

Scrutinising Brexit: Parliament faces its biggest challenge

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Briefing paper

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Introduction

Much recent debate around Brexit – in Parliament and the courts – has focused on the role Parliament should play. Questions about Parliament's role in triggering Article 50 or ratifying the final exit deal are highly significant, but equally important will be the role of parliamentary select committees in scrutinising the Brexit process.

In recent years, select committees have gained a growing reputation for influencing policy and holding both government and individuals – such as media mogul Rupert Murdoch and entrepreneur Mike Ashley – to account. Brexit will dominate the political agenda for the coming months and years. Select committees should take the opportunity to make a valuable contribution – or see their relevance and reputation suffer.

In this paper we look at what House of Commons select committees could add to the Brexit process, and set out what they need to do to rise to the challenge they face.

Over 30 inquiries into Brexit, and counting

Scrutiny of Brexit in the Commons has had a shaky start. On the one hand, there has been no shortage of activity: Commons committees have already launched over 18 separate inquiries into the effect of Brexit, alongside a further 13 underway in the House of Lords. This means there are currently over 30 parliamentary inquiries into Brexit – and that's even before the new Exiting the European Union Committee (DExEU Committee) has begun its work. So far these efforts appear to have been uncoordinated, creating a risk of overlap. Over the coming months these, and any further inquiries launched, will absorb a significant amount of civil servant and ministerial time. On the other hand, turf wars over which committee should scrutinise the Department for Exiting the European Union (DExEU) have meant that committee scrutiny of both DExEU and the Department for International Trade (DIT) will begin a full four months after the departments themselves were created.

These issues have played out in the context of apparent government scepticism about parliamentary scrutiny, with the Prime Minister focusing on what won't be possible ("no running commentary") rather than what scrutiny might add to the Brexit process. So far we have had no information about how the Government intends to fulfil the early commitment made by the Secretary of State for Leaving the EU, David Davis, that UK MPs would have at least the same access to information as Members of the European Parliament (MEPs), a pledge that was reiterated by DExEU junior minister Lord Bridges recently. [Based on past international negotiations](#), MEPs will be given detailed information about the progress of the negotiations; access to European Commission meetings about the negotiations; and influence over the Commission's negotiating position. We need to know urgently how the Government intends to ensure that UK parliamentarians are not at a disadvantage in comparison to MEPs when it comes to knowing what is going on during negotiations.

Better scrutiny will result in a better Brexit

The process of the UK leaving the EU is one of the most significant, complex and politically sensitive tasks to face government in recent decades. The Government will have to balance multiple interests and ensure it takes account of both the public preference expressed in the referendum and the huge array of impacts

that disentangling 40 years of EU membership will entail. Parliament's job – of scrutinising the way the Government approaches Brexit and deals with its consequences – will be equally tricky.

Select committee scrutiny will help the Government better understand Parliament's position on various aspects of Brexit. When Theresa May goes to the negotiating table, she needs to know if the options she takes with her are acceptable to Parliament. The idea of coming back with a deal, only for it to be rejected in either House, is certainly not one which she would wish to entertain – particularly if that rejection were to take place at the eleventh hour before the two-year Article 50 time limit expires.

By engaging in the scrutiny process, the Government can help ensure that the exit deal it agrees is one that Parliament will ratify. Engagement with Parliament will signal to the EU that the Government knows which potential deals would command a majority, increasing the UK's credibility as a negotiating partner – and potentially reducing the pressure to compromise on issues that may not be acceptable to Parliament.

There are several other ways in which select committees can make a contribution:

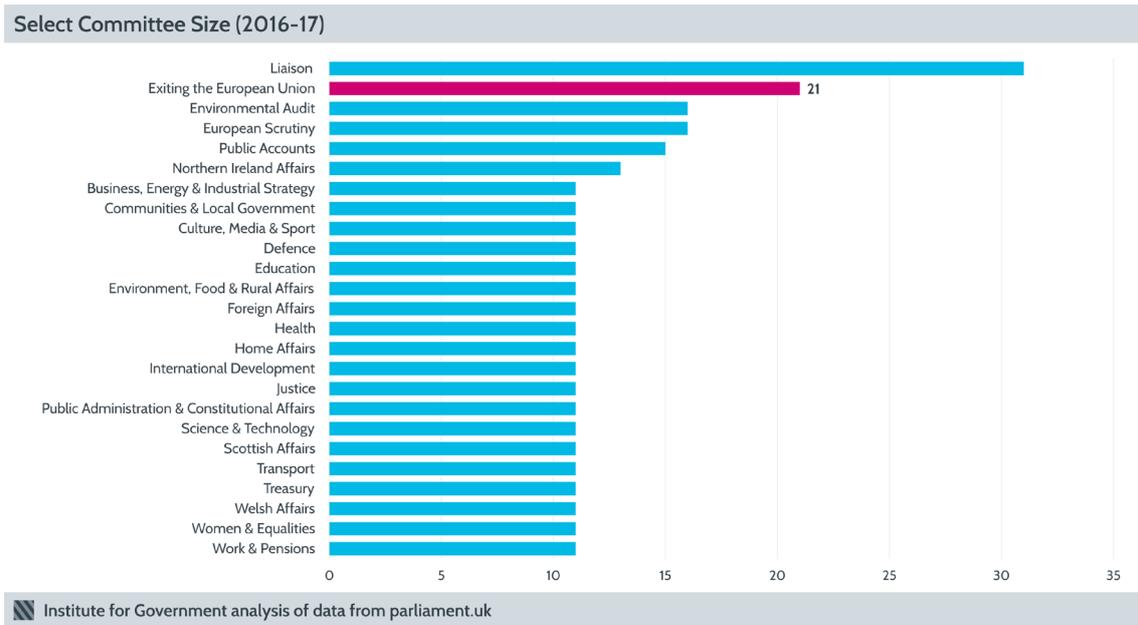
- **Gather evidence about the potential impact of different outcomes:** Select committees have well-established networks which enable them to engage with a wide range of stakeholders. This research could add to the Government's evidence base, helping it to: understand the full range of possible outcomes; establish their potential impacts; and analyse the country's options. Committees can widen the range of voices heard in the debate and ensure that as many views as possible are fully aired. At a time when the Government's own resources are stretched, they should take every opportunity for extra help in the evidence-gathering process.
- **Hold government to account:** One of the most important powers of select committees is their ability to call witnesses to give evidence. Those witnesses often include ministers responsible for specific policy areas. While scrutiny of the actual negotiation process will be challenging, there are many aspects of the Government's approach to Brexit for which MPs can hold ministers to account. These include the way it handles domestic policy consequences such as the implications for the UK's immigration system and customs processes, the resourcing and administration of the key departments, and post-Brexit planning.
- **Build political agreement:** Cross-party committees can add value by identifying common ground between diverse groups of politicians. With an issue as divisive as Brexit, any areas of consensus that can be established will be especially valuable.
- **Engage with the media and public:** Unlike much select committee work, which takes place outside the glare of public scrutiny, many of the Brexit inquiries are likely to attract considerable public and media attention. While individual MPs are usually good at engaging with the public, groups of politicians – committees – are often less so. Nonetheless, with the right resources and support, committees could involve the public in debates about Brexit and raise public awareness of important issues and trade-offs. The Government may do much of its stakeholder engagement in private, but committee scrutiny will allow external views to be put on the record and help inform parliamentary debate.

- **Keep the Government focused on its other priorities:** By continuing to conduct inquiries and hold ministers to account on non-Brexit related domestic priorities and new issues emerging within their policy areas, committees can help ensure the Government maintains focus on these areas.

The DExEU Committee risks being a large but toothless watchdog

If those are the roles that select committees in general could play, what role should be adopted by the new departmental select committee for scrutinising DExEU?

The DExEU Committee will include 10 Conservative, five Labour (including the Chair) and two SNP MPs, together with one each from the Liberal Democrats, the DUP, the SDLP and Plaid Cymru. This is an unusually large committee, with a membership of 21 – the average committee has 11 members. This reflects the pressure there has been on the Government from different political parties wanting representation.



While a large committee enables a wider range of interests to be accommodated, its size will inevitably [hamper the process of effective scrutiny](#). The experience of other large parliamentary committees – including the 31-member Liaison Committee – indicates that the DExEU Committee is likely to experience problems with:

- **Effective questioning of witnesses.** When numerous MPs are involved in an evidence session, questioning often becomes superficial and 'scatter-gun' – with less likelihood of probing lines of questioning being maintained.
- **Consistency of attendance.** Large committees often find that a slightly different cast list attends each meeting, so each member ends up hearing a different combination of evidence and drawing different conclusions.

- **Speaking with one voice.** Achieving consensus would anyway be difficult on a subject as contentious as Brexit. But finding common positions amongst large numbers of MPs is likely to be even more so.

If the DExEU Committee wants to **contribute to the UK's negotiating position and strategy**, it could do this by exploring the possible impacts of Brexit on different sectors, constituencies and places, and identifying any ways in which the Government might mitigate potential negative effects. But it will have to move fast: there are only 17 weeks that Parliament is sitting between the start of November (the earliest possible date the Committee will be formed) and the end of March deadline the Government has set to trigger Article 50. One way to start would be to engage with members and committees of the devolved legislatures, to help maximise the chances of an agreed UK-wide position being reached.

The committee may wish to attempt to **scrutinise the negotiations**. This process would ideally begin before Article 50 is triggered, with analysis of the Government's proposed negotiating objectives. Even if the Government decides not to publish these in advance of triggering Article 50, it is likely they will be leaked as soon as they are communicated to Brussels. As mentioned above, we know Theresa May does not intend to provide a running commentary to Parliament, so the committee may wish to push for private meetings with ministers to discuss sensitive elements of the negotiation, or for sight of confidential documents for scrutiny. There is a precedent for doing this: the Intelligence and Security Committee, which scrutinises the work of the UK security services, holds meetings and evidence sessions in private and issues heavily vetted public reports so as not to reveal confidential information.

Another potential role for the DExEU Committee could be **engaging with the public** – to ensure a wide range of views on the possible outcomes and implications of Brexit is communicated to Government, and to enhance public understanding of the exit process. This is an area where the size of the committee could be an advantage – providing a greater number of MPs to get out of Westminster and travel around the country engaging the public.

There are strong grounds for allocating the DExEU Committee **additional resources**, but these will have to be prioritised carefully. The committee is allowed to draw on the assistance of in-house legal expertise as well as to appoint legal advisers – an extension of the usual power of committees to appoint 'specialist advisers'. It may also choose to draw on the precedent of the [Parliamentary Commission on Banking Standards, on which we reported in 2015](#), by appointing numerous such advisers to help MPs get up to speed on some of the more technical issues associated with exiting the EU.

The Liaison Committee must step up

With 31 Brexit-related inquiries underway in 24 committees across the Commons and Lords, there is a pressing need for coordination. This is a role which should be taken on by the Liaison Committee (which is made up of the chairs of all the other select committees), which has a remit to promote effective scrutiny across the committee system. However, this coordination role is so important that, if the Liaison Committee fails to step up, the DExEU Committee should take on this role itself.

The coordination effort needs to identify gaps in scrutiny and help minimise overlap between the work of different committees. Going further, it could draw together outputs from other committees in order to consolidate knowledge and expertise. This could help create a coherent parliamentary contribution to Brexit, rather than a panoply of individual bits of work.

There are likely to be multiple calls on key civil servants and ministers to give evidence to parliamentary committees. Such accountability is crucial, but will be a further call on the already stretched resources of Whitehall, with the same witnesses being called before different committees and being asked similar questions. The Liaison Committee must work with the Government to agree how often ministers and their senior advisers can be called to give evidence, and how to manage competing requests from different committees. Importantly, it will also have to agree how and when the Prime Minister will give evidence to the Liaison Committee on Brexit-related issues. There is an established expectation that the Prime Minister will appear before the Liaison Committee three times in each parliamentary session, but the significance of Brexit presents a pressing case for more frequent opportunities for MPs to undertake detailed questioning of the Prime Minister in a committee setting.

Every committee needs to rise to the challenge

Committees focusing on Brexit must start by working out exactly how their efforts will be communicated to, and influence, the Government. Parliamentary committees are often poor at thinking about how they can ensure their work has an actual impact on government. Committees publishing long reports in the run up to the triggering of Article 50, for example, are unlikely to find they receive a rapid response from Whitehall.

Ministers and civil servants operating under intense public scrutiny will inevitably have limited capacity to listen to, and take on board, the conclusions of parliamentary committees. It will be even more difficult than usual for committees to get the kind of departmental engagement they normally seek. This means they will need to formulate a serious engagement plan at the very start of any inquiry. Any committee that endeavours to make recommendations about Brexit will need to think about how theirs can cut through the noise to make a real impact.

Committees should work together when their work overlaps departmental boundaries. We know committees are stronger when they do coordinate: the joint Business, Innovation and Skills (BIS) and Work and Pensions Committees' [evidence sessions on the collapse of BHS](#) are a good example of enhanced impact from joint working.

Conclusion

Select committees – including the ones whose chairs are soon to be elected (see page 8) – face a huge task in undertaking scrutiny during these challenging times. There is a risk that select committee scrutiny of Brexit ends up looking like a chaotic competition for the limelight, simultaneously diverting huge amounts of ministerial and official time which might have been better spent elsewhere.

But an alternative outcome is possible. If the Government continues to appear relatively unforthcoming, select committees could play a key role in driving an informed debate on the options for, and consequences of, Brexit. In doing so they would be performing a considerable national service and cementing their reputation as a crucial element of our democratic system.

Annex: Election of select committee chairs

What is happening?

On 19 October 2016, the whole of the Commons will elect the chairs of five select committees with vacancies. This will include the two who will take responsibility for running the committees scrutinising the new Brexit departments – the Department for International Trade and the Department for Exiting the EU.

Why are elections taking place?

Two new committees have been created to scrutinise the two new departments (DExEU and DIT), two committees are replacing chairs who accepted ministerial roles in Theresa May's Government (Science and Technology; and Culture, Media and Sport) and the Home Affairs Committee needs a new chair following the resignation of Keith Vaz MP.

Who is eligible to stand?

The party affiliation of the chairs has been agreed via the usual channels, so only candidates from the designated party will stand, as show in the table below.

Table: Party affiliation of new select committee chairs

Committee	Party of chair
Culture, Media and Sport	Conservative
Exiting the EU	Labour
Home Affairs	Labour
International Trade	SNP
Science and Technology	Conservative

What happens next?

Once the committee chairs have been elected, political parties will conduct internal processes to elect their own members of each of the new committees. The DExEU Committee will have 21 members: 10 Conservative, five Labour and two SNP members, together with one each from the Liberal Democrats, the DUP, the SDLP and Plaid Cymru. The DIT Committee will have 11 members – an SNP Chair, four Labour members and six Conservative members.

When will the DIT and DExEU committees be up and running?

The process of electing committee members will probably be complete in the next two weeks – paving the way for the committees to meet for the first time in late October or early November.

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