



Northern Ireland
Assembly

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Institutional review committees

1 Introduction

The Assembly and Executive Review Committee (AERC) asked for a comparative paper on institutional review committees to inform its strategic direction for the remainder of the current mandate.

This paper provides an update on a previous, similar paper prepared for the AERC in August 2016.

The research looked at committees in the following legislatures:

- Welsh Parliament
- Scottish Parliament
- House of Commons
- House of Lords
- Dáil Eireann

Remit of the Assembly and Executive Review Committee

The St. Andrew's Agreement provided for:

An amendment to the 1998 Act [which] would provide for the Assembly to appoint a standing Institutional Review Committee, to examine the operational aspects of the Strand One institutions. Matters to be reviewed in this way would be agreed among the parties. The Committee's reports would be considered by the Executive and Assembly, and, where agreed changes required legislative steps outside the scope of the devolved institutions, by the British Government in consultation as appropriate with the Irish Government.¹

Section 29A of the Northern Ireland Act 1998 provides for the establishment of a committee "to examine such matters relating to the functioning of the Assembly and the Executive Committee as may be specified in the standing orders".²

It also gave this committee a statutory duty to specifically report on:

- the functioning of the Assembly and the Executive Committee, which encompassed Parts 3 and 4 of the 1998 Act; and
- the operation of sections 16A to 16C (the appointment of the First Minister and deputy First Minister).

AERC fulfilled its statutory obligations by reporting on sections 16A to 16C in April 2011 and Parts 3 and 4 of the 1998 Act in April 2015.

Apart from the above statutory reports, AERC has produced the following reports:

- Arrangements for the devolution of policing and justice matters
- Review of the Initial Ministerial Provision in relation to the Department of Justice and the arrangements from 1 May 2012
- Number of Members of the Northern Ireland Legislative Assembly
- Reduction in the Number of Northern Ireland Departments
- Review of D'Hondt, Community Designation and Provisions for Opposition
- Review of Petitions of Concern
- Women in Politics and the Northern Ireland Assembly
- Report into the Assembly & Executive Reform (Assembly Opposition) Bill

¹ St. Andrew's Agreement:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136651/st_andrews_agreement-2.pdf

² Section 29A of the Northern Ireland Act 1998

2 Committees elsewhere in the UK and Ireland

Given that the basis of the AERC was part of a wider agreement that reflected the unique context of Northern Ireland, it is perhaps not surprising that there is no directly comparable committee in the other legislatures in the UK and Ireland. However, there are examples of committees undertaking work that may be of relevance to the AERC in setting its strategic direction.

The areas covered by these committees can be broadly classified into two categories:

- constitutional issues; and
- legislation/legislative review.

More specifically, committees in the Scottish and Welsh Parliaments have begun to consider electoral reform as it relates to their respective institutions, including extension of the franchise and other aspects of electoral administration.

Welsh Parliament

Legislation, Justice and Constitution Committee

The Legislation, Justice and Constitution Committee's remit is set out in Standing Order 21³. The committee was previously known as the Constitutional and Legislative Affairs Committee but this was changed in January 2020. The committee considers "any other matter relating to legislation, justice and the constitution within or relating to the competence of the Senedd or the Welsh Ministers, including the quality of legislation."⁴

As part of its remit the committee also considers all statutory and draft statutory instruments to be laid before the Senedd.

Examples of the Committee's work

Figure 1 lists a selection of completed inquiries by the Committee since 2011. This includes those completed when the committee was known as the Constitutional and Legislative Affairs Committee.

Figure 1: examples of inquiries by the Constitutional and Legislative Affairs Committee and the Legislation, Justice and Constitution Committee 2011-19

Inquiry
UK Government's EU Reform Agenda
Making Laws in Wales
The UK Government's Proposals for Further Devolution to Wales

³ Standing Orders of the National Assembly for Wales (excluding Standing Orders 21.8 to 21.11)

⁴ Legislation, Justice and Constitution Committee of the Welsh Parliament: <https://senedd.wales/en/bus-home/committees/Pages/Committee-Profile.aspx?cid=434>

Disqualification of Membership from the National Assembly for Wales
Wales' role in the EU decision making process
Powers granted to Welsh Ministers in UK Laws: Review of Outcomes
The establishment of a separate Welsh jurisdiction
The Granting of Powers to Welsh Ministers in UK Laws
UK Government's Wales Bill
UK governance post-Brexit

Much of the committee's current workload relates to the implications of Brexit, including the future of the Sewel Convention and how new levels of UK governance will impact on the Welsh devolution settlement.

Committee on Senedd Electoral Reform

The Committee on Senedd Electoral Reform was established in September 2019 following a recommendation following a recommendation from the Expert Panel on Assembly Electoral Reform.

The committee was proposed by the Presiding Officer following the Senedd Commission's decision in June 2019 not to introduce legislation in this Senedd term in respect of Phase 2 of its Senedd Reform programme.

Phase 2 relates to the number of members of the Welsh Parliament, the voting system to elect any future larger institution and measures to make the Parliament more diverse in its composition.

Phase 1, which has been completed, led to the passage of the Senedd and Elections (Wales) Act 2020, which will:

- lower the voting age for Senedd elections to 16;
- change the name of the Assembly to Senedd Cymru or Welsh Parliament;
- name elected representatives "Member of the Senedd" (MS) or "Aelod o'r Senedd (AS)."
- change the law relating to disqualification from being a Member;
- enable qualifying foreign citizens to be able to vote in Senedd elections; and
- allow for the Electoral Commission to be accountable to and financed by the Senedd for devolved elections.⁵

The committee's current inquiries include:

- Capacity of the Senedd

⁵ Senedd Reform Programme: <https://senedd.wales/en/abthome/role-of-assembly-how-it-works/Pages/AssemblyReform.aspx>

- Electing a more diverse Senedd
- Electoral systems and boundaries

The committee will be dissolved following a plenary debate on its final report.

Scottish Parliament

Standards, Procedures and Public Appointments Committee

The Scottish Parliament's Standards, Procedures and Public Appointments Committee has recently published reports relating to aspects of electoral reform in Scotland. For example, its report on the Scottish Elections (Reform) Bill commented on the length of terms for Scottish Parliamentary elections and Scottish local government elections; allowing 14 year olds to register to vote and electronic voting.⁶

In February 2020 it published its proposal for a committee bill on financial assistance for political parties. This would "transfer responsibility for setting the terms of the funding of nongovernment political parties – the provision of so-called "Short money" - from the Scottish Government to the Scottish Parliamentary Corporate Body."⁷

The Public Audit and Post-legislative Scrutiny Committee

In September 2016 The Scottish parliament agreed that the Public Audit Committee should include post-legislative scrutiny within its remit, which "means that the Committee can consider previous Acts of the Scottish Parliament to determine whether they have achieved their intended purpose. This could involve examining a specific part of an Act rather than examining the legislation as a whole. Other committees of the Parliament have always been able to undertake PLS and will continue to do so."⁸

House of Commons

The Public Administration and Constitutional Affairs Committee (PACAC) has a remit to "examine: constitutional issues; the quality and standards of administration provided by Civil Service departments; and the reports of the Parliamentary and Health Service Ombudsman (PHSO)".⁹ Some of the ongoing/completed business by this Committee is listed below:

⁶ Report on the Scottish Elections Reform Bill:

<https://digitalpublications.parliament.scot/Committees/Report/SPPA/2020/1/14/Stage-1-Report-on-the-Scottish-Elections--Reform--Bill>

⁷ As above

⁸ Public Audit and Post-legislative scrutiny committee:

<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/105094.aspx>

⁹ Public Administration and Constitutional Affairs Committee: <https://committees.parliament.uk/committee/327/public-administration-and-constitutional-affairs-committee/>

Figure 2: Ongoing/completed inquiries and reports by the Public Administration and Constitutional Affairs Committee

Inquiry
The Work of the Commissioner for Public Appointments, ongoing
The Work of the Cabinet Office, ongoing
Pre-appointment hearings: Promoting best practice, September 2018
The Minister and the Official: The Fulcrum of Whitehall effectiveness, June 2018
Proposals on voter engagement
The relationship between central and local government: international comparisons
Voting by convicted prisoners: summary of evidence
What next on the redrawing of Parliamentary boundaries?

House of Lords

The House of Lords Constitution Committee “examines all Public Bills for constitutional implications and investigates broad constitutional issues... (it) assesses the impact of a Public Bill and, where appropriate, publishes a report on the Bill to inform the House. The Committee also undertakes investigative inquiries into wider constitutional issues and publishes a report with recommendations aimed principally at the Government”¹⁰.

Below are examples of inquiries undertaken by the Committee in the 2017-19 mandate:

Figure 3: Recent inquiries undertaken by the House of Lords Constitution Committee and published reports

Topic
Fixed Term parliaments Act 2011, ongoing
Northern Ireland (Executive Formation) Bill, July 2019
The Legislative Process: The Passage of Bills Through Parliament, July 2019
Judicial Appointments: follow-up, November 2017

Republic of Ireland

Sub-Committee on Dáil Reform

The Sub-Committee on Dáil Reform was a sub-committee of the Committee on Procedures and Privileges. Its role was essentially that of a procedure committee, but it was tasked with looking at ways the role of the Dáil could be strengthened. There had historically been a debate about the relative weakness of the Dáil as a scrutiny body and commitments had been given by governments to address this.

¹⁰ Constitution Committee of the House of Lords: <http://www.parliament.uk/business/committees/committees-a-z/lords-select/constitution-committee/role/>

In May 2016 the Committee produced a report and some of the key recommendations are reproduced below:¹¹

Figure 4: Recommendations from the sub-Committee on Dáil reform

Recommendations from Sub-Committee on Dáil Reform Committee report
more power for parliament to plan and make arrangements for its own business, with a new Business Committee comprising of both Government and Opposition TDs, who will together plan the House business on a weekly, sessional and yearly basis;
better scrutiny of the annual budgetary cycle by a new Budget Oversight Committee, supported in its work by a new Independent Budget Office, which will 'crunch the numbers' for the new Committee;
an increased role for the Office of the Parliamentary Legal Advisor, to allow that Office assist backbench members in drafting legislation, and give advice on all legislation coming before the House;
changes to the rules around 'groups', to allow more than one 'technical group' to be formed; this will enable independents and members in small parties to join forces to get a greater share of parliamentary set pieces, for instance, private members' time;
a rearrangement of the sitting day, so that the House, wherever possible, does not clash with Committee meetings; this will enable members to give more time to both plenary sittings and Committees – members will not have to choose whether to attend one or the other;
pre-legislative scrutiny will be extended to non-Government Bills (when sufficient resources are in place in the Office of the Parliamentary Legal Advisor), which will increase the possibility of those Bills being enacted;
a new Irish Language Committee will be established;

In April 2019 the committee published its report on an agreed Memorandum of Understanding between the Government and Dáil Eireann on Private Members' Bills. The purpose of the MOU is to set out:

- 1) *a comprehensive and transparent parliamentary scrutiny process for Private Members' Bills, with the aim of enacting private members legislation which is fit for its intended purpose and which is legally sound, and*
- 2) *a process for engagement by Government on requests for Money Messages in respect of PMBs which involve appropriation of revenue or other public moneys, with the aim of ensuring a response from Government to requests for Money Messages within a reasonable time following the Order for Committee Stage subsequent to the publication of a Committee Scrutiny Report.*¹²

Joint Committee on the Eighth Amendment

The Joint Committee on the Eighth Amendment of the Constitution was tasked with consideration of the Citizens' Assembly recommendation that Article 40.3.3 of the Constitution be replaced "with a constitutional provision that explicitly authorises the

¹¹ Final report of the Sub-Committee on Dáil Reform: <http://www.oireachtas.ie/parliament/media/committees/sub-committeeondailreform/Final-Report-of-the-Sub-Committee-on-Dail-Reform.pdf>

¹² Sub-Committee on Dáil Reform, Report on MOU between the Government and Dáil Eireann on Private Members' Bills: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/sub_committee_on_dail_reform/reports/2019/2019-04-29_report-memorandum-of-understanding-between-the-government-and-dail-eireann-on-private-members-bills_en.pdf

Oireachtas to legislate to address termination of pregnancy, any rights of the unborn and any rights of the pregnant woman".¹³

3 External reviews of the Scottish Parliament and the Welsh Parliament

This section draws on previous research which examined reviews of the devolution settlements in Scotland and Wales. Although independent of those institutions, these reviews nevertheless provide useful context as they addressed topics similar to those considered by AERC.

Commission on Parliamentary Reform (Scotland)

In October 2016 the Presiding Officer of the Scottish Parliament established an independent commission on parliamentary reform to examine how the Parliament could more effectively engage with citizens and how its work could be improved to deliver better scrutiny.

Its report was published in June 2017 and addressed a broad range of issues including:

- More effective committees
- Effective use of chamber time
- Parliament's role in supporting diversity
- The parliamentary business programme
- Greater variety in chamber business
- Party discipline and committees
- A more collaborative approach to members' bills¹⁴

The Presiding Officer established the Presiding Officer's Advisory Group to oversee delivery of the report's recommendations. The recommendations were referred to a number of bodies within the parliament to take forward.

Expert Panel on Assembly Electoral Reform (Wales)

In February 2017 the Presiding Officer of the National Assembly for Wales (as it was then known) announced the establishment of an Expert Panel on Assembly Electoral

¹³ Report of the Joint Committee on the Eighth Amendment of the Constitution:
https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_the_eighth_amendment_of_the_constitution/reports/2017/2017-12-20_report-of-the-joint-committee-on-the-eighth-amendment-of-the-constitution_en.pdf

¹⁴ See the report for the full list of topics addressed by the Commission:
<https://test123582.files.wordpress.com/2016/10/commissiononparliamentaryreformreport-june20171.pdf>

Reform “to provide robust, politically impartial advice on the number of Members the Assembly needs, the most suitable electoral system, and the minimum voting age for Assembly elections”.¹⁵

As with the Commission on Parliamentary Reform in Scotland, the Expert Panel addressed a range of issues on how the Assembly could function more effectively. Some of the topics it addressed were:

- The size of the Assembly (number of members)
- Extension of the Assembly’s working week
- Increasing the number of sitting weeks
- Support and resources available to members
- Cross-party groups
- Legislative scrutiny
- Financial scrutiny
- Capacity of the committee system (including committee structure and membership)
- The Assembly’s electoral arrangements
- The voting age

The Panel’s report, *A Parliament that works for Wales*¹⁶, was published in December 2017. As noted earlier in this briefing, the Committee on Senedd Electoral Reform was tasked with taking forward some of the recommendations contained in the report.

¹⁵ Expert Panel on Assembly Electoral Reform: https://senedd.wales/en/abthome/about_us-commission_assembly_administration/panel-elec-reform/Pages/Assembly-Electoral-Reform.aspx

¹⁶ Expert Panel on Assembly Electoral Reform, *A Parliament that works for Wales*, November 2017: <https://senedd.wales/NAfW%20Documents/About%20the%20Assembly%20section%20documents/Expert%20Panel%20on%20Assembly%20Electoral%20Reform/A%20Parliament%20that%20Works%20for%20Wales.pdf>