It’s time to realise the potential of the Scottish Parliament

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Preface

Since the General Election, Scottish Conservatives have been making the running, advocating positive policies, articulating new ideas, being prepared to say how difficult issues should be faced. While other parties procrastinate, Scottish Conservatives have been prepared to offer answers to the difficult questions.

As this first Parliament of which I have been a member draws to a close, I have been reflecting on my own personal experience of the last four years as I imagine have many other colleagues. There has been much debate – primarily within the ‘Holyrood village’ - about the transfer of additional powers to the Scottish Parliament. This paper makes no argument one way or the other regarding the proposals made. However, regardless of whether the Parliament gains new powers or not, MSPs urgently need to review the way we operate in order to provide greater value for taxpayers’ money. By no means is this a criticism of any MSP or any Party. Nor am I in any way seeking to promote myself as some sort of political paragon! However, since 2007 one sentiment that stands out in the debate is a determination to find ways to make the Scottish Parliament which people voted for, better still. I respect that view and believe the Parliament could work better on behalf of the people of Scotland.

This paper is a manifesto of possible solutions. It identifies areas where change could be beneficial and, where sensible, articulates options for change worth considering. For example, I am convinced the Scottish Parliament should sit for longer – for more days each week and later on Wednesday evenings. Parliament should reform itself to enable it to hold Ministers more effectively to account, both through the powers invested in the Presiding Officer and through changes in our processes. ‘Decision Time’ should be examined to see whether votes might better take place as debates finish to loosen the control of party business managers and to make the work of Parliament more transparent to the public. I also argue for reform of First Minister’s Question Time, which has evolved into a quite ghastly mis-advertisement for the Scottish Parliament. With significant additional powers will come significant additional responsibilities and the Scottish Parliament has to be ready to meet the challenges these would represent and not allow the practices adhered to in the first decade to be an obstacle when considering how the Parliament might best operate in years to come. Mindful that ‘fools rush in where angels fear to tread’ I offer this paper as a contribution to the debate which I believe now needs to take place.

This paper reflects my own personal views and not necessarily those of my Conservative MSP colleagues or the wider party. I don’t pretend to have all the answers to all the questions posed, but it is my hope that this paper will encourage others and help to stimulate and contribute to the debate which I believe Scottish politics increasingly needs to have.

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How can the Scottish Parliament work more effectively?

Politicians are rarely praised for their industry and work rate, but that doesn’t mean politicians should not care about what they achieve. The Scottish Parliament is now more than 11 years old and despite the persistent, loud and repeated calls for the Parliament’s powers to be reviewed and even increased, there is little if any discussion about reviewing the way Parliament operates. In a sense, this is not a surprise. The current set up seems to have managed to get the job done (with some hiccups along the way). Bills are introduced, the public is consulted, committees and the full Parliament debate and vote. If passed the bill becomes law. In this sense the current process is successful. But is this enough? Does the process - and specifically the scrutiny given to legislation introduced - not matter? I think it does.

In reviewing the powers the Scottish Parliament has, as the Calman Commission did in 2009, it is unfortunate that the manner in which these powers are exercised was not subject to a similar full-scale review. The Calman Commission did look at the operation of the Scottish Parliament, but did not embark upon what might have been a helpful in-depth review of it. In reaching its conclusions and recommendations, Calman did make an important suggestion about the operation of the Scottish Parliament, namely, recommending the addition of a 4th stage to the legislative process. The Commission claimed that such a move would allow members to better reflect on the amendments made to the bill at stage 3 by moving the decision as to whether to approve the amended bill to a 4th stage held on a different day. Its broader concern was that ‘novel’ amendments could be made to the bill at stage 3 which do not receive sufficient scrutiny before a bill becomes law.

As to the broader issues, the commission recommended:

“There should be a review of all other provisions in the Act that constrain the Parliament in terms of its procedures or working arrangements to ensure they are proportionate, appropriate and effective.”

It is this point that I use as a starting point for this paper as I endeavour to tease out areas where action would be most helpful in creating a more effective Scottish Parliament. While a broader review (as the Calman Commission itself recommends) was not the function of the Calman Commission, it should have been. In the absence of such a necessary and comprehensive review of the operation of the Scottish Parliament this paper seeks to suggest some areas for improvement in the manner in which the Parliament governs on behalf of the people of Scotland.
Meetings of the Parliament

The role of the Presiding Officer

A discussion about the role and powers of the Presiding Officer has been ongoing for a number of years. This has primarily been since the emergence of a minority administration after May 2007. The advent of a minority government meant the role of the Presiding Officer became more important in ensuring effective Ministerial scrutiny. For the first time since the restoration of the Scottish Parliament in 1999 opposition parties dominated the chamber. This inevitably led to an increase in demands upon the Presiding Officers to impose themselves more in the chamber to ensure Ministers answered questions and that - since the will of the Parliament was no longer the will of the government - this needed to be reflected in Parliamentary proceedings. More recently, in a parting shot before retiring from the Scottish Parliament, Lord George Foulkes made a series of criticisms over the way the Presiding Officer in the 3rd session had carried out his duties. Whilst the tenor and nature of many of Lord Foulkes' criticisms are perhaps unhelpful, it is useful to hear the perspective of someone who has served in both chambers of the UK Parliament as well as the Scottish Parliament.

Lord Foulkes described the process for questioning Ministers in the chamber as comprising "pathetic rituals of questions which are read, often badly, and answers drafted by civil servants with no apparent input from the minister delivering them". This is a topic that I discuss later on in this paper, but in terms of the role of the presiding officer, I will only emphasise Lord Foulkes' apparent view that the role needs to be re-thought in light of over a decade of devolution. For example, it is Lord Foulkes' view that the Presiding Officer's role needs to be strengthened to aid Ministerial scrutiny. It has become a common complaint in recent years that Ministers avoid the substance of the question actually posed although to be fair this is not a complaint unique to Holyrood. In the absence of a follow up question to force the Minister to address the substance of the original question, a strengthened Presiding Officer could be empowered to pursue Ministers for an answer, and to curtail answers that drift off at a tangent. Strengthening the role of the Presiding Officer to intervene on members whose questions, and Ministers whose answers, are too long, could help to improve the scope for Ministerial scrutiny. There is a legitimate discussion to be had (and legitimate criticisms to be made) of the current arrangements that govern the role of the Presiding Officer. This is completely divorced from the personalities involved.

1 http://news.scotsman.com/scotland/Foulkes39-damning-verdict-on-decade.6541963.jp
The problem is not who the Presiding Officer is but what powers the office has. I believe that Alex Fergusson MSP has served with distinction and diligence in the role of Presiding Officer and within the limited scope given to him by the current constitutional arrangements to open up and develop the work of the Scottish Parliament, I think he has done well. However, for the reasons already given, I believe the Presiding Officer’s role should be reviewed with a view to strengthening this position to aid scrutiny and help the Parliament to develop.

Plenary sessions

In my view the Scottish Parliament does not meet for nearly long enough. Take the business programme for the week of 13th September 2010 as an example. According to the published schedule, the Parliament met from 2:30pm through to 5 pm on Wednesday the 15th September (2 hours 30 minutes)\(^2\) excluding a member’s business debate after decision time. On Thursday 16th September the Parliament met from 9:15am through to 12:30pm (3 hours 15 minutes), and from 2:15pm through to 5pm (2 hours 45 minutes)\(^3\) again followed by a member’s business debate. That week the Scottish Parliament gave 8 hours 30 minutes to holding Ministers to account, scrutinising and amending legislation, and discussing issues of national importance. (I exclude from my calculation here the work of the Committees taking place on Tuesday and Wednesday mornings).

*In summary then, during the week of the 13th September 2010 the Scottish Parliament met, as a whole, for just 8 hours 30 minutes.*

This is neither impressive nor acceptable. Members of the Scottish Parliament cannot possibly fulfil all their responsibilities by meeting in plenary session for what is effectively just one day a week. The Scottish Parliament’s strongest advocates regularly boast that this is a modern Parliament, and that it works hard for the people of Scotland. The truth is it needs to work much, much harder than it currently does. It is time for us to start giving value for money from our Parliament, it is time for MSPs to work harder to hold the Executive to account and to better scrutinise the legislation we pass. Having examined the pattern of the Parliament’s working week, I believe there is significant scope to increase the length of time Parliament meets as a whole. The first barrier to a harder working Parliament is the practice that committees do not meet at the same time as a plenary session. This is for the admirably noble reason that all members ought to be able to participate in all the plenary debates and in the


questioning of Ministers. However, since very few members get to speak in debates or question Ministers, and given that speaker selection is tightly controlled by the party business managers, it hardly seems necessary to continue observing this practice.

I believe that we should lengthen the time available for debates or, ideally, to remove the arbitrary timescales currently in place thus allowing the debate to end after all those who wish to speak have done so. The current arrangements result in a situation whereby a similar number of speakers make speeches in each debate regardless of the tenor of their contribution. Debates in the Scottish Parliament have become very contrived, almost like a theatrical production. Why not relax the current arrangements and free the Presiding Officers to determine who speaks in debates, whilst ensuring a fair political representation, and leave them to determine when a debate concludes? There are inevitably debates that have a much higher level of interest than others, but the existing arrangement dictates that each party has a set number of speakers in each debate regardless of whether they have anything meaningful to contribute. Often, the experience has been that members make a speech not because they want to but because they are expected to. This can result in several members delivering what is essentially the same speech. This seems to be both a waste of Parliament's time and grossly unfair to other members who feel they may have an important point to make, but are denied the opportunity because of the arbitrary time constraints in force for the debate.

Another issue I think should be reassessed is the current practice whereby only at Stage 3 of a bill are votes taken immediately subsequent to the issue being discussed in the chamber. In the course of regular business, all votes are taken at ‘decision time’ at 5pm on Wednesdays and Thursdays. This often means that, instead of members discussing an issue and then deciding on it, by the end of the day there can be a number of motions and amendments that need to be considered at the one time. There have been numerous instances of important votes being lost through members voting the wrong way in error, which can partly be explained by the process at decision time being on occasion, quite confusing. I believe we should consider an alternative to decision time by taking a vote immediately after each issue is debated which would at least prevent multiple votes having to take place at the same time on unrelated matters. This would allow members to better follow the course of the votes being taken. In addition, having votes taken after the debate would allow members of the public observing the debate to follow this through by watching the vote. This would add to the understanding both of the work of the Parliament and the views of the members and parties on that issue. As it stands, it is all but impossible for members of the public to follow the voting process in the Scottish Parliament given the speed and
the effect which various votes on amendments can have. The obvious downside to having votes immediately following the debate is that it would require members to be in attendance in the Parliamentary complex a great deal more than they are at present, but this is far from an insurmountable obstacle. As an aside, it is an inevitable consequence of the higher chamber utilisation for Parliamentary business that it would cease to be as available for a range of other activities. At the moment the chamber is used for concerts and festivals throughout the year and, to an extent, I suppose this has helped familiarise many Scots with the Parliament. However as the Parliament grows and matures and if, as I suggest, the working time of the Parliament is extended, it is likely that some of these activities may have to be relocated elsewhere within the Parliamentary campus.
People attending a debate in the Scottish Parliament are generally struck by the extent to which the length of the debate is tightly controlled and how speakers in that debate have so little time to contribute. The length of time allocated to each member differs according to the party the member represents and their speaking position within the debate (opening, closing or general contribution). If opening or closing, a Conservative member may expect to get anywhere between 5 and 7 minutes, whilst any member speaking in the middle of a debate may get as few as 4 minutes. A Labour front bench member speaking could expect anything from 8 - 17 minutes to open or close.

Before discussing the principle of limiting the length of Parliamentary speeches, it is important to note that the current system is inherently biased in favour of the larger parties (both in terms of the number of contributions allowed and their length). Further, it carries the somewhat unattractive suggestion that all contributions in Parliament are not of equal value. The system as presently constituted, weighs the opinion of some front bench members (as measured by time allocated to them) as more or less important than the contributions of their front bench colleagues in other parties. If we are to have limits on the length of speeches then it is perfectly sensible that those opening and closing a debate ought to be given longer to speak than those contributors in the 'middle' portion of the debate. But should this also differ between parties? Should speakers from all the substantially represented parties not be given the same length of time in which to make an opening and closing speech in a debate? I argue that they should, particularly for opening contributions.

Every contribution, whether from the front or back benches, should be regarded as being of equal value. All speakers should be entitled, but not obliged, to speak for an equivalent length (whilst accepting that the length of front bench contributions will be longer than those that follow). That said, it is both tedious and obvious to all present when some debates are 'populated' with speakers who clearly have no interest whatsoever in the matter being debated and who are merely speaking in order to fulfil their party's allocated 'quota.' Parliament should be sufficiently grown up to not feel the need to artificially extend the life of a debate when there are fewer members seeking to participate (subject to there being sufficient speakers to sustain the debate at all). Indeed, by not 'packing them in' those who do wish to contribute ought to have more time available to them to develop their argument.

The length of Parliamentary speeches was an issue considered by a UK Parliament Select Committee on Parliamentary modernisation in 2001-02 and has been revisited by this committee on a
regular basis. Its view was that it did “not regard it as desirable to place a fixed ceiling [in terms of length] on frontbench speeches.”4 At the same time, it did recognise the benefit of placing a 10-minute limit on backbench contributions, a recommendation which was then implemented. The limit on backbench speeches was subsequently determined by a similar committee in 2006-07 to have been too inflexible, and that the Speaker should have “greater flexibility to vary time limits during debates”5 The Speaker of the House of Commons circulated a memo on 8th November 2007 detailing the new rules, including detailed time limits that can be invoked as temporary standing orders for ‘topical’ debate. The regulations for these ‘topical’ debates are contained in the box below.

Time limits in topical debates

The new temporary Standing Order on topical debates provides for a special regime of mandatory speech limits on front bench speeches as below:

– Minister: 10 minutes (when opening the debate)
– Official Opposition: 10 minutes (either at the outset or before the Ministerial wind-up)
– Second largest opposition party: six minutes (either at the outset or before the Ministerial wind-up)

In each case a minute is added for each intervention up to a maximum of 10 for Government and Official Opposition and six for the second largest opposition party, when they speak at the beginning of a debate. In topical debates, time limits are also likely to be imposed on backbench speeches in accordance with the Standing Order on Time Limits on Speeches (as above).

Notwithstanding this memo the prevailing ability of the Speaker to limit the front bench speeches to 20 minutes was not affected. However the emphasis placed in the standing orders is that the Speaker may choose to limit the front bench speeches, rather than that the Speaker should limit them. In the latest version of the standing orders6 it states that the Speaker is allowed to specify a length of his choosing for speeches from backbenchers, and can limit frontbenchers to twenty-minute speeches.7 However the important point is that the limiting of speeches is still viewed in the UK Parliament as the exception, not the rule. In the Scottish Parliament it is the rule, the only exception appears to be when a debate is under-subscribed. It has now become standard practice that each party

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7 Ibid p44
gets a set amount of time depending on its party allegiance and position in the debate. So through
convention the time each speaker gets is effectively fixed, and so too is the length of time allocated for
debates. For example it is stipulated in the standing orders that the Presiding Officer is required to
ensure that the debate concludes at the agreed time, regardless of the merits of each individual case.
There is a provision (rule 8.14 in the standing orders⁸) to extend a debate beyond the scheduled time in
the Scottish Parliament, but it is rarely used and is limited to extending the debate for a maximum of 30
minutes.

The Presiding Officers are free to divide up the allocated time (as determined by the party
business managers) for debate as they see fit, although, as mentioned previously, this is largely
determined by convention. They “may not allocate speaking time in a manner which would disrupt any
timetable of business set out in the daily business list.”⁹ This is just one of the ways in which the
business of the Scottish Parliament is made to conform to a somewhat arbitrary timetable which takes
little account of the issues, importance of the business taking place or the desire of members to
contribute which can often only become apparent during the debate itself. Essentially the entire
Parliament’s limited plenary session allocation, which I believe is absurdly short, is divided up into slots
for each item of business by the business managers in closed session which prevents the business
schedule adapting to the dynamics of each debate as it unfolds. As it stands, the Presiding Officer is
essentially tasked with making the Parliament conform to the will of the party business managers.

⁸ http://www.scottish.parliament.uk/business/so/sto-3.htm#8
Scrutiny

The Scottish Parliament, unlike a number of national legislatures, has only one chamber. The UK Parliament at Westminster has the House of Commons and the House of Lords. The USA has the House of Representatives and the Senate. Germany has a second tier legislative body in the Bundesrat. So the Scottish Parliament has to do the work carried out by two chambers in many other countries. One of the key points of this paper is to trigger a wider debate on whether the single chamber Scottish Parliament has been effective and where operational practices could be changed for the better.

Executive Scrutiny

How is it possible for effective scrutiny of the Executive, and of legislation, when Parliament only meets as a whole for up to 10 hours in a working week?

As I discussed in the earlier section on plenary sessions, in a typical week the Scottish Parliament meets in plenary session for between 8½ hours and 10 hours. In addition the Scottish Parliament is in recess for 14-15 weeks of the year. Effectively, this means that the actual time devoted to plenary meetings in a given year is between 323 and 380 hours. Simply put, this is roughly equivalent to 10 weeks of work for the average employee. Can Scotland be governed effectively when its legislators only meet together for the equivalent of 10 weeks a year? Breaking these 8½ -10 hour slots per week down we can see just how little time is allowed for the scrutiny of both the Executive and of legislation. Taking again as an example the week beginning 13th September 2010, outlined in brief below is the business that took place in the chamber of the Scottish Parliament.
**Wednesday 15th September**

30-minute Ministerial statement followed by questions
2 Hours for a debate on the Scottish Government’s various strategies for drugs

**Thursday 16th September**

2 hours 25 minute debate on the Scottish Government’s housing strategy
20-minute general questioning of Ministers
30-minute questions to the First Minister
40-minute tourism and education questions
1 hour 55 minute debate on Scottish food and drink fortnight

The business noted above was all the work undertaken by the Scottish Parliament in plenary session during week beginning 13th September 2010. Just over 6 hours was spent debating the government’s various strategies and initiatives, an hour and a half was spent questioning Ministers (excluding the half an hour devoted to the special statement from the Minister on Wednesday morning). Based on this pattern, which does vary a little from week to week whilst following the same basic format, Ministers are held to account by the full chamber for 1½ hours a week. To put this further into perspective, there are 6 main Scottish Government departments: The Office of the First Minister; Health and Wellbeing; Education and Lifelong Learning; Finance and Sustainable Growth; Rural Affairs and Environment; Justice. Excluding the 30 minutes of First Minister’s Question Time each week, the other 5 departments share the remaining hour of weekly Ministerial scrutiny time. Four of these departments have budgets in excess of £1 billion from the 2010-11 Scottish Government budget. Now, assuming each department is scrutinised by the full chamber for the same amount of time, each department only gets an average of 12 minutes of scrutiny by the full Scottish Parliament each week.

This is one of the main motivating factors in my belief that the amount of time that Parliament meets as a whole needs to be extended. Tuesday afternoons, all of Wednesday and all of Thursday
could easily be allocated to plenary sessions of the Scottish Parliament. If the Parliament is to get more powers as a consequence of the recent review of the devolution settlement it must do so having convinced the public it is exercising those powers it currently has with due diligence and effective scrutiny. To date, the Scottish Parliament has shown little sign it expects to change its working practices should it secure the further powers some argue are required.

Legislative Scrutiny

As at 8th October 2010, 161 bills have been passed into law since the Scottish Parliament was reconvened in 1999. Session one (1999-2003) passed 62 bills. Session two (2003-2007) passed 65. Session three (2007-8th October 2010) has passed 34 bills (one of which is still awaiting Royal Assent)\(^\text{13}\). Some of these were member’s bills, most Executive bills, and others were committee bills. Regardless of their purpose, given the very limited time available during the short Parliamentary week it is worth asking: how much scrutiny is given to legislation in the Scottish Parliament? Let’s take the Crofting Reform (Scotland) Bill (2010) as an example. The following is a list of the scrutiny given to the bill both in committee and by the full Scottish Parliament meeting in plenary session, with times calculated from the minutes of the official report:

Crofting Reform (Scotland) Bill (2010)

Bill introduced on 9 December 2009

Went to the Finance Committee on 15 December 2009 (1 minute)\(^\text{14}\) and 2 February 2010 (41 minutes \(^\text{15}\) + time spent in private session lasting less than 1 minute)

Went to the Subordinate Legislation Committee on 2 February 2010 (4 minutes\(^\text{16}\)

The Stage 1 debate took place on 13 May 2010 (2 hours 23 minutes \(^\text{17}\))

The Bill passed Stage 1 on 13 May 2010.

The Bill was referred to the Rural Affairs and Environment Committee at Stage 2.

2 June 2010 Rural Affairs and Environment Committee (Consideration of amendments, Day 1) (2 hours 21 minutes\(^\text{18}\))

9 June 2010 Rural Affairs and Environment Committee (Consideration of amendments, Day 2) (1 hour 54 minutes + 18 minutes in private session\(^\text{19}\))

16 June 2010 Rural Affairs and Environment Committee (Consideration of amendments, Day 3) (2 hours and 2 minutes\(^\text{20}\) + 27 minutes in private session)

The Subordinate Legislation Committee considered the delegated powers provisions in this Bill after Stage 2.

Subordinate Legislation Committee on 22 June 2010. (Discussed in private session lasting 8 minutes\(^\text{21}\))

Stage 2 was completed on 17 June 2010.

The Stage 3 debate was held on 1 July 2010 (2 hours 23 minutes\(^\text{22}\)).

Passed Stage 3 on 1 July 2010

The total time spent debating this bill in committee was **7 hours 3 minutes** (excluding time spent in private session and short adjournments to committee meetings); while the time spent in plenary session was **4 hours 46 minutes**. So in total, the Scottish Parliament and its committees considered the Crofting Reform (Scotland) Bill (2010) for fewer than 12 hours. To illustrate that this level of scrutiny is low by the standards of the UK Parliament let's consider the ‘Flood and Water Management Bill 2010’. This was a UK Parliament bill to “make provision about water, including provision about the management of risks in connection with flooding and coastal erosion.”\(^\text{23}\)

\(^{14}\) http://www.scottish.parliament.uk/s3/committees/finance/or-09/09/02.htm#Col1737

\(^{15}\) http://www.scottish.parliament.uk/s3/committees/finance/or-10/01/0302.htm#Col1841

\(^{16}\) http://www.scottish.parliament.uk/s3/committees/subleg/or-10/01/0402.htm#Col4851

\(^{17}\) http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-10/05/0513-02.htm#Col26131#Col26131

\(^{18}\) http://www.scottish.parliament.uk/s3/committees/rail/or-10/01/10-1402.htm#Col2774#Col2774

\(^{19}\) http://www.scottish.parliament.uk/s3/committees/rail/or-10/06/1502.htm#Col2001

\(^{20}\) http://www.scottish.parliament.uk/s3/committees/rail/or-10/06/1602.htm#Col2087

\(^{21}\) http://www.scottish.parliament.uk/s3/committees/subleg/or-10/01/10-2102.htm

\(^{22}\) http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-10/07/01-02.htm#Col28046#Col28046

\(^{23}\) http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm091119/debtext/91119-0003.htm#column_143
The Flood and Water Management Bill (2010)

1st reading: House of Commons 19 November 2009

2nd reading: House of Commons debate 15 December 2009

Committee stage: 1st sitting: House of Commons 7 January, 2010
Committee stage: 2nd sitting: House of Commons 7 January, 2010
Committee stage: 3rd sitting: House of Commons 12 January, 2010
Committee stage: 4th sitting: House of Commons 12 January, 2010
Committee stage: 5th sitting: House of Commons 14 January, 2010
Committee stage: 6th sitting: House of Commons 14 January, 2010
Committee stage: 7th sitting: House of Commons 19 January, 2010
Committee stage: 8th sitting: House of Commons 19 January, 2010
Committee stage: 9th sitting: House of Commons 21 January, 2010
Committee stage: 10th sitting: House of Commons 21 January, 2010
Report stage: House of Commons 2 February 2010

3rd reading: House of Commons 2 February 2010

1st reading: House of Lords 3 February 2010

2nd reading: House of Lords 24 February 2010

Committee: 1st sitting: House of Lords 17 March 2010
Committee: 2nd sitting: House of Lords 24 March 2010
Committee: 3rd sitting: House of Lords 6 April 2010
Report stage: House of Lords 8 April 2010

3rd reading: House of Lords 8 April 2010

Ping Pong: House of Commons 8 April 2010

Royal Assent 8 April 2010
The Flood and Water Management Bill (2010) in the process of its scrutiny by the UK Parliament had nearly 11 hours of debate in the House of Commons, nearly 26 and a half hours of debate in House of Commons committees, over 3 and a half hours of debate in the House of Lords and nearly 11 hours of scrutiny in a House of Lords committee. So in total, this bill received over 53 hours of scrutiny before it was passed into law by the UK Parliament. Compare this level of detailed in-depth scrutiny to the 13 hours received by the Crofting Reform (Scotland) Bill (2010). It appears that the UK Parliament gives much more time, on the whole, to scrutinising, debating and amending proposed legislation than does the Scottish Parliament. That is not to say I think we should mimic the UK Parliament, simply that we ought to compare our own practices with those of others. Clearly, we are also a smaller Parliament with far fewer members. Interestingly, the need to review the effective scrutiny of Scottish Parliament legislation was one of the points raised by the Calman Commission. Specifically, it noted that both the voting on amendments and the voting on the bill’s final passage during stage 3 puts at risk the proper scrutiny of the legislation at hand. The Calman Commission’s solution was the introduction of a 4th stage to the Scottish legislative process. In its recommendations the Commission comments:

“The main area where we were struck that the Parliament might be more effective was its scrutiny of Bills towards the end of the legislative process. Currently, the final opportunity to amend the Bill and the debate on whether to pass it are taken together in one stage (called Stage 3). As a result, MSPs have almost no time to reflect on the amendments they have just made before the Bill is passed into law. We have therefore concluded that Stage 3 should routinely be split into two separate stages, held on different days. Related to this was a concern that novel amendments could be made to a Bill at Stage 3, and as a result could receive insufficient scrutiny…”

Ministerial statements and speeches

Ministers regularly make contributions to Parliament, and they form an important part of the exercise of Parliamentary scrutiny. The length and content of Ministerial statements is something worth discussing. For instance, Ministers can ask the Presiding Officer for permission to make a statement. However, I believe there should be a mechanism for the Scottish Parliament to compel Ministers to make a statement on a particular subject. In addition, who should decide the length of Ministerial statements? A

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related issue arises over the Ministerial statement introducing legislation to Parliament. Is the current 14 minutes allocated for the Ministerial introduction of legislation sufficient?

In introducing his recent budget for the Scottish Government, which specifies the intended spending of over £30 billion, the Cabinet Secretary for Finance and Sustainable Growth, John Swinney, was allocated just 14 minutes to speak\(^45\) in the Stage 1 debate (taking 5 interventions in the process). In contrast, in introducing the UK Government’s budget on 22\(^{nd}\) April 2009, the Chancellor Alistair Darling MP spoke for nearly 52 minutes\(^46\), while then leader of the Opposition, David Cameron MP, spoke for 13 minutes\(^47\). Not once in the past 20 years (1990-2010) has a UK Budget speech by the Chancellor been under 51 minutes in length. The record for longest budget speech in the last 20 years was 1 hour 53 minutes in 1993, by then Chancellor Kenneth Clarke MP\(^48\). Disraeli made the shortest Budget speech of all time in 1867- speaking for only 45 minutes\(^49\) - more than three times longer than Mr Swinney! In terms of total plenary debate at stage 1, the UK Budget debate in 2009 lasted for over 20 hours. The full Scottish Parliament debated the proposed Scottish Budget in 2010 for a mere 2 hours and 26 minutes\(^50\). The UK Parliament debated the budget on day one (22\(^{nd}\) April 2009) for more than double the time the Scottish Budget was debated in plenary session at Stage 1. Beginning with the Chancellor’s speech at 12:32 the debate on the UK Budget continued until nearly 7pm on day 1\(^51\). Day 2 ran from 1:17pm through to 6pm\(^52\), Day 3 ran from 5.40pm until after 9:45pm\(^53\), and day 4 ran from 4:44pm through to nearly 11:50pm\(^54\). To reiterate: over 4 days, the UK Budget received over 20 hours of debate in Parliament- over 9 times the scrutiny that the Scottish Budget received at stage 1 in 2010.

It is not just the lack of time available to the Cabinet Secretary for Finance and Sustainable Growth to introduce the budget that is objectionable, but also the limited time available to other members to challenge the Government on the budget. If the Scottish Parliament is to get more powers - including tax raising powers as recommended by Calman - surely it cannot do so while allowing only 2 and a half hours to debate the single most important piece of legislation it considers each year. The argument here applies equally to the introduction of legislation by other Ministers who are similarly and severely restricted in the amount of time they can speak for in presenting new legislation to Parliament.

Introducing legislation to parliament is an important task that ought to be given appropriate weight and

\(^{45}\) http://www.scottish.parliament.uk/business/officialReports/meetingsParliament(or-1)/mm10/sor0120-02.htm#Col22869
\(^{46}\) http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090422/debtext/cm090422-0003.htm
\(^{47}\) http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090422/debtext/cm090422-0006.htm
\(^{49}\) http://www.parliament.uk/about/faq/house-of-commons-faq/budget/
\(^{50}\) http://www.scottish.parliament.uk/business/officialReports/meetingsParliament(or-1)/mm10/sor0120-02.htm#Col22869
\(^{51}\) http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090422/debtext/cm090422-0018.htm#6090422770000004
\(^{52}\) http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090423/debtext/cm090423-0008.htm#6090423470000011
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\(^{54}\) http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090428/debtext/cm090428-0006.htm#6090428380000009
prominence, the current arrangements are particularly poor in the way that they restrict Ministers in this most important task. It is for this reason that I believe we need to review the procedures governing Ministerial contribution in Parliament as a matter of urgency.

First Minister’s Questions & General Questions to Ministers

It clearly was the intention of the Scottish Parliament to improve upon Prime Minister’s Questions in the House of Commons. If that was the hope then, it has failed by a wide margin. For what we have in First Minister’s Questions each week is 30 minutes of tedious verbal torture. Verbose speeches by the party leaders, and even longer responses from the First Minister, routinely go unchecked and more often than not leave fewer than 10 minutes for the final three questions allocated to other members. Despite the repeated and determined efforts of the current Presiding Officer to curtail these practices, there is a clear need for a procedural change. When it comes time for the final question – put alternately by the Conservatives or the Liberal Democrats – it regularly includes no additional intervention beyond the questioner. In addition, the requirement for the final three questions to be issue specific can often lead to them having been overtaken by events by the time they reach the chamber.

The holding of the First Minister to account by the whole Scottish Parliament should be an invigorating experience for the First Minister, members and – dare I say it - the Scottish public alike. Rather than 30 minutes I would propose 45 minutes. One option might be to have just one open question from the leader of the largest opposition party rather than one from each of the party leaders. There would be no change to the overall number of questions allocated to the leaders of opposition parties. However, questions could be put at a moment of their choosing and at their discretion over the 45 minute period. Although time is often short, the present practice of allowing unannounced constituency questions and interventions thereafter from around the chamber works well. Could we not build upon this? Perhaps members should either enter a ballot simply for a place on the Order Paper (without a specified question) or, more simply, seek to attract the attention of the Presiding Officer through registering their request to ask a question in the usual way? In any event, a less straight jacketed format to FMQs would give it vigour, would make it a more thorough examination of the First Minister with more contributions from ordinary members and leave party leaders free to choose their moment to intervene.
Parliamentary Committees

The Scottish Parliament committee system is based on a series of subject committees tasked with both scrutinising the Executive and any legislation relating to that subject area as well as proposing its own legislation. This dual role was innovative, and a break from the Westminster practice. In the House of Commons the majority of committees are Select Committees (there are both departmental and topical select committees). Each departmental select committee is tasked with scrutinising a single department and any associated bodies the subject department is responsible for. Topical select committees are tasked with examining topical issues and include, for example, the Public Accounts Select Committee and the Public Administration Select Committee. The Scottish Parliament has two types of committees; Mandatory Committees and Subject Committees. Mandatory Committees are required under the standing orders of the Scottish Parliament. The Scottish Parliament can create Subject Committees as it wishes. Subject Committees are intended to both scrutinise the Executive and share its power through the investigation of issues and the initiation of legislation as it sees fit. When the first committee bill was passed by the Parliament, Alasdair Morgan MSP, then convener of the Justice 1 Committee, commented:

“The ability of Scottish Parliament committees to initiate legislation is an important part of what makes our system of governance innovative and fundamentally different from Westminster.”

No systematic review has taken place as to whether this system has proven to be better than the system in place in the House of Commons. It is time one did. Such a review might consider whether the same committee should carry out the roles of scrutinising the work of the Executive, scrutinizing legislation as well as proposing legislation? In the absence of proposed legislation being before a subject committee the work of that committee would be then be focused on scrutinizing the Executive and perhaps initiating legislation of its own. Alternatively, since any individual member is at liberty to introduce legislation, perhaps it is not sensible to charge investigative committees with this task also. It may be more effective to establish permanent scrutiny committees covering each of the main departments. These could compliment dedicated bill committees for each Executive bill. Similarly a provision could be introduced under which, upon the approval of Parliament, a committee could be established to examine the basis for, the drafting of and, ultimately, the introduction of a bill in a particular area.

For example, if the Health Committee heard evidence that moved it to introduce a bill on a particular issue, it would schedule time to work to introduce that bill, and it would take that bill through to a vote in Parliament. Alternatively, if the Health Committee (as an investigative and scrutiny committee) believed that legislation was required in a particular area (say to make provision for social care services) it would ask Parliament to establish a separate Bill Committee to work to introduce legislation accordingly. For some this may raise a question as to whether there are sufficient members and sufficient Parliamentary time to sustain this alternative infrastructure. I am certainly not arguing for any increase in the number of MSPs! Given that there are 6 main departments within the Scottish Government, we would require 6 committees of 7 members (42 members in total). Each could meet for say for 2 hours each week or fortnight, easily allowing it to be held either on a Monday afternoon (as part of my earlier suggestion for a lengthening of the Parliamentary working week), or on a Tuesday morning. The individual bill committees would then be free to meet during the rest of the week, including when Parliament was in plenary session. Meetings of these committees would be held as often as desired by the committee, and should be at a time of mutual convenience. In this way, the scrutiny of the Government and the operation of legislation would be assured and protected, while the scrutiny of proposed legislation would be given to a bespoke committee enjoying greater flexibility over the exercise of that scrutiny than exists at present.

The current committee structure in the Scottish Parliament has some advantages (such as the support it gives to non-Executive bills). Nevertheless I believe these advantages can be obtained without overburdening the committees and without detracting from the scrutiny of the Executive and of existing legislation. By allowing Parliament to establish ad-hoc committees to pursue and ultimately introduce legislation on particular issues, support can be provided for non-Executive bills in a manner that does not detract from the scrutiny of the Executive. Strong scrutiny committees are an essential component of strong Parliamentary democracy. Vital to this aim is that there is sufficient time to hold the Executive to account. Stronger oversight of the Executive may not be universally welcome, but I believe it is essential to the future good governance of Scotland.
Members of the Scottish Parliament

In light of the arguments outlined in this paper, a consequential opportunity arises to discuss the role and position of MSPs. It has long been Scottish Conservative Party policy to reduce the number of MSPs in line with the original intent in the Scotland Act (1998). However if - as seems likely - the Scottish Parliament is to gain more powers in the future it is perhaps sensible that we also acknowledge it may help to have a higher number of MSPs than that envisaged under the Scotland Act (1998). In the event of the Scottish Parliament obtaining significant additional legislative responsibility the Scottish Conservative Party should, in those circumstances (and only in those circumstances), abandon its current policy which is to reduce the number of MSPs in line with the reduction in Scottish MPs which took place following the implementation of the Scotland Act (1998) and accept and maintain a Scottish Parliament with 129 members. There is also a clear issue that remains unresolved after 10 years, namely re-examining the actual role and responsibilities of both list and constituency MSPs.

Traditionally MPs at Westminster tend to progress Parliamentary business between Monday and Thursday and constituency business on Fridays. A similar system was intended in Scotland, but with both Mondays and Fridays left for constituency business. This makes sense for constituency members, but for many regional members it would seem to be less crucial. This is not to say that regional members don’t have constituency work to attend to, just that the experience has been that the level of this casework is generally lower. In any event, given that members employ staff to support their constituency work, it seems less onerous to suggest that only one week day per week is devoted to working in the constituency. This does not detract from the ability of members to represent their constituents; it simply, potentially, requires their attendance in Parliament for one more day a week than is the current practice.

Moving away from the current system we could, for instance, have procedural committees meeting on a Monday afternoon (for example the Sub-legislation committee) and these could largely be dominated by list members (respecting of course the current political configuration of these committees), thus lengthening the working week but not detracting unduly from the time members currently have to address casework. In addition, it is not clear that the public has ever clearly understood the different remits of their MSPs. In practice, many constituents contact all their MSPs, which can lead to a general confusion and delay in addressing an issue as MSPs observing the current Parliamentary protocols seek to determine first that no other member is or has represented the constituent. A simpler system
might be to introduce and establish a routine practice whereby constituents are encouraged to contact their constituency member in the first instance with local level issues and to contact their wider regional list MSPs about non-local issues. In the case of the Scottish Parliament, if we are to believe most commentators, the debate has moved beyond a concern that we might create two classes of MSP. Having already done so the issue of how the remit of these two groups might evolve 11 years or so after the establishment of the Scottish Parliament remains.

**Engagement with the UK Parliament**

The Scottish Parliament has taken a fairly passive attitude to engagement with the UK Parliament in its first 10 years. There has been some Ministerial level joint working, most notably through the joint Ministerial committees, and this should be encouraged. However joint working is all too sadly lacking between the Scottish and UK Parliaments. Instead of proactively engaging and seeking to develop closer institutional and legislative links with Westminster, the Scottish Parliament has left the UK Parliament, and UK Parliamentarians, to do all the work. In my opinion, this needs to change as the Scottish Parliament develops.

The Scottish Parliament needs to be self assured enough to take the lead in relations with the UK Parliament. There are clear issues where jurisdiction overlaps, and the formulation of, for example, joint investigative committees of both Parliaments would seem a sensible development. A recent, if perhaps highly sensitive issue, is the release of the ‘Lockerbie Bomber’ from prison on compassionate grounds by the Cabinet Secretary for Justice. This is an issue that covers both Scottish jurisdictional issues (justice) and UK jurisdictional issues (national security and foreign affairs). As it happened, the Scottish Parliament’s Justice Committee did have hearings and produced a report on this specific case. However the committee only heard from 3 witnesses: the Cabinet Secretary for Justice (Kenny MacAskill MSP), Robert Gordon (Scottish Government - Director General for Justice and Communities) and George Burgess (Scottish Government - Head of Criminal Law and Licensing Division).

Had there been a joint investigation, the committee inquiry could have heard directly from UK Ministers (who in this case wrote to the committee) as well as specialists in foreign affairs. A joint inquiry would have allowed both a wider focus and a broader panel of opinion and expertise to be heard. A sensible alternative procedure in such cases would be for the establishment of a joint Parliamentary investigative committee to investigate an issue such as this. In this particular instance such a body could
have called Scottish and UK Ministers to give evidence, heard expert testimony on all matters and published a joint report into the entire spectrum of issues involved in this complex case. This approach could be applied to numerous other issues, for example, climate change and energy security; issues that transcend both Scottish and UK Parliamentary jurisdictions. The Scottish Parliament should be far more self-assured in its dealings with other Parliaments, particularly the UK Parliament, and to engage much more proactively in joint working with other Parliaments.

Similarly there are issues where joint backbench committees, or joint cross party groups, could be invaluable. There are numerous areas where, while the jurisdictional boundaries are clearly drawn, joint action could be useful. Take climate change again. There is a need for coordination and cooperation, so a joint cross party group on climate change could be a useful forum for the discussion of climate change issues. The same could be said for transport, where there are clear advantages in having a joint cross party group since there are aspects of transport that are of mutual concern, such as airports, air travel and the proposed high speed rail link. Another potential area for greater cooperation is between the respective Parliamentary committee convenors - they could meet collectively and/or with their opposite numbers to learn, share best practice and discuss the issues being examined by their respective committees. Building up this type of joint institutional capacity could prove invaluable if the Scottish Parliament seeks to obtain more powers.
Concluding Remarks

In closing, I repeat that this paper represents my own personal reflections and not necessarily the views of my Conservative colleagues, which have taken shape during the last four years in Parliament. Now seems to me to be the right time for a general debate on the way we operate to take place. The Scottish Parliament is over a decade old – now approaching it's 'teens' and anticipating more responsibility.

I have not touched on one other important question. Who sits in the Scottish Parliament? Back in the 1990s one of the most often stated benefits of a Scottish Parliament was said to be the opportunity a parliament located in Scotland would give to facilitate the involvement of successful business people and entrepreneurs. Sadly, this has not proved to be the case and while it may be controversial to say so I do think there are too few members who have owned a business, run a company, won or lost, employed people or who have invented, built or manufactured anything. The Scottish Parliament needs such experience as well as a mix of Members who are representative of the young and old and the many cultural minorities living in Scotland today. Their representation and participation would improve the legislation we pass, which is often well intentioned but insufficiently practical or robust.

I hope this personal contribution will be accepted in the spirit in which it is intended. I do not have all the answers, nor do I claim to, but I hope that this contribution helps stimulate further debate ahead of any additional responsibility – this is the time to realise the potential of the Scottish Parliament.
Summary of recommendations

The role of the Presiding Officer

I believe the Presiding Officer’s role should be reviewed with a view to strengthening this position to aid scrutiny and help the Parliament to develop.

Should the Presiding Officer be given more powers to order Ministers to make statements to Parliament and to order Ministers to appear to answer urgent questions?

What role should the Presiding Officer have? Should the role be that of a facilitator or should it involve a more proactive role, for example, requiring Ministers to answer questions rather than allowing them to give answers that merely obfuscate.

Plenary Sessions

Members of the Scottish parliament cannot possibly fulfil all their responsibilities by meeting in plenary session for what is effectively just one day a week.

In my view the Scottish Parliament does not meet for nearly long enough.

I believe that there is significant scope to increase the length of time Parliament meets as a whole. The first barrier to a harder working Parliament is the practice that committees do not meet at the same time as a plenary session.

I believe that we should lengthen the time available for debates or, ideally, to remove the arbitrary timescales currently in place.

I believe we should consider an alternative to Decision Time, taking a vote immediately after each issue is debated would at least prevent multiple votes having to take place at the same time on unrelated matters.
Are the current working arrangements supporting or hindering effective legislative and Executive scrutiny?

If we accept that the Scottish Parliament needs to spend longer scrutinising the Executive and legislation, how do we best achieve this?

Should votes be taken following the conclusion of business rather than as at present, Decision Time?

Parliamentary Debates

People attending a debate in the Scottish Parliament are generally struck by the extent to which the length of the debate is tightly controlled and how speakers in that debate have so little time to contribute.

All speakers should be entitled but not obliged to speak for an equivalent length. Parliament should be sufficiently grown up to not feel the need to artificially extend the life of a debate when there are fewer members seeking to participate.

Leaving aside the length and frequency of debates, what changes to the operation of debates would help the Scottish Parliament to better do its job?

Should all front bench contributions be regarded as being of equal value, and given equal time in Parliamentary debates?

Should the Presiding Officer be empowered to determine whether to apply time limits in debates, rather than having a prescriptive approach to all debates?

In the context of the discussion on determining the length of speeches in the chamber should the Presiding Officer, and not the party managers, be given greater powers to decide which backbenchers get to speak and for how long?
**Scrutiny**

I believe there should be a mechanism for the Scottish parliament to compel Ministers to make a statement on a particular subject.

If the Scottish Parliament is to get more powers – including tax raising powers as recommended by Calman – surely it cannot do so while allowing only 2 and a half hours to debate the single most important piece of legislation it considers each year.

I believe we need to review the procedures governing Ministerial contribution in parliament as a matter of urgency.

How do we make the scrutiny of the Scottish Government by the Scottish Parliament more effective? Should Parliament meet in plenary session longer during the week?

Do we need to create dedicated weekly question sessions for each department?

How do the current arrangements for plenary meetings and the business of those meetings help or hinder effective Executive scrutiny?

What changes to the chamber scrutiny of legislation would enhance overall scrutiny?

What changes to the committee scrutiny of legislation would enhance overall scrutiny?

**First Minister’s Questions & General Questions to Ministers**

What we have in first Minister’s Questions each week is 30 minutes of tedious verbal torture. Despite the repeated and determined efforts of the current Presiding Officer...there is a clear need for a procedural change.

What is the best way of ensuring that Ministers introducing legislation or making statements to Parliament are able to fully outline their case?
Do we need to give the Scottish Parliament clear powers to bring Ministers to the chamber to make statements on issues of concern?

Should the format of FMQs become less rigid, be extended, and provide for a more thorough and flexible holding to account of the First Minister, and if so, how best can this be achieved?

**Parliamentary Committees**

The Scottish Parliament committee system is based on a series of subject committees tasked with both scrutinising the Executive and any legislation relating to that subject area as well as proposing its own legislation – no systematic review has taken place as to whether this system has proven to be better than the system in place in the House of Commons and I believe that it should.

Do we need a systematic review of the operation of the committee system?

Is there merit in splitting off a committee’s role in introducing legislation to ad-hoc bill committees, allowing subject committees to remain focussed on investigation?

Does the current committee structure and process mean that scrutiny is compromised as committees focus on pursuing legislation?

**Members of the Scottish Parliament**

In the event of the Scottish Parliament obtaining significant additional legislative responsibility the Scottish Conservative Party should, in those circumstances (and only in those circumstances), abandon its current policy and accept and maintain a Scottish Parliament with 129 members.

What changes to the current working practices would better reflect the different work of regional and constituency MSPs?

How should regional and constituency members interact to best serve their constituents?
Engagement with the UK Parliament

The Scottish Parliament needs to be self assured enough to take the lead in relations with the UK Parliament.

How can the Scottish Parliament work more closely with other Parliaments like the UK and EU Parliaments, and the devolved assemblies in Wales and Northern Ireland?

What support and institutional practices would be useful in enabling better and more frequent joint parliamentary working?