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# Evidence-informed or value-based? Exploring the scrutiny of legislation in the UK Parliament


## Abstract

This article argues that three types of factor – process, subject and political circumstance – are likely to affect the extent to which claims of evidence are made during legislative scrutiny. It draws upon case studies of the National Minimum Wage Act 1998, the Academies Act 2010 and the Welfare Reform and Work Act 2016, utilising interviews with those involved and information from Hansard. The article concludes that these cases highlight that while there might be potential benefits from a yet more robust legislative scrutiny process, including greater use of pre-legislative scrutiny and the ability of public bill committees to take evidence from a wider range of witnesses and on all bills, subject and political factors would be likely to mean that the use of claims of evidence would continue to vary widely.



**Keywords:** evidence; legislation; Parliament; policy making; scrutiny



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## Introduction

The quality of scrutiny of legislation by the United Kingdom Parliament has long been a subject of interest to academics and politicians. Many have expressed concerns about shortcomings in the process, although there has not necessarily been consensus on what the problem is, nor what reforms might be appropriate. Griffith (1974, p. 245), for example, suggested that on major social issues 'the examination is, in reality, of the principles that lie behind such legislation', while Walkland (1968, p. 70) argued that formal support or criticism of a bill was largely directed to 'the education of a wider public in the political stances of the vocal parties, or groups within parties'. He did, however, suggest that detailed criticism, including in standing committees, was more likely to have some limited success. It is this detailed criticism, and in particular claims for the use of evidence, that is the focus of this article.

The view that the Westminster Parliament has been subservient to the executive has recently been increasingly challenged (e.g. Cowley, 2002, 2005; Flinders & Kelso, 2011; Russell & Gover, 2017). With regard to the legislative process, Brazier et al. (2008) suggest that 'parliamentary scrutiny does make a difference to the final shape of an act' (p. 184), although they highlight the dependence of individual parliamentarians, and in particular those from opposition parties, on information provided by individuals and organisations outside Parliament. They argue for more structured consultation on legislation with greater feedback to Parliament and the public, and that pre-legislative scrutiny should be the norm for most bills. Fox and Korris (2010) note significant criticisms of the quality of policy preparation and the extent to which expertise feeds into the process, with their recommendations including greater use of pre-legislative scrutiny and the further reform of public bill committees.

Russell and Cowley (2016, p. 9) argue that parliamentary influence is greater than is often recognised, that rather than coming from defeats in votes, 'most government concessions occur far more consensually', and they highlight the role of pressure groups in encouraging both government and non-government amendments. Russell and Gover (2017; see also Russell, Gover & Wollter, 2015, p.282) analysed 12 government bills from 2005-12 and again concluded that while the formulation of legislation is clearly a government centred activity (Norton, 2013), 'parliament's influence on government legislation is extensive, and is exerted in various ways throughout the policy process', although they too suggested that the scrutiny process could be made more evidence-based.

At the start of the 2006/7 parliament, House of Commons standing committees were renamed public bill committees, with each taking the name of the bill that it is responsible for scrutinising (Levy, 2010). Importantly, they gained the ability to receive written and oral evidence from experts, which can add to their policy knowledge (Thompson, 2014), and to divide their time between taking oral evidence and line-by-line scrutiny. Levy (2010) suggests that these reforms have made the committees' work more transparent, although recognises that they may simply allow MPs and interests to express the same views as previously but in a different fashion. Thompson (2014, p. 391) also argues that the new powers have been largely beneficial, that 'oral evidence is providing a solid foundation for committee scrutiny, with all committee members being better informed of aspects of the bill', and that changes do occur as a result of committee activity, even if they are not made within the confines of the committee room. She also notes continuing tensions, such as the selection of witnesses being largely controlled by the government whips, and weaknesses, including in relation to appointments to committees (2013, 2016). In addition, while some major measures have been subject to evidence sessions, those which go to committees of the whole House, such as the Fixed Term Parliaments Act 2011, or which start in the House of Lords, such as

the Justice and Security Act 2013, the Care Act 2014 and the Cities and Local Government Devolution Act 2016, have not.

This discussion makes clear that even among those who argue that Parliament does play a significant role in scrutinising and influencing legislation, and who recognise that parliamentarians have access to a wide variety of forms of evidence from a range of different sources (e.g. Kenny et al. 2017), there are important questions about the quality of evidence and expertise available to parliamentarians, and their use, as they seek to fulfil the scrutiny function.

Outside Parliament, there has been considerable attention paid to how to make policy well and implement it effectively, including the role of experts and the use of evidence (e.g. Nutley, Walter & Davies, 2007; Oliver et al. 2014; Rutter, 2012), the tools or 'instruments' used for implementation (e.g. Hood & Margetts, 2007), and how to assess policy 'success' and 'failure' (e.g. McConnell, 2010; King and Crewe, 2013). The Labour governments of 1997-2010, in particular, made much of the idea of 'better' policy making, including through 'evidence-based' and 'joined-up' approaches (e.g. Bochel and Duncan, 2007). These principles were broadly affirmed by the Conservative-Liberal Democrat coalition government (e.g. Secretary of State for Business, Innovation and Skills, 2010; Willetts, 2012) and reflected in initiatives such as the What Works centres and the creation of the Behavioural Insights Team, and the 2015-17 Conservative government (Andrews, 2017) (albeit with perhaps less emphasis on evidence in general and more on the use of data, often in relation to more consumerist approaches to policy), while later in the period, in particular, some politicians evinced considerable scepticism, as with Michael Gove's assertion during the EU referendum campaign that 'the people of this country have had enough of experts' (Mance, 2016).

This article contributes to the understanding of the role of evidence by considering claims for its use by supporters and opponents in both Houses in the scrutiny of three major measures introduced by governments committed to using evidence to inform policy: the National Minimum Wage Act 1998, the Academies Act 2010, and the Welfare Reform and Work Act 2016. The article considers claims for the use of evidence during the passage of the legislation, and the views of those involved at the time gathered through interviews. It provides a number of insights into the claims made for evidence during the scrutiny process, including that for the first two measures, despite much preparatory work by the incoming governments, discussion in Parliament often focused on broad philosophical positions emphasising values, but that in the case of the Welfare Reform and Work Act there was significantly more reference to evidence by both sides, notably associated with the evidence sessions in the public bill committee in the House of Commons and the deployment of expertise in the House of Lords. The article suggests that process, subject and political factors may all influence claims for the use of evidence during the scrutiny process.

## Methodology

The research used a case study design (Becker et al. 2012; Yin, 2014), an approach taken in other studies of the legislative process (e.g. Brazier et al. 2008; Russell & Gover, 2017). While there are a number of factors that might be taken into account in case selection (for example in their work Russell and Gover used session, sponsoring department, House introduced in, draft bill, length, and profile and controversy), here the three measures were chosen because they were: a) flagship policies of newly-elected governments; b) foreshadowed in general election manifestos; c) intended to have a significant impact on domestic policy; d) different forms of legislation in terms of length and detail; and e) underpinned by considerable preparatory work by the parties. The only criteria used by

Russell and Gover that do not apply, by accident or design, to the bills considered here are whether they were published in draft for pre-legislative scrutiny (none of the three were, although the number of such bills has remained small, e.g. Kelly, 2015; Liaison Committee, 2015), and profile and controversy (all were, by any measure, reasonably controversial). In addition, while the taking of oral evidence was not available to standing committees at the time of the National Minimum Wage Act, the Academies Act was introduced in the House of Lords and in the Commons was scrutinised by a committee of the whole House, being excluded from oral evidence-taking on both grounds. None of the measures were bills developed later in a parliament, as that would clearly not allow for a, b and possibly e as outlined above. While legislation introduced early in the life of a government might potentially be seen as atypical, it might also be expected to clearly reflect its priorities, and it might equally be argued that legislation later in a government is also therefore atypical.

The research involved detailed examination of the scrutiny of each piece of legislation using Hansard, covering debates, committee sessions and proposals for amendments. This provided information on the arguments and claims for the use of evidence that were presented. 'Evidence' is itself, as noted above, a potentially problematic term (Davies et al. 2000; Stoker & Evans, 2016), and for this research was understood as claims such that 'the evidence (however construed) can be independently observed and verified, and that there is broad consensus as to its contents (if not its interpretation)' (Davies et al. 2000, p. 2), with examples including references to research, the experience of other states, or statistics. However, it is worth reiterating that the focus here is primarily on claims with regard to evidence, rather than the quality of that evidence.

In-depth interviews were undertaken with those who were closely involved with the legislation, including politicians, special advisers and civil servants (twelve in the case of the National Minimum Wage Act, nine for the Academies Act, and five for the Welfare Reform and Work Act). Interestingly, accessing interviewees was easiest for the National Minimum Wage Act, perhaps in part because it has widely been viewed as a success, and perhaps also because some were now less involved in 'front-line' legislative activity. The interviews on the National Minimum Wage Act and the Academies Act took place during 2014 and 2015, and those on the Welfare Reform and Work Act during 2016. Interviews typically lasted around 45 minutes. The interviews provided valuable additional insights into the gestation of the policies and legislation, the variety of motivations behind them, and decisions made and arguments put forward by supporters and opponents during the process of parliamentary scrutiny. They therefore provide significant underpinning and reinforcement for the discussion and analysis of the arguments and use of evidence in the scrutiny of each bill. Ethical approval for the research was gained through the University of Lincoln's formal processes.

## The National Minimum Wage Act 1998

The National Minimum Wage Bill was laid before the House of Commons on 26 November 1997. Initially consisting of 53 clauses (later increasing to 56) and 3 schedules, it was a complex piece of legislation, yet not subject to pre-legislative scrutiny. Labour and its supporters had done considerable work on the issue while in opposition (e.g. interviewees NMWA3, NMWA12). Ian McCartney, as Shadow Employment Minister from 1994-7, had been a strong advocate for the policy, while the IPPR had undertaken research on the topic and the report of the IPPR's Commission on Public Policy and British Business (1997) included a section on the national minimum wage. As a result, Labour had dealt in detail with issues relating to implementation, coverage and compliance (Rutter, Marshall & Sims, 2012). The measure already had support from a wide range of stakeholders, representatives of whom

had either been involved in working on the proposals, or included, as 'social partners', in consultation processes. Labour's manifesto had made clear that many of the crucial details, including the level at which the minimum wage would be set, would be decided 'with the advice of an independent low pay commission, whose membership will include representatives of employers, including small businesses, and employees' (Labour Party, 1997, p. 17).

Once elected, with McCartney as Minister of State in the Department for Trade and Industry and responsible for the measure, the Labour government adopted the IPPR's proposal for a 'social partnership approach', establishing the Low Pay Commission (LPC), chaired by George Bain, in advance of the publication of the Bill, as the primary mechanism through which many of the key details would be determined.

**The main arguments in Parliament**

The Bill took nine months to pass through Parliament, including a marathon committee stage in the House of Commons (19 sittings of more than 70 hours in total) (Pyper, 2014). The government side drew strongly on claims that the idea of a minimum wage was no longer controversial and was accepted by the public (e.g. HC Deb. 16 December 1997, col. 170), and that there was a business case for it (e.g. HC Deb. 16 December 1997, col. 165). More specifically, the government's arguments focused on fairness, the likely impact on the economy, the support of a variety of organisations, and the position in other countries. In contrast, the Conservative opposition drew strongly on its longstanding belief in the efficacy of labour market deregulation, and the critique of the minimum wage that it had used against Labour in the early 1990s, particularly in the run-up to the 1992 general election. They sought to highlight a lack of clarity over the problem, the measure and the process, the inappropriateness of the government's response, the risks to the economy and employment, and the opposition to the legislation of a number of organisations (e.g. NMWA11). While most criticisms of the Bill came from the Conservatives, a number of Liberal Democrat MPs and peers argued that the minimum wage should vary by region (e.g. HC Deb. 16 December 1997, col. 187). Table 1 summarises the points made by the two sides.

| Table 1: Government and opposition arguments on the National Minimum Wage Bill |
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| **Government:** |
| The proposal for a minimum wage was right, just and fair; |
| The pay gap between rich and poor, and inequality, were growing; |
| The Bill was part of a wider strategy to help unemployed people, alongside changes to taxation, benefits and training; |
| It would not harm competitiveness; |
| Set at a reasonable level it would bring economic benefits; |
| The lack of a minimum wage had increased costs to the public purse and undermined good companies that had been undercut by others; |
| A variety of businesses, business organisations, and important figures in industry were in favour of the measure; |
| There was no evidence that lower wage levels resulted in higher levels of employment; |
| Every other developed nation had some form of protection. |
| **Opposition:** |
| The Bill did not address a real problem, there was not a large pool of poorly paid workers, and in the UK there was relative, not absolute poverty; |
| There were too many unanswered questions about the proposals, including what the |

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| rate would be and who would be covered; |
| There were risks associated with the substantial enforcement powers contained in the Bill; |
| The government should consult first and legislate second; |
| Legislation could not create prosperity, low taxes and a low regulation economy were necessary; |
| There should be a minimum income rather than a minimum wage, using measures such as family credit top-ups; |
| There was a possible pay/benefits cliff, and most of the advantage from the legislation would go to the Treasury; |
| There should be an allowance for regional variations (or at least the LPC should be able to consider such things); |
| Jobs would disappear; |
| The CBI and the Chambers of Commerce had expressed opposition to the measure. |

**The use of evidence in scrutiny**

Perhaps surprisingly, especially given the work done by the Labour Party and the IPPR before the election, and the Conservatives' established critique of the idea of a minimum wage, there was relatively little detailed reference to evidence by either government or opposition during the debates or standing committee sessions of the scrutiny process. Indeed, and reflecting the varied nature of 'evidence' for politicians, one of the few areas of specificity of argument was around the business and other organisations that supported or opposed the measure. For example, during the second reading debate the Secretary of State for Trade and Industry, Margaret Beckett, quoted favourable comments from the Business Services Association and DHL, while both government and opposition speakers claimed that their views reflected those of the Federation of Small Businesses (HC Deb, 16 December 1997, col. 165 and 167-8).

Despite the considerable time spent debating the potential impact on employment, most claims were general in nature, although John Redwood, Shadow Secretary of State for Trade and Industry, cited a previous Department of Trade and Industry assessment in an answer to a parliamentary question, that one million jobs could be lost 'if we had a national minimum wage at half average earnings' (HC Deb, 16 December 1997, col. 172). There was, however, some recognition of the complexity of the relationship between a minimum wage and employment, with Margaret Beckett using the example of the United States, which had had a minimum wage since 1938, to argue that 'the relationship between pay and employment is much more complicated – as are the effects of such a policy – than the Conservative Party would wish to suggest' (HC Deb, 16 December 1997, col. 171).

Arguments in the Lords largely reflected those in the Commons, with the government emphasising its attack on 'low pay and in work poverty' (HL Deb, 23 March, col. 1030), that it would benefit women and people from ethnic minority groups, that there would be more general benefits to workers, business and the economy, and that there was no evidence that if set at a sensible level it would increase unemployment. Similarly, the opposition's arguments included the claim that the measure would damage competitiveness and add to inflation, and that regionality should be taken into account. The assertion that it would destroy jobs was repeated, and it was suggested that the government's reference to the United States to suggest that a minimum wage need not adversely affect employment levels was based on a 'myth' (HL Deb, 23 March 1998, col. 1036). On occasion, parliamentary scrutiny and opposition arguments did focus on important specific aspects of the Bill, such as the failure to identify the level at which the minimum wage would be introduced, while during the latter stages of

its passage, both sides referred to the work of the Low Pay Commission (e.g. HC Deb, 18 June 1998, cols. 507-19) and evidence presented to the Commission by a variety of organisations (HC Deb, 20 June 1998, cols. 700-4).

Political factors, including what interviewees on both sides saw as a Conservative front bench still reeling from an election defeat (e.g. NMWA10, NMWA11), and an unwillingness on the part of some organisations to oppose a newly-elected government (NMWA7), together with the broad acceptance of the principle of a minimum wage, may have had a negative impact on the quality of opposition arguments. Those drew significantly on ideas from the Thatcher era, which those behind the Bill felt had been increasingly challenged by research evidence (NMWA1, NMWA12), and a business case for the measure (NMWA5). Whatever the causes, parliamentary scrutiny largely took place around contestation of broad and often conflicting policies and values, rather than the specifics of the Bill, and claims relating to evidence were limited. Those on the government side tended to feel that scrutiny had been time consuming, but that they had been well prepared for opposition critiques, and indeed highlighted that some of the most important (and less anticipated) arguments and amendments, such as the exclusion of the armed forces, were the result of pressure from within the government (in that case, the Ministry of Defence) but outside Parliament (NMWA3, NMW5A). Those on the opposition side noted that it is the role of the opposition to oppose, and that they therefore 'took them through the Bill thoroughly' (NMWA11).

The National Minimum Wage is now widely regarded as an important example of a good and successful policy (e.g. Rutter, Marshall & Sims, 2012; King & Crewe, 2013), with even the 2015 Conservative government seeking to enshrine it, albeit as a re-labelled 'national living wage'. However, while greater scrutiny and reference to evidence might not have made a difference, two of those closest to the measure suggested that it was in some respects a missed opportunity to build arguments about issues such as the shape of society and future economic development (NMWA6), and that subsequent issues, such as the use of zero-hours contracts, to some extent undermined the aims and achievements of the Act (NMWA5).

**The Academies Act 2010**

The Academies Bill was introduced in the House of Lords on 26 May 2010. Although there is an argument that governments may tend to start bills that are perceived as less controversial in the Lords (Russell & Gover, 2017), one interviewee from the government side suggested that in this instance it was felt that the Lords might be the more difficult House to get the Bill through, and that a decision was therefore made to go there first (AA7). As with the National Minimum Wage Bill, there was no pre-legislative scrutiny. The Bill was a short measure of 16 clauses and 2 schedules (increasing to 20 clauses and 2 schedules following amendments during its passage). It sought to put into practice the Conservatives' manifesto commitment that 'all existing schools will have the chance to achieve Academy status, with "outstanding" schools pre-approved' (Conservative Party, 2010, p. 53), to extend the Academy programme to primary schools, and to allow for the opening of many more free schools. The Bill's brevity was seen as praiseworthy by some, although others criticised it for a lack of clarity. It was passed rapidly, receiving Royal Assent on 27 July 2010.

The Conservatives had done considerable work on free schools and academies when in opposition, including visiting Sweden to look at the operation of free schools there, holding regular meetings with sympathetic teachers and heads, spending considerable time in schools in England and producing a draft bill with the involvement of lawyers which they were able to present to senior civil servants in advance of the general election (e.g. AA4,

AA8). This was done alongside other work on education topics, such as phonics and the curriculum, so that they were 'preparing across the board' (AA3). The link with the Policy Exchange think tank was also important, with Sam Freedman, who had been head of education there from 2006 to 2009, taking the role of policy adviser to Michael Gove from 2009 to 2013, including most of Gove's time as Secretary of State for Education.

**The main arguments in Parliament**

Throughout the Bill's passage the government's key arguments in both Houses were fairly limited. At second reading, the newly-appointed minister, Lord Hill, argued that the Bill was not a radical departure, but built on Labour's academies programme and Conservative reforms of the 1980s, and the government consistently emphasised philosophical positions on freedom, claims about raising standards, and the measure being part of wider reforms of the school system (see Table 2). In the Lords, the opposition tended, unsurprisingly, to accept that Labour's academy programme had been a success (even citing evidence to support that in terms of GCSE performance, e.g. HL Deb, 7 July 2010, col. 1172), although they drew distinctions between it and the Bill's aims, questioned the speed of the reforms, the risks of greater educational inequality, the lack of detail, and a number of practical aspects of the measure. In the Commons the underlying arguments were similar, although more party political and personal in tone.

| Table 2: Government and opposition arguments on the Academies Bill |
|---|
| **Government:** |
| Teachers, rather than bureaucrats, were best placed to make decisions, so more autonomy should be given to schools; |
| Greater trust should be placed in professionals, rather than prescribing in legislation what should happen in every school; |
| The academies system had been shown to raise standards, and standards would continue to rise in all schools as a result of the Bill; |
| The Bill should be seen alongside other important changes, such as the Pupil Premium, the doubling in size of the Teach First initiative, new proposals on discipline, and reforms of the curriculum and assessment. |
| **Opposition:** |
| The Bill did not simply represent a straightforward continuation of Labour's initiative, which had focused on turning around failing schools; |
| The reforms were being made rapidly and there had been a lack of formal consultation, with the government seeking to allow a number of schools to reopen as academies in September 2010; |
| Schools in deprived areas would not be supported as well as in the past; |
| New free schools and academies were likely to have an impact on others in the local area, including because evidence suggested that academies were more likely to be over-subscribed; |
| There would be the possibility of greater inequalities between different types of school in an area; |
| There was a lack of detail on Special Educational Needs (SEN), including whether the requirements for academies would be the same as for maintained schools; |
| There was an absence of formal requirements for schools to consult before converting or before opening a new school; |
| There would be too much concentration of power on the Secretary of State; |

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| Selection would be able to continue when grammar schools or others selected converted to academy status; |
| There were issues around the National Curriculum in academies, and particularly faith schools. |

**The use of evidence in scrutiny**

In addition to the arguments outlined above, in the Lords there was considerable attention paid to special educational needs (e.g. HL Deb, 13 July 2010, cols. 611-7), the impact of academies on other local schools (e.g. HL Deb, 21 June 2010, cols. 1251-72), the powers being given to the Secretary of State (e.g. HL Deb, 23 June 2010 col. 1327, the requirements to consult on conversion (e.g. HL Deb, 7 June 2010, cols. 521-3) and issues associated with the funding of academies (e.g. HL Deb, 23 June 2010, cols. 1324-5). Despite the government making amendments on some of these issues, those concerns continued to be expressed as the Bill progressed.

Having been introduced in the House of Lords, the Academies Bill would not have been subject to evidence taking by a public bill committee in the Commons, but in any event went to a Committee of the whole House where it was restricted to three days of debate. There, the government noted that Britain had fallen down the international education league tables, and that there was an attainment gap between the wealthiest and poorest children. Michael Gove also cited the work of Leon Feinstein, of the Institute of Economic Affairs, as showing that 'education disadvantage starts even before children go to school' (HC Deb, 19 July 2010, col. 24), and argued that the evidence showed that schools with greater autonomy, such as city technology colleges and academies, performed better, for example on GCSE results (HC Deb, 19 July 2010, col. 126). He also emphasised not only continuity with Labour's approach, but alignment with the path of other countries, including Finland, Singapore and the United States (HC Deb, 19 July 2010, col. 34). However, there was no explicit indication of what 'improvement' might mean or how it might be measured. Labour argued that the approach was different from that of the previous government, that the Bill contained no specific measures to improve standards, that it focused additional support on successful schools at the expense of others, that it allowed selection to persist, and that it was being rushed through to meet a particular deadline. Ed Balls, the Shadow Secretary of State, noted that it centralised power in the hands of the Secretary of State. Some did question whether the evidence about the positive effect of academies (e.g. HC Deb, 21 July 2010, col. 380), and of free schools in Sweden and the USA (e.g. HC Deb, 19 July 2010, col. 88), was actually that clear. The Conservative chair of the Education select committee, Graham Stuart, also raised concerns, including over the speed of the passage through Parliament, Special Educational Needs, and the higher rates of exclusions in academies, although he argued that the principles underpinning the legislation were sound (HC Deb, 19 July 2010, cols. 48-50).

Clearly, there were repeated references to a number of examples of evidence, in particular the impact of Labour's academies programme and the educational performance of other states, and there was also detailed discussion of aspects such as the process of consultation required for conversion, and, particularly in the House of Lords, SEN issues. In general, however, both sides tended to make broad claims about the Bill's potential impact on the quality of education, often extending well beyond the scope of the measure itself.

As with the National Minimum Wage Bill, political factors contributed to the opposition being more muted and less effective than the government might have expected, partly as a result of Labour's leadership contest distracting the party from affairs in Parliament (AA1), but also because the unions were caught off guard and the views of local authorities were more varied and less negative than had been anticipated (AA5). In addition,

many critics focused on the speed with which the Bill was being taken through, rather than the nature and scale of the change itself.

The Academies Act has subsequently been subject to a select committee inquiry (Education Committee, 2015). As that report suggests, the Act might be judged as broadly successful in terms of the number of schools (particularly secondaries) that have converted to Academy status, although the evidence regarding its impact on educational attainment is more mixed, particularly in primary schools, while there are questions about the roles of sponsors and chains (Education Committee, 2015). While some of these issues might have been addressed further during the parliamentary scrutiny process, not all were raised to a significant degree, although, as with the other measures considered here, the willingness of a government to significantly amend such flagship legislation is questionable.

**Welfare Reform and Work Act 2016**

The Welfare Reform and Work Bill reflected a number of policies outlined in the Conservatives' 2015 general election manifesto (Conservative Party, 2015), with other elements being announced in the July 2015 Summer Budget. Introduced to the House of Commons on 9 July 2015, it initially consisted of 26 clauses and 1 schedule, and ultimately, 37 clauses and 2 schedules. It was a wide-ranging Bill, including, for example, measures on employment, apprenticeships, the benefits cap and in relation to the new Universal Credit, and was closely linked with the government's desire to continue to reduce public expenditure and to increase incentives to work, drawing together issues from a number of government departments (WRWA3). Some elements had been flagged-up during the Conservative-Liberal Democrat coalition government, including the dislike of many Conservatives for the measures of child poverty set out in the Child Poverty Act 2010 (Edwards & Gillies, 2016). The Bill also reflected arguments that had been made for some time by the Secretary of State for Work and Pensions, Iain Duncan Smith, and the Centre for Social Justice, around work, poverty, 'troubled families' and the complexity of the benefits system. As with the National Minimum Wage Bill and the Academies Bill, there was no pre-legislative scrutiny.

**The main arguments in Parliament**

The bill took eight months to pass through Parliament, including a public bill committee which received both oral and written evidence. The government made many of the arguments associated with the preceding coalition government, around increasing employment, making the social security system more sustainable, rewarding work, and the need to be 'fair' to working households, along with the need to increase the number of apprenticeships to meet the promise in the Conservatives' manifesto (Table 3). Many of the opposition's arguments were more focused, including with regard to levels of child poverty and homelessness, the reporting obligations of governments, the proposed changes to the measurement of child poverty and the impact of the benefits cap.

| Table 3: Government and opposition arguments on the Welfare Reform and Work Bill |
|---|
| **Government:** |
| There was a need to move to a high pay, low tax, low welfare economy; |
| There was a need to continue to create jobs and reduce worklessness; |
| There was a need to reduce expenditure and achieve a more sustainable welfare system; |
| It was important to reward hard work; |

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| There was a need to increase fairness to working households; |
| There are five pathways to poverty: family breakdown, educational failure, worklessness and dependency, addiction and serious personal debt; |
| The Bill was underpinned by three principles:<br>1. Work is the best route out of poverty, and being in work should always pay more than being on benefits;<br>2. Spending on welfare should be sustainable and fair to the taxpayer while supporting the vulnerable;<br>3. People on benefits should face the same choices as those in work and those not on benefits. |
| **Opposition:** |
| There continued to be high levels of child poverty, homelessness, etc., and the Bill did not address these; |
| The proposals did not address the problem of in-work poverty; |
| Some support for obligations on government to report on topics such as full employment, apprenticeships, troubled families and the benefits cap, but there was a need for change and improvements; |
| Changes to measuring and reporting child poverty were wrong; |
| The reduction of tax credits for working families would be harmful; |
| The impact of benefits cuts and freezes would hurt vulnerable people, and decisions should be made annually, rather than a four-year freeze; |
| The blanket implementation of the two-child policy in relation to Child Tax Credit and Universal Credit would hurt families with multiple births or other exceptional circumstances; |
| Proposed changes to the Employment and Support Allowance work-related activity component were problematic, for example creating perverse incentives for some; |
| Changes to the level of the benefits cap should not be applied to all groups. |

**The use of evidence in scrutiny**

Even at the second reading stage, both government and opposition combined arguments of principle with considerable use of figures, with Iain Duncan Smith, Secretary of State for Work and Pensions, even highlighting the role and impact that the introduction of the national living wage would have in building upon the national minimum wage to reduce poverty (HC Deb, 20 July 2015, col. 1257), while Labour drew attention, for example, to levels of child poverty and rough sleeping (col. 1257) and the impact of reductions in benefits to people with Parkinson's and other progressive diseases (col. 1259). At the same time, on the government side in particular, there was clearly considerable alignment with austerity and the aim of reducing public expenditure.

The Bill was subject to evidence sessions at the committee stage. Written evidence was received from 86 individuals and organisations, while oral evidence was taken for over seven hours across three sittings from 28 individuals (an average of 15 minutes per person) from a range of groups including local authorities, business associations, charities and think tanks. Reflecting the scope of the bill, the topics considered were diverse, and there was substantial reference, by both witnesses and committee members, to what might be seen as 'hard' evidence, for example, on the measurement of full employment or success in the troubled families programme (e.g. HC Deb, 10 September 2015, cols. 5-6; 13-18), the introduction of loans for mortgage interest payments for benefits claimants, and the reduction of the employment gap for disabled people (e.g. HC Deb, 10 September 2015, cols. 29-35; 66-80), as well as to opinion and the more general views of committee witnesses.

Interviewees suggested that the evidence stage was more useful for the opposition and for civil servants than for the government side, providing them with ideas and information that they might not otherwise easily have accessed (WRWA2, WRWA3).

During the subsequent line-by-line scrutiny, both written and oral evidence were widely referenced by MPs (e.g. HC Deb, 13 October 2015, col. 287), while there was considerable mention of other evidence at the report stage, both anecdotal, such as the experiences of constituents, and figures, including from the OECD, the Institute for Fiscal Studies and the Resolution Foundation, and work for the Joseph Rowntree Foundation on minimum income standards (e.g. HC Deb, 15 October 2016, col. 227-8). Perhaps inevitably, there was also considerable reiteration of points of principle, and attempts at political point scoring, by both government and opposition MPs.

In the Lords the debates were again wide-ranging, with significant focus on detail and references to evidence on both sides, including to information submitted to the public bill committee (e.g. HL Deb, 17 November 2015, col 42). There was also considerable expertise among peers relevant to the Bill's aims, while Lord Freud, who led for the government in the upper House, had advised the previous Labour governments on welfare reform and was seen as being able to speak as an expert himself (e.g. WRWA2, WRWA3).

These factors, combined with input from pressure groups, were reflected in interviewees' assessment of scrutiny in the Lords as having been 'very, very thorough' (WRWA2), although some were more sceptical about the government's responses. Unlike the National Minimum Wage Bill and the Academies Bill, in part because of the greater degree of continuity between coalition and Conservative majority governments, there was a view that organisations outside Parliament, including those from the third sector, 'got their act together on this' (WRWA4**)**, which enabled more coordination and exchange of information among those seeking revisions to the measure, both inside and outside Parliament (see also Russell & Gover, 2017).

## Discussion and conclusions

As noted above, all three cases considered here had been subject to considerable preparatory work before being introduced to Parliament, yet the extent of claims for evidence during the scrutiny process varied considerably, including from the government side. While there may be a number of factors that contributed to the different emphases in scrutiny, including in terms of resourcing, such as increases in the levels of staffing to support MPs (Brown, 2016), and technological developments, the analysis provided in this article highlights three broad sets of factors that might contribute to the extent to which claims of evidence are made during the scrutiny of legislation: process, subject, and political circumstances; although clearly these are likely to overlap.

The process of scrutiny that a bill goes through is likely to have an impact on the type of arguments that are made by both supporters and opponents, and this can vary significantly, particularly in the House of Commons. The considerable use of claims of evidence during and after the public bill committee stage of the Welfare Reform and Work Act supports the arguments of those such as Thompson (2015) and Russell and Gover (2017) that the ability of public bill committees to take evidence has been a positive development, while the example of the Academies Act, which was not subject to the same process, and where the committee stage in the Commons was restricted to three days, highlights a continuing gap, and perhaps even reflects the arguments of those such as Walkland (1968) and Griffith (1974) about a concern with principle and the persuasion of groups outside Parliament. It might be anticipated that pre-legislative scrutiny of draft bills could similarly inform subsequent scrutiny (Smookler, 2006). From another perspective, the considerable work that had been

done in opposition on the national minimum wage by Labour and academies and free schools by the Conservatives bolstered the confidence of the incoming governments in their measures, although it did not result in the substantial use of arguments based on evidence rather than principle.

There are also likely to be factors related to the subject matter of a Bill. Put simply, some subjects may lend themselves more to different forms of evidence and types of argument, governments may sometimes seek to frame their policy aims in terms of broad claims and assertions, and the levels of expertise in both Houses also vary by subject area (see, for example, Bochel & Defty, 2010; Russell & Benton, 2010). In addition, although all three measures could broadly be described as being concerned with social policies, in the case of the Welfare Reform and Work Bill, it was arguably more incremental in nature, building upon the preceding coalition government's policies, while there was also considerable evidence available on many aspects of the proposals; and, for the Academies Bill, where there were significant claims for evidence from both sides, they were frequently associated with the Labour government's academies programme, where again there was a range of evidence easily available. The government's argument that the Academies Bill was primarily an enabling measure, and that it was building on Labour's reforms, may also have served to focus arguments on issues such as the speed of passage rather than the aims of the bill itself.

Given the nature of government and the passage of legislation, unsurprisingly, claims of evidence for all three measures also reflect the importance of political factors. These are likely to include the audiences that government and opposition seek to be heard by, the aims of a bill, and the balance between a focus on Westminster and the media and public more broadly. It is unsurprising, for example, that in each case examined here both sides sought to present their arguments as principled in nature, and to build support around those ideas. Equally, governments may not wish to outline specific intended measures of success for each piece of legislation. These factors, in turn, are likely to influence the nature of scrutiny. However, for the National Minimum Wage Bill, and the Academies Bill in particular, electoral victory not only enabled the governments to claim a mandate for change, but defeat clearly had an impact upon the ability of the opposition to marshal their arguments and even to work with others outside Parliament, so that in the case of the former, the Conservatives found that many organisations with whom they might have allied did not even wish to talk to them (NMWA7), while for the latter Labour was occupied with a leadership contest. As a shadow minister responsible for opposing one of the measures noted, in such circumstances 'it is the job of the Opposition to oppose, and that is what I did. I developed the best arguments that I could given that role' (NMWA11). On the other hand, for the Welfare Reform and Work Bill, the opposition to the measure was generally better organised, including the greater involvement of outside groups, with better coordination and the provision of information, both inside and outside Parliament, and that, together with the process and subject factors, appears to have worked in favour of greater claims of evidence by both sides.

These findings suggest that while it might be possible to 'improve' the process, for example with more pre-legislative scrutiny of draft bills, and more bills being subject to evidence sessions, including those introduced in the House of Lords, and that this might lead to more use of evidence, even when governments are committed to drawing on evidence to inform policy, and even when they are confident that there is evidence to underpin their proposals, the combination of process, subject and political factors means that the extent of claims of evidence by supporters and opponents of legislation in the scrutiny process are likely to vary considerably.

**References**


Andrews, L. (2017). How can we demonstrate the public value of evidence-based policy making when government ministers declare that the people 'have had enough of experts'? Palgrave Communications, 3(11).

Becker, S., Bryman, A. and Ferguson, H. (2012). Understanding Research for Social Policy and Social Work. Bristol: Policy Press.

Bochel, H. & Duncan, S. (Eds.). (2007). Making policy in theory and practice. Bristol: Policy Press.

Bochel, H. & Defty, A. (2010). A question of expertise: The House of Lords and Welfare Policy. Social Policy and Society, 9(3), 367-77.

Brazier, A., Kalitowski, S. & Rosenblatt, G. with Korris, M. (2008). Law in the making. London: Hansard Society.

Brown, J. (2016). Total Number of MPs, Peers and Staff, House of Commons Library Parliamentary Information List Number 02411. London: House of Commons.

Commission on Public Policy and British Business (1997). Promoting prosperity: A business agenda for Britain. London: Vintage.

Conservative Party (2010). Invitation to join the government of Britain: The Conservative manifesto 2010. London: Conservative Party.

Conservative Party (2015). Strong leadership, a clear economic plan, a brighter, more secure future. London: Conservative Party.

Cowley, P. (2002). Revolts and rebellions: Parliamentary voting under Blair. London: Politico's.

Cowley, P. (2005). The rebels: How Blair mislaid his majority. London: Politico's.

Davies, T., Nutley, S. & Smith, P. (2000). What works? Evidence-based policy and practice in public services. Bristol: Policy Press.

Education Committee (2015). Academies and Free Schools, Fourth Report of Session 2014-15. London: The Stationery Office.

Edwards, R. & Gillies, V. (2016). Family policy: the Mods and Rockers. In H. Bochel & M. Powell (Eds), The coalition government and social policy (pp. 243-63). Bristol: Policy Press.

Flinders, M. & Kelso, A. (2011). Mind the gap: Political analysis, public expectations and the parliamentary decline thesis. British Journal of Politics and International Relations, 13(2), 249-68.

Fox, R. & Korris, M. (2010). Making better law: Reform of the legislative process from policy to Act. London: Hansard Society.

Griffith, J. A. G. (1974). Parliamentary scrutiny of government bills. London: George Allen & Unwin.

Hood C. & Margetts, H. (2007). The tools of government in the digital age. Basingstoke: Palgrave Macmillan.

Kelly, R. (2015). Pre-legislative scrutiny under the coalition government. London: House of Commons Library.

Kenny, C., Rose, D., Hobbs, A., Tyler, C. & Blackstock, J. (2017). The Role of Research in the UK Parliament Volume One. London: Houses of Parliament.

King, A. & Crewe, I. (2013). The blunders of our governments. London: Oneworld.

Labour Party (1997). New Labour: because Britain deserves better. London: Labour Party.

Levy, J. (2010). Public Bill committees: An assessment: scrutiny sought; scrutiny gained. Parliamentary Affairs, 63(3), 534-44.

Liaison Committee (2015). Legacy Report. London: The Stationery Office.

Low Pay Commission (1998). National Minimum Wage: First report of the Low Pay Commission. London: The Stationery Office.

McConnell, A. (2010). Understanding policy success: Rethinking public policy. Basingstoke: Palgrave Macmillan.
Mance, H. (2016) Britain has had enough of experts, says Gove. Financial Times, 3 June. Retrieved from https://www.ft.com/content/3be49734-29cb-11e6-83e4-abc22d5d108c
Norton, P. (2013). Parliament in British politics. Basingstoke: Palgrave Macmillan
Nutley, S., Walter, I. & Davies, H. (2007). Using evidence: How research can inform public services. Bristol: Policy Press.
Oliver, K., Innvar, S., Lorenc, T., Woodman, J. & Thomas, J. (2014). A systematic review of barriers to and facilitators of the use of evidence by policymaker. BMC Health Services Research, 14, 2, Retrieved from https://bmchealthservres.biomedcentral.com/track/pdf/10.1186/1472-6963-14-2
Pyper, D. (2014). The National Minimum Wage: historical background. London: House of Commons Library.
Russell, M. & Benton, M. (2010) Analysis of Existing Data on the Breadth of Expertise and Experience in the House of Lords: Report to the House of Lords Appointments Commission. London: Constitution Unit.
Russell, M. & Cowley, P. (2016). The policy power of the Westminster Parliament: The "parliamentary state" and the empirical evidence. Governance (29)1, 121-37.
Russell, M. & Gover, D. (2017) Legislation at Westminster: Parliamentary actors and influence in the making of British law. Oxford: Oxford University Press.
Russell, M., Gover, D. & Wollter, K. (2015). Does the executive dominate the Westminster legislative process?: Six reasons for doubt. Parliamentary Affairs (69)2, 286-308.
Rutter, J. (2012). Evidence and evaluation in policy making: A problem of supply or demand? London: Institute for Government.
Rutter, J., Marshall, E. & Sims, S. (2012). *The 'S' factors: Lessons from IfG's policy* reunions. London: Institute for Government.
Secretary of State for Business, Innovation and Skills (2010). Government response to the House of Lords Science & Technology Committee report: Setting priorities for publicly funded research. London: The Stationery Office.
Smookler, J. (2006). Making a difference? The effectiveness of pre-legislative scrutiny. Parliamentary Affairs, 59(3), 522-35.
Stoker, G. & Evans, M. (Eds.). (2016). Evidence-based policy making in the social sciences: Methods that matter. Bristol: Policy Press.
Thompson, L. (2013). More of the same or a period of change? The impact of Bill committees in the twenty-first century House of Commons. Parliamentary Affairs, 66(3), 459-79.
Thompson, L. (2014). Evidence taking under the microscope: How has oral evidence affected the scrutiny of legislation in House of Commons committees? British Politics, 9(4), 385-400.
Thompson, L. (2015). Making British Law: Committees in Action. Basingstoke: Palgrave Macmillan.
Thompson, L. (2016). Debunking the myths of Bill committees in the House of Commons. Politics 36(1), 36-48.
Walkland, S. A. (1968). The legislative process in Great Britain. London: George Allen & Unwin.
Willetts, D. (2012). Research evidence is the antidote to sloppy thinking of sofa government. The Guardian higher education network blog. Retrieved from http://www.theguardian.com/higher-education-network/blog/2012/oct/22/evidence-based-policy-david-willetts
Yin, R. (2014). Case Study Research Design and Methods. Thousand Oaks, CA: Sage.