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Foreword

This report forms part of the Constitution Unit's research into the scrutiny process. The Unit is currently engaged on a two-year project examining the process of 'scrutiny' by committees at all levels of government in the UK: national; devolved; regional and local. This briefing is the sixth output of the project (see Appendix 3 for details of other outputs).

The aim of this report is to summarise the types of scrutiny practised in the House of Commons and analyse the effectiveness of the different types of scrutiny being carried out. We make recommendations for ways in which select committees' working practices could be improved and draw conclusions on their practices to date. We also compare the types of process and the methods used by Westminster select committees with those used at local and devolved level and hope that this report will be helpful to those in other parliaments and assemblies whose scrutiny committees are still young by comparison to those at Westminster.

Select committees in the House of Commons and the House of Lords are the main focus of non-partisan scrutiny and overview of Government policy and executive decisions. The current system of departmental select committees in the House of Commons was established in 1979. Unlike the new parliaments and assemblies of the UK, the Westminster select committees do not fit into any 'grand design' of parliamentary functioning and are to a large extent still developing in their role. As they develop, the powers afforded to them and their pattern of work changes also. In recent years, select committees have often found themselves at the centre of proposals for strengthening Parliament. This report is set in the context of the Modernisation agenda put into effect under Robin Cook's Leadership of the House of Commons (June 2001–March 2003).

There are, of course, other scrutiny mechanisms within the House of Commons. Members of





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Executive Summary

- The access that select committees have to people, persons and papers is crucial to carrying out effective scrutiny. There need to be clear protocols about the circumstances in which named officials can be expected to appear before committees and Ministers should not resist giving evidence to committees other than their own if matters within their remit are crucial to a particular inquiry. The government should use Freedom of Information principles when responding to requests for information by committees. Further to this, committees might want to consider how they might use the legislation strategically to gain access to documents.
- In May 2002 the House of Commons agreed core tasks for select committees. The overall effect of the core tasks has been to encourage select committees to carry out the full range of activities currently open to them. The recent increases in the number of committee staff and the creation of the Scrutiny Unit, which has expertise in financial and legislative issues, has greatly increased the capacity of select committees to carry out more routine and rigorous scrutiny. However, committees still spend the majority of their time on policy based inquiries and have considerable scope in setting their own agenda.
- Committees need to set priorities for themselves over a period of time, planning first, major issues to cover, secondly specific inquiries, and thirdly the scope of each inquiry. However, committees also have to remain flexible enough to deal with issues as they arise and include routine tasks in their work plans.
- Committees have several sources of expertise open to them including appointing specialist advisers to assist with specific inquiries. However, the process of appointment is ad hoc. Together with a more formal procedure for appointments, job descriptions should be provided for specialist advisers. Committees should also consider how they might use commissioned pieces of research from outside experts to enhance their inquiries.
- Select committees attempt to influence the behaviour not only of the government, but Parliament and the press. They seek to inform debate in the chamber, and produce documents for debate. Increasingly committees have sought to influence the behaviour of political actors by influencing the media and both encouraging and informing a wider debate.
- The government is obliged to respond to committee reports within 60 days. However, responses are often late and the quality of the response is often questionable. A way of improving the system would be for the 60 day response to be an initial response with a further response one year later allowing for serious consideration of recommendations.





1. The current system of select committees dates from the nineteenth century when committees were used to report on specific issues of concern to Parliament. However, the idea that routine examination of policy or administration could improve government did not develop until the latter half of the twentieth century. During the 1960s more systematic scrutiny committees were established. Six committees were established on agriculture, science and technology, education and science, race relations and immigration, overseas aid and development and Scottish affairs. These committees were known as the Crossman Committees, after their instigator—the then Leader of the House of Commons, Richard

them.⁴ The House of Commons has delegated powers to select committees to send for persons, papers and records. In theory this grants them the power to require any person or body to attend a meeting of the committee to give evidence orally, to invite any person or body to submit evidence in writing or to require any person or body to submit specified documents to a committee. The power to send for persons and papers is only enforceable by a resolution of the House (where the government can use its majority). So in practice committees have to negotiate with the executive when calling for particular individuals from government and the civil service.

7. Erskine May states that “Members of the House, including Ministers, may not be formally summoned to attend as witnesses before select committees”.⁵ Although a committee cannot compel a minister to appear, in practice convention dictates that ministers do appear. One of the core tasks of committees agreed in May 2002 was that they should take evidence from each Minister in their department at least once a year. In April 2002 the Prime Minister announced that he would give evidence to the Liaison Committee twice a year after previously refusing to give evidence to the Public Administration Select Committee on the Ministerial Code.

8. Ministers generally only resist appearing before a select committee if it is not the select committee which monitors their department, and refusal to do so is very rare. The Health Select Committee took evidence from ministers from both the Department of Education and the Department for Culture, Media and Sport as well as from the Department of Health during their inquiry into Obesity during 2003–04. In recent years there have been particular difficulties getting ministers from the Treasury to give evidence to departmental select committees other than their own. For instance in April 2002 the Chancellor of the Exchequer, Gordon Brown, refused to give evidence to a sub-committee of the then Transport, Local Government and the Regions Committee on PPP for the tube. The Treasury is a special case, however, as theoretically they could be called to give evidence

to any committee on almost any inquiry. However, where Treasury matters are a crucial part of an inquiry they should not resist giving evidence and usually do not. The government needs to be as flexible in its accountability mechanisms as it can be in its policy making and administration.

9. When calling representatives of the government to give evidence, select committees have no power to require a particular individual to attend. The government maintains that appearance of civil servants before select committees is governed by the Osmotherly Rules.⁶ However, these rules are government rules and have never been formally accepted by Parliament. The normal course is for the select committees to leave it to the department concerned to nominate the appropriate civil servant. If they do require specific individuals, there is no obligation for them and not other civil servants to attend. In 1986 the Defence Committee’s investigation into the Westland Affair centred on the exchange of information between specific individuals in government. The government refused to allow the named individuals sought by the committee to appear and twice sent the cabinet secretary instead. In recent years the ability to call named officials has several times been obstructed. For instance in March 2002 the Cabinet Office refused to allow Lord Birt (a then unpaid strategy adviser on transport issues) to give evidence on the Transport Sub-committee’s review of the 10 Year Plan for Transport.

10. Private individuals can be compelled to attend select committee hearings and can be found in contempt of Parliament if they fail to do so. They have in the past been required to answer all questions put to them.

11. Despite the power to call for papers, select committees cannot formally order a Secretary of State to produce papers. The chairman of a committee may seek to move a motion in the House, but in practice this is unlikely to occur because of the lack of opportunities for backbenchers to move motions, and unlikely to be successful because of the government’s majority in the House. Under the 1997 version of

⁴ See Appendix 2.

⁵ Erskine May, *Parliamentary Practice*, 22nd Edition, 1997, eds Donald Limon and W R McKay, p.648.

⁶ For more information on the Osmotherly Rules see: House of Commons Library Standard Note, *The Osmotherly Rules*, SN/PC/2671, January 2004.

the Osmotherly Rules, the government has committed to releasing information to committees in line with openness procedures first introduced with the Code of Practice on Government Information in 1994. The Freedom of Information Act 2000 will replace the Code of Practice when it comes fully into force in 2005. Select committees may want to use the Freedom of Information Act strategically to make targeted requests for information.

12. Following the Hutton Inquiry into the circumstances surrounding the death of Dr David Kelly, the Liaison Committee raised concerns with the Prime Minister regarding the level of access to information and witnesses given to Lord Hutton compared with that given to House of Commons select committees.⁷ The Liaison Committee stated in its 2003 annual report that “the Government has undertaken to co-operate as fully as possible in the provision of information to parliament. It is therefore reasonable to expect that select committees should receive Government co-operation as fully as an inquiry set up by the government itself.”⁸ The Prime Minister has agreed to undertake a review within government of its guidance to officials on the availability of witnesses and evidence.

13. Select committees and the government need to agree clear protocols about the circumstances in which named officials can be expected to appear before committees. The government should use FOI principles when responding to requests for information. They should respond within the statutory deadline for responses to requests for information and give reasons for exempting information.

Sub-committees and ad hoc Committees

14. Each select committee has the power to appoint a sub-committee, and the Environment Food and Rural Affairs Committee has the power to appoint two sub-committees. The ODPM Committee has a sub-committee which consists

of all of the members of the Committee. The purpose of this arrangement in practice is to allow other members to take the chair for small enquiries. Normally the sub-committee will meet weekly for about three weeks or so, produce a short report or carry out a quick scrutiny process, then do nothing for another month.

15. Although sub-committees can be a flexible way of increasing the capacity of the committee, and allowing members to lead individual pieces of work, they do come at a considerable cost both to staff and members.

“Staffing a sub-committee to be effective really means doubling your staff.”

16. Sub-committees on their own are not an answer to increasing the capacity of select committees because they stretch the fixed level of support available to the committee, and members find it difficult to find extra time to sit on them.

17. Select Committees also have the power to work with one another. Select committees and sub-committees can hold concurrent meetings with one or more other Commons select or sub-committees, and any committee of the House of Lords. In practice, however joint meeting and working of committees is rare. This is because of the level of co-ordination, support and time required to organise and staff such a committee. One notable success has been the “Quadripartite Committee”: the Defence, Foreign Affairs, International Development and Trade and Industry Committees have co-operated on a continuing basis since 1997 to examine and report on the government’s new series of annual reports on strategic export controls. Generally, however, the caveats regarding sub-committees also apply to joint working.

⁷ See also the Foreign Affairs Committee, *First Special Report Session 2003–04: Implications for the Work of the*



Core Objectives of Select Committees

18. In May 2002 the House of Commons agreed proposals of the Liaison Committee on defining the common objectives for select committees along with a raft of other measures.⁹ Select committees had increasingly been seen as a central part of strengthening parliament against the executive. Two influential reports, of the Commission to Strengthen Parliament (The Norton Commission) and the Hansard

Commission on Parliamentary Scrutiny (The Hansard Commission), had both given significant focus to the work of select committees as well as their membership. The Liaison Committee proposed the core tasks as a way of achieving “a more methodical and less ad hoc approach to the business of scrutiny” and such a list was also proposed by the Modernisation Committee. The list of core tasks the House agreed are in Box 1 below.

Box 1

OBJECTIVE A: TO EXAMINE AND COMMENT ON THE POLICY OF THE DEPARTMENT

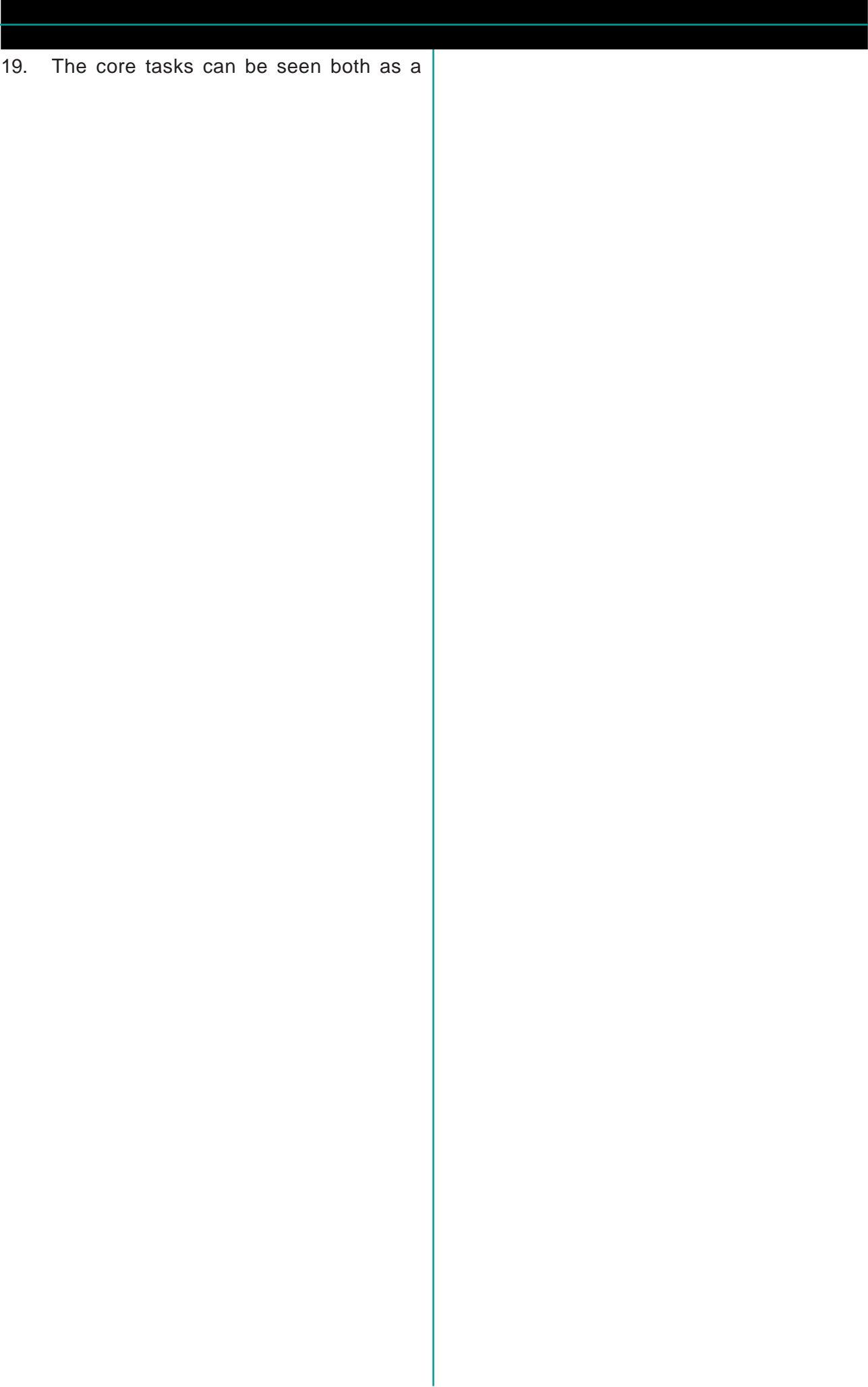
Task 1: To examine policy proposals from the UK Government and the European Commission in Green papers, White papers, draft Guidance etc, and to inquire further where the Committee considers it appropriate.

Task 2: To identify and examine areas of emerging policy, or where existing policy is deficient, and make proposals.

Task 3: To conduct scrutiny of any published draft bill within the Committee's responsibilities.

Task 4: To examine specific output from the department expressed in documents or other decisions.

OBJECTIVE B: TO EXAMINE THE EXPENDITURE OF THE DEPARTMENT



19. The core tasks can be seen both as a

concentrate on sexy areas and miss out some very important areas.”

25. Respondents from the Health, ODPM and Constitutional Affairs committees all linked the increase of this activity to its inclusion in the core tasks. The Education Select Committee had regularly started to take evidence from Ministers in 2001.

26. Respondents also indicated that the requirement to take evidence from a particular minister had made them focus on issues they would not have done otherwise. With the evidence sessions published on the web, often single evidence sessions with ministers are not followed by the publication of a report. This makes the committee more flexible, enabling it to question ministers on issues arising over a broader sphere, including expenditure issues, than just for the two or three large inquiries planned in any one session. **Single evidence sessions with ministers have allowed the committee to cover more ground within their department without necessarily soliciting evidence and producing a report.**

Appointments

27. One of the more problematic tasks for select committees is the requirement to “consider and if necessary report on major appointments by a Secretary of State or other senior Minister”.¹¹ Although this is something which some select committees have been doing regularly for many years, such as the Treasury Committee which has taken evidence from each new member of the Monetary Policy Committee

alongside the new appointee's priorities for OFSTED.¹³ The report describes the process that led to the appointment of Mr Bell and sets out his qualifications and career. It goes on to discuss the issues covered in his oral evidence before recommending that the appointment of Her Majesty's Chief Inspector of Schools should be subject to Parliamentary approval.

31. The Constitutional Affairs Committee received a "valedictory" memorandum from the outgoing Chief Executive of the Legal Services Commission which provided "much useful material both for the session with his successor and for future scrutiny of the work of the Legal Services Commission".¹⁴ One interviewee stated "when someone is leaving an appointment, that is when they would love to give evidence and then tell you precisely what they think." **It would be useful for committees to take evidence from major appointments towards the end of their appointment when they have more of an insight, and less to lose, by giving full and frank evidence.**

Annual reports

“The Scrutiny Unit has raised that act [of probing into estimates and expenditure], and has put departments on the spot because they get regular questions—they usually turn out to be mistakes or the numbers are wrong. It has exposed some financial weaknesses which is a good thing.”

“Some of the supplementary estimates that have come in we have sent questions on—‘why have you suddenly added £150m in for this’—we’d better write to the ministers and ask them to explain.”

36. Select committees are also becoming more attuned to looking at the financial issues when considering policy.

“When we look at the policy we look at the money side of things. For instance, where are you going to get the money to pay educational maintenance allowances. We look at the money as a means to an end rather than scrutinising the estimates like an accountant would.”

For instance, the Health Select Committee asked the Scrutiny Unit to assist them in looking at the use of private health care by the public sector. The Unit worked out that the cost per item purchased from the private sector was likely to be on average around 40% higher than the same treatment from the NHS.

37. The Health Select Committee has its own method of monitoring the expenditure of the Department of Health. Every year since 1991 the committee has sent a Public Expenditure Questionnaire (PEQ) to the department. The questionnaire is roughly the same year on year in order to get comparable figures. It is prepared, and interpreted for the committee, by a panel of health finance experts. The responses from the questionnaire are analysed and the Minister is questioned on issues arising.

38. One of the traditional limitations on financial scrutiny has been the difficulty in fully engaging members’ interest. The level of specialism required to interpret figures has always meant that such work has been predominantly staff led. It is work which more naturally lends itself to scrutiny by correspondence rather than by evidence session. Members’ interests are more focused on policy issues rather than figures, and

they find examination of finances both less interesting and less rewarding than inquiring into a major new policy initiative or area of concern.

39. Even with the added complement of the Scrutiny Unit, select committee resources are tiny compared to those of the government. Rather than attempting or aiming to establish a “mirror bureaucracy”, the Scrutiny Unit and the select committees try to target their resources at areas where they will have the most effect. Again, the supplementary estimates and the annual report, as well as ongoing policy issues, provide the best target. **Concentrating on supplementary estimates, linking expenditure to policy, and added staff support has meant that members’ interests are more fully engaged and committees are becoming more effective and focused in this area.**

40. It is not surprising that committees spend most of their time doing policy-based inquiries, as well as timely investigations into events and appointments, rather than scrutinising estimates and expenditure. It is much harder for this latter sort of work to be member rather than staff led because of the level of specialism and detail involved. Further to this, with the limited capacity of a departmental select committee’s secretariat, even when supplemented by the Scrutiny Unit, total scrutiny of expenditure, estimates and supplementary estimates is not going to be achieved. It is also harder to engage the interest of the members and the public in detailed budget scrutiny. The area where this type of work has captured the imagination of members is where it interacts with policy decisions rather than accountancy errors. Select committees must focus on a few areas where budgetary scrutiny produces information regarding policy rather than attempt to do the impossible.



41. For the work committees do on policy, performance and administration they use an inquiry process. Although all inquiries differ, the basic structure remains the same. Roughly speaking, an issue is identified, a specialist adviser is appointed, written evidence is solicited, oral evidence is taken, and then the committee publishes a report. However, a number of choices are made at various points within this process which can impact on the effectiveness of the output (the report) and the outcome (the change in perceptions or policy a report might produce). This chapter provides a

typology of inquiries, identifies the key choices made during an inquiry and suggests ways in which these choices should be faced. The following chapter then identifies the resources which select committees have access to and ways in which they can be used.

Classification of case studies

42. Although the common objectives outlined above can be one way of classifying committee reports, this study uses its own typology developed in *Scrutiny Under Devolution*.¹⁷ This

Box 2: Typology of scrutiny reports

Strategic Policy Review: These are large-scale forward-looking reviews into widely-drawn policy areas. Despite being forward looking in their focus, these reviews often look in depth at recent approaches to the policy field.

Forward Policy Proposals: These focus on particular issues or policies. These may be inspired by government actions or proposals.

Event Inquiries: These are backward-looking reviews of one-off events.

Non Departmental Public Bodies: These are inquiries looking at the work of arms-length agencies.

Appointments: These are one-off evidence sessions, which may lead to a report, with a recent appointment made by the department which is of public interest.

¹⁷ See Sandford, M., and Maer, L., *Scrutiny Under Devolution: Committees in Scotland, Wales and Northern Ireland*, The Constitution Unit 9 2 -1, 178 on or proposals.



only should committees respond to the government, but they should pressurise the government into action in areas they are neglecting by setting the agenda:

“We have a range of responsibilities and we cannot let the government write all of our agenda. Indeed, that would distract us from issues they may not be interested in.”

47. The impetus to carry out these less routine inquiries comes from the members, and usually the chair is most influential in this regard. As one interviewee explained “All chairmen have bees in their bonnet, and that is reflected in the range of enquiries we’ve embarked on.” A chair that we interviewed claimed to know himself what the focus of the select committee’s work would be over the next session of parliament, even if the rest of the committee didn’t know yet.

Timetabling

48. Once a plan for the upcoming months has been made, each inquiry then has to be scoped in greater detail and a timetable for the inquiry produced. It became clear through the research that to let an inquiry expand beyond its original

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issues within the subject and discuss the possible way forward for the select committee.

“They have introductory seminars, they have academics in, they go on a visit first, they don’t draw up their terms of reference until they have talked to various odd-bods or experts, they invite comments from the public before they do so.”

53. All these attempts to set clear boundaries around an inquiry do not necessarily lead to a set of objectives for each inquiry. Committees do not tend to set themselves targets other than just getting the right evidence in to lead to a report published within a set timetable. For instance, objectives could be set, as they were in the Constitutional Affairs Select Committee inquiry into the Supreme Court and the Judicial Appointments Commission, to influence the second reading debates when legislation was introduced, with a secondary target of encouraging the government to publish the legislation in draft. **Without setting objectives at the start of an inquiry, it is very difficult to point to achievements at the end. As one respondent indicated: “you can only evaluate the output or outcome if you know what you want to achieve in the first place”.**

Written Evidence

54. Committees usually begin the substantive part of their inquiry by issuing a call for written evidence. The most common method is by sending a press release round to the usual suspects and the trade press.

“What we do is we have a press list of around 500 people. All calls for evidence are in the form of a press release that automatically goes to all those people so that is good and wide. The second thing we do, more often than not, is to target particular organisations that we really do feel we ought to hear from and it is generally the usual suspects.”

55. The aim is not to receive large numbers of documents, but to gather well argued evidence which can then be circulated or advertised to members. In Northern Ireland and Wales especially, calls for written evidence are circulated much more widely than this. The ‘Schools of the Future’ inquiry carried out by the National Assembly for Wales solicited evidence

from every school in Wales. In Northern Ireland advertisements are regularly placed in newspapers calling for evidence. As discussed below, the difference is in part due to the difference in attitude to the role of Parliament in consulting “ordinary people”. As one respondent stated:

“We get tonnes of evidence. If it started increasing I’m not sure we could deal with it.”

56. Although it is true that there is a limit to the amount of written evidence a committee secretariat can be expected to process, there is a danger of committees being unable to break out of consulting the ‘usual suspects’ only. Recent increases in staff for committees should enable more energy to be invested in soliciting evidence from key groups and individuals who might not be consulted regularly and issuing better targeted calls for evidence. If public opinion is sought, committees should consider conducting polling or focus groups as is done more regularly in the Scottish Parliament rather than attempting to reach them through traditional means. **Committees could be clearer about what they are trying to get from any given call for evidence, and perhaps send questions focusing on different areas to different sorts of witnesses.**

57. However, there is a further problem with receiving large amounts of written evidence: members are unlikely to have time to read and evaluate hundreds of responses. Clerks already sometimes use their own judgement in choosing which written memoranda to send to the members, and whether to issue a précis of some of the evidence provided. Some clerks simply advertise a list of evidence to the members who can then choose which pieces they would like to receive. It is standard practice to circulate all memoranda provided by those later called to give oral evidence. **Clerks should always provide a summary of the evidence highlighting the most important and interesting points, and a list of all the memoranda received.**

Oral Evidence

58. Oral evidence is usually taken from a subset of those who provided written evidence. The usual practice is to take evidence from officials first, followed by representative groups and various experts, with evidence from the

65. We have said in our past two reports that short questions are often most effective in eliciting a valuable answer as the witness has less room to be evasive and less opportunity to miss the point of the question. In the House of

service users, it also provides difficulties especially due to the lack of a written transcript. Firstly, no record of the visit appears on the committee's website although it might be referred to within the final report. Very rarely a note of the visit is included as an appendix to the report; this is routinely the case in the London Assembly. Secondly the lack of a transcript means that it is difficult to make solid use of the information gathered. The memories and notes of those on the visit are relied upon to capture views and facts.

“More of it goes on than appears in public. That is what visits, especially domestic visits, are really about. There are disadvantages. You get eleven members on a visit and they will come back with eleven different accounts of what they heard so how much it can actually feed into an inquiry is problematic.”

72. However, others were of the opinion that the availability of a written transcript had become more of a security blanket for select committees:

“The output from a formal evidence session is a transcript. The advantage of that is that you have a very thorough record of everything that is said. There is a tendency for committees to cling to that.”

73. Information on domestic and international visits by select committees could be included on the committees' websites. Written briefings on committee visits could be included more often as an appendices to reports. This would allow an accurate and agreed record to be made of the event and the process would be more transparent thereby allowing acknowledgement and rewarding select committees for this work.

74. However, the amount of time a committee could give to this task is affected by their priorities. Unlike at the devolved level and in local government, select committees do not see it as one of their key tasks to gauge public opinion and find out what 'people think'. For instance in the

Northern Ireland Assembly, an inquiry into tourism included two large conferences where individuals involved in the Tourism industry were invited to participate. Their views were then channelled into the formulation of the report.²² Overview and scrutiny panels in local government see great value in going out and speaking to service users.²³ The committees of the Scottish Parliament have a 'Participation and events' budget to enable them to carry out this sort of work. Select committees see consultation as being something that governments and political parties facilitate when making policy, and their role more of a consulted body rather than a consulting body. Although MPs represent the views, concerns and interests of their constituents, the select committee is not the main forum for this part of their work.

“If you are looking into the railways you don't really want 10,000 people telling you how awful they are.”

75. However, select committees do have a role to play in the wider agenda of Parliament 'reconnecting' with the public.²⁴

“Select committees are not primarily there to find out what the public thinks about things...but of course because of the concern with public engagement more generally with Parliament, committees get asked to do more to make sure that it is more accessible to the public.”


76. For those committees who are interested in engaging with the public for various inquiries, one method of doing so is through online consultations run through the Hansard Society. However, these can be expensive (a recent online consultation carried out by the Modernisation Committee cost just over £9,000) and not necessarily effective in every situation.

77. Select committees do not have individual budgets to commission research from a leading expert on an issue. The Liaison Committee controls a budget of £50,000 a year for research which is available to all 18 select committees. It

²² See Sandford M., and Maer L, *Scrutiny under devolution: Committees in Scotland, Wales and Northern Ireland*, November 2003.

²³ See Sandford M., and Maer, L., *Old Habits Die Hard? Overview and Scrutiny in Local Government*, February 2004.

²⁴ The Select Committee on Modernisation of the House of Commons has held an inquiry into 'Connecting Parliament with the Public' during the 2003–2004 session.



is little known and not always fully used. In the 2002–2003 session of Parliament, the total cost of ‘work commissioned, specialist publications and interpretation’ was £20,300. Compared to the £890,000 spent on overseas visits and the 2003–2004 (financial) year’s budget of £240,000 for research commissioned by the committees of the Scottish Parliament this figure is relatively small. Although their own staff capacity is

Expertise and Support

Committee staff

79. Each committee is allocated between three and seven staff, of which one or two are clerks to the committee. Clerks are generalist civil servants working for Parliament who will work for a number of committees and hold various other positions within Parliament during their career. Their skills are complemented by committee specialists who are appointed on a fixed term basis to each committee in order to bring knowledge particular to the departmental subject area to the committee team. During 2003 the House undertook a review of select committee resources. The report recommended that each departmental committee should receive 1.5 extra members of staff. Additional Committee Specialists have already been appointed, as have Inquiry Managers. Further to this, one press officer has been appointed to work with a group of select committees and further appointments are expected.

80. The Liaison Committee has committed itself to a “system of regular review updates, to ensure that select committees are never again expected to carry out evolving duties with out-of-date resources”.²⁶

Specialist Advisers

81. As outlined in the Standing Orders, specialist advisers can be appointed by select committees to assist with their inquiries “either to supply information which is not readily available or elucidate matters of complexity”. For almost every inquiry at least one specialist adviser is appointed. Quite often committees appoint more than one specialist adviser to avoid allegations of bias in their reporting or to cover all aspects of an inquiry. For instance the Constitutional Affairs inquiry into the Supreme Court and Judicial Appointments Commission used two special advisers, one leading on each facet of the inquiry.

82. Unlike in the devolved assemblies there is no formal method by which specialist advisers are appointed. There is no open advertising for the posts, and often no formal interview procedure. When members and clerks were asked about how specialist advisers were

appointed, it emerged that they themselves recognised that there was a lack of open procedures.

“The way in which you get specialist advisers is a bit haphazard in a way.... To some extent inertia plays a role. If there is someone you have worked with who you know is good you tend to favour reappointing them.”

“To an extent it is a random process.”

83. In general, select committees discuss possible specialist advisers. The members, chair and the clerks suggest names. Clerks may seek the opinion of other specialists in the area and may carry out initial research of the subject in order to identify possible candidates. In the case of the Education Select Committee where interviews are held with potential advisers, members from all three parties are included in the interviews to ensure there is no political bias.

84. There is also no real job description for specialist advisers. What they contribute seems very much to depend on the time they have available and their own understanding of the role. Generally, specialist advisers guide the committee through complex issues, often acting as a backstop for them:

“One of the things is that they are a safety net. They ensure that we are not barking up the wrong tree. They act as guides through a subject. At the start of an inquiry they can identify the main themes....”

“You could broadly describe it as stopping the committee from looking stupid.”

The tasks that specialist advisers carry out includes suggesting witnesses to provide oral evidence, drafting questions for evidence session, advising on overseas experience and commenting on, and drafting sections of, the final report.

85. However, very occasionally specialist advisers do not add much to an inquiry, and

²⁶ Standing Order No. 152(4)(b).

instead take up time rather than add to the capacity of a committee secretariat.

“[Specialist advisers] are a mixed blessing. I have learnt that some of them are very good and some of them are actively bad....”

“People are disappointing, misunderstand their role, are simply a nuisance, but others are splendid and can ensure the quality of a report or a brief.”

86. The ad hoc approach of the House of Commons to appointing specialist advisers is obviously open to criticism. Although there may be an argument that it would be difficult to run a formal appointment process in the timescale open to committees, the more committees plan their work ahead, the less of a problem this will become. They also do already know the skills and experience they would be looking for in an adviser. As one interviewee stated, “You are not necessarily looking for people who have strong views. Strong views make good witnesses. What you are looking for is someone who shows good knowledge and analysis of the subject.”

87. Another option would be to keep a list of approved advisers on a central database within the Department of the Clerk of the House. **People interested in becoming special advisers could register their interest and submit their CVs. Committees could then search the list for relevant experts and draw up a short list.** This is a process similar to that in the Scottish Parliament whereby there is a place on the website where potential specialist advisers can register their interest. One respondent commented that “we are not good at sharing our special advisers between committees because very often they have transferable skills”. A central register of potential appointees would help correct this.

88. A more formal approach to appointments should be complemented with job descriptions for specialist advisers outlining their key tasks and duties through the inquiry process. This would demarcate boundaries of responsibility for the adviser, perhaps preventing difficulties that many respondents reported of specialist advisers not being aware of what was wanted and needed from them.

Scrutiny Unit

89. The Scrutiny Unit was established in November 2002 following the House of Commons’ acceptance of proposals of the Modernisation Committee and the Liaison Committee. The Unit provides specialist support for committees on expenditure matters and draft bills, together with support for committees experiencing staff shortages or with a sudden unexpected increase in the amount of work. They also provide the clerking team for draft bills which do not go to an existing select committee. There are 18 members of staff at the Scrutiny Unit including accountants on secondment from the National Audit Office, lawyers, a statistician, an economist and an estimates specialist.

90. As noted in the sections above on routine scrutiny, the Scrutiny Unit has significantly expanded the capacity and the ability of select committees to carry out work on the more routine aspects of scrutiny, and also has provided a resource for research during policy based inquiries which require financial background information. For instance, the Health Select Committee asked the Scrutiny Unit to provide assistance with its inquiry into Foundation Trusts by producing a flow diagram showing how the funding flows to foundation hospitals differed from funding flows to other hospitals. The Education Committee used them to do some comparative work on OFSTED compared to other inspectorate organisations.

“It has certainly helped us to do a broader range of things that we would not have ordinarily done. They have been very useful.”

“Without any question [the Scrutiny Unit] has extended the Committee’s ability to do its job.”

91. There has been a wide variation in the use of the Scrutiny Unit by committees. One reason for this is that those committees which have had to deal with draft legislation have had more use of the Unit. Also, those which have been understaffed have had more substantial use of their time. Even allowing for these disparities, however, there are some committees which have barely used the Unit. When questioned on this, respondents indicated that there were some committees whose chair or clerk had not been supportive of the creation of the Scrutiny Unit and





are the most crucial part of the report—it is these that committees seek to persuade the government to act on. Getting the drafting of





Impact and follow-up work

108. There are a number of ways of measuring the impact and effectiveness of select committee work. Looking at the government response, the development of policy over a longer time period, the reactions of other politicians and the media can all be considered as ways of measuring success.

Government responses

109. A way in which the effectiveness of select committees has been measured in the past is by looking to see how positively the government responds to the report. The government is obliged to respond to select committee reports within 60 days of their publication and their responses are published by the committee. However, using a government response as a guide to the success of a report is only one measure of success. Where there are aspirational or challenging issues contained in a report, the government response is unlikely radically to alter existing policy within 60 days of publishing a report. Often, recommendations are rejected in a government response but might later be adopted by the government who then give no credit to the committee. Where they do accept recommendations, there are often various factors at work.

110. For example, the government response to the Health Select Committee contained two commitments to amend the Health and Social Care (Community Health and Standards) Bill:

“The Government acknowledges the concerns raised by both the select committee and the standing committee scrutinising the Health and Social Care (Community Health and Standards) Bill. The Government has therefore tabled amendments for the Report Stage of the Health and Social Care (Community Health and Standards) Bill which will strengthen the legislative requirements of the governance of the NHS Trust.”²⁷

“In recognition of these concerns, the Government intends to support amendments

to the Health and Social Care (Community Health and Standards) Bill.”²⁸

111. This alone may look like a success for the select committee. However, the government response should be considered within the wider political context. As one respondent put it:

“the government was so worried that they wouldn’t have a majority that anything that was going to buy them votes on the floor of the House of Commons they would do.”

112. Another factor which makes government responses a difficult measure of success is the requirement for them to be produced in 60 days. Although this means the select committee does not send a report off into the ether (which is often the case at local authority level) the ability for the government to produce a considered response is limited. This is particularly true where reports make a large number of strategic-level recommendations, as it takes time for civil servants to co-ordinate a cross-departmental response and ensure that it does indeed accurately reflect government policy:

“I think it is almost completely useless. It focuses the committee too much on a list of recommendations. I think the 60 day period is wholly unrealistic for a number of complicated ideas that a committee is putting forward. I think it is very rare indeed that the government response has any intellectual quality.”

“Some of the problem is that if you are going to receive a response in 60 days the government is going to start drafting it within two or three weeks of the report being introduced and that doesn’t give enough time for policy development.... You could argue that if they responded six months or a year later they would have more of a chance to consider things.”

113. Previously, research into the work of select committees has criticised the quality of government responses. The Hansard

²⁷ The Government Response to the Health Committee’s Second Report of Session 2002–2003 into NHS Foundation Trusts, Cm 5876, July 2003, p. 8.

²⁸ Ibid, p. 8.

Commission recommended that “Government replies should conform to a set of minimum standards. These should include an undertaking that a reply should address each of the committee’s specific recommendations and oblige the Government to formally publish their response.”²⁹ Unfortunately, the quality of government responses does not seem to have improved:

“We expect to see as bland an attempt to fob you off as possible.”

“[Responses] are 80% bland, 10% impertinent and 10% unhelpful. But without them you would be throwing the report into the wind.”

“This year, the Committee published five special reports consisting of responses to our reports. Twice we considered the Government response to be unsatisfactory.... The response of the DfES to the Committee’s report on A Level Standards failed to address one of our key criticisms, namely that the new examination system was not piloted before being implemented nationwide. We returned the response and later received a revised reply, giving a commitment that any major examinations introduced in future would be piloted. The Committee thus asserted its right to a detailed and considered response to its recommendations from the Department.”³⁰

114. The Government does often fail to meet the 60 day time limit. The Liaison Committee annual report from 2003 points out that although departments have become more efficient at meeting the deadline than the previous year, there have been some noticeable examples of failure. This includes the Work and Pensions Committee who, nearly a year after publishing their report into the future role of the Social Security Advisory Committee, had not received a government response to their inquiry.

115. One way of improving the system of government responses would be for the government to give an initial response after

60 days, but a more detailed response one year later allowing for serious discussion of recommendations. Not only might this increase the quality of government responses, but government might be forced into linking changes in policy to the work of select committees more closely. Often at present, when the government does change policy a number of months on from the publication of the select committee report, the change of policy is branded as a government initiative even if the original idea had emerged through select committees. It would also encourage the best practice of committees that follow up their work on a more routine basis. It would provide a tool to monitor the work of government in areas of interest over a longer time period.

Relationship with the department

116. The nature of the relationship between the committees and those they monitor is a delicate matter. Good and close relationships between the two can provide more effective passing of information and more of a concern to inform committees of department’s plans. For instance, giving committees advance notice of government announcements and plans prevents select committees from mirroring consultation work of government departments. During the inquiry into the government proposals for the Supreme Court and Judicial Appointments Commission, the DCA let the Constitutional Affairs select committee use the responses to the government’s consultation as written memoranda, and published the responses in full on their website. The process is two-way: committees should inform government departments of pro-active work they are planning to carry out as they may be able to discover the department itself is keen to reform this area. Good exchanges of information can lead to the committee adjusting its timetable to accommodate important upcoming work.

117. However, creating a close relationship can be problematic. It can lead to an unwillingness to criticise and too great an influence by the department on the committee’s agenda. As one

clerk explained, “there is this kind of international freemasonry of bureaucrats so we all feel sympathy for the people who are working for ministers. You can get too close.... But I think the fault more often lies in the other direction.” A good relationship with the department can help the committee to prioritise, and to ensure that it chooses the right topics for inquiry at the right stage to have some influence on the development of policy or the outcome. **Creating a trusting relationship with the department can be invaluable to the committee to help with planning its upcoming work.**

118. If the relationship is too distant and adversarial there can be a lack of trust between the two sides, and a lack of a free flow of information which can be of use to a committee. If a department assumes a committee is going to kick it down from the start on an issue, it is likely to be more obstructive than otherwise. As one respondent stated, “When the Secretary of State thinks the chair has it in for him there is nothing much you can do about it.” Getting the relationship right requires considerable skill. The relationship operates at two levels: clerk to civil servant and committee chair to minister.

119. On the clerk to official level, the formal and initial point of contact is between the clerk and the parliamentary liaison officer in the department. However, this individual is not always the most effective person to contact about committee business. The liaison officer is unlikely to have detailed knowledge of the subject at hand. If a clerk wants information on a particular issue or to discuss an inquiry it is more usual that they speak directly to the civil servant who deals with that policy. Good relations between officials is useful to both the department and the select committee, and clerks are becoming more proactive in building these relations:

“There are more of the younger [clerks] who get hold of the relevant official, not the parliamentary clerk.... They have a long cup of tea together.”

120. Occasionally situations will arise where chairs have to approach ministers over difficulties with co-operation. For instance, a chair might have to directly approach a minister

from another department if civil servants from that department are resisting coming before the committee but these instances are rare (see section above on select committee powers).

Influencing parliament and the press

121. Select committees also attempt to influence the behaviour of parliamentarians. Often they will seek to influence and inform debate in the chamber. Indeed, one of the objectives for select committees is to assist the House in debate and decision. The Constitutional Affairs Committee set out on its inquiry into Judicial Appointments and a Supreme Court for the UK with this objective in mind: “The purpose of the inquiry is to examine the Government’s proposals and responses to the two Consultation Papers and to define the main issues in order to inform the second reading debate.”³¹ In the event there were four separate references to the report during the debate. This can be seen as a success. Also, although the government did not produce a Constitutional Reform Bill in draft form as recommended by the committee, the committee’s recommendation may have been a factor in the House of Lords deciding to send the Bill to a special select committee for further scrutiny.

122. A further way of select committee reports affecting what goes on in the chamber of the Commons is by linking reports to other debates. Select committees can make a request of the initiator of the main business that the report is ‘tagged’ to the debate. If the initiator agrees, a note appears under the title of the debate naming the committee report as a relevant document. As time to debate select committee reports is limited (see below) this is a useful device to raise the discussion and dissemination of select committee work.

123. Increasingly, however, select committees have sought to influence the behaviour of Parliament and the government by influencing the media and encouraging and informing a wider debate. Although this cannot be measured in the same way as the number of recommendations which receive a positive

response or number of citations in the chamber, it can be just as influential:

“If it shapes the debate and the agenda that is positive. If it pushes the issue ahead in public perception, if it makes people think and revise their views or come up with ideas to improve a situation that is all a bonus.”

124. Respondents also pointed out that it is not just at the publication stage of a report that select committees can exert influence. Members of the Health Select Committee cited the ongoing inquiry into obesity as an example of where a select committee’s interest in an issue can spark media interest leading to a national debate.

“The very fact that our committee announces that it will do an inquiry can be influential.”

“If you look at our obesity inquiry, I doubt that many of the recommendations would make the slightest bit of difference to what the government says it will do. For instance if we call for a ban on advertising during children’s television the government will say no. But we have taken evidence for a year now and every time I put my television or radio on they are talking about obesity. We have been part of the process of raising awareness of this huge public health disaster that is looming over us.”

125. However, this can fail to happen. The Environment Food and Rural Affairs Committee published the report of its inquiry into Gangmasters in September 2003. Five months later when the Morecambe Bay Cocklers tragedy occurred, suddenly the media spotlight was on this issue and the government announced plans to back a Private Members’ Bill.

126. It was widely recognised that press coverage for select committee work was largely a good thing as by influencing the media Parliament was influencing the government by putting things into the public agenda. As one member stated: “Without press interest what are we? We have no influence other than speaking out in public.” However, there was some concern that if committees focused too much on what would play well with the media they could well become distracted from the more routine or less headline grabbing topics hence limiting the

effectiveness of committees to carry out serious and detailed work.

“There is a tension between a report which is a report to the House, a formal document and the modern world which is about influencing opinion and debate.”

127. There was also a concern that often press coverage was gained by committees who gave stark criticism to the government department and its minister. The creation of an adversarial relationship in the public eye was considered by some to endanger effective scrutiny:

“You’ve got a decision. You can use a select committee just to kick the government the whole time on everything. To my mind that somewhat devalues the process. Yes you get on the Today programme but the government then resents it because all these committees have Labour majorities. The government then digs its heels in. Or you can have a more philosophical approach. You come up with what you think will be an intelligent contribution to the debate devoid of political point scoring. Then if the media think it is a sensible contribution to the debate you get on the media.”

128. The way that parliamentary select committees interact with the media has seen something of a revolution in recent years. The capacity and ability of committees to engage with the media has been increased by the appointment of a full-time Select Committee Media Officer in 2003.

“Previously clerks ran the public relations side of things and I don’t think we did it very well. Most clerks sent out a press notice and that was it.”

129. The increase in the number of media staff in the House of Commons may encourage the committees to plan more effectively the type and volume of media interest required for any particular report. Also, there is an issue about

advisable as committees risk swamping the press with so much information, so that what is newsworthy becomes lost in the noise.

“If you set out at the start what kind of media attention you want to get you are more likely to get it...”

Producing documents to debate

130. Core task number 10 is “to produce reports which are suitable for debate in the House, including Westminster Hall, or debating committees”. This a different activity from the objective it sits under—“To assist the House in debate and decision”. It is this latter core task which we now address.

131. There are few opportunities to debate Commons select committee reports on the floor of the House of Commons. In the first 10 years of the select committees (1979–1989) only four of around 500 reports were debated. This increased to 29 reports being debated between 1997 and 2000. The introduction of ‘parallel

the responses are likely to be more considered.

Conclusions and Recommendations

- Select committees and the government need to agree clear protocols about the circumstances in which named officials can be expected to appear before committees. The Government should use Freedom of Information principles when responding to requests for information from select committees. They should respond within the statutory deadline and give reasons for exempting information. Further to this, select committees should consider how they might use the legislation to enhance their inquiries.
- The overall effect of the core tasks has been to encourage select committees to carry out the full range of activities currently open to them. They have given a stronger hand to chairs and clerks in encouraging committees to take part in more routine scrutinies rather than just policy based inquiries, hence perhaps achieving more 'methodical scrutiny' as intended. However, committees still spend the majority of their time engaged in policy based inquiries and have considerable scope in setting their own agenda.
- Single evidence sessions with ministers have allowed committees to cover more ground within their department without necessarily soliciting evidence and producing a report. This makes the committee more flexible.
- It would be useful for committees to take evidence from major appointments towards the end of their appointment when they have more of an insight, and less to lose, by giving full and frank evidence.
- Although committees had always shown some interest in departmental annual reports, that interest has increased since the publication of the core tasks, and their capacity to give the reports proper attention has increased with the creation of the Scrutiny Unit.
- Concentrating on supplementary estimates, linking expenditure to policy, and added staff support has meant that members' interest is more fully engaged and committee are becoming more effective and focused at examining the expenditure of the department.
- The Scrutiny Unit has undoubtedly increased the capacity and ability of select committees to carry out scrutiny in areas which have a financial or other specialist aspect to them. They have not only taken pressure off committee staff on more routine inquiries but also provided specialist skills for specific inquiries.
- Sub-committees are not an answer to increasing the capacity of select committees because they stretch the fixed level of support available to the committee, and members find it difficult to find extra time to sit on them.
- Each committee needs to set priorities for itself over a period of time: planning first major issues to cover, second specific inquiries to include as part of the examination of the issues and third the scope of each individual inquiry. Committees should also leave time in their schedule to deal with routine business and issues which arise that the committee is likely to want to consider. Creating a trusting relationship with the department can be invaluable to the committee to help with planning its upcoming work.
- Without setting objectives at the start of an inquiry, it is very difficult to point to achievements at the end. If committees give more thought at the beginning of an inquiry to those they wish to influence, and what value an inquiry might add, they will be more focused in their approach and more likely to succeed.
- Committees should be clearer about what they are trying to get from any given call for evidence, and perhaps send questions focussing on different areas to different sorts of witness. Clerks should



always provide a summary of the evidence highlighting the most important and interesting points, and



Appendix 2: Standing Order no. 152

152.—(1) Select committees shall be appointed to examine the expenditure, administration and policy of the principal government departments as set out in paragraph (2) of this order and associated public bodies.

(2) The committees appointed under paragraph (1) of this order, the principal departments of government with which they are concerned and the maximum numbers of each committee shall be as follows: [...]

(3) Each select committee appointed under this order shall have the power to appoint a sub-committee, and the Environment, Food and Rural Affairs Committee shall have power to appoint two sub-committees.

(4) Select committees appointed under this order shall have power—

(a) to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report from time to time;

(b) to appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference; and

(c) to report from time to time the minutes of evidence taken before sub-committees, and to lay upon the Table of the House the minutes of the proceedings of sub-committees; and the sub-committees appointed under this order shall have power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, to report from time to time the minutes of their proceedings, and shall have a quorum of three.

(5) Unless the House otherwise orders, all Members nominated to a committee appointed under this order shall continue to be members of that committee for the remainder of the Parliament.

Appendix 3: Effective Scrutiny Publications

Mark Sandford and Lucinda Maer, *Issues of Importance, The scrutiny role of the London Assembly*, July 2004, 43pp, £10.00.

Mark Sandford and Lucinda Maer, *Old Habits Die Hard? Overview and scrutiny in local government*, February 2004, 57pp, £10.00.

Lucinda Maer and Mark Sandford, *The Development of Scrutiny in the UK; an overview of procedures and practice*, January 2004, 58pp, Available on line.

Mark Sandford and Lucinda Maer, *Scrutiny under devolution: committees in Scotland, Wales and Northern Ireland*, November 2003, 51pp, £8.00.

Mark Sandford and Lucinda Maer, *Annotated Bibliography of Effective Scrutiny*, Available on line (pdf)

Mark Sandford and Lucinda Maer, *Effective Scrutiny in the Devolved Institutions*, ESRC Devolution Programme Briefing No. 6, February 2004, 6pp.





