



House of Commons
Select Committee on
Modernisation of the House of
Commons

**Scrutiny of European
Matters in the House
of Commons:
Government
Memorandum from the
Leader of the House of
Commons**

Session 2003–04

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The Select Committee on Modernisation of the House of Commons

The Select Committee on Modernisation of the House of Commons is appointed by the House of Commons to consider how the practices and procedures of the House should be modernised.

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Powers

The powers of the Committee are set out in an Appendix to the House of Commons Standing Orders. These are available on the Internet via www.parliament.uk.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at http://www.parliament.uk/parliamentary_committees/select_committee_on_modernisation_of_the_house_of_commons.cfm A list of Reports of the Committee in the present Parliament is at the back of this volume.

Committee staff

The current staff of the Committee are George Cubie and Tom Healey (Clerks), Susan Morrison (Chief Office Clerk) and Jane Cooper (Secretary).

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Scrutiny of European Matters in the House of Commons: Government Memorandum from the Leader of the House of Commons

1 Introduction

1. The Government is keen to enhance the way in which Parliament engages with European matters. There is much of which we can be proud: the efficient way in which the European Scrutiny Committee sifts the large number of European documents coming before it, alerting the House to those of significance; the detailed scrutiny of European matters which has been done by the Foreign Affairs Committee and some other Departmental Select Committees; and the scrutiny reserve, by which the Government has undertaken, in all but special cases, not to agree to European proposals until the House has completed its scrutiny. These are strengths to maintain and build on.

2. But the sad fact is that European Scrutiny is something of a minority interest: the great majority of Members take little interest in the reports of the European Scrutiny Committee or in the debates which it recommends. Meetings of the European Standing Committees to which it refers some documents are badly attended and seen to be irrelevant. European issues are seen as something separate and avoidable, while they should be in the mainstream of our political life. This is reflected in the media's coverage of European matters, and in the views of the public. There is a worrying and widening gap between our citizens and the institutions of the European Union; and this is not good for our democracy.

3. The House of Commons has a key role to play in bringing the European Union closer to our citizens. On the one hand, it can engage the British public in its scrutiny of European matters: disseminating information, seeking views, and pressing these views on Government. On the other, it can engage with Europe: scrutinising EU policy, holding Commissioners to account, working together with Members of the European Parliament and other national parliaments. The House of Lords also has an important part to play, and particular expertise to offer. We must make sure that the work that Parliament already does on European scrutiny is done to better effect. And we need to respond to the new challenges, and the new responsibilities for national parliaments, which may come out of the IGC process.

4. How the House can best engage with European matters is for the House to decide. This memorandum puts forward some ideas, which the Government hopes the Modernisation Committee, and the House more widely, will consider. These ideas have been discussed in outline with the European Scrutiny Committee, and were greeted positively. It is hoped that the Modernisation Committee will work in tandem with the European Scrutiny Committee in developing its proposals.

2 A new Joint European Grand Committee

The Government's proposal

5. As the Foreign Secretary announced in his Statement to the House on 11 February, the Government favours establishing a new Committee, as a successor to the Standing Committee on the Convention and that on the IGC, whose remit would cover the whole of the EU's work. Our aim is that the new Committee would be open to Members of both Houses; and that Ministers involved in EU work, from the Foreign and Commonwealth Office and from other Departments, would make statements, respond to questions and participate in debates. We also hope that ways might be found to allow European Commissioners to make statements and answer questions before the new body, and perhaps for UK Members of the European Parliament to attend.

6. This proposal has been widely welcomed in both Houses. Naturally, Members have asked for clarification about the Committee's role and the value it would add to Parliament's monitoring of EU matters, and in particular for reassurance that it would not undermine the existing scrutiny mechanisms. Members of the House of Lords have expressed a strong preference for the Committee to be a truly Joint Committee, rather than a Commons Committee with Lords participation, and for their House to be fully involved in consultation on the proposal. The Government hopes that the Modernisation Committee will consult with the Lords Procedure Committee when considering this matter.

Membership

7. The Government suggests that the Committee should be open to all Members of both Houses. It could have a core membership, as did the Standing Committee on the Convention and the IGC, with other Members able to participate. Alternatively—and this may be simpler given the involvement of both Houses—its membership could consist of all members of both Houses, along the lines of the Commons Grand Committees. While it is to be hoped that the new Committee will attract considerable interest, it may be wise, in view of the difficulties experienced in maintaining a quorum by the Standing Committee on the Convention and to a lesser extent by the Standing Committee on the IGC, to set a modest quorum: perhaps three from each House, in line with the quorum for Westminster Hall.

8. The Government hopes that ways might be found to allow UK Members of the European Parliament to attend the new Committee. It understands that work currently being done by House officials suggests that the procedural barriers to including non-Members in formal Committee proceedings are not insuperable. Indeed there is a precedent for a Committee co-opting outsiders: the Joint Committee on Indian Constitutional Affairs in 1933 was given power to “call into consultation representatives of the Indian States and of British India”. **The Modernisation Committee may wish to consult the Procedure Committees of both Houses on this point.**

9. The Government strongly believes that closer co-operation between Members and UK MEPs would be beneficial to the UK. The participation of UK MEPs in the meetings of the

new Committee would both bring a European perspective to its debates and help to ensure that MEPs are aware of the views of UK parliamentarians.

10. The Government hopes that it will be possible for the new Committee to accommodate statements by, and questions to, European Commissioners or perhaps other senior EU officials or representatives of the European Parliament or other European institution. It believes this would be a significant advance in accountability, and a considerable attraction to Members, media and the public. The Government envisages that it would be responsible for issuing invitations to Commissioners, as appropriate and following discussion with the usual channels; the Committee would not have a Select Committee's power to summon witnesses. The status of the Commissioners would be procedurally novel: they would not be members of the Committee, nor witnesses as before a Select Committee. **The Modernisation Committee might therefore like to consult the Procedure Committees of both Houses on this matter.**

Proceedings

11. The Government envisages that the new Committee would follow the pattern of proceedings adopted for the Standing Committee on the IGC. It would begin with statements from, and questions to, Ministers, or Commissioners as discussed above. The Ministers might be from the FCO or from other Departments engaged in EU work. There would follow a debate. The Government anticipates that this debate would be on the adjournment; it sees no need for provision for substantive motions. And we think it would be important that, as in Westminster Hall, there should be no voting.

12. The Government envisages that meetings of the Committee would be called by Government motions in both Houses, following discussions in the usual channels. How frequently the Committee should meet would be for discussion. The Government does not envisage that it should meet very frequently, or replace existing fora for debate on European matters. Roughly quarterly meetings might be appropriate: to discuss the Foreign Secretary's White Papers in January and in July, and other matters as need arose. The subject for debate would be proposed in the Government motion, but it would be open to others (for example, the Scrutiny Committees) to suggest topics.

13. The new Committee could meet in Committee Room 14, as did the Standing Committees on the Convention and the IGC, or perhaps in Westminster Hall. The timing of its meetings would be for discussion between the Houses, and would need to be considered in the light of the wider debate on the sitting hours of the House. The length of the meetings would be for discussion. Two and a half hours, as for the Standing Committee on the IGC, might be a good starting point, perhaps with facility for meeting longer if attendance were anticipated to be high. It would probably be necessary to provide for "injury time" for divisions in either House. Alternatively, it might be possible to schedule meetings for when one or both Houses were not sitting.

Name

14. The name of the Committee would be for consideration in the light of decisions on its form and composition. If membership is unrestricted, "the European Grand Committee"

or “the Joint European Grand Committee” might be thought appropriate, and suitably imposing. However, the term “Grand Committee” has a somewhat different meaning in the Lords and might create confusion there. **The Modernisation Committee might like to consult the Lords Procedure Committee for their views on what name would be appropriate.**

3 Debates on the Floor

15. The Government does not envisage that the creation of the new Joint European Committee would reduce the need for debates on the Floor of the House. Nevertheless, we are always keen to ensure that time on the Floor is used to best effect and to reassess whether the established pattern of debates still reflects Members’ interest. At present, there are two European debates in the Chamber each year timed to coincide with the European Council meetings in June and December. (In addition, there are occasional EU-related debates in Westminster Hall as need arises.) The rationale for these two Floor debates is that the House should have an opportunity to influence the Government’s stance at the European Council meetings. Those Council meetings are then followed by Statements by the Prime Minister, which attract somewhat wider interest. **The Government would welcome the Modernisation Committee’s view on whether these debates are still appropriate, and of appropriate length.**

16. The Government envisages that there will continue to be occasional debates on the Floor on EU documents, when these raise matters of major and widespread interest in the House. The additional option of holding occasional debates on EU documents in Westminster Hall is discussed below (paragraph 31).

Questions

17. An option would be to use the facility for Cross-cutting Questions sessions in Westminster Hall for Questions on European matters, perhaps on a regular and established basis. This would have the benefit of allowing Ministers from different Departments to be questioned on a European matter which crosses departmental boundaries. Rather than providing for a general session on “European matters” (for which it would be difficult to know in advance which Ministers might be required), it would probably be better to identify a particular cross-cutting issue, or range of issues, with a European dimension.

18. It has been suggested that Westminster Hall might also be used as a forum for questioning European Commissioners. That is a possibility that would be worth exploring if the two Houses chose not to proceed with our proposal that European Commissioners might be questioned in a new Joint European Committee.

4 The European Scrutiny system

19. It seems to the Government that the European Scrutiny Committee itself works effectively. Although it imposes a heavy workload on Departments and there seems to be some duplication with work required for the Lords EU Committee, the Government

believes that it does an admirable job in sifting the large number of European documents which come before it, alerting the House, and outside stakeholders, to those of significance. The Government welcomes the Committee's commitment to improving the accessibility of information about its work, and hopes that the House will consider whether the resources to support this are adequate.

20. The problem lies with what comes next. There seems to be general agreement that the European Standing Committees have not worked out as it was hoped. It is hard to persuade Members to serve on them. Few other Members think them worth attending. Their proceedings have a ritualistic quality, and are largely devoid of much political interest; yet they consume a lot of time and effort. There is a very strong case for reform.

21. The European Scrutiny Committee has in the past recommended that the number of European Standing Committees be increased from three to five, in order to allow them to specialise on a narrower field of policy. The suggestion is that this would make the Committees more focussed and more appealing to Members. The Government does not think this would be successful; if the Committees have not worked, it does not seem to make sense to make more of them.

22. A further suggestion which has been made is that the problem lies with the Committees' powerlessness. At present, if the Committee amends the motion before it, the Government is not required to amend the motion which it puts before the House. It has been suggested that the Government should be required to table the motion as agreed by the Committee, and to move a further amendment if it thought that necessary. Alternatively, if the Government chose to table a motion in different terms, it should be subject to a short debate on the Floor. The Government is not persuaded that this would make much difference.

23. There are a number of other options for reform which the Modernisation Committee might like to consider.

24. First, we could stick with roughly the present system and try and make it work better. There could be stronger linkage between the European Standing Committees and the European Scrutiny Committee, perhaps with the Scrutiny Committee sending a representative to the Standing Committee to explain why it thought a debate was necessary. Members of the Standing Committee might be provided with a briefing pack, including the Scrutiny Committee's report. The core membership could be reduced, with perhaps some membership overlap with the relevant Departmental Select Committees.

25. Secondly, we could change the nature of the Standing Committees a little. We could do away with the core membership, reverting to ad hoc membership for each meeting (as for Standing Committees on Delegated Legislation). We could change the motion before them to a simple take note-type motion ("That the Committee has considered [the document]"), and we could perhaps limit them to 1½ hours. We could even go further and encourage the Whips on both sides to take the view that attendance was optional. The Government would in effect be saying: "here is an opportunity to debate the document; take it or leave it". The Government would need to be able then to put a substantive motion to the House, whether or not the Committee had reported. The House would then have an opportunity to divide on, or amend, the motion, if it wished, albeit without debate. The downside

would be that Ministers and Opposition Spokesmen would still feel that they needed to attend; and stakeholders and the public might be less than impressed by inquorate meetings.

26. Thirdly, and more radically, we could decide that the Standing Committee format is not what we want. It might be that the select committee format of evidence-taking would be more appropriate, and would allow opportunity to engage the public, and outside stakeholders, more effectively in the European scrutiny process.

27. If so, the options would be either to retain the European Standing Committees with a core membership and give them the power to take evidence, and perhaps to travel (opening the possibility of evidence taking in Brussels, for example); or to abolish them and to refer the documents instead to a Select Committee, in the expectation that it would take evidence from the relevant Minister, and others as appropriate. This could be done either by an existing departmental select committee or one of a new set of subject sub-committees of the European Scrutiny Committee. Of these two options, the Government's preference would be for documents to be referred to the relevant departmental select committees, though it recognises the danger of overloading them. Creating sub-committees of the European Scrutiny Committee would risk duplicating what exists already in the House of Lords, and might well meet with the same lack of willing volunteers as for the European Standing Committees. Referring these matters to the Departmental Select Committees would be more consistent with the philosophy of "mainstreaming" European matters.

28. The Departmental Select Committees are already charged by the Liaison Committee with examining policy proposals from the European Commission. Some of them have done valuable work in this field. Scrutinising EU documents to the timetable required would impose a considerable workload on some Committees, and require a different way of working from Committees' traditional mode of inquiry. Those Committees with a heavy European workload could be given the power to set up an additional Sub-Committee for this purpose; and consideration could be given to increasing the size of those Committees, allowing Members to specialise in this work if they wished. The additional staff resources now being given to Committees should increase their capacity and speed of working.

29. Given that the timetable for negotiation of EU proposals is not within the UK's control, it will be important to ensure that any new system does not slow down the process of scrutiny clearance. Delays would adversely affect the UK's position in negotiations. It will also be important to ensure that scrutiny arrangements do not impinge upon the ability of the UK and the EU to take urgent operational decisions in response to emerging crises.

30. If a decision were made to do away with the European Standing Committees and to opt for referral to a select committee, there would still be opportunity for occasional debates on European documents of particular interest. On occasion, time on the Floor might be required; but more regularly it might be possible to provide time in Westminster Hall. **The Modernisation Committee might wish to consider this in the context of its review of sitting hours.**

5 The Subsidiarity Early-Warning Mechanism

31. The draft Constitutional Treaty provides that, if a national parliament believes that an EU legislative proposal breaches the principle of subsidiarity, it could put forward a reasoned opinion on it, and if a third of chambers submitted such opinions within six weeks, the Commission would have to reconsider. While the future of the Treaty is at present uncertain, it would be helpful if the **Modernisation Committee, in consultation with the Procedure Committee, could give consideration to how the House might implement this proposal, taking into account the suggestions of the European Scrutiny Committee.** The Scrutiny Committee has proposed that, if this situation were to arise, it might alert the House by tabling a motion on the Remaining Orders providing for objection to be made. The Government would decide, within a given timeframe, when to put the motion to the House; and it would then be decided on without debate and, if necessary, by deferred division. The devolved assemblies might wish to submit their views. This seems to the Government to be a reasonable suggestion; though it would be premature to make any decision until the outcome of the negotiations on the Treaty is known.

6 Engagement in Europe

32. Since so much policy is either influenced by or driven by decisions at a European level, the Government believes that it is important to the UK's interests that UK politicians engage much more fully in the European policy debate and scrutiny. Traditionally, the UK has not been so active, or effective, in political engagement at the European level as some of our partners. The increasing joint working between Committees of this House and those of the European Parliament and of other national Parliaments is greatly to be welcomed in this respect. The increasing links between Members and UK MEPs—for example, the regular informal meetings which are now taking place between the European Scrutiny Committee and UK MEPs—are particularly valuable. The Government hopes that the House authorities will facilitate this by extending the access that UK MEPs have to facilities in the Palace of Westminster.

33. For individual Members, engagement with European colleagues has been greatly facilitated by the Members' European travel scheme, which allows each Member up to three visits a year. The allowable destinations have recently been increased so that visits are now permitted to all EU institutions and agencies and to national parliaments in EU member, candidate and applicant countries, and in EFTA countries. To date, it has been left to individual Members to take up this opportunity if they wish. It is notable that only a minority of Members have done so, and they complain that three annual visits is not sufficient. It might be that we should be more proactive in offering more organised, and perhaps collective, visits under the scheme, while bearing in mind that our Posts overseas, which do an excellent job in assisting MPs and Peers, have finite resources for supporting such visits, and that the level of assistance available will inevitably vary according to factors such as the size of the Post concerned. **The Modernisation Committee is also invited to**

explore whether it would be practicable within the existing (and consistently underspent) budget to enable those Members who have regular and valuable contact through approved visits to do so more than three times.

34. Language skills can contribute considerably to effective political engagement with European partners. The Government is exploring with the House authorities whether those Members who wish might be able to get support from the House for language training provided by the FCO.

7 Conclusion

The Government is both committed to our membership of the European Union and to greater accountability of EU decision making to the national parliaments of member states. That is why we proposed the subsidiary early warning mechanism discussed above which would require consultation by the Commission with national parliaments before any new proposal could be taken forward. That is also why the Government favours greater scope for accountability within our Parliament through ‘mainstreaming’ of European issues, as evidenced by the proposal for a Grand Committee put forward by the Foreign Secretary.

35. The Government welcomes this inquiry by the Modernisation Committee and the consultation it plans on these matters. It looks forward to its Report with great interest.

LEADER OF THE HOUSE OF COMMONS

MARCH 2004

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