Procedure (Standing Orders) of the Bundestag give the Council of Elders two general functions: to assist the Bundestag President in conducting the business of the House and to facilitate agreement among the party groups about the timetable and the distribution of committees chairs.<sup>27</sup> The rules also emphasise that the Council has no decision-making power. Its role is limited to achieving consensus and making proposals to the House.

### **The Parliamentary Bureau in the Scottish Parliament**

Those who planned the Scottish Parliament in the 1980s and 1990s did not want the new institution to be 'like Westminster'. That is, a parliament seen as being too dominated by its executive, not least in terms of control of the arrangement of business in the Commons. A more transparent and inclusive means of business management, through some sort of business committee, was therefore seen as an important component in the workings of the devolved

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<sup>25</sup> Ibid, pp 20-21.

<sup>26</sup> The historical antecedents and development of the Council of Elders are detailed in Gerhard Loewenberg, 'Agenda-Setting in the German Bundestag: Origins and Consequences of Party Dominance', *Journal of Legislative Studies*, 9:3 (2003), 17-32.

<sup>27</sup> Rules of Procedure of the German Bundestag, Rule 6.

Parliament. When the Consultative Steering Group (the official, cross-party body that devised detailed principles and procedures for the Scottish Parliament, many of which were incorporated into Standing Orders) came to consider the organisation of business management, this view was agreed.<sup>28</sup>

This scheme was broadly adopted in the Parliament's Standing Orders, except that it was decided, virtually at the last minute, that the business committee was to be called the 'Parliamentary Bureau'. This provided a suitably continental flavour, but also emphasised that it was not a parliamentary committee in the usual Standing Orders sense. The Bureau's *sui generis* nature is made explicit in Standing Order 5.1.4 and has the result that it need not conform to the requirements for party balance or openness that apply to committees of the parliament.

The Bureau is established in Standing Orders (chapter 5), and its main functions, for the purposes of this paper, are to agree upon a business programme for the parliament and propose this in a motion in plenary, and to propose the establishment, remit, membership and duration of any committee or sub-committee.

### **The Selection Committee of the Australian House of Representatives**

In Australia the 148-seat lower house, the House of Representatives, is elected using the 'alternative vote', which tends to give comfortable single party majorities. The Australian constitution reflects the traditional framework of 'responsible parliamentary government' by protecting the rights of serving governments to initiate much if not most parliamentary business. In practical terms, serving governments also control decisions over the timing and length of parliamentary sittings. The rules for determining the programming and business of each house are a matter for its own members and are set down in Standing Orders. As parliament sits for only about 80 sitting days each year (around half that of the UK) governments have relatively little time to lose and few incentives to tolerate delays.

Although the majority of time in the chamber is controlled by government, a new committee – the Selection Committee – was established around 20 years ago with responsibility for determining non-government business. Its creation was one of a number of changes that flowed from an inquiry and subsequent report held by the House Standing Committee on Procedure into parliamentary time.<sup>29</sup> The inquiry was a response to growing dissatisfaction about the limited opportunities for backbenchers to initiate debates and the encroachment of government business into periods that were set aside for non-government business.

The Selection Committee has a more limited role than the equivalent bodies in New Zealand, Germany or Scotland, but provides an interesting example of how some responsibility for business management can be formalised in a majoritarian Westminster-style parliament. Its functions are limited to determining the makeup of the bulk of non-government business. Formally, it is tasked with 'arrang[ing] the timetable and order of private Members' business and committee and delegation reports for each sitting Monday' (Monday being the day when government business does not take precedence).<sup>30</sup> The Selection Committee thus has no responsibility for programming government business or for committee appointments. Occasionally the suggestion of extending its remit to cover some government business has arisen but this has so far failed to attract the support of the major parties.

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<sup>28</sup> Consultative Steering Group on the Scottish Parliament, *Shaping Scotland's Parliament*, Edinburgh: The Scottish Office (1998).

<sup>29</sup> Australian House of Representatives Standing Committee on Procedure, *Days and Hours of Sitting and the Effective Use of the Time of the House*, Parliamentary Paper PP108 (1986).

<sup>30</sup> Australian House of Representatives Standing Order 222.

## Business Committee Membership and Procedure

There are both strong similarities and some notable differences between the make up of business committees in our four sample countries. Relevant variables include the balance between frontbench and backbench members, between government and opposition parties, between large and small parties, and the role of the Speaker or other non-partisan representatives of the parliament as a whole.

In terms of decision-making processes, the key questions are whether decisions are usually taken by consensus, and how disputes are resolved. Also of relevance is whether the committees' decisions are debated and voted on in parliament, and whether any record of their meetings is published.

### New Zealand

In New Zealand the Business Committee is convened and chaired *ex officio* by the Speaker of the House. Apart from this, however, the formal membership criteria confirm the primacy of the parties. Standing Orders stipulate that all parties with at least six MPs are entitled to have a representative on the Business Committee. In addition, parties with fewer than six members, and that are in a government coalition, are entitled to choose one representative between them. Other parties with fewer than six members, together with independent members, have the same right. In practice this means that parties surmounting the electoral threshold for entry to parliament of five per cent in the national list vote are directly represented on the Business Committee. Independent MPs and (as is more likely) parties entering Parliament by winning a small number of constituencies can be excluded.

In practice, however, in all four of the parliaments elected since the first MMP election the Business Committee has opted for inclusivity, allowing smaller parties individual representation on the committee. In the current parliament, for example, the sole party (out of eight) without direct representation on the committee has only a single MP (and he is a government minister so cannot be said to be excluded from the business management processes). It has also become usual for the Deputy Speaker and the Assistant Speaker to attend Business Committee meetings. By convention, the Leader of the House, always a senior cabinet minister, is a full participant in the work of the committee, as generally is the shadow Leader of the House. Despite a heavy workload, the Leader is usually present and leads much of the discussion. S/he is the primary conduit between the legislature and the political executive, and also usually chairs the Cabinet Legislative Committee, which is responsible for determining the government's legislative programme. The other Business Committee members have tended to be party whips (or 'musterers', as they are called in the Green Party). There is a Committee Clerk to attend to the body's administrative needs, and the Clerk of the House is present to give guidance on procedural issues.

The Business Committee's decision-making practice is unusual in New Zealand parliamentary terms, in that it was at the outset envisaged as being consensual, aiming for unanimity where possible. It is expected to at least achieve 'near-unanimity', meaning that the Speaker is satisfied that parties representing an 'overwhelming majority' of MPs are in favour (in practice taken as dissent being limited to parties of six or fewer members). The Speaker is the judge of whether unanimity is possible, or whether near-unanimity has been reached, and the rules require that s/he must be satisfied that 'the proposed determination is fair to all parties and does not discriminate against or oppress a minority party or minority parties'.<sup>31</sup> This formal near-unanimity rule means that every party (or at least those passing the five per cent nationwide threshold)

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<sup>31</sup> New Zealand House of Representatives Standing Orders 75 (1), (2) and (3). The Business Committee is one of only two standing parliamentary committees that operate according to a formal unanimity rule. The other is the Officers of Parliament Committee.

potentially have a veto on Business Committee decisions. Again, however, there is a distinction between formal and informal rules. It seems that, if consensus cannot be reached on the Business Committee itself, the issue is shelved. It is thus referred to the parties to be resolved, and that is where direct negotiations between the Leader of the House and the various whips occur. Once agreement is reached, the Leader of the House informs the House of this by means of a business statement as in the British House of Commons. It should be noted that the Speaker does not have a casting vote on the Business Committee (or indeed in the House itself). Nevertheless, there is considerable power allocated to the Speaker through the provision that he or she alone can declare when near-unanimity must suffice.

The Business Committee does not meet in public, and its deliberations are not recorded. The minutes contain merely a brief record of its decisions. Free and open exchanges of views are thus preserved, perhaps at the expense of democratic openness and accountability.

## Germany

The Council of Elders is chaired by the President (Speaker) of the Bundestag, who is traditionally nominated by the largest parliamentary group, elected by the Bundestag and impartial in office. All Vice-Presidents (Deputy Speakers), of whom there are currently six, are also members of the Council and Standing Orders provide that a further 23 places are distributed proportionately among the parliamentary parties. These party representatives are largely made up of ‘floor leaders’ and ‘first’ floor leaders – in Westminster parlance whips and chief whips – though the larger parties may have sufficient seats to give some to backbenchers. However, in understanding the German system it is crucial to understand that floor leaders, unlike whips at Westminster, are elected by their respective party groups. A representative of the Federal Government also participates in Council of Elders meetings. This is usually a junior minister and often a former floor leader.

The Council meets weekly on a Thursday, and may occasionally be called together at other times to deal with issues as they arise. In practice meetings are short, as many of the important decisions (as outlined below) have already been taken in earlier informal meetings. An indication of the extent to which negotiations occur outwith Council meetings is the fact that its secretariat comprises only two people, despite its extensive formal role.

The proceedings of the Council are kept confidential. The Bundestag website details the general functions of the Council and its membership but carries no information about specific decisions made, the agenda or even the dates of meetings held.

## Scotland

As in New Zealand and Germany, the Bureau is convened and chaired by the Presiding Officer of the chamber. He or she is elected by the whole Parliament, does not necessarily come from a government party, and is strictly non-partisan when elected. Each party with five or more MSPs is entitled to a single Bureau representative. These members are nominated by the party leaders and generally are ‘business managers’.<sup>32</sup> In addition any group of five or more MSPs made up of smaller parties and independents is entitled to a representative. In practice the two Deputy Presiding Officers attend the meetings, as do deputy business managers, with permission of the Presiding Officer and in a non-voting capacity.

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<sup>32</sup> The norm is for each party’s business manager also to hold the position of chief whip, though in the case of the Liberal Democrats the two posts are now held by different individuals confirming that the *inter*-party business manager role can be distinguished from the *intra*-party whip role. The Bureau representatives of the two coalition parties are also, thus far, Ministers in the Scottish Executive – the Labour business manager is a cabinet minister (originally titled Minister for Parliament, and more recently, and more appropriately – Minister for Parliamentary Business), and the Liberal Democrat is a junior minister, and deputy to that cabinet minister.

There is thus no fixed size of the Bureau. In the first session (1999-2003), it had four party representatives (Labour, SNP, Conservative and Liberal Democrat), and no group representatives. Since then, the make-up has become more diverse. In the 2003 election the Scottish Greens and the Scottish Socialists won seven and six seats respectively, entitling each to a Bureau representative. And since September 2004 there has also been an independents group with representation on the Bureau as the number of independent MSPs had risen to the requisite five. Consequently, in addition to the Presiding Officer (who holds a never-yet-used casting vote) there are currently seven voting members. In practice, the membership changes quite frequently as parties shuffle their frontbench teams but all members are very much spokespersons for the party line.<sup>33</sup>

While each of the main parties is represented by a single member, their voting strength on the Bureau relates to the party's number of seats. Each member wields this as a 'block vote', rather than splitting it in any way. The prevailing philosophy is that business arrangements should, as far as possible, be made on a consensual basis, without resort to formal votes – a practice bolstered by the Executive's in-built majority, and the Bureau meeting in private. There were 26 formal votes in the first four-year session but the first three years of the second session have seen only two such divisions on the Bureau. In such a model, agreement is assumed to be reached on the basis of debate and discussion, which makes the composition of Bureau meetings of particular significance. The Presiding Officer's role is potentially much greater than that of a passive chair, and the presence of non-voting members (Deputy Presiding Officers and deputy business managers) may also affect the tone of debate and decisions taken. However, throughout the 1999 Parliament, and probably to some extent now, there were pre-meetings between the business managers to discuss the agenda of the meeting in advance, at which the Presiding Officer was not present.

One critique made of the Bureau is that it operates in a manner contrary to the Parliament's underlying culture of openness and transparency, with limited accountability to Parliament (especially backbenchers) and public. Not only does it meet in private (as it is required to do by Standing Orders), but it also did not, until April 2001, publish any details of its deliberations other than through announcements of its decisions. As a result of freedom of information legislation, the Scottish Parliament website now carries agendas, meeting papers and minutes, but these date back only to June 2004 and the information published has been criticised for being minimalist. The Parliament's Procedures Committee has urged more openness in the Bureau's operation, with options such as publication of agendas in advance, and power for it to decide to meet in public.<sup>34</sup>

## Australia

The Selection Committee has 11 members and a composition precisely fixed in Standing Orders. These state that it is chaired by the government party's Deputy Speaker and the other members will include the chief government whip, chief opposition whip, the third party whip (representing not a 'third party' in the Westminster sense but the Liberal Party's coalition partner, the National Party). The remaining seven seats are to be divided between four government members and three non-government members, who are selected by means of intra-party ballots then formally appointed by a resolution of the House. In practice, though this is not stipulated in the rules, since the creation of the committee in 1988 five of these seven slots have been given to junior

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<sup>33</sup> Margo MacDonald (the independents' representative) is perhaps a partial exception as her reported intention on joining the Bureau was 'provide a greater voice for backbench interests' (Mark Shephard, 'Parliament' in *Scotland Devolution Monitoring Report: November 2004*, section 2.3. At: [www.ucl.ac.uk/constitution-unit/monrep/scotland/scotland\\_november\\_2004.pdf](http://www.ucl.ac.uk/constitution-unit/monrep/scotland/scotland_november_2004.pdf).)

<sup>34</sup> See Scottish Parliament Procedures Committee, *The Founding Principles of the Scottish Parliament: the application of Access and Participation, Equal Opportunities, Accountability and Power Sharing in the work of the Parliament*, SP Paper 818 (2003), pp. 141-148.

whips, leaving only two places for backbench members. For this reason, the Selection Committee is often informally described as the ‘committee of whips’ and is sometimes the forum for negotiations and consultations among whips on matters outside the formal remit of the committee.

Decisions of the Selection Committee are made – without exception – on the basis of consensus. Although Standing Orders permit divisions on the committee, there have been none since its formation in 1988.

Decisions by the Selection Committee do not require subsequent House approval. Similarly to in New Zealand, decisions are simply reported to the House and automatically adopted, with no debate or vote.<sup>35</sup> Theoretically, when the committee’s report is presented in plenary, a member could ‘seek leave’ to comment on it but this has never happened. Unlike other parliamentary committees, minutes or transcripts of Selection Committee debates are not made public. After each meeting, a document setting out the decisions taken is published, which then forms the report made to the House.

The composition of the four business committees reflects the fact that all are designed as forums for inter-party negotiation rather than bodies to represent the collective voice of the parliament. Frontbench spokespersons – principally whips – predominate. The exception is the German case where party representatives are elected by colleagues rather than being appointed by party leaders, but in all four business committees considered there is little sense in which these members represent the collective backbenches rather than their own party interests.

On the other hand, all four business committees are chaired by the parliament’s Speaker or equivalent (or Deputy Speaker in the Australian case). This contrasts with the House of Commons, where the Speaker has no such institutionalised role in the management of business. Minor parties are also more integrated into the business management systems of the Scottish, New Zealand and German parliaments than is the case in the House of Commons (though proportionately, minor parties in the Commons are less significant).

Voting strength on all four business committees in one way or another corresponds to party representation in the parliament. However, the ability of the government to prevail in the event of dispute depends upon the strength of formal or convention-based requirements for consensus (strongest in New Zealand and Germany). A further variable is what happens once the business committee takes a decision. In Scotland and decisions are subject to ratification in the House, strengthening the sense of parliamentary ownership of its own time and committees. In New Zealand and Australia, on the other hand, decisions of the respective business committees are automatically adopted. As previously noted, the Commons falls between these models, as business statements are not voted upon but decisions relating to committee appointments are.

Finally, none of the four business committees studied are subject to the same transparency requirements as ordinary parliamentary committees. In all cases however, the membership and functions of the business committees is at least clearly laid out in the rules and on the respective websites, which is not the case for the usual channels and Committee of Selection in the House of Commons.

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<sup>35</sup> This is made explicit in Australian House of Representatives Standing Order 222(f).

**Table 1: Membership of Business Committees**

	New Zealand: Business Committee	Germany: Council of Elders	Scotland: Parliamentary Bureau	Australia: Selection Committee
Size of parliament	120	656	129	148
Size of committee	10-15 (dependent on party strengths)	c.30 (dependent on number of vice-presidents)	5-10 (dependent on party strengths)	11 (fixed in Standing Orders)
Who chairs?	Speaker	President (Speaker)	Presiding Officer (Speaker)	Deputy Speaker (from government party)
Share of seats by party?	All parties with 6+ members are guaranteed one seat, plus one for small government parties and one for small non-government parties. In practice, small parties are given a seat each.	23 seats divided proportionally to party strengths.	All parties with 5+ members get a seat, as do other groups of 5+ members.	One whip from each of the three main parties, plus 4 additional government and 3 non-government members. In practice, eight places are filled by whips.
Who represents parties?	Generally whips, plus Leader of House and Shadow	Principally whips	Generally 'business managers' or whips	Principally whips
How are members chosen	Nominated by party leaders	Elected by party groups	Nominated by party leaders	Whips nominated, others elected by party groups in secret ballots
Who represents government?	Chief Whip and Leader of the House	Junior minister (distinct from government party representatives)	Business minister or whip of each Executive party	Chief whip
Other members	None, though Deputy and Assistant Speaker generally attend.	Vice presidents	None, though the two Deputy Presiding Officers generally attend.	None

## Business Committees and Parliamentary Time

The core role of all four committees is to influence the way time in the chamber is spent and to balance the needs of different individuals and groups. In each case the committee is limited by those items of business that are already fixed (for example in Standing Orders). This is a bigger constraint in some cases than others, and the committees themselves have widely varying powers.

### New Zealand

The usual sitting hours of the New Zealand Parliament, as specified in Standing Orders, are from 2 pm to 6 pm and 7.30 pm to 10 pm on Tuesdays and Wednesdays and from 2 pm to 6 pm on Thursdays. Each sitting day commences with 'general business', which includes presentation of bills and committee reports, oral question time and, on Wednesdays, 'general debates'. The rest of the Tuesday and Thursday sittings are taken up with government business. On Wednesdays, private and local orders of the day and members' orders of the day (including consideration of committee reports) alternate with Government business in terms of taking precedence.<sup>36</sup>

The Business Committee meets on Tuesdays at 4:30 to discuss the week's legislative programme.<sup>37</sup> Early in the meeting the Leader outlines the business of the House. This is followed by some negotiation by opposition MPs wanting to change the order of business. The Leader of the House tends to be flexible, although the extent to which leniency and compliance is exercised undoubtedly depends on whether the government coalition has a majority in the House or whether it needs the votes of supporting parties. Standing Orders allow the government without notice to move a motion to take 'urgency' (meaning suspending Standing Orders and government legislative business taking priority over everything else), but only once general business is completed. In practice, if the government plans to do so, the Leader of the House usually informs the Business Committee of this intention a couple of weeks in advance so that all the parties can plan.<sup>38</sup>

A key task of the Business Committee is to grant extensions of time for select committee consideration before reporting on government bills, usually following consultation with the relevant minister. Further, the Business Committee considers any clash between House sittings and select committee meetings and adjudicates on these matters. Upon request it can consider select committee workloads and can reallocate bills and petitions to alternative committees. The decision on which committee a bill is referred to is taken by the House after first reading on a motion moved by the member in charge of the bill after first reading.<sup>39</sup>

After the 1999 Standing Order changes, extensions of time for members', local and private bills also became formally the responsibility of the Business Committee. With respect to members' business, the Business Committee decides the number of bills to be drawn from the ballot.<sup>40</sup> It also discusses whether or not the 2<sup>nd</sup> and 3<sup>rd</sup> Readings will happen on the same day, as often occurs with non-contentious local and private bills. It is in the interest of opposition MPs to expedite this sort of legislation in order to leave time for members' orders of the day (at present only four and a half hours every fortnight).

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<sup>36</sup> New Zealand House of Representatives Standing Order 73.

<sup>37</sup> Recent Speakers have been prepared to call other meetings if they are required (for example if the government decides it wants to declare 'urgency' over a piece of legislation).

<sup>38</sup> There was an occasion during the first MMP Parliament when the National/New Zealand First government took urgency without prior discussion in the Business Committee. For the next couple of weeks the opposition parties withdrew all cooperation with the Government.

<sup>39</sup> New Zealand House of Representatives Standing Order 286.

<sup>40</sup> Procedures relating to the ballot for member's bills are set out in New Zealand House of Representatives Standing Order 277.

There are a range of other matters that the Business Committee discusses. These include the weekly allocation of oral questions to the parties, where Standing Orders specify that twelve oral questions can be accepted per day and that these should be distributed proportionately on the basis of party strength. Additionally the Business Committee decides the speaking times and order of speakers from the various parties for general debates,<sup>41</sup> the sessional order for parliamentary scrutiny of treaties, and requests for pieces of legislation to be voted on together as omnibus bills.

Finally, the committee discusses the general sitting programme for the year. Discussion of this usually begins in about October of the previous year when the Leader of the House brings a proposed plan to the Business Committee (having already discussed it with cabinet and the caucuses of the government parties). Sometimes minor changes are made at the Business Committee itself.

It is clear from interviews that, as in the Commons' usual channels, agreement amongst the Business Committee participants is usually achieved simply because it is in the interests of both sides – government and opposition parties – to resolve issues in order that they all end up with speaking and legislative time in the House. But it also should be noted that, although the Government dominates parliamentary time and activities, it is constrained at times by the wishes of the minor parties on which it depends to keep its majority.

## **Germany**

In the Bundestag the first two days of each sitting week are dedicated to party meetings. Plenary sessions are usually only held on Thursdays and Fridays, with Wednesdays principally dedicated to committee meetings. Regular question times are fixed for Wednesdays 1:30 – 2:30pm and Thursdays 2 – 3:30pm. On Wednesday this is preceded by a brief debate on the prior cabinet meeting (1 – 1:30pm). Each plenary day usually also includes an hour of 'topical debate', on an issue proposed by one of the parties. The Council of Elders itself meets on Thursdays and within this framework sets the agenda for plenary sessions a week in advance. It establishes an annual calendar of business at an early stage. The total number of weeks of sittings varies between 22 and 24, with a rhythm of two on, one or two off.

Since its earliest origins the Council has operated within a broad framework set down in rules and Standing Orders. These included an initial rule in the 1860s that committee reports on legislation had priority over other business, then that one day per week was dedicated to non-legislative motions by members, then that the priority order of bills was determined by the order in which they were submitted (the latter has now been dropped). Also adopted early was the principle, still rigidly adhered to, that, except in brief debates, the speaking time is divided among parties in proportion with their relative strengths in the Bundestag.<sup>42</sup> Today the formulae for dividing time, for both speakers within debates and the share of agenda business between the parties, are agreed by the Council of Elders at the start of each parliament and adhered to rigidly thereafter. The only major concession to the executive is the rule that members of the government or their delegates may speak at any length at any time – though this time is deducted from that allocated to the governing parties. The rules also recognise the rights of minority groups – meaning any group totalling five per cent of members. These include rights to call short debates or demand question sessions, to have their resolutions placed on the agenda within three weeks, to table bills, and to demand that committees report ten weeks after referral of a bill.

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<sup>41</sup> These take place on Wednesdays on non-legislative matters raised by both the government and opposition parties. Formally they are on a motion 'that the House takes note of miscellaneous business' (New Zealand House of Representatives Standing Order 383).

<sup>42</sup> Loewenberg, 'Agenda-Setting in the German Bundestag', op cit. p. 23.

At its weekly meetings the Council formally reviews all the submissions from government, the parties, committees and individual members for plenary time. The Council also agrees the length of debate on each item and the number and order of speakers. Decisions on the timetable are taken by consensus – no votes are held, as the Council formally does not have decision-making power. The ability of members to challenge the agenda in plenary, along with the strict provision of minority rights, also create incentives for consensus.

In practice agreement on the agenda is extremely quick as there have been many discussions beforehand. Over the last two decades, the role of the Council of Elders has increasingly become a formality in this respect. The floor leaders meet together twice a week to discuss the current and the forthcoming week's business. At these meetings a written agreement is reached, which is simply endorsed when the Council meets. The lead in drawing up the agenda thus does not lie with parliamentary officials but in practice with the secretariat of the largest parliamentary party (whose floor leader chairs these informal discussions) – a development made possible by the large budgets and staffs of the parliamentary groups.<sup>43</sup> These pre-meetings not only exclude the junior whips and any ordinary members represented on the Council of Elders, but also its chair, the Bundestag President.

The agenda agreed in these various meetings is assumed to be adopted by the plenary chamber at the start of each sitting day, unless an objection is raised. New items (generally matters agreed by the whips after the Council has met) may be added unless a group of at least five per cent of members objects.

Although it is theoretically subject to vote the agenda is generally supported. There were only 28 motions to change the agenda in the first 30 years' operation of the Bundestag. The entry of new parties into the Bundestag (the Greens and later the PDS) was accompanied by more challenges to the agenda, which demonstrated that these smaller parties felt excluded. However, after initial attempts to change the agenda failed, they joined the established system – though challenges to the agenda have continued to occur more frequently than in previous decades. In the 1994-98 parliament, for instance, a total of 33 motions to change the agenda were moved including 19 by the three major parties.<sup>44</sup> The entrance of the smaller parties into the Bundestag has also resulted in meetings of the Council being more formalised than previously, when they were a more comfortable agreement between the three main parties.

## Scotland

In the Scottish Parliament the Bureau agrees the allocation of time in the chamber within the framework which is fixed in Standing Orders. In practice the Parliament almost always meets in plenary for only 1½ days a week. Within this time, question times and 'decision times' (when votes are taken) are fixed. In an arrangement similar to Westminster's adjournment debates, 45 minutes at the end of each day must be devoted to members' debates. Standing Orders also specify, for example, that 12 half sitting days per parliamentary year will be devoted to committee business and 16 to business proposed by non-Executive parties or groups.<sup>45</sup> No indication is given in Standing Orders as to how to allocate any of the forms of non-executive time. Other relevant Standing Orders oblige the Parliamentary Bureau to make time for ministerial statements, statements on the Executive's annual legislative programme and the various stages of budget bills.

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<sup>43</sup> Party resources have risen exponentially in 30 years. There were virtually no party staff in the 1960s but by the 11<sup>th</sup> Bundestag there were around 600 in total. See Suzanne S. Schüttemeyer, 'Hierarchy and Efficiency in the Bundestag: The German Answer for Institutionalizing Parliament' in G. W. Copeland and S. Patterson (eds.), *Parliaments in the Modern World: Changing Institutions*. Ann Arbor: University of Michigan Press (1994).

<sup>44</sup> Data from Loewenberg, 'Agenda-Setting in the German Bundestag', op cit, p.27.

<sup>45</sup> The Parliament meets on approximately 100 half-days per year.

The more general point is that Standing Orders do not specify, as at Westminster, that subject to stated exceptions government business must take precedence. The nearest the Rules come to any such suggestion is the rule that on 12 half days committee business ‘is given priority over the business of the Scottish Executive’.<sup>46</sup> This could be interpreted as an implicit acknowledgement that once fixed time is allocated, the residue belongs to the Executive. But this is a controversial point in Scotland, with critics exhorting the Parliament ‘to make it clear, in its SOs, that all time belongs to the Parliament itself’.<sup>47</sup>

The Bureau presents to the Parliament a forward ‘business programme’ for a specified period, including the agenda for meetings of the full Parliament, and timetables for consideration by the Parliament or any committee of any legislation. This programme is not devised by the Bureau secretariat but, as at Westminster, originates in the Minister’s office. This draft may be amended by the Bureau and is then put to the Parliament. Generally, each business programme covers a two-week period. The information provided for the second week in particular can sometimes be relatively sparse, such as ‘ministerial statement’ or ‘non-Executive business’, with details being gradually filled in as the day approaches. The Bureau sets the timetable for consideration of bills (including individual members’ bills) in committee and in plenary. It also agrees the allocation of members’ (i.e. adjournment) debates between parties, using a strict proportionality formula. The allocation of these debates to individuals is then left to the parties themselves.

A business motion reporting the decision of the Bureau is moved in the plenary, usually at five o’clock on a Wednesday. Business motions can only be moved by a Bureau member and, as at Westminster, this is generally an Executive representative. Though business motions are often passed without debate or division, amendments can be moved. A brief debate is permitted if any member wishes to speak against the motion or if any amendments with ten or more supporters have been tabled. The business motion is generally accepted, but challenges do regularly occur; in 2005, for instance, six out of 36 business motions of this kind were opposed and pushed to a vote.<sup>48</sup> Primarily on the basis of the business programme, the Clerk publishes a ‘daily business list’, though this can be (and not infrequently is) amended at late notice by the Parliament, on a Bureau motion. The Presiding Officer can also make late changes to cope with emergency business.

The basic principles of business management in the Scottish Parliament reflect a balance between conflicting demands for time. These arrangements have to recognise the need for the Executive to govern, the right of Parliament to scrutinise the work of ministers, the ability of committees to carry out their work and of individual members to raise matters of concern (and introduce legislative proposals). In practice, strict party proportionality is adhered to in allocating members’ business and opposition time. The Bureau usually (though not invariably) follows recommendations from the Conveners’ Group (of committee chairs) as to how the 12 committee half-days should be disposed of. In fixing the timing of business, the Bureau must also take into account some of the principles of the Parliament, for example: to be ‘family friendly’ with limited late night sittings, to achieve balance between plenary and committee work, with both seen as equally important, and to allow balance between members’ work in the Parliament and in their constituencies.

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<sup>46</sup> Scottish Parliament Standing Order 5.6(1)(a).

<sup>47</sup> Barry Winetrobe, *Written Submission to Procedures Committee Parliamentary Time Inquiry* (2005). Available at: [www.scottish.parliament.uk/business/committees/procedures](http://www.scottish.parliament.uk/business/committees/procedures).

<sup>48</sup> These figures relate solely to the weekly business motions setting out the business programme for the following two weeks’ business. Other types of ‘business motion’ – for instance amending the existing business programme, or setting out time limits for debating a bill – are not included.

Recesses are announced well in advance – for example on 21 December 2005 recesses were agreed until January 2007 by the Parliament on a Bureau motion. Standing Orders oblige the Bureau to have regard to dates of school holidays in deciding on recess dates.<sup>49</sup>

## Australia

The weekly timetable of the Australian House of Representatives is fixed in Standing Orders to a relatively high level of precision. In a sitting week, the House meets for four days with a question period and a 30-minute adjournment debate at fixed times each day. Except on Mondays, the question period can be followed by a debate on a ‘matter of public importance’ on a subject that can be proposed by any member (though not, by convention, ministers). The rest of Tuesday, Wednesday and Thursday plus Mondays from 6-9pm is dominated by government business. Non-executive business takes precedence on Mondays from 12:30 until approximately 6pm. This is divided into slots for committee and delegation reports, private members’ business, petitions and a ‘grievance debate’. The Australian Parliament is notable for its very low number of sitting days in comparative terms, a fact which further reduces the opportunities for backbench and opposition members, as well as government.

The detailed order of most business in the House of Representatives proceeds according to the Notice Paper prepared by the Table Office, reflecting government preferences.<sup>50</sup> Formally business is divided into three general categories – government business, business of the House (comprising a miscellany of activities, notably the daily question period and Monday debates on committee and delegation reports) and private members’ time. Although the Selection Committee has power over non-government business, it is ministerial decisions that play by far the most significant part in determining the balance of time between this and government business. Between 1990 and 2005, government business rose from 52 per cent of the time of the House to 60 per cent. Business of the House fell from 23 per cent to 16 per cent. Private members’ time fluctuated between 26 and 21 per cent.<sup>51</sup>

The major player with influence over the determination of government business is the Leader of the House. He or she is a government minister and the government’s chief programming officer for House business, implementing government decisions. These are authorised by weekly meetings of the ‘Parliamentary Business Committee’, which is actually a committee of cabinet.<sup>52</sup>

The Speaker also plays a prominent role in determining business of the House in two areas: administration of oral question time (short of actually determining whether to hold it and when to end it, both of which powers effectively rest with the prime minister – though the norm is for the question period to take place daily and to last at least 45 minutes<sup>53</sup>); and selection of proposals for ‘matters of public importance’ debates.

With government and the Speaker so involved in setting the timetable, the powers of the Selection Committee are far more circumscribed than its comparators elsewhere. Its role is limited to determining the order of business for private members’ business and consideration of

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<sup>49</sup> Scottish Parliament Standing Order 2.3.

<sup>50</sup> Australian House of Representatives Standing Order 45 states that ‘The Leader of the House may arrange the order of notices and orders of the day for government business on the Notice Paper as he or she thinks fit.’

<sup>51</sup> *House of Representatives Practice*, 5<sup>th</sup> Edition, Canberra: Department of the House of Representatives (2005), Appendix 23, p. 836.

<sup>52</sup> This committee is similar to the Legislative Programme Committee in the UK, officially described as a ‘Cabinet coordinating committee which manages the government’s legislation and parliamentary business program and allocates priorities to legislation proposals’ (*Legislation Handbook*, Canberra: Department of the Prime Minister and Cabinet (1999), para 1.21).

<sup>53</sup> ‘The basis of this discretion of the Prime Minister is that, as Ministers cannot be required to answer questions, it would be pointless to proceed with Question Time once the Prime Minister has indicated that questions, or further questions, without notice will not be answered.’ *House of Representatives Practice*, op cit, p. 529.

committee and delegation reports for the following Monday. In carrying out its tasks the Selection Committee is required to have regard to factors including the importance of the subject matter proposed for debate, the extent of other discussion on this matter, the constitutional competence of the House of Representatives and the party balance in the House.<sup>54</sup>

Priority is given on the day to bills proposed by private members (defined as those members other than Speaker, ministers, or parliamentary secretaries) but this can fall far short of a parliamentary debate. The procedure for giving notice allows members five minutes to give their bill its first reading. (It is worth noting that since 1901, only 20 non-government bills have ever secured parliamentary passage – seven originating in the House, eight in the Senate, and five proposed by the Speaker and Senate President.)<sup>55</sup> Standing Orders are also relevant, particularly Standing Order 104A, which requires the Selection Committee to give notices for new bills priority over other notices and to ‘provide for alternation between government and non-government Members.’<sup>56</sup> Like private members’ bills, most private members’ motions never come to a final vote. The time reserved for debates is typically used by movers to publicise their bill or motion and, in most instances, few other members participate.

It is interesting to contrast the relative powerlessness of the House of Representatives Selection Committee with the Selection of Bills Committee in the Australian Senate, where government generally has no majority. This committee determines which bills are referred to legislative committees to be the subject to public evidence. It is ‘based on an informal committee of party whips which meets each sitting day’.<sup>57</sup> The government whip takes the chair and its members comprise three Senators from each of the two major party blocs and one from the minor party groupings. The Standing Orders contain no criteria to guide, or to fetter, the committee. Generally it will recommend referral of a bill if a significant group in the Senate ask for this and in practice it recommends approximately 35 per cent of bills to committee. It is just one example of how the Senate has gained more control of its business due to the lack of a permanent government majority. Since 2005, however, the government has had majority control of the Senate, putting under strain the upper chamber’s greater autonomy.

There is significant variation in the types of parliamentary time over which the four business committees have influence and the way in which that influence is exerted. In the cases of Scotland and Germany, the business committees officially take decisions over most aspects of timetable management. Their decisions can also then be debated, voted upon and are potentially amendable in plenary, providing for an additional degree of ownership of the agenda by the parliament itself. In New Zealand, the business committee has a similarly wide remit, but its decisions are simply presented to Parliament as *faits accomplis*. Given the fact that the committee comprises whips and the Leader of the House, this approach to business management is in some ways similar to the House of Commons’ usual channels. Even in Scotland, which sought to break away from Westminster’s style, the drafting of the agenda, behind-the-scenes negotiation, and ultimately presentation to the plenary all rest with the Executive. The key difference here may be less the existence of the Bureau, and more the ability (albeit not yet exercised) of the plenary to amend it. In Germany the Council of Elders largely comprises whips, and is increasingly a formal front for negotiations that take place behind the scenes, though the plenary can vote to overturn its decisions. The Australian Selection Committee is the weakest of all, with power only over

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<sup>54</sup> Selection Committee, *General principles relating to the selection of private Members’ business* (adopted on 20 February 2002), at: [www.aph.gov.au/house/committee/selc/generalprinciples2002.doc](http://www.aph.gov.au/house/committee/selc/generalprinciples2002.doc).

<sup>55</sup> *House of Representatives Practice*, op cit, p. 568.

<sup>56</sup> Australian House of Representatives Standing Order 41(f).

<sup>57</sup> *Odgers’ Australian Senate Practice*, 11<sup>th</sup> Edition. Canberra: Australian Senate (2004), p. 354.

non-government business. As in New Zealand and the UK, the decisions it takes are not voted on but simply reported to the House.

It also seems clear from the examples discussed that it is unrealistic to expect a business committee to institute agreement on the agenda to such an extent that it becomes entirely predictable. Generally minor day-to-day alterations to the timetable to accommodate changes in circumstances remain possible. This system allows necessary flexibility and topicality, but may also cause frustrations. Negotiations over these changes, like the decisions of the business committee itself, are always likely to reflect the interests of the key power brokers in the parliament: the leading members of the main parties.

## **Business Committees and the Committee System**

The other key area of interest with respect to business committees is their role in the establishment and regulation of parliamentary committees. This section examines that role with respect to the four parliaments that we are considering. In particular, we are interested in the role played by the business committees in establishing the equivalents to Commons select and standing committees and determining their membership, chairs and agendas.

### **New Zealand**

In New Zealand the 1985 Standing Orders, along with those agreed before the implementation of MMP, have produced an increasingly influential select committee system. The subject committees have three roles: scrutiny, legislation, and inquiry. Each reinforces the potential power and authority of the other. Further, with party proportionality on the committees, and some chairs held by non-government parties, the committees do not always behave as governments would want. This tension between governing and opposition parties is reflected in some contested Business Committee decisions where post-committee negotiations are required between ministers and committee chairs.

Initially the authority of the Business Committee with respect to committee memberships was confined to replacements – the main determination of membership had to be through a motion in the House. Since Standing Orders were revised in 1999, however, the Business Committee has broadened its role and acts as a general intermediary between the select committees and the House, and takes final decisions on both matters. The Standing Orders require committee membership overall to reflect the proportions of seats held by all the parties. This means that, although all parties will receive their due share of committee places, given that some are quite small, not all parties will have representation on every committee.

At the first meeting of the Business Committee at the start of a parliament, the party balance on each committee is agreed. The parties indicate the committees of which they wish to have membership and, within the constraints of the proportionality requirements, the Business Committee then also decides on the precise composition of each individual committee. In practice, however, its role is to authorise the names of individual members which have been sorted out beforehand by the parties.

Chairs and their deputies are elected by committees themselves at their first meeting, though it is known in advance of the meeting who is to be elected. Although there is no formal requirement for any distribution of chairs and deputies among the parties, opposition parties are given the chairs of some committees, though on a less than proportional basis. As at Westminster, this is the outcome of inter-party negotiations and is not formally decided by the Business Committee or parliament.

## Germany

The Council of Elders has control over matters relating to committees only within the confines set out in Standing Orders. The Standing Orders state that the Bundestag has the final say with regards to the size, number, and chairmen of committees. But it is the task of the Council to reach an agreement on this. In particular, reaching an agreement on which parliamentary group is to chair each committee is one of the first major tasks of the Council at the beginning of each parliament. In practice, as with the timetable of business, cross-party agreement is achieved in whips' meetings before a proposal goes to the Council to be formalised. It is then sent to the Bundestag for final approval. Chairs must be allocated proportionately between the parties, and (much as at Westminster) each party chooses the committee(s) they want to chair and an accommodation is reached where possible between the whips based on the preferences expressed. If this system fails chairs are allocated according to a strict proportionality formula. Either way there is little discretion left to the Council of Elders. It also has no role in choosing the individual chairs – these are selected within the party groups. Committees are formally responsible for electing their own chairs, but by convention they always respect the right of the relevant party to make this decision.

Standing Orders also require that the composition of each committee is proportional to the relative strength of the parliamentary groups in the Bundestag. The actual members of committees are again appointed directly by the parliamentary party groups themselves, with no reference to either the Council of Elders or the plenary chamber.<sup>58</sup> Appointment of committee members is therefore considered a purely internal party matter. Maverick party members cannot be excluded completely, as all members serve on a committee. However MPs who are not members of parties, or whose parties have insufficient numbers to be officially recognised as a party group, used not to have committee representation. Following a ruling of the Federal Constitutional Court these individuals can now be nominated as an 'advisory' committee member by the Bundestag President, with no voting rights.

Once nominated, the chair has nominal control over the committee, but its timetable is drawn up by the Council of Elders. Convening outside of this timetable requires the permission of the President of the Bundestag. The Council of Elders also sets the timetable for individual bills in committee, and how many (if any) hearings with witnesses will be held. Issues for investigation may be referred to the committee by the plenary, and committees may also choose issues for investigation of their own. Only in the former case, however, will time in the plenary be made to discuss their conclusions.

## Scotland

In Scotland the Parliamentary Bureau has a similar role to the New Zealand Business Committee in relation to the Parliament's committees, which are divided into mandatory and subject committees.<sup>59</sup> Mandatory committees, of which there are eight, have specialised functions and must be established by the Bureau within a specified period of an election.<sup>60</sup> Subject committees, as in Germany and New Zealand, combine executive and legislative scrutiny roles (in Westminster terminology, they combine the functions of select and standing committees). Unlike in the Commons, Standing Orders do not specify which subject committees are to be created, only that the Bureau may propose the establishment, remit, membership and duration of any committee.<sup>61</sup> In practice, subject committees are usually set up to reflect ministerial portfolios.

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<sup>58</sup> Rules of Procedure of the German Bundestag, Rule 57.2.

<sup>59</sup> The third category of committees mentioned in Standing Orders, Private Bill committees, are not discussed here.

<sup>60</sup> This requirement is set out in Standing Order 6.1. The mandatory committees are: the Procedures Committee, Standards and Public Appointments Committee, Finance Committee, Audit Committee, European and External Relations Committee, Equal Opportunities Committee, Public Petitions Committee, and Subordinate Legislation Committee.

<sup>61</sup> Scottish Parliament Standing Order 6.3.

The Scotland Act requires that in determining the membership of committees and sub-committees ‘regard is had to the balance of political parties in the Parliament’.<sup>62</sup> Standing Orders reiterate this and add that allocation of committee conveners (chairs) and deputy conveners must also take party strength into account.<sup>63</sup> Thus the Executive has a majority on all committees. In practice the Bureau has developed a practice of allocating members and conveners using a strict application of the d’Hondt formula, which leaves it little discretion. Parties are asked to prioritise which seats/convenerships they want, and these demands are fulfilled within the formula. Places are in practice allocated to members drawn from lists put forward by the parties (i.e. the whips). As at Westminster, then, the allocation of members to committees remains largely a matter for internal party democracy, though the chamber has oversight and in theory can amend the lists put before it.

In addition to possessing a monopoly over the power to propose the establishment, remit, membership and disbandment of committees, the Bureau plays an important role in regulating how committees operate in practice. Initially, it bore sole responsibility for determining questions relating to committees’ competence to deal with particular matters, designating lead committees in cases of joint competence, approving joint committee inquiries and requests to travel, meet outside Edinburgh or appoint advisers. The Bureau’s power over several of these matters was diluted in January 2003 by the decision to institute in Standing Orders the hitherto informal Conveners’ Group of committee conveners (i.e. the equivalent of Westminster’s Liaison Committee). The Conveners’ Group was given consultation and co-decision-making rights over questions of competence, joint meetings and travel.

Whether the formal institutionalisation of the Conveners’ Group marked a genuine shift in the balance of power between front and back benches is hard to say, but interview evidence suggests that there was some opposition to the change on the part of the Bureau. Nonetheless, the Bureau clearly remains the senior partner and exercises significant power over the agenda of committees by referring matters to them.

In terms of workload of particular committees, referrals by the Bureau directly, or through the Parliament, have created a sore point. One challenge has been maintaining the balance between committee and plenary business, as Standing Orders require that committees should not sit at the same time as a meeting of the Parliament. But pressure on committees created by legislative business (with complaints of unrealistically tight deadlines) has put this under strain. Further planning difficulties result from the number of Members who serve on more than one committee, though the size of committees was reduced in 2003. These factors tend to circumscribe the extent to which the committees can determine their own agendas and conduct investigative work.

## **Australia**

The role of committees in the Australian House of Representatives is small. Most bills take their committee stage on the floor of the House and there are few investigative committees. This contrasts with the extensive system of committees in the Senate. In any case the Selection Committee has no role in committee business, which is tightly constrained by government. For example only government party members may be elected chair of a House committee,<sup>64</sup> while other rules protect the governing party’s majority on all House committees. In addition, House committees may only inquire into matters ‘referred to them by the House or a Minister’.<sup>65</sup>

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<sup>62</sup> Scotland Act, London: The Stationery Office (1998 Chapter 46), Schedule 3, s.6(2).

<sup>63</sup> Scottish Parliament Standing Order 6.3.4.

<sup>64</sup> Australian House of Representatives Standing Order 232.

<sup>65</sup> *House of Representatives Guide to Procedure*, Canberra: Department of the House of Representatives, p. 105.

As in the other countries considered here, it remains primarily a matter of internal party democracy who is selected to serve on a committee. However in Australia the parties do ballot internally for their quota of committee seats (typically six government members and four non-government members). And as in the UK, committee memberships must be agreed by the House as a whole. This typically authorises the decisions of the parties, but does allow unsuccessful members an opportunity to state their case.

The New Zealand Scottish and German business committees all formally have extensive powers over membership of committees whilst that of Australia has no role in this area. In all of the three former cases, it is the business committee that formally proposes the composition of committees. However, in practice, all do little more than follow standing order requirements for proportionality and approve the individual party lists submitted by whips. In the German case, the individual appointments to committees bypass the business committee (and the chamber) altogether and are simply made by the parties. As at Westminster, in all four countries one party will generally not seek to interfere in the committee nominations of another, even where they could. So this remains a question of internal democracy in the party groups.

As with the establishment of the parliamentary agenda, in the case of New Zealand the Parliament in plenary is denied the chance to debate and vote on the Business Committee's decision. This is also the case in Germany. In this respect the House of Commons (along with the Australian House of Representatives, insofar as it has committees at all) provides a model of greater parliamentary autonomy. And as the 2001 revolt demonstrates, the Commons chamber is not averse to exercising this when provoked. The Scottish Parliament has also witnessed noisy debates and attempted amendments to Parliamentary Bureau motions relating to select committee membership and remits. This demonstrates again that how business committees are held to account by the plenary is at least as important as who sits on them or what their powers are, when considering their role in increasing parliament's control of its own affairs.

**Table 2: Formal Powers of Business Committees**

	New Zealand: Business Committee	Germany: Council of Elders	Scotland: Parliamentary Bureau	Australia: Selection Committee
How often meets	Weekly	Weekly	Weekly	Weekly
Annual calendar of sittings	Recommends to the House a programme of sittings for the year.	Establishes an annual calendar early in the session.	Bureau motion sets out recess dates, largely in line with school holidays.	No role
Annual programme of government business	No role	No role	No role	No role
Government bills	Agrees order of business including government legislation.	Decides plenary programme, which bill goes to which committee and for how long.	Decides plenary programme, which bill goes to which committee and for how long.	No role in this. Its powers are limited to non-government business.
Private Members' Bills	Decides how many taken, and timing.	As for government bills. Private Member's Bills must be signed by five per cent of the Bundestag.	As for government bills.	Responsible for timetabling members' bills on Mondays.
Share of speaking time	Agrees share between parties for weekly 'general debates' only.	Share between parties agreed by Council at start of the parliament, based on proportionality requirement in Standing Orders.	No role	No role
Speakers	Agrees order of speakers for general debates only.	No role	No role	No role
Party balance on committees	Agrees for each committee subject to proportionality requirement in SOs.	Proportionality is fixed in Standing Orders.	Agrees for each committee subject to proportionality requirement in SOs.	No role

Members of committees	Agrees size and membership for each committee on recommendation of whips.	Proposes size and membership for each committee based on strict proportionality. Members are chosen by party groups.	Proposes size and membership for each committee on recommendation from whips. Decision is put to Parliament.	No role
Chairs of committees	No role. Committees elect their own chairs, with by convention opposition parties chairing some committees.	Decides on distribution of chairs between parties according to proportionality requirements. Committees then formally elect their own chairs	Recommends to Parliament the party from which each chair will come using proportionality rule. Committees then formally elect their own chairs.	No role
Other	Allocates oral questions among parties on basis of proportionality.	Allocates 'topical debates' (but on strict basis of proportionality). Agrees the Bundestag annual budget. Various other administrative responsibilities.	Allocates members' debates between parties on basis of proportionality. In consultation with the Conveners' Group (of committee chairs), approves other matters such as committee advisers.	-

## **The Merits of Business Committees: More Power to Parliament?**

Considering the aspirations of reformers, and contrasting the experiences described above, the impact of a business committee on the culture of parliament can be seen to fall into three broad areas. These are parliamentary control, inclusiveness and transparency. Why these features are thought to be associated with business committees, and whether the committees considered here live up to these ideals, are considered in this section. The final section then provides a brief discussion of the options for a business committee in the House of Commons.

### **Parliamentary control**

The most obvious reason for having a business committee is to have a mechanism whereby a body representing parliament is handed control of key decisions rather than government having this control. But this effect is perhaps less noticeable than would be imagined in the countries considered here. At the end of the day, government control over parliament is primarily exercised through party channels and by the fact that (at least normally) it has a partisan majority in the house. Thus it is seen in all four of our example countries that government will still tend to dominate the parliamentary agenda and ‘get its way’, as a result of having a majority on the business committee as well as in the chamber itself. In New Zealand, for example, the new Business Committee has moderated the dominance of the political executive over Parliament – but this has depended greatly on whether or not the governing parties hold a majority of seats in the House. In periods of minority government, the power of the Business Committee is likely to be significantly greater. However if such circumstances occurred at Westminster, the power of the opposition parties would be likely to be enhanced through the usual channels as well.

It is of course difficult to balance the need for government to get its business with the desire by other parties and backbenchers to place matters on the parliamentary agenda. Legislation remains a central role of parliaments and it is natural for elected governments to expect parliament to provide time for their bills to be discussed. Standing Orders in the different countries considered here all protect both government and non-government business to some extent. Within this framework it is the responsibility of a business committee to decide how time is allocated and individual matters are prioritised. Government is likely to remain central to proposing a draft agenda, both because of the volume of its business and its access to resources, and the provisions of Standing Orders with respect to allocating time to opposition parties or individual members are likely to be more influential than the existence or otherwise of a business committee. But such a committee may at least provide a forum for negotiation with other interests inside parliament.

The Business Committee of the New Zealand Parliament perhaps exemplifies the limits of parliamentary autonomy against the power of the political executive in a Westminster-style system. Although the Committee can be agreed to have made the House a more democratic institution by legitimising the roles and voices of the non-governing parties, ultimately government business and priorities dominate both the agenda of the committee and, furthermore, the business of Parliament itself. In Scotland there have been continuing discussions about the extent to which Executive business should dominate the Parliament. The business committee may have facilitated negotiations on a week-to-week basis behind the scenes, but it has not developed as a public defender of backbenchers or opposition parties in this debate.

### **Inclusiveness**

One of the clear benefits of business committees is that they provide some access to decision making, and certainly to information, for all or most parties within a parliament. The existence of the committee makes it potentially more difficult for the two main parties to ‘stitch up’ business

to the exclusion of others, and for government to divide and rule. In both Scotland and New Zealand the new business committees have become significant forums for the exchange of information and the negotiation of parliamentary matters (often beyond their formal powers<sup>66</sup>). It is interesting that in New Zealand minor parties always attend the meetings of the Business Committee. As one of those interviewed said, the primary role of the Business Committee is to share information. From this respect it is easy to see why it is the Liberal Democrats at Westminster who have been most keen on the creation of a similar committee.

There clearly are tensions in respect of representation of different groups. It is difficult for all voices in a parliament to be heard on a business committee, where there are many small parties or independents. This difficulty has become evident in the Scottish Parliament since 2003, and was also seen when new parties entered the German Bundestag. In Scotland in the first session there were four main parties, all represented on the Bureau, but since 2003 this has risen to six and then seven. This has made negotiations more difficult, and there has been some unhappiness about Bureau decisions, for example among the minor parties when they found themselves under-represented on committees. The representation of six parties and the Independents on the Bureau in theory ensures that the process takes account of a wider range of views and interests, but it also can encourage more informal 'fixes' between the coalition and main opposition parties outwith formal Bureau meetings.

The representation of minor parties in negotiations is only one form of inclusiveness, however. Equally important to many of those seeking reform in the UK is a better representation of backbench voices in the management of parliamentary business. This is less visible in the examples provided here from other parliaments. In all four cases the business committee is dominated by whips, and in the New Zealand and Scottish cases there is no backbench representation at all on the committee. Meetings therefore comprise of negotiations between these representatives, with wider consultation left as an internal party matter. The presiding officer may provide some voice for parliament as a whole, but as we have seen informal pre-meetings may see even this figure cut out of negotiations. On both the management of time and appointments to committees the result can be that independent-minded backbenchers are excluded, unless they can win their case behind the scenes in party meetings. In Germany and Australia there is a mixed membership of whips and backbenchers on the business committee but it is clearly the former who play the leading role. In Germany, however, the situation is influenced by the fact that whips themselves are elected by the party groups and are distinct from the executive in the case of governing parties.

Early blueprints for the Scottish Parliament proposed a parliamentary business committee based on the principle of dispersal of power, with elected party representatives each yielding a single vote.<sup>67</sup> But the final model arrived at was a tight 'party leadership' driven model, with representatives of parties holding proportional block votes. Despite the aspiration to move away from Westminster-style politics, the priorities of elite-driven functional efficiency won over broader notions of power-sharing and inclusiveness in the end.

## Transparency

Perhaps the final reason for supporting a business committee model over the 'usual channels' approach is that it provides for greater transparency. To what extent does this succeed, based on the case studies that we have looked at? Again the answer seems to be mixed. The immediate

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<sup>66</sup> An example from Scotland is the protocol on relationships between constituency and regional MSPs, which was the subject of intense, private negotiations between and within party groups, before an agreed version was adopted by the Parliament as part of its Code of Conduct (*Code of Conduct for Members of the Scottish Parliament*. Edinburgh: The Scottish Parliament (2003). At: [www.scottish.parliament.uk/msp/conduct/coc.pdf](http://www.scottish.parliament.uk/msp/conduct/coc.pdf)).

<sup>67</sup> See Barry Winetrobe, *Realising the Vision: A Parliament with a Purpose. An Audit of the First Year of the Scottish Parliament*. London: Constitution Unit (2001).

impact in this area is that the existence of the committee makes it clear who is responsible for decisions about parliamentary business and when decisions are taken. It can help to clarify the distinction between the political executive and parliament, being seen as embodying parliamentary authority. However, there are downsides of business committees with respect to transparency as well.

In all of the cases we have looked at it could be said that the business committee is, in essence, an institutionalisation of the ‘usual channels’. Much is still inevitably discussed informally outwith formal meetings (between business managers, and within party groups), and once agreement has been reached discussions at the meetings can be short. The decisions of the committee may only be occasionally questioned or challenged in the Parliament – where this is allowed at all. There is a danger, therefore, that the business committee simply becomes a ‘rubber stamp’ for the decisions that would have been taken anyway. There is a tension here: the more transparent (and perhaps the more inclusive) the meetings of a business committee are, the more the real decisions may actually be taken elsewhere.

In part the problem arises because the existence of business committees raises expectations. Promises of transparency may also be difficult to live up to in practice. In Scotland concerns have been expressed that the Bureau is too secretive and that the public, as well as backbenchers, are denied influence in its deliberations. Whilst the system is clearly an advance on a totally private ‘usual channels’ arrangement, the Parliament’s business management is certainly not as transparent and participative as was initially (and probably, unrealistically) intended. In reviewing the Parliament’s founding principles its Procedures Committee has recommended that the Bureau should be made more transparent, publishing agendas and a fuller record of decisions taken, and even considering holding meetings in public.<sup>68</sup> However, such changes might simply drive real negotiation further behind the scenes whilst failing to satisfy a sceptical public.

## **Conclusion: A Business Committee for the House of Commons?**

Having reviewed the operation of business committees in four other parliaments, it remains to question whether such a committee could improve the operation of the House of Commons and, if this is felt desirable, what form such a committee might take. The evidence provided in this briefing demonstrates that this is not a straightforward issue. It can be argued that business committees boost parliamentary control over the agenda, inclusiveness of decision making and transparency about how key decisions are taken. But the systems considered here all have shortcomings as well. Perhaps one important lesson when considering reform is that Westminster has some positive features not seen in other parliaments, and that we should beware of losing some of them if new procedures are adopted – instead appreciating and seeking to build on them. The lack of transparency with respect to committee appointments in Germany, for example, or the inability to debate the agenda in New Zealand, are features that few would wish to see imported into the UK.

If we did choose to move to a business committee model, there are a number of key questions that would need to be addressed. The case studies considered in this briefing help us to identify the issues that we would need to think about, and some of the pitfalls that should be avoided.

The first question is perhaps who would sit on a business committee for the House of Commons. These bodies exist to give representation to each of the main ‘players’ in a parliament

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<sup>68</sup> Scottish Parliament Procedures Committee, *The Founding Principles of the Scottish Parliament*, op cit. .

– in all cases here meaning the party groups. The most obvious beneficiaries would be the Liberal Democrats, who would gain representation under any model of composition, given their current 63 seats, and thus be less excluded than currently from negotiation between Labour and the Conservatives. The status of the smaller parties and independents is more ambiguous, given that no party has more than nine seats and collectively these groups (of those that take their seats) hold only 25 seats. Adopting an inclusive (New Zealand style) approach would make for a large meeting, and a more likely approach would be to exclude very small parties (as in Germany) or give them one collective representative (as in Scotland).

A bigger question is what logic should be applied to representation on a business committee. In all of the parliaments considered here, representatives are chosen within the parties and the resulting committees are dominated by whips. The creation of a committee along these lines would lead to a greater formalisation of the role of the parties at Westminster, which still formally privileges the individual member and gives little recognition to the party groups. If representation was party-based the committee would probably do little to represent backbenchers. Unless Standing Orders sought to interfere in the internal decisions of parties (which is unlikely) there could be no guarantee of democracy in the selection process for members of the business committee. If representation of individual members was felt desirable it might be possible to devise a system whereby they were elected by the whole chamber on a cross-party basis – even if such members were in a minority. But this in turn would clearly undermine the rights of parties to select their own representatives. The likeliest model might be the one currently applied to select committees – that the parties decide internally but the chamber has the final say. But however members are chosen, parties on the committee will tend to form voting blocks. If some party colleagues were felt to be unreliable, the examples shown here demonstrate that there is nothing to stop an informal meeting of whips doing deals before meetings in much the same way as they do now. Meaningful representation of backbenchers in such an arrangement therefore remains extremely difficult.

A further question is who should preside over meetings of a business committee. On the basis of the examples discussed here there is a clear precedent that this should be the presiding officer of the chamber. This would give the Speaker of the House of Commons some input into the timetabling of business that he doesn't have now, which could have some advantages. However, some express concerns that such a change would 'politicise' the role of the Speaker in undesirable ways, as s/he would have to resolve disputes between the party whips. There is no clear evidence of this from the examples we have considered, though the presiding officer's role differs in important ways in each case. Evidence from Scotland and Germany suggests, in any case, that the presiding officer can easily be excluded from major decisions through informal pre-meetings between the whips.

The bigger question is what responsibilities might be given to the committee. As outlined here, there are two broad areas of responsibility: agreement of the timetable, and appointment of committees. With respect to the former a business committee might agree the overall timetable of government (and non-government) bills, the week-by-week timetable, and the allocation of opposition days, for example. There are precedents for all such roles from the other parliaments which we have considered here. In practice this would make the committee the forum for agreeing programme motions before they were put to the chamber and it might also decide which draft bills were sent to which committee for consideration. On all of these matters it would ensure that there was a three-way discussion between the largest parties, rather than the bilateral negotiations that go on now – although Labour and the Conservatives could still decide matters between them if they wished, given their voting strength in the chamber. Potentially the committee could take on other duties, such as the prioritisation and timetabling of Private Members' Bills – though in Scotland this contentious matter has been largely dodged by the Bureau. Indeed one possibility is that even if a wholesale committee was not established now, a

committee on non-government business, as exists in Australia, could be convened to discuss these matters alone.<sup>69</sup> This might over time develop a wider remit, although no such development has occurred in the Australian case.

With respect to committees, a new business committee could take on all or most of the roles of the current Committee of Selection, in proposing members of select and standing committees. Whether this proved more satisfactory to members would be very much dependent on who sat on the committee and how its decisions were taken. A business committee such as those considered in this paper would look remarkably like the Committee of Selection – a meeting of whips which endorses the decisions already taken within the parties. In none of the cases we have looked at did the business committee foster a greater sense of ‘parliamentary’ ownership over committee appointments, and in two cases such appointments were not even approved by the plenary chamber, as select committee appointments are in the UK.

This example illustrates one of the most important lessons from our case studies: that the presence of a business committee is unlikely to be the most important feature in determining how inclusive an ethos a parliament has, and the extent to which it has ownership of its own procedure. In each case that we have considered the business committee is dependent on the framework created by parliamentary standing orders, and often has little discretion in making decisions. Other aspects of standing orders may therefore be far more important. For example, in Germany it is the rights of minority groups to gain a proportional share of the plenary agenda which ensures that discussions between the whips (and formally on the Council of Elders) are considerate of their needs. Such provisions are in stark contrast to House of Commons Standing Order 14(1) that ‘Save as provided in this order, government business shall have precedence at every sitting’, and have far-reaching consequences. Similarly, the rule existent in both Germany and Scotland that the future order of business must not only be presented to the plenary chamber, but may be challenged and voted upon, gives power to parliament as a whole and acts as a check on the business committee. The same is true of the House of Commons’ control of select committee appointments with respect to the Committee of Selection. There are, therefore, many potential changes that could be introduced in the Commons inspired by the parliaments that we have discussed which fall short of a business committee, but might prove more beneficial. These include, for example, extending the rights of minority groups or parliamentary committees to win time on the plenary agenda, making the Thursday Business Statement amendable and subject to a plenary vote, and introducing plenary approval for the members of standing committees as well as select committees.

These various reforms are not mutually exclusive, but hard-headed reformers need to pick their targets with care. The creation of a business committee would be symbolic, but the main beneficiaries would be opposition party whips. Other reforms building more incrementally on Westminster traditions might offer more to backbenchers, and to the chamber as a whole. In considering the future options it is worth remembering that in Germany the Council of Elders is a product of long tradition, whilst in Scotland and New Zealand the creation of business committees resulted from radical institutional change. In contrast, in the Australian House of Representatives (the most similar of the four chambers to the House of Commons), little progress has been made. A key difference between this and the other example chambers is that its composition is based on a majoritarian electoral system. In contrast in New Zealand it was the sweeping change in party composition in parliament following electoral system change, from a dominantly two-party, highly disproportionate chamber, to a multi-party one, which precipitated reforms to make parliament more inclusive, amongst which was creation of the Business Committee. In other words, bodies such as these may be the product of external forces bearing down upon the institution of Parliament, in a way which is not currently the case in the UK.

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<sup>69</sup> Such a proposal has been made before in the UK. See footnote 13.

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