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Committee scrutiny and engagement: areas of good practice and innovation in other legislatures

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A comparative paper on innovative and good practice approaches of scrutiny committees in selected legislatures.

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Executive Summary

Legislative committees play a central role in the effective scrutiny of policy and legislation. This work is carried out in many legislatures by what might be termed 'dual-purpose' committees, where a committee has a remit to scrutinise the work of one or more departments along with relevant legislation. This is the case in the Northern Ireland Assembly, Scottish Parliament and Welsh Parliament. The House of Commons has separate departmental select committees and ad hoc public bill committees.

There are a number of factors that can impact on the ability of a committee to effectively carry out its scrutiny functions. The first factor to consider is the extent to which committee members have the capacity to fully engage with the work of the committee. In the devolved legislatures, members are usually required to sit on multiple committees, which are further stretched by the requirement for many elected members to fill ministerial positions.

Committees in the Scottish Parliament and Welsh Parliament are involved in the consideration of legislation at an earlier stage than their counterparts in the Northern Ireland Assembly. In the Scottish and Welsh Parliaments, once a Bill is introduced it is assigned to an appropriate committee for scrutiny. This involvement at an earlier stage may not automatically equate to 'better' legislation, but could be worthy of more detailed consideration.

The administrative support that committees can call on also impacts on their scrutiny role. Adequate staffing and the level of assistance provided by, for example, research and legal services can enhance the effectiveness of committee inquiries and scrutiny of legislation. This support can be embedded within the committee structure or may sit separately within the parliamentary secretariat.

Beyond this, outreach and engagement activity can be supplemented by dedicated teams that facilitate events, such as mini-publics, that serve to inform the work of committees. Engagement and/or scrutiny units can play an important role in witness diversity, allowing committees to reach beyond the 'usual suspects'.

Pre- and post-legislative scrutiny play increasingly important roles in enhancing the quality of legislation, but legislatures vary in the extent to which they undertake this work. This again comes back to issues of capacity and, in the case of pre-legislative scrutiny, the willingness of departments to publish draft bills. The Commission on Parliamentary Reform in Scotland recommended that additional stages be factored into committee scrutiny of bills to accommodate pre- and post-legislative scrutiny, while the committees in the Swedish Riksdag are constitutionally obligated to undertake follow-up and evaluation work.

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1 Introduction

1.1 Background

This research paper has been prepared following a request from the Chairpersons' Liaison Group (CLG). The CLG is taking forward a programme of work aimed at strengthening the scrutiny function of Assembly committees. This work will be informed by the report into the Renewable Heat Incentive Scheme. That report made recommendations around the capacity of Assembly committees to undertake scrutiny and considered that there could be scope for "significantly increasing the resources available to statutory committees and, generally, identifying what steps are needed to improve the effective scrutiny of Departments and their initiatives, whether in Assembly Committees or in the Assembly Chamber itself".⁴⁴

This paper provides an analysis of how committees carry out their scrutiny functions in other legislatures and covers a number of areas including:

- capacity of committees to undertake scrutiny;
- diversity of witnesses, including gender diversity;
- engagement with stakeholders and the public to inform scrutiny;
- measures to regulate and enhance the quality of legislation; and
- pre- and post-legislative scrutiny.

The literature on how committees undertake their scrutiny functions is primarily focused on the UK Parliament with two recent external reviews of the Scottish Parliament and Welsh Parliaments also providing valuable comparative information. These have been particularly useful as those institutions experience similar issues to the Assembly in terms of, for example, the capacity of members sitting on multiple committees.

International examples of good or innovative practice have been referenced where appropriate.

Although comparisons between legislatures are useful, they should be approached with caution. The powers and political contexts of institutions differ and the design of the Northern Ireland Assembly in particular reflects an attempt to address competing political views in a deeply divided society, which does not apply to other UK legislatures.

⁴⁴ The Report of the Independent Public Inquiry into the Non-domestic Renewable Heat Incentive (RHI) Scheme, March 2020: <https://www.rhiinquiry.org/report-independent-public-inquiry-non-domestic-renewable-heat-incentive-rhi-scheme>

1.2 Structure of the paper

Section 1 provides an introduction and background to the paper.

Section 2 examines the committee structure, scrutiny and remit in the Scottish Parliament and Welsh Parliament. It provides an overview of recommendations made by recent external reviews in respect of those institutions and the role of those committees in the passage of legislation.

Section 3 looks at examples of how effective public engagement and evidence gathering can complement and enhance scrutiny. It considers issues such as witness diversity and the support given to committees from other parts of the legislature.

Section 4 discusses the value of pre- and post-legislative scrutiny.

Section 5 provides an overview and conclusion.

1.3 Previous research

RaISe has undertaken previous research on issues around committee capacity/size (NIAR 24-2020) and scrutiny of delegated legislation (NIAR 118-2019). This paper has drawn on information contained in NIAR24-2020 where appropriate.

2 Committee structure, remit and scrutiny in the Scottish Parliament and Welsh Parliament

The Scottish Parliament and Welsh Parliament are obvious comparators with the Northern Ireland Assembly as they too are unicameral legislatures with strong party discipline. Furthermore, committees in those legislatures are also dual purpose committees in that they scrutinise both policy and legislation.

2.1 Scottish Parliament

The Consultative Steering Group (CSG) on the Scottish Parliament, which was established to report on how a Scottish Parliament might work in practice, made a number of recommendations as to how committees of the new institution might function.⁴⁵ Broadly, the CSG envisioned strong committees combining both policy and legislative scrutiny and which had the power to initiate inquiries. Standing Orders would set out basic criteria including size and quorum. This is essentially the model that was followed once the Scottish Parliament was established in 1999.

⁴⁵ Report of the Consultative Steering Group on the Scottish Parliament, December 1998

In June 2017 the Commission on Parliamentary Reform published its Report on the Scottish Parliament. As part of its work it examined the role of committees in the Parliament, including their remit and size, with the benefit of almost 20 years of continuous operation.

Drawing on evidence from a range of sources, the Commission noted that although committees had on occasion been robust in their scrutiny of government, a number of factors inhibited their effectiveness. These included:

- party discipline used to co-ordinate votes on legislation has been enforced during inquiries on non-legislative issues; some suggest this has hindered a committee's ability to develop cross-party consensus;
- some committees have seen so much legislation they have been unable to develop their own agenda with fewer opportunities to hold inquiries or focus on long-term or cross-cutting issues; and
- committees have also undertaken little pre- or post-legislative scrutiny; and
- turnover of membership has been too high and prevented the realisation of the CSG's ambition that members would develop an expertise in their subject area over the course of a parliamentary session.⁴⁶

The Commission went on to make a number of recommendations aimed at strengthening the scrutiny function of committees. Not all of these may be appropriate or practicable in the context of the Northern Ireland Assembly, while others may already be in place. The recommendations included:

- the election of convenors (committee chairs) from the start of the next session;
- possible remuneration and/or increased resources for convenors. This is in recognition that the role of convenor is more intensive than being a committee member;
- committees should normally have a maximum of seven members, even though this would mean smaller parties missing out on representation. The Commission also recommended that the Parliament agree a set of principles to inform decisions taken about the size of committees, for example where larger committees might be desirable to obtain more views on certain issues, such as constitutional issues; and
- the Convenors' Group⁴⁷ should take a greater role in developing a more strategic approach to scrutiny across committees.

⁴⁶ Commission on Parliamentary Reform, *Report on the Scottish Parliament*, June 2017:
<https://test123582.files.wordpress.com/2016/10/commissiononparliamentaryreformreport-june20171.pdf>

⁴⁷ The equivalent to the Northern Ireland Assembly's Chairpersons' Liaison Group.

The commentary on the size and remit of committees was underpinned by a recognition that committees can benefit from increased resources to better inform their scrutiny, including: “greater flexibility to incorporate external expertise and advice [which] could balance the technical evidence provided by officials and policy professionals with a more personal view about how legislation or policy impacts ‘on the ground’ at an individual or community level”.⁴⁸

It suggested that “the Scottish Parliament’s ability to exercise meaningful scrutiny is influenced by the depth, expertise and capacities of those available to support parliamentarians, impacting on committees’ overall capacity for scrutiny” and that additional resources could benefit committees by way of:

- enhanced business planning capacity and greater support to members on scrutiny options;
- enabling committees to interrogate more effectively the evidence cited as underpinning and supporting policy and legislation;
- enabling committees to undertake their own research to inform their views and to identify particular issues for further scrutiny; and
- legal advice to support committees to understand the nuances of bills and the effect of amendments, primary and secondary legislation.⁴⁹

The Commission recommended “that the Parliament should review the dedicated resources available to committees to determine whether they are able to meet the future needs of parliamentary business and support more effective scrutiny”.⁵⁰

2.2 Welsh Parliament

In December 2017 the Expert Panel on Assembly Electoral Reform published its report, *A Parliament that Works for Wales*. The Panel was tasked with examining and making recommendations on the following:

- the number of Members the Assembly needs;
- the most suitable electoral system; and
- the minimum voting age for Assembly elections.

As part of its work, the Panel looked at the size and capacity of committees in the National Assembly for Wales. The Panel “considered whether the Assembly’s overall capacity issues could be alleviated by reducing the size of committee

⁴⁸ Commission on Parliamentary Reform, *Report on the Scottish Parliament*, June 2017

⁴⁹ As above

⁵⁰ Commission on Parliamentary Reform, *Report on the Scottish Parliament*, June 2017

memberships...”.⁵¹ It referenced evidence supplied to it by the Sir Bernard Crick Centre for the Public Understanding of Politics which argued that:

*What makes an effective scrutiny committee cannot be reduced down to the number of members but it can be related to having sufficient members with sufficient time and energy to really commit to an area of policy and to forge meaningful relationships with other members.*⁵²

The Panel nevertheless raised concerns that committees that are too small may have issues around achieving quorum on a consistent basis, while large committees might struggle to reach consensus.

The Expert Panel also commented on the impact of members sitting on multiple committees. It highlighted the views of the Richard Commission (officially known as the Commission on the Powers and Electoral Arrangements of the National Assembly for Wales) which had recommended that Members should sit on just one major subject committee in order to develop subject expertise and facilitate better scrutiny.

The Panel commented on the commitments expected of AMs:

*The size of the Assembly makes membership of two, sometimes three, demanding committees inevitable for most backbench Members. This is damaging to the effectiveness of the Assembly. It constrains the time available for Members to read, research and prepare and has a corresponding effect on the capacity of Members to undertake high quality scrutiny, develop alternative policy thinking, and engage effectively with stakeholders and the public.*⁵³

Table 1 provides a comparison of committee membership across the three devolved legislatures, highlighting the requirement of members to sit on multiple committees.

Table 1: Comparison of committee membership in the Northern Ireland Assembly (2020), National Assembly for Wales and Scottish Parliament (2017).

	No. of committees	No. of Members	Number of Members sitting on:		
			One Committee	Two Committees	Three Committees
Northern Ireland Assembly	14	90	33 (37%)	40 (44%)	3 (3%)
National Assembly for Wales	12	60	12 (20%)	25 (42%)	7 (12%)

⁵¹ The report of the Expert Panel on Assembly Electoral Reform, *A Parliament that Works for Wales*, December 2017:

https://www.assembly.wales/en/abthome/about_us-commission_assembly_administration/panel-elec-reform/Pages/Assembly-Electoral-Reform.aspx

⁵² The report of the Expert Panel on Assembly Electoral Reform, *A Parliament that Works for Wales*, December 2017

⁵³ As above

Scottish Parliament	16	129	51 (40%)	37 (29%)	5 (4%)
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Source: Information for Scotland and Wales taken from *A Parliament that Works for Wales*.

Note: Figures for the Scottish Parliament and National Assembly for Wales are from **July 2017**. Figures for Wales exclude the Business Committee and the Scrutiny of the First Minister (which is chaired by the Deputy Presiding Officer and of which all committee chairs are members in an ex officio capacity). Figures for Scotland include one subcommittee, and exclude its equivalent of the National Assembly for Wales' Business Committee and committees established to scrutinise Private Bills. Figures for Northern Ireland are from **January 2020** and exclude the Business Committee, Chairpersons Liaison Group and Assembly Commission.

The report on the National Assembly for Wales considered the issue of members sitting on multiple committees from an overall membership of 60 Members and suggested that membership of more than one committee can undermine the ability of members to perform their duties effectively. The report on reform of the Scottish Parliament reflected the pros and cons of larger committees while recognising that the actual numbers on committees had fluctuated over the life of the Parliament, but that the trend has been towards smaller committees. It also recognised the particular pressures of MSPs who sit on multiple committees.

In comparison, the Northern Ireland Assembly committee structure has been largely consistent, albeit there has been a recent reduction to nine members from 11 for most committees. The prospect of additional committees provided for in the *New Decade, New Approach* document may bring the current structure into sharper focus.

2.3 The role of committees in the passage of legislation: Scottish Parliament and Welsh Parliament

Committee involvement in the scrutiny of public bills begins earlier in the Scottish Parliament and Welsh Parliament compared to the Northern Ireland Assembly.

Scottish Parliament

- In the Scottish Parliament, bills are referred to a lead committee at stage 1. This committee's report will then inform a debate at stage 1 on the general principles of the bill.
- At stage 2, the Parliamentary Bureau may refer the Bill back to the stage 1 lead committee for stage 2 or propose by motion that a different committee or committees take that Stage. The stage 2 committee can be a Committee of the Whole Parliament, of which all MSPs are members and the Presiding Officer is the convener.
- The Bureau may also propose that the Bill be divided among two or more committees for Stage 2 consideration – preferably with each committee being allocated whole Parts or Chapters to deal with.

- Stage 2 proceedings may be dealt with at one committee meeting, or may require two or more meetings and be spread over a number of weeks. The principal role of the Stage 2 committee is to consider and dispose of amendments. Any member may attend the committee to participate in Stage 2 proceedings. Any member who has lodged an amendment, the member in charge and (if different) any Government Minister present is entitled to speak on the amendment. However, only members of the committee (or committee substitutes attending as such) can vote on amendments at Stage 2.⁵⁴

Welsh Parliament

- In the Welsh Parliament, the first stage involves consideration of the general principles of a Bill by a committee (or committees), which can involve gathering evidence and hearing from witnesses. The Senedd is then asked to debate and vote on the Bill's general principles in the stage 1 debate.
- At the end of its Stage 1 scrutiny, the responsible committee must publish a report, which may contain a recommendation that the Senedd either agrees or does not agree to the general principles of the Bill. The report may also contain recommendations for amendments to the Bill, based on the information the committee has received, or on any other relevant matter on which the committee wishes to comment.
- If the Bill passes stage 1, it is then referred to a responsible committee for consideration at stage 2, or be referred to a committee of the Whole Senedd. The role of the responsible committee at Stage 2 is to consider the text of the Bill in detail and dispose of any amendments which are tabled. 'Disposal' of an amendment means that a decision has been taken on that amendment. This could include agreement, rejection, withdrawal etc.
- Amendments are tabled with the clerks who support the responsible committee. The clerks can also provide or arrange confidential procedural, legal and tabling advice to Members in relation to amendments.
- After they have been tabled, amendments are published on the relevant Bill's webpage on a daily Notice of Amendments. Each amendment is given a unique number according to the order in which the amendments were tabled.

⁵⁴ The Scottish Parliament's Guide to the legislative process provides more detail and is available at:
<https://www.parliament.scot/parliamentarybusiness/Bills/15707.aspx>

- There is no selection of amendments at Stage 2, so any admissible amendment that has been tabled can be moved in committee.⁵⁵

The Northern Ireland Assembly's process for the consideration of public bills has a debate on the general principles of a Bill at second stage, followed by committee stage. Committees cannot amend bills but in their report can propose amendments to a bill.

There is clearly more involvement and at an earlier stage by committees in the Scottish Parliament and Welsh Parliament, including the disposal of amendments. This is not to say that the approach in those legislatures results in better quality legislation, but it is a marked difference in approach compared to the Assembly's procedure.

2.4 Committee staff

The research sought information from the Scottish and Welsh Parliaments on the committee staffing support. The response from the Welsh Parliament stated:

Committees in the Senedd are supported by a clerking team comprising four officials: the Committee Clerk (or team leader); a Second Clerk; a Deputy Clerk; and a Team Support officer. The Committee Clerk is responsible for working with the committee and its chair to establish the work programme and ensure that all necessary support is provided to that programme by colleagues (including the integrated team, see below). The Second Clerk shares the practical work of clerking meetings and drafting reports, etc with the Committee Clerk. Whilst the Committee Clerk retains overall responsibility for the committee and the team, these two officials should be able to work to the same standard, and thus be interchangeable. This arrangement is designed to provide capacity for weekly committee meetings, and for our committees' dual role in scrutinising both policy and legislation.

The integrated team for each committee comprises members from other services – legal, research, communications and translation – which develop subject specialisms through their attachment to the committee, but also continue to work within their respective services. The Committee Clerk is responsible for leading this team to ensure effective support for the committee's work programme.⁵⁶

The Scottish Parliament provided the following information:

⁵⁵ The Welsh Parliament's guide to the legislative process provides more detailed information on the process:

https://senedd.wales/NAfW%20Documents/Assembly%20Business%20section%20documents/Guide%20to%20the%20Stages%20of%20Public%20Bills%20and%20Acts/Guide_to_the_Stages_of_Public_Bills_and_Acts-eng.pdf

⁵⁶ Information provided by the Welsh Parliament

Most committees are headed up by a clerk, usually assisted by a senior assistant clerk and an assistant clerk and one committee assistant [performing an administrative role]. Some committee teams are headed up by a senior assistant clerk, reporting to a clerk. Committee clerks work closely with research/library staff but not together in the same teams. Committee Office and SPICe have, however, recently joined to form a Scrutiny Unit, so the links between research and clerks may change over the next few months.⁵⁷

Committees in the Northern Ireland Assembly are currently supported by a Clerk, Assistant Clerk and clerical staff. Committees can also draw on the services of research and legal staff, although these staff are not embedded within the committee structure.

3 Evidence gathering, public engagement and enhancing scrutiny

3.1 Submission of evidence

Effective public engagement by committees raises the question of the methods used by committees to gather evidence to inform inquiries. This is an issue addressed by the House of Commons Liaison Committee in a 2019 report which recognised the fundamental importance of evidence gathering to the work of committees:

The flow of information into committees is central to their scrutiny work. This information is largely gathered through written and oral submissions, which is then evaluated to form conclusions and recommendations. Through engaging with diverse voices, listening to experts and those with lived-experience and by gathering public opinion, we are able to engage with the public as well as produce well-evidenced reports. The weight and influence of committees' findings is largely due to this process.⁵⁸

The Liaison Committee considered the format in which evidence had to be submitted for consideration. It contrasted the strict requirements used by committees⁵⁹ with the varied ways in which people choose to communicate in everyday life. It noted that the Welsh Parliament had amended its Standing Orders in 2012 to remove reference to “written”:

⁵⁷ Information provided by the Scottish Parliament

⁵⁸ <https://publications.parliament.uk/pa/cm201719/cmselect/cmliaison/1860/1860.pdf>

⁵⁹ Currently, written evidence must be submitted in Microsoft Word, be under 3000 words and contain as few pictures as possible. These requirements have been in place for over 20 years.

As a result, all material submitted to committees— including video and audio clips and images—is privileged and the public is invited to submit “digital evidence” in response to calls for evidence. Accordingly, the views of the public gathered through audio and video recording by their Outreach team is also formal evidence.⁶⁰

The requirement for evidence to be submitted in written format can also disadvantage people with lower levels of literacy. The Liaison Committee referenced the Commons’ Web and Publications Unit which had told the Committee that:

Requiring written documents assumes a level of literacy that many in the UK [...] do not possess [...] For many people a long, written document will be an extremely daunting task, and an insurmountable barrier to entry. Microsoft’s software packages start at £59.99 per year [...] Parents, carers, and people in inflexible employment patterns may struggle to find time to compose a long, written document.⁶¹

In a 2019 report Nesta, which describes itself as an “innovation foundation”, reflected the views of UK parliamentary staff in relation to greater use of digital participation methods:

Figure 1: Digital participation methods and committees

Low diversity and reliance on usual suspects

A common concern among staff was that current evidence feeding into select committees relies disproportionately on some groups over others, namely men from in and around the south east.¹⁶ Staff therefore see high potential for crowdsourcing to help expand the pool of ideas and evidence that feed into select committee inquiries, as well as making committees less reliant on the ‘usual suspects’. As expressed by one clerk:

We’re talking about hundreds of thousands of people who are affected by things like Universal Credit, in very difficult situations, spread all over the country. How do we reach them? Often at speed. That’s the fundamental problem we have.

High barriers to entry

Invitations to submit evidence to committees are often framed around what are known as ‘terms of reference’, which help to describe the topics and scope of an inquiry. Many of our interviewees suggested that these can be framed in inaccessible language, or in ways that may be off-putting or unnecessarily complex to some audiences.

Low capacity

Resources are a key challenge and public engagement activities are thinly stretched. There’s a corresponding challenge that when staff do receive large volumes of written evidence (say, when the topic is highly popular or controversial) it can take weeks to sort through the evidence. Parliament has huge audiences, but select committees rarely find optimal ways to harness them.

⁶⁰ House of Commons Liaison Committee, *The effectiveness and influence of the select committee system*, September 2019 <https://publications.parliament.uk/pa/cm201719/cmselect/cmliaison/1860/1860.pdf>

⁶¹ As above

The implication here is that digital could help to improve efficiency and reduce some of the burden of large-scale public engagement, whether streamlining or automating existing approaches using technology; helping to filter, sort and summarise evidence more effectively; or inviting the public to do more of the work of scrutiny in collaboration with committee members.

The Northern Ireland Assembly's website provides guidance on submitting written evidence.⁶² The guidance states that:

Committee staff will make reasonable adjustments for people with disabilities to enable them to submit evidence in an alternative format. Organisations and individuals wishing to submit evidence in an alternative format should advise the committee office in advance.

There is also an accompanying video on the importance of committees hearing from stakeholders.

The Scottish Parliament provides specific written guidance along with a British Sign Language video on how to submit video evidence.⁶³

The Welsh Parliament advises that people wishing to submit evidence in audio or digital formats should contact the clerking team on the best way to do this.⁶⁴

3.2 Engagement and scrutiny units

One method of enhancing committee scrutiny is through effective public engagement. A recent article in Parliamentary Affairs outlined the potential of committees as mechanisms to engage with the public:

They focus on issues, they tend to work on a cross-party basis and they are constituted of a small number of members, which facilitates conversations, agreements and compromises more easily than within a whole parliament. Committees have more scope to delve deeply into policy areas and to examine the impact of legislation on citizens. In short, they are mini versions of parliament, but without some of the elements that hinder engagement with the whole institution, such as its adversarial nature. Highlighting the work of committees is therefore a useful way of explaining parliament's scrutiny function, but can also facilitate more effective engagement of the public with parliamentary business.⁶⁵

⁶² Northern Ireland Assembly, *Guide for witnesses appearing before Assembly committees*: <http://www.niassembly.gov.uk/assembly-business/committees/guide-for-witnesses-appearing-before-assembly-committees/>

⁶³ Scottish Parliament, *Submitting evidence to a committee*: <https://www.parliament.scot/help/106812.aspx>

⁶⁴ Welsh Parliament, *Preparing written or digital evidence*: <https://senedd.wales/en/bus-home/committees/gettinginvolved/Pages/Preparing-evidence.aspx>

⁶⁵ Walker et al., *How Public Engagement Became a Core Part of the House of Commons Select Committees*, Parliamentary Affairs, October 2019

Committees in the House of Commons have increasingly used public engagement to seek views, which has “resulted in innovative and wide ranging types of activities, reaching larger and more varied audiences”.⁶⁶

Commons committees have benefitted from a dedicated committees’ engagement team, which is based in the Education and Engagement Service.

Evaluation carried out by the Engagement Unit showed a high percentage of those who had taken part in a committee event had felt that their input had made a difference.

In 2016-17 21 such engagements had taken place, involving nine committees and reaching 46,886 people. In 2018-19 this had risen to 43 separate engagements, involving 19 committees and reaching 61,515 people.⁶⁷

Scottish Parliament

The Commission on Parliamentary Reform in Scotland recommended that a Committee Engagement Unit be established to provide support to committees. The Scottish Parliamentary Corporate Body approved funding for the Unit, which has been operational since the summer of 2018. The Unit comprises five staff including experienced members from the Parliament’s clerking and outreach teams and participation experts from third-sector organisations.

The CEU’s three aims are:

- increase effective public participation in the work of Committees to improve the quality of scrutiny for the benefit of the people of Scotland;
- help design engagement which lets people engage with their Parliament how and when they want; and
- support Scottish parliamentary service staff to try new engagement methods and improve their engagement practice.

The Scottish Parliament’s response to the Commission’s report sets out how the Committee Engagement Unit has approached its role based on innovating, improving and co-designing with under-represented groups.

Figure 2: Scottish Parliament’s Committee Engagement Unit approach

1. **Innovating**
- 2.
3. The CEU will design and test new engagement methods and evaluate them to see what benefit they add to Committee scrutiny. This will include looking at who participates, whether participants found the experience

⁶⁶ As above.

⁶⁷ Source: House of Commons Committee Engagement Unit. Includes reaching people by email and polling.

positive, and the value to Committee Members of the evidence gathered. New methods are being explored in three main areas:

4.

5. **Digital tools:** the CEU has supported a Public Petitions Committee inquiry into young people's access to mental health support. The tool used – Dialog – attracted a high level of engagement from young people and of those who responded to a request for feedback, and 92% agreed it provided a good way to get involved in the work of the Parliament.

6. **Mini-publics:** the CEU is working with the Environment, Climate Change and Land Reform Committee and the Health and Sport Committee to put together mini-publics on topics of interest to the Committees.

7. **Pop-ups:** the CEU is developing ways of contacting people in public spaces, such as shopping centres, both to gather snapshot views and point them towards more extensive involvement. The approach has been tested internally and used in community settings in relation to a Member's bill on lowering the default speed limit from 30mph to 20mph

8.

9. Improving

10.

11. Some Committee processes have been done in broadly the same way since the Parliament was established. The extra capacity in the CEU is allowing the Parliament to look at core inquiry activities, such as calls for evidence and how inquiries and reports appear on the website, and consider how these can be made more engaging to the target audiences. The CEU is also supporting Committee teams to find sustainable ways of feeding back to people who have contributed to inquiries about what happened as a result of their input and how they can continue to be involved with the Parliament.

12.

13. Co-designing

14.

15. The CEU is working with partners – including the Scottish Youth Parliament, Children's Commissioner and Young Women's Movement – to test different ways of involving young people in Committee consultations and to develop proposals that can be routinely built into Committees' work in future.

16.

17. During 2018, a group of young women under the age of 30 and from a wide variety of backgrounds met over the course of the year as a Committee to consider an issue of their choosing – sexual harassment in schools – gather evidence, and make recommendations. The project not only developed the knowledge and confidence of the participants, encouraging many of them to consider future roles in public life but it was so successful it went on to win a prestigious award at the Holyrood Magazine Public Services Awards.

18.

19. The report has also informed the Parliament's Equalities and Human Rights Committee, which used it to question the Deputy First Minister on government policy in this area. The project will be repeated with new cohorts of young women in 2019 and 2020, after which the Parliament will consider whether this is a model which could also be used with a different participant group.⁶⁸

The Committee Engagement Unit has organised two events for committees. Figure 3 contains the summary of the Primary Care Public Panels which were used to inform the Health and Sport Committee's Inquiry into the future of primary care.

Figure 3: Primary Care Public Panels

20. Between April and June 2019, three groups of randomly selected members of the public met in different parts of Scotland to learn about and discuss the question:

⁶⁸ Presiding Officer's Advisory Group Report on Parliamentary Reform, March 2019: https://www.parliament.scot/POandUKandIRO/POAG_Report.pdf

21.

22. What did the events involve?

23. These events brought together people from a wide range of backgrounds to discuss the future of primary care in Scotland. Participants learned about the issues and discussed them a group. At the end they considered everything they had heard and identified the most important themes and questions that they wanted the Health and Sport Committee to consider.

24.

25. Why hold these events?

26. We know that some people find it more difficult to become involved in our work than others. If you live a long way from the Scottish Parliament building, for example, then getting here can seem too time-consuming and expensive. We also know that the jargon we use, and the way that we work, can be off-putting for some people.

27. Events like these are designed to make it easier for everyone across Scotland to have the chance to get involved in our work and to overcome some of the barriers people have told us they have experienced in the past.

28.

29. How did you ensure that the events were accessible?

30. All transport and lunch costs were paid by the Scottish Parliament. After the event, participants also received £100 to thank them for their time.

31.

32. Who could apply?

33. In each area, invitations were sent to 2500 randomly generated households, drawn from the Royal Mail's address database. Any voting age (16+), permanent resident in Scotland living in a household that received an invitation could apply, with a few exceptions set out below:

34.

35. – employees of the Scottish Government

36. – employees of the UK Government

37. – Members of the Scottish Parliament

38. – Members of the UK Parliament

39. – Local Authority councillors

40.

41. From those who responded, a sample was selected at random to take part in the events. This random selection was weighted to make sure that there was a good mix of gender, age and background.

42.

3.3 Mini-publics

An article in *Parliamentary Affairs* explored the use of 'mini-publics' as a method for engaging with the public. It stated:

There are different types of mini-publics, but they have a number of features in common. They recruit participants through random or stratified sampling, give the participants balanced information and facilitate their discussions. Research suggests that mini-public participants have the capacity to

*deliberate complex issues and that their preferences become more public-regarding, informed and considered by the end of the process.*⁶⁹

Mini-publics come in different formats including “citizen juries, consensus conferences, deliberative polls and citizen assemblies”.⁷⁰ Whatever format is taken, they share some common principles:

- using a random selection of participants to underpin the legitimacy of the process;
- facilitated discussions;
- experts providing evidence and advocacy of relevant information; and
- the outcome of participants’ deliberations is reported.

The Commission on Parliamentary Reform in Scotland considered the potential effectiveness of mini-publics as a means of enhancing the effectiveness of committees:

Meaningful engagement has to be purposeful and relevant to participants so we recognise mini-publics may not be appropriate for committees to adopt in every circumstance. They take time and resources to deliver well but they do bring wider benefits such as encouraging long-term levels of civic engagement, developing the capacity of citizens and also reflecting more effectively how a policy or bill actually impacts on people. Mini-publics, when used well, can work against certain interests dominating scrutiny (through the random selection of participants) and can build trust and legitimacy in parliaments and their scrutiny outcomes, given a cross section of citizens is used to deliberate...

*We consider deliberative approaches would be well suited to bill scrutiny or to examining issues where it is important to understand the public’s views on a complex moral or social issue. They could be used as part of an inquiry into an issue where public opinion is divided. The mini-public report would demonstrate to the committee what happens when people with different views are invited to deliberate and report their conclusions.*⁷¹

3.4 Belgium - Joint deliberative committees

⁶⁹ Walker et al, How Public Engagement Became a Core Part of the House of Commons Select Committee, Parliamentary Affairs, Volume 72, Issue 4, October 2019

⁷⁰ Commission on Parliamentary Reform, Report on the Scottish Parliament, June 2017

⁷¹ Commission on Parliamentary Reform, Report on the Scottish Parliament, June 2017

Engagement and scrutiny units provide one method of ensuring that committees have access to a cross-section of views. It is possible to take this further and make public representation a permanent feature of committee deliberations.

The Parliament of the Brussels Region in Belgium has gone further in seeking the views of the public by instituting joint deliberative committees comprised of 15 elected members and 45 citizens. Their task will be to draft recommendations on issues chosen by the public. If a particular issue obtains the support of at least 1,000 citizens, it will be considered by the Bureau of the Parliament before being passed to one of the deliberative committees. It is anticipated that the committees will organise once a year, each meeting four times on one issue. Any citizen of Brussels aged 16 or over will have a chance to be randomly selected to participate on one of the committees.⁷²

3.5 Diversity of witnesses

An academic article from 2019 explored the impact of witness diversity on the effectiveness of parliamentary committees' scrutiny of government. Reflecting previous literature, the article highlighted that:

...there are arguments that a greater range of voices can provide different perspectives including from those who are responsible for implementing and who are affected by policy and legislation and that, in turn, may inform scrutiny by informing committees and helping committee members develop expertise. Similarly, it has been suggested that input from a wider variety of voices and interests can provide additional external challenges to policy and legislation leading to better and more transparent scrutiny and, in turn, can potentially lead to improved outcomes more effective policy implementation and evaluation and increased legitimacy including by providing greater awareness of society's views and increasing the ability of policy makers to respond to public concerns; emphasise the possibilities for enhancing the 'deliberative capacity' of committees.⁷³

It also referenced a recommendation from the Organisation for Economic Co-operation and Development (OECD), which was focused on the Canadian Parliament, on the importance of a broader range of views to inform committees:

Ensuring a degree of diversity among experts who give evidence to committees, in terms of gender, but also ethnicity, sexuality, disability, etc.,

⁷² Niessen and Reuchamps, *Designing a Permanent Deliberative Citizens Assembly*, Centre for Deliberative Democracy and Global Governance, 2019: <http://www.governanceinstitute.edu.au/magma/media/upload/ckeditor/files/Designing%20a%20permanent%20deliberative%20citizens%20assembly.pdf>

⁷³ Bochel and Berthier, *A Place at the Table? Parliamentary Committees, Witnesses and the Scrutiny of Government Actions and Legislation*, Social Policy and Society, 2019: http://eprints.lincoln.ac.uk/id/eprint/34653/3/place_at_the_table_parliamentary_committees_witnesses_and_the_scrutiny_of_government_actions_and_legislation.pdf

*helps to ensure that policy making is fully informed by the range of experiences facing Canadians, and that persistent policy gaps are highlighted and exposed to challenge.*⁷⁴

Committees in the House of Commons have taken steps in recent years to diversify their witnesses. These have included:

- adding statements on witness diversity to websites and communications with witnesses. For example: The Committee values diversity and seeks to ensure this where possible. We aim to have diverse panels of witnesses and therefore ask you to bear this in mind when choosing a representative;
- offering extra places on panels to organisations if they can provide a representative of both genders;
- using broader outreach events, social media and web fora to draw in a wider range of evidence and as a way of identifying potential oral evidence witnesses from broader backgrounds; and
- identifying potential witnesses in an organisation just below the top management tier (for example Finance or Operations Directors) and inviting them rather than the Chief Executive.⁷⁵

In addition, the House service has made it easier for witnesses to claim expenses for caring responsibilities and first time witnesses have been offered advance visits to committee rooms.

Previous research conducted as part of a MA in Legislative Studies at the Northern Ireland Assembly examined five committees in each of the Northern Ireland Assembly, National Assembly for Wales and Scottish Parliament. The research “found that in each legislature male witnesses typically outnumbered female witnesses by around two to one, with subjects such as agriculture and business having the smallest proportion of women, and education and health the smallest gaps in representation”.⁷⁶

3.6 Institute for Government report

A 2015 report from the Institute for Government, *Select committees under scrutiny: The impact of parliamentary committee inquiries on government*, examined the effectiveness of House of Commons committees. It identified constraints to effective

⁷⁴ As above

⁷⁵ House of Commons Liaison Committee, *Witness Gender Diversity*, May 2018:
<https://publications.parliament.uk/pa/cm201719/cmselect/cmliaison/1033/1033.pdf>

⁷⁶ Bochel and Berthier, *A Place at the Table? Parliamentary Committees, Witnesses and the Scrutiny of Government Actions and Legislation*, Social Policy and Society, 2019:
http://eprints.lincoln.ac.uk/id/eprint/34653/3/place_at_the_table_parliamentary_committees_witnesses_and_the_scrutiny_of_government_actions_and_legislation.pdf

scrutiny and offered possible methods to improve the impact of committee scrutiny. Some of the report's findings have general read across to committees in other institutions and these are summarised below:

Constraints to effective scrutiny

- **Focus on activities not outcomes:** The way committees are established and administered has led to a tendency for them to focus on what activity they should be undertaking rather than what they are trying to achieve in terms of impact.⁷⁷
- **Lack of institutional memory:** Within each committee silo, turnover of membership, generated in part by the inevitable lure of frontbench positions, has a negative effect on learning. Lack of institutional memory can be exacerbated by staff changes. Although the clerk of a committee would normally expect to remain in place for a whole parliament, other committee staff are replaced and circulated more frequently.
- **Absence of feedback:** The Commons committee system is remarkable for its lack of feedback mechanisms. The only means by which members can get a sense of how they are doing is through feedback from other members in the tea room, or via the media... the absence of any established expectation that committees should seek feedback from their primary audience – government – on the impact of their inquiries and working practices, is truly surprising.

Committees do not seem to have a clear idea about who their customers are or how they engage with their work, or how journalists use their reports for example. Nor do committees receive data on the number of times their reports are downloaded or their webpages are viewed.

- **Lack of evaluation of process:** In terms of self-evaluation [the research found] few attempts to identify how inquiry outcomes had been affected by the way inquiries had been conducted, or to apply such learning to future work.
- **Lack of meaningful evaluation of impact:** [the research] found no evidence of our case study committees evaluating the long-term outcomes of their work.

Enhancing scrutiny

The IfG also put forward possible solutions to the above perceived shortcomings in scrutiny.

Fundamentally, the IfG felt that the committee system needed to move its focus from tasks and outputs to an emphasis on impact and outcomes. This means a more

⁷⁷ Specific reference was made here to the core tasks that Commons committees are expected to carry out. These do not necessarily apply elsewhere.

“nuanced understanding of impact which recognises that long-term outcomes which may not be directly attributable to committee activity but still result in part from it, may be just as valuable, if not more so, than short-term measurable outputs”.⁷⁸

The IfG put forward two broad themes that could benefit the work of committees:

Feedback and evaluation

- Individual committees should, as a matter of good practice, seek feedback from their witnesses on their experience before the committee and the process of the inquiry. The results of this feedback should be collated by staff and presented to the committee regularly.
- Individual committees should undertake a short evaluation exercise on the impact of their inquiry six months (or another appropriate interval) after receiving a government response to a report. The evaluation process should involve commissioning a short memorandum from the department about progress in relation to the committee’s concerns, and seeking the views of other interested parties.
- Committee chairs should work together to identify an agreed mechanism for independently benchmarking and evaluating committee impact. Once agreed, evaluation of committee impact should take place on a rolling basis with each committee being subject to evaluation more than once in each parliament.

Learning and exchange of ideas

- Committee chairs should work together to create and embed mechanisms to recognise what effective practice looks like, and to identify and proactively highlight aspects of good practice – not just through annual reports but on a real-time basis. All committees should be required to engage with the benchmarking and sharing of good practice and promoting the development of the committee system as a whole. This responsibility could be the focus of a new impact-goal.
- This work on good practice by committee chairs should be used create resources for use in the induction of new committee members. Committees should continue to experiment with skills-based training on scrutiny techniques, to embed learning within the committee system.
- Committee chairs should work together to find mechanisms to drive cross-cutting committee work by actively identifying emerging issues which cut

⁷⁸ Institute for Government, *Select Committees under Scrutiny: The impact of parliamentary committee inquiries on government*, June 2015: <https://www.instituteforgovernment.org.uk/sites/default/files/publications/Under%20scrutiny%20final.pdf>

across the remit of several committees and to commission joint working by committees. This would have benefits in terms of scrutiny outcomes but also facilitate sharing of good practice.⁷⁹

4 Pre- and post-legislative scrutiny

The value of pre- and post-legislative scrutiny has gained prominence in recent years as methods to enhance and assess the quality of legislation.

4.1 Importance of post-legislative scrutiny

Lord Norton of Louth has commented on the importance of post-legislative scrutiny:

*Post-Legislative Scrutiny may be seen as a public good. It is designed to ensure that measures of public policy deliver on what the representatives of the people voted for. It means assessing the consequences against the purposes identified when the measures were introduced.*⁸⁰

Post-legislative scrutiny (sometimes referred to as ex-post evaluation) is generally considered to play an important role in determining if a law or regulation was sufficient and effective in its implementation, and to what extent any (un)expected impacts of the regulatory intervention were properly addressed at its conception.⁸¹

In a 2006 report, the Law Commission defined post-legislative scrutiny as referring to:

*...a broad form of review, the purpose of which is to address the effects of legislation in terms of whether the intended policy objectives have been met by the legislation and, if so, how effectively. However, this does not preclude consideration of narrow questions of a purely legal or technical nature.*⁸²

That report also highlighted potential drawbacks of post-legislative scrutiny:

- **Risk of replaying arguments:** post-legislative scrutiny should concentrate on the outcomes of legislation. Unless self-discipline is exercised by the reviewing body, and those giving evidence to it, there is a clear danger of it degenerating into a mere replay of arguments advanced during the passage of the Bill.

⁷⁹ Institute for Government, Select Committees under Scrutiny: The impact of parliamentary committee inquiries on government, June 2015

⁸⁰ Westminster Foundation for Democracy, Post-Legislative Scrutiny in Europe: How the oversight on implementation of legislation by parliaments in Europe is getting stronger, 2020: https://www.wfd.org/wp-content/uploads/2020/02/WFD_DeVrieze_2020_PLSinEurope.pdf

⁸¹ OECD, Evaluating Laws and Regulations: The Case of the Chilean Chamber of Deputies, OECD Publishing, 2012.

⁸² The Law Commission, *Post-legislative scrutiny*, 2006: http://lawcommission.justice.gov.uk/docs/lc302_Post-legislative_Scrutiny.pdf

- **Dependence on political will:** the evolution of a more systematic approach to post-legislative scrutiny will depend on a combination of political will and political judgement.
- **Resource constraints:** post-legislative scrutiny will place demands on resources that could be used elsewhere.⁸³

4.2 Framework for effective post-legislative scrutiny

A submission by the Chartered Institute of Public Finance and Accountancy (CIPFA) to the Scottish Parliament's Standards, Procedures and Public Appointments Committee's 2013 inquiry on post-legislative scrutiny provides a number of useful principles for the design of a framework to undertake this work.

CIPFA recommended that post-legislative scrutiny should be part of a holistic approach to assessing the merits or otherwise of legislation. It also addressed the potential limitations as identified in the Law Commission's report and noted earlier in this paper. These are set out below but it should be noted that CIPFA was writing in the context of the Scottish Parliament, hence references to Members of the Scottish Parliament.

Figure 4: Mitigations identified by CIPFA in response to Law Commission report

Risk identified by Law Commission	Mitigation identified by CIPFA
The risk of replaying arguments: significant self-discipline will be required to prevent simply repeating and re-engaging on, the original arguments debated during legislative development. Such 'replay' does not directly contribute to the objectives of post-legislative scrutiny.	<ul style="list-style-type: none"> • A clearly defined remit framework for post-legislative review for all participating individuals and bodies to adhere to; • Focus on the achievement of the original policy objectives and not on the appropriateness of the policy objectives in the current post-legislative environment; • An element of independent leadership, or oversight, of the review process; and • Clear and unbiased leadership by MSPs of each review.
The dependence on political will: without political will and political belief in the benefits of post-legislative scrutiny, the development of an effective overall scrutiny regime is unlikely to occur.	<ul style="list-style-type: none"> • Clear and unbiased leadership by MSPs of the review process; • Well-implemented legislation; and • Parliamentary leadership in communicating the lessons learned from each review. This is important not only to obtain political will but also to ensure that the lessons learned from any specific example (e.g. affecting one committee) are recognised in all future legislative development (e.g. by other committees). Feedback will also inform improvement of the post-legislative scrutiny process itself.
Resource constraints: resources, including parliamentary committee time are limited. It will therefore be necessary to ensure that an appropriate framework should balance costs and benefits of post-legislative review.	<ul style="list-style-type: none"> • Recognising that undertaking post-legislative scrutiny will require either additional resources or the re-direction of resources from existing activities • Prioritisation of the legislation that should be subject to review. This could be based on both quantitative and qualitative factors, such as:

⁸³ Law Commission, *Post-Legislative Scrutiny*, October 2006.

	<ul style="list-style-type: none"> ○ Scale - this will be related to cost, social impact, economic impact, environmental impact; ○ Political impact – where there was a high degree of debate, either politically or in a wider social context, review will be appropriate. Where general consensus existed this aspect would be less relevant but the other considerations (e.g. scale) could still apply; ○ Significant impact on specific social groups, individuals or bodies; ○ Significant successes or failures in implementation. This is relevant since the most extreme examples are likely to yield the most evident lessons for the future. ● Careful consideration of the cost-benefits of: <ul style="list-style-type: none"> ○ Establishing any new bodies, posts or responsibilities for post-legislative scrutiny; ○ Undertaking each proposed post-legislative review.
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4.3 Training for elected representatives

CIPFA also identified a training requirement for MSPs within an integrated approach to the scrutiny of legislation (pre and post). It made the following observations in relation to training:

- **Training:** It is unlikely that existing [members] will have had extensive experience of post-legislative review. An initial investment of time and resources in providing training for relevant [members] is therefore likely to be required...post-legislative scrutiny should be regarded as part of an overall scrutiny approach, rather than separated from other aspects of scrutiny.
- **Access to appropriate external skills:** Ensuring that [members] have access to appropriate external skills will be critical to the success of post-legislative review. In part this may be achieved through:
 - **Appropriate witnesses:** ensuring that a sufficient variety of relevant witnesses, presumably including service users where appropriate, are invited to provide evidence will assist. Consideration may be required on how to encourage potentially reluctant witnesses to participate.
 - **Additional external skills:** access to external skills may be desirable to direct [members'] attention to relevant question areas and evidence. Desirable support may include relevant expertise such as economists, statisticians, lawyers, financial analysts and cost experts, subject matter specialists and others. Some of this expertise may be available within the Scottish Parliament (e.g. Scottish Parliament Information Centre), or

the wider Scottish public sector, for example in scrutiny bodies..., government departments and bodies and local government...⁸⁴

4.4 Recommendations in respect of the Scottish Parliament

The Commission on Parliamentary Reform examined the viability of formally including pre- and post-legislative scrutiny in the passage of legislation. Commenting on a lack of post-legislative scrutiny in the early years of the Parliament, the report stated: “In the early years of devolution, this was to be expected, but the case for evaluating the impact and effectiveness of Scottish Parliament legislation grows as the Parliament develops and more legislation is enacted.”⁸⁵

The Commission’s starting point for its consideration of greater post-legislative scrutiny was that it was in keeping with the Parliament’s founding principles of openness, transparency and power sharing. It concluded that: “if a key purpose of parliament is to scrutinise legislation, then accountability to parliament for how those legislative powers are then enacted and delivered, and the outcomes they deliver, must be a key component.”⁸⁶

The Commission recommended that the current three stage legislative process be replaced with a five-stage process, with committees including pre- and post-legislative scrutiny in their work programmes. The Standards, Procedures and Public Appointments Committee supported the Commission’s objective of enhancing pre- and post-legislative scrutiny, but did not agree with the need for new formal stages:

*[the Committee] was not persuaded that additional formal stages to the legislative process were required on the basis that committees are currently able to undertake this scrutiny using existing procedures. In addition, a new Public Audit and Post-legislative scrutiny Committee has recently been established.*⁸⁷

4.5 Dáil Éireann

Recommendations made by the sub-Committee on Dáil Reform in June 2016⁸⁸ led to amendments to Standing Orders which require post-legislative scrutiny (referred to as post-enactment) of legislation. Standing Order 164A states:

Twelve months following the enactment of a Bill, save in the case of the Finance Bill and the Appropriation Bill, the member of the Government or

⁸⁴ CIPFA submission to Standards, Procedures and Public Appointments Committee, 2013

⁸⁵ Commission on Parliamentary Reform, *Report on the Scottish Parliament*, June 2017

⁸⁶ As above

⁸⁷ Commission on Parliamentary Reform, Scottish Parliament website:

<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/108084.aspx>

⁸⁸ Report of the sub-Committee on Dáil Reform, June 2016

Minister of State who is officially responsible for implementation of the Act shall provide a report which shall review the functioning of the Act and which shall be laid in the Parliamentary Library.

This places the onus on government-led review, as opposed to the Dáil taking the lead. However, Standing Orders further provide that select committees may consider any such report⁸⁹ and require the Minister responsible for the implementation of an Act to attend committee in respect of a report under Standing Order 164A.

4.6 Follow-up and evaluation in the Swedish Riksdag – a constitutional obligation

The Riksdag in Sweden is an example of a legislature with an advanced form of post-legislative scrutiny which is embedded within the Constitution. Since January 2011 the requirement for parliamentary committees to conduct this ‘follow-up and evaluation’ has been included in one of Sweden’s four fundamental laws, the Instrument of Government.⁹⁰

Committees have employed various methods to meet this constitutional obligation. It might comprise study visits or public hearings, while other committees take a more structured approach:

Some committees have special follow-up and evaluation groups comprising members of the Riksdag from the different parties. These groups can, for instance, consider project proposals, carry out follow-ups and submit a follow-up report to the committee with assessments and conclusions.⁹¹

Committees can also avail of specific resources to assist them in carrying out their statutory duty:

The Riksdag Administration has allocated resources to support follow-up and evaluation work by the Riksdag’s committees. This support is provided by officials of the committee secretariats and by the evaluation and research unit at the Committee Services Division. It is also possible to procure support externally.⁹²

It is essentially up to each individual committee to determine how it wishes to conduct the follow-up and evaluation.

The Evaluation and Research Secretariat in the Riksdag provides support to committees and their secretariats in conducting this post-legislative scrutiny. There are a number of ways that the Evaluation and Research Secretariat assist in this work:

⁸⁹ Standing Order 84A(4)(g) of Dáil Éireann.

⁹⁰ Follow-up and evaluation by the Riksdag’s committees - a constitutional obligation, publication by the Swedish Parliament.

⁹¹ As above.

⁹² Follow-up and evaluation by the Riksdag’s committees - a constitutional obligation, publication by the Swedish Parliament.

[the Secretariat] helps the committees to prepare, implement and conclude follow-up and evaluation projects, which includes formulation of a problem, methodology support, survey design, participation in the committees' working groups, presentation to the committees and preparing background data for committee reports. The Secretariat can also prepare documentation needed by the committees to take decisions on a possible evaluation and provide support regarding the development of the committees' ideas for a possible evaluation by, at an early stage, submitting proposals regarding clarifications and more specifically defining questions and methods. During the implementation of the projects, the Secretariat can contribute by, for example, carrying out interviews and surveys, collecting data, arranging study visits and compiling facts and observations in a draft report.⁹³

The role of post-legislative scrutiny is likely to continue to grow in importance, but this will put more focus on the capacity of committees to undertake such work, particularly in the devolved legislatures where committee members are likely to be stretched across multiple committees. Nevertheless, the potential benefits of post-legislative scrutiny make it worthy of further consideration. In evidence to the Expert Panel on Electoral Reform, Daniel Greenberg, former Parliamentary Counsel, commented:

...in many ways post-legislative scrutiny is a more important way of holding the Welsh Government to account in relation to legislation than is Committee scrutiny at the Bill stage, at which point predictions and concerns must largely be guesswork on both sides. Although the Assembly does have an emerging tradition of post-legislative scrutiny, there is considerable room for greater rigour and regularity, and pressure on Committees is one of the reasons why this is developing relatively slowly. [...]⁹⁴

4.7 Pre-legislative scrutiny

To date, the idea of pre-legislative scrutiny has not generated as much academic literature as post-legislative scrutiny. The ability of a committee to carry out pre-legislative scrutiny will again have resource implications, but also depends largely on the willingness of the Government to publish a draft Bill.

In a 2015 report, the then Constitutional and Legislative Affairs Committee at the National Assembly for Wales published its report *Making Laws in Wales*. The report noted the importance of such scrutiny, especially in a unicameral legislature. It referenced views it had received on the issue of draft bills and their potential benefits, including the arguments that they would:

⁹³ *Evaluation and Research Secretariat*, publication by the Swedish Parliament.

⁹⁴ The Expert Panel on Assembly Electoral Reform, *A Parliament that works for Wales*, December 2017

- indicate legislative intent;
- allow earlier engagement in the legislative process;
- highlight important or contentious issues early; and
- provide more opportunity to influence.⁹⁵

Such scrutiny would also provide “an opportunity for the Assembly to satisfy itself that the interests and concerns of stakeholders have been identified and reflected in the policy development”.⁹⁶

4.7 The quality of legislation

The examples of the Australian and New Zealand Parliaments provide examples where there is an explicit focus on committees improving the quality of legislation. Guidance on parliamentary practice from the New Zealand Parliament states that:

*The Standing Orders Committee has encouraged select committees to examine legislative quality issues when preparing their reports on bills. In particular, it has indicated that respect for the rule of law requires the avoidance of the arbitrary deprivation of rights and freedoms; and it has referred to the principles for good legislation-making expounded by the...Legislation Design and Advisory Committee.*⁹⁷

The reference to the Legislation Design and Advisory Committee is noteworthy. This body “advises departments in the initial stages of developing legislation when legislative proposals and drafting instructions are being prepared. It advises on basic framework/design issues and consistency with fundamental legal and constitutional principles”.⁹⁸ The guidance on parliamentary practice goes on to comment on how committees should adhere to the guidelines produced by the Legislation Design and Advisory Committee:

Attention by select committees to legislative quality may result in committees, in their consideration of bills, addressing wider constitutional and administrative law issues, along with the fundamental question of whether each piece of legislation is necessary and fit for purpose. In undertaking such legislative scrutiny, committees should ensure that any departures from the Legislation Design and Advisory Committee’s guidelines are justified. The guidelines were designed to help departments prepare draft legislation before

⁹⁵ National Assembly for Wales Constitutional and Legislative Affairs, *Committee Making Laws in Wales*, October 2015: <https://senedd.wales/laid%20documents/cr-ld10379/cr-ld10379-e.pdf>

⁹⁶ As above

⁹⁷ The Legislative Process in the New Zealand Parliament: <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand/chapter-26-the-legislative-process/>

⁹⁸ Legislation Design and Advisory Committee, New Zealand: <http://www.ldac.org.nz/>

*its introduction, but they are equally available to committees seeking subsequently to ensure legislation is easy to use, understandable, and accessible to those who are required to use it, that it integrates smoothly with the existing body of law, and that it achieves its underlying policy objective, but with proper respect for important legal principles. Committee staff may draw departures from the guidelines to the committee's attention, so that the committee can ask departmental officials to demonstrate the justification for them.*⁹⁹

The Scrutiny of Bills Committee in the Australian Parliament was established in 1981, with its functions at first carried out by the Legal and Constitutional Affairs Committee. The scrutiny principles applied by the Committee require it to consider whether Bills or Acts:

- trespass unduly on personal rights and liberties;
- make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
- make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- inappropriately delegate legislative powers; or
- insufficiently subject the exercise of legislative power to parliamentary scrutiny.¹⁰⁰

A document produced by the Australian Law Reform Commission provides further information on the committee:

The Committee is comprised of six Senators, and is supported by a secretariat made up of a secretary, principal research officer and legislative research officer. The Committee is also supported by a legal adviser, who reviews all Bills against the scrutiny principles, and provides a report on whether and how the principles are breached. Based on this advice, the Committee publishes, on each Wednesday of a Parliamentary sitting week, an Alert Digest containing an outline of each of the Bills introduced in the previous sitting week, along with any comments in relation to a particular Bill.

If concerns are raised in the Digest, the Committee writes to the Minister responsible for the Bill, inviting a response to its concerns, and sometimes suggesting an amendment. The Minister's response may include a revised version of a section of legislation or explanatory memorandum, or may better

⁹⁹ The Legislative Process in the New Zealand Parliament:

¹⁰⁰ Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia:

https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Role_of_the_Committee

*explain why the Bill has appeared in its current form. If the response does not allay the Committee's concerns, it will draw the provisions in question to the Senate's attention through its Report, and leave it to the Senate to determine the appropriateness of the relevant encroachment on rights and freedoms in the Bill.*¹⁰¹

As part of its work, the Commission on Parliamentary Reform in Scotland considered how a separate body might play a greater role in ensuring legislative standards:

*We believe the Parliament is well placed to lead collaborative working with the Government and other stakeholders as part of a standards body whose purpose is to develop guidance on the attributes of good legislation. This approach would enable all those involved with making law to establish a set of Scottish standards for designing, developing and drafting good quality and effective legislation from bill inception to introduction.*¹⁰²

The Legislative Design and Advisory Committee in New Zealand was recommended to the Commission as a model of good practice. The Commission was persuaded of such a body and recommended the establishment of a legislative standards body in Scotland.

Responding to the Commission's recommendation, the Standards, Procedures and Public Appointments Committee was not persuaded:

*the Committee considered the range of existing initiatives that are underway to promote good legislation in Scotland and agreed to monitor these initiatives to ensure that the objectives identified by the Commission on Parliamentary Reform in relation to the quality of legislation are implemented.*¹⁰³

5 Conclusion

This paper has provided an overview of some of the methods committees use to enhance scrutiny of policy and legislation. It has examined a broad range of issues beginning with the capacity of committees to effectively undertake scrutiny functions. This was primarily in the context of the Scottish and Welsh Parliament and Northern Ireland Assembly, all unicameral legislatures with members sitting on multiple committees. Recent external reviews of the Scottish Parliament and Welsh Parliament have highlighted capacity issues within the committees of those institutions and have

¹⁰¹ Australian Law Reform Commission, Scrutiny Mechanisms: https://www.alrc.gov.au/wp-content/uploads/2019/08/fr_129ch_3_scrutiny_mechanisms.pdf

¹⁰² Commission on Parliamentary Reform, *Report on the Scottish Parliament*, June 2017

¹⁰³ Commission on Parliamentary Reform, Scottish Parliament website

put forward recommendations on how those committees can more effectively carry out their scrutiny roles.

Effective and innovative approaches to public engagement and evidence gathering can enhance the work of committees and work towards ensuring a cross-section of society is able to communicate its views to committees. For example, the Committee Engagement Unit in the Scottish Parliament plays a key role in facilitating outreach events for committees. Innovative approaches can help committees to move away from reliance on the 'usual suspects', albeit some stakeholders will have accountability to committees and will be expected to attend regular evidence sessions.

The role of pre- and post-legislative scrutiny has grown in importance in recent years. This work will impact on committee capacity and work programmes, but it has been argued that post-legislative scrutiny in particular, and the evaluation the impact of legislation, may have potentially greater benefits than scrutiny of a bill as it progresses through a legislature.