



House of Commons  
Procedure Committee

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# Matters for the Procedure Committee in the 2017 Parliament

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**Seventh Report of Session 2016–17**

*Report, together with formal minutes relating  
to the report*

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## Procedure Committee

The Procedure Committee is appointed by the House of Commons to consider the practice and procedure of the House in the conduct of public business, and to make recommendations.

### Current membership

[Mr Charles Walker MP](#) (*Conservative, Broxbourne*) (Chair)

[Bob Blackman MP](#) (*Conservative, Harrow East*)

[Jenny Chapman MP](#) (*Labour, Darlington*)

[Mr Christopher Chope MP](#) (*Conservative, Christchurch*)

[Nic Dakin MP](#) (*Labour, Scunthorpe*)

[James Duddridge MP](#) (*Conservative, Rochford and Southend East*)

[Chris Elmore MP](#) (*Labour, Ogmores*)

[Yvonne Fovargue MP](#) (*Labour, Makerfield*)

[Patricia Gibson MP](#) (*Scottish National Party, North Ayrshire and Arran*)

[Helen Goodman MP](#) (*Labour, Bishop Auckland*)

[Patrick Grady MP](#) (*Scottish National Party, Glasgow North*)

[Sir Edward Leigh MP](#) (*Conservative, Gainsborough*)

[Huw Merriman MP](#) (*Conservative, Bexhill and Battle*)

[Mr David Nuttall MP](#) (*Conservative, Bury North*)

[Melanie Onn MP](#) (*Labour, Great Grimsby*)

### Powers

The powers of the Committee are set out in House of Commons Standing Orders, principally in SO No. 147. These are available on the internet via [www.parliament.uk](http://www.parliament.uk).

### Publication

Committee reports are published on the Committee's website at [www.parliament.uk/proccom](http://www.parliament.uk/proccom) and in print by Order of the House.

### Committee staff

The current staff of the Committee are Martyn Atkins (Clerk), Leoni Kurt (Second Clerk), Jim Lawford (Committee Assistant), and Alasdair Rendall (Media Officer).

### Contacts

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## Summary

The resolution of the House in favour of an early General Election has curtailed the work programme of the Procedure Committee for the 2015 Parliament.

In this report we set out the main items of business on the Committee's agenda which remain unfinished, and indicate some matters which the Committee in the 2017 Parliament may wish to take up once it is established.

### Proposals for a 'Great Repeal Bill'

Our inquiry into the Government's proposals for legislation to provide for the UK's exit from the European Union (EU) has been prematurely curtailed. We had expected to report on the Government's proposals by the end of the 2016–17 Session, and to undertake substantive scrutiny of the Bill delivering the Government's proposals early in the new Session. Our terms of reference, augmented following the publication of the Government's White Paper on legislating for the UK's exit from the EU, identified a number of issues relevant to the House's procedures on delegated legislation which need to be addressed before any Bill is enacted. We have reported to the House and published all the oral and written evidence taken in the inquiry to date.

The Committee in the new Parliament ought to examine the implications of the Government's proposals for the House's procedures on delegated legislation. The Government has indicated that it is open to a discussion with Parliament on how to achieve a balance between the need for scrutiny of delegated legislation in this area and the need for speed in preparing the statute book for the point of exit. We recognise that the time of Members ought to be directed to examining legislation which is politically or legally important: arguably, the existing procedures for scrutinising secondary legislation do not properly provide for this. If the Government does want to proceed swiftly with a 'Great Repeal Bill' in the new Parliament, it ought to arrange for select committees with a direct interest in the matter—including the Procedure Committee—to be established as soon as possible after the House has reassembled: otherwise the Government will struggle to find agreement on an approach to the handling of delegated legislation under the Bill which will command widespread support.

### Revision of Standing Orders

The Committee in the new Parliament may wish to take forward the work on Standing Order revision first proposed by the Committee in the 2010 Parliament. The task has been made more complex by the introduction of the English votes for English laws Standing Orders during this Parliament.

### Scrutiny of the Government's Supply Estimates

In this Parliament we embarked on a programme of work to examine the House's procedures on financial matters. The Government is expected to respond to our first report in this field—on better practical scrutiny of the annual Estimates—in the new Parliament. The new Committee may wish to take up the other elements of the programme identified in that report, such as arrangements for scrutiny of the Government's multi-annual Spending Reviews.

### **English votes for English laws**

We have published two reports on the new procedures to achieve ‘English votes for English laws’. In both cases we stated our intention to keep these procedures under active review. The new Committee may therefore wish to review the operation of these procedures in the new Parliament.

### **Sitting hours of the House**

Our predecessors in 2012 surveyed the House elected in 2010 to ascertain Members’ views on sitting hours, and sponsored a debate, and a series of motions for decision, which enabled that House to take a decision on the hours it wished to sit. We undertook a similar survey in 2016 and have recently published the results. We have recommended that the new Committee survey the 2017 House in the summer of 2018 and sponsor a debate to allow that House to determine its own sitting hours.

### **Term limits for select committee chairs**

The resolution on an early general election has thrown up an uncertainty over the operation of the Standing Order governing the limits to terms served by chairs of select committees. While the matter cannot be resolved before chairs are elected in the new Parliament, we nevertheless recommend that the new Committee examine the issue as a matter of urgency.

# 1 Unfinished business from the 2015 Parliament

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1. On Tuesday 18 April the Prime Minister, Rt Hon Theresa May MP, announced that the Cabinet had agreed to seek an early general election, to be held on Thursday 8 June. On Wednesday 19 April the House resolved, by the necessary two-thirds majority, that there should be an early General Election. Parliament will be dissolved on Wednesday 3 May, in accordance with the provisions of section 3(1) of the Fixed-term Parliaments Act 2011.

2. The dissolution of Parliament has naturally truncated the Committee's work programme for the 2015 Parliament. We set out below matters where there is active or unfinished business which we recommend that the Committee to be established in the 2017 Parliament should examine.

## Proposals for a 'Great Repeal Bill'

3. The proposal for a 'Great Repeal Bill', to terminate the operation of the European Communities Act 1972 and, in its place, to provide a legal basis for the continued application of EU regulations and directives in the UK, pending revision or repeal, was first announced by the Prime Minister on 2 October 2016, during the Conservative Party Conference.

4. We thought it likely that this Bill would have significant implications for the House's procedures for considering secondary legislation, particularly secondary legislation which, under delegated powers which the Government would claim in the Bill, would amend existing primary and secondary legislation—for instance, existing legislation which transposed the provisions of EU directives into UK law.

5. On 2 February 2017 we announced an inquiry and invited submissions to address any or all of the following terms of reference:

- The adequacy of the present procedure for scrutiny of secondary legislation, and potential approaches for sifting the potential volume of legislation to be incorporated
- The changes (if any) desirable to Commons procedures related to the delegation of powers or secondary legislation to address the likely scale and volume of 'Great Repeal Bill' legislation
- The powers likely to be necessary or justified in primary legislation to incorporate the existing body of EU legislation (the *acquis communautaire* or *acquis*) into domestic law upon repeal of the European Communities Act 1972 (ECA), including (but not necessarily limited to):
  - powers to ensure the continuation in UK law of the legal order in force upon repeal of the ECA, with only such amendments as are necessary to ensure that the law applicable in the UK continues with the same effect);

- powers to amend domestic primary and secondary legislation implementing EU obligations in line with Government policy objectives, following the cessation of those obligations and the repeal of the ECA):
- powers to amend, in line with Government policy objectives, provisions of EU law presently given direct effect in UK law by operation of the ECA, following the incorporation of those provisions into UK law
- Whether so-called “Henry VIII” powers are likely to be necessary or justified in this respect; whether alternative drafting techniques may produce the same effect; and whether there are any areas of the *acquis* or existing domestic legislation which should be off limits to such powers<sup>1</sup>
- Whether a time limit should be set upon the availability of any powers delegated for these purposes.

6. The Government published a White Paper on its proposals for a ‘Great Repeal Bill’ on Thursday 30 March,<sup>2</sup> and the Secretary of State introduced the proposals to the House by means of an oral statement.<sup>3</sup> Despite a request from the Committee, no draft Bill or draft clauses for a Bill were published at that time and therefore no pre-legislative scrutiny has been possible.

7. We consider that the White Paper raises a number of further questions. On 31 March we invited further submissions to address additional terms of reference, cross-referenced to paragraphs in the White Paper, as follows:

- The justifications for the use of delegated powers to be claimed under the Bill, and what information should be provided to Parliament in support of such justification (para 3.9)
- The adequacy of the statutory procedures set out in the Statutory Instruments Act 1946 to handle the anticipated scope and volume of delegated legislation (box, page 23)
- The claims made by the Government about present parliamentary scrutiny of delegated legislation, with particular reference to practice in the House of Commons:
 

“Existing parliamentary procedures allow for Parliament to scrutinise as many or as few statutory instruments as it sees fit. Parliament can, and regularly does, both debate and vote on secondary legislation” (box, page 23)
- The principles and mechanism for determining whether any proposed secondary legislation should be handled under the affirmative procedure or the negative procedure (para 3.22)

1 “Henry VIII powers” are generally taken to mean powers granted to the Government in primary legislation which allow both primary and subordinate legislation to be amended or repealed by subordinate legislation alone, with or without further parliamentary scrutiny.

2 Department for Exiting the European Union, [Legislating for the United Kingdom’s withdrawal from the European Union](#), Cm 9446, March 2017

3 [HC Deb, 30 March 2017, cols. 427–30](#)

- The information to be provided to Parliament to demonstrate the exercise of the powers claimed in respect of each instrument ('anti-transposition notes')
- The conventions and procedures to apply in providing for debates and votes on instruments under the negative procedure (para 3.21)
- The present practice of the Government in determining the procedure applicable to secondary legislation transposing EU Directives under section 2(2) of the European Communities Act 1972
- Considerations to be taken into account when determining the 'most pragmatic and effective' approach to take in balancing the need for scrutiny and speed (para 3.23)
- The merits or otherwise of requiring certain categories of instrument to be presented to Parliament in amendable draft form prior to approval (the so-called 'super-affirmative' procedure)
- The means whereby the powers claimed in the Bill are to be time-limited (para 3.25)
- The additional capacity, if any, required in the House of Commons for technical and policy scrutiny of the '800 to 1,000' instruments the Government anticipates will be necessary (para 3.19)
- The prospects for any continued delegated powers required to ensure that UK legislation continues to operate in line with EU legislation, in circumstances where this meets the Government's policy objectives.

8. We have received 31 submissions to date, from 27 individuals and organisations.<sup>4</sup> In addition we held one session of oral evidence, with Professor Michael Dougan and Dr Mike Gordon of the University of Liverpool and Professor Catherine Barnard of the University of Cambridge, on 1 March.

9. Our approach to the inquiry has been deliberately collaborative. We invited written evidence from Committees in both Houses who were likely to have an interest in the matters under consideration. We have in consequence received memoranda addressing both sets of terms of reference from two committees in the Lords: the Delegated Powers and Regulatory Reform Committee and the Secondary Legislation Scrutiny Committee.<sup>5</sup> We have also received evidence from the Presiding Officer of the Scottish Parliament, Rt Hon Ken Mackintosh MSP, from the Chair of the Constitutional and Legislative Affairs Committee of the National Assembly for Wales, Huw Irranca-Davies AM, and from the Scottish Government.<sup>6</sup> In addition we note the extensive report on the Government's proposals published by the House of Lords Constitution Committee on 7 March, which was referenced by the Government in the White Paper.<sup>7</sup>

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4 The written evidence received in this inquiry is listed on page page 18

5 Delegated Powers and Regulatory Reform Committee ([GRB 0014](#) and [GRB 0031](#)); Secondary Legislation Scrutiny Committee ([GRB 0001](#) and [GRB 0030](#)).

6 Presiding Officer, The Scottish Parliament ([GRB 0021](#)); Chair of the Constitutional and Legislative Affairs Committee, National Assembly for Wales ([GRB 0028](#)); The Scottish Government ([GRB 0010](#)).

7 House of Lords, Select Committee on the Constitution, [The 'Great Repeal Bill' and delegated powers](#), Ninth Report of Session 2016–17, HL Paper 123

## Next steps

10. Had an early General Election not intervened, we would have sought to make a short report to the House before the end of the 2016–17 session setting out a number of issues arising from the oral and written evidence which we would have expected to have been addressed in the Bill once presented. It is likely that we would have gone on to scrutinise the Bill in the period between presentation and Committee stage, in order to inform the House of the implications of the Bill for the House’s procedures.

11. For obvious reasons, it is no longer possible to complete the work on the Government’s proposals in this session as we would have wished. We have nevertheless reported all the evidence received to the House for the benefit of the successor committee.<sup>8</sup> ***We recommend that the Procedure Committee in the 2017 Parliament examine, as a matter of urgency, the implications for the House’s procedures of the Government’s proposals for a bill to repeal and replace the European Communities Act 1972 and to establish a basis in UK law for***

- a) ***the direct application, and eventual revision or repeal, of EU regulations which have direct effect in the UK, and***
- b) ***the amendment of existing UK primary and secondary legislation which currently implements the UK’s existing obligations under EU directives.***

12. The Government has, in the White Paper, indicated that it is “mindful of the need to ensure that the right balance is struck between the need for scrutiny [of delegated legislation under the Bill, once enacted] and the need for speed”. It suggested that a discussion between Government and Parliament should begin in order to establish “the most pragmatic and effective approach to take in this area”.<sup>9</sup>

13. **We recognise the need to establish procedures for scrutiny of secondary legislation under the ‘Great Repeal Bill’ which will ensure that the time of Members is directed to the scrutiny of legislation of the greatest legal and political importance. Arguably, this balance is not achieved in respect of existing procedures for parliamentary approval of secondary legislation under the Statutory Instruments Act 1946. We therefore welcome the Government’s intention to discuss with Parliament “the most pragmatic and effective approach” to achieving a balance which ensures the effectiveness of the House in scrutinising this secondary legislation.**

14. In the White Paper the Prime Minister announced the Government’s intention to bring forward legislation to enact the ‘Great Repeal Bill’ proposals at the beginning of the next Session of Parliament.<sup>10</sup> We have, therefore, to assume that this legislation would have been announced in the Queen’s Speech scheduled for mid-May 2017, and will now be announced in the first Queen’s Speech of the new Parliament, to take place in late June. It seems likely that, should the current administration continue after the election on 8 June, flagship legislation such as this would be introduced shortly after the Queen’s Speech and would be sent on its Commons passage without delay.

8 The written and oral evidence has been published on the Committee’s [inquiry page](#).

9 [Legislating for the United Kingdom’s withdrawal from the European Union](#), Cm 9446, para 3.23

10 [Legislating for the United Kingdom’s withdrawal from the European Union](#), Cm 9446, foreword

15. In our view, if the Government wishes to proceed swiftly with the Bill, then it should not delay in arranging for the establishment in the new Parliament of the select committees of this House with an interest in the issues. Those committees should be part of the “meaningful discussion” the Government envisages: without the full participation of such committees, the Government will struggle to achieve agreement on an approach to scrutiny of secondary legislation which will command widespread support.

16. It is axiomatic that the committees most interested in the matter—the Procedure Committee, the European Scrutiny Committee, the Joint Committee on Statutory Instruments and the Committee on Exiting the European Union—should be established as quickly as possible in the new Parliament, to examine any ‘Great Repeal Bill’ which may be introduced, together with associated proposals for handling of ensuing delegated legislation.

17. *We recommend that, should a ‘Great Repeal Bill’ be announced in the Queen’s Speech at the State Opening of the first session of the 2017 Parliament, the chairs and members of the select committees named above should be in place before the Bill starts its legislative journey.*

## Revision of Standing Orders

18. Our predecessors published, at the end of the 2010 Parliament, a comprehensive proposal for the revision of the Standing Orders as they then stood.<sup>11</sup> The proposal aimed to remove archaic and gender-specific language from the Standing Orders, to improve their comprehensibility and to reflect current practice more accurately.

19. The proposal was referred to us for consideration in this Parliament.<sup>12</sup> Almost immediately upon appointment, however, we were required to examine the new administration’s own project for Standing Order revision, in the form of proposals for Standing Orders to implement a commitment to introduce a system of ‘English votes for English laws’. As we have previously observed, the Government’s proposals added 15 new Standing Orders to the existing corpus and amended 13 others: they represent 12 per cent of the volume of the 2016 edition of Standing Orders.<sup>13</sup>

20. This substantial amendment to Standing Orders has had a consequential effect on our proposals, several of which will require redrafting. Given that the focus of the Government has been on implementation of new systems based on Standing Orders, rather than revision of the existing corpus, it is perhaps understandable that progress on the latter has been slow. We nevertheless understand that there is now a willingness on the part of the Government to contemplate supporting a wholesale revision of Standing Orders, based on the initial proposals made by our predecessors.

11 Procedure Committee, *Revision of Standing Orders*, Sixth Report of Session 2014–15, HC 654.

12 Procedure Committee, *Matters for the Procedure Committee in the 2015 Parliament*, Seventh Report of Session 2014–15, HC 1121, para 2

13 Procedure Committee, *English votes for English laws Standing Orders: report of the Committee’s technical evaluation*, Third Report of Session 2016–17, HC 189, para 6. The new Standing Orders (83J to 83X) take up 28 of the 226 pages of the 2016 volume ([HC \(2016–17\) 2](#)) of Public Business Standing Orders (12.3 per cent of 226 pages).

21. *We recommend that the Procedure Committee in the 2017 Parliament take forward the proposals for revision of Standing Orders contained in the Annex to the Sixth Report from the Procedure Committee, Session 2014–15, HC 649, with a view to securing the support of the House for a wholesale revision based on those proposals.*

## Scrutiny of the Government’s Supply Estimates

22. Examination of the House’s financial procedures has been a priority for the Committee in this Parliament. On 19 April we published the first report to emerge from this workstream, which examined changes in procedure and practice which could lead to better practical scrutiny of the Government’s supply estimates—the annual spending plans on the basis of which the House formally approves the release of money to the Government from the Consolidated Fund.<sup>14</sup>

23. We recommended a significant change in practice, whereby the Backbench Business Committee would in effect take over responsibility for allocating debates on the three Estimates days to be held each session, while the Liaison Committee—which presently has that responsibility—would in turn receive an allocation of three backbench days for allocation to debates on select committee reports.<sup>15</sup> In our view, this change would promote better engagement across the House with formal scrutiny of Government spending plans on the three days in the House’s year when such matters are debated on the floor of the House. *We recommend that the Backbench Business Committee and the Liaison Committee in the new Parliament take forward work to implement the recommendations in our Fifth Report of Session 2016–17 on allocation of debates on Estimates days.*

24. **We draw the attention of our successor Committee to the further recommendations in our report on scrutiny of Estimates, and the indications of further work we had planned to undertake later in this Parliament. We also expect the Government to provide the new Committee with a full response to the recommendations contained in that report which concern the Government.**

25. In particular we identify the issue of consideration by the House of the Government’s multi-annual spending plans set out in Spending Reviews, since these increasingly govern the spending choices presented to the House in the annual Estimates. Our successors may also wish to take forward our proposals for rescheduling the presentation of Main Estimates so that they are approved by the House before the start of the financial year to which they relate. These proposals are closely connected to the proposals from the Chancellor of the Exchequer to move the annual Financial Statement and Budget Report to November each year, and our successors will no doubt wish to examine the implementation of these proposals closely.

14 Procedure Committee, *Authorising Government expenditure: steps to more effective scrutiny*, Fifth Report of Session 2016–17, HC 190

15 *Ibid*, paras 77–84

## 2 Matters which the new Committee may wish to take up

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### English votes for English laws

26. The Committee published its technical evaluation of the first year of operation of the ‘English votes for English laws’ procedures in December 2016.<sup>16</sup> In that report, we made practical suggestions to improve the operation of the procedure, including means to eliminate the frequently otiose legislative grand committee stage from the procedure unless there was a demand for debate in such a committee. We also expressed concern at the overall drafting of the standing orders implementing the new procedure, and drew attention to the lack of support for the new procedures in the House from every party except the party of government.

27. The Government issued its response to its technical review of the procedures on 30 March 2017, and addressed our conclusions and recommendations in its response.<sup>17</sup> We found the response disappointing: it missed several opportunities to make practical improvements to the operation of the present procedures, and failed to acknowledge the widespread dissatisfaction with them which we have observed in the House.

28. *We recommend that the Committee in the 2017 Parliament continue to keep the operation of ‘English votes for English laws’ procedures, insofar as they are continued by the present or any future administration, under regular review.*

### Sitting hours

29. In the summer of 2016 the Committee undertook a survey of Members on their preferences for the sitting hours of the House and their views on the effect of sitting hours on their personal lives, their effectiveness as Members and the effectiveness of the House. The outcome of the survey would have informed a debate on the sitting hours of the House which we intended to sponsor before the summer recess: this would have given the House, as a whole, the chance to vote on the existing sitting hours of the House and for support for alternative sitting hours to be tested.

30. We have not of course proceeded with the planned debate. The report on the 2016 survey has been published as our Sixth Report of this Session.<sup>18</sup> In that report we recommend that the successor committee undertake a similar exercise twelve months into the new Parliament, with a view to sponsoring a debate on sitting hours in the autumn of 2018.

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16 Procedure Committee, *English votes for English laws Standing Orders: report of the Committee’s technical evaluation*, Third Report of Session 2016–17, HC 189

17 Cabinet Office, *Technical Review of the Standing Orders Related to English Votes for English Laws and the Procedures they Introduced*, Cm 9430, March 2017

18 Procedure Committee, *Sitting hours of the House; response to a survey of Members*, Sixth Report of Session 2016–17. HC 1144

## Term limits for chairs of select committees

31. The 2015 Parliament will have lasted for just under two years, following the 2010 Parliament which lasted the full fixed term provided for in the Fixed-term Parliaments Act. The brevity of this Parliament was largely unanticipated—the establishment of fixed-term parliaments has given select committees a reasonable expectation of being able to plan for a five year work programme. It also encouraged a reasonable expectation in select committee chairs that, following their election at the start of a Parliament, they would be able to serve out a Parliament of five years.

32. Term limits for select committee chairs were introduced in Standing Orders in 2002.<sup>19</sup> At the time it was decided that the House should begin to remunerate chairs to encourage Members to consider committee work as part of an alternative career structure to Ministerial office. Until the end of the 2005 Parliament, Members were nominated to committees by the Committee of Selection on the recommendation of the whips who sat on that committee, and the committee chair was chosen by the committee from among its number. There was a perception—which in some cases may have been justified—of potential patronage by the whips in arranging for certain Members to be chosen as committee chairs. The introduction of term limits for chairs was intended to limit the overall power of patronage to salaried posts and to provide for a degree of turnover. Standing Order No. 122A provided that, unless the House otherwise ordered, “no select committee may choose as its chairman any Member who has served as chairman of that committee for the two previous Parliaments, or a continuous period of 8 years, whichever is the greater period.”

33. Shortly after the General Election of 2005, the standing order was amended to provide that no committee should **have** as its chair any Member who had served for the greater period of two Parliaments or for a continuous period of eight years. This amendment was intended to cater for a circumstance where there were parliaments rather shorter than the expected term of four or five years. As the then Leader of the House explained when proposing the amendment,

[...] a Chairman who has served for two full Parliaments could be re-elected for a third if the date of his re-election fell just within eight years of his first election. The proposed change would mean that if a Chairman were elected for a third term, the chairmanship would cease at the expiry of eight years from first election.<sup>20</sup>

We understand that the standing order has been interpreted to provide that a Member who takes a committee chair part way through a parliament, in succession to a departing chair, does not have service in that parliament reckoned as part of the two terms provision: that is to say, “two Parliaments” has been taken to mean service throughout two Parliaments.

19 [HC Deb, 14 May 2002, col 726](#): the change accompanies a package of proposals on reform of select committees proposed by the Select Committee on Modernisation of the House of Commons in its First Report of Session 2001–02, [Select Committees](#), HC 224: the issue of term limits is addressed at paragraph 43. The report was broadly endorsed by the Liaison Committee in its Second Report of Session 2001–02, [Select Committees: Modernisation Proposals](#), HC 692.

20 [HC Deb, 13 July 2005, col. 845](#)

34. The majority of select committee chair posts were opened to election in 2010 under the provisions of Standing Order No. 122B. The operation of Standing Order No. 122A, as presently interpreted, means that those chairs who were elected to their posts at the start of the 2010 Parliament, and were elected again at the start of the 2015 Parliament, will be eligible to stand for election again, should they be returned at the forthcoming General Election and should the chairing of their committee be assigned to their party. Should those chairs be elected by the 2017 House, under Standing Order No. 122A any chairs elected at the start of the 2010, 2015 and 2017 Parliaments would be ineligible to continue as chairs beyond the date of 12 July 2018.<sup>21</sup>

35. This situation throws up a number of potential anomalies which we consider that our successor committee ought to address as a matter of urgency:

- a) A system designed to ensure a turnover of chairs, in the period when chairs were chosen by their committees, does not necessarily translate well to the era of chairs elected by the House. There is no explicit mechanism under present Standing Orders to enforce an orderly removal of an elected, but time-expired, chair in mid-Parliament.
- b) It may appear anomalous that, while there are term limits for elected chairs which can curtail a term of office in the middle of a Parliament, there are no similar limits applied to other members of select committees, who are elected to their posts by their parties before their nomination is confirmed by the House—albeit that committee membership alone is not remunerated.
- c) In the era of fixed-term parliaments, where committees expect to be able to plan a work programme to last for up to five years, it seems counterintuitive to provide that former chairs may stand for election—doubtless with a plan to continue the work of the committee from the previous Parliament—but may consequently, if elected, be required to stand aside after barely 12 months.
- d) Following the enactment of the Fixed-term Parliaments Act 2011, the length of a Parliament is now set at five years. In 2005 it was a reasonable assumption that two Parliaments would last on average eight years: that figure is now ten years.

36. The elections of committee chairs in the early weeks of the 2017 Parliament will therefore be subject to a degree of uncertainty, depending on the outcome of the General Election and the determination by the House of the parties from which each committee chair should be drawn. This uncertainty is unavoidable: it cannot be resolved before the elections take place.

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21 Under the present interpretation of the Standing Order their successors would, of course, be eligible to stand for election at the start of the next two parliaments—which, if the parliaments from 2017 all ran their full five-year course, would deliver a potential maximum term of 14 years.

37. The Leader of the House made some helpful comments during the course of Business Questions on Thursday 20 April:

I concede that the Standing Orders relating to the election of Select Committee Chairs are capable of being construed in a number of different ways. It seems to me that the way forward is for the Procedure Committee in the new House of Commons, when it is constituted, to take the issue away, to examine the current Standing Orders, to consult across the parties in the House and to come back with recommendations in due course.<sup>22</sup>

***38. We recommend that the Procedure Committee established in the 2017 Parliament consider, as a matter of urgency, the present operation of Standing Order No. 122A, on term limits for chairs of select committees, and make recommendations for change which are compatible with the expectations of the House and the present arrangements for election of chairs of select committees. We recognise that it will not be practicable to report on this matter before select committee chairs are elected at the start of the next Parliament. The next Committee should therefore aim to report its recommendations to the House in order for the House to take a decision on any proposed changes as soon as possible before the end of the calendar year 2017.***

## Conclusions and recommendations

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### Unfinished business from the 2015 Parliament

1. *We recommend that the Procedure Committee in the 2017 Parliament examine, as a matter of urgency, the implications for the House's procedures of the Government's proposals for a bill to repeal and replace the European Communities Act 1972 and to establish a basis in UK law for*
  - a) *the direct application, and eventual revision or repeal, of EU regulations which have direct effect in the UK, and*
  - b) *the amendment of existing UK primary and secondary legislation which currently implements the UK's existing obligations under EU directives. (Paragraph 11)*
2. We recognise the need to establish procedures for scrutiny of secondary legislation under the 'Great Repeal Bill' which will ensure that the time of Members is directed to the scrutiny of legislation of the greatest legal and political importance. Arguably, this balance is not achieved in respect of existing procedures for parliamentary approval of secondary legislation under the Statutory Instruments Act 1946. We therefore welcome the Government's intention to discuss with Parliament "the most pragmatic and effective approach" to achieving a balance which ensures the effectiveness of the House in scrutinising this secondary legislation. (Paragraph 13)
3. In our view, if the Government wishes to proceed swiftly with the Bill, then it should not delay in arranging for the establishment in the new Parliament of the select committees of this House with an interest in the issues. Those committees should be part of the "meaningful discussion" the Government envisages: without the full participation of such committees, the Government will struggle to achieve agreement on an approach to scrutiny of secondary legislation which will command widespread support. (Paragraph 15)
4. It is axiomatic that the committees most interested in the matter—the Procedure Committee, the European Scrutiny Committee, the Joint Committee on Statutory Instruments and the Committee on Exiting the European Union—should be established as quickly as possible in the new Parliament, to examine any 'Great Repeal Bill' which may be introduced, together with associated proposals for handling of ensuing delegated legislation. (Paragraph 16)
5. *We recommend that, should a 'Great Repeal Bill' be announced in the Queen's Speech at the State Opening of the first session of the 2017 Parliament, the chairs and members of the select committees named above should be in place before the Bill starts its legislative journey. (Paragraph 17)*
6. *We recommend that the Procedure Committee in the 2017 Parliament take forward the proposals for revision of Standing Orders contained in the Annex to the Sixth Report from the Procedure Committee, Session 2014–15, HC 649, with a view to securing the support of the House for a wholesale revision based on those proposals. (Paragraph 21)*

7. *We recommend that the Backbench Business Committee and the Liaison Committee in the new Parliament take forward work to implement the recommendations in our Fifth Report of Session 2016–17 on allocation of debates on Estimates days. (Paragraph 23)*
8. *We draw the attention of our successor Committee to the further recommendations in our report on scrutiny of Estimates, and the indications of further work we had planned to undertake later in this Parliament. We also expect the Government to provide the new Committee with a full response to the recommendations contained in that report which concern the Government. (Paragraph 24)*

### **Matters which the new Committee may wish to take up**

9. *We recommend that the Committee in the 2017 Parliament continue to keep the operation of ‘English votes for English laws’ procedures, insofar as they are continued by the present or any future administration, under regular review. (Paragraph 28)*
10. *We recommend that the Procedure Committee established in the 2017 Parliament consider, as a matter of urgency, the present operation of Standing Order No. 122A, on term limits for chairs of select committees, and make recommendations for change which are compatible with the expectations of the House and the present arrangements for election of chairs of select committees. We recognise that it will not be practicable to report on this matter before select committee chairs are elected at the start of the next Parliament. The next Committee should therefore aim to report its recommendations to the House in order for the House to take a decision on any proposed changes as soon as possible before the end of the calendar year 2017. (Paragraph 38)*

# Formal minutes

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**Wednesday 26 April 2017**

Members present:

Mr Charles Walker, in the Chair

Bob Blackman

Huw Merriman

Mr Christopher Chope

Mr David Nuttall

Patrick Grady

Draft Report (*Matters for the Procedure Committee in the 2017 Parliament*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 38 read and agreed to.

Summary agreed to.

*Resolved*, That the Report be the Seventh Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[The Committee adjourned.]

# Evidence taken in the Committee's inquiry into *Delegated powers and the 'Great Repeal Bill'*

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## Witnesses

**Professor Michael Dougan**, Professor of European Law, **Dr Mike Gordon**, Senior Lecturer in Law, University of Liverpool, and **Professor Catherine Barnard**, Professor of European Union Law, University of Cambridge

[Q1-23](#)

## Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

GRB numbers are generated by the evidence processing system and so may not be complete.

- 1 38 Degrees ([GRB0016](#))
- 2 Brexpat's—Hear our Voice and RIFT (Remain in France Together) ([GRB0025](#))
- 3 Campaign for the Real Referendum—on the Terms of Brexit ([GRB0022](#))
- 4 Campaign for the Real Referendum—on the Terms of Brexit ([GRB0023](#))
- 5 ClientEarth ([GRB0008](#))
- 6 Daniel Greenberg ([GRB0029](#))
- 7 Dr John Kemp ([GRB0011](#))
- 8 Dr Mike Gordon ([GRB0019](#))
- 9 Dr Thomas Horsley ([GRB0013](#))
- 10 Hansard Society ([GRB0032](#))
- 11 House of Lords Delegated Powers and Regulatory Reform Committee ([GRB0014](#))
- 12 House of Lords Delegated Powers and Regulatory Reform Committee ([GRB0031](#))
- 13 House of Lords Secondary Legislation Scrutiny Committee ([GRB0001](#))
- 14 House of Lords Secondary Legislation Scrutiny Committee ([GRB0030](#))
- 15 Huw Irranca Davies AM, Chair of the Constitutional and Legislative Affairs Committee, National Assembly for Wales ([GRB0028](#))
- 16 Institute for Government ([GRB0024](#))
- 17 Liberty ([GRB0012](#))
- 18 Liberty (National Council for Civil Liberties) ([GRB0027](#))
- 19 Miss Tessa Burrington ([GRB0015](#))
- 20 Mr Elwyn Jones ([GRB0026](#))
- 21 Professor Michael Dougan ([GRB0003](#))
- 22 Scottish Government ([GRB0010](#))
- 23 The Archaeology Forum ([GRB0006](#))

- 24 The Heritage Alliance ([GRB0007](#))
- 25 The Scottish Parliament ([GRB0021](#))
- 26 Traidcraft ([GRB0018](#))
- 27 TUC ([GRB0020](#))
- 28 University of Sheffield ([GRB0005](#))
- 29 Which? ([GRB0009](#))
- 30 Wildlife and Countryside Link ([GRB0004](#))
- 31 WWF-UK ([GRB0002](#))

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website.

The reference number of the Government's response to each Report is printed in parenthesis after the HC printing number.

### Session 2015–16

|               |   |                                |
|---------------|---|--------------------------------|
| First Report  | Government proposals for English votes for English laws Standing Orders: Interim Report | HC 410<br>(HCWS (2015–16) 251) |
| Second Report | Notification of the arrest of Members   | HC 649                         |
| Third Report  | Private Members' bills  | HC 684                         |
| Fourth Report | Programming: evaluation of the trial of new arrangements for tabling amendments         | HC 823                         |

### Session 2016–17

|                       |   |                     |
|-----------------------|---|---------------------|
| First Report          | Monitoring of written Parliamentary questions: progress report for Session 2015–16  | HC 191              |
| Second Report         | Private Members' bills: Observations on the Government response to the Committee's Third Report of Session 2015–16 HC 684   | HC 701<br>(HC 937)  |
| Third Report          | English votes for English laws Standing Orders: report of the Committee's technical evaluation                              | HC 189<br>(Cm 9430) |
| Fourth Report         | Use of the Welsh language in the Welsh Grand Committee at Westminster   | HC 816<br>(HC 1043) |
| Fifth Report          | Authorising Government expenditure: steps to more effective scrutiny  | HC 190              |
| Sixth Report          | Sitting hours of the House: response to a survey of Members   | HC 1141             |
| First Special Report  | Private Members' bills: Government Response to the Committee's Second Report of Session 2016–17                             | HC 937              |
| Second Special Report | Use of the Welsh language in the Welsh Grand Committee at Westminster: Government Response to the Committee's Fourth Report | HC 1043             |