

# Parliamentary innovation through post-legislative scrutiny

## Manual for parliaments



Franklin De Vrieze  
and Maria Mousmouti

The PLS Series 4 | July 2023

**"The PLS Series" brings together applied research and tools on aspects of legislative processes and Post-Legislative Scrutiny. In this series, the following publications have been released:**

- Post-legislative scrutiny in the UK Parliament, Tom Caygill, 2022
- Post-legislative scrutiny of election campaign finance legislation: comparative study on legislation and practices in Indonesia, Moldova, and Nigeria, S. Lipcean, F. Casal Bértoa, N. Goguadze, 2022
- Sunset clauses and post-legislative scrutiny: bridging the gap between potential and reality, Sean Molloy, Maria Mousmouti and Franklin De Vrieze, 2022
- Parliamentary innovation through post-legislative scrutiny: A new manual for parliaments, Franklin De Vrieze and Maria Mousmouti, 2023.
- Evaluation framework on the results of post-legislative scrutiny activities by parliaments, Franklin De Vrieze and Maria Mousmouti, 2023.

Prepared for  
Westminster Foundation for Democracy

July 2023

#### About the authors

The publication has been drafted by Dr Maria Mousmouti (Associate Research Fellow at the Institute of Advanced Legal Studies of the University of London) and Franklin De Vrieze (Head of Practice Accountability at Westminster Foundation for Democracy). It was published in June 2023, as a revised and updated version of WFD's 2017 Manual on post-legislative scrutiny.

#### Acknowledgements

The authors appreciate the peer review comments received from Hannah Johnson (Welsh Parliament), Marko Vujacic (Consultant IPU), Dinesh Wagle (WFD Country Director Nepal), Agus Wijayanto (WFD Country Director Indonesia) and Stephanie Le Lievre (Head of Campaigns and Strategic Communications at WFD).

The publication "Parliamentary Innovation through Post-Legislative Scrutiny: A new Manual for Parliaments" was made possible through funding received from the United Kingdom's Foreign, Commonwealth and Development Office (FCDO).

#### Disclaimer

The authors have used all due care and skill to ensure the material is accurate as at the date of this report. The authors do not accept any responsibility for any loss that may arise by anyone relying upon its content.

All rights in this work, including copyright, are owned by the Westminster Foundation for Democracy Limited (WFD) and are protected by applicable UK and international laws. This work cannot be copied, shared, translated into another language, or adapted without prior permission from the WFD. All rights reserved. The information and views set out in this report are those of the author(s) and do not necessarily reflect the official opinion of WFD, its funders, or the UK Government. Neither WFD nor any person acting on its behalf may be held responsible for the use which may be made of the information contained therein.

# Contents

Foreword	6
Executive summary	7
<b>1. Introduction: why this manual?</b>	9
<b>2. Framework and principles for post-legislative scrutiny</b>	11
<b>3. Enabling factors for post-legislative scrutiny in parliament</b>	17
<b>4. Methodological steps for organising post-legislative scrutiny in parliament</b>	17
<b>Step 1: Define the objectives and scope of PLS</b>	28
<b>Step 2: Collect background information and prepare a data collection plan</b>	31
<b>Step 3: Identify key stakeholders and prepare a consultation plan</b>	34
<b>Step 4: Review implementing agencies and delegated legislation</b>	36
<b>Step 5: Conduct consultation and public engagement activities</b>	40
<b>Step 6: Analyse post-legislative scrutiny findings</b>	45
<b>Step 7: Draft the PLS report</b>	46
<b>Step 8: Disseminate the report and making it publicly accessible</b>	49
<b>Step 9: Invite a response from the government to 'comply or explain'</b>	50
<b>Step 10: Conduct follow up to the post-legislative scrutiny activities</b>	50
<b>Step 11: Evaluate the post-legislative scrutiny inquiry results and process</b>	51
<b>5. Impact of post-legislative scrutiny</b>	53
<b>6. Parliamentary innovation through post-legislative scrutiny- the way forward</b>	56
Annex 1: Bibliography	59
Annex 2: About the authors	61
Annex 3: Endnotes	62

Acronyms	
<b>CoE</b>	Council of Europe
<b>CoP-PLS</b>	Community of Practice on Post-Legislative Scrutiny
<b>CSO</b>	Civil Society Organisation
<b>FGM</b>	Female Genital Mutilation
<b>FOISA</b>	Freedom of Information (Scotland) Act
<b>HoC</b>	House of Commons
<b>MP</b>	Member of Parliament
<b>NGO</b>	Non-Governmental Organisation
<b>NHS</b>	National Health Service (UK)
<b>PLS</b>	Post-legislative scrutiny
<b>SDGs</b>	Sustainable Development Goals
<b>SDIA</b>	Sustainable Development Impact Assessment
<b>SMART</b>	Specific, measurable, achievable, relevant, time-bound
<b>SMEs</b>	Small and Medium Enterprises
<b>SWOT</b>	Strengths, Weaknesses, Opportunities and Threats
<b>ToR</b>	Terms of Reference
<b>UK</b>	United Kingdom of Great Britain and Northern Ireland
<b>VRU</b>	Verkhovna Rada Ukraine
<b>WFD</b>	Westminster Foundation for Democracy

#### List of boxes and figures

- Box 1: Scottish Parliament's Sustainable Development Impact Assessment (SDIA) tool
- Box 2: Enabling factors for post-legislative scrutiny in parliament
- Box 3: Sunset and review clauses
- Box 4: Possible triggers for post-legislative scrutiny
- Box 5: Checklist for selecting laws for post-legislative scrutiny (by the Scottish Parliament)
- Box 6: Methodological steps in organising post-legislative scrutiny in parliament
- Box 7: Potential questions to be addressed in post-legislative scrutiny activities
- Box 8: Ten considerations when planning for data collection
- Box 9: Checklist for assessing implementing agencies of legislation
- Box 10: Evidence collection methods (as practised in the UK – Westminster Parliament)
- Box 11: Guidelines for written submissions, as prepared by the Parliament of Georgia

Box 12: Tips for SMART recommendations

Box 13: How post-legislative scrutiny leads to Private Member's Bill – case study on gender equality legislation

Box 14: Follow-up actions to the PLS inquiry into the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015

Figure 1: Main steps for gender-sensitive post-legislative scrutiny

Figure 2: Data collection sources for PLS

Figure 3: Types of data relevant for post-legislative scrutiny

Figure 4: The six tests for stakeholder identification

Figure 5: Assessing secondary legislation and how it is issued through primary legislation

Figure 6: Overview of steps in the implementation phase for PLS

Figure 7: Stakeholders for post-legislative scrutiny in Parliament

Figure 8: Overview of steps in the follow-up phase for PLS

Figure 9: Overview of PLS indicators

# Foreword

In the five years since the original WFD Manual on Post-Legislative Scrutiny (PLS) was published, the appetite for integrating PLS into parliamentary procedure has continued to grow. That's not surprising. The events since 2017 have changed the world in many ways, and the challenges ahead will be existential for all of us. PLS is not a silver bullet but it is a tool that recognises the importance of trying to solve real problems – passing a law rarely changes things immediately, so if parliaments want to be relevant to citizens then they need to check whether they are actually working.

The parliamentarians that WFD engages with – on PLS and on many other skills and practices – are determined to have an impact on the lives of people in their countries. They have shown us how the political context shapes the options they have in their work. That is why this manual has been updated. It reflects the real experiences of parliamentarians around the world, and the many ways in which PLS can be applied to different issues. We are very grateful for the feedback that they have provided.

I am also grateful for the professionalism of Franklin De Vrieze, my WFD colleague, and Dr Maria Mousmouti of the Institute of Advanced Legal Studies of the University of London, who together were responsible for this excellent update of the Manual.



**Anthony Smith**  
CEO, Westminster Foundation for Democracy

# Executive summary

**"Public expectations of parliaments' legislative success have evolved substantially, from getting laws on the statute book to ensuring that laws are brought into effect and their implementation has an impact."**

Lord Norton of Louth, UK House of Lords

Legislation is important business for parliaments. Parliaments around the world adopt a staggering number of new laws on a weekly basis but few parliaments know what happens after these laws are adopted.

Post-legislative scrutiny (PLS) is a systematic and structured process through which parliaments review the implementation and impact of legislation. It is a tool that allows parliaments to get a holistic view of the operation and impact of legislation, understand what worked well and what did not, and identify the best way forward in ensuring that legislation has the impact as intended.

Post-legislative scrutiny is not a luxury good but an essential function of parliaments in a governance system under the rule of law. Parliaments at various stages of institutional development undertake post-legislative scrutiny successfully. The critical question for any parliament is not whether to undertake PLS, but how to do it in the best possible way.

Post-legislative scrutiny can be undertaken in a wide variety of ways and there is no single blueprint for it in parliamentary settings. Parliaments do things differently and practice confirms that there are many ways to conduct an effective PLS.

Through this publication, Westminster Foundation for Democracy (WFD) offers practical guidance and examples aimed at assisting and enabling systematic, focused, and methodologically sound post-legislative activities by parliaments. This new manual on post-legislative scrutiny by parliaments is structured in the following sections.

## Section 1

The first section explains what PLS is. It sets the scene and determines the main principles for conducting PLS by parliament. It addresses the questions of which laws require priority focus, what questions to ask, and which issues to pursue. The section also discusses how PLS can scrutinise cross-cutting topics or priorities, such as gender or environment and climate change concerns. It addresses the question of who should be involved in PLS and what their role should be.

## Section 2

The second section describes significant factors that can make a difference when conducting post-legislative scrutiny activities, including the existence of commitments for a review of legislation, the identification of non-legal triggers for PLS and the selection and prioritisation of acts for scrutiny.



### **Section 3**

The third section presents the main methodological steps for effective and robust post-legislative scrutiny. These steps include:

- Actions to initiate PLS: defining the objectives and scope of PLS, collecting background information, identifying important stakeholders and reviewing the role of implementing agencies and delegated legislation.
- Actions to implement PLS: conducting consultation and public engagement activities, analysing PLS findings and drafting the PLS report.
- Follow-up activities: inviting a response from the government, conducting follow-up activities and evaluating the PLS process and results.

### **Section 4**

The fourth section examines how PLS can make a difference for parliaments, for governments and for citizens. Drawing on examples from jurisdictions around the world, this section supports the argument that PLS is a powerful tool to generate and oversee change through legislation and to deliver not just promises, but results.

### **Section 5**

The last section of the manual offers concluding remarks and important innovation steps for the future, including the development of PLS indicators and the establishment of a PLS community of practice.

**The manual has been drafted because WFD sees value in the argument that post-legislative scrutiny should be a more integral part of the parliamentary process. WFD is aware of the resource constraints that parliaments may face and the need for a flexible approach. The manual therefore seeks, as much as possible, to build on existing systems and procedures in parliament.**



**Image above:** Committees of the Parliament of Ukraine, Verkhovna Rada Ukraine (VRU), continue to conduct PLS inquiries.

# 1. Introduction: why this manual?

A fundamental role of parliament is to adopt laws that meet the needs of the country's citizens. It is also a parliament's role to evaluate whether these laws achieve their intended outcome(s). Post-legislative scrutiny takes place when a parliament asks itself whether laws that have been adopted are producing expected outcomes, to what extent, and if not, why not.

This manual aims to upgrade and enhance the knowledge of parliaments in preparing, organising and following up on post-legislative scrutiny activities. The manual proposes new or additional parliamentary practices to enhance the efficiency of PLS and/or increase its outreach to the public. This document is a revised and updated version of WFD's PLS manual from 2017, enriched by the experience and lessons learned in conducting PLS activities over the past six years since the original manual was published.

The manual is addressed to parliaments that want to introduce PLS, conduct a PLS pilot project, or strengthen already existing oversight practices. Parliaments interested in advancing PLS practices often do not have the time or resources to reflect on their internal operation, compare it with external benchmarks and get inspiration from the practice of other parliaments. The manual addresses in particular:

- Members of Parliament (MPs)
- parliamentary staff working in committees or research services and involved in PLS activities
- the leadership and staff of the Secretariat of Parliament
- staff from MPs' offices

The manual can also be a useful resource for other state institutions involved in PLS as well as civil society, media, and stakeholder organisations that interact with the parliament. The manual can make the PLS proceedings more accessible and understandable, allowing citizens and civil society to understand how they can participate and contribute to PLS in an active and meaningful way.

This manual does not provide an exhaustive or a one-size-fits-all overview of scenarios for PLS activities. Instead, it suggests options for preparing and conducting PLS and it allows readers to select solutions that best fit their institutional context.



**Image above:** Mr. Kacha Kuchava, chairperson of the Environmental Committee and later Speaker of the Parliament of Georgia, addresses the Academic Conference on Post-Legislative Scrutiny in Asia in 2019.

## **2. Framework and principles for post-legislative scrutiny**

This chapter provides a short introduction to the why and what of post-legislative scrutiny.

### **What is post-legislative scrutiny?**

Post-legislative scrutiny is the systematic and structured process of reviewing the implementation and impact of legislation. Depending on the jurisdiction and the context, this process might be called post-legislative scrutiny, evaluation of legislation or ex-post impact assessment. Many parliaments might be already conducting PLS activities as part of oversight and legislative scrutiny and not name it as such. The differences in terminology do not alter the essence of the task which is to review, *ex post facto*, the implementation and the impact of the law.

Post-legislative scrutiny lies at the intersection of the legislative and oversight functions of parliament and can capture two complementary dimensions: firstly, the implementation of the law, including the enactment of all provisions or secondary regulation; and their application and interpretation by the courts, citizens and legal practitioners. Secondly, it can capture the impact of legislation, including whether the intended objectives of the law have been met and if yes, how effectively.

### **Why is post-legislative scrutiny important for parliaments?**

There are four overarching reasons why parliaments are compelled to monitor and evaluate the implementation and impact of legislation, which are to:

- ensure the requirements of democratic governance and the need to respect the principles of legality and legal certainty
- prevent potential adverse effects of new legislation
- appraise the effectiveness of a law in regulating and responding to specific social problems in a systematic way
- improve legislative quality by learning from experience both in terms of what works and what does not, and in terms of the relationship between objectives and outcomes

### **Which laws should be scrutinised?**

In principle, PLS could be conducted for most acts, or at least acts of importance. However, this might not be a realistic expectation even for well-resourced parliaments. To make effective use of time and resources, parliaments need to prioritise and carefully select the legislation to be reviewed. Effective post-legislative scrutiny of a few carefully selected pieces of legislation every year is preferable to numerous but less thorough evaluations of multiple acts. Sometimes there might be more added value in scrutinising in depth a few provisions or sections of an act, rather than an entire act in a superficial way.

PLS can focus on a single act, specific provisions of an act, or can take the form of a cumulative assessment of a body of related laws or implementing regulations.<sup>2</sup> There is no right or wrong answer to the question of what the focus of scrutiny should be, as a case by case approach is required. Parliaments need to choose wisely depending on the mandate of the committee or body exercising the scrutiny, the time and resources available and their most effective use, the potential for high quality of the scrutiny, the existence of data and other related reviews, and the timeliness or importance of a topic, among others.

**Legislation related to emergencies, particularly where it affects civil liberties, and legislation adopted under fast-track procedures should be priorities for post-legislative scrutiny. Such legislation is often adopted without proper parliamentary scrutiny and under significant time pressure, and it is advisable to ensure that it is subjected to post-legislative scrutiny.**

Acts that are less suitable for PLS review include:

1. appropriation acts;
2. consolidation legislation;
3. legislation that makes only minor technical changes; and
4. legislation where the scheme of the legislation contains its own method of independent analysis and reporting.

## **What questions should be asked in post-legislative scrutiny?**

Once a decision to conduct a review or post-legislative scrutiny is made, it is important to clearly determine its scope and focus. Committees or other bodies exercising the scrutiny need to determine the most important questions to ask. PLS can provide insights on the necessity and adequacy of the law, its implementation, compliance and enforcement, its broader impacts, and the way forward.

In practice, committees or other bodies exercising the scrutiny make their mandate explicit in terms of reference, motions or mandate letters and specify the specific questions that the scrutiny will seek to address.

## **Post-legislative scrutiny as a lens for cross-cutting issues**

Post-legislative scrutiny offers the advantage of hindsight – and the possibility to look at cross-cutting impacts and identify positive and negative change at a larger scale. PLS can also capture horizontal or sectoral results and impact of legislation, such as the impact of legislation on: women, men and gender-diverse people; inclusivity; sustainable development; environment and climate change; on future generations; or on several of these at the same time.

Thematic PLS adds a complementary layer of analysis to ‘regular’ PLS. Instead of looking only at whether the law has worked and what it has achieved, thematic PLS additionally explores whether the law in question has worked for women, men, and gender-diverse people; whether it had a positive or negative footprint on the environment or on climate change, on the rights of children, sustainability, or on future generations.

## Figure 1: Main steps for gender-sensitive post-legislative scrutiny

Source: Mousmouti, Maria. 2020. Case study 1: Gender-Sensitive Post-Legislative Scrutiny of general legislation



### Gender-sensitive post-legislative scrutiny

Gender-sensitive post-legislative scrutiny is PLS with a gender lens. It adds a complementary layer of analysis to 'regular' PLS: it can show not only whether the law worked, but how it worked for women, men and gender-diverse people; whether there were achievements or unwanted impacts from a gender equality perspective and possible ways to overcome them. Gender-sensitive PLS can reveal the actual impact of legislation on men, women and gender inequalities, make visible biases, stereotypes and assumptions relating to gender and other characteristics, access, participation barriers and data gaps. It can improve the effectiveness of legislation and its contribution to gender equality.

### Environment and climate-proof post-legislative scrutiny

Environment and climate-proof post-legislative scrutiny applies a climate and environmental lens to legislation. It attempts to measure, among other issues, its positive or negative impact in tackling climate change and protecting the environment.<sup>4</sup>

Important strides have already been taken around the world to adopt climate legislation. The current challenge lies in "strengthening existing laws and filling gaps" rather than "devising new frameworks"<sup>5</sup> With laws already in place, parliament's role is to turn towards implementation and towards ensuring climate-proof legislation. Reviewing climate legislation as part of a PLS inquiry, parliaments can identify the legislative gaps and provide evidence-informed solutions to strengthen those existing laws.

A climate and environment lens in the business of legislating and post-legislative scrutiny will facilitate climate and environmental scrutiny to be integrated in the work of almost all committees, and not to be left solely to an environment committee.

Thematic post-legislative scrutiny can use a variety or a combination of lenses and perspectives; for example poverty, fundamental rights, gender equality or sustainable development. For example, the Scottish Parliament developed a tool to assess the impact of legislation on sustainable development and the sustainable development goals.

### **Box 1: Scottish Parliament's Sustainable Development Impact Assessment (SDIA) tool**

The Scottish Parliament's Sustainable Development Impact Assessment Tool aims to equip all parliamentarians and staff with the tools to scrutinise legislation and its impacts through the SDG lens.

The tool is based on the UK Shared Framework for Sustainable Development and is discursive rather than a 'tick-box exercise'.

The tool is based on the requirement for users to talk through the implications of any given piece of policy or legislation.

The Parliament's Non-Government Bills Unit is routinely using the tool to help shape and assess the impact of legislation. Parliamentary officials have also sought to use the tool to better integrate sustainable development into work carried out by its parliamentary committees.

### **Who has a role to play in post-legislative scrutiny?**

Post-legislative scrutiny is parliament-led. Parliaments, as the bodies constitutionally mandated to adopt legislation, are increasingly assuming an active role not only in adopting legislation but also in exercising legislative oversight.

Within the parliament, committees are important actors in PLS. Committees (dedicated PLS committees, thematic committees or ad hoc select committees) should include PLS in their work plans, reserve sufficient parliamentary time for PLS, plan PLS activities, communicate their findings within and outside parliament and follow up on their recommendations.

However, PLS is not a 'one institution' show. Post-legislative scrutiny is a collaborative effort, led by the parliament. Good PLS is a dialogue between different actors around the law, its impacts and ways to improve results. It requires input and collaboration between multiple actors inside and outside the parliament.

Governments are important for PLS in their role as initiators/drafters and implementers of legislation. Their role in mobilising and managing the resources required for the implementation of the law, in monitoring the implementation process, their proximity to implementation data and their potential to track potential unwanted or adverse results or impacts makes them an important player.

Independent authorities can also play a role in PLS. In several countries, independent authorities (such as equality bodies, ombudspersons, or national human rights institutions) have the mandate to monitor and review the law in specific areas like equality legislation, fundamental rights, children's rights and so on. Further, their expertise, objectivity and independence places them in a privileged position to provide expert insights to PLS.



Experts, academics, and practitioners can provide invaluable insights on PLS, through their experience as expert users of legislation. Through information from the ground, expertise or thematic insights they can contribute with quantitative and qualitative data and information in the scrutiny process. Thematic experts, such as gender and diversity experts or environment experts, can offer specialised insights especially on aspects not detected through formal processes.

Citizens and civil society organisations are the 'lay users' of legislation and the ones that benefit or suffer from the impact of legislation. The experience of how the law affects them is a perspective that is often forgotten in favour of the experience and insights of expert audiences. Citizens and civil society organisations are important actors for modern PLS and all efforts should be made to ensure their engagement and active participation.<sup>6</sup>

**Image above:** Discussion on post-legislative scrutiny with a delegation of Committee chairpersons from the People's Majlis (Parliament) of the Maldives.



**Image above:** Members of Parliament at the Conference on Post-Legislative Scrutiny in Asia in 2019.

### 3. Enabling factors for post-legislative scrutiny in parliament

This section identifies a number of factors that lead to an enabling environment for conducting PLS as a systematic and structured part of parliamentary activity. These factors can facilitate an environment of transparency and scrutiny, yet they are not indispensable for a PLS activity to take place.

These issues go beyond the organisation of PLS activities, are important for the functioning of parliament as a whole, and are relevant for the legislative process.

Discussions on these issues often take place at the political and managerial level of parliament, and over a longer period, prior to a specific PLS activity, and way before the other phases mentioned further in this publication. We count these issues as part of the pre-planning phase of conducting PLS.

#### Box 2: Enabling factors for post-legislative scrutiny in parliament

Phase	Steps	Staff actions	MPs' actions
Enabling factors for PLS	Horizontal commitments for PLS	Drafting amendments to legislation	Adopt amendments or debate ministerial undertakings to PLS
	Identification of (non-legal) trigger points for PLS, if binding requirements are not in place	Proposal on trigger points	
	Determine the body to conduct PLS	Commit bodies, human resources and budget for PLS activity	<ul style="list-style-type: none"><li>▪ Decide on competent body</li><li>▪ Decide on human resources needed</li><li>▪ Decide on budget resources needed</li></ul>
	Select and prioritise legislation for post-legislative scrutiny	Project outline for conducting PLS	Approve PLS project outline

## **Horizontal or act-specific requirements for post-legislative scrutiny**

One mechanism to guarantee that legislation is scrutinised during its life cycle is having in place binding commitments to review legislation at a specific point in time after its adoption. Such commitments are horizontal, unrelated to the adoption of specific acts<sup>7</sup> and can take different forms:

- As constitutional requirements for the evaluation of legislation. For example, in the Swiss Confederation or France, the obligation of the national parliament to evaluate legislation is provided for in the constitution.
- As a horizontal policy on the ex-post scrutiny of legislation. For example in the UK, the policy document “Post-legislative scrutiny – the Government’s approach” establishes a commitment to scrutinise legislation 3 to 5 years post enactment and details the scrutiny process in government and parliament.
- As a horizontal legislative requirement to conduct PLS. For example, in Greece, the law on the Executive State (Law 4622/2019) consolidates evaluation as a “tool” of better regulation and introduces a horizontal obligation to evaluate the results of application of legislation 3 to 5 years following enactment.
- As a requirement in the Standing Orders of parliament (for instance Republic of Serbia, National Assembly, Standing Orders article 44 on the mandate of Committees).
- Commitments to trigger post-legislative scrutiny can also be expressed with regard to individual acts through:
- A ministerial commitment to conduct a review of legislation, as expressed during the passage of a bill, and recorded in the proceedings of parliament.

▪ A review clause in a bill. A review clause requires the act to be reviewed after a specified time period. A review clause may be a useful tool because it is enshrined in statute and has the force of law. It may simply provide for a general review of the entire law or specify the provisions that should be reviewed, the timescale for review and who should carry it out. It enables an assessment of the working of legislation and generates data on the implementation of legislation.

▪ A sunset clause. The utility of a sunset clause is to enable an act or provision to automatically cease in its effect after a certain time period, unless another criterion is met, such as a review that keeps it in place. Sunset clauses can play an important role in safeguarding democracy and rights or values that might be endangered or compromised. For example, in COVID-19 acts and regulations, sunset clauses were used to ensure that the restrictive measures adopted to respond to the pandemic extended no longer than necessary. In areas like terrorism legislation, sunset clauses are used to ensure that controversial measures are temporary or kept under scrutiny.

Often a review or a sunset clause reflect a political compromise that will get a bill through parliament.

Sunset and review clauses are often used in combination to create an early warning system against ineffectiveness and potential adverse effects of legislation, to oblige legislators to monitor how legislation performs in real life, and to allow them to revisit issues on which insufficient evidence was available at the time the legislation was adopted. It is recommended that parliaments establish as a binding requirement the review of the implementation of legislation as much as possible.

### **Box 3: Examples of sunset and review clauses**

#### **Example of a review clause**

The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 combine the obligation for a review of the restrictions and requirements (Section 3 par. 2) with an expiry (Section 3 par. 11).

"3. The emergency period and review of need for restrictions

3.—

(1) ...

(2) The Secretary of State must review the need for restrictions and requirements imposed by these Regulations at least once every 28 days, with the first review being carried out by 31st July 2020.

...

11. Expiry

11.—

(1) These Regulations expire at the end of the period of six months beginning with the day on which they come into force.

(2) This regulation does not affect the validity of anything done pursuant to these Regulations before they expire."

#### **Example of a sunset clause**

Good sunset clauses need to meet a very high level of clarity, specificity and unambiguity. Essential elements of an effective sunset clause include:

#### **A clear and unambiguous definition of the subject of sunsetting**

"Expiry

(1) This Act expires at...

(if relevant to the entire Act)

Part 1 expires on ...

(1) Sections 1, 3 and 5 expire at..."

**A clear sunsetting date or an easy-to-figure-out formula to calculate the expiry date**

"Expiry

(1) Part 1 expires on 30 September 2020.

Expiry

(1) This Act expires at the end of the period of 2 years beginning with the day on which it is passed."

**Where appropriate, an explicit requirement for a review and the subject of review**

"(2) The Secretary of State must review the need for restrictions and requirements imposed by these Regulations at least once every 28 days, with the first review being carried out by 31st July 2020."

**It is important to specify the scope of the review**

"The review of the Act should focus on:

(a) the extent to which the objects of this Act are being achieved; and  
(b) the extent to which additional legislative measures, if any, are considered necessary to achieve the targets set by this Act within the periods contemplated by this Act, including by the introduction of performance standards and other mandatory requirements; and  
(c) such other matters as the Minister may consider relevant to a review of this Act."

**Additional topics that can add to the effectiveness of a sunset review include:**

The definition of the authority to conduct the review

Procedure for the review or expiry

## Action for parliament staff

- Propose the introduction of a review clause or sunset clause.
- Draft the MPs' statement requesting the executive to commit to a ministerial review of legislation.

## Action for MPs

- Consider the adoption of a horizontal binding requirements to review legislation.
- Debate and insert review clause or sunset clauses in draft legislation, or request during the parliamentary debate a ministerial undertaking to review the implementation of legislation.

## Identify (non-legal) trigger points for post-legislative scrutiny, if binding requirements are not in place

Binding requirements to conduct post-legislative scrutiny are neither possible nor even desirable in all circumstances. On many occasions the decision to review a piece of legislation is left for a later point in time and the responsibility to trigger the scrutiny is entrusted to the parliament.

If no horizontal commitments to PLS are in place, it is useful for parliamentary committees or parliament's leadership to agree on triggers that can generate consideration of whether or not to initiate PLS.

The next box includes an indicative list of trigger points for post-legislative scrutiny. These can form a working document for the committee staff or for a decision by committees or parliament bureau, depending on the political system and organisational culture of the respective parliament.

### Box 4: Possible triggers for post-legislative scrutiny

- evidence brought to the attention of a committee indicating that an act needs to be reviewed due to potential adverse impact
- a report from an independent oversight institution
- a review of legislation, for example by a Law Reform Commission
- new academic research
- media reports and events in the public space
- pressure from civil society
- an individual case or case law
- interests of members of parliament
- important policy developments around, for instance, SDGs or climate change policies
- a committee deciding that it will undertake regular scrutiny of the implementation of a law

For example, in its PLS of the Control of Dogs (Scotland) Act 2010), the Chamber (Scotland) debated Motion S5M-10404 that stated:

- That the Parliament expresses its concern at figures obtained by a recent Clyde News investigation, which suggest that, between January and June 2017, 205 children were taken to A&E due to dog bites;
- understands that the number of people receiving treatment for such bites in Scotland has risen from 1,939 in 2015 to 2,027 in 2016 and that, in the first six months of 2017, 1,057 children and adults in the NHS Greater Glasgow and Clyde area went to hospital;

- considers these figures to be very worrying, and calls for a post-legislative review of the Control of Dogs (Scotland) Act 2010, including the degree to which the Act is being effectively enforced by local authorities.
- Following the debate, the Minister for Community Safety and Legal Affairs wrote to all local authorities seeking information on their use of the powers in the 2010 Act. The Minister shared the responses received from local authorities with the committee.

### Action for parliament staff

- **Based on some of the trigger points, make recommendations to Members of Parliament concerning which acts can be selected for PLS.**

### Action for MPs

- **Determine how to best integrate these trigger points into committee or parliament decision making – for example, a committee working document, or by committees or the parliamentary bureau formal decision.**

## Determine the body to conduct post-legislative scrutiny

There are various parliamentary bodies that can conduct post-legislative scrutiny. Committees are key actors in PLS. In some parliaments, committees with a PLS-specific mandate are in place, while in other parliaments, departmental or thematic committees or ad hoc select committees can conduct PLS. There are advantages and disadvantages to each of these models but what is important is that parliaments make a decision on the bodies that have the mandate to conduct PLS.

Once this is done, committee staff can assume the organisational and research tasks to conduct PLS. Where a separate committee for post-legislative scrutiny is established, the committee staff take care of PLS activities. In countries where there is a separate secretariat research service for PLS (as is the case in Indonesia and Switzerland), it is important to ensure smooth coordination with the relevant thematic or sectoral committees, to ensure rational use of resources and avoid overlap. Where a parliament decides to outsource and commission the research from an independent body or expert panel (as was the case in South Africa), the required staff support in parliament will focus on liaison and consultation, where needed.

## Action for parliament staff

- Cooperate with other competent bodies within the parliament when conducting PLS activities.

## Action for parliament leadership (Secretary General, parliament bureau or Speaker)

- Determine which parliamentary body/human resources structure is best placed to conduct PLS: regular committee staff, a separate unit or department for post-legislative scrutiny, or a team of external experts working with parliament.
- Ensure coordination between all staff involved in PLS and the follow up to its findings: committee staff, staff from research departments, legal and communications staff; and put in place the required management arrangements to enable all staff involved to work together as a team.

## Select and prioritise legislation for post-legislative scrutiny

While different factors can trigger post-legislative scrutiny, such as the existence of a review or sunset clause, events in the public space and media, or civil society pressure, an important factor for embedding PLS in parliamentary practice is that the competent committees prioritise and compile a short list of laws that could be subjected to scrutiny during a specific term or year.

In practice, the selection of acts to be scrutinised is based on criteria such as the nature and importance of the act, the time needed to review the implementation of the law, the anticipated nature of implementation difficulties, the emergence of risks or adverse effects during implementation, and so on. Factors that can trigger scrutiny, such as media reports or public events are often the reason why specific acts are selected.

In principle, a key issue is to ensure that the act had sufficient time to generate visible and sufficient effects. In practice, most countries foresee PLS within 3 to 5 years from enactment, although in specific circumstances the timeframe can be shorter.

More often than not, however, no formal methods or criteria are in place to determine which pieces of legislation undergo PLS. The approach depends on whether there are requirements under specific legislation for reporting on its implementation, or the approach is otherwise based on the political interest of committees and members. In some cases, PLS of existing legislation has been undertaken to learn lessons before new legislation is introduced. For example, in Wales, the Senedd's Children, Young People and Education Committee undertook post-legislative scrutiny of the Higher Education (Wales) Act 2015 before the introduction of the Tertiary Education Bill, which would repeal the 2015 Act. The committee was interested to learn lessons from the 2015 Act before the new bill was introduced.

The decision on what to scrutinise will depend on the priorities and strategic objectives of the committee that will conduct the PLS, the importance of the issues in question, and the complexity and costs associated with a substantive scrutiny; but also the legal, political, economic and social effects, and the extent to which the law is innovative. When making these decisions it is important to focus on what is more important and on what has added value.

### Action for parliament staff

- Prepare a pipeline or short list of acts for PLS.
- Discuss the short list with committee members or the committee chair, for decision.

### Action for MPs

- Committee adopts a plan for acts to be subjected to PLS activities within a parliamentary year or term, or alternatively selects one act for PLS.

## **Box 5: Checklist for selecting laws for post-legislative scrutiny (by the Scottish Parliament)**

To make sure that the suggestions were as informed as possible, the (Public Audit and Post-legislative Scrutiny) Committee agreed a checklist for anyone wishing to contribute.

**▪ Do you consider that the Act has had sufficient time to have made a difference?**

The Committee is unlikely to consider Acts that have only recently come into force.

**▪ Does the Act have a measurable outcome or policy objective, and has it fulfilled its intended purpose?**

When a Bill is introduced, a separate document called the Policy Memorandum explains why the Bill has been proposed and describes the objectives and outcomes it is designed to achieve. Has the Act been effective in delivering these objectives and outcomes?

**▪ Has another committee of the Parliament already carried out post-legislative scrutiny of the Act?**

Other committees of the Parliament have always been able to undertake post-legislative scrutiny and will continue to do so. It is therefore important to avoid possible duplication; having said that, if the scrutiny was undertaken more than five years ago, we may wish to revisit the legislation.

**▪ Does the Act contain an in-built mechanism for post-legislative scrutiny?**

The High Hedges (Scotland) Act 2013, for example, was amended to allow for a review of the operation of the Act to take place within a specific timeframe. It is anticipated that the relevant subject committee would therefore undertake post-legislative scrutiny at the appropriate time.

**▪ Has the Act been subject to, or could it be subject to, significant revision?**

The Scottish Government outlines its legislative programme on an annual basis, which may contain proposals for Bills that would alter existing Acts or perhaps even repeal an Act. MSPs and Committees can also seek to introduce bills. If the Government has said it will be reviewing or is planning to amend the legislation, we would not want to duplicate that work.

**▪ Would there really be merit in undertaking post-legislative scrutiny of the Act?**

For example, does the Act deal with a very technical or minor issue?

**▪ Is the Act subject to legal challenge?**

The Committee is not allowed to consider any matter that is sub judice; in other words, the Committee would not consider an Act that is being reviewed in the courts.



Image above: The Chairperson of the Legislation Management Committee of the Parliament of Nepal has taken a lead role in initiating post-legislative scrutiny in Nepal, among others in examining the effectiveness of Covid-19 related health and emergency legislation.



**Image above:** The Parliament of Lebanon conducts a post-legislative scrutiny inquiry on the Law Criminalizing Sexual Harassment.

## 4. Methodological steps for organising post-legislative scrutiny in parliament

Before PLS activities can start, the following issues must be addressed: defining its objectives and scope; collecting the necessary background information and data; identifying key stakeholders and preparing a consultation

plan; reviewing the work of implementing agencies and implementing legislation; and determining the timeframe and schedule of PLS activities.

### Box 6: Methodological steps in organising post-legislative scrutiny in parliament

<b>Phase 1: Initiating PLS</b>	<b>Step 1:</b> Define the objectives and scope of the PLS		
	<b>Step 2:</b> Collect background information and prepare a data collection plan	Research	
	<b>Step 3:</b> Identify key stakeholders and prepare a consultation plan	Research	
	Step 4: Review implementing agencies and delegated legislation	Prepare data collection plan	
<b>Phase 2: Implementing PLS activitie</b>	<b>Step 5:</b> Conduct consultation and public engagement activities	Organisation of consultation events, engagement activities	
	<b>Step 6:</b> Analyse PLS findings	Analysis	
	<b>Step 7:</b> Draft the PLS report	Drafting report	
<b>Phase 3: Follow-up activities</b>	<b>Step 8:</b> Disseminate the PLS report	Develop communication strategy	
	<b>Step 9:</b> Invite a response from the Government to 'comply or explain'	Organising hearings	Seek government response to report
	<b>Step 10:</b> Conduct follow up to PLS activities	Drafting note	
	<b>Step 11:</b> Evaluate the PLS results and process	Post-inquiry monitoring mechanism	

# Phase 1: Initiating post-legislative scrutiny

## Step 1: Define the objectives and scope of PLS

Once a decision has been made to conduct PLS, it is important to define its objectives and scope. PLS cannot address everything, so it is important to make it a focused exercise. It is good practice to compile a document that presents the objectives and the specific questions that the PLS aims to address and that formally initiates the PLS process.

Parliaments refer to this document as Terms of Reference, a motion or a mandate letter. Whatever the name, this document is important because it reflects the agreement of the committee on the scope of work and sets out the specific questions that the scrutiny will address. In many parliaments, committees publish the PLS Terms of Reference on the committee's website.

An important decision that needs to be made concerns the scope of the scrutiny. A PLS can focus on:

- an entire law
- specific provisions of a law (a specific area covered by law)
- several laws regulating a specific area (for example, social welfare, health, business, etc.)
- secondary regulations ensuring implementation of the law or arising from the basic laws
- combinations of the above

A second important decision concerns the questions that the PLS will focus on. PLS cannot do everything, especially if time and resources are limited, so it is important to be clear on what the focus of the scrutiny is.

As already mentioned, PLS can address both the enactment of the law and its impact. A narrow approach would examine whether all legislative provisions have been brought into force, how courts have interpreted the law and how legal practitioners and citizens have used the law. A broader approach would look at whether the intended policy objectives of the law have been met and how effectively. In principle, trying to look at both implementation and impact is recommended. Sometimes, however, depending on the timing of the PLS, it might not be possible to do both.

## **Box 7: Potential questions to be addressed in post-legislative scrutiny activities**

### **The adequacy of the law**

- Has the act achieved its aim?
- Are there gaps in legal protection?
- Are the law and its application well suited to meet the desired objectives?
- Have assumptions made during the passage of legislation (on costs, or timings, or impact) held true and if not, why not?

### **The implementation of the law**

- Have all provisions been implemented?
- Are implementing regulations adopted?
- Is the implementation mechanism in place and does it work properly?
- What resources have been allocated to implement the law and how have they been used?
- Has implementation been affected, adversely or advantageously, by external factors?
- Has implementation led to unfairness or disadvantage for specific groups or communities?

### **Compliance and enforcement**

- Do subjects comply with the law?
- Do they benefit from the law? If yes/no, why?
- Are enforcement mechanisms accessible and effective?
- Are specific groups of people more likely to be prosecuted?

### **Broader impacts of the law**

- What are the wanted/unwanted outcomes of the law?
- What are the reasons behind them?
- Have any significant unexpected side effects resulted?
- Has the law affected different groups in different, or unintended ways?  
Have unforeseen disadvantages or burdens been created for women or gender-diverse people, young people, or other groups?

### **Lessons for the future**

- What changes or improvements need to be made to the law and its implementation to make it more effective or cost-efficient?
- What lessons can be learnt?

**For example, in the Post-Legislative Scrutiny: Freedom Of Information (Scotland) Act 2002, the Committee decided to address the following questions:**

- Question 1: In your view, what effects has the Freedom of Information (Scotland) Act 2002 (FOISA) had, both positive and negative?
- Question 2: Have the policy intentions of FOISA been met and are they being delivered? If not, please give reasons for your response.
- Question 3: Are there any issues in relation to implementation and practice in relation to FOISA? If so, how should they be addressed?
- Question 4: Could the legislation be strengthened or otherwise improved in any way? Please specify why and in what way.

Report: <https://sp-bpr-en-prod-cdnep.azureedge.net/published/PAPLS/2020/5/19/Post-legislative-scrutiny--Freedom-of-Information--Scotland--Act-2002/PAPLS052020R2.pdf>

**The Committee on Economic Development of the Verkhovna Rada (Ukraine) in a post-legislative scrutiny (2022) to assess the effectiveness and the impact of COVID-19 emergency legislation identified the following important questions to be addressed:**

Have the measures adopted by the government to support Small and Medium Enterprises (SMEs), private entrepreneurs, employers and employees provided them with sufficient support and financial guarantees, given the severity of the economic downturn caused by the COVID-19 pandemic and the restrictions introduced to help to control it?

- How effective have these measures been in maintaining employment and reducing job losses?

**The Equality, Local Government and Communities Committee of the Welsh Parliament in its Terms of Reference for the inquiry Is the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 working? considered the following questions:**

To what extent is the approach to tackling violence against women, domestic abuse and sexual violence improving as a result of the obligations in the Act?

- What are the most effective methods of capturing the views and experiences of survivors? Are arrangements in place to capture these experiences, and to what extent is this information being used to help inform the implementation of the Act's provisions?
- Are survivors of abuse beginning to experience better responses from public authorities as a result of the Act, particularly those needing specialist services?
- Does the National Adviser has sufficient power and independence from the Welsh Government to ensure implementation of the Act?
- To what extent is the good practice guide to healthy relationships successfully influencing the development of a whole school approach to challenging violence against women, domestic abuse and sexual violence?

**The ad hoc Select Committee of the House of Lords that conducted post-legislative scrutiny of the Bribery Act 2010 considered the following questions:**

- whether the Act has led to a stricter prosecution of corrupt conduct, a higher conviction rate, and a reduction in such conduct;
- whether, as the CBI and others warned, UK businesses have been put at a competitive disadvantageous in obtaining foreign contracts because conduct which was lawful under equivalent foreign legislation might be unlawful under the stricter provisions of the Bribery Act;
- whether small and medium enterprises (SMEs) were sufficiently aware of the provisions of the Act;
- Deferred Prosecution Agreements (DPAs) as they affect bribery.
- Preparatory actions for PLS can include research, consultation with experts, or public hearings.
- The terms of reference should also indicate the timeframe for the scrutiny. As an indication, the process should be completed in 3 to 6 months.

### **Action for parliament staff**

- **Prepare a document with the objectives, scope and questions of the scrutiny.**

### **Action for MPs**

- **Committee launches the PLS and adopts terms of reference detailing the objective, scope and specific questions of the PLS.**

### **Step 2: Collect background information and prepare a data collection plan**

Collecting background information and data is another important step when initiating PLS activities. Before embarking on a PLS it is important to know what data is already available and what data will need to be collected or generated. It is good practice for the PLS team and the committee to use this understanding to compile a comprehensive data collection plan.

Every law, policy or public intervention generates data. Without this data, one can only speculate with regard to whether objectives were achieved, what worked or did not work and why, and whether people were affected in a positive or negative way. Ideally, a good PLS should rely on a balanced body of data that combines primary and secondary data sources. Start from secondary data is advisable, as often a considerable amount of information might already be available. Primary data that would need to be generated directly by the PLS team can be considered after secondary sources have been exhausted or put to good use. The following diagram presents data sources that are invaluable for PLS activities.

---

**Figure 2: Data collection sources for PLS**

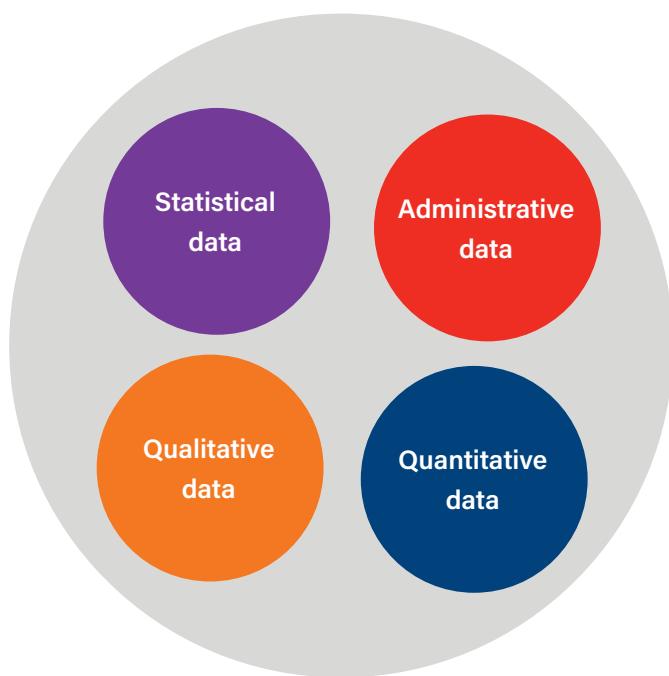
PLS can rely on different types of data, including quantitative and qualitative data, statistical data or administrative data.



---

**Figure 3: Types of data relevant for post-legislative scrutiny**

Source: Mousmouti, Maria. 2020. Case study 3: Data and gender-sensitive post-legislative scrutiny.



Statistical data can reveal the magnitude of an issue and the change achieved over time. Administrative data is collected by government departments and agencies as part of their performance measurement responsibilities. Quantitative data generated through surveys is also important to measure the prevalence of an issue. Qualitative data is useful to highlight the lived experience of the subjects of legislation and allow more in-depth investigations into the roots of potential problems. Qualitative data can be collected through interviews, focus groups, expert panel discussions, case studies, among others.

It is good practice for a PLS inquiry to combine different types of data. For example, stakeholder interviews or in-depth interviews; focus groups or workshops; field visits, structured discussions and consultations and quantitative surveys. The following box includes a series of questions to consider when planning for data collection.

#### Action for parliament staff

- **Prepare a data collection plan, including the type of data necessary, the actors responsible, the main means for collection and related timeframes.**
- **Monitor the data collection process during the PLS activities.**

#### **Box 8: Ten considerations when planning for data collection**

- 1.** What basic data is necessary for the scrutiny? Which data needs to be broken down by gender, age, level of education, location, and so on?
- 2.** What additional data should be collected to support the planned evaluation?
- 3.** What information is available and what information will need to be collected?
- 4.** What are the quality indicators for collected data?
- 5.** What institutions should be involved in primary data collection and analysis?
- 6.** What are the key timeframes for data collection and analysis?
- 7.** Who will have responsibility for gathering data?
- 8.** How will the quality and consistency of information be assured?
- 9.** Who should be heard and what hearings are necessary (representatives of the government, public administration, civil society, victims, witnesses, and so on)?
- 10.** What field visits are required for data collection and validation of the findings?

### **Step 3: Identify key stakeholders and prepare a consultation plan**

The identification of key stakeholders and a plan for stakeholder consultation are important steps when planning PLS activities.

A stakeholder is a person, a group or institution that has an interest, experience or knowledge on a topic. Stakeholders can include officials from implementing agencies but also experts and specialists on the topic, academics and professionals, representatives of collective bodies, professional associations and individuals with lived experience of the issue, and any other person with an interest to contribute to PLS. Compiling a comprehensive list of stakeholders and identifying the best ways to consult with them and solicit information from them are of central importance.

Stakeholder mapping must include all those who possess and can provide information about the implementation and the impact of the law, as well as those who have been affected by the law. PLS needs to consider:

- Which social groups are affected by the law to be scrutinised?
- How big are these groups?
- What is the nature of the effect of the law on each group?
- How important are these effects?
- How long will these effects last?

The selection of stakeholders is important, to the extent that it can ensure that all relevant perspectives on the issue scrutinised are heard. It is very important for the quality of scrutiny to

ensure that a broad range of stakeholders are represented and that diverse viewpoints and perspectives are considered. It is also important to ensure the diversity of witnesses (gender, age, race, ethnic origin, political views and others depending on the issues) and, where possible, gender balance in representations and a sufficient representation of those whose voices are not generally heard. For example, it is important to ensure that the views of minority groups are heard, especially when the issues under consideration have a direct effect on their livelihood and wellbeing.

Diversity and even gender balance are important considerations in the process of selecting stakeholders and witnesses. Both can ensure that diverse experiences are represented and that different insights are taken into account. Diverse witnesses can provide useful, and often complementary insights, to that of other witnesses. Diversity in PLS is not about optics and image but essentially about the integrity of the process. Lack of inclusivity from a diversity or gender perspective might mean that the evidence used in analysis is incomplete, partial or biased, lacking the perspective of significant groups of the population.

#### Figure 4: The six tests for stakeholder identification

Source: European Commission. 2021. Better Regulation Toolbox,  
[https://commission.europa.eu/system/files/2022-06/br\\_toolbox - nov 2021 - chapter 7.pdf](https://commission.europa.eu/system/files/2022-06/br_toolbox - nov 2021 - chapter 7.pdf)



When a list of initial stakeholders is prepared, the list needs to be endorsed by the committee.

The identification of stakeholders needs to go hand in hand with the best methods to consult and engage with these stakeholders. A one-size-fits-all approach is not a solution for all stakeholder groups and committees need to carefully plan the channels, means and methods to be used to reach out to stakeholders and collect information from them. For example, an online survey might be an effective way to collect the views of professionals but it is inappropriate when it comes to accessing minorities or victims of violence or vulnerable groups. These groups would best approached through civil society organisations, invitations to submit oral evidence, field visits, focus groups or webchats.

It is therefore important for the PLS team to put together a consultation plan with the most effective methods and means to access all key stakeholders.

#### Action for parliament staff

- **Compile an accurate map of relevant stakeholders and propose appropriate consultation and engagement activities.**
- **Propose a list of potential witnesses bearing in mind the need for expertise and diversity.**

#### **Step 4: Review implementing agencies and delegated legislation**

The claim that “we have good laws but they remain poorly implemented” is a contradiction in terms. A law that does not foresee its effective implementation often indicates a poorly prepared law. PLS must assess the effects of the law, including the provisions of the law on implementing agencies.

Implementing agencies generally confront five sets of issues:

- **inducing compliance with the law**
- **maintaining itself as an organisation**
- **making regulations**
- **addressing complaints or settling disputes**
- **monitoring actions/behaviours of agency officials when implementing the law.**

PLS must consider whether the implementation model, chosen at the time of adoption of the law, has worked, and why (or why not). PLS can also assess whether an existing agency can cope adequately with the law's demands or whether a new agency should be established.

#### **Box 9: Checklist for assessing agencies responsible for implementing legislation<sup>8</sup>**

##### **I. Duties and powers of the implementing agency:**

- 1.** What responsibilities have been assigned to the agency? Has the agency performed those duties?
- 2.** What conformity/compliance-inducing measures have the agency officials used to carry out their responsibilities? Have these measures addressed the problematic behaviours that the law aimed to help resolve?
- 3.** Does the implementing agency have the authority to impose sanctions? What kinds of sanctions? How often were sanctions issued? How useful did these seem to help resolve the problematic behaviours?

##### **II. Human and financial resources of implementing agencies:**

- 1.** How many officials of the agency are required or are envisaged in its staffing tables? Has this been followed? Why (not)?
- 2.** How does the legislation describe their qualifications, process for selection and appointment, diversity of workforce? How has it happened in practice?
- 3.** By what process can an official or institution remove an official from office (for example, end of term, resignation, removal for cause, retirement age, and so on)? On which occasions has this been applied; and how effective were the existing procedures for implementing these rules?
- 4.** What budget is needed/foreseen for the functioning of the implementing agency; is it also available and used in full?

### **III. Input functions:**

- 1.** Who have agency officials consulted about how to implement the law's details? Did these include all the stakeholders? In particular, did the legislation require them to consult advocates for the poor, women, children, minorities, the environment, human rights and the rule of law?
- 2.** How and from whom have agency officials gathered facts to help them decide how to implement the law's detailed provisions?

### **IV. Feedback functions:**

- 1.** How did the agency learn about whether the law's stakeholders followed its prescriptions?
- 2.** Did the agency wait until people came forward with complaints?
- 3.** Almost every implementation agency permits complaints; but did the agency also have an obligation to search out omissions or violations? How did it make use of this in practice?
- 4.** Who had the authority to make complaints?
- 5.** How were relevant actors able to make their complaints? Were these procedures clear and efficient?
- 6.** Did the agency obtain facts about whether the law's addressees followed the law through investigations by agency employees, public hearings or by soliciting responses from those affected, particularly vulnerable or historically disadvantaged populations?

### **V. Decision making processes and appeals:**

- 1.** Must decision-makers accompany their decisions with a written justification? Should they include findings of fact as well as reasons? How has it been applied in practice?
- 2.** Must decision-makers notify stakeholders when they have an issue under consideration, and invite their inputs? How must the agency respond to those inputs? How has it been applied in practice?
- 3.** Did a person aggrieved by an agency decision have a forum to which they could appeal?
- 4.** How frequently were appeals filed?
- 5.** How effective was the appeals procedure? How many initial decisions were altered following the appeals procedure?

Very often, acts of parliament grant ministers the powers to make delegated or secondary legislation. Delegated or secondary legislation provides the necessary detail for the implementation of the law. PLS activities should review secondary legislation together with the parent legislation, especially when many provisions giving effect to an act are specified through secondary legislation.

Another important aspect to be considered in PLS is whether there is a right balance between issues regulated in primary and in secondary legislation, and whether there is a right balance between issues determined by the lawmakers and issues left to be determined by the executive or the implementing agencies.

(See Figure 5 with checklist to assess legality and legitimacy of secondary legislation, and criteria to review how primary legislation authorises the issuing of secondary legislation.)

Questions that can be considered concern the following:

- How to grant a limited part of the legislative power without weakening parliament substantially.
- How to devolve discretionary power to administrators in a measured amount, to the extent necessarily required in the given circumstances.
- How to ensure that agencies use the delegated power for public, not for private, purposes.
- How MPs can claim to represent the people, and at the same time conscientiously give away a part of the legislative power to the executive.

Therefore, PLS should ask whether evidence and logic justify a law authorising secondary legislation. Have the sponsors of the law been correct in choosing this agency to make and promulgate the new rules? What was the effect of choosing this agency and prescribing these procedures?

### Action for parliamentary staff

- **Prepare a thorough map of the law's implementing mechanisms, and agencies with a role in implementation.**
- **Prepare an assessment of the role and performance of the implementing agency as foreseen in the act, and make it available to the committee(s) conducting the post-legislative scrutiny inquiry.**
- **Prepare an analysis for the committee chairperson on secondary legislation.**

Solicit input from the implementing agency on the regulations and decisions taken, and draft questions for further inquiry.

**Figure 5: Assessing secondary legislation and how it is issued through primary legislation.**



## Phase 2: Implementing PLS activities

As post-legislative scrutiny activities progress, consultation and public engagement activities are implemented, the findings of the PLS are processed and analysed and the PLS report is drafted. The next sections provide some indication of the type of activities that can be included in each step.

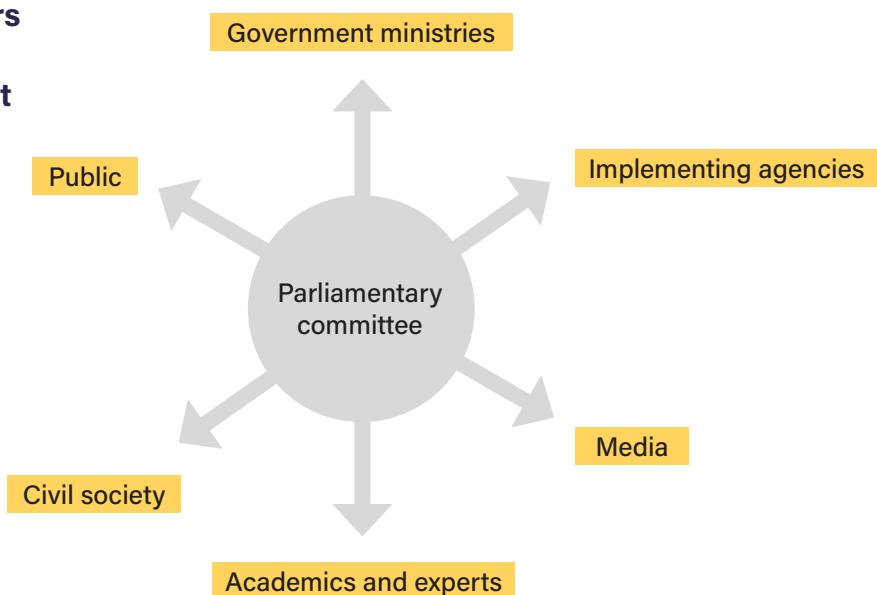
### Step 5: Conduct consultation and public engagement activities

Conducting a stakeholder consultation is a key moment in post-legislative scrutiny activities. Consultation allows experts, interested stakeholders and the public to provide information and evidence on one or more pieces of legislation and enables MPs to determine the measures required to improve a piece of legislation and/or the work of government institutions in implementing legislation.

**Figure 6: Overview of steps in the implementation phase for PLS**



**Figure 7: Stakeholders for post-legislative scrutiny in parliament**



Consultation is a dialogue between the committee conducting PLS and important stakeholders. In order for this dialogue to be effective it must be structured around a set of central questions. It is good practice to notify stakeholders of the key questions on which the committee invites their feedback in a call for evidence or a public call for consultation. This allows stakeholders to provide input and insights focused on what matters for the PLS, and ensures that the limited resources of the committee are used to process information that is relevant to the PLS.

There are many ways to consult and collect information as part of post-legislative scrutiny: key parliamentary mechanisms include public hearings, calls for written and oral evidence, expert meetings, field visits, focus groups, virtual chats and so on. A committee conducting PLS activities can employ a combination of these mechanisms that will allow the collection of the information and data required to answer the questions raised by PLS.

Data collection and consultation methods should be designed to be accessible to stakeholders, to reflect their particular circumstances and to protect their identity and dignity. For example, it cannot be expected that members of minority groups will provide evidence if the call for evidence has not been publicised in their language or if interpretation facilities are unavailable.

## **Examples of adaptations to ensure an inclusive consultation process**

The UK House of Lords in its scrutiny on The Equality Act 2010: the impact on disabled people adjusted its working methods to enable the involvement and contribution of the most relevant informants. It issued a call for evidence in standard and easy read format and then in British Sign Language (BSL); it accepted evidence in BSL with audio transcription or subtitles.

As a result, the committee received 144 responses, heard oral evidence, received supplementary written evidence, took evidence from witnesses with physical disabilities, mental health problems, learning difficulties and visual impairments and officials of the British Deaf Association in BSL.

In addition, committee members visited the offices of an organisation run by and for people with disabilities and spoke directly with a wide range of people with disabilities.

The success of post-legislative scrutiny depends to a great extent on the contribution of stakeholders and the quality of information they provide in the form of written, oral or online evidence. The committee must decide on the format and the sequencing of consultation activities to ensure that information is provided in a consistent and progressive manner.

## **Box 10: Evidence collection methods (as practised in the UK Westminster Parliament)**

### **Written evidence**

Written evidence is submitted in response to a “call for evidence” that details the topic and the questions that stakeholders are expected to respond to. It is good practice to collect written evidence before oral evidence so that committee members can take it into account. When inviting a person to provide oral evidence, the committee staff specifies whether the committee expects to receive a written brief.<sup>10</sup>

There are no rules about the format that written evidence should take. Written evidence often contains:

- the name and address of the person or organisation providing testimony
- a brief introduction of the individuals or organisation, perhaps stating their area of expertise
- any information they have to offer from which the committee might be able to draw conclusions or which could be put to others for their reactions
- recommendations for action

Written evidence can be sent in any form, as a letter, an email or a memorandum.

### **Oral evidence**

Committees often invite witnesses to provide oral evidence. Witnesses appear before the committee to present their views and experience. Oral evidence may be provided in person or via an online connection.

### **Questioning witnesses**

The question and answer time starts when a witness has finished their statement. Committee members use this time to ask questions and obtain additional information. Each committee member should be able to ask questions to witnesses.

### **Box 11: Guidelines for written submissions, as prepared by the Parliament of Georgia<sup>11</sup>**

- The submission should include factual information to substantiate the views of the testimony.
- Recommendations should be as specific as possible.
- The name and address of the organisation or person submitting the paper should appear on the cover page.
- All submissions should contain a summary.
- Any line drawings or graphs should be done in black ink for photocopying purposes.
- Those signing on behalf of an organisation should indicate the level at which the submission has been authorised.
- It is helpful if submissions can be made available both electronically and in paper copy.
- Public distribution of the submission remains within the discretion of the committee.
- Material already published elsewhere should not form the basis of a submission but may be referred to within or attached to a submission, in which case it should be clearly referenced.
- Witnesses should be careful not to comment on matters currently before a court of law or matters in respect of which court proceedings are imminent.

What happens to written evidence once submitted to parliament must also be communicated to the witnesses, and mentioned on the parliament web page announcement for the consultation.

- Committees publish most of the written evidence they receive on the parliament web page.
- If someone does not wish his/her submission to be published, s/he must clearly say so and explain the reasons for not wishing its disclosure. The committee will take this into account in deciding whether to publish.
- A committee is not obliged to accept a written submission as evidence, nor to publish any or all of the submission if it has been accepted as evidence. This may occur where a submission is very long or contains material to which it is inappropriate to give parliamentary privilege.

Public engagement is linked with, but not identical to, consultation. It refers to the many ways in which parliaments can engage with others outside the institution with the goal of generating benefit for all those involved. Parliaments have a vital role to play in addressing the challenges of today's rapidly changing world, by enabling people to connect with and participate in law making, policy formulation and oversight processes that affect their lives now and in the future. Groups like young people, underrepresented or disadvantaged groups can be accessed and motivated to express their views. Technology, social media, and other digital tools offer new opportunities to boost interaction with the community, to communicate with groups that were previously out of reach, and to work more closely together.

Important target groups for outreach and public engagement include the media, but also citizens themselves. The parliamentary website, its social media accounts and interaction with the media are effective means to reach out and inform the public about what is happening behind the parliament's doors and how they can be part of it.

There are various ways in which a committee in parliament can make use of the internet as part of the outreach for a public hearing. The following are the most sensible approaches:

- The parliament's website can contain a link for consultation and receiving documentation.
- Twitter, Facebook and other social media can be a means for the public to follow and even participate, for instance by suggesting questions for witnesses through Members of Parliament and the committee chairperson.

### Action for parliament staff

- **Support the organisation of targeted consultation activities.**
- **Determine the best format for consultation (public hearings, written evidence, and so on).**
- **Propose means for effective outreach and public engagement through the website and social media.**
- **Liaise with the media.**

### Action for MPs / committee

- **Prepare to question witnesses by doing their own research and studying the research briefing, and agree between the members on the sequencing of questioning.**
- **Conduct PLS consultation/public hearing and question the witnesses.**

## **Step 6: Analyse post-legislative scrutiny findings**

The translation of information into findings and conclusions is an important step in the PLS process, but this is by no means automatic or easy. The challenge is to provide a structure to the information, and to use it to answer the questions posed by the objectives for the post-legislative scrutiny.

Transforming information into evidence-based findings and conclusions related to the achievements and failures of a law is a task that needs to be conducted meticulously while also identifying the root causes lying underneath the identified problems.

Analysis of PLS findings requires a creative, forward-looking effort. Using consistent, objective methods to draw conclusions ensures that they will suit the needs of the inquiry. To draw conclusions, committee staff should analyse the information collected through the prism of questions such as:

- **Is the law working or not?  
Why (why not)?**
- **Has the law created unintended  
consequences?**
- **Who has the formal or informal power  
to bring about change?**
- **Who could cooperate with whom  
to bring about or prevent change?**

These questions, among others, will provide information that can be used to conduct a general analysis of the topic.

Committee staff can use methods from the social sciences to process information and start looking for patterns and explanations on why problems are occurring, including by a SWOT analysis (Strengths, Weaknesses, Opportunities and Threats). The information collected, ideally both quantitative and qualitative, will highlight trends. Committee staff should also use findings to gain an understanding of which improvements and recommendations are the most urgent, which goals will be more or less challenging to achieve and to which level of government their findings should be addressed.

### **Action for parliament staff**

- **Compile relevant preliminary findings of the post-legislative scrutiny activities, based on established methodologies for data analysis, SWOT analysis, stakeholder analysis and legal review.**
- **Discuss preliminary findings between parliament staff working for different committees, research and legal departments. Parliament staff may consult the preliminary findings with external experts and implementing agencies.**

## Step 7: Draft the PLS report

PLS activities often result in a written document (such as a report or letter to a government minister) that offers an overview of the whole process: the questions raised, the method and process followed, the information and evidence collected, and the findings and the recommendations of the committee. The responsibility for the final written output on the PLS process, its findings and recommendations, lies with the competent committee.

A good PLS report should offer a comprehensive overview but also a clear response to the PLS questions identified in the terms of reference. A good report should be:

- short
- concise
- user-friendly
- documented
- with clear responses to the PLS questions
- clear recommendations to specific addressees

It is good practice that the PLS report addresses the findings of the inquiry (which are factual) in separate sections to the recommendations (which are forward-looking).

The ultimate purpose of post-legislative scrutiny is to make recommendations on how to maximise achievements and address failures in relation to the law. Recommendations put forward through post-legislative scrutiny<sup>12</sup> propose possible changes with regards to:

- changing policies informing the legislation
- changing practices related to the policy area
- suggesting the need for further research/review
- identifying actions linked to the implementation of legislation
- highlighting the need to disclose issues
- recommending initiatives to other bodies than parliament
- suggesting requirements for cooperation
- identifying the need for funding and resources
- recommending new campaigns/public information and guidance

Research on the content of PLS recommendations in the UK Westminster Parliament found that recommendations can be soft and focus on factual issues (these appear to make up the majority of recommendations), or of medium strength calling for legislative action, or (rarely) stronger ones calling for broad change such as the repeal of an act or the adoption of new legislation.<sup>13</sup>

Good recommendations need to address both positive and negative findings and propose concrete steps on what to sustain and what to improve and how. Recommendations should be specific, measurable (where possible), achievable, relevant and time-bound (SMART) in order to facilitate further monitoring and follow up and they need to respond to the following questions:

- What are the recommended changes?
- Who needs to take these changes forward?
- When or within which timeframe do these changes need to be implemented?
- Why are these changes suggested over possible alternative changes?
- How do these changes need to be implemented – what is needed in order to support their implementation?

The committee conducting the PLS activities also needs to consider what documents should accompany its PLS report. Accompanying documents may include, for instance, written witness statements, tables, committee research findings and written testimonies, witness responses to questions asked by committee members during the PLS process, and so on. It is important to ensure that the report is fully documented and transparent.

### Action for parliament staff

- Finalise the draft report with findings of the PLS.
- Prepare a proposal for the committee chairperson on possible recommendations, or different options for possible recommendations.
- Assist the chairperson in meetings with other committee members in finding common ground on the possible recommendations.

### Action by MPs / committee

- Review and approve the report containing the findings of the PLS inquiry.
- Debate and approve recommendations.

#### Box 12: Tips for SMART recommendations

- acknowledge both positive and negative findings
- be specific with regard to what should be sustained or changed
- address the recommendations to specific authorities/institutions
- indicate how these will be monitored/ followed up
- indicate timelines for the recommendations (short-, medium- or long-term, or specific deadlines) to facilitate follow up and monitoring

### **Box 13: How post-legislative scrutiny leads to a Private Member's Bill – a case study on gender equality legislation<sup>14</sup>**

The Istanbul Convention on preventing and combating violence against women and domestic violence was adopted by the Council of Europe (CoE) in 2011. The United Kingdom was active in drafting the Convention and signed it in 2012, but was slow to take action to ratify it.

Existing British law already contained strong legal frameworks for protection against violence and prosecution for offences, but Member of Parliament of the UK House of Commons Dr Eilidh Whiteford identified a number of gaps. These included weak authority in cases of forced marriage, honour killings and aspects of modern slavery, and lack of jurisdiction for offences committed by British nationals outside UK territory.

Dr Whiteford additionally noted that existing legal protections were housed in different pieces of legislation. The Convention would bring these together into a broader strategy around addressing violence and ending discrimination, ideally making it easier to track progress and consistency in implementation.

Further, the Convention would deliver higher levels of accountability and protection for resource commitments, as well as providing a framework to deal with emerging forms of violence, such as revenge pornography.

Finally, the reporting requirements built into the Convention would ensure regular intervals for post-legislative scrutiny, which would not only track the Government's efforts to address violence but would also require regular reports on its commitments to advance gender equality.

Dr Whiteford tabled a Private Member's Bill to compel the Government to take all reasonable steps to enable the United Kingdom to become compliant with the terms of the Istanbul Convention. While there was considerable debate around issues of extra-territorial jurisdiction in particular, the bill ultimately passed and became an Act of Parliament in April 2017.

**What worked? Dr Whiteford identified a number of factors as important to this process.**

#### **1. A strong partnership with civil society.**

Working in partnership with civil society organisations created momentum to push forward both the scrutiny of existing legislation (identifying the gaps in the existing legal framework) and the proposed remedy (the Istanbul Convention). Civil society played an important role in both providing evidence that made the need for the Convention more compelling, and in generating public support and political pressure for MPs and the Government to support Dr Whiteford's bill.

#### **2. Building post-legislative scrutiny mechanisms into the process.**

Dr Whiteford's original bill contained rigorous reporting requirements for the Government, in addition to those integrated into the Convention itself. While the terms contained in Dr Whiteford's bill were ultimately reduced during the parliamentary debate, their initial inclusion focused attention on the importance of being able to track, monitor and assess impact and implementation of the Convention.

## Phase 3: Follow-up activities

PLS is not an end in itself. Instead, it is the beginning of a dialogue between the parliament and the government with a focus on the scrutinised act.

As PLS activities come to an end, a number of subsequent issues need to be addressed as part of the follow-up phase: disseminating the report, inviting the government to respond, the follow up to the inquiry, and evaluating the post-legislative scrutiny inquiry results and process.

### Step 8: Disseminate the report and making it publicly accessible

The report of a PLS needs to be published and made publicly accessible. Making the report available on the parliament's website is a first means of publication. The committee may also decide to publish the report in hard copy for further distribution. Committees may hold a press conferences to present the report, and write short articles for websites or newspapers in order to attract public attention to its findings. Social media are also effective means for disseminating PLS reports. After the end of PLS activities, the committee needs to discuss follow-up activities.

It is recommended practice to send a copy of the report to the witnesses and all those who contributed to the PLS process. Copies can also be sent to ministries, stakeholders and interest groups, civil society organisations and NGOs, specialised journalists, international organisations and other institutions which might have an interest in the topic under consideration. Distributing the report widely can contribute to the public information campaign on the topic and enhance the outreach of the parliament.

The committee staff should liaise with the press and public information department of the parliament and make use of all communication means, including social media, to launch and publicise the report.



#### Action for parliament staff

- Propose suitable outreach and communication activities for the PLS report and liaise with the press and public information department of the parliament.
- Distribute the report to all persons and agencies who have contributed to the PLS activities

## **Step 9: Invite a response from the Government to 'comply or explain'**

PLS is a dialogue between the parliament and the government around a specific act. This dialogue is structured around findings and recommendations on how to improve the implementation and effectiveness of the act. PLS activities reveal achievements and failures in the design, implementation and enforcement of the law and proposes ways to correct or address them. PLS activities are not a doctrinal or theoretical exercise but an action-oriented effort addressing all actors that have a role and offers recommendations on what needs to be done.

Following the publication of the PLS report, the committee invites a response from the government. Although this is often an unwritten rather than a formal rule, governments are expected to respond to the PLS report and position themselves towards the findings and the recommendations. Governments can agree or disagree with the Committee findings, but ultimately they have to commit themselves on what they plan to do: they either have to comply or explain why it is necessary not to.

The government response essentially generates a plan of action and governmental commitments on the future of the act. The Committee should make note of these in order to formulate its follow-up plan.

## **Step 10: Conduct follow up to the post-legislative scrutiny activities**

Once the government response is public, the parliament might decide to initiate a debate in plenary session on the issue. This is a way of exercising political pressure on the government and generating commitments for action.

But even this is not the end of the process. Further follow-up actions are needed to hold the government and the implementing agencies to account and to ensure that they honour their commitments. Evidence from many countries shows that committees are not very meticulous at looking closely at government responses and following up on them.<sup>23</sup>

While momentum and interest might diminish in the aftermath of an inquiry, it is essential that post-inquiry monitoring mechanisms are put into place to hold the government to account. Follow-up actions to be undertaken by the staff and the committee chair can include:<sup>15</sup>

- the chairperson and members of the Committee making use of the findings of the inquiry during plenary meetings of parliament
- seeking a debate in the plenary on the report
- substantive motions expressing the agreement or disagreement of the parliament with the report as a whole or with certain paragraphs of it, or agreeing to the recommendations contained in the report generally or with certain exceptions
- follow-up debates
- follow-up evidence sessions
- additional scrutiny sessions
- Public hearings

## Action for parliament staff

- Prepare a proposal for the committee chairperson and members on follow-up activities.

## Action for MPs

- Seek a response from the government to report and recommendations.
- Reference the reports and its findings in parliament plenary debates.

## Step 11: Evaluate the post-legislative scrutiny inquiry results and process

Following the end of the inquiry, it is good practice that the committee evaluates the PLS results and process. Such an evaluation can take place internally immediately after the end of the PLS to assess how the process was conducted and what could have been done differently. It can also be done at a later stage in time, for example after 9 to 12 months, when the committee will have the opportunity to review the progress made on the PLS recommendations, and consider additional initiatives to advocate for the recommendations.

## Action for parliament staff

- Prepare a draft evaluation on the inquiry results and process, for discussion at a meeting of the committee which conducted the PLS activities.

## Box 14: Follow-up actions to the PLS inquiry into the Violence against Women, Domestic Abuse and Sexual

Source: Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 ([senedd.wales](http://senedd.wales))

March Act adopted	September - December PLS enquiry and report	February Response of Welsh Government – debate in plenary	January Site visits and letter	November Ministerial scrutiny hearing	November Wales audit Office report	February Follow up evidence session – Additional scrutiny session with the Minister	April - August Issues raised as part of COVID response
2015	2016	2017	2018	2019	2020		



**Image above:** The Senate of Kenya has conducted a PLS baseline assessment against the new Indicators on post-legislative scrutiny.

## 5. Impact of post-legislative scrutiny

Post-legislative scrutiny is a systematic process of reviewing the implementation and impact of legislation. But can it actually make a difference for the parliament, the government or the citizens?

Parliamentary committees can make a difference in a number of ways:<sup>16</sup>

- by influencing the policy debate
- by offering a voice to groups whose voices have not been heard
- by drawing attention to niche or overlooked issues
- by highlighting unintended consequences of the act
- by brokering policy disputes between ministers, officials and bodies
- by providing expert evidence on a topic and by making this available in the public domain
- by holding the government and other bodies accountable
- by exposing wrongdoing or poor decision-making

Post-legislative scrutiny is a useful tool in the effort of committees to exercise oversight and deliver positive change. The examples below, mostly related to legislation against gender-based violence, show different ways in which PLS has made a difference in real life.

### Influencing the implementation of the law and holding the government accountable

Post-Legislative Scrutiny on the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015<sup>17</sup> by the Welsh Parliament identified a lack of pace and consistency of implementation of the law. It also identified a low awareness of obligations among public authorities, limited possibility to fulfil demand for services, and lapses in the publication of statutory guidance which affected the effectiveness of the Act. By identifying the gaps, civil society exercising pressure on the government to commit to deadlines and specific processes, and through consistent follow up, the committee played a key role in speeding up and improving the implementation of the specific law.

### Influence over policy and legislation

Scrutiny of Uganda's Prohibition of Female Genital Mutilation (FGM) Act 2010 revealed how the law had minimal impact on eliminating the practice of FGM.<sup>18</sup> An important finding of the scrutiny was that, while the practice of Female Genital Mutilation appeared to have reduced, in fact it had gone underground and involved covert methods of engaging in the practice. The scrutiny also revealed the deeply entrenched cultural roots of FGM practice in specific regions, and how secrecy surrounding the practice of FGM led to unwillingness to report cases or provide evidence in court for fear of reprisal.

The PLS demonstrated that the 'solution' of the law was not working and the committee proposed a more sophisticated approach with the direct involvement of communities, better communication of the law to target audiences, improved enforcement but also a legislative design of incentives and disincentives that would take into account the behaviours of those engaging in FGM.

## **Triggering legislative and institutional developments**

In Brazil, the review on the Lei Maria da Penha (law on violence against women) triggered an amendment to the Penal Code to establish femicide as an aggravating circumstance for crime. It also led to the establishment of a permanent joint committee in the Congress on violence against women.

In Australia, the review on the Effectiveness of the Sex Discrimination Act 1984 triggered a number of legislative and non-legislative developments:

- amendments to the Act by the federal Government in response to several of the committee's recommendations
- inquiries and legislative amendments across a number of Australian states
- advocacy by community groups calling for improvements to Australia's anti-discrimination regime
- inquiries by the Sex Discrimination Commissioner that led to strategies and recommendations for improved responses
- the 2009 Productivity Commission's inquiry into Paid Maternity, Paternity and Parental Leave (Australian Productivity Commission, 2009) which led to the adoption of Australia's first paid parental leave scheme in 2011

## **Drawing attention to niche or overlooked issues and providing expert evidence**

Committees in parliaments around the world have investigated issues that have remained under the radar and have heard evidence on issues which had received insufficient attention in public debate.

The Report on Hearings Relating to the Uptake of Apprenticeships and Traineeships from the Joint Committee on Education and Skills of the Houses of the Oireachtas in 2019 (Ireland) revealed a highly gendered uptake of the existing apprenticeship scheme in Ireland.

The percentage of men taking up apprenticeships was 85%, compared with 2% women in the age group under 25 years. This was due to occupational segregation, as apprenticeships were in 'male dominated' areas of work, and the quality and affordability of available childcare. Additional barriers were caused by take-up criteria (requirement to be unemployed for a certain period before commencing) and compatibility with family commitments. The committee formulated a recommendation for "a national and persistent promotional campaign" that would "encourage more women to consider the opportunity" in order to reverse this outcome in the future implementation of the scheme.

Other examples of niche areas explored by committees include topics like women's unpaid work,<sup>20</sup> the impact of the pandemic on mental health and human rights,<sup>21</sup> hate crime online,<sup>22</sup> menopause and the workplace or the mental health of men and boys.<sup>23</sup> Hearing evidence, raising awareness on overlooked topics and placing them on the political agenda is an important function that PLS can support.

## **Improving and strengthening parliamentary practice**

PLS is a powerful learning mechanism for parliaments. Committees can learn a lot about the laws they scrutinise, about the laws they adopt but also about their own practice and ways to improve them.

For example, following a PLS pilot, the Committee on Economic Development (the Committee) of the Verkhovna Rada (Ukraine) (VRU) had the skills and resources to hold the government accountable for the implementation of COVID-19-related legislation. The VRU conducted PLS for the first time and they can decide what action they want to take in the future. In addition, the committee identified challenges in the interaction between parliament and civil society and a lack of guidance for effective consultation with stakeholders and public engagement.



Image above: Launch of the new PLS methodology for civil society, at the Institute of Advanced Legal Studies of the University of London.

## **6. Parliamentary innovation through post-legislative scrutiny: the way forward**

PLS emerged from the shadows to claim a clear space in parliamentary practice. Before 2017, few people knew what post-legislative scrutiny was and even less could claim to have insights on how this should be conducted. Five years later, PLS is increasingly recognised as an important dimension within the oversight and the legislative role of parliament and an integral part of the legislative cycle.

There are various ways in which parliaments can introduce PLS in parliamentary practice:

- by asking ministries to provide regular reporting to parliament on the implementation of laws**
- by outsourcing or commissioning research on law implementation to external institutions, either autonomous official institutions or external independent institutions such as universities**
- by conducting their own inquiries on the implementation of selected laws by holding public hearings, collecting evidence and conducting in-house research**

Parliaments often choose, before deciding on what a fully integrated PLS system should look like, to plan and implement pilot projects, through which they examine the implementation of a limited number of laws. After this period, the pilot project can be evaluated, and lessons can be identified for a more generalised and institutionalised approach. The pilot project could take the form of a committee review of ministry reports on the implementation of selected law(s), committee review of outsourced research by external institutions or committee-led inquiries and in-house research on implementation of selected legislation. Finally, the PLS work needs

to show its relevance to the public and needs to be conducted in such a way that citizens can contribute to evaluation of legislation.

Parliaments around the world are increasingly active in conducting PLS and they do so in different ways. The evolving experience and mutual learning feeds into three fundamental questions:

**(1) What form should PLS take?**

**(2) What priority should it have?**

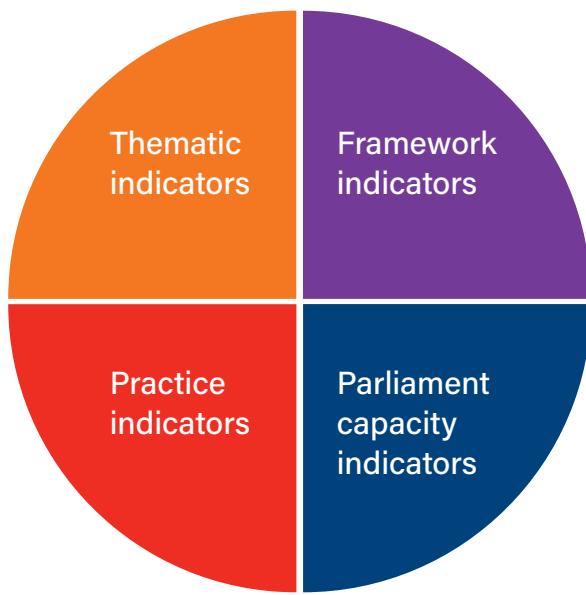
**(3) When should it be used?**

In answering these questions, parliaments can learn from the experience of others in terms of how to best tailor their practices to their unique characteristics. To this aim, parliaments around the world can benefit from a growing evidence base, including academic literature, practical approaches to PLS, training courses and materials.

The Parliamentary and legislative indicators for Post Legislative Scrutiny in Parliament are a tool for benchmarking, self-reflection, peer learning and exchange of practice between parliaments with regards to post-legislative scrutiny. The PLS indicators have been designed to broaden understanding of how a country's system of law making shapes its PLS practices; understanding parliament's capacity to conduct PLS; analysing parliament's performance in PLS and mainstreaming a good governance thematic approach to PLS.

---

**Figure 9: Overview of PLS indicators**



---

## Overview of PLS indicators

I. Framework indicators identify how the country's process of law making and the executive-legislative relationship provide the framework that enables PLS of individual laws. The framework indicators outline both incentives and challenges in the country's governance system in the way it affects how parliament can conduct PLS.

II. Parliament capacity indicators assess parliament's procedures, structures, and resources that are dedicated to conducting PLS. They outline provisions that upscale parliament's approach of PLS. These indicators focus on how parliament is organised to conduct PLS as it relates to its overall legislative and oversight practices.

III. Practice indicators analyse how parliament applies its procedures, structures, and resources to effectively conduct PLS. They also assess the quality of ex-post reporting and follow up. While parliamentary procedures and resources might enable parliament to conduct PLS, the extent to which these are being used in practice is analysed here.

IV. Thematic indicators analyse the legislature's good governance approach to PLS, and outlines options for mainstreaming crucial horizontal lenses within PLS, such as gender equality and environment/climate.

## **Another initiative, planned in the context of WFD's 30th anniversary, is the establishment of a Community of Practice on Post-Legislative Scrutiny (CoP-PLS).**

A Community of Practice (CoP) is a network of professional counterparts aimed at sharing experiences and learning from each other. The Community of Practice will bring together the various PLS initiatives as developed over the past years and upscale them in a more systematic and structured level. The CoP on Post-Legislative Scrutiny (CoP-PLS) will have the following five functions:

### **Networking**

At its core the CoP-PLS is an opportunity for those working in the field of law making and evaluation to engage and build a network of associates from which collaboration, information exchange and learning can occur. Being part of the CoP-PLS network provides recognition for the work done on PLS and increases visibility for PLS professionals throughout the parliament or any other institution where they are working.

### **Knowledge sharing**

The CoP-PLS is an opportunity to share knowledge about how PLS works in one's national context, and its successes and challenges; and to discuss how to overcome these challenges. The CoP-PLS can contribute to peer-to-peer learning among PLS practitioners and inform comparative studies and other knowledge products on PLS.

### **Standard setting**

Deriving from the knowledge sharing, the CoP-PLS may also be an opportunity to define and promote standard practices in the area of legislative evaluation. The 2017 'Principles on PLS' and the 2022 'Indicators on PLS' can be considered examples of standards setting, which can be developed further through the CoP-PLS.

### **Innovating**

The CoP-PLS can be an opportunity to consider innovative work on legislative evaluation and PLS, to test and try, and to gather lessons learned to allow PLS work to evolve. Examples of innovative PLS approaches can be found in the work on gender-sensitive PLS or climate-proof PLS.

### **Communicating and advocating**

The CoP-PLS is an opportunity to increase the communication and outreach towards audiences which might not be aware of or informed about ongoing PLS work. Communication initiatives will be developed in cooperation with the AGORA portal for parliamentary development, and the WFD communications team. In addition, the CoP-PLS can be a venue for advocating for the role of PLS within the legislative cycle and within the legislative and oversight roles of parliament, and for PLS inquiries on specific legislation as relevant in a national or regional context.

# Annex 1:

## Bibliography

- Benton, Meghan and Russell, Meg. 2013, October. "Assessing the Impact of Parliamentary Oversight Committees: The Select Committees in the British House of Commons" *Parliamentary Affairs* 66(4), 772–97.
- Bernhardt, Peter. 2014. "Parliamentary Scrutiny of Delegated Legislation in Canada: Too Late and Too Little?" in: *The Loophole, Journal of the Commonwealth Association of Legislative Counsel*, (3)2014, 73-84.
- Careccia, Grazia and Wallace, Alicia. 2022. Post-Legislative Scrutiny: From a Model for Parliamentarians to a CSO Strategic and Operational Tool WFD, London.
- Caygill, Thomas. 2017. "Into the Unknown: Accounting for the Recommendations and Government Acceptance of Post-Legislative Scrutiny in the UK Parliament", Conference Paper submission for PSA Annual Conference 2017 Parliaments and Legislatures Specialist Group, Glasgow 10th - 13th April 2017. <https://www.psa.ac.uk/sites/default/files/conference/papers/2017/Into%20the%20Unknown%20Accounting%20for%20the%20Recommendations%20and%20Government%20Acceptance%20of%20Post-Legislative%20Scrutiny%20in%20the%20UK%20Parliament.pdf>
- Caygill, Thomas. 2017. "Post-legislative scrutiny: what recommendations are committees making, and are they being accepted?" *British Politics and Policy at LSE* (27 Jul 2017), Blog Entry: <http://blogs.lse.ac.uk/politicsandpolicy/post-legislative-scrutiny-strength-of-recommendations/>
- Caygill, Tom. 2021. Post-legislative scrutiny in the UK Parliament, The PLS Series 1, WFD.
- Childs, Sarah. 2015. "The Good Parliament" University of Bristol: Bristol. <http://www.bristol.ac.uk/media-library/sites/news/2016/july/20%20Jul%20Prof%20Sarah%20Childs%20The%20Good%20Parliament%20report.pdf>
- De Vrieze, Franklin. 2017. "Guide for Parliaments on Post-Legislative Scrutiny", WFD, London. 52.
- De Vrieze, Franklin. 2018. "Principles of Post-Legislative Scrutiny". WFD, London.
- De Vrieze, Franklin. 2020. "Post-legislative scrutiny in Europe: how the oversight on implementation of legislation by parliaments in Europe is getting stronger", *Journal of Legislative Studies*, 26(3), 427-447.
- De Vrieze, Franklin and Mousmouti, Maria. 2022. "Parliamentary and legislative indicators for post-legislative scrutiny". WFD, London.
- Equality, Local Government and Communities Committee, Wales. December 2016. "Is the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 working? Post-legislative scrutiny." <https://senedd.wales/laid%20documents/cr-ld10863/cr-ld10863%20-%20e.pdf> (last accessed 7 September 2022).
- European Commission. 2021. Better Regulation Toolbox, [https://commission.europa.eu/system/files/2022-06/br\\_toolbox - nov 2021 - chapter 7.pdf](https://commission.europa.eu/system/files/2022-06/br_toolbox - nov 2021 - chapter 7.pdf)
- European Journal of Law Reform – special Issue on Post-Legislative Scrutiny. 2019. (21) 2 <https://www.elevenjournals.com/tijdschrift/ejlr/2019/2>
- Government of Canada. 2022. Gender Based Analysis Plus (GBA+) Resource Website, Status of Women Canada. <http://www.swc-cfc.gc.ca/gba-acis/index-en.html>
- Hirst, David. 2021. Post-legislative scrutiny of climate and environment legislation: Guide for parliamentary practice, WFD, London. <https://www.wfd.org/what-we-do/resources/post-legislative-scrutiny-climate-and-environment-legislation-guide>
- Journal of Southeast Asian Human Rights (JSEAH), University of Jember (Indonesia): <https://jurnal.unej.ac.id/index.php/JSEAH/issue/view/845> and <https://jurnal.unej.ac.id/index.php/JSEAH/issue/view/974>
- Kelly, Richard and Everett, Michael. 2013. "Post-Legislative Scrutiny" Standard Note: SN/PC/05232; date: 23 May 2013. House of Commons Library, London.
- Lipcean, Sergiu; Casal Bértoa, Fernando; and Goguadze, Nino. 2022. Post-legislative scrutiny of election campaign finance legislation. Comparative study on legislation and practices in Indonesia, Moldova, and Nigeria WFD, London.
- Molloy, Sean; Mousmouti, Maria and De Vrieze, Franklin. 2022. Sunset Clauses and Post-Legislative Scrutiny: Bridging the Gap between Potential and Reality, The PLS Series 3, WFD, London.
- Mousmouti, Maria. 2020. Case study 1: Gender-Sensitive Post-Legislative Scrutiny of general legislation. WFD, London.
- Mousmouti, Maria. 2020. Case study 2: Post-legislative scrutiny of gender-specific legislation. WFD, London.
- Mousmouti, Maria. 2020. Case study 3: Data and gender-sensitive post-legislative scrutiny. WFD, London.
- Mousmouti, Maria. 2020. Policy Paper: Gender-Sensitive Post-Legislative Scrutiny. WFD, London.
- Nachmany, Michal; Fankhauser, Sam; Setzer, Joana and Averchenkova, Alina. 2017. "Global trends in climate change legislation and litigation", Centre for Climate Change Economics and Policy.

- National Democratic Institute (NDI). 2009, November. Service and Accountability – Public Hearings Manual, Washington DC, p. 84. <https://www.ndi.org/sites/default/files/Service%20and%20accountability%20Public%20Hearing%20Manual.pdf>
- National Democratic Institute. 2007. "Strengthening the Legislative Participation of Women in Parliament: Analyzing Legislation with a Gender Perspective." [http://iknowpolitics.org/sites/default/files/gender\\_perspective\\_roundtable.pdf](http://iknowpolitics.org/sites/default/files/gender_perspective_roundtable.pdf)
- Norton, Philip and De Vrieze, Franklin. 2020. Special Issue of the Journal of Legislative Studies: Parliaments and Post-Legislative Scrutiny, 26(3): <https://www.tandfonline.com/toc/fjls20/26/3?nav=tocList>
- Norton, Philip and De Vrieze, Franklin. 2020. "The significance of post-legislative scrutiny", Journal of Legislative Studies, 26(3), 349-361.
- Norton, Philip and De Vrieze, Franklin (eds.) 2021. Parliaments and Post-Legislative Scrutiny, Routledge, p. 160.
- Palmieri, Sonia. 2011. "Gender Sensitive Parliaments: A Global Review of Good Practice", Inter Parliamentary Union, p. 65. <http://www.ipu.org/pdf/publications/gsp11-e.pdf>
- Parliament of Georgia. 2016. "Manual for Committee staff" (draft document p.82) Tbilisi.
- "Post-legislative Scrutiny – The Government's Approach. Updating and improving the legislative process". Presented to Parliament by the Lord Privy Seal, Leader of the House of Commons and Minister for Women and Equality, March 2008, UK House of Commons.
- Seidman, Ann; Seidman, Robert and Abeysekere Nalin. 2003, February. "Assessing Legislation - A Manual for Legislators" Boston, Massachusetts.
- UK House of Commons. 2016, February. "Guide for witnesses giving written or oral evidence to a House of Commons select committee, London. <https://www.parliament.uk/documents/commons-committees/witnessguide.pdf>
- UK Law Commission. 2006, October. "Post-Legislative Scrutiny – consultation paper", published as LAW COM No 302, London, p. 62.
- Westminster Foundation for Democracy. 2017. "Comparative Study on practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance" London.
- World Bank. 2017. "Governance and the Law - World Development Report 2017" Washington DC, p. 307. <http://www.worldbank.org/en/publication/wdr2017>
- Zacharia, Gitta. 2019. "Post-Legislative Scrutiny and Its Impact on Legislative Oversight in Uganda Parliament. Experiences from an Emerging Democracy", European Journal of Law Reform, 21(2), 185–89.

## Annex 2: About the authors



**Dr. Maria Mousmouti** is Associate Research Fellow at the Institute of Advanced Legal Studies of the University of London and Executive Director at the Centre for European Constitutional Law, a research centre based in Athens, Greece. Her research in the field of legislative studies deals with the concepts of legislative quality and effectiveness, legislative design and mechanics, gender-sensitive law-making and post-legislative scrutiny, and their application in different areas of law. She is passionate about a more active role of parliaments in the scrutiny of the quality of legislation and the exercise of legislative oversight. Her monograph "Designing Effective Legislation" was published in August 2019 and an edited volume on 'Gender Sensitive Lawmaking in Theory and Practice' will be published in August 2023. Maria is Secretary of the Board of the International Association for Legislation and alternate member of the National Commission for Human Rights in Greece. For many years, she has worked to support reform initiatives through research, evidence-based advice and capacity-building in more than 30 countries worldwide. She is a WFD Associate Expert.



**Franklin De Vrieze** is Head of Practice Accountability at Westminster Foundation for Democracy (WFD) in London. He is a democracy and governance expert with extensive experience in post conflict, fragile and transition countries. His areas of expertise are parliamentary strengthening, legislative impact analysis and scrutiny, institution building for anti-corruption and integrity, and the oversight role of parliaments on public finances and public debt. He is WFD's in-house expert on post-legislative scrutiny. He develops tools, resources and research to support the design and implementation of WFD programmes. He has over 30 years' experience in the field of good governance, with a specific 20 years focus on parliamentary strengthening. He is the author of several academic articles and other professional publications on good governance, parliamentary strengthening and post-legislative scrutiny.

## Annex 3: Endnotes

- 1 Westminster Foundation for Democracy. 2017. "Comparative study on practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance", London, p. 68.
- 2 Franklin De Vrieze. 2017. "Post Legislative Scrutiny: Guide for Parliaments", Westminster Foundation for Democracy, London.
- 3 See Mousmouti, Maria. 2020. Policy Paper: Gender-Sensitive Post-Legislative Scrutiny; Mousmouti, Maria. 2020. Case study 1: Gender-Sensitive Post-Legislative Scrutiny of general legislation; Mousmouti, Maria. 2020. Case study 2: Post-legislative scrutiny of gender-specific legislation; Mousmouti, Maria. 2020. Case study 3: Data and gender-sensitive post-legislative scrutiny.
- 4 Hirst, David. 2021. "Post-legislative scrutiny of climate and environment legislation: Guide for parliamentary practice", WFD, London. <https://www.wfd.org/what-we-do/resources/post-legislative-scrutiny-climate-and-environment-legislation-guide>
- 5 Nachmany, Michal; Fankhauser, Sam; Setzer, Joana and Averchenkova, Alina. 2017. "Global trends in climate change legislation and litigation".
- 6 Careccia, Grazia and Wallace, Alicia. 2022. Post-Legislative Scrutiny: From a Model for Parliamentarians to a CSO Strategic and Operational Tool.
- 7 Westminster Foundation for Democracy. 2017. Principles for Post-Legislative Scrutiny by parliament, London, p. 16.
- 8 Based upon and further adjusted from: Seidman, Ann; Seidman, Robert and Abeysekere, Nalin. 2003, February. "Assessing Legislation - A Manual for Legislators". Boston, Massachusetts, p. 105.
- 9 This checklist is based on the criteria established by the Canadian Standing Committee on the Scrutiny of Regulations. See: Westminster Foundation for Democracy. 2017. Comparative Study on practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance, London, p. 41.
- 10 See: UK House of Commons. 2016, February. Guide for witnesses giving written or oral evidence to a House of Commons select committee, London, p. 16; National Democratic Institute for International Affairs (NDI). 2009, November. Service and Accountability – Public Hearings Manual, Washington DC, p. 84.
- 11 Based upon and further adjusted from: Parliament of Georgia. 2016. "Manual for Committee staff", Tbilisi, p. 82.
- 12 Caygill, Tom. 2019. "A Tale of Two Houses?" 21(2) European Journal of Law Reform 2019 (21); Caygill, Tom. 2019. "Legislation Under Review: An Assessment of Post-Legislative Scrutiny Recommendations in the UK Parliament" 25(2), The Journal of Legislative Studies, 295-313.
- 13 Ibid.
- 14 All post-legislative scrutiny documents related to domestic violence in the UK can be found at: <http://services.parliament.uk/bills/2016-17/combattingviolenceagainstwomenanddomesticviolence.html>
- 15 For analysis on the policy follow-up and impact of the Post-Legislative Scrutiny inquiries in the UK Westminster Parliament, the research conducted by Thomas Caygill, PhD at Newcastle University, is worth reviewing. See bibliography.
- 16 Benton, Meghan and Russell, Meg. 2013, October. "Assessing the Impact of Parliamentary Oversight Committees: The Select Committees in the British House of Commons" Parliamentary Affairs 66(4), 772–97. See also: Caygill, Tom 2021, Post-legislative scrutiny in the UK Parliament, The PLS Series 1, WFD.
- 17 Equality, Local Government and Communities Committee, Wales. December 2016. "Is the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 working? Post-legislative scrutiny". <https://senedd.wales/laid%20documents/cr-ld10863/cr-ld10863%20-%20e.pdf> (last accessed 7 September 2022).

- 18 Zacharia, Gitta. 2019. "Post-Legislative Scrutiny and Its Impact on Legislative Oversight in Uganda Parliament. Experiences from an Emerging Democracy" European Journal of Law Reform, 21(2). 185–89.
- 19 Moulds, Sarah. 2020. "A deliberative approach to post legislative scrutiny? Lessons from Australia's ad hoc approach", The Journal of Legislative Studies 1-25.
- 20 <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-equalities-human-rights-and-civil-justice-committee/business-items/inquiry-into-womens-unfair-responsibility-for-unpaid-care-and-domestic>
- 21 <https://commonslibrary.parliament.uk/the-impact-of-covid-19-on-mental-health-and-human-rights/>
- 22 Hate crime: abuse, hate and extremism online, <https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/609/609.pdf>
- 23 <https://committees.parliament.uk/work/124/mental-health-of-men-and-boys-followup/publications/>

Westminster Foundation for Democracy (WFD) is the UK public body dedicated to supporting democracy around the world. Operating internationally, WFD works with parliaments, political parties, and civil society groups as well as on elections to help make political systems fairer, more inclusive and accountable.

 [www.wfd.org](http://www.wfd.org)

 [@WFD\\_Democracy](https://twitter.com/WFD_Democracy)

 [@WestminsterFoundation](https://facebook.com/WestminsterFoundation)



Scan here to sign up to WFD news



Westminster Foundation for Democracy is an executive Non-departmental Public Body sponsored by the Foreign, Commonwealth & Development Office.



Foreign, Commonwealth  
& Development Office