



Hansard Society written evidence to the House of Commons Procedure Committee inquiry 'Establishing select committees in a new Parliament'

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Author: Dr Brigid Fowler (Senior Researcher)

Summary

Just before the House returned from recess in September 2017, the Hansard Society published a blogpost decrying the fact that its select committees had not yet been re-established following the general election, and arguing that it should amend its Standing Orders to ensure that this situation could not arise again. The post set out the timelines by which House of Commons select committees had been re-established after the two earlier post-Wright-reform elections, in 2010 and 2015, and it pointed out that the Wright Committee had recommended that Standing Orders be amended to ensure the timely nomination of committee members, but that this recommendation had never been implemented.¹

The Hansard Society continues to believe that a lengthy post-election delay in the re-establishment of select committees damages their reputation and effective operation, and thus also those of the House. This brief submission therefore represents the argument of the September 2017 blogpost in favour of the amendment of Standing Orders to introduce a deadline for the nomination of select committee members after a general election.

Submission

'The Procedure Committee would like to invite written evidence to address ... The effect on the reputation and integrity of the select committee system of undue delay in the House's appointment of its select committees'

1. Undue delay in select committees' post-election re-establishment carries five risks:

- i) To the **ongoing scrutiny of government and policy**. The lack of relevant select committees risks causing difficulties most obviously where scrutiny work is based on an ongoing flow of documents (European Scrutiny Committee) or where scrutiny is tied to particular events that will not wait (some public appointments; legislation; the budget). Any programme of evidence sessions agreed with ministers or officials in terms of 'X-many per year', most notably the Liaison Committee's sessions with the Prime Minister, fall into a similar category. However, select committees now routinely conduct such a volume of scrutiny work, in such important fields, that committees' absence for any period risks opening scrutiny gaps and obliging committees, once appointed, to play 'catch up'. This jeopardises the quality of scrutiny being delivered by the select committee system.

¹ 'A summer without select committees - and why it must never happen again', 3 September 2017, <http://www.hansardsociety.org.uk/blog/a-summer-without-select-committees-and-why-it-must-never-happen-again>. Appended as an Annex to this submission.

- ii) To the **public reputation of, and public engagement with, select committees and the House**. Select committees now enjoy a higher public and media profile than they once did. Backed by the investment of House staff and communications resources, select committees now make considerable efforts to encourage the public to engage with them, whether through the traditional submission of formal evidence, less traditional transmission of views (social media; online forums), participation in outreach events or simply attending or watching evidence sessions. Having encouraged the public to look to select committees, the House risks undermining this aspect of its own work if its committees are then missing for months. A member of the public who wished to raise an issue, but found there was no committee to raise it with, would be much less likely to try again in future.

The risk to committees' public engagement from any lengthy post-election absence arises most acutely in connection with the *Petitions Committee*. Our research and that of others shows that e-petitions are among the most popular forms of political engagement. In our annual Audit of Political Engagement, the number of people reporting that they have created or signed an e-petition in the last year has risen steadily from 9% in the 2013 Audit (Audit 10) to 24% in 2018 (Audit 15). In the 2018 Audit, creating or signing an e-petition was the second most popular form of traditional political activity (after voting), and the second most popular form of online political engagement.

Both of these risks - i) to scrutiny work and ii) to select committees' public reputation - would be most likely to be realised if it *turned out that an important development had been missed when committees were in abeyance, or if some scandal or crisis broke without select committees being in place to respond*.

Both of these risks also have the potential to generate *contrasts with the Lords* which would presumably be uncomfortable for the elected House. The Lords reliably gets its select committees up and running relatively quickly after the start of a new Parliament. For example, the Commons European Scrutiny Committee met for the first time after the 2017 general election on 1 November 2017; the Lords European Union Committee was nominated on 27 June and was already working in early July.

Overall, by charging select committees with the conduct of scrutiny on behalf of itself and the public, but then potentially allowing this function to go undone for months after a general election, the House risks appearing not to be serious about its scrutiny role, while being casual about the public's views of and engagement with its select committees.

- iii) To the **efficient use of staff resources**. Select committee staff are permanently in place, even if select committees are not yet re-established. Particularly where select committee scrutiny work is document-based, or

where chairs have been elected and are able to indicate areas of future work they would like to pursue, there is useful work that staff are able to undertake even in the absence of their select committee(s). However, there are also limits to such work in the absence of formal committee decisions about work programmes and inquiry subjects and witnesses. Inasmuch as this results in more hurried activity when select committees are re-established, this again risks detracting from the quality of scrutiny.

- iv) To **select committee cohesion**. Under the current system, for committees with chairs elected by the whole House, it is possible for chairs to be in place months before committees' remaining members are nominated. This is preferable to an alternative in which even elected chairs are not in place for an extended period after a general election. However, the potential lengthy time gap between the election of chairs and the nomination of other members carries risks for relations between chairs and other committee members. It would be useful, if possible, to take soundings from those concerned in 2017 as to whether this risk was real, or indeed realised.
- v) To the **efficient arrangement of House business**. The Backbench Business Committee and Liaison Committee now have responsibilities for the programming of some business on the floor of the House which they cannot fulfil if they have not been re-established.

'The Procedure Committee would like to invite written evidence to address ...Changes which might expedite the election of committee members by parties ... [and] Potential for delay in assembling the full list of proposed memberships for decision by the House'

2. The Wright Committee intended that one of the results of its reforms would be the prevention of lengthy delays in reconstituting select committees after general elections. In its report, it said that it 'consider[ed] that under any system the principal select committees should be nominated within no more than six weeks of the Queen's Speech and that this should be laid down in Standing Orders and capable of being enforced by the Speaker.'² However, this recommendation was never implemented in full. The House inserted into Standing Orders a set of deadlines to govern the election of select committee chairs, but not any provision concerning the second part of the process of getting committees re-established, namely the nomination of members. Rather than inserting any provision on this issue into Standing Orders, in a motion the House 'approve[d] the principle that the principal select committees ought to be appointed within six weeks of the beginning of the Session at the start of a new Parliament', in line with the Wright Committee's preferred timeframe.³

² House of Commons Reform Committee, First Report of Session 2008–09, *Rebuilding the House*, HC 1117, para 56,

<https://publications.parliament.uk/pa/cm200809/cmselect/cmrefhoc/1117/111711.htm>

³ HC Deb 22 Feb 2010 c130,

<https://publications.parliament.uk/pa/cm200910/cmhansrd/cm100222/debtext/100222-0021.htm>

3. It appeared in 2017 that the main source of the delay in nominating select committee members was the election of a hung Parliament and the formation of a minority government, which had knock-on effects on the politics of allocating committee places among parties. A number of analysts, including Professor John Curtice in the 'Britain Votes 2017' special issue of the Hansard Society journal *Parliamentary Affairs*, regard hung parliaments as increasingly normal rather than the exceptions.⁴ The need for provisions in Standing Orders to ensure the timely post-election nomination of select committee members has thus strengthened since the Wright Committee reported.

4. In 2017, the delay in re-establishing select committees after the general election appeared especially great, in calendar rather than sitting-day terms, because the committees were not in place before the start of the summer recess. Since the Wright Committee reported, the Fixed-term Parliaments Act 2011 (FTPA) has provide that, in the relevant year, general elections are held on the first Thursday in May. The FTPA might thus be thought to guarantee that there will be sufficient time between a general election and the summer recess to get select committees in place. However, 2017 showed that the FTPA does not prevent a general election being held on dates other than the first Thursday in May - including, in late spring/early summer, much closer to the summer recess.

5. In our blogpost, we recommended that Standing Orders be amended so as to require that the motion for the nomination of select committee members is made 'within six weeks of the Queen's Speech or at least two sitting days before the House rises for any adjournment of longer than one month, whichever is the earlier'. This would adhere to the original six-week Wright Committee recommendation, while also covering a situation in which the Queen's Speech takes place less than six weeks before an extended recess.

Our suggestion of a minimum of two sitting days between nomination and any recess was intended to ensure that newly re-constituted committees could at least hold a first meeting before any recess, to enable them to elect chairs (where relevant) and take initial decisions about working methods and work programmes. If the Committee were to receive evidence from clerks or Members that, to achieve this aim, it would be advisable to provide for more than two sitting days (or that it would be sufficient to provide for one), we would be in favour of changing our suggested two days accordingly.

Our prime objective, namely to ensure that select committees can be up and running before the summer break, accords with the recommendation made by the Liaison Committee in its very first report, over a decade before the Wright

⁴ John Curtice, 'How the Electoral System Failed to Deliver-Again', *Parliamentary Affairs*, Vol, 71, Special issue 'Britain Votes 2017', March 2018, pp 29-45, https://academic.oup.com/pa/article/71/suppl_1/29/4930850

Committee reported: 'At the very latest, the committees should be nominated in sufficient time for them to begin work before the following recess.'⁵

⁵ House of Commons Liaison Committee, First Report of Session 1996-97, *The Work of Select Committees*, HC 323, para 5,
<https://publications.parliament.uk/pa/cm199697/cmselect/cmliaison/323i/lc0104.htm#4>

Annex: 'A summer without select committees - and why it must never happen again'

[Hansard Society blog, 3 September 2017](#)

The House of Commons returns on 5 September still without its select committees. By failing to get its select committees back up and running for so long after the general election, the House risks appearing not to be serious about its scrutiny role. The hiatus has exposed a piece of unfinished business from the Wright reforms that needs to be resolved.

The House of Commons entrusts important tasks to its select committees that it wants done. In particular, select committees are the principal vehicle through which the elected House holds the government to account through scrutiny - including, currently, of Brexit.

But when the House returns on 5 September, it will do so still without having got its select committees back up and running after the general election. It will thus have left their tasks un-done for nearly three months - and counting. There is no guarantee that the House will re-constitute its select committees during the short September sitting. Adding on the election period, the Commons will have had no select committees for over four months at least, since Parliament prorogued on 27 April. If any other major public organisation allowed one of its core tasks to go un-done for so long, it would be accused of complacency, if not irresponsibility.

In practice, though, does the lack of select committees over the summer really matter? Select committees don't normally meet during recesses. Even if they had been nominated before the summer, they would not have had time before the break to undertake any substantive work. And chairs have been in place since mid-July, for those committees whose chairs are elected by the whole House. Several, like [Yvette Cooper](#), [Frank Field](#), [Nicky Morgan](#) and [Rachel Reeves](#), have been busy already, outlining prospective areas of work and starting to gather information and set out views.

Scrutiny gaps

But, [as former Commons Clerk of Committees Andrew Kennon](#) has suggested, there can be risks to future committee cohesion if elected chairs get too far ahead of themselves. And chairs on their own cannot formally launch committee inquiries. This means that, for Members, staff and external stakeholders, the potentially valuable summer months to do early inquiry work have been lost. And there has not even been the option of committees potentially meeting, or taking a decision by email, if a sufficiently urgent situation had arisen. When the select committees are – presumably – finally re-constituted during the autumn, they will be under pressure to start holding hearings and producing reports with less time, strategic thinking, background knowledge and evidence than they might have liked. The failure to get the committees up and running before the summer could thus lower the quality of scrutiny well into 2018.

In the meantime, scrutiny gaps have opened up. For example, counting from [her last appearance in December 2016](#), the Prime Minister is likely to go nearly a year without a grilling by the Liaison Committee, instead of the agreed thrice-yearly sessions. And, [as previous European Scrutiny Committee \(ESC\) Chair Bill Cash has pointed out](#), with no control over the flow of documents the document-based scrutiny committees (the ESC and the Joint Committee on Statutory Instruments) face a growing backlog, hampering effective scrutiny.

Brexit break

The absence of the Commons select committees has been most glaring with respect to Brexit.

There is no scope here to detail all the Brexit developments that have taken place since late April, while the Commons has been without its select committees - suffice to say that the committees could be playing Brexit catch-up for months.

The hiatus also means that the Commons will have to debate the second reading of the EU (Withdrawal) Bill on 7 and 11 September without any of its select committees having been able to examine the Bill. The previous Procedure Committee recommended that, if the Bill were announced in the 2017 Queen's Speech, '[the chairs and members of the \[relevant\] select committees ... should be in place before the Bill starts its legislative journey](#)'. If the failure to re-constitute the committees drags on, it will be hard for the Procedure Committee, for example, to make any impact from scrutinising the Bill before its committee stage in October.

Lords in the lead

Brexit has also highlighted another uncomfortable aspect of the Commons' failure: the contrast with the Lords. The [Lords nominated its select committees in 2017 on 27 June](#), just four sitting days after the Queen's Speech.

The Lords is, admittedly, unencumbered by the same sensitivities over party balance on committees, or the need for parties to hold internal elections before putting forward their select committee members. However, the impression is - as in some other areas - that the unelected House takes its scrutiny responsibilities more seriously than its elected counterpart.

Brexit Secretary David Davis's only select committee grilling between March and at least September will be his [11 July appearance before the Lords EU Committee](#). And it has been the Lords Committee that has [waded into a wrangle with Mr Davis](#) to try to establish the principle that he (or one of his ministers or officials) should appear before a select committee after every Brexit negotiating round, even in recess. Summer 2017 will set a precedent in this respect for 2018, when the Brexit negotiations could be in an even more critical phase. A concerted campaign between the Lords EU Committee and Commons Exiting the EU Committee might have had more force - but has been impossible because the Commons committee has no members.

Beyond scrutiny

The select committees' lengthy absence is also affecting non-scrutiny tasks with which the House has entrusted them. For example:

Both the Liaison Committee and the Backbench Business Committee have a role in the scheduling of business in the Chamber and Westminster Hall, which they cannot currently fulfil.

Select committees have been at the forefront of the Commons' efforts to engage more effectively with the public, and the e-petitions system is Parliament's '[public front door](#)'. But the door remains firmly shut as long as the Petitions Committee is in abeyance.

Wright gone wrong

By hampering effective scrutiny, public engagement and select committees' other roles, the committees' absence over summer 2017 risks undermining the Commons' longer-term effort to revitalise them through the Wright reforms, implemented in 2010 to help restore the House's reputation after the expenses scandal.

The Wright Committee saw reformed select committees - more fully creatures of the House and backbenchers, not the government or party whips - as key to the development of a House of Commons which was more independent of the government and thus more credible as its scrutineer.

The introduction of elections by the whole House for some select committee chairs, and internal party elections for select committee members, were flagship elements in the reforms.

One of the points of the changes was also supposed to be that they would prevent lengthy delays in reconstituting select committees after general elections.

The House has invested significantly in the post-Wright select committees, and the reforms have borne some fruit, in terms of both public awareness and engagement, and policy influence.

But the committees' lengthy absence now risks undermining the Commons' own long-term efforts to build the select committee 'brand'. And the failure to nominate the committees for so long after the election is a failure to meet a specific Wright objective. There have been instances after previous late spring elections in which one or two committees were nominated only in the autumn, but 2017 is the first time since the Wright reforms that the House has failed to get any of its select committees up and running before the summer.

What's the problem in 2017?

At first glance, it appears that the problem in 2017 is simply timing. Given the general election date, there was simply not enough time to get the select committees up and running before the summer recess. As the table shows, since the Wright reforms the House has nominated its select committees during the period from roughly 20 to around 35 sitting days after the Queen's Speech. In 2017,

[as Leader of the House Andrea Leadsom has pointed out](#), there were only 18 sitting days between the Queen's Speech and the summer. Under any political circumstances, it would have been tight to get select committees nominated before the break.

But, on closer inspection, it seems that the problem is politics, not time. This is best indicated by the fact that the Committee of Selection has not been nominated. The Committee of Selection is the body that puts the names of proposed select committee members (and public bill committee members) before the House for approval. It is the gateway body: no Committee of Selection means no other select committees (and no public bill committees).

But the Committee of Selection is itself a select committee. Its membership has to be approved by the House; and - as for other select committees - before that can happen, the places on the committee must be allocated among parties. In 2010 and 2015, the Committee of Selection was nominated 15 and 13 days after the Queen's Speech, respectively. In 2017, there would have been time for this before the summer.

The fact that the Committee of Selection has not been nominated suggests strongly that, rather than a lack of time, matters are stuck at the allocation of select committee places among parties. And this in turn suggests that the problem is the need to reflect, within the current committee system, the election of a hung parliament and the formation of a minority government.

This has not happened since 1974, when the House had no system of permanent departmental select committees. The House is thus now operating without a precedent. At stake is whether a minority government, with an agreement with another party for support on key votes, should or should not have a majority on select committees. But in failing to resolve this issue, the House has now violated the norm that, after late spring/early summer elections, select committees should be nominated before the summer recess. This could set a damaging new precedent of its own.

Standing Order shortfall

The timely nomination of select committees was one of the aims of the Wright reforms - but it turns out that the Commons' failure in 2017 to nominate the committees before the summer was enabled by a shortcoming in the reforms' implementation.

When it approved its new select committee system in 2010, [the House inserted deadlines into its Standing Orders](#) to ensure that the first stages in getting post-election select committees up and running - for relevant committees, the allocation of chairmanships to parties, and the election of chairs - are achieved within at most one month of the Queen's Speech.

The Wright Committee also wanted to set a deadline for the next stage - the nomination of committee members. The Committee recommended that 'the principal select committees should be nominated within no more than six weeks of

the Queen's Speech and that this should be laid down in Standing Orders and capable of being enforced by the Speaker'.

But this recommendation did not make it into Standing Orders. Instead, in a motion the House merely '[approve\[d\] the principle that the principal select committees ought to be appointed within six weeks of the beginning of the Session at the start of a new Parliament](#)'.

It is this difference, between stages of the select committee election and nomination process which do and do not have deadlines in Standing Orders, that has facilitated the current existence of chairs without committees, in some cases, and not even chairs, in others.

Standing Order amendment

Should the House amend its Standing Orders finally to implement the Wright recommendation for a select committee nomination deadline?

With the government having abandoned its plans to repeal the Fixed-term Parliaments Act (FTPA), it might be thought that there is no need. Future general elections will be held on the first Thursday in May, leaving time to nominate the select committees before the summer, as in 2010 and 2015.

But 2017 has shown that the FTPA does not prevent a government from holding a general election when it wishes. The political class has a well-established preference for late spring/early summer polls. And, inasmuch as the problem is the hung parliament, not time, it would be brave to rest the future functioning of the select committee system on the assumption that this will never recur. It would thus be best not simply to assume that 2017 could never happen again.

2017 has shown that the six-week limit mooted in 2010 would not do the trick: given the timings, a six-week deadline would not have obliged the House to nominate its select committees before the summer.

Instead, the relevant Standing Order (SO 121) needs an addition something like this:

'The chair or another member of the Committee of Selection shall, on behalf of the Committee, make a motion for the nomination of members of select committees appointed under the Standing Orders of this House within six weeks of the Queen's Speech or at least two sitting days before the House rises for any adjournment of longer than one month, whichever is the earlier.'

By implying a potential threat to the long summer recess, this might concentrate minds. But it also avoids tackling directly the circumstances of a hung parliament, since any attempt to limit the flexibility to deal with particular political circumstances would probably meet resistance.

If it really wanted to show that it was serious, the House could even give the Speaker a backstop power - available if the Committee of Selection failed to meet its deadline - to impose an allocation of select committee places and thus, if necessary, get the Committee of Selection re-constituted and able to fulfil its role.

The [BBC's Mark D'Arcy has suggested](#) that during its imminent September sitting the Commons may be asked to endorse a solution that bypasses the Committee of Selection altogether, in order to get at least some select committees up and running. But this sounds like a temporary and unsatisfactory fix. The House could best ensure that it never again goes a summer without select committees by putting a provision ensuring this into its Standing Orders.

House of Commons select committees: Timelines at the start of the 2010, 2015 and 2017 Parliaments

	2010	Sitting day	2015	Sitting day	2017	Sitting day
General Election	06 May		07 May		08 Jun	
New House of Commons 1st meeting	18 May		18 May		13 Jun	
Queen's Speech	25 May	1	27 May	1	21 Jun	1
Motion passed allocating chairmanships to parties	26 May	2	03 Jun	5	04 Jul	8
Chairs elected by House (for relevant committees)	9 Jun, 22 Jun (new Backbench Business Committee)	9, 16	17 Jun	13	12 Jul	13
Committee of Selection nominated	21 Jun	15	17 Jun	13		
Members of other select committees nominated	29 Jun (Backbench Business - elected by whole House on this occasion only), 12 Jul (most others), 19 Jul (Liaison), 26 Jul (remaining committees)	20, 27, 31, 35	6, 7, 8, 13, 15, 20 Jul; 9 Sep (Standards), 10 Sep (Liaison)	23, 24, 25, 27, 29, 31, 35, 36		
Rose for summer recess	27 Jul	36	21 Jul	32	20 Jul	18

Sources: Hansard; House of Commons Votes and Proceedings; House of Commons Sessional Returns; House of Commons website; House of Commons Library