

Evidence to the Constitutional and Legislative Affairs Committee Inquiry: Making Laws in the Fourth Assembly

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1. The purpose of this evidence is to draw the Committee’s attention to the attached report, *The Constitutional Standards of the House of Lords Select Committee on the Constitution* by Jack Simson Caird, Dawn Oliver and Robert Hazell, published by the Constitution Unit (UCL) in January 2014. It contains a Code of Constitutional Standards, drawn from the 149 reports published by the House of Lords Constitution Committee since it began work in 2001. We suggest that the Report shows that a legislative body is able to develop its own constitutional scrutiny standards over time as ‘legisprudence’, and that those standards could be organised into a Code which would be a resource, not only for members of the legislature and its committees, but also ‘upstream’ in government.

2. The Constitution Unit Report is relevant to this inquiry in two senses: (1) the substance of the Code might be used, formally or informally, to inform the Assembly’s legislative scrutiny; (2) it illustrates the value of a parliamentary committee taking a *proactive* approach in articulating the rules and principles that should inform the legislative process.

3. The standards in the Code are organised into five sections: the rule of law; delegated powers, delegated legislation and Henry VIII clauses; the separation of powers; individual rights; and parliamentary procedure. Many of the standards relate directly to the terms of this inquiry. For example, all of the standards within section 2 of the Code on delegated powers are directly relevant to question 1 of this inquiry. Further, standards 5.4.1 to 5.4.9 relate directly to question 6 on ‘fast-track’ legislation. The standards do not themselves provide answers to the many of the difficult questions that arise in the legislative process. However, they can serve as a useful tool in the legislative process. Legislative scrutiny of a particular bill is improved by reference to accessible general constitutional standards drawn from practical past experience within the legislature.

4. We suggest that the experience of the House of Lords Constitution Committee over ten years could provide lessons, both positive and negative, for the National Assembly when developing its own standards or ‘legisprudence’. For instance, in its early reports, the Constitution Committee adopted a ‘technical’ approach, which restricted its ability to develop its own

constitutional analysis of the key constitutional principles that underpin the parliamentary process within Westminster. Subsequently the Committee developed a bolder approach, and the reports develop and specify rules from broader principles that can be applied in the scrutiny of particular Bills. It is these standards which are set out in the Code. The key point is that the National Assembly, and particularly the Constitutional and Legislative Affairs Committee, might wish to be proactive in developing its own distinctive voice in the Assembly's legislative activities. Articulating its own soft-law standards, which draw upon the Government of Wales Act 2006, relevant jurisprudence and the previous experiences of the Assembly, would improve the scrutiny of Government Bills.

5. In summary, by translating statutory provisions, broadly framed constitutional principles, parliamentary practices and past reports of this Committee into a concrete and accessible *Code of Standards*, the Committee could improve both the *effectiveness* and the *transparency* of legislative scrutiny. A code produced by the National Assembly might be used upstream within Government to improve the substance of law at an early stage. A code could also be used as a template for a Government memorandum or the explanatory notes that accompany a Bill, which could enhance the information available to AMs at an early stage in the legislative process.