I wish to make the following comments in response to the call for evidence on this topic from the Standards, Procedures and Public Appointments Committee. These comments are made in a wholly personal capacity and do not represent the views of any institution or organisation.

1. With apologies for stating the obvious, a useful source of discussion and information is the Law Commission's fairly recent inquiry into this subject, culminating in their report Post-Legislative Scrutiny (Law Com No.302, Cm.6945, 2006).

2. The form of scrutiny and the body carrying it out depend on its purpose. This can vary from full reconsideration of the policy behind and content of legislation, to a detailed evaluation of the practical effectiveness of the legislation, to a limited review of technical aspects of its operation. Resources, both financial and the effort required from parliamentarians, their staff and public authorities, are also relevant in determining what should be undertaken. One size will not fit all.

3. A very simple form of post-legislative scrutiny is a requirement on the Scottish Ministers or other affected parties to report regularly on their progress in implementing legislation or securing its objectives. Examples include the Nature Conservation (Scotland) Act 2004, s.2A and the Climate Change (Scotland) Act 2011, ss.33-43, which illustrate different levels of external oversight and comment built into the process. In the next few years Parliament should be developing more experience of such reporting processes and their value. This should provide guidance on whether there is a need for more formal mechanisms for considering such reports, rather than relying on the more general mechanisms of political accountability where there are issues requiring further action. Consideration should be given to applying the lessons learned more widely.

4. Identifying in advance the legislation requiring scrutiny is difficult since subsequent events (or even legislation) may justify consideration of something initially expected to be unproblematic. The real value of a system of post-legislative scrutiny is for those cases where there are no major policy issues which may lead to a topic being revisited, for the less glamorous and prominent areas which may get overlooked after the initial legislative effort. Although the resource implications are significant, the arguments in favour of post-legislative review apply equally to subordinate legislation as to Acts of the Scottish Parliament.

5. There is a case for trying to separate a more technical review from one which considers the substantive effectiveness of the legislation. As an example, although aspects of the review of the Adults with Incapacity (Scotland) Act 2000 (Learning from Experience) did consider policy issues, for parts of the Act much of the focus was on technical difficulties and procedural obstructions that stood in the way of
realising the full potential of the Act. Making sure that such issues are not overlooked and are dealt with on a non-partisan basis is valuable (cf. the role of the Subordinate Legislation Committee).

6. One simple form of scrutiny that may be desirable is a regular (annual?) update on legislation which has not yet been brought into force and of progress with making any regulations or orders or designations necessary to give provisions full effect. The failure to take these further steps can thwart the objective of parliamentary legislation (see RM v Scottish Ministers [2012] UKSC 58). On the other hand there may be good reasons for not taking further steps (e.g. the legislation may always have been intended as a "back-stop" to be used only if other approaches that offer a better way forward, such as a continuation of voluntary action on the part of key parties, prove ineffective). Simply producing a review would enable MSPs to see where things stand and where appropriate to take matters further through whatever channels are best suited to the situation.

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