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# THE LAW SOCIETY OF SCOTLAND RESPONSE

House of Commons Liaison Committee Inquiry on  
the Effectiveness and Influence of the Select  
Committee System

March 2019



## Introduction

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The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Constitutional Law Sub-Committee welcomes the opportunity to consider and respond to the House of Commons Liaison Committee Inquiry on the Effectiveness and Influence of the Select Committee System. The Sub-Committee has the following comments to put forward for consideration.

## Responses to Inquiry Topics

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### The work of select committees

The essential questions are what do we consider select committees to be for? and how can they best achieve those objectives?

Parliament's website states that "There is a Commons Select Committee for each government department, examining three aspects: spending, policies and administration. These departmental committees have a minimum of 11 members, who decide upon the line of inquiry and then gather written and oral evidence. Findings are reported to the Commons, printed, and published on the Parliament website. The Government then usually has 60 days to reply to the committee's recommendations. Some Select Committees have a role that crosses departmental boundaries such as the [Public Accounts](#) Or [Environmental Audit](#) Committees. Depending on the issue under consideration they can look at any or all of the government departments. Committees also have power to appoint specialist advisers; these are not permanent members of staff, but outside specialists paid by the day. They are often, but not always, academics, and are appointed either generally or to assist with particular inquiries. They support the clerk as the head of the committee's staff".

This description makes clear that through inquiries select committees consider policy issues, scrutinise the work and expenditure of the government, and examine aspects of administration.

There are 21 House of Commons select committees and sub committees including those which deal with administration of the House itself or allegations about the conduct of individual MPs <https://www.parliament.uk/about/how/committees/select/> . This is a significant number of committees and sub committees and represents a considerable investment in committee work. In order to assess the

effectiveness and influence of the select committee system it will be necessary to undertake not only to gather evidence as in this Inquiry but also examine critically the remits of each of these committees and sub committees and ascertain whether those remits remain relevant. There are many changing circumstances and developing arrangements in the UK not only in the context of withdrawal from the European Union but also in connection with the economy, international relations, the application of technology, devolution and other representative structures and each of these has the potential to impact on the work of select committees.

### ***What should select committees aim to achieve? Do they focus on the right things?***

Select committees should focus on those objectives listed above scrutinising the spending, policies and administration of relevant Government departments. In addition to holding Government to account, promoting transparency and examining policy ultimately select committees provide an essential democratic input into the work of Government and so contribute, ultimately to the development of good law. Legislation is the way in which Government policies are made into binding rules which affect us all. If legislation is to achieve this purpose, it must reflect those policies and express them clearly to those who are affected by the law. The office of the Parliamentary Counsel has expressed “good law” as law that is necessary, clear, coherent, effective and accessible. If committees keep these objectives in mind when scrutinising policy and assisting Government in producing necessary, clear, coherent, effective and accessible policies there is an enhanced possibility that the law which implements those policies will reflect those objectives.

### ***How can select committee achievements and impact be measured?***

Committees can maximise the impact inside and outside the House by mounting inquiries which are seen as relevant by government, policy makers, civic society, stakeholder groups and the wider public.

Relevant inquiries can be supported by deep research on the topics identified for the inquiry and by the production of robust, sustainable reports which are respected for their impartiality, application of evidence, logic and the usefulness of their recommendations. In general recommendations should fulfil the following criteria they should be SMART: specific, measurable, achievable, relevant and time bound.

To maximise the impact of the work which committees have done each committee should create a communications strategy to accompany each inquiry. The communications strategy should be informed by the objects of the inquiry, the context in which the inquiry takes place politically and socially and the communication methods available to the committee. The committee should avoid adopting a “one size fits all” communication strategy. Some communications to government the civil service or sophisticated stakeholders would not be appropriate to non-governmental bodies, more general stakeholders or the public.

Furthermore committees could evaluate their activity by undertaking research into the response of Government, political parties and stakeholders to their committee reports, the impact of those reports on Government policy and the behaviour of stakeholders and undertaking surveys of the civic society, community groups and individuals with which the committees have engaged. Committees should publish

such evaluations and follow up with the relevant Department any aspect of their recommendations which has not been taken up, whether in whole or in part, for further explanation and scrutiny.

### ***How will the UK's future relationship with the EU have an impact on the departmental select committee system?***

The UK's withdrawal from the EU and replacement of policy and law originating from the EU with that originating within the UK will require changed roles for committees and sub committees and the opportunity should be taken to rationalise the committee structure. Government's aspirations to create a 'Global Britain' and to create a network of trade agreements will necessitate additional scrutiny requirements. Accordingly this could translate into the creation of select committees on International Trade, Free Trade Agreements, Private International Law and Citizens' Rights.

The EU will in the future be a significant trading partner and a significant generator of policy and law which will impact on the UK in a variety of ways. Therefore it will be important for the House of Commons to maintain a committee or committees which will maintain a monitoring and horizon scanning role. This will assist in alerting Parliament, Government and stakeholders to EU developments. The return of powers from the EU to UK will be considerable and the committees which currently scrutinise EU proposals will require to be re-orientated to scrutinise UK proposals also in areas of former EU competence and where appropriate take into account views from the devolved legislatures.

### **Devolution**

Since 1998 devolution has developed considerably with significant increases in powers in 2012 and 2016 for Scotland and in 2006 and 2017 Wales and more powers made available to the Northern Ireland Assembly. Devolution has also developed in England with proposals for English votes for English laws, enhanced power for City Mayors and proposals for regional devolution. Increasing powers for the devolved administrations means that the UK Parliament does not exercise those powers for the devolved areas but the continued relevance of Parliament as a legislature for reserved powers and continued ministerial decision making particularly in connection with finance and strategic matters still rests with Whitehall. House of Commons committees are well placed to consider and examine proposals by the UK Parliament and Government which will have an impact on the devolved arrangements across the UK.

### **Technological Change**

Changes to technology have in the past few years revolutionised the ways in which people communicate, form networks and learn. A use of data and the influence which that use can bring has increased and can be a force for good but can also create controversy when it is abused. Technology is developing very quickly; the use of robots, AI Solutions and over posted communications leaves policy development behind. IT and technological solutions are used by many committees and legislatures within the UK to good effect. Select committees should explore how their work can be enhanced by the application of IT solutions. The renovation of Parliament presents a good opportunity to accommodate current technology in a widespread way and, as far as possible to anticipate advances in technology.

## Membership

The ideal number of members for select committees depend on the subjects being investigated or the scrutiny being undertaken. House of Commons committees normally comprise 11 members. It is very difficult to identify the optimum number however the following principles should apply:-

- (a) there should be a balance of political representation on the committee.
- (b) there should be a balance of expertise on the committee.
- (c) consideration of gender, race and disability balance is essential.
- (d) the number of committee members should be an odd number.

The Scottish Parliament Commission on Parliamentary Reform reported that the number of MSPs on Scottish Parliament committees was highlighted as another reason why committees do not operate as effectively as they could. This aspect was considered by the Scottish Parliament's Standards Procedure and Public Appointments Committee in 2013 when it recommended committees should normally have a maximum of seven members. The Commission noted that critics argue that party dynamics are more likely to be replicated within larger committees (roughly interpreted as being eight members or more), and so preventing its members from developing a distinct committee identity. It is also argued larger committees are too unwieldy to discuss detailed and complex policy issues effectively. Supporters of larger committees, however, argue they enable all the parties in Parliament to have a voice and can provide additional scrutiny capacity if more diverse means of inquiry are adopted (such as sub-committees and reporters)(paragraphs 39 and 40).

## Witnesses, evidence, and select committee powers

### ***What is it like to give evidence either oral or written evidence to a committee? Is the experience appropriate for the different sorts of people and organisations committees invite to appear?***

We advocated the taking of evidence from stakeholders under the previous procedure for Special bill Committees in the mid-1990s and supported the adoption of procedures in the Scottish Parliament where committees not only mount inquiries but also take evidence on bills at Stage 1 from stakeholders, interested parties and Scottish Government Ministers to assist in the preparation of inquiry and bill reports for the Parliament to consider.

We have provided oral and written evidence to public bill committees most recently to the Trade bill and the Counter Terrorism and Border Security bill.

We have also provided oral and written evidence to select committees recently including the Scottish affairs Committee, the Justice Committee, the Public Administration and Constitutional Affairs Committee,

the International Trade Committee and the Exiting the European Union Committee. Our experience is very positive. We hope that the comments which we make are considered useful by these committees.

***What more can be done to encourage witness diversity and wider public engagement?***

The factors which inhibit effective engagement include the number of Inquiries, the timescale for responses, and policy issues which require significant resources on the part of stakeholders to identify, analyse and respond to. The lack of resources generally amongst stakeholders means that legislation and policy matters are prioritised in order of impact on the stakeholder which may restrict the number of responses made. It is relatively easy for professional organisations, campaigning bodies, experts in the relevant fields, and those accustomed to civil service and political structures to respond to consultation papers. It is less easy for those whose interaction with government or legislative authorities is sporadic. There are issues concerning the language used in consultation in consultation papers, the assumptions made of prior knowledge and understanding of the constitutional and legislative backdrop militate against a broad range of participation from a broad range of people. Some may be intimidated by the machinery of government or the image presented by Parliament. Some potential consultees may be put off by a sense of political detachment documented in reports such as the Hansard Society's regular Audits of Political Engagement; For example in a recent Audit, only 6% of those polled said they had participated in a public consultation (Hansard Society, Audit of Political Engagement 13: the 2018 Report).

**Public engagement and profile**

***How might the public profile of committee outputs be raised, for example, by making changes to the content, format and style of committee reports?***

House of Commons committees can engage more effectively with public and media by developing new methods of taking evidence (indeed even using the phrase "taking evidence" should be reconsidered as it implies a formal near-court process which could be off putting to many) using language which is more accessible and less parliamentary in style. Committees can also conduct broader outreach by holding sessions outwith the House of Commons and by choosing a more diverse range of locations in which to meet with the public. Finally, committees should be more flexible about the channels of communication which they employ and the engagement programme which they undertake. Each committee should have a communications plan and identify targets for engagement with community groups, representative bodies; individuals and those on the margins of society which should be achieved within any given parliamentary session. Adopting these methods could help to develop an authentic two-way conversation with Society broadly. Committees should seriously consider the format and style of the reports in order to make them more easily accessible to a broader readership.

***Are there any methods of involving the public that have worked particularly well, or that would be open to select committees who wish to innovate in new or different ways?***

Technology could be used to support the development and scrutiny of legislation by allowing for further and better consultation for example by video with consultation groups and through social media. Witnesses should also be able to provide evidence by video link on bills to select committees. The use of technology

to engage with the public at large and specialist users should not be underestimated. Outreach through the internet, blogs and social media about the existence of inquiries, how to participate, where to participate and within what timescale would improve this aspect of the legislative experience. In particular government departments could conduct consultation meetings on important pieces of legislation in localities across the country and engage on a one to one basis with the communities affected by the proposed policy or legislative changes.

The media which committees could use ought to include the following range:

- using rich media (videos and pictures)
- using plain English/language
- tagging and engaging with other relevant accounts (organisations and people)
- using a range of hashtags to link to relevant content
- following social ‘influencers’ in chosen topics and reaching out to them directly
- blogger outreach
- creating useful content that supports the chosen message

Offline channels are often variations on existing themes e.g. using posters, attending/supporting relevant events, writing articles for non-traditional print media. Committees should also evaluate their activity by undertaking surveys of the community groups and individuals with which the committee has engaged in the session.

### **Joint working, cross-cutting scrutiny, and the role of the Liaison Committee**

#### ***Are current structures effective in allowing for joint working and co-operation between committees?***

The House of Commons Standing Orders provide for joint working and cooperation between committees (and Committees of other legislatures) seem to be adequate in terms of empowering Select Committees to undertake joint working – see Standing Order 137A below.

One example of this is the joint meeting between the Scottish Parliament’s Social Security Committee and the Scottish Affairs Committee who met in November 2016 with academics to examine how the Scottish and UK Governments work together to develop and implement welfare policy.

What is required is that committees use these Standing orders to create an atmosphere where not only Joint Committees (properly so called) but any committee may engage in joint working.

137A Select committees: power to work with other committees (1) Any select committee or sub-committee with power to send for persons, papers and records shall have power— (a) to communicate its evidence to

any other select committee or sub-committee of either House of Parliament or to the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly or to any of their committees; provided that evidence from the National Audit Office shall first have been agreed between that Office and the government department or departments concerned;

(a) to meet concurrently with any committee or sub-committee of either House of Parliament for the purpose of deliberating or taking evidence;

(ba) to agree with any other select committee or sub-committee of this House on the exercise of any power which each of those committees, or sub-committees may separately have to appoint specialist advisers, to authorise witnesses to publish written evidence submitted by them, or to adjourn from place to place;

(b) to meet concurrently with any other select committee of this House for the purpose of considering a draft report; and

(d) to agree in the choice of a chair for any concurrent meetings.

(e) to invite members of any other committee to which this order applies to attend any meeting and, at the discretion of the Chair, ask questions of witnesses or otherwise participate in its proceedings; but no member of another committee so invited may move any motion or amendment, vote or count towards the quorum.

(2) Where two or more select committees have agreed reports to the House in identical terms, those reports may be published as a joint report.

(3) The Welsh Affairs Committee may invite members of any specified committee of the National Assembly for Wales to attend and participate in its proceedings (but not to vote).



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