STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

REFORM OF PARLIAMENTARY BUSINESS: REMODELLING THE PARLIAMENTARY WEEK

WRITTEN SUBMISSION RECEIVED FROM SCOTTISH ENVIRONMENT LINK

Introduction

Scottish Environment LINK has been considering many of the issues involved in the Inquiry and has recently published a paper entitled Governance Matters, covering similar ground. This response takes its content from that paper. The full paper can be found on the front page at:

http://www.scotlink.org/. Paper copies can be provided if required. We hope that the paper will be of considerable interest to the Committee.

Views in response to the remit for phase one of the Inquiry

To consider how the Parliamentary week can best be organised to allow the Parliament to be effective in its key roles of scrutiny and debate; and specifically:

The potential benefits of changing Chamber and committee sitting patterns

This question is not directly discussed in Governance Matters but parallel questions as to how legislative and scrutiny functions are performed are covered as follows.

1(a) Is the legislative performance of the Parliament satisfactory? Are there ways in which it might be improved? Has Holyrood attempted to pass too much or too little legislation? Are there arguments for a more participative model with regard to setting the legislative agenda?

The experience of LINK and its members has been that the Scottish Parliament has performed commendably as a legislature, with a series of highly significant environmental bills being passed in the 12 years since its establishment. With an excellent basis in the recommendations of the Consultative Steering Group (CSG) the new Parliament built an admirable legislative ethos and practice, consulting widely, building expertise and avoiding its committees being turned into servants of the executive.

With the Coalition government of the first eight years of the Parliament, however, the legislative timetable was kept incredibly full. Parliament operated as a legislative machine on a familiar Westminster model, with exceptionally full legislative programmes from year to year. The Parliament was attempting
to forge its own approach to legislation, and new developments such as the carry-over of Bills from year-to-year throughout the four year session were immensely valuable. Many of the Bills introduced by the Executive appeared, however, to have the purpose of “making a point” rather than fundamentally improving the law. This accusation has been made, also, of some of the Members Bills proposed. There was sometimes a sense of Bills for the sake of activity. Furthermore, the Parliamentary Committees existed under huge pressure, and on many occasions gave the impression of rushing their work. We note that “laws to make a point” can have an impact, but if their purpose is administrative change inside government our preference is that the problems be tackled directly. We discuss this further in Part 2.

A major difference with Westminster is, however, the size of the Scottish Parliament. With only 129 MSPs, Committees have been handed the work of both the “Standing” and “Select” committees in the UK Parliament and of both the Houses of Commons and Lords. Westminster’s Select Committees scrutinise the Government, while Bills are being dealt with concurrently by Standing Committees. At Holyrood, the Committees have benefited from their all-encompassing remit - in that the experience from working on both legislation and administration has proved of value – but the balance between the two has strongly favoured legislative work, at least in the environmental field.

In the third session of the Parliament, with a minority government and therefore against expectations perhaps, this pressure was kept up and it became apparent that Parliament has, in vital respects, conceded that the legislative timetable has become largely the property of the executive branch. Despite the number of Bills laid, there was little if any increase in the number of Members’ Bills dealt with; no Bills arising from the Committees; and no Bills introduced by opposition parties. The Consultative Steering Group’s (CSG) hopes that legislation might come from several sources appeared to evaporate. This is, once again, familiar within a UK context.

Recommendations:

- We (Scotland) should carefully consider the amount of time devoted by each Committee to legislative work and seek to redress the balance of this work with the job of scrutinising the Government.

- We should seriously consider the issue of whether Parliament has been presented with legislative programmes too heavy for its numbers.

- We should re-visit the opportunities (and process) by which legislation can be proposed by individual MSPs, Committees, opposition parties and even civic society.

1(c) Does the Parliament carry out its scrutiny functions at an adequate level? Does the Parliament carry out post-legislative scrutiny at an adequate level? Does Holyrood succeed in scrutinising the work of the Scottish
Government adequately? Are the Scottish Government’s arms-length agencies held to account properly?

It has always been the stated aim of the Parliamentary Committees to consider legislation and to scrutinise the implementation of that legislation by government. As all acts and expenditure of the executive branch must be justified in law (and principally on the basis of legislation) it follows that the traditional, broader role of a Parliament – to hold the executive branch to account – must itself be a broader form of this scrutiny.

The experience of the eNGOs has been that post-legislative scrutiny by Parliamentary Committees has been seriously limited. As a consequence of the crowded legislative programme, very little time has been allowed by Committees for serious consideration of the implementation of the large numbers of environmental Acts passed (or to perform other scrutiny functions). Full and proper consideration and inquiry into the delivery of government has been lacking in our view – with even the National Performance Framework not used its first four years for comprehensive scrutiny purposes. We believe that this observation is far from exclusive to the field of the environment.

It is well understood that with 129 members in a unicameral chamber, (with an average of 15 MSPs appointed to office as Ministers) the ability of the Parliament to establish large numbers of committees is limited – but those Committees must do, therefore, the work of both Select and Standing Committees in the Commons and all the committees of the House of Lords at Westminster. No serious consideration has been given to distinguishing formally the legislative and scrutiny functions within Holyrood’s all-purpose Committees, and as a result of the enormous pressures of the legislative programme, scrutiny has seriously fallen by the wayside.

This is particularly seen in relation to agencies of government. In the environmental field, no comprehensive scrutiny of the work of either of the major agencies (SNH and SEPA) has been undertaken. While the agencies have been called to give evidence to Committees on legislative (and other) matters, neither has ever seen their corporate priorities, individual programmes of work or annual report and accounts scrutinised fully by a Committee at Holyrood. Neither has any Committee of Parliament reviewed the selection and/or appointments of Chairs or Board Members – either the generic process or the actual decisions. LINK believes this may be a serious failing. At the same time, no Committee has ever inquired into the operation of Historic Scotland or Marine Scotland as Executive Agencies operating entirely within the structures of the civil service. No serious questions have been asked about whether they have or require independence in the policy or scientific fields. This too may be a serious failing.

In the field of Committee Inquiries into policy matters, we have witnessed few into environmental areas. Positive examples include, however, the ERD Committee’s (2003-07) inquiry into the need for marine legislation – which set the scene (and developed cross-party support/understanding) for the
subsequent Marine Act - but most such inquiries have resulted in little action because rarely have they been followed through. For example, the ERD Committee (2003-07) conducted an inquiry into sustainable development and both the 2003-07 and 2007-11 Committees completed inquiries into CAP reform. None of these have been reviewed or followed up, and none of them have had any discernable impact on the Government’s position on these matters.

The question of scrutiny comes into even sharper focus as a result of the election of a clear majority party in the Scottish Parliament in 2011. A whole series of questions arise about the willingness as well as the effectiveness of Parliament in challenging the executive branch. This new development will require careful observation in the coming years.

**Recommendations:****

- We must consider how to radically improve the ability of Parliament’s Committees to schedule serious scrutiny work, including the possibility of setting aside specific time or meetings for the function.

- As under 1(b) above, we should seriously consider the issue of whether Parliament has been presented with legislative programmes too heavy to allow proper performance of its scrutiny function.

- The issue of the division of constituency, plenary and Committee work recommended by the CSG should be re-examined, whether the division of time between them is right, and consideration given to whether more time is required for Committees to work - both during each term and during recesses.

- Government Agencies should be regularly scrutinised as to their core work.

- Room must be made in the Committee schedules for full Inquiries and follow up as appropriate.

**The potential benefits of changing the format and regularity of question times**

This question is not directly discussed in *Governance Matters*.

**How to make best use of Chamber time**

This question is not directly discussed in *Governance Matters*.

**The potential to introduce new forms of business into the Chamber**

This question is not directly discussed in *Governance Matters* but the paper contains full discussions of related issues including:
1(f) Does Parliament allow for too much secondary legislation? Is the Parliamentary scrutiny of secondary legislation adequate? Should we consider the different types of secondary legislative instruments more carefully?

1(g) Is the Committee structure working? Are there ways in which it could be improved? Can we interact with committees and clerks better, especially outside of formal evidence giving or scrutiny of Bills? Do the Committees help to solve the problem of “departmentalisation” in both their own work and the work of the Government? Does the current Committee system cope with the task of pursuing truly sustainable development – and joined-up governance?

1(h) How successful is the three stage legislative process? How has Parliament coped without a revising chamber? Can we engage better and more successfully at certain stages? Do we exploit the potential for Private Members Bills or the possibility of Committee Bills fully?

1(j) How successful are ‘action plans’ or other administrative strategies in comparison to legislation? Does Parliament properly scrutinise these non-legislative strategies?

**Views on the broad issues outlined below that could be used to develop a remit for the second phase of the inquiry**

The Committee is clear that there are a number of principles which should inform Parliamentary reform:

- that the Parliament should be the primary forum for debating relevant issues of importance in the day-to-day lives of the Scottish people
- that it should deliver flexible and timely scrutiny of the Scottish Government and Scottish public services
- that there should be appropriate checks and balances to ensure that the Parliament can hold the Scottish Government to account
- that procedures should give first priority to Parliamentary business in the Chamber and committees.

Our views on scrutiny and holding the Scottish government are given above. LINK agrees completely “that the Parliament should be the primary forum for debating relevant issues of importance in the day-to-day lives of the Scottish people” We do however discuss broader relations and discussions within the Scottish Policy Community as follows.

4(c) Does Scotland require a forum for the entire policy community to openly discuss and debate the issues affecting Scottish life? Is there great enough communication and debate between the different parts of the policy community?
In the debate so far, a number of problems have been suggested arising from the Parliament’s existing procedures. These include:

- the Parliament’s work is not sufficiently visible to people outside;
- the sense of sharing the power is not as prevalent as it could be;
- attendance and participation in the Chamber is low at times;
- debates could be made more lively, spontaneous and topical;
- some business – e.g. amendments to bills at Stage 3 - is not given enough time; and
- scrutiny of legislation after it has passed is insufficient.

In addition to the relevant sections mentioned above, two further sections in particular of Governance Matters may be of interest here.

1(e) Is the Parliament satisfactorily accessible to non-governmental organisations? Are there any significant barriers to our participation in the legislative process? Are their ways in which our engagement might be improved?

1(h) How successful is the three stage legislative process? How has Parliament coped without a revising chamber? Can we engage better and more successfully at certain stages? Do we exploit the potential for Private Members Bills or the possibility of Committee Bills fully?

Scottish Environment LINK would be interested in being considered for the participation event on 22 November.

Scottish Environment LINK
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