



House of Commons

Public Administration and
Constitutional Affairs Committee

**Democracy Denied:
Appointment of the
UK's delegation to the
Parliamentary Assembly
of the Council of
Europe: Government
Response to the
Committee's Second
Report of Session
2015–16**

Ninth Report of Session 2015–16



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

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The Public Administration and Constitutional Affairs Committee

The Public Administration and Constitutional Affairs Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs.

Current membership

[Mr Bernard Jenkin MP](#) (*Conservative, Harwich and North Essex*) (Chair)

[Ronnie Cowan MP](#) (*Scottish National Party, Inverclyde*)

[Oliver Dowden MP](#) (*Conservative, Hertsmere*)

[Paul Flynn MP](#) (*Labour, Newport West*)

[Rt Hon Cheryl Gillan MP](#) (*Conservative, Chesham and Amersham*)

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[Rt Hon David Jones MP](#) (*Conservative, Clwyd West*)

[Gerald Jones MP](#) (*Labour, Merthyr Tydfil and Rhymney*)

[Tom Tugendhat MP](#) (*Conservative, Tonbridge and Malling*)

[Mr Andrew Turner MP](#) (*Conservative, Isle of Wight*)

Powers

The Committee is one of the departmental select committees. Its powers are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/pacac and in print by Order of the House.

Committee staff

The current staff of the Committee are: Dr Rebecca Davies (Clerk), Ms Rhiannon Hollis (Clerk), James Harrison (Second Clerk), Dr Adam Evans (Committee Specialist), Dr Henry Midgley (Committee Specialist), Ms Penny McLean (Committee Specialist), Rebecca Usden (Committee Specialist), Ana Ferreira (Senior Committee Assistant), Iwona Hankin (Committee Assistant), and Mr Alex Paterson (Media Officer).

Contacts

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The Committee's view of the Government's Response to our Report on the Appointment of the UK's delegation to the Parliamentary Assembly of the Council of Europe

1. The Public Administration and Constitutional Affairs Committee published its Second Report of Session 2015–16, Appointment of the UK's delegation to the Parliamentary Assembly of the Council of Europe, as HC 658 on 14 January 2016. The Government's response was received on 24 March 2016 and is appended to this report.
2. The Committee wishes to place on record its dissatisfaction with the Government's response. It does not address the issues raised in our report, and in addition, it seeks to use irrelevant facts to cast doubt on the validity of our recommendations. We ask the Government to think again and to give a considered response to our report.
3. The Government's response draws attention to the fact that this Committee received the letter from Mr Owen Paterson MP, which triggered our inquiry, before the meeting of the Assembly's Committee on the Rules of Procedure, Immunities and Institutional Affairs (the "Rules Committee") at which it was recommended that the credentials of the UK's Delegation be ratified. This is correct, but not relevant. We were aware of the decision of the Rules Committee when we took oral evidence and when we agreed our report. The Rules Committee decision is irrelevant to our main conclusion that there should be a democratic process in our own Parliament for the appointment of members of the delegation, rather than the present system relying on patronage. We do not accept that the Government's response should attempt to minimise the importance of our report in this way.
4. Although the UK Delegation's credentials were ratified by the Parliamentary Assembly on 25 January 2016 following a recommendation by the Rules Committee, it is not acceptable that the UK's delegation is appointed and announced by the Prime Minister. We do not think it is right that the House has practically no opportunity to debate and vote on it, nor to amend the list of members presented. Furthermore, the fact that the UK's delegation to an organisation whose central purpose is to uphold and strengthen democracy in Europe is appointed in an undemocratic way is completely inappropriate and embarrassing. This situation is democracy denied.
5. The Government response notes that the Assembly's own rules allow for a member state's delegation to be "elected [...] or appointed". Again, while correct as a matter of procedure, this is irrelevant to the case made in our report for a democratic process of appointment. The same kind of arguments were used against the election of Select Committees before the Wright Report. The House of Commons was right to ignore them then and they should carry no weight now. In our view, the United Kingdom's Delegation should be appointed in a way which is as democratic as possible, as befits a nation which

was among the founder members of the Council of Europe. It is not enough to say that a less democratic method is acceptable under the rules of the Assembly. It is not acceptable to this Committee and we do not think it should be acceptable to the House.

6. The response draws attention to the ways in which Members were able to express their dissatisfaction with the decision which had been taken to exclude several members from the delegation. This was done through an urgent question, a debate in Backbench Business time, and through our inquiry. We agree that these methods were well used in drawing attention to the decision and in airing Members' views. However, this does not do away with the need for a formal mechanism of approval, built in to the usual process for deciding the membership of the delegation.

7. We do not accept this Government Response, which fails to address the importance of democracy in appointing the UK's Delegation to the Council of Europe. This is democracy denied. We call upon the Government to amend its process from Prime Ministerial announcement of a list of names decided in concert with party leaders, to free, fair and open election of the Commons element of a delegation by the whole House of Commons. If the House agrees to the principle of the change we propose, the Procedure Committee could consider how this reform should be implemented. At the same time, we suggest that the Procedure Committee should consider whether the other delegations sent by Parliament to international assemblies, namely the Organization for Security and Co-operation in Europe (OSCE), the North Atlantic Treaty Organization (NATO) Parliamentary Assembly and the British-Irish Parliamentary Assembly, should also be appointed by free, fair and open elections. We ask that the Government reconsider its response to our Report and produce a further response.

Appendix: Government Response

The Government notes the report published on 14 January 2016, relating to the UK's delegation to the Parliamentary Assembly of the Council of Europe. We note that the Public Administration and Constitutional Affairs Committee (hereafter referred to as the Committee) has confined itself to considering the issue of principle, and the Government response takes a similar approach.

Given that all of the Committee's recommendations are connected closely to each other, the Government response addresses all of the recommendations together.

Recommendations

Recommendation 3. *The House should note the criticism made by the Rules Committee and consider that Committee's recommendation. We recommend extending the same principles of direct election which have now been introduced to the choice of the membership of most House of Commons select committees.* (Paragraph 25)

Recommendation 5. *As the Leader of the majority party is also the Leader of the entire UK Delegation of all parties represented, and is automatically a member of the Council of Europe's controlling Bureau, the House of Commons should elect the Delegation Leader in the same way it elects most chairs of select committees.* (Paragraph 26)

Recommendation 7. *As the Delegation represents the whole of the United Kingdom, we recommend that the membership of future delegations should be open to formal approval or rejection by both Houses of Parliament and that Parliament should be free to object to the inclusion of individual members, in the same manner in which the House of Commons approves the appointment of select committee members.* (Paragraph 27)

Recommendation 8. *We recommend that there should be free, fair and open elections of the House of Commons membership of the Delegation by each party from among its House of Commons membership at the beginning of each new Parliament. These elections should be conducted on the same lines as the election of members to Select Committees, which have been such a success. There is no reason why the special requirements for gender representation cannot be included, as they have been already in respect of the election of the Deputy Speakers of the House. A reform of this nature is long overdue. Representation from the House of Lords is of course a matter for that House but we hope it will also consider a similar reform.* (Paragraph 28)

Recommendation 9. *We recommend that, if the House agrees to the principle of the change we propose, the Procedure Committee consider how this reform should be implemented. At the same time, we suggest that the Procedure Committee should consider whether the other delegations sent by Parliament to international assemblies, namely the Organization for Security and Co-operation in Europe (OSCE), the North Atlantic Treaty Organization (NATO) Parliamentary Assemblies and the British-Irish Parliamentary Assembly, should also be appointed by free, fair and open elections.* (Paragraph 29)

Response

The Government is grateful for the work undertaken by the Committee, and notes the Committee's own comments on the limitations of its remit to consider only the issue of principle, recognising the implementation of Standing Order changes is for consideration by the Procedure Committee.

The Government notes that letter which triggered this inquiry, was received by the Committee on 30 November 2015. This was before the Assembly's Committee on the Rules of Procedure, Immunities and Institutional Affairs, unanimously agreed to ratify the credentials of the UK delegation at a meeting on 10 December 2015.

The Government also notes the evidence of Sir Roger Gale to the Committee that he thought the decision of the Assembly to refer the credentials of the UK delegation to the Rules Committee had, in part, come about because not all Assembly members were in possession of the full facts. Sir Roger also notes in his evidence that the device of a Written Ministerial Statement to place information on the record has been "misconstrued."

National flexibility

It is recognised by the Committee that the Assembly does not specify how delegations from each member state should be appointed, saying only that they shall be 'elected [...] or appointed from among the members of [each] Parliament in such manner as it shall decide.' In its report of 11 December 2015, the Assembly Committee on the Rules of Procedure, Immunities and Institutional Affairs stated that the Statute "offers member States a degree of flexibility regarding the procedure to be followed".

This flexibility is highlighted in the range of procedures used, as shown in Section 3 of the Briefing Paper of the House of Commons Library (Number 7378 of 11 November 2015), which sets out the procedure for selecting delegations for inter-parliamentary assemblies in countries across Europe. The report also states that "it is clear that neither the Statute of the Council of Europe (Article 25) nor the Assembly's Rules of Procedure (Rule 6) oblige member States to appoint their delegation to the Parliamentary Assembly by election."

Role of political parties

In the UK, the practice has been that each party selects those of its representatives who will be appointed to the Delegation, following discussions between the parties as to the split between both Houses, and the split between the political parties, considering any representation for minor parties and between the nations, as well as other requirements such as gender balance. The process of selection is then for the political parties but can include internal elections. This is a matter for the political parties, not for the government.

It is clear that the political parties reserve the right to refresh their membership of the Delegation from time to time. In this matter, the Assembly Committee on the Rules of Procedure, Immunities and Institutional Affairs said in its report that "it is not for the Committee on Rules of Procedure to become involved in party politics when verifying the credentials of delegations. This is why it is not the Committee's role to take a position

on the merits of the decision not to reappoint three members of the outgoing delegation, insofar as such a decision has no effect on the balance of political representation in the new delegation.”

View of the UK Parliament

In 1992, the Houses of Parliament agreed twin motions “that this House confirms the existing procedures for the nomination of the United Kingdom delegations to the parliamentary assemblies of the Council of Europe and the Western European Union.” In essence, Parliament ratified the process used to appoint members of both Houses to the Assembly, which has remained largely unchanged for many years.

As the Committee notes in its report, the House of Commons was able to express its view on 16 November 2015 when it considered a motion, and an amendment to that motion, both of which would have meant the House adopting a system reflecting that for nomination of departmental select committees. This arose following a request to the Backbench Business Committee. The House voted against the amendment by 171 votes to 34 and the main question was defeated without division.

The Assembly Committee on Rules of Procedure commented on the debate in its report, saying that “the question of the procedure for appointing the parliamentary delegation to the Assembly has been duly debated in the House of Commons, publicly and in total transparency, and it cannot but welcome the opportunity given to the Members of Parliament who so wished to speak freely on this issue. Clearly, the vote on 16 November 2015 in the House of Commons, which led to the rejection of the motion to amend the current procedure, can be seen as the expression of the majority of the House to maintain the existing procedure.”

The Government also notes that the House has come to a decisive view on the process of appointment to the UK delegation to the Assembly less than three months ago, and is not convinced that there is anything of substantial difference to suggest that the House would come to a different decision if asked again, given that only 34 Members supported a change.

Parliamentary Scrutiny

The Government observes that the membership is notified to the House by Written Ministerial Statement ahead of the Speaker communicating the credentials to the President of the Parliamentary Assembly. In instances where either House wishes to question either the process of appointment or individual members, there are many avenues open to them.

On this occasion, Members of the House of Commons were able to ask an urgent question on 3 November 2015, contribute to the debate on a substantive motion in a debate requested through the Backbench Business Committee on 16 November 2015 and contribute to the inquiry organised by the Committee. This was in addition to the opportunities afforded by Parliamentary Questions and the weekly business question to the Leader of the House of Commons.

Formal Minutes

Tuesday 10 May 2016

Members present:

Bernard Jenkin, in the Chair

Oliver Dowden

Mr David Jones

Mr Paul Flynn

Gerald Jones

Kate Hoey

Tom Tugendhat

Kelvin Hopkins

Mr Andrew Turner

Draft Report (*Democracy Denied: Appointment of the UK's delegation to the Parliamentary Assembly of the Council of Europe: Government Response to the Committee's Second Report of Session 2015–16*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 7 read and agreed to.

Resolved, That the Report be the Ninth Report of the Committee to the House.

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

[Adjourned till Tuesday 24 May at 9.15am.]

List of Reports from the Committee during the current Parliament

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 brackets after the HC printing number.

Session 2015–16

| | | |
|-----------------------|--|-----------------|
| First Report | Follow-up to PHSO Report: Dying without dignity | HC 432 (HC 770) |
| Second Report | Appointment of the UK's delegation to the Parliamentary Assembly of the Council of Europe | HC 658 |
| Third Report | The 2015 charity fundraising controversy: lessons for trustees, the Charity Commission, and regulators | HC 431 (HC 980) |
| Fourth Report | The collapse of Kids Company: lessons for charity trustees, professional firms, the Charity Commission, and Whitehall | HC 433 (HC 963) |
| Fifth Report | The Future of the Union, part one: English Votes for English laws | HC 523 (HC 961) |
| Sixth Report | Follow up to PHSO Report of an investigation into a complaint about HS2 Ltd | HC 793 |
| Seventh Report | Appointment of the Commissioner for Public Appointments | HC 869 |
| Eighth Report | The Strathclyde Review: Statutory Instruments and the power of the House of Lords | HC 752 |
| First Special Report | Developing Civil Service Skills: a unified approach: Government Response to the Public Administration Select Committee's Fourth Report of Session 2014–15 | HC 526 |
| Second Special Report | Lessons for Civil Service impartiality for the Scottish independence referendum: Government Response to the Public Administration Select Committee's Fifth Report of Session 2014–15 | HC 725 |
| Third Special Report | Follow-up to PHSO Report: Dying without dignity: Government response to the Committee's First Report of Session 2015–16 | HC 770 |
| Fourth Special Report | The Future of the Union, part one: English Votes for English laws: Government response to the Committee's Fifth Report of Session 2015–16 | HC 961 |

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| Fifth Special Report | The collapse of Kids Company: lessons for charity trustees, professional firms, the Charity Commission, and Whitehall: Government Response to the Committee's Fourth Report of Session 2015–16 | HC 963 |
| Sixth Special Report | The 2015 charity fundraising controversy: lessons for trustees, the Charity Commission, and regulators: Government response to the Committee's Third Report of Session 2015–16 | HC 980 |