

Inquiring about Brexit

How select committees can provide effective scrutiny in 2017-19

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This Insight paper considers how select committees can undertake effective scrutiny of Brexit. After looking back at committee activity before the General Election – which cut off much useful work mid-stream – we examine how parliamentary committees should contribute to and hold the Government to account for the Brexit process.

This paper makes recommendations about how committees should conduct Brexit scrutiny in 2017-19. It follows our earlier reports *Scrutinising Brexit* and *Legislating for Brexit*.

Summary: recommendations

Departmental committee scrutiny

- Wherever possible, inquiries that started in the last Parliament should be resumed and seen through to their conclusion.
- Any new committee inquiries need to be designed carefully to add value. Before launching any new inquiry, committees should ask themselves:
 - Will this inquiry bring to light *new information* that is important for either the negotiations or implementation of Brexit in a timely way?
 - Is this committee the *best placed* to do the inquiry? Would it be better to do the inquiry *jointly* with another select committee?
- Departmental select committees need to undertake routine and systematic scrutiny of departmental planning for Brexit, holding regular accountability sessions with the relevant secretary of state and permanent secretary on the state of departmental readiness, as well as with the chairs and chief executives of affected arm's length bodies.
- Select committees need to engage with the Government's Brexit white papers to influence the shape of policy. Committees should schedule hearings during the consultation periods on white papers, and communicate their views to the Government in a timely manner, to ensure they influence legislation before it is introduced.

Committee on Exiting the EU

- The Committee on Exiting the EU should continue its role as the prime scrutineer in the Commons of the progress of Brexit and the work of Department for Exiting the EU. It is also well placed to pick up wider concerns from other committee work and put them to the department with overall co-ordination responsibilities.
- The Committee on Exiting the EU should not only look at the conclusions of the sectoral impact assessments released to them by Government, but also use this as an opportunity to assess the quality of the evidence base the Government is using to take critical decisions.

Liaison Committee

- The normal rhythm of three Liaison Committee hearings a year with the Prime Minister is not fit for purpose in the exceptional circumstances of Brexit, given that the committee will also wish to retain its focus on domestic issues. The Prime Minister should provide updates to the Liaison Committee after each round of negotiations between now and the end of the Article 50 period.
- The Liaison Committee should take an active role tracking the inquiries undertaken by committees in relation to Brexit; identifying common themes

emerging from their work; recognising and encouraging opportunities for joint working; and spotting gaps and, if necessary, finding ways of filling them.

Public Accounts Committee

- The Public Accounts Committee has a vital role given the need for government to spend without certainty or legislative cover, and must ensure that the short-circuiting of normal parliamentary processes to allow accelerated Brexit spending only occurs in exceptional circumstances. The Committee must probe the use of directions and contingencies fund advances.

European Scrutiny Committee

- The European Scrutiny Committee needs to resume its normal scrutiny role as soon as possible and leave scrutiny of the Brexit process to other committees.

House of Lords committees

- The House of Lords must continue to bring their expertise to bear on the scrutiny of Brexit-related matters. The Lords should suspend the practice of rotating committee membership for the committees most focused on Brexit-related scrutiny, at least until the end of the Article 50 process.

Inquiries to date

Select committee inquiries into Brexit-related topics proliferated in the 2016-17 session. While many of these inquiries generated useful insights, the sheer volume of material was overwhelming and the scattergun approach reduced impact. Servicing hearings also imposed very considerable demands on Department for Exiting the EU (DExEU) ministers and officials.

Parliament faces a demanding task in the 2017-19 session: to get the UK statute book ready for Brexit. It is also increasingly flexing its muscles on the Government's approach to both the negotiations and to legislation.

The period between the EU referendum and the general election was characterised by a huge amount of Brexit-related activity. The House of Commons alone spent over 150 hours debating Brexit and questioning ministers on the floor of the House.

Table 1: Brexit activity in the House of Commons, June 2016 to April 2017

Activity	Number of sessions	Duration (hours:minutes)
Notification of withdrawal bill	8	40:21
General motions	4	14:51
Statements	2 David Cameron 7 David Davis 5 Theresa May	03:18 11:09 08:21
Departmental questions	5	05:24
Urgent questions	2	01:34
Opposition days	7	30:51
Backbench business	2	04:38
Ten-minute rule motions	4	00:54
Daily adjournment debates	7	03:40
Private members' debates	18	19:33
Debates on petitions	2	05:31
Standing order 24 application	1	00:10
Total	74	150:15

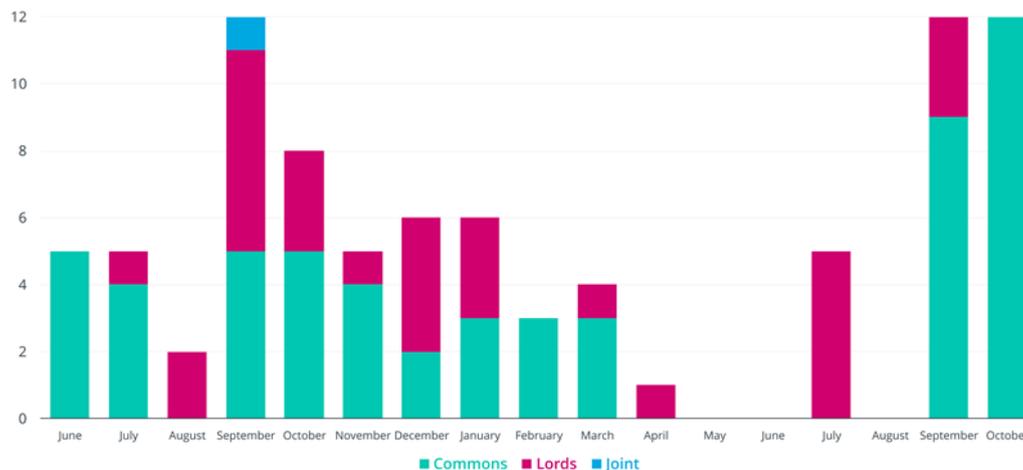
Source: Institute for Government analysis of House of Commons Sessional Diary

Work undertaken in the committee corridors provided Parliament with the opportunity for more forensic scrutiny of government activity than is ever possible in the Chamber. In the House of Lords, the existing EU committee system took on Brexit-related scrutiny. In the Commons, new committees were established to scrutinise the work of the two new departments – the DExEU and the Department for International Trade.

It was not only the new committees that looked into Brexit. Brexit was the hot topic for inquiries in both the Commons and the Lords. In the period between the referendum

and the general election, a total of 55 new Brexit-specific inquiries* were launched: 32 in the Commons, 22 in the Lords and one by the Joint Committee on Human Rights.† In addition, a number of committees held one-off evidence sessions on Brexit-related subjects. As the figure below shows, there was a six-month hiatus in Commons activity due to the election, and a much shorter pause in the Lords.

Figure 1: New Brexit-related inquiries by month, June 2016 to October 2017



Source: IfG analysis of Select Committee inquiries pages on Parliament website

Inevitably, with all this activity there was a degree of overlap between different inquiries, with a number that covered some of the same topics. For example: both the Commons Justice Committee and the Lords EU Select Committees produced reports on Crown Dependencies; and, both the Lords EU Committee and Commons Home Affairs Committee looked at policing and security co-operation. There were a large number of committees looking at aspects of the trade impacts of Brexit.

Most reports produced large volumes of useful evidence. In a helpful innovation, Parliament now has a dedicated online Brexit hub,² which brings together both the reports of committees and library briefings. But the sheer volume of activity will have made it hard for government departments to absorb all the material being generated.

Not all the inquiries resulted in reports. Only 12 of the 32 Commons inquiries did so before the election closed down parliamentary activity. The rest simply published the evidence they had collected. The Lords moved more quickly, with 19 out of 22 inquiries leading to reports.

Seven of the 20 Commons inquiries that did not produce reports have been re-established in the wake of the election, albeit under committees with changed

* We have included inquiries that would not have taken place if the result of the referendum had been to remain in the EU. Brexit of course features in other sessions, including the regular inquiries committees undertake on the 'work of departments'.

† Information on parliamentary inquiries comes from Institute for Government analysis of committee web pages.¹

membership.* The other 13 appear to have been dropped. In the Lords, inquiries that had not produced a report by the time of the election have simply been able to continue.

Figure 2: Outcome of Brexit-related inquiries in the 2015 Parliament



Source: IfG analysis of Select Committee inquiries pages on Parliament website

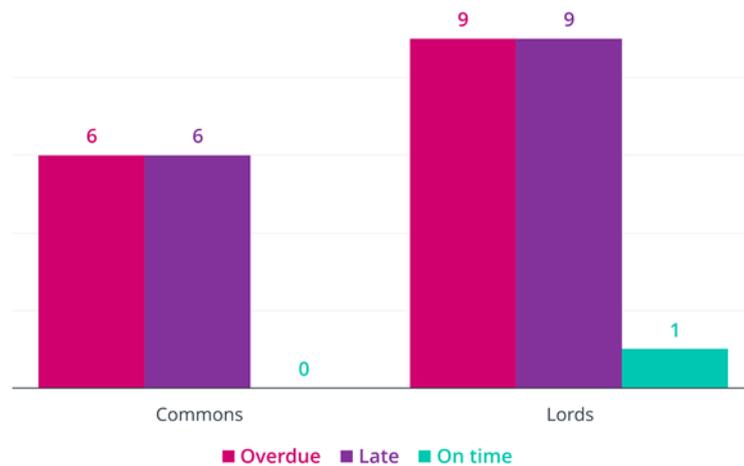
Government is supposed to respond to every select committee report within 60 days, but where an inquiry does not result in a report there is no requirement for the government to respond. So far, nearly half of the reports produced in the 2015 Parliament have yet to receive a government response.

Of the responses the Government has submitted, only one has been on time. Most have been more than one month late. Delays were particularly pronounced for reports published in the first half of 2017, in part because Commons committees were dissolved at the election and were not able to receive and publish responses until they were re-established in September. Three reports published in December 2016 have yet to receive a response, 11 months on.

Inquiries have generally helped increase the openness of government, given a platform for concerns and educated members about Brexit-related issues. Chair of the Exiting the EU Committee, Hilary Benn, told us he had learnt “something new about the potential consequences of Brexit every day”³.

* Eight are shown on the graph, since one inquiry that produced a report has been re-established post-election to assess the Government’s response to that report.

Figure 3: Government responses to Brexit-related inquiry reports in the 2015 Parliament



Source: IfG analysis of Select Committee inquiries pages on Parliament website

However, particularly where the Government has not responded to reports, it is hard to identify specific impacts on the Government from committee scrutiny. Many inquiries relate to issues where the Government has not yet made its position clear or that have not yet been resolved in the course of negotiations. Nonetheless there are some impacts that committees can point to. Asked about the impact of the Exiting the EU Committee, Chair Hilary Benn pointed out that it had raised: the need for transition; the need to give Parliament a vote on the withdrawal agreement; and the need for the Government to produce a white paper on its negotiating position. The Government had followed, or committed to follow, all three of these key recommendations.

Future inquiries

Committees need to learn from the experience of the post-referendum session if they are to increase their impact in the remaining 18 months until Brexit. They have a vital role to play, both in holding ministers to account for the conduct of the negotiations, but also in ensuring readiness for Brexit and influencing the post-Brexit landscape.

Unfortunately some of the expertise developed by the Commons committees was dissipated by turnover in the committees' membership. Although the chairs of both the Exiting the EU Committee and the Committee on International Trade have continued into the current Parliament, there has been substantial turnover in membership – with only 12 of 20 Exiting the EU Committee members and four of 10 International Trade Committee members returning. The rules governing committee membership in the Lords, where one third of the membership changes each session, have led to loss of expertise from Lords committees too.

Committee inquiries need to be designed carefully in order to add value

Committees need to think about how their particular inquiry will add value to the process of negotiating or planning the UK's exit from the EU. Too many similar inquiries create overload without adding value. Since the Commons committees were established after the 2017 election, 21 inquiries have been announced, eight of which are continuations of previous inquiries. Lords committees – which did not have to wait until September to swing back into action because they continued to exist throughout the election period – announced eight new inquiries: five in July and three in September.*

Before launching any new inquiry, committees should ask themselves:

- Will this inquiry bring to light *new information* that is important for either the negotiations or implementation in a timely way?
- Is this committee the *best placed* to do the inquiry? Would it be better to do the inquiry *jointly* with another select committee?

As we noted earlier, the snap election led to the premature termination of many Commons inquiries. Some have been resumed in the new Parliament, but many have not. In most cases those inquiries were on issues that remain pertinent and need to be carried on to their conclusion. New chairs and members will clearly have their own views on where they want to focus. But **wherever possible, inquiries that started in the last Parliament should be resumed and seen through to conclusion.**

Departmental committees should focus on the Government's preparedness and approach to negotiations

Eight months after Article 50 was triggered and with only 17 months to go to Brexit, the time for repeating well-worn debates is over.

* All figures correct as of 27 October 2017.

Parliamentary committees need to focus on close scrutiny of the Government’s preparedness and planning, the choices it is making in the negotiations, and the way it is conducting them.

Departments will be affected by Brexit to different extents, but all will feel some impact, if only through the diversion of staff to Brexit work in more affected departments. For some, like the Department for Environment, Food and Rural Affairs (Defra), Brexit will dominate most areas of their work. For others, like HM Revenue and Customs (HMRC) and the Home Office, there will be vital work streams as well as wider implications. In some departments, the major impacts will be on their arm’s length bodies (ALBs)* – this is particularly true of regulators who, in many cases, will have to prepare to deliver functions currently exercised by EU bodies.⁴

Parliament needs to undertake routine and systematic scrutiny of departmental planning for Brexit. Departmental select committees should ensure they are fully aware of the implications of Brexit for their department’s work and hold regular sessions with the relevant secretary of state and permanent secretary on the state of departmental readiness. Where ALBs are significantly affected, committees should also ensure they hold regular sessions with the chairs and chief executives of those bodies.

Below we set out a checklist for departmental select committees to use when scrutinising departmental planning for Brexit. It focuses on understanding the impact on departments of Brexit: the negotiating and legislative challenges it presents (including relations with the devolved institutions); the progress they are making on implementation and contingency planning; their resourcing and capability; and, the impact of Brexit on wider departmental work.

* Arm’s-length bodies (ALBs) include non-ministerial departments, non-departmental public bodies, executive agencies and other types of organisation such as public corporations.

Questions select committees should ask government departments about Brexit

Negotiations	What are the important issues for you in the phase one negotiations and what progress has there been on these?
	What are the important issues for you in the phase 2 negotiations and how are you working with the Cabinet Office and DExEU to highlight the importance of those issues?
	What agreements and relationships do we have now with the EU – or through the EU – that need to be carried over after the UK leaves? How do you assess the likelihood that this will be achieved by exit day?
Legislation	Is there any legislation that is critical for you and is there any that must be passed by March 2019 to avoid a legal hiatus?
	Is any of the legislation dependent on the final agreement?
	What progress have you made in developing that legislation and when do you expect to introduce it?
	Will this legislation require the consent of any of the three devolved legislatures and what are you doing to ensure that agreement is reached? What will happen if it's not given?
Implementation	What changes will the UK's exit mean for your responsibilities and those of your arm's-length bodies?
	How far advanced is your implementation planning? What is the earliest date on which you could be confident of delivering a smooth transfer of responsibilities from the EU to the UK?
	When do critical decisions need to be made to be ready for day one after the UK leaves?
	What are the big challenges in being ready for day one? What are your plans to meet those challenges?
	Are the people, businesses and other organisations your department engages with getting ready for Brexit? What processes have you set up to ensure they have the information they need to prepare?
Contingency planning	What would 'no deal' mean for your planning? What would you have to do to cope with 'no deal'?
Capacity and resources	What resources does your department need to prepare for the UK's exit? Do you have the resources and expertise you need?
	Is your department making use of the Contingencies Fund? If so, why is that necessary?
	What additional resources and capabilities might you need in order to carry out new functions after exit? At what point would you need to begin hiring to be ready for either 'no deal' or a negotiated outcome?

The Exiting the EU committee should be the principal Commons committee tracking progress in the negotiations

Given the way in which negotiations are being conducted, it makes sense for the Exiting the EU Committee to lead on scrutiny of the progress of negotiations. That means taking regular evidence from the Exiting the EU Secretary of State, as it did in the last session.

The organisation of the conduct of the negotiations changed over the summer with the move of Oliver Robbins from being David Davis's Permanent Secretary in DExEU, to focus on being the Prime Minister's adviser on Europe in the Cabinet Office (a role he was already playing). Despite that move, he should continue to attend hearings with David Davis.

The size and the composition of the ExEU Committee, and the polarisation of views around Brexit has made it difficult for it to produce useful, agreed reports – but they are even more compelling when it does succeed, as for example it did in the last Parliament, on citizens' rights.

The committee has already demonstrated the value of its evidence sessions with the Secretary of State on the progress of negotiations, forcing the Government to be more open about its approach than it is on the floor of the House. It should also continue with its practice of taking evidence from around the country where the range of views present on the committee is a strength.

The Exiting the EU Committee should continue its role as the prime scrutineer in the Commons of the progress of Brexit and the work of DExEU. It is also well placed to pick up wider concerns from other committee work and put them to the department with overall co-ordination responsibilities.

The Opposition was successful in using parliamentary procedure to compel the Government to release documents detailing the work the civil service has undertaken to assess the impact of Brexit on different economic sectors to the Exiting the EU Committee.

The Committee on Exiting the EU should not only look at the conclusions of the sectoral impact assessments released to them by Government, but also use this as an opportunity to assess the quality of the evidence base the Government is using to take critical decisions.

The Liaison Committee needs to increase the frequency of its regular scrutiny sessions with the Prime Minister

The Liaison Committee – which brings together the chairs of Commons select committees – is the only committee able to summon and cross-examine the Prime Minister. As the Prime Minister sought to establish herself as the principal negotiator on Brexit after Oliver Robbins' move from DExEU to become May's personal adviser on Brexit,⁵ the committee needs to summon her for regular progress reports.

The normal pattern of three hearings a year with the Prime Minister is not fit for purpose in these exceptional circumstances, given that the committee will also wish to retain its focus on domestic issues. Instead, the Prime Minister should provide updates to the Liaison Committee after each round of negotiation between now and the end of the Article 50 period. If necessary for scheduling purposes, these updates could be to a sub-committee of Brexit chairs.

The role of the Liaison Committee includes promoting effective scrutiny by all select committees. To fulfil this role in relation to Brexit it should take an active approach: tracking the inquiries undertaken by committees; identifying common themes emerging from their work; recognising and encouraging opportunities for joint working; and spotting gaps and, if necessary, finding ways of filling them.

Select committees need to engage with Government Brexit white papers to influence the shape of policy

The Government appears to be unwilling to offer any of the planned Brexit legislation for pre-legislative scrutiny, and the ever-more compressed timetable for legislation would anyway have made this an increasingly unlikely prospect. However, in certain important areas of policy it has promised to produce white papers.

Select committees have already missed one opportunity to influence the Government's thinking – on the UK's future arrangements for trade policy. The Government's Trade white paper promised a 'transparent and inclusive trade policy', noting that: 'Parliament, the devolved administrations, the devolved legislatures, local government, business, trade unions, civil society, and the public from every part of the UK must have the opportunity to engage with and contribute to our trade policy'.⁶ But the white paper contained no proposals on how that might happen, and the extent to which Parliament would have a formal role on the UK's future trade policy. And the Government's trade bill⁷ is silent on this issue as well, confining itself to provisions to allow transfer over of existing EU free trade agreements; providing for the UK to act as a member of the World Trade Organisation's General Procurement Agreement; establishing the Trade Remedies Authority; and providing data collection powers.

Parliament had little time to engage with the Government's thinking on trade in the period between publication of the white paper and the production of the bill. The issue of Parliament's role in future trade policy remains outstanding. The International Trade Committee and Lords EU Committee need to feed in their thinking as soon as possible.

Three further white papers are outstanding: on agriculture, fisheries and migration. These have already been the subject of committee inquiries, but the relevant committees should schedule hearings on the content of the white papers as soon as they are published; reflect on how the white papers respond to their existing recommendations; and draw any significant findings to the Government's attention.

Committees should schedule hearings during the consultation periods on white papers, and communicate their views to the Government in a timely manner, to ensure they influence legislation before it is introduced.

The Public Accounts Committee has a particular role, given the need for government to spend without certainty or legislative cover

The continuing uncertainty on both the final deal, and whether or not there will be a transitional period, has meant extraordinary measures have been taken to allow spending on preparations to proceed without normal Parliamentary authority. The Chief Secretary announced to Parliament that in certain limited cases, departments would be allowed to spend money needed to prepare for Brexit in advance of Royal Assent.⁸

A letter from the Treasury and DExEU permanent secretaries to accounting officers, copied to the Public Accounts Committee (PAC), set out the criteria under which claims on the contingencies fund could be made, and also put in place processes for departments to seek formal directions to allow ‘critical spending’ for Brexit readiness to take place in advance of normal legislative approval.⁹

The PAC has a vital role in ensuring that the short-circuiting of normal parliamentary processes to allow accelerated Brexit spending is only used in exceptional circumstances. The committee must probe the use of directions and contingencies fund advances.

The European Scrutiny Committee still has important work to do and needs to leave Brexit scrutiny to other committees

Even though we are leaving the EU, we are likely to be affected by EU legislation being agreed now for years to come. The *acquis* (body of European Law) which is in place at 29 March 2019 is being transferred onto the UK statute book through the withdrawal bill and relevant secondary legislation: depending on the degree of regulatory alignment incorporated into the final partnership agreement, it may continue to define much of our legislative framework after Brexit.

Although the departmental select committees were established in September, the European Scrutiny Committee has only just been set up. This means there is a significant backlog of EU legislation which languishes unscrutinised by the Commons (although the separate Lords EU Committee system has continued to operate).

The European Scrutiny Committee needs to resume its normal scrutiny role as soon as possible, and leave scrutiny of the Brexit process to other committees.

The House of Lords must continue to bring their expertise to bear on the scrutiny of Brexit-related matters

The Lords committee system has long been focused on the EU and many peers can bring significant expertise to the scrutiny of the negotiations, Brexit legislation and the Government’s implementation plans. Without the distraction of the 2017 election, Lords committees have continued to undertake important scrutiny, particularly on the withdrawal bill, while the work of Commons committees was subject to a six-month hiatus.

However, the excessive size of the Lords means that – in order for more peers to have the opportunity to sit on its committees – one third of their membership turns over each year. Although there is no shortage of well-qualified candidates waiting to move

on to committees, the turnover rules have led to an unfortunate loss of Brexit-specific expertise and institutional memory about the committees' activities.

The Lords should suspend the practice of rotating committee membership for the committees most focused on Brexit-related scrutiny, at least until the end of the Article 50 process.

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