

Institution: University of Essex		
Unit of Assessment: 19		
Title of case study: Strengthening Parliamentary Capacity through Pre-Legislative Scrutiny in Ireland		
Period when the underpinning research was undertaken: 2016-2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Shane Martin	Role(s) (e.g. job title): Anthony King Chair in Comparative Government; Head, Department of Government	Period(s) employed by submitting HEI: September 2016 - present
Period when the claimed impact occurred: 2018-2020		
Is this case study continued from a case study submitted in 2014? N		
<p>1. Summary of the impact</p> <p>Professor Martin's research on parliamentary committees and pre-legislative scrutiny (PLS) has changed the way the Irish Parliament operates. His research, including elements co-produced with parliamentary officials, has led the Irish Parliament to strengthen its role in the law-making process. The engagement represents one of the few examples of academic research changing the ways in which a national parliament operates.</p> <p>PLS is a process whereby a Government ministry sends early drafts of, or ideas for, proposed legislation to Parliament which then analyses the proposals and reports its observations and/or recommendations back to the relevant minister. Because most government bills become law unamended in parliamentary systems like the UK and Ireland, PLS permits parliament to shape the content of legislation before it is entrenched in a published bill.</p> <p>Martin's research has led to PLS now becoming a key stage of Ireland's law-making processes – covering government bills and Private Members' Bills - with positive consequences for parliament, parliamentarians, the quality of legislation, and stakeholder engagement with the law-making process – in a system where the executive had been seen as being too-dominant in the legislative process.</p>		
<p>2. Underpinning research</p> <p>Professor Martin's research focuses on legislative organization and in particular on how electoral incentives shape representatives' preferences and careers, the internal structures of parliaments, executive oversight and the production of public policy. The role and operation of parliamentary committees (a formal subgroup of parliamentarians, charged by parliament with specific functions and capacity) is a particular focus of his research.</p> <p>Although most of his research focuses on the Irish parliament, and political behaviour therein [R1, R2] and executive-legislative relations [R3], he additionally places the Irish case in a comparative context. This larger context includes works on committees in comparative perspectives [R4, R5, G1] and on legislative organization more generally [R2]. A central theme in this research is how and why executives have come to (at least on the face of it) dominate parliaments, the negative consequences of such executive-legislative imbalances for representative democracy, and what actions in terms of institutional reform parliaments can take to better perform their constitutional and representative roles.</p> <p>Martin's research on legislative behaviour, committees, and new forms of legislative organization</p>		

prompted further in-depth research on pre-legislative scrutiny. That research was co-produced with the Irish Parliament between 2016 and 2019. This includes research for and with the Irish Parliament's Library & Research Service, which included a comparative study of PLS structures and processes, and a mixed-method study of the strengths, weaknesses, opportunities, and challenges of the current system of legislative scrutiny by committees in the Irish Parliament [R6]. That research [R6, summarised in R7] included a quantitative analysis of all government bills between 2010 and 2015 and in-depth case studies of three government bills including interviews with parliamentary officials, government officials, interest groups and members of the *Oireachtas*. The research concluded that PLS has the potential to strengthen parliament's capacity to scrutinise legislation because it allows parliamentary committees to scrutinise Government's legislative policy *before* the Bill's text is firmly entrenched. PLS also allows parliament the opportunity to engage with stakeholders, experts and interest/advocacy groups in civil society on the consequences of draft Bills or proposed Bills. In addition to introducing more transparency to the policy-making process, PLS result is closer consideration by parliament of proposed legislation. The revised process for PLS also ensures that a Private Member's Bill (a draft law which is proposed by a single Member or a group of Members, rather than by the Government) receive better scrutiny and more attention from elected officials than was heretofore the case when such bills were not subject to PLS.

3. References to the research [can be supplied by HEI on request]

[R1] Martin, S. (2018) "Bargaining in Legislatures, Portfolio Allocation, and the Electoral Costs of Governing." *West European Politics*, Vol. 41(5):1166-1190.

<https://doi.org/10.1080/01402382.2018.1427946>

[R2] Martin, S. (2017) "Legislative Organization" in E. S. Herron, R. J. Pekkanen, and M. S. Shugart, eds. *The Oxford Handbook of Electoral Systems*. Oxford: Oxford University Press.

<https://doi.org/10.1093/oxfordhb/9780190258658.013.21>

[R3] O'Malley, E. and S. Martin (2018) "The Government and the Taoiseach" in J. Coakley and M. Gallagher, eds. *Politics in the Republic of Ireland*, 6th edition. Abingdon: Routledge, pp. 243-269.

<https://doi.org/10.4324/9781315652313>

[R4] Martin, S. and T. A. Mickler (2019) "Committee Assignments: Theories, Causes, and Consequences." *Parliamentary Affairs*, Vol. 72(1): 77–98. <https://doi.org/10.1093/pa/gsy015>

[R5] Martin, S. and R. Whitaker (2019) "Beyond committees: parliamentary oversight of coalition government in Britain." *West European Politics*, Vol. 42(7): 1464-1486

<https://doi.org/10.1080/01402382.2019.1593595>

[R6] Martin, S. (2017) "[The impact of pre-legislative scrutiny on legislative and policy outcomes](#)" Dublin: Oireachtas Library & Research Service.

[R7] Lynch, C. and S. Martin (2020) "Can Parliaments be Strengthened? A Case Study of Pre-Legislative Scrutiny." *Irish Political Studies*, Vol. 35(1):138-157

<https://doi.org/10.1080/07907184.2019.1631809>

Grant

[G1] Martin, S. Trust is Good, Control is Better: Parliament and the Coalition Government 2010-15. The British Academy, £115,959. Oct 2016-Sept 2017.

4. Details of the impact

National parliaments are the cornerstone of representative democracy, yet around the world most legislatures struggle to play a meaningful role within their political system. Highly disciplined parties, combined with various executive prerogatives over the legislative process, means that the cabinet in parliamentary systems commonly dominates decision making within the chamber. This *de facto* dominance allows the cabinet to get the legislation they want.

One response has been for parliaments to engage in efforts to review and strengthen their capacity to engage more fully and effectively in the legislative process. **Professor Martin's research has**

led to direct improvements to strengthen capacity for legislative scrutiny in Ireland. Pre-legislative scrutiny, a formal process whereby a parliament scrutinizes draft government bills (or more general proposals ahead of a draft bill) and reports back with observations and/or recommendations to the Minister sponsoring the legislation, has become popular in a small number of parliamentary systems. This is in response to parliament being perceived as being relatively weak and ineffective in terms of law-making, with the Government dominating the law-making process. Such parliamentary capacity building programs – a broad term to describe institutional reform and additional resource allocation aimed at allowing parliament to more effectively perform its constitutional function – are becoming increasingly popular. Reforms to parliaments are important because they often represent an attempt to overcome executive dominance of policy-making by enhancing parliament's capacity to carry out its constitutional duties - legislative and representative.

In 2016 Professor Martin addressed a leadership seminar for The European Centre for Parliamentary Research and Documentation (ECPRD), who act as a channel for inter-parliamentary cooperation and information exchange for parliamentary leaders and staff. Hosted by the Secretary General of the Houses of the Oireachtas, and addressing leaders and senior officials from 26, mostly European, parliamentary chambers, Professor Martin drew on his research, including [R6, R7] to consider the experiences of, and approaches to, committee scrutiny of proposed legislation and their impact on legislation [S1].

Following the seminar, Professor Martin was commissioned to undertake a review of the operation of legislative scrutiny in the Irish case for the Irish Parliament's Library & Research Service [S2], to consider whether PLS could enhance the role of the Irish parliament in law-making and to make recommendations regarding whether PLS should become a standard part of the legislative process, and if so, how PLS should work in the Irish Parliament.

Professor Martin's review [R6] made a series of recommendations to senior parliamentary officials in the Irish Parliament which were presented by him in a keynote address to the Houses of the Oireachtas Principal Officer's (heads of section) Network Conference in 2017. **A follow-up presentation was made by Professor Martin in 2018 to the Sub-Committee on Dáil Reform, chaired by the Ceann Comhairle (presiding officer of the Dáil) and composed of party whips, who accepted the recommendations and instructed the parliamentary administration to move forward with implementation of all recommendations [S3].** Following this, the presiding officer of the Working Group of Committee Chairs (equivalent of the UK House of Commons Liaison Committee) wrote to all Government Departments to make them aware of parliament's expectation that going forward all bills will be subject to Pre-Legislative Scrutiny.

In December 2018, the Irish Parliament research service and committees jointly introduced a strategic framework for pre-legislative scrutiny of all parliamentary draft bills [S4] which drew upon Martin's recommendations in [R6]. This includes, based on the presentation to the Sub-Committee on Dáil Reform, the requirement that Private Member' Bills also undergo PLS. The inter-electoral period 2016-2020 saw an explosion in the number of Private Member' Bills introduced and passed into law. This dramatic increase caused concern with regard to the quality of legislation being passed by the Oireachtas. The Library and Research Services of the Irish Parliament state that **'The recommendations from the extensive research undertaken by Professor Martin contributed decisively to the final review where the Working Committee recommended that all private members bills' undergo detailed scrutiny' [S3].** The Houses of the Oireachtas Commission Annual Report for 2019 confirms: *'Under the new procedures, Private Member Bills may not be referred to the relevant Select Committee for Committee Stage of the Bill, unless they have either undergone pre-Committee Stage scrutiny, or the Business Committee has waived this requirement' [S5].*

To ensure that government is not seeking to avoid pre-legislative scrutiny on contentious and/or highly salient bills, the Sub-Committee on Dáil reform agreed to draw up Guidelines [S4] on the criteria to be applied by the Business Committee when considering whether or not to grant a waiver, and to provide for this in Standing Orders [S6].

Professor Martin made seven recommendations to strengthen the role of the Parliament in the law-making process, which have been implemented in the Irish Parliament since

December 2018 [S3, S7]:

1. PLS is mainstreamed and since 2018 is a normal part of the public policy making process for government and private Member' Bills. PLS is incorporated into the formal legislative process, with a standard timeline for when the PLS process is to take place.
2. The Houses of the Oireachtas website for each Bill reflects the full legislative process: it is possible to access all material relating to the PLS stage (including the General Scheme and the Report) and subsequent legislative stages from one webpage.
3. Because the composition of the committee is very important for the success of PLS – in terms of the quality and quantity of proposed recommendations, parties and groups are required to take into account members' expertise and interests when allocating members to Committees. Note that this is a recommendation only to the party leaders, as each party is free to select who they wish to serve on any particular committee.
4. Because Members reported that they find it challenging to find time to prepare for and attend PLS public hearings, the Irish Parliament agree to invest and allocate resources to support members in their analysis and scrutiny of legislation; in particular to PLS, where the potential to influence and improve legislation is greater. This recommendation fed into a wider 2020 review of committees, including how they should be resourced.
5. A central platform to place calls, receive, and process submissions from interested groups or individuals was created alongside the single web source which reflects all stages of the legislative process including PLS. While inviting submissions enhances the role of the general public and interested stakeholders in law-making, the processing of submissions can be a challenging task for the Committee Secretariat. For example, one Bill received in excess of 800 PLS submissions and the verification and acknowledgement then required a significant allocation of resources to the task.
6. Committees to concentrate hearings, rather than holding sessions spread out over many weeks, without compromising on the depth of the scrutiny process, and with a view to issuing its Report within 12 weeks from referral if possible.
7. A wide array of views can be represented in submissions and hearings, through an open and transparent call for evidence. The Committee, rather than individual members of the Committee, are required to implement a process to select who should be invited to attend hearings. Who gets to speak at PLS Committee hearings is important, in part because attendees tend to be very influential in shaping the content of the Committee's PLS report.

A Review of the Committee system between June 2019 and February 2020 by the Committee Secretariat used the findings of Martin's report [R6] to consider how committees can best scrutinise government legislation. According to the Irish Parliament's rules of procedure (Standing Orders), Bills must undergo detailed scrutiny 'from a policy, legal and financial perspective'. The methods of the detailed scrutiny are specified in the 2020 amendment to the Dáil Éireann Standing Orders Relative to Public Business, Order 178 [S6].

In November 2019, and in order to expand the audience for the research impact beyond Ireland, Professor Martin hosted a one-day practitioner-focused workshop on PLS at Wivenhoe House Hotel on the campus of the University of Essex. Participants included staff of the UK Parliament, the Westminster Foundation for Democracy, the Irish Parliament, and researchers from the University of Essex. The case study of PLS reform in Ireland saw the research recommendations endorsed by participants and disseminated further within their own organizations, as well as an agenda for future practitioner-academic research.

5. Sources to corroborate the impact

[S1] Programme from the European Centre for Parliamentary Research & Documentation (ECPRD) Seminar on Pre- and Post-Legislative Scrutiny, Dublin, listing Professor Martin's keynote address to their leadership seminar.

[S2] [Press Release](#) from the Houses of the Oireachtas, Parliament of Ireland

Impact case study (REF3)

[S3] Letter from the Houses of the Oireachtas confirming Martin's engagement with the Parliament, his research, follow-up meetings and impact.

[S4] 2018 [Memorandum of Understanding](#) Between The Government and Dáil Éireann on Private Members' Bills.

[S5] Houses of the Oireachtas Commission [Annual Report for 2019](#).

[S6] Dail Eireann. [Standing Orders relative to Public Business](#) 2020.

[S7] Irish Cabinet Handbook, demonstrating the revised procedures for Drafting Legislation.