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Contents

Executive Summary

- A vast range of policy and administrative issues are available for attention from committees in the three devolved institutions. In the limited time available, they need to both concentrate on a small number of issues where they can make a significant contribution, as well as complying with the functions outlined in Standing Orders.

- Committees will inevitably react to events and Executive priorities in shaping their work-plans. However, they should also attempt to steer their own course, by drawing a balance between policy development work, investigations of problems, and scrutiny which is purely reactive.

- For the most part committees have followed the standard methods of gathering information and taking evidence used by Westminster committees. There have been a few innovative practices, which have been quite successful, and perhaps more direct contact with members of the public through visits than is typical at Westminster. Committees could extend the use of innovative practices such as sub-committees or reporters, seminars, and conferences.

- Research services have increased in their scope through the first term of the devolved institutions. The use of special advisers has become more measured as a result.

the Public Accounts Committee and the National Audit Office at Westminster: those committees have slightly different names in each institution.[4]

- 'Executive' is used to refer to the Governments of Scotland, Wales, and Northern Ireland.
- 'Devolved assemblies' has been used to refer to the non-executive sides of the Scottish Parliament, Northern Ireland Assembly and National Assembly for Wales.

7.   We would like to thank all of the officials and elected members in the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly who took the time to be interviewed on a topic which, in most cases, was not at the head of their list of concerns. In particular we would like to thank the three clerks who acted as points of contact for the research—Adrian Crompton in Wales, Christine Darrah in Northern Ireland, and Joanna Hardy in Scotland—who have been an enormous boon in advising on interviews, on reports, and pointing out omissions. We would also like to thank their respective managers, Marie Knox, Debbie Pritchard, and Elizabeth Watson, for allowing them to spend a considerable amount of time working with us on this research.

8.   Committees in the three devolved assemblies share one central characteristic: their resources and capacity are tiny in comparison to the executive. Committees have at most a few full-time staff and a small number of elected members, for whom the committee is one amongst many priorities. To carry out their role of scrutinising the executive in a situation of such disparity, committees need to be smart. They need to focus their resources at the points of maximum potential impact; use any available means of extending the time available to them to scrutinise; and to use the full range of means of influence, besides formal meetings and hearings (which constitute the most common conception of 'scrutiny').

9.   In each assembly, the committees have powers to send for persons and papers within the institution. These powers are statutory in origin and hence more restricted than those available at Westminster—for instance, in Wales the National Assembly can only apply them to certain public bodies.[5] Their membership is proportional to party strengths in the assembly, and varies from 7 (some Scottish committees) up to 17 (Committee of the Centre in Northern Ireland). Most contain between 9 and 11 members. Typically, committees meet either weekly or fortnightly for a period of 2-3 hours. Each has at least one dedicated clerk, and some also have an assistant or access to a pool of assistants.

10.   Each committee also, at the time of writing, has access to between 1 and 2.5 full-time equivalent staff for research purposes within the respective assemblies' library and information services. The number of staff who work full-time for committees has implications for the role of the members. Members invariably have huge demands on their time, and the possibility of enquiries becoming staff-driven becomes increasingly real. But it is vital that members lead the enquiry process, as scrutiny itself is a function of democratic procedure and not merely a bureaucratic process.

11.   Membership of the committees is selected by the political parties. The membership of most committees suffers from a high turnover (see Appendix 3). High turnover may be due to elected members being appointed to the executive, which normally leads to a knock-on effect throughout most of an assembly's committees, or it may be due to internal political party decisions. It is not conducive to the development of a collective memory or a team spirit for the committees. Collective memory is important to allow previous experience to be brought to bear on current reviews; team spirit is important to permit cross-party concentration on effective scrutiny. However, there is little that committees can do about high turnover, as committee membership remains in the hands of the political parties. A change to this situation would require collective action by backbenchers against their own party machines.

12.   Evidence indicates that smaller committees enjoy better attendance records. The Committee of the Centre, in Northern Ireland, contained 17 members, but experienced increasing delays obtaining a quorum of 5. Respondents suggested that the larger numbers meant that members did not feel an obligation to attend, as they assumed someone else would. In Scotland, an equivalent effect was noticed following a reduction in numbers from 9 to 7 on many committees. Respondents suggested that both attendance, and team spirit, improved:

"I thought it [the reduction] would have a negative impact because we lost a lot of experienced members. But it actually worked better because it felt more like a family or a team effort than it did with 11. They felt more pressure to turn up. If only one member of the SNP turned up, there could be four Labour so they didn't want to be drowned out."

"The dynamics of smaller numbers work better. [There should be] nine at most, but seven on a committee works well. You work as a committee. With 11, people come and go,

they tend not to leave behind their political baggage [when in the committee session]."

13.   The National Assembly for Wales differs considerably from the other two institutions studied in that its Ministers are members of their own subject committees. Constitutionally this is a blurring of the executive and scrutiny roles: it results from the hybrid nature of the Assembly in law. Although having the Executive member on the committee would appear to make scrutiny

Classifying committee reports

15.   So far there has been no agreed typology of committee work, though there is an acknowledgement that there are different kinds of work a committee can do. There is an identifiable difference between a policy review into higher education and a report on the failure

Box 2: other forms of scrutiny:

Legislative and secondary-legislative: subject committees in the Scottish Parliament and Northern Ireland Assembly are obliged to consider primary legislation passing through the institution. This took a very substantial amount of committee time in the first term. The National Assembly for Wales has only secondary legislative powers.

Annual reports and legacy reports

Planning work and selecting topics

20. When deciding what work to do, committees face a number of options. Should they create a balanced workplan at the beginning of a session, or should they leave the workplan fluid in order to respond to events outside their own control? Committees cannot choose a subject to inquire into whilst the relevant policy world and actors stay still. In particular, how much should the executive be consulted when drawing up the workplan, and indeed how much should the committee be driven by executive actions? Committee workplans inevitably include enquiries and evidence sessions that come about for a variety of these reasons. In order to be capable of independent scrutiny and innovative in their own right, a committee must take control of its own agenda and preserve the ability to respond to events. This section outlines what gets onto a committee's agenda, and how.

Setting the workplan

21. The committees in each devolved institution maintain a rolling workplan over a twelve-month session. In each institution, each committee would deal with a mixture of regular business, conducted at each meeting, and longer-term business, consisting of some form of large-scale enquiry. This balance is demonstrated in Table 2.

22. In the Scottish Parliament it has been normal practice for the committee to have an initial meeting, or frequently an away-day, at the beginning of each Parliamentary year where members give suggestions for enquiries. The clerk would then produce a short briefing outlining the possibilities of each enquiry. The Committee would then vote, often using a multivote system, to choose between the competing reports.

23. Committees have less discretion over the items listed under 'short-term business'. Committees must deal with these issues in order to comply with the standing orders setting them up, although the time balance between the items may vary between committees according to the preferences of chair and members. But these items are either responses to events taking place elsewhere, or routine items relating to other agencies.

24. The scrutiny of NDPBs (non-departmental public bodies) deserves some attention, as closer scrutiny of NDPB plans and performance was expected to be a significant benefit of devolved government. In practice regular scrutiny of NDPBs has been variable. To some extent the audit office and public audit committee take the responsibility for ensuring efficiency and propriety of NDPBs, but scrutiny of their policy falls to subject committees.

25. Scrutiny of NDPBs in Wales has been relatively systematic. One of the processes studied was the annual scrutiny of the Countryside Commission for Wales (CCW). This takes place in a single three-hour session once per year, when CCW, the Environment Agency, and the three Welsh national parks authorities are questioned on their performances and plans. Opinions differed on the effectiveness of this session. One respondent suggested that it was growing in effectiveness, as the committee's awareness of ongoing policy issues became stronger and the NDPBs themselves became accustomed to being scrutinised. Another suggested that one annual three-hour session fectivTD0.025 Tc(awarenes signinad64.ato havein-0rogne

session each or scrutiny of them should be subsumed into wider reviews of the policies that they were concerned with.

26. The committee's discretion over its long-term business is far greater. Committees must make decisions about the balance between policy reviews, performance enquiries and other pressing matters, and the items listed under 'short-term business'. We have referred to the need to transact 'short-term business' to comply with standing orders, but two other factors limit committee discretion over long-term business: large policy reviews and executive policy-making.

Executive pre-emption

27. Many strategic forward reviews have run in parallel to executive or executive agency enquiries into similar subjects, with limited dialogue between the two sides. For committees, this may mean that the executive is not disposed to listen to their recommendations, or decides its policy before the committee's report appears. Unless there is a real gulf of trust between the two sides, such duplication is also to be avoided purely because it is inefficient. However, committees sometimes decided to investigate subjects which were already under review by the civil service, under the aegis of the executive, in order to educate themselves:

"We had programmed a large section of time to look at the [forthcoming] Bill clause by clause…[but it was delayed. So] we thought it would not be a waste of time to do some preparatory work, so we did a number of enquiries—into large scale voluntary transfers, homelessness, housing generally."

28. In Wales, Ministerial presence on committees can lead to attempted "thunder stealing" by the Minister who, having sat through the deliberations, knows the themes in the report and is able to respond immediately with a press-release rebutting committee criticisms if she so chooses. Clearly in all three territories ministers respond to committee criticisms, but they do not have the same opportunity to pre-empt them.

29. In consequence, some committees in all three devolved assemblies found it difficult to produce a proactive agenda, being obliged to react to legislation and departmental initiatives. In some cases it had become clear that the executive was bringing forward plans either to legislate or to initiate a change in policy. Committees would therefore feel it appropriate to investigate the executive's proposals, or, if these were not to hand, the subject generally:

"There tend to be other areas that emerge over the course of a year. Whether they are sparked by the legislative programme or by government action, or by other events—for example, the SQA enquiry was a direct result of the failure of the exam system in Scotland."

30. One respondent believed that strategic reviews of this kind could not produce detailed policy prescriptions in themselves—which was the job of the executive:

"[I wonder] how far using committees to actually bring forward detailed recommendations on policy is the right thing to do. If you go for a commission, working in a very intensive way, which is able to do detailed analysis and quantification and all those kind of things and come forward with recommendations in a way that a committee could never do."

31. The exchange of information between executive reviews and committee reviews was not guaranteed. Both in Scotland and Northern Ireland, each executive department contains a Departmental Committee Liaison Officer who is the formal point of contact between the committee clerks and the executive. In Northern Ireland, committees might obtain general background papers from the executive but there was no sense of a two-way process where the committee was intimately involved in the making of departmental policy.

32. Interviews did not produce any clear view about whether it was necessary for a committee to carry out independent subject reviews *because* the department was carrying out a review, or whether committee enquiries should dovetail with departmental reviews. The rationale for carrying out a review seemed to be purely that the subject was topical or of interest. Most respondents did not critique the process, though the following respondent did suggest that committee time could be better used:

"I thought there was a bit of duplication, because the Northern Ireland Housing Executive carried out its own enquiry into

homelessness. We haven't seen the outcome of that, but I felt that Committee time was not best used by spending time doing what another agency had already done. And if you look at the recommendations made in the [committee's] report, a lot of them actually mirror what the Housing Executive said."

Disruption of workplans

33.   In the first term of the devolved bodies there has been a tendency to launch large strategic forward reviews into a wide range of policy areas, which were previously directed on a UK-wide basis with little territorial consideration. One respondent talked of a committee "that was notorious in its desire to change the world." Such reviews consider a wide range of strategically important issues, but have dominated workplans at the expense of more focused, short-term studies. Enquiries' terms of reference have typically been very wide and inclusive. Many of them have over-run and disrupted the forward workplan, and their inclusive, strategic nature predisposes them to doing so.

34.   Workplans can be disrupted by the need to enquire into topical issues. Some enquiries need to be carried out quickly, either to influence executive actions before they occur or to strike whilst the media spotlight is still on an issue. In deciding to carry out short, sharp enquiries, committees must weigh up the benefits and drawbacks of lengthy versus fast work. It is important that committees do carry out quick reports on topical issues, as it signals to the public that committees are concerned with relevant matters: and, as respondents openly admitted, enquiries into high-profile issues were a useful means to publicity for their committee. Similarly, some respondents felt that their position in a mechanism of public accountability put them under a duty to investigate potential misdeeds, as in the case of the Titanic Quarter leases in Northern Ireland:

"The fact that something quite secretive was being embarked up on by the Belfast Harbour Commissioners together with the company [Harland & Wolff] meant that we were alarmed that we didn't know what was going on. We had to react and we had to react strongly.... I don't think we thought very carefully or very deeply about the extent of the

*enquiry. We just wanted to know what was going on."*

35.   Few respondents mentioned time constraints as a significant factor in their decision-making over what to investigate: each enquiry was allowed to run its course. There were very few instances where a committee would interrupt one enquiry to begin another. Respondents did not perceive the length of time spent on individual enquiries as a problem, although for clerks it could be a source of frustration: taking evidence in strategic enquiries might be timetabled over a six-month period, which might then itself slip.

36.   One respondent admitted that their committee had expressed a desire to run a short enquiry, but then asked for broad wide-sweeping terms of reference from which a long enquiry was bound to follow. Another stated that relatively long enquiries would frequently be driven to a sudden conclusion:

"The committee decided, all committees do this, that all of a sudden it was very, very urgent. We always see that. It starts off very slowly and usually stops, dips, and the last bit is usually really truncated."

37.   It is easy, therefore, for large strategic reviews to crowd out event enquiries by virtue of expanding into the space provided for them. Committees would benefit from not only planning the length of the enquiry, but setting the time allocated to various parts of it, to prevent a rush when the deadline is approaching.

38.   Committees would benefit from greater balance between strategic policy reviews and the other types of enquiry listed in Box 1. The terms of reference for committees requires them to do a variety of work, but so far holding ministers to regular account has tended to suffer due to concentration on large reviews. For instance, a committee could limit itself to one strategic policy review per 12-18 months. The motives for lengthy enquiries are often that the committee wants to build up a bank of expertise and knowledge and create some original research in a field. This is a worthy aim, but it is not the only function of committees. It is also sometimes the case that a lengthy enquiry is the result of a lack of thought as to the aims and feasibility of an enquiry in the planning stage,
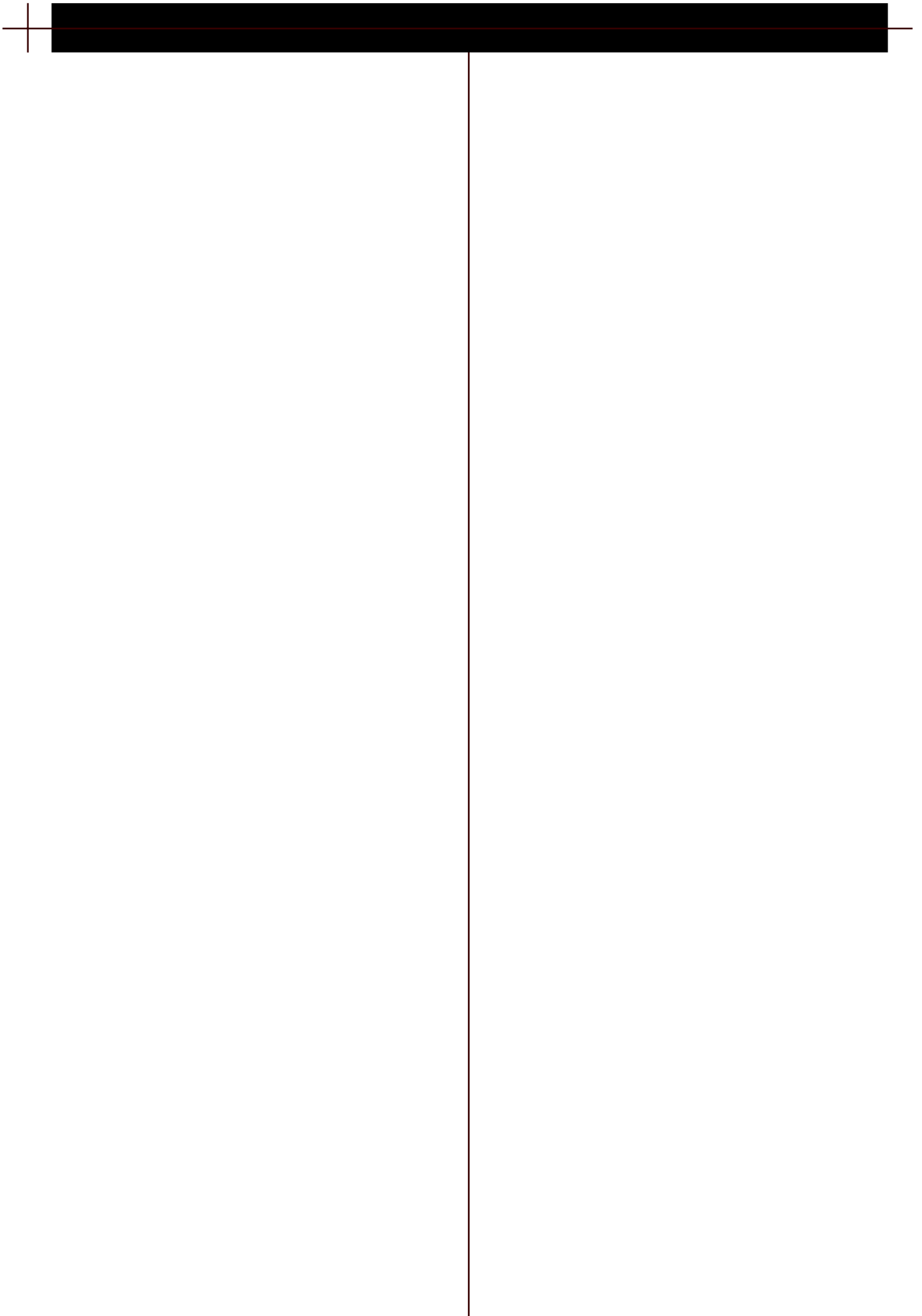
report on a subject is a necessary but not sufficient element of effective scrutiny.

- Committees should timetable each part of the enquiry. It may be helpful to use external deadlines (such as government announcements) in this regard.

- Reporters are an extremely effective means of enhancing committee capacity, and of undertaking fact-finding missions, where a committee has a number of matters demanding its attention. However, reporters need a disproportionate amount of support time from committee staff and research services in order to complete an effective report. This must be taken into account at the planning stage.

- Committees should consider their relationship with the executive in relation to policy development. They could, for instance, agree to share consultation data or wait until the executive has produced a summary of responses, allowing committees just to take oral evidence. Committees could structure their workplans so that consultees are not approached by either side at the same time: this is a drain on consultees' resources.

may grow in the next few years as methods become more sophisticated.

52.   Another respondent spoke of "natural people" to invite to give evidence on given issues. In most enquiries, explicitly or implicitly, there were certain organisations who would be automatically invited to either submit written or

evidence should have been kept from the public eye: "the argument was whether scrapping the particular views he had given from the report would set a dangerous precedent and my view was that it would." The evidence was retained in the public record.

Specialist research

58.   Committees requiring research, as distinct from submitted written evidence, can choose between:

- briefings from the committee clerk;
- commissioning external research;
- briefings from researchers in the assemblies' library and research services department;
- appointing a special adviser.

59.   Table 3 below shows the enquiries studied on which a special adviser was appointed. Clerks' briefings were usually not used on enquiries where a special adviser was appointed (though the Tourism enquiry in Northern Ireland was an exception to this rule), nor are they required for audit enquiries. Clerks' briefings are typically short and are not intended as expert opinion or advice: they simply assemble the relevant issues in an accessible fashion for members.

60.   Normally, clerks make the decision to access library and research services, if members have requested a briefing to which they cannot do justice:

> *"Other committees use Research and Library Services in a different way, to help identify key issues for consultation documents. I tend to respect their role, to be used not sparingly but sensibly, efficiently. I'm very selective about when I refer to them, and it's always a substantial piece of work, not a two-page paper that someone else can do."*
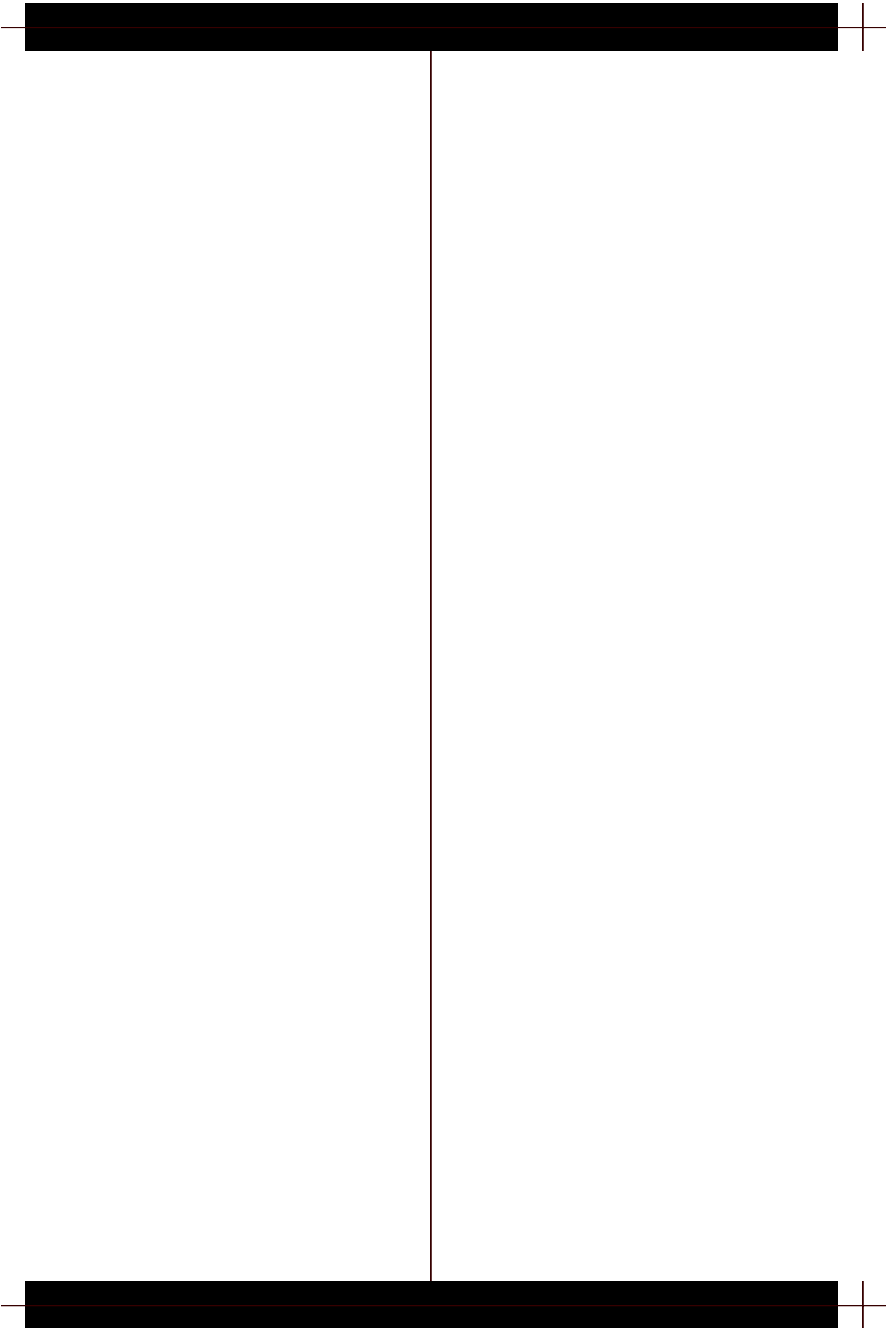
for the sake of it, they need to make a contribution and of course they need to be able to deliver. I have been on committees where the special adviser has delivered a report that has been absolutely awful."

71.   However, it is possible that the absence of a special adviser might compromise the quality of the enquiry. The Social Development Committee in Northern Ireland did not appoint an adviser to its Homelessness enquiry, because several members came from constituencies with severe housing shortages or related social problems. But most of them sat for Belfast constituencies, and in the words of one, "I don't think we really appreciated that homelessness was a rural phenomenon as well, and we had to adjust some of the evidence we took to invite some groups from rural areas later on in the process, whom maybe we would have got [earlier] if we had advertised [for written evidence]." The presence of a special adviser would very likely have picked up on this omission earlier in the process.

Who is appointed?

72.   The way that committees have selected and appointed special advisers has changed since 1999. Although the norm in Scotland and Wales is now through open advertisement, one respondent admitted that early on advisers had been appointed from lists of people known to the committee secretariat. Individuals can register interest in becoming a special adviser on the Scottish Parliament's website. They are then selected from that list according to committee requirements: hence their appointment may still take place without open competition.

73.   Special advisers are typically established experts in an academic field closely related to the subject of the enquiry. Committees considered it important that they had up-to-date knowledge of the field under study. This often makes the field of candidates small, and creates associated problems. For instance, Dr Leslie Hobson was appointed special adviser to the Higher Education Review in Wales, despite being Vice-Chancellor to the University of Glamorgan, the only higher education institution in Wales not to belong to the federal University of Wales. On paper this appears a strong potential conflict of interest, the more so as there were many rumours that the outcome of the review would be voluntary or enforced mergers

between institutions. Respondents on this case study defended the decision, indicating that any special adviser with sufficient knowledge of the issues was likely *ipso facto* to be in a position of potential conflict. The appointment was made through open competition and individuals from other universities had been free to apply. The only way to categorically prevent this is to use internal researchers in place of external special advisers or to appoint two advisers.

74.   The appointment of the Independent Investigator on the Nantygwyddon enquiry, in Wales, was an unusual step in accessing expert advice. David Purchon was essentially asked to carry out the entire enquiry, interviewing witnesses and bringing his expertise (he is a senior environmental health officer) to bear on

Box 3: Nantygwyddon

Nantygwyddon was a landfill site in the Rhondda valleys which had long been the source of complaints, from local residents, that it was causing ill-health, smells, and even birth defects. During the early minority government in the National Assembly for Wales (1999-2000), a resolution was passed that the Environment, Planning and Transport committee should undertake an investigation, in consultation with the Environment Minister, with the assistance of an independent investigator.

David Purchon was appointed as investigator by the Minister for Environment on the recommendation of two members of the Environment, Planning and Transport Committee and an independent assessor. His terms of reference were set by the Committee, and he was obliged to report periodically to the Committee. His investigation had affinities with committee enquiries: he took evidence from members of the public and from relevant public bodies, such as the local health authority and the Environment Agency. Purchon was a senior environmental health officer with some thirty years' experience, and hence was aware of issues and standard practices in environmental health.

The investigator's report produced was some 50 pages long, with substantial appendices in addition. The investigation took place over a period of 14 months at a total cost of some £250,000, including two specialist reports commissioned by the investigator. In its own report to plenary, the Committee adopted all of the recommendations of the investigator's report.

Factors which distinguish this investigation from most others include:

- The very local nature of the issues (though the investigation has subsequently informed the public health and environmental strategies of the Assembly);
- The scientific complexity of the issues—which continued to cause controversy after the publication of the investigator's report, due to disagreements over the interpretation of some decisions, over some facts, and over the validity of some recommendations;
- The lack of involvement of Committee members in much of the initial evidence-taking. Members were able to question public officials in considerable detail, because of the quantity of information available to them from the investigator's report. As with public audit committee reports, the committee did not need to spend a long time obtaining the most basic information from witnesses, but could conduct a high-level debate from the beginning;
- Putting a subject expert (the investigator) in charge of choosing witnesses and taking evidence. This is a qualitatively different relationship between specialist and process from that which exists when a committee appoints a special adviser;

There are many ways in which the independent investigation could become the template for certain forms of 'disaster enquiry'. The Nantygwyddon landfill tip had long been a source of controversy. Most critically, it was a politically-charged issue between Labour and Plaid Cymru, a s,1782 TD-ble detcomjD-.0008 TcTc0.igationlly7teh88 conduct a higod 01 Tcosing non-178eci and0 ielalis

Commissioner "the clerks would…write a list and people would argue for names".

Recommendations

- When inviting written evidence, committees need to consider carefully what type of evidence they want. Are they interested in the views of the public, or of professionals and interest groups, or both? This will influence how the evidence is invited.
- Members are unlikely to have time to read a large number of submissions, but clerks should not sift the submissions for the members as all views must be considered by committee. Clerks may wish to summarise the main points from the written evidence as well as passing on the individual submissions to committee members.
- Committees must consider the likely responses to different kinds of publicity. Newspaper advertising is likely to reach a wide audience. Advertising on a website will reach only a computer-literate audience, which is a subset of the whole population.
- The most valuable submissions are evidence-based rather than opinion based. Witnesses seeking to have the most impact on the committee should

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Oral evidence

Methods of gathering oral evidence

77.   All of the enquiries studied took some form of oral evidence. The majority was taken in the form of hearings: witnesses were invited to appear before the Committee and were questioned. This is a part of the 'classical scrutiny' model used by Westminster committees.

78.   The witnesses invited to give oral evidence were normally a sub-set of those submitting written evidence. On Homelessness in Northern Ireland, there was conscious intention in this:

> "Where three or four organisations said the same thing we took the lead organisation or the organisation.... who we felt had something to add, had sufficient weight, or whom we would like to ask something [specific]".

79.   In that particular instance the sub-set contained some 70% of organisations submitting written evidence. As with written evidence, committees might invite oral evidence either to achieve buy-in from major organisations, or to bring in informed opinion. The review of higher education in Wales invited representatives of every HE institution, students' union representatives, and members of executive agencies such as ELWa and the representative organisation Higher Education Wales. The process of obtaining 'informed opinion' is partly political:

> "You can tell when [their] written evidence comes in that they would be good.... Some people you have to have for credibility of the report, and would be upset if you didn't have them in. The second [group] was stuff that caught our eye."

80.   Alternative models of oral evidence can be divided into two types.

- A range of methods drawn from public consultation and participation may be used: for instance, focus groups, informal discussions, or citizens' jury-type events.
- The committee, or committee members, may travel to relevant organisations and 1) discuss issues informally or be shown the work of those organisations, or 2) hold formal or semi-formal hearings in the organisation's building: this may encourage members of traditionally excluded groups to be more forthcoming in giving evidence to the committee.

Aims of oral evidence

81.   Two purposes can be identified for taking oral evidence:

- Members have an opportunity to question witnesses in greater detail about issues raised in the written submissions. This is the sole function of the oral evidence process for audit reports, where the questioning is interrogative. By contrast, on strategic reviews, where the questioning is normally informative, it was more common for witnesses to be asked general questions.
- Oral evidence sessions allowed interested organisations to make their views known—even if the committee did not reflect them all in the final report. This was particularly important where strategic reviews were running alongside executive-led reviews or planned legislation, allowing opportunities for cross-fertilisation between the two reviews. Executive review reports often (whether sincerely or due to political etiquette) pay tribute to committee reviews: examples are the Northern Ireland Housing Executive review on homelessness and the Welsh Department of Education's "Reaching Higher". One Welsh respondent was quite open about this cross-fertilisation, facilitated in Wales by the minister being a member of the departmental committee:

> "If the minister takes a complete role in the investigation, he can give a steer as to what's acceptable and what's not acceptable. There's little point in coming up with recommendations which will be wholly rejected. That's why I become bothered when the Minister doesn't become involved. He has access to information and data which we don't.... so at least we can focus on issues we can influence and not those we can't."

82.   Cases where those giving oral evidence had not given written evidence first tended to occur where evidence was being taken from hard to reach groups such as the young people

within the committee. However, others made it clear (and transcripts backed them up) that they would interrupt members who asked irrelevant questions—even if the answers might prove of interest to the committee—and witnesses who either rambled or made irrelevant points. This

Questions in oral evidence sessions

90. Questions can be divided into two types: interrogative and informative. Interrogative questions are asked when members are seeking information which the witnesses would not readily give to them: sometimes, the non-availability of this information is the justification for the enquiry taking place. They predominate in audit work and event enquiries.

91. Informative questions are the norm in strategic policy reviews, where the committee is seeking information on a particular subject and witnesses are willing to provide it. As suggested above, innovative evidence-taking methods are used to ask this kind of question, although it is possible for interrogative questions to occur here too if witnesses appear to contradict themselves or to be unclear.

92. The questions asked in oral evidence sessions are clearly critical to effective scrutiny. They are also the facet of scrutiny which varies the most between committees. The discrete parts of the questioning process are as follows:

• **Drawing up the questions.** On many enquiries, the committee chair will ask the special adviser or the clerk to draw up a list of questions for oral hearings (though this was being actively discouraged in the Northern Ireland Assembly). On public audit committees, this role is filled by the audit office. Frequently, though, questions written by a clerk or special adviser (especially on a strategic policy review) will be generic suggestions of topics, allowing members the final say over phrasing and focus. On one enquiry studied, the chair opted for a more informal process:

> *"What I didn't want to do is what I think select committees do, and that's increase the element of falseness by having planned questions. I just think that it's about a general conversation, a backwards and forwards discussion."*

• **Dividing the questions between members.** The questions or topics may be divided up either by the chair, just before the hearing begins, or by the clerks with the agreement of members when preparing briefing materials. If a question or questions match known interests of particular members, those questions will normally be allocated to them. That member may be able to challenge the witness on factual accuracy or interpretation: this occurred in the Brucellosis Outbreak enquiry (Northern Ireland) and the Foot and Mouth Disease enquiry in Wales. This process does not preclude the same members bringing questions which have been prepared by their party researchers or by themselves, nor does it preclude the members asking one or more supplementary (and perhaps more focused) questions to their allocated one.

Even distribution of questions can also be required in order to give all parties and points of view an equal stage during committee meetings. Some committees avoided the formal distribution of questions on the grounds that it would produce a stilted evidence session with individuals taking it in turn to read out their allotted questions. Also, as one respondent stated, "we have some very strong members, and some members who are not so strong in respect of being proactive and asking questions." This unspoken knowledge influenced the proceedings themselves, but did not appear to affect the plans for proceedings. Some committees allowed stronger members to dominate proceedings, by virtue of not having a formal mechanism by which each member would take their turn. Meanwhile, in other committees there is a fairly strong political (with a small p) pressure to permit every member a chance to ask a question. Prioritising equal time allocation in this way can lead to important issues being skimmed over or to repetition, and is not necessarily the best use of time to achieve effective scrutiny.

• **Questions being called by the chair.** Committees vary in the length of time permitted to members to ask their questions. In some cases the chair will take members one by one, permitting each to ask one question plus a supplementary: hence all members will be able to speak. In others members indicate to the chair when they would like to ask a question. Also at issue here is the length of time available: public audit committees frequently hold very long meetings, allowing members as much as half an hour each to develop a line of questioning. Being able to return to an issue again and again is particularly valuable for interrogative questions:

> *"If you are busy moving on from a questioner you are doing more of a process than trying to*

who is asking the question. Sometimes you find that one person keeps going down a particular road because it is useful. It makes room for only two other people to ask questions."

93.   The importance of members being able to ask questions effectively was stressed by almost all of those interviewed. Questioning is a skill which assemblies could consider providing training sessions for. The skills of either teasing out information from people who are nervous or inexperienced at giving evidence, or interrogating those who are less willing to be open with the committee, are quite specialised. They are also critical to effective scrutiny:

"The only specific training I have been given was IT training. No training is given to members on chairmanship. I think that people need to learn how they should behave as a member of a committee. I think there should be some sort of training. New members need a particular type of support around the committee process. It is a steep learning curve."

"You are dealing with, in some of these enquiries, some incredibly bright people, unless you can get them on the run—in order to do that you do have to sometimes be smarter and cleverer than they are and follow up answers. If you simply accept them then you are a walkover."

Informative questions

94.   The prepared questions are frequently general and indicative of a subject area, not dealing with focused, specific issues. Respondents indicated that, when ministers or officials were giving evidence, committee members occasionally asked questions which related to events or people in their constituencies. Properly, these belong in plenary sessions or letters to ministers, and they are almost never an effective approach. Ministers and officials cannot be expected to know the details of individual cases, and inevitably promise to look into the matter and produce a written note. This is not an effective way of holding the executive to account in the round.

95.   Executive-side respondents indicated that they were often not taxed by appearing in front of committees:

"We had gone to great lengths to brief ourselves, and the Minister, on all the details of the issues, in anticipation of tough questions. Well, none of it was needed. The questions just weren't probing enough."

96.   A number of members also experienced frustration with this:

"If members just ask the questions they're given, they are pretty disappointing, pretty poor, especially given the type of individuals we're interviewing in these situations. There needs to be much more in-depth scrutiny."

"You always knew somebody who had just taken this list of questions and wanted to get their name on the record, read a question out, and it was quite clear they hadn't read any of the background. Once they'd got an answer to the question that was it, they didn't want to pursue it any further, they felt they'd done their bit. If the questions are simply regarded as lead-ins and people have done the background work, I suppose they're a useful tool…. The researchers probably [already] knew the answers to all these questions."

97.   Questioning on policy reviews, and occasionally on disaster enquiries, was frequently general in character. Typical questions which recur in transcripts include "what could best be done for the future of [this policy]?" and "what lessons have you learned from this episode?". Such general questions invite answers which are short on specifics and

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general answer. Questions which either

- Committee chairs perform well in ensuring political balance and permitting all members to participate. Committee chairs should encourage members to ask short questions and to avoid mini-statements.

Report drafting, publication and follow-up

108. The majority of enquiries studied followed the format used at Westminster, of publishing a lengthy report together with a set of recommendations. Some reports, particularly those produced by reporters, were shorter. Reports from the Scottish Parliament and the Northern Ireland Assembly were published in standard covers and format, whilst those from the National Assembly for Wales were published in brighter covers with pictures. (The drabness of Westminster committee reports was a recurring issue in the debate over reform of the select committees of the House of Commons.)

109. The only enquiry not to publish a final report was the Northern Ireland tourism enquiry

minority remarks in published reports, were slightly more prominent in the Scottish Parliament than elsewhere.

114. In Northern Ireland, politics was also remarkably absent from committee reports, although some respondents indicated that this led to very broad ranges of recommendations which were not necessarily consistent with one another. The existence of agreed committee reports itself has a strong political significance in Northern Ireland: more than one respondent described the committees as the opposition under the consociational form of government. Their impact could be particularly felt on policy questions when they pre-empted Executive action, because the Executive had no existing policy position to defend:

"The report is not going to create a children's commissioner. It is going to be a leverage to it. You want to send a signal to the department that we have looked at this and this is the sort of thing we want to see. So a department is going to know when it comes back with something different that there is likely to be some resistance…. There's no point in their producing a consultation document to be rejected, although I think if you want it to be as effective a signal to the department as possible then it does look better if everyone endorses it."

115. Though this quote came from Northern Ireland, where committees can table amendments for debate in plenary on legislation on devolved matters, it applies equally in Wales where there is no legislative power. Few Welsh ministers would ignore committee views with equanimity. There were also indications that on a few occasions, committee chairs had discussed the wording of recommendations with the relevant Minister. This does not necessarily indicate that the committee process is compromised. It may reflect a desire on both sides to achieve a working relationship which is of maximum benefit, recognising the existing power differential between committee and Executive.

116. Where committees cannot overcome internal dissent, it may become necessary to indicate this in the final report. A number of different ways of doing this are evident from the reports studied. The Higher Education Policy Review in the National Assembly for Wales contained a motion for amendment put forward in an appendix. The Scottish Parliament Enterprise and Lifelong Learning Committee footnoted the dissent of five of its members from two of its recommendations but did not publish the minority view. Guidance exists in all three institutions on how to do this.

117. The interest of the executive in the report is critical for its success, and this cuts to one of the lasting debates about the new devolved institutions. Subject committees were expected to form a counterweight to the executive, avoiding the acknowledged problem of the over-mighty executive found at Westminster. The reality has not matched the messianic hopes of the run-up to 1999, and has varied between institution. In Northern Ireland, committees have been relatively influential, as the consociational executive and dispersed party system means that the Northern Ireland Assembly does not have a normal system of electoral arithmetic. In the limited life of the Assembly they had considerable influence on bills, in particular. Scottish committees have had some influence on bills but have been subject, in policy work, to lack of interest from the executive: they have few means of forcing the executive to listen to their work.

118. The same has been true of Welsh committees, but the hybrid system in Wales where the Minister is also a member of his/her committee means that the two 'sides' are in fairly close contact. Respondents from both sides claim that this obliges executive staff to take more notice of committee views than they otherwise might, and it ensures that committees are more likely to carry out work that is timely and influential (we referred above to the tendency for executive reviews to run alongside committee work). The sheer physical size of these institutions should not be underestimated as a factor in enabling closer working: with 129, 108, and 60 members in Scotland, Northern Ireland and Wales respectively, and far smaller office space, it is much easier physically for cross-fertilisation and contact to take place than at Westminster, with 659 MPs and an executive

provocation of political division further into the enquiry.

- In order to follow up on recommendations, the recommendations themselves must be clearly worded. If there are a large number of recommendations made by the committee, key recommendations should be picked out
- Committees should not be afraid to work with the executive side, to a limited degree, to help them produce reports which have the maximum possible impact.
- It is important that committees have their own branding as a separate entity to the executive. This can be achieved through attempting to gain media coverage both for evidence sessions and for the launch of formal reports.

Before setting out on a report the clerks and the chair should work through the following checklist:

- Contact the department to see what work is planned on the issue by the executive to avoid doubling up on consultations and to ensure work;
- Think about the potential for political division within the committee;
- What resources would you need and would you get value for money?
- What are the potential media hooks?
- Is the enquiry you have in mind feasible in the time you can allocate to it?

The following lists reproduce the recommendations from the main sections of the briefing. They are re-arranged here according to which scrutiny 'actors' they are directed at.

Clerks

- The substantive work that committees do must be member rather than officer led. Committee staff may play the leading role in scoping out a potential enquiry identified by the members, but the workplan must be set (or at the least, approved) by the committee and the members must play the central role in the enquiry process.
- When terms of reference are set for each enquiry, they must be set with a mind to the fact that the most powerful reports are those which achieve consensus. Terms of reference therefore should avoid the provocation of political division further into the enquiry.
- Committees should timetable each part of the enquiry. It may be helpful to use external deadlines (such as government announcementThe0.0Tj0 is

- methods such as informal visits and focus groups should be considered.
- Where committees wish to ask informative questions, or to hear from groups unused to taking part in the political process, they should be more ready to use alternative and innovative methods. These have been used more commonly with hard-to-reach groups in the enquiries studied, allowing those groups to contribute from their own turf.
- Committees should ensure that oral questions do not repeat questions already asked of organisations through written consultation, but that they expand on information already in the Committee's possession. Repetition of basic information by witnesses is not a good use of either witnesses' or the Committee's time.
- To get the most out of extended questioning opportunities, committee members should ensure that they are well prepared both in their understanding of the subject area and with their questions. They should also feel free to suggest questions to the chair, the clerk, or other members in pre-meetings.

Ministers

- Ministers in Scotland and Northern Ireland should deliver a regular bi-monthly or quarterly report as ministers in Wales do. The production of a topical report or a regular question session is a particularly useful way for committee and department to keep up with one another's work, and for routine questions to be asked without the need for a specific enquiry.
- Committees should consider their relationship with the executive in relation to policy development. They could, for instance, agree to share consultation data or wait until the executive has produced a summary of responses, allowing committees just to take oral evidence. Committees could structure their workplans so that consultees are not approached by either side at the same time: this is a drain on consultees' resources.
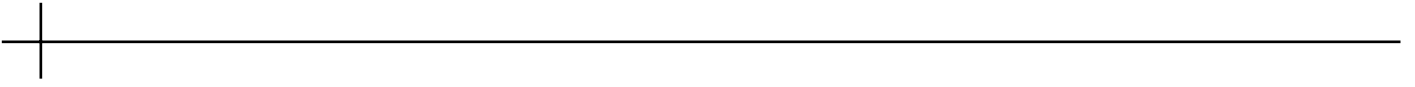
Others

- Long-term membership of a committee is a vital factor in developing a committee team spirit that offers an alternative focus

of loyalty to political party loyalty. It deserves encouragement, to achieve more effective scrutiny. Turnover on committees should be planned by political parties with this in mind.
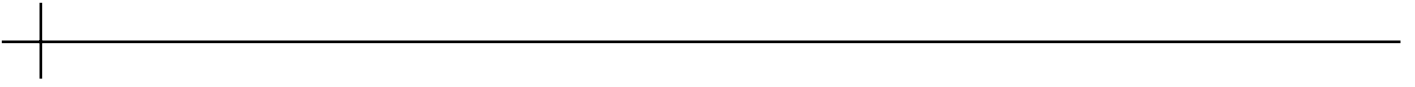- Committees should not be afraid to work with the executive side, to a limited degree, to help them produce reports which have the maximum possible impact.
- It is important that committees have their own branding as a separate entity to the executive. This can be achieved through attempting to gain media coverage both for evidence sessions and for the launch of formal reports.
- The most valuable submissions are evidence-based rather than opinion based. Witnesses seeking to have the most impact on the committee should produce evidence to support their cases.

Appendix 1: Committees in the devolved institutions (1999–2003)

	Northern Ireland	Wales	Scotland
List of 'subject' committees	Agriculture & Rural Development	Agriculture & Rural Development	Education Culture & Sport

Wales
Subject Committees

Title and Membership

9.1   The committees established under section 57(1) of the Act shall be known as subject committees. Each subject committee shall, subject to the requirements of section 57(8), have at least 7 and not more than 11 members, including the chair and the Minister who is a member of the committee by virtue of section 57(4).

Chairs of Subject Committees

9.2   Chairs of subject committees shall be selected from a panel of Members elected by the Assembly so as to secure that, as far as is practicable, the balance of the parties in the Assembly is reflected in the membership of the panel. The panel shall have as many members as there are subject committees. Ministers shall not be eligible to be members of the panel.

9.3   The Business Minister shall table motions for election of Members as panel members, and for selection of chairs of particular subject committees, following consultation in the

committees and the Assembly Cabinet on their draft programmes, and shall have regard to the comments received in finalising them. Each subject committee shall notify the Assembly of its programmes, and shall report to the Assembly from time to time on its progress in fulfilling them.

Meetings of Subject Committees

9.10 The chair of each subject committee shall determine the agendas for its meetings, in consultation with the relevant Minister; but the Minister may require specified items to be discussed at meetings of a subject committee or a sub-committee. At the request of any two of its members, the committee may resolve to include an item of business on the agenda of a specified future meeting.

9.11 The Minister shall from time to time report on matters relating to the discharge of his or her responsibilities; but a member of a subject committee may propose that the Minister should provide the committee with an oral or written report on a specified matter within the committee's remit, and if the committee so resolves the Minister shall submit a report on the matter within a period agreed with the chair.

Attendance at Meetings

9.12 Members who are not members of a subject committee may attend the committee's meetings when these are in public. With the permission of the chair secured in advance they may make brief representations on individual items of committee business touching on particular constituency or regional interests before the discussion on those is concluded, but they may not vote. A Minister who is not a member of a particular subject committee may attend a meeting of that committee where the matter under consideration is closely related to his or her responsibilities, and may participate in the meeting with the consent of the chair.

9.13 A committee member who has given tiassis

may be referred to it by the Parliament or another committee and shall report to the Parliament on any such matter.

2.   In particular, each committee shall conduct such enquiries into such competent matters as it may consider appropriate or as the Parliament or another committee may require, and may-

(a)   consider the policy and administration of the Scottish Administration upon any competent matter;

(b) -if the person nominated does not take up the specified office within 15 minutes, of the request being made, (whether that person was present when nominated or not),

unless the nominating officer, the person nominated, or another Member of the Assembly asks the Assembly to extend that time limit, and gives a reason or reasons for so asking and the Assembly approves the granting of the extension, the power shall be exercisable by the nominating officer of the party for which the formula in paragraph (4) gives the next highest figure.

(8) Paragraph (7) shall not operate whilst the Assembly is adjourned.

(9) Paragraphs (5) to (7) shall be applied as many times as may be necessary to secure that each of the Chairperson and Deputy Chairperson offices has been allocated and taken up as required by paragraph (1).

(10) A Minister or junior Minister may not be the Chairperson or Deputy Chairperson of a Statutory Committee.

(11) Where a nomination is made, on acceptance, the Speaker shall announce and confirm the appointment.

(12) No person may be nominated to serve as a Chairperson or Deputy Chairperson of a Committee if they have already been appointed as a Chairperson or Deputy Chairperson of a Committee established under this Standing Order.

(13) A Chairperson or Deputy Chairperson shall cease to hold office if:

(a) -he/she resigns by notice in writing to the Speaker;

(b) -he/she ceases to be a Member of the Assembly; or

(c) -he/she is dismissed by the nominating officer of the party which nominated him/her and the Speaker is notified of his/her dismissal.

(14) The nominating officer of a party may at any time nominate a different member of the party to replace a Chairperson or Deputy Chairperson of a Committee established under

paragraph (3) who is a member of that party and Aon or or
of11 Tc09 T0(()19.5 who is a

(d)   -subject to paragraphs (a) and (c) above, that the number of seats on each Statutory Committee which is allocated to each political party as far as possible bears the same proportion to the number of seats on that Committee as is borne by the number of members of that party to the membership of the Assembly.

(5)   The allocation of seats to parties or individual Members shall be undertaken by the Business Committee and shall be approved by resolution of the Assembly.

(6)   The Business Committee shall review the representation of the different political parties as soon as may be following any numerical changes to party memberships in the Assembly.

(7)   The quorum of every Statutory Committee shall be five and such quorum shall be deemed to be present where Members are linked by a video-conferencing facility.

(8)   The period of the continuance of every Statutory Committee shall be for the duration of the Assembly unless the Assembly determines otherwise.

(9)   All questions at a Statutory Committee shall be decided by a simple majority. Voting shall be by show of hands unless otherwise requested by a Member of the Committee.

Appendix 3: Turnover rates in Scottish and Welsh committees

National Assembly for Wales

Committee Name	Turnover
Agriculture and Rural Development (June 1999–April 2003)	122%
Culture (June 1999–April 2003)	25%
Economic Development (June 1999–April 2003)	60%
Education and Life-long Learning (November 2000–April 2003)	33%
Health and Social Services (June 1999–April 2003)	75%
Environment, Planning and Transport (April 2000–April 2003)	122%
Local Government and Housing (March 2000–April 2003)	13%

Scottish Parliament

Committee name	Turnover
Health and Community Care	89%
Audit	143%
Education Culture and Sport	157%
Enterprise and Lifelong Learning	127%
Transport and Environment	133%
Equal Opportunities	133%
European and External Relations	122%
Finance	186%
Justice 1	100%
Justice 2	71%
Local Government	143%
Procedures	114%
Public Petitions	86%
Rural Development (previously Rural Affairs)	118%
Social Justice (previously social inclusion housing and voluntary)	157%