



Findings from the Economic and Research Council's  
Research Programme on *Devolution and Constitutional Change*



## *Devolution Briefings*

# *Effective Scrutiny in the Devolved Institutions*

Briefing No. 6, February 2004

### **Key Points**

- A vast range of policy and administrative issues vie for the attention of the committees in the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. In the limited time available, they need to concentrate on a small number of issues where they can make a significant contribution.
- 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.
- Committees have often followed the standard methods of gathering information and taking evidence used by Westminster committees, but have also begun to innovate in significant ways.
- Questioning in oral evidence sessions has been variable in quality. Short questions, and the opportunity to develop a point over several questions, makes for the most effective questioning.
- Committee chairs play a vital role in co-ordinating workplans, meetings, and evidence-taking.
- The impact of committee work on the three devolved executives depends partly on political luck and good timing, but evidence-based recommendations, with cross-party support, can be hard to ignore.

A much-overlooked aspect of the three devolved institutions – the Scottish Parliament, Northern Ireland Assembly and National Assembly for Wales – is the role of committees in the management of the institutions' work. Although this role was much trumpeted in the run-up to devolution, as part of the widespread rhetoric on the 'new politics', there has been much less interest since devolution took place in how the committees have defined and practised their role.

The subject or departmental committees have interpreted their functions – in policy development, budget monitoring, and holding ministers to account – in a variety of ways. There has been little systematic analysis of how they establish their pattern of work, carry out enquiries, and interact with officials and members of the public. The evidence so far indicates that, despite the rhetoric of 'new politics', committee work has largely inherited Westminster thinking. However, there are many signs that the committees are beginning to move beyond their inheritance and explore new methods of interacting with the world outside their institution.

Concentration on detailed policy enquiries, recommendations, and policy development, is more widespread in committee work than quasi-judicial holding ministers to account. This reflects an aspiration for committees to work as partners in the development of public policy. The evidence so far indicates a greater willingness on the part of committees to listen to a range of voices during enquiries. Critically, Executive policy-makers also appear to be better disposed to committee views than their Westminster counterparts.

The variety of work that committees carry out is summarised and classified in Boxes 1 and 2:

### **Box 1 : Committees' Work**

Committees carry out the following types of regular work:

- a) Scrutiny of annual departmental budgets;
- b) Scrutiny of non-departmental public bodies (annual report and accounts);
- c) Scrutiny of primary/secondary legislation ;
- d) Ministerial monthly reports (Wales only)
- e) Responses to topical issues (often one or two hearings, with no report produced)
- f) Annual or legacy reports

### **Box 2: Committee Enquiries**

Committees carry out three basic types of enquiry:

1. Strategic policy review: these are in-depth examinations of a policy field, recommending a shift in direction or starting a policy debate where none currently exists. They may cut across departmental responsibilities. These enquiries typically take considerable amounts of evidence from 'major players' (interest groups, government officials) and sometimes from members of the public or service users.  
*Examples:           Drug Misuse and Deprived Communities (Scotland)*  
*Review of Higher Education (Wales)*
2. Forward policy proposal: these are focused on more specific policies, evaluating proposals made by the government, and suggesting alternatives if appropriate.  
*Examples:           Free Eye Tests for the Elderly (Wales)*  
*Children's Commissioner (Scotland, Northern Ireland)*
3. Event enquiry: these are examinations, normally critical, of existing or past Government policy. This category includes 'disaster' enquiries, and 'topical' enquiries into recent news-worthy events.  
*Examples:           Nantygwyddon (Wales)*  
*Exam Results Enquiry (Scotland)*

### **Agenda-setting**

There is always more for subject committees to investigate than they have time for. Their terms of reference are general, requiring them to examine the policy and expenditure of their department. They therefore need carefully to prioritise those issues where they can have maximum impact. As committees have no formal power to enforce their recommendations, they rely upon the power of persuasion and publicity (and party politics) in order to have their views taken into account. This implies paying particular

attention to issues of public interest, of matters where executive policy is unclear or under review. We found some examples of government policy reviews progressing at the same time as committee reviews into the same subjects, which is unlikely to be a good use of committees' time.

In the new institutions' first term there were several examples of large-scale strategic policy reviews, which overran their time schedule considerably and produced exhaustive reports and lists of recommendations. Though these reviews are certainly worthwhile, it is possible for them to crowd out other work.

A short, focused enquiry into a matter of public concern may produce as significant an impact as a strategic policy review. At the same time, these short enquiries too may disrupt the committee's flow of work. Careful timetabling is a partial solution to this problem.

### **Research and written contributions**

The majority of committees studied have stuck to the Westminster pattern: they begin their enquiries by inviting written evidence. The manner of inviting written evidence varies. Sometimes the enquiry will be advertised on the institution's website, sometimes in 'regional' newspapers. Committees should consider what groups of people are likely to respond in each case when placing these advertisements – regular users of an assembly or parliament website may not accurately represent a range of popular views.

Committee clerks are an often-overlooked repository of knowledge on how to conduct effective enquiries. The clerk is a pivotal figure at all stages: he or she will arrange evidence sessions, obtain and distribute briefing material, on occasions suggest or write questions for members in evidence sessions, and will draft the final report.

The use of expert knowledge by committees varies. Perhaps the most salient point is the expertise of members: it was hoped that the 'new politics' would lead to committee members developing expertise through long service on a single committee. In the event there has been a good deal of membership turnover, sometimes exceeding 100% over the first term (1999-2003). This prevents committees from developing a collective memory or expertise, for which responsibility lies ultimately in the hands of the political parties.

In each institution there is a good level of in-house research expertise. In some cases better use could be made of this research capacity. Special advisers, for instance, were frequently appointed for large strategic enquiries, but there was rarely a clear rationale for doing so. Especially early in the new institutions' lives, external special advisers seem to have been appointed at almost every opportunity because it was normal procedure. Special advisers need only be used for specialist subjects: it is not a good use of their time to ask them to prepare general background papers in their subjects. The actual use made of them varies considerably between committees – in some instances they designed the process from start to finish, suggesting witnesses, lines of enquiry, questions, and then playing a very close role in drafting the final report.

Committees in the Scottish Parliament use reporters – one or two committee members who are tasked either with writing a report on a small, focused issue, or with carrying

out research on a focused issue to feed into a wider enquiry. This is a very effective way both of increasing ‘outreach’ to the electorate and of enhancing the committee’s work capacity.

## **Taking Evidence**

Most committees studied invited a subset of those who have given written evidence to give oral evidence to the committee, in a quasi-judicial fashion. On many enquiries, a few dozen organisations were explicitly invited to submit both written and oral evidence. These organisations were described by one clerk as the ‘natural people’ to ask on any given subject. This may be in part a valid approach, despite potential arguments over who the ‘natural people’ should be. But it will produce a particular kind of evidence, from policy-literate pressure groups with their own agendas, and this must be borne in mind by committees when drawing conclusions.

As with written submissions, decisions on how to take oral evidence should flow from the aim of the enquiry. Committees may be more interested in service-user views than detailed articulation of policy aspirations by major organisations. For instance, committee members on the Scottish Parliament’s enquiry into *Drug Misuse and Deprived Communities* visited drug treatment centres and spoke to recovering addicts. One member summed up the contrast of approach:

*“[Visits are useful] for the purpose of translating our objective enquiry into the realities of somebody’s life. It is good to have somebody explain what the impact of a particular problem is on their life... If you speak to someone who has studied it as an academic, hopefully you will get someone who has looked at the whole area. So you always have to temper the two.”*

Committees in the devolved institutions have tended to take evidence from ‘the general public’ more than is usually at Westminster. They have therefore learnt to be very accommodating for those who find the traditional committee system intimidating, such as young people.

*“It applies to everyone who might be intimidated. You tend to forget because we are here sitting round this table every day that it can be intimidating.”*

Northern Ireland’s Committee of the Centre took evidence from a group of young people during its enquiry into the need for a Children’s Commissioner in Northern Ireland. The group of eleven young people refused to nominate a spokesperson, the normal practice when a group gives evidence. All eleven young people sat at the end of the committee table and answered questions. The committee was accommodating of this.

The committees were also all keen to carry out visits to community groups rather than call them into the Parliament or Assembly building (examples include the NAW inquiry into Nantygwyddon, and the Scottish Parliament’s inquiry into Drugs Misuse in Deprived Communities).

*“Visits are useful for the purpose of translating our objective inquiry into the realities of somebody’s life.”*

There were also attempts at gathering evidence in more innovative ways (see Box 3):

### **Box 3: Innovative Evidence-Gathering**

- The Northern Ireland Enterprise Trade and Investment Committee held two one-day conferences outside Belfast when taking oral evidence as part of their Tourism inquiry. The committee had received 80 written submissions in response to their call for evidence. In their previous inquiries they are invited all those who provided written evidence also to give oral evidence. One member suggested that a conference would save time. Professional conference organisers were employed. The special adviser identified key themes from the written evidence which formed the basis of the break-out sessions.
- The Scottish Parliament's Education, Culture and Sport Committee's inquiry into the need for a Children's Commissioner used a number of different methods of taking evidence from young people. They worked with focus groups, opinion polling, held conferences and took evidence in the traditional committee format.

### **Asking questions**

Questions in evidence sessions can generally be divided into two types:

- **Interrogative questions** are asked when members are seeking information that the witness is reluctant to give.
- **Informative questions** seek to explore public, expert, or interest group opinions.

Committees not only have to think about the best setting for taking evidence, but how best to get the information that they want out of the witness. The way that questions are asked can be crucial. Short questions were overwhelmingly felt to be most effective, with questions containing members' position statements or several sub-questions obtaining far less useful answers. Short questions facilitate a line of questioning being maintained and avoids ambiguity.

*“The shorter the questions the more difficult it is to answer. When people ramble on and ask four or five questions at a time it is dead easy to choose the ones you want to answer and ignore the ones you don't.”*

Some committees use questions written in advance by the committee clerk, whilst others do not. Our research found that both work as long as the members are prepared. If members are not prepared, they may ask a written question without understanding the answer; or they may ask a non-written question which is less than relevant.

The committee chair has a vital role during evidence sessions. Often they open the questioning, or they mop up at the end of the session, asking questions on areas which arose from the evidence given. It is also important for chairs to permit a line of questioning to be taken by a member: many members felt that answers to supplementary questions were far more informative than answers to initial questions. This was normally more effective than a process which focused on every member having their turn. Lots of chairs also saw putting nervous witnesses at ease as part of their role.

## *Committee Reports*

Almost all the inquiries we looked at ended with the publication of a report. Although there is ultimately nothing a committee can do to ensure that the executive accepts the report and moves its recommendations, there are a few things that can help. It is much harder for an executive to disregard a report which does not have the full support of the committee. Therefore, reaching a consensus is a vital part of the scrutiny process. Committees often start by agreeing the use of the evidence in the report, then the least controversial recommendations, then the hardest ones last. Evidence is, therefore vital. Not only does it help the committee agree the recommendations of the report, it gives the executive more reason to take the findings of the report seriously.

For recommendations to be accepted they need to be realistic and well thought through. One way of doing this is to have a good relationship with the executive. In Wales, recommendations are often accepted because the minister (who sits on the committee) will indicate those issues to which the executive is irreversibly committed and those on which it is persuadable. The Scottish Parliament has Departmental Liaison Officers who provide a link between the executive and the relevant committee.

Following up recommendations, and pointing out where they have not been implemented, also helps committees gain purchase on executive policy. In the first term of the devolved institutions, there was more of a desire by committees to mark out their territory than to follow through the progress of earlier recommendations. More follow-up of committee work looks set to occur in the second term, and was encouraged by 'legacy reports' in Scotland and Wales (written by committees for their successors at the end of the term of office). Legacy reports are themselves a useful way of ensuring that committee's work is followed up, especially when there is the level of turnover in committees which was witnessed during the first term.

**Mark Sandford and Lucinda Maer, *Scrutiny under Devolution: committees in the Scottish Parliament, Northern Ireland Assembly and National Assembly for Wales*, Constitution Unit, London, 2003, £8**

This ESRC Briefing is an abstract of the full report of the Constitution Unit's research on committee scrutiny. The Unit is running a two-year project called 'Effective Scrutiny', examining the work of policy development, monitoring, budget examination and holding to account by 'subject' or departmental committees at all tiers of government in the UK. In each of the three institutions, six enquiry reports were selected as case studies, and the process of conducting the enquiry and preparing the report was studied in depth. Agendas, minutes, and transcripts of meetings were obtained, reports and evidence were studied, and interviews were carried out with members, clerks and officials in each institution.

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The Devolution and Constitutional Change Programme was set up by ESRC in 2000 to explore the series of devolution reforms which have established new political institutions in Scotland, Wales, Northern Ireland, London and the other English regions since 1997. It has commissioned 35 projects around the UK to carry out top-class academic research and to contribute to the policy debates surrounding devolution.

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