



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Tuesday 22 November 2011

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
8th Meeting 2011, Session 4

CONVENER

*Dave Thompson (Skye, Lochaber and Badenoch) (SNP)

DEPUTY CONVENER

Helen Eadie (Cowdenbeath) (Lab)

COMMITTEE MEMBERS

*Margaret Burgess (Cunninghame South) (SNP)

Bob Doris (Glasgow) (SNP)

*Alex Fergusson (Galloway and West Dumfries) (Con)

*Margaret McDougall (West Scotland) (Lab)

*Paul Wheelhouse (South Scotland) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Paul Cairney (University of Aberdeen)

Michael P Clancy (Law Society of Scotland)

Chloe Clemmons (Scottish Churches Parliamentary Office)

John Downie (Scottish Council for Voluntary Organisations)

Andy Myles (Scottish Environment LINK)

CLERK TO THE COMMITTEE

Gillian Baxendine

Alison Walker

LOCATION

Committee Room 2

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Tuesday 22 November 2011

[The Convener *opened the meeting at 14:15*]

Decision on Taking Business in Private

The Convener (Dave Thompson): Welcome to the eighth meeting of the Standards, Procedures and Public Appointments Committee in session 4. I remind members and guests that it would be helpful if they could turn off their mobile phones and BlackBerrys.

We have one or two little bits of business to take care of before I introduce our witnesses. First of all, I invite the committee to agree to take consideration of its work programme in private at a future meeting. Are members agreed?

Members *indicated agreement.*

Cross-party Groups

14:16

The Convener: The second item is consideration of proposed cross-party groups, the first of which is the proposed cross-party group on families affected by imprisonment. It was not active in the previous session and as members will see from the paper on the group's application it meets all the criteria for such groups. Do members have any questions or comments?

Margaret McDougall (West Scotland) (Lab): I simply want to declare an interest in two of the groups under consideration.

The Convener: Thank you.

Are members happy to accord recognition to the proposed cross-party group on families affected by imprisonment?

Members *indicated agreement.*

The Convener: The second group is the proposed cross-party group on housing. It was active in the previous session and as members will see from the papers it meets all the criteria for registration. Do members have any questions or comments?

Margaret Burgess (Cunninghame South) (SNP): I declare an interest as a member of the group.

The Convener: Thank you.

Do members agree to accord recognition to the proposed cross-party group on housing?

Members *indicated agreement.*

The Convener: The third group is the proposed cross-party group on learning disability, which was also active in the previous session and meets all the criteria for registration. If members have no questions or comments, does the committee agree to accord recognition to this proposed cross-party group?

Members *indicated agreement.*

Reform of Parliamentary Business

14:18

The Convener: The third item on the agenda is a round-table evidence session on reform of parliamentary business and remodelling the parliamentary week. I welcome to what I hope will be a fairly informal and free-flowing discussion Michael Clancy from the Law Society of Scotland; Chloe Clemmons from the Scottish Churches Parliamentary Office; John Downie, director of public affairs for the Scottish Council for Voluntary Organisations; and Andy Myles, parliamentary officer for Scottish Environment LINK. Dr Paul Cairney has not yet arrived but we hope that he will do so fairly soon. *[Interruption.]* I think that he has just walked in. You must have been tempted by the coffee downstairs, Paul, or perhaps your train was late. Dr Cairney is a senior lecturer in politics and head of the department of politics and international relations at the University of Aberdeen.

As I have said, I hope that with this round-table format we will have a pretty free-flowing discussion on parliamentary reform. We are interested in your views on parliamentary reform in general and, in particular, on the issues that we are considering in the second phase of our inquiry, which are to do with committees. I ask panel members to introduce themselves briefly—they do not need to—and to say a couple of words about what they think of parliamentary reform.

Michael P Clancy (Law Society of Scotland): It is a great pleasure to be here to talk about the topic. I have had the privilege of giving evidence to many committees in the Parliament since 1999. Some of that evidence has been taken on board and some of it has not, but one of the signal features of the parliamentary process that has been clear to me is the receptiveness of the Scottish Parliament to people from outwith it, such as those who might have an expert view or those who have a special perspective on bills, legislation or inquiries. I have always been struck by the extent to which the Parliament is willing to take on board representations, either in inquiries such as this or in relation to bills or subordinate legislation. That has always set the tone for me when I have made representations on behalf of the Law Society of Scotland.

To give the committee an idea of the scale of what we do, in the past 12 or 14 months, we have commented on 15 or 16 bills and responded to 129 Government consultations, from the Scottish Government and from Whitehall departments, ranging across the legal spectrum from agricultural law to wills. The Law Society undertakes a vast

amount of activity to try to make the law as good as it can be and as understandable, comprehensive and consistent as it can be. Of course, sometimes our views do not accord with those of the Government and sometimes they do. However, we are always given a fair hearing by the Parliament and its committees. For that, we are grateful.

Chloe Clemmons (Scottish Churches Parliamentary Office): My interest in parliamentary procedure is twofold. First, I am interested in how to ensure that people who are not politicians or policy staff have access to decision making. We work with many people in churches who are excited by the possibility of being involved but who need procedures that are structured in certain ways to make it possible for that to happen. Part of my role is to facilitate their engagement with and translate their expertise for the parliamentary process. Secondly, I am interested in ensuring that the Parliament takes a long-term view of events in society and does not simply react to immediate needs, particularly in relation to inquiries.

My key concern, and the reason why I decided to submit evidence to the inquiry, is that, when considering changes and reforms, we find it easy not to remember why we did things in the first place. I make a plea for the long public consultation periods at the beginning of legislative processes to continue. Stage 1 of the bill process operates effectively at present. A key feature of community organisations and churches is that decisions are made by volunteers. They have volunteer governance boards and professional staff who deliver services. For most people, it takes a lot of time to engage on issues. If they do not have time, it is not possible for them to engage in the process at all.

When I discussed the issue with colleagues, they pointed out that the stage 2 and 3 processes are much quicker and that it is much harder to engage in them. In some of the committee's previous meetings, witnesses have queried the stage 3 process and have said how short stage 3 debates are. I echo that. It would be good to have longer timescales to provide more opportunity for people to feed into that process.

I commend committee inquiries, which are a useful way of making progress in a debate in a more long-term way. I am thinking about the previous Finance Committee's inquiry on preventative spending and the inquiry on women offenders. I would like more of that kind of work, and more post-legislative scrutiny.

John Downie (Scottish Council for Voluntary Organisations): Michael Clancy and I have been lobbying the Parliament since it was set up in 1999—one of us for the private sector, and one of

us for the third sector—and my reflections are a bit like his. I have given evidence to lots of committees and have responded to lots of committee inquiries and Government consultations and, in comparison with what the process was previously, we can see that it is like night and day. A lot of the time, SCVO facilitates the engagement of our members, a bit like Chloe Clemmons does—we bring a sectoral voice together. Lots of our members lobby the Parliament individually. At times, some of them will disagree and be at cross-purposes, but we try to bring a sectoral point of view. As Chloe says, the issue is the agenda of the committees in thinking about issues over the long term. On many issues, the Government is thinking in the short and medium term, and there is a role for Parliament in thinking a bit differently.

An issue that many people have raised is the need for scrutiny of past legislation to learn the lessons, from where we are now. Last week, the British Medical Association called for a ban on smoking in cars. The anti-smoking legislation in Scotland was groundbreaking, but it has been in place for a number of years and we should be scrutinising it, asking whether it needs to be strengthened and whether it is working effectively, as some people have called that into question. In the context of the anti-sectarianism legislation that Parliament is dealing with at the moment, I do not think that we really looked back at the legislation that was previously introduced to see what was working best or what was not working and why as we went forward. That might have saved us a bit of time in our thinking.

I echo Chloe Clemmons's point that it is very difficult for organisations to influence the bill process at stage 3. However, there have been examples of the Parliament being extremely responsive. For example, on the Welfare Reform Bill, many of our members put in a lot of effort at Westminster—in both the House of Commons and the House of Lords—but absolutely no one was listening. We have facilitated great engagement with the Scottish Parliament through a number of committees and it looks as though there might be a Welfare Reform Bill committee quite soon. That is a great example of the Parliament listening and responding.

Yes, there are some areas in which we could do better. However, in terms of overall performance, we are happy to accept that parliamentary business needs to be refreshed but emphasise that it does not need any wholesale redesign.

Andy Myles (Scottish Environment LINK): I represent Scottish Environment LINK—an organisation that some members may not have come across. We have 36 voluntary, non-governmental organisation members, from some of the largest, such as the National Trust for

Scotland and RSPB Scotland, down to some of the smallest, such as Buglife Scotland and Froglife Scotland. They are all national organisations representing environmental and cultural interests. Between them, they have 500,000 members in Scotland.

Like all the other organisations represented here, we have been working with the Parliament since 1999 and have had an extensive and very positive experience, particularly in the legislative field. The participation of environmentalists in Scotland, working with MSPs from all parties, civil servants, clerks and everyone else, has meant that Scotland has ended up with pieces of legislation that I hope—and that parliamentarians, at the end of stage 3 debates, have tended to claim—are much better because of the involvement of civic Scotland. I am thinking of the Marine (Scotland) Act 2010, the Environmental Assessment (Scotland) Act 2005, the Nature Conservation (Scotland) Act 2004 and the Planning etc (Scotland) Act 2006. I could go on listing the many important pieces of legislation that I like to think the policy community in Scotland, working together, has made much better than when they were introduced to Parliament. In that way, the Parliament has followed its four founding principles, one of which was that there should be participative government.

In relation to participative government, as you will see from the written evidence that we submitted, we have just reviewed our relations with Parliament and the executive, civic and judicial branches of government and produced a major report recommending yet further discussion across the policy community in Scotland.

14:30

Your inquiry relates to that in two ways. First, has Parliament allowed its legislative programme to be dominated too much by the Executive—the Scottish Government—and the civil service? Secondly, has the Parliament got the balance right in exercising its scrutiny function and its legislative function? Our feeling is that, particularly in our sphere of the environment, the Parliament has had so much legislation year after year after year that there has been very little scrutiny. There has never been a calling in of the reports of or appointments to the Scottish Environment Protection Agency, Scottish Natural Heritage, Historic Scotland or Marine Scotland by a parliamentary committee. MSPs have been extraordinarily hard working, but the Parliament needs to address the balance between legislative and scrutiny work. That is particularly the case in our sphere, although we have had comments from across civic society that suggest that the environment is not unique in that experience.

Dr Paul Cairney (University of Aberdeen): I am different from the other witnesses in that I very rarely give evidence to Parliament—this is my second time. I am much more of an outsider. Presumably, you got me in because I can say what I like—I can do that at your work, but I cannot do it at mine.

The Convener: I will come over and reciprocate at your work.

Dr Cairney: I remember saying this the first time I appeared: it is very easy to be negative about the record of Parliament when you are an academic, because you can point to the burden of expectations for the new Parliament in relation to the new politics, a new culture, power sharing between Parliament and Government and such like, and then to the difference between the rhetoric and the reality. I do not want to do that, because I have done it too much.

A more positive thing to say is that this is just the sort of review that I think Parliaments can be good at, because it is very doable. What struck me about the review is that it has relatively clear aims, it is relatively short term and you can deliver on your aims—the recommendations that you put forward have a good chance of coming to fruition. That might compare well with some of the year-long, far-ranging reviews that identify a whole range of problems within Scotland on which Parliament is not able to deliver. I like the fact that it is a good, self-contained, doable review. It could in a sense act as a model for how committees could structure their own business in a manageable way.

However, being a picky academic, I picked up on something about the wording—there is a sort of disconnect in the review. There are two aims that could almost be contradictory. On one hand, you want a “sense” of—I am very picky about that term—visible scrutiny and accountability through plenary questions and wide debates. On the other hand, you want an actual improvement in scrutiny and accountability through committees. It seems to me that if you want a more visible presence for the Parliament, you focus on anything to do with First Minister’s questions and anything that you can relate to it, because it is the only thing that anyone outside of the parliamentary village will be interested in. I am conscious that no one will be watching this committee on telly or via the live stream.

The Convener: You might be surprised.

Dr Cairney: Okay. However, they will watch First Minister’s questions because it is entertaining—it is really good theatre. That is the visible side.

If you want actual scrutiny and accountability, you focus your resources on committee work.

Scrutiny in that sense is reading lots of documents and having lots of quite dull meetings. It is an invisible and thankless task, particularly in a context in which the Scottish Government will always produce the bulk of policy—the Parliament will always be operating at the margins in that regard. There is a disconnect between the aims in relation to what parliamentarians spend their time on—do you want to look like you are doing something, or do you want to actually do something? You cannot necessarily get both.

Minority government showed us the limits to the Parliament and parliamentary reform. We might think that such a situation would offer the best chance of proper engagement, because a minority Government has to co-operate with other parties and engage with the Parliament to get legislation through. However, my sense is that the Government withdrew a small number of key pieces of legislation, which it knew that it would not be able to put forward, and then was able to disengage from Parliament in quite an important way, fulfilling its objectives through legislation that already existed, through finance and through its relationships with local authorities and health boards.

Now we are in a period of majority government, which focuses the mind on the extent to which the Parliament can power share, in a profound sense.

The Convener: I thank you all. You have made positive comments and provided an awful lot of material to get us thinking. I will start with a general question—if anyone wants to respond they should catch my eye and I will bring them in.

You are looking at us from the outside. Will changing our plenary sitting pattern from Wednesday afternoons and all day on Thursdays to Tuesday, Wednesday and Thursday afternoons, and having committees meet in the mornings as opposed to all day on Tuesdays and on Wednesday mornings, make any difference to how we operate or how we are perceived?

Andy Myles: Paul Cairney talked about the difference between looking like you are doing something and actually doing something. Scottish Environment LINK does not mind when you sit; we are interested in the quality of the scrutiny of Government and in the quality of the legislation that is produced. In general, I do not think that LINK members and member organisations are worried about the perception from outside; they are much more worried about the quality of the media that is reporting and about the performance of the Parliament and the Government. However, that is a question for another day.

In the meantime, the important question is how we sort out the division of labour between the two functions, rather than whether things are done on

a Tuesday morning or a Thursday afternoon. In that respect, it is worth saying that the scrutiny function is best performed in committees, where people can hammer away at finding out what Government has been up to. Plenary sessions do not lend themselves to that.

Given that the number of MSPs is limited—we considered saying that you are far too busy and there should be more of you, but we knew that that would be met with derisive laughter, so we did not include the suggestion in our report, “Governance Matters: The Environment and Governance in Scotland”—and given the pressure that you are under, Environment LINK suggests, if anything, that more committee time and less plenary time might be the way forward.

John Downie: I agree with Andy Myles. We are all aware of committees’ workload. As Paul Cairney and Andy Myles said, your workload is very much driven by the Scottish Government’s legislative programme. Every organisation, whether it is in the private, voluntary or governmental sector, has to prioritise, which is how we can make a difference. Some committees have probably taken on too much work, which affects the scrutiny that they can provide.

Our organisation often supplies not so much parliamentary questions, but questions that MSPs can use in scrutinising matters such as the spending review and the budget. For example, we gave information on the change fund to members of the Local Government and Regeneration Committee, because they needed assistance to aid their scrutiny of people who were in front of them.

I appeared at the Economy, Energy and Tourism Committee when it looked at the third sector division of the Scottish Government’s budget. The committee had only the top-line figure of £20-odd million; it did not have the breakdown of what the division spent the money on—£4 million for this fund, £2 million for that fund, the money that it gives to interfaces and so on. The information that comes from the Scottish Government might be an issue but, equally, committees could easily drown in paperwork, so a balance must be struck to ensure that committees can carry out effective scrutiny.

Committees have tended to use advisers, but we are fishing in a fairly small pool. An adviser to one committee gives evidence to another committee as an expert, so it has become fairly incestuous. I suppose that that is equally true of lobbyists from the voluntary sector and the private sector. There is a lot of expertise out there—that is equally true in other sectors—and it is necessary to find a mechanism so that we can help committees to scrutinise the Government.

Another evidence session that I looked at is a good example. Representatives of Scottish Enterprise were in front of the Finance Committee and it was obvious that there was not the detailed questioning that perhaps there should have been, because of either a lack of information or a lack of expert advice from advisers. MSPs who are on committees need to pick up on the organisations that know something about the matter that is being discussed. I appreciate that there are issues around that, but the Scottish Enterprise representatives got away with blue murder in what they said about what Scottish Enterprise is doing for the economy. That is one example, but there are probably many others.

Michael Clancy: You asked how best the sitting week could be organised. In our submission to the committee we said, in essence, that MSPs and officials would be best placed to organise the sitting week, because they are the people who have to allocate work in the Parliament and constituency work. That is where one would sit on the organisational question of whether Parliament should meet on Tuesday, Wednesday and Thursday, or on Wednesday afternoon and Thursday, or on some other combination of days. It is like one of these 1960s games when there is a missing block—

The Convener: I could never do those games.

Michael Clancy: When these things are writ large, nobody can do them.

The essential issue—Andy Myles touched on this—is not really the allocation of time, but the use to which that time is put. The focus should be on maintaining the key principles of the Parliament: openness, accountability and power sharing. Those are the leitmotifs of the Parliament. One reason for the Parliament’s existence is to project that engagement with the people to ensure that there is participative democracy. The issue is how best to organise time around those principles rather than to organise the principles around the time.

That leads to a discussion about the relative merits of committee scrutiny and plenary scrutiny. We have all sat patiently through stage 1 and stage 3 debates listening for that pearl of wisdom that we carefully crafted and sent out in a letter four weeks beforehand, hoping patiently that someone will pick it up and put it on the record. We have all watched as, first, there were 129 MSPs, then there were 118, then 100, 70, 50, 40, 30 and, eventually, we get down to the core band of stalwarts who have been interested in the issue from the beginning and who stay through to the end.

14:45

That tells me that MSPs are the best judges of the use of the time, with one caveat. While you ladies and gentlemen who represent the people of Scotland think about how to divide up your days, I do not see terribly much argument for not running committee meetings at the same time as plenary sessions. That works at Westminster and it might encourage members to develop different kinds of expertise.

If members of the Scottish Parliament are like any other group of humans whom I know—I think that they are, by and large—some will have an inclination to oratorical debate, some will have an inclination to plough through the many tonnes of paper to which John Downie referred and others will have different talents that can be used in different ways. A challenge for MSPs is to match their talents to the procedures to get the best benefit for constituents and themselves.

Dr Cairney: I will try to stop being contradictory just for the sake of it. I will describe the logical conclusion of saying that we have different sorts of people, such as talkers. Actually, I am doing a management course at which we are talking about just that—extroverts and introverts. If anyone is interested, I am a controller producer.

Groups do not work unless they have combinations of people. If plenary sessions are full of people who like to talk and committee meetings are full of people who like to read, the solution might not be optimal. People might be doing what they want to do, but they are in a system in which we need to force them to work together.

My problem with making plenary sessions and committee meetings compete is that the chamber already looks pretty empty. If we take away First Minister's question time, my impression is that chamber debates involve members who are obliged to be there to make a speech and a handful of people who are roped in. As I have said, when a member is talking, other members check their e-mail. If committee work took place at the same time, that would add to the pressure for people not to engage in plenary debates, unless the plenary time was shorter, which would mean that people had to go at some time.

That takes us back to the idea of looking like you are doing something. At First Minister's question time, people see a full chamber in which everyone is engaged and passionate. In more esoteric debates, people see members not working. That is my sense when I see an empty House of Commons—I ask why members are not there, as we pay them to be in the chamber. Even if members are working somewhere else, the image is a problem.

The Convener: One difficulty is the perception that, if a member is not taking part in a debate in the chamber, they are doing nothing.

Paul Wheelhouse (South Scotland) (SNP): I will pick up Michael Clancy's point about nuggets of wisdom, which I completely accept sometimes do not appear in debates. I have a question for all the representatives of stakeholder organisations. How much notice do you have of the scheduling of debates? I presume that it is short. As a new member, I have observed that briefings often appear in my in-tray while I am in the chamber for the debate to which they relate or that briefings arrive too late in the day to be taken on board, because of the practicalities of writing speeches, preparing for debates and evening meetings.

What can the Parliament do to improve the engagement at that pre-debate stage, so that we get the nuggets of wisdom in time to allow us to absorb them and take them on board when we write our speeches? I sometimes feel guilty about not doing that, but we often do not have time to do it.

John Downie: I agree with Paul Cairney's point about maintaining the separation between committee and plenary but having smaller and more focused plenary sessions with, in a sense, real issues to debate.

On Paul Wheelhouse's point, we often have problems because of the short notice that we are given. That applies to committee agendas as well. How can the business be scheduled so that there is a more medium-term approach? If we get the approach right and have more focused and detailed debates on key issues, we can build them into the system slightly further ahead.

We all understand that Parliament has to react to issues that come up all the time—that is a fact of life—but we need to think about how we can schedule some important debates so that MSPs can get the information that they need in order to make a better contribution. It comes down to the scheduling issue.

Paul Wheelhouse: As a newbie, I have not yet encountered a stage 3 debate. I presume that, because we know that they are coming well in advance, there is more time for stakeholders to engage in the process and brief members before them. Is that true?

John Downie: No. As Chloe Clemmons said, stage 1 is quite long—it can seem endless, sometimes—but stages 2 and 3 seem to be quite compact. That is a time issue, because there is usually a pressing need to get the legislation through. The balance is slightly skewed, and papers are produced fairly late.

Chloe Clemmons: I am not sure that I have much to add. The issue is simply about scheduling. If people are given a week's notice, they can get things to you in a more timely fashion than they can if they have only 24 hours' notice. It is that simple.

Andy Myles: Generally, it is up to the non-governmental organisations to ensure that they submit their briefings in time. I would not issue a briefing if it was going to go out only at the start of a debate in committee, because that is far too late. A briefing has to be produced in time. We have to submit it early enough so that we have time to call MSPs or their researchers to offer further briefings, if more information is required—by their very nature, the briefings are only one or two sides of A4.

It is up to us to produce briefings on time. That means that, during stage 2 and stage 3 debates, we often have to have people in our teams working ridiculous hours. However, those ridiculous hours are matched by the ridiculous hours that are required of MSPs by the schedule of creating the piece of legislation. We have to adapt. I do not think that the system should be thought about in terms of how easy it is for the non-governmental organisations, as long as they have a proper opportunity to participate. Generally speaking, we have had no real problems in terms of participation.

The committees work in a much more programmatic way. The preparation of briefing material and ideas is much easier if we know what the committees' programme of work will be over the next few months. If we know roughly what is coming up, information can be produced in advance and can be turned into briefing material for the committees much more easily.

We are given very little notice of some plenary debates. We might have no idea of what will come up; that applies to Government debates as well as Opposition debates, and when the debate is being driven by a media frenzy. That is often when we have the least opportunity to contribute, because plenary business is not programmatic. In my experience, non-governmental organisations often say, "Well, I'm just not going to bother briefing. There will be a motion, but no product at the end of the debate—nothing but the possibility of a news report, and even that is doubtful. So, we won't get too worried about a plenary debate."

In briefing a committee that is running through a programme, an inquiry or a piece of legislation, however, NGOs have an idea of what will come up, so we will provide a briefing. We just have to get down and do it in time. There have been occasions on which we have had very limited time in which to provide briefing, but if we want to participate in government and the work of

Parliament, we just have to get on with it and fit in with the schedules that the legislators and scrutinisers have to put up with.

Michael Clancy: There is clearly a very variable picture across the non-governmental bodies vista. The situation could also be different depending on which sector one is working with. The Justice Committee, which is the one that I naturally have the most to do with, has a heavy emphasis on legislation, invariably but not exclusively relating to criminal law. Given the pace of that legislation—there is a programme, but it is a very pushed programme throughout the year—there is little opportunity for the members on that committee to take moments of quiet reflection.

Paul Cairney disclosed to us his recent experience with Belbin management theory and such like. If it is any consolation, it must be that time of year, because we were doing that ourselves just last week. I cannot remember whether I am a finisher, a producer or a plant, but there we are. No committee would consist exclusively of readers, and no plenary would consist exclusively of orators. There would necessarily be a mixture of the two, because, in each instance, there is room for both.

Another issue relates to submitting briefing papers in advance of stage 3, which Paul Wheelhouse mentioned as being important. Clearly, it is up to those of us outside the Parliament who want to express a view about legislation or inquiries to ensure that we adhere to the deadlines. There is no point in sending in amendments on day one of stage 2, and anyone who does so needs to be taken to one side and told that that is not how to do it. We must ensure that people know what the procedures are, and that sufficient education is given, not only to organisations but to the public at large, about the process.

In our submission, we made a point that I had raised with the Calman commission about stage 3 debates being divided into a report stage and, following perhaps a week or two of thinking time, a third reading. One of the features of having a three-stage legislative process, particularly in a unicameral Parliament, is that getting it right first time is a necessary objective. Humans do not always manage to achieve that, however. Therefore, building in more thinking time and more opportunity for change to be brought forward, even at a pretty finished level, would lead to a general improvement in the quality of legislation. The intensive stage 1 inquiry that Chloe Clemmons referred to is the key to balancing a unicameral Parliament with the obligations of public engagement.

15:00

The Convener: We move on to the Parliament's engagement with the public and with civic Scotland through events in the Parliament and cross-party groups. How valuable are those events and groups to the operation of the Parliament? We have our committee system, our plenary debates and so on. Should those events be a very secondary thing, to be fitted in after we have done our other work, or do they have greater importance?

Chloe Clemmons: They are very important. To return to something that Paul Cairney said earlier, there is a choice between doing something and being seen to do something. Cross-party groups and events are a way of not having to make that choice, because they are a place in which people who are genuinely interested can engage on the periphery of the work, without it being a huge commitment. Such engagement is very informative and it is good PR for the Parliament.

We hold an annual event in which the moderator visits the Parliament and hosts a reception with a theme, and we get people coming in from churches on issues such as climate change or young people. That is a great opportunity to sell what the Parliament does in a much more cohesive way than would ever happen in the media. It is a really important way for MSPs to see what is going on in their constituencies from our perspective, because we choose the issues that we bring, but also for people in constituencies to see what their representatives do the rest of the time.

Cross-party groups are important because, again, they are a way of having informal dialogue. Someone does not need to be as brave to go to a cross-party group as they would need to be to come in here. I spend a lot of time talking to people who would not appear at a parliamentary committee because it is not part of their normal professional work, but they still want the conversation and they still want that access. The cross-party groups give them a way of speaking to representatives and others, getting a feel for what the Parliament is doing, and getting their issues heard.

I would definitely say that events and cross-party groups should remain key to people's time.

John Downie: I agree, but we all acknowledge that the quality of cross-party groups is variable. Some groups are very active and the quality of debate is extremely good, but there are issues about how much others contribute and some organisations see cross-party groups as a tick-box part of their objectives. The cross-party groups have to be meaningful. I agree that they are an extremely important part of the process,

particularly for MSPs, in that they enable you to talk to real people and organisations whom you might not otherwise meet, and as a source of intelligence and information about some of the key issues that you are debating. That is why I think that debates in the evening would not work—there has been a big increase in the number of cross-party groups that are meeting in the evening. Wednesday lunch times and Wednesday evenings are important times for cross-party groups.

Sometimes it is difficult for MSPs to attend meetings because of their schedule, but we place prime importance on them. On any given night, there will be four receptions going on in the Parliament. It is really good that organisations want to engage and to be here; it is not just ticking a box. Most MSPs make a commitment to organisations in their constituency that are engaging in that way, or to national organisations as part of a policy debate. It is all about building relationships and trust to ensure that what happens in committees, the briefings that you get and so on are better in the future and that you have sources of expertise that you can turn to.

Andy Myles: The main thing that we need to appreciate is function; for members of Scottish Environment LINK the function is to build relationships with MSPs. The basis for any such activity is our ensuring that we provide help and that we appreciate the job that MSPs do by providing assistance, knowledge and experience that are of value to them. In my experience, that is best done over the long term and in relation to what is happening in Parliament. We can certainly start relationships in cross-party groups, but there are a variety of means of finding out who is interested in particular issues.

One of our small, but active, groups—the Scottish Allotments and Gardens Society—has no full-time staff; however, two formidable lady members attended an advocacy course that was run by Scottish Environment LINK and set about lobbying and building up relationships with MSPs on expanding allotments in Scotland. Even though they did not set up a cross-party group, an event in Parliament that they held last year was attended by 28 MSPs, including four ministers, I think. In other words, their networking and advocacy efforts were particularly successful, with considerable penetration into the Parliament.

I must say: because there are so many cross-party groups, and because there are only 129 MSPs, such groups have not been the best way of forging relationships in Parliament. I am not decrying cross-party groups at all; I know, for example, that many of our members found the cross-party group on climate change to be an extremely effective way of spreading views, ideas and discussion. By and large, though, I would not

say that they are in any way the most important focus for building relationships between MSPs and civic Scotland. That relationship is built on the quality of our ability to help MSPs and to provide them with information and material of value, and on MSPs' ability to seek out such information and to listen to us when we come in to talk to them.

There is no doubt in my mind that the most effective approach is to call MSPs to ask whether they are interested in an issue and, if they are, to ask whether we can come in and meet them. The member will not be able to be in the plenary meeting when we meet them in their office, but such meetings offer the chance to follow up on briefings in a way that cannot be done even in this kind of committee situation. We need one-to-one meetings with MSPs and to remember that we are there not to lecture the MSP, but to help them to get our points of view across and to provide them with assistance. There will not be many experts on allotments among the 129 MSPs, although I can say that there are now many more expert allotmenters in Parliament than there used to be.

Paul Wheelhouse: The clerks have helpfully provided us with an analysis of the pattern of sittings for cross-party groups. I do not know whether that is available in the public documents, but in relation to John Downie's point, I simply point out that 25 of the 43 CPG meetings that took place between September and November happened on a Wednesday lunchtime or evening. That makes it very difficult for members to attend all the CPGs that we would like to attend; indeed, I am regularly embarrassed because—as John Downie has witnessed during a meeting of the cross-party group on sport—as a CPG member I often have to leave halfway through a meeting. In that case, I was very interested in the subject because it crossed over with my responsibilities as a member of the Finance Committee.

What scope is there for organisations that take part in cross-party groups—as you do—to look carefully at the scheduling of CPG meetings? If a member is interested in a subject, they will attend the CPG meeting if they can. I would certainly attend meetings on Tuesday evenings, when I tend to be in Edinburgh—although not all members are. In the period that we are talking about, only five CPG meetings were held on a Tuesday evening and only one was held on a Tuesday lunch time. It is clear that you try to fit meetings around when you think the majority of MSPs will be here, but in doing so you defeat the purpose of allowing us to have access to those meetings. Does anyone have any comments on that?

Andy Myles: Generally speaking, the best window for organising an event in Parliament is on a Wednesday, because that is when most MSPs

will be here. We have organised Scottish environment week for eight or nine years, and we get the best attendance on Wednesday lunch time and Wednesday evening, which is when we tend to hold a reception in the garden lobby. Things build up as the week builds up and they tail off towards Thursday evening, as MSPs disperse. I think that that is just a simple result of the fact that the Parliament has MSPs from all over Scotland, who collect as the week begins and disperse as the week goes on. That very much reflects the information that you have on when cross-party groups meet. The reality of parliamentary life is that if you want a busy meeting, you should not hold it on a Thursday evening or a Tuesday lunch time.

Dr Cairney: I suppose that the question about cross-party groups comes up because there are a lot of them and they seem to command a lot of members' time. If the context is that MSPs do not have very much time, CPGs compete for it.

It is interesting to consider where CPGs came from. My impression is that, initially, they came from some MSPs' desire to avoid the party whip. I do not know how many elephants there are in the room, but that is one of them. The context is that the party whip in the Scottish Parliament is one of the most impressive that I have ever seen. The amount of dissent in parties is extremely low; at one point, it was so low that I could name the dissenting members.

I think that CPGs proliferated because they were different from the committees, where there are clear party divisions and a clear whipping system, which went against the idea of being businesslike and taking a cross-party approach. Some members found a home in those more independent groups. I suppose that that is a negative reason for their formation.

Occasionally, the CPGs produce something that we can point to. I always go back to the example of the smoking ban, which can be traced back to Kenny Gibson's member's bill, which Stewart Maxwell took on—it came out of a CPG.

Most of the panel are from relatively well-resourced groups that have the necessary access and which are well established. It might be that CPGs are there for those who are less skilled at engaging with the Parliament and who find the atmosphere of CPGs more relaxed, as has been mentioned. Even some of my students who are interested in particular issues will sometimes go to a cross-party group meeting because the groups are relatively open and self-selecting. I suppose that the problem is that very few MSPs attend them, but it could be that they act as a way of getting people together and help to form networks between groups in a way that does not always

require that an MSP be there. I say that as an outsider.

John Downie: There are a number of issues at stake. It should not be beyond the abilities of the organisers of the cross-party groups and parliamentarians to get together to organise things better.

As Andy Myles said, the perception is that an event has to be on a Wednesday or MSPs will not attend. However, that is actually not the case. If the subject matter is good and it is an important group, MSPs will attend, so perhaps the secretariats of organisations need to schedule events as parliamentary business is scheduled in order to make it more effective and easier for MSPs to engage. I agree with Paul Cairney's point that CPGs represent a different way of interacting for organisations. As he said, we are all fairly well resourced and, as Andy Myles said, we can respond quite quickly to the subjects of plenary debates, but lots of organisations that are under a lot of pressure send stuff too late.

15:15

There are a number of issues to consider, but cross-party groups have their place if we can get them organised much more effectively, because they create a different debate. The cross-party group on sport meeting that was mentioned was interesting: it was on preventative spend and was not on the usual debate about sport. It attracted a number of MSPs and a good cross-section of sports organisations, which had a lot to say about an important issue, although they probably had not thought that they were in that space. From that point of view, the meeting was extremely useful. I certainly found it useful just to sit and listen to the various organisations in the group. Frankly, we tend to engage only with the cross-party group on the third sector, but a lot of our members are individual organisations.

We might need to ask whether we can merge some of the cross-party groups. People might not like to do that, but we need to look at how many groups there are.

Paul Wheelhouse: I will make a couple of observations. First, we have talked a lot about the impression that is given to the public by low attendance at plenary meetings. From the point of view of participants in CPGs, when there is a revolving door of MSPs coming in and going out because of different functions and events during the evening, what impression does that give to people who are attending the group and who have a particular interest in what is being discussed?

My second observation is—I suppose that you would expect this from me, as an economist—about the law of diminishing marginal returns. Do

we lose sight of the value of the CPG if we focus purely on the number of MSPs who attend and not on the quality of their input to the CPG? That relates to my point that I would like to be there for the whole CPG meeting to play a part in it and to hear evidence from stakeholders, which tends to come towards the end of the meeting; there might be a speaker at the beginning, with other participants contributing later. As I said, it would be better to be present throughout rather than coming in and going out and perhaps missing vital input from outside organisations.

The Convener: I will let Margaret Burgess in before anyone comes back on that.

Margaret Burgess: Paul Wheelhouse has dealt with that matter that I intended to raise on CPGs, so I will leave it. Do you want me to go on to something else?

Dave Thompson: We will wind up on CPGs, then I will come back to you. Andy Myles wants to come in.

Andy Myles: I want to come back on something that Paul Wheelhouse said about whips. There certainly is whipping in the Scottish Parliament. I am not going to give away our secrets about how we turn MSPs, but we do not wait until there is a vote. A long time before that, we build relationships and trust with MSPs so that they know that what we provide them with is bona fide, properly researched material.

I have had no problems over the years in finding MSPs of all parties who have reasonably independent minds and are prepared to manoeuvre without the necessity of breaking the party whip. The manoeuvring does not come out in votes, because changes to legislation, scrutiny or inquiries will often be made before the stage of public announcements. As a representative of non-governmental organisations, I do not like whipping and I am not saying that it does not exist or that it is fine; I am saying that it is possible to get round it, even for a less well-resourced group.

My second point about such groups is that we have large and small member organisations. For example, RSPB Scotland has many policy and advocacy staff who provide a professional service to a range of MSPs on a range of subjects, and in a truly admirable fashion. However, Scottish Environment LINK, as an intermediary umbrella body, assists smaller organisations that have only a few hundred members and no permanent staff—such as the Scottish Allotments and Gardens Society—in engaging with the Parliament. It is important to recognise that we are organised to help organisations in civic Scotland to engage with the Parliament. Less well-resourced groups do not have to be excluded from the Scottish Parliament. In our experience, our sector has, in many

respects, specifically gone out to help less well-resourced groups to influence, and make an impact in, the Parliament.

The Convener: I was a whip for a few years, so I will have a word with you and Paul Cairney at the end of the meeting.

It strikes me that you feel that the cross-party groups are both valuable and variable, and that they allow smaller groups that do not have huge resources to exert influence that they would not otherwise have.

I am convener of the cross-party group on psoriasis and psoriatic arthritis, and I know that the people who work with those conditions have very meagre resources. We struggle at times to get the requisite two MSPs to form a quorum, which is not surprising: there were more than 70 cross-party groups in the previous session of Parliament, and they often met on Wednesday evenings because members tended to be in Parliament then.

One of the thoughts behind stretching plenary sessions and holding decision time on a Tuesday is that more MSPs would be in the Parliament on Tuesday evenings, which would even out the pressure. That is just one of the arguments in favour of those changes, and we are considering it.

Margaret Burgess: All the groups that are here today have talked up committee scrutiny, which they all view as being one of the most important aspects of the Parliament.

I am looking ahead to the potential impact of the Scotland Bill and the subsequent legislation that will need to be scrutinised. What are your thoughts on that? You want more scrutiny, but how can we fit that into the parliamentary week? It will not stretch by much.

Andy Myles: To be perfectly honest, I am not sure that the Scotland Bill will make a huge amount of difference. Its principal provisions concern the power to vary income tax, and I imagine that they will to a large extent be dealt with during the budget process and in a budget bill. I may be completely wrong and off the rails on that, but I am not convinced that it will make a huge difference.

I am, along with our members, much more concerned that we put a lot of effort into submitting evidence to a variety of committees in the current budget process—for instance, submitting evidence on the budget bill and finance to the Rural Affairs, Climate Change and Environment Committee—which is passed to the Finance Committee and completely ignored. That is a much more serious problem, which will exist one way or the other.

The siloisation of subjects among the committees of the Parliament—the way in which

topics are divided up and not integrated—and the Government falling into silos is a much graver concern when one is pursuing sustainable development and the integration of economic, environmental and social concerns as a principal objective. It still happens in Westminster, and in our experience it happens here and in St Andrews house. I do not believe that it will change as a result of the Scotland Bill.

John Downie: I, like Andy Myles, do not expect the Scotland Bill to be over-onerous in terms of scrutiny and the powers that it will give back to the Scottish Parliament if it is passed.

The creation of a welfare reform committee is a much greater concern and will require much more scrutiny. The Parliament has debated a legislative consent memorandum because the impact of the Welfare Reform Bill—which, to be frank, some people in Scotland would describe as being an unmitigated disaster—will have big implications for the Scottish Government's budget. That will require quite a lot of scrutiny with regard to how the Scottish Government and the Scottish Parliament will try to mitigate some of the bill's impacts. We would very much welcome the setting up of a Welfare Reform Bill committee, which would work across a number of areas and not stick just to the welfare silo.

The Parliament's committees have got better at getting out of their silos. Government tends still to have that mentality, but the Finance Committee looking forward towards Scottish Government departmental budgets is a way out of that cycle. As we all know, the allocations have never really changed over the past 10 years—they are the same percentages of the budget. In contrast, it is my perception, from the committees that we deal with, that the Parliament committees have got much better at discussing things and working across one another.

Michael Clancy: There is no doubt that the Scotland Bill is an interesting measure and you are right to point out that parts of the bill will have a knock-on effect on what the Scottish Parliament will deal with in the future. When one deconstructs the bill, one sees—as Andy Myles said—that the income tax provisions might easily fit into the current provisions for budget allocation. Further thought might need to be given to how the Scottish Parliament deals with stamp duty land tax or with the other minor taxes that are being devolved, including landfill tax.

When one thinks of the other powers that are being devolved—rather than those that are being re-reserved, as it were—one is looking at the provisions in respect of drink-driving, speed limits and so on, and one can envisage that a number of existing committees may lay claim to those areas without upsetting their workload overmuch. For

instance, the committee that is responsible for transport might consider the drink-driving provisions, and the other aspects—such as devolution of firearms licensing in respect of air weapons—might easily go to the Justice Committee. I am not sure that a workload tsunami will result from the Scotland Bill—assuming that it remains substantially as it is before it goes to committee in the House of Lords and receives royal assent.

The question does not address the issue of European Union law, which we have not touched on. The danger of a workload tsunami is in the need for the Scottish Parliament to respond to developments in EU law. You will be aware that the Lisbon treaty requires, for the first time, a greater role in scrutiny of EU law for national parliaments. Parliaments that are not national parliaments but are parliaments within EU member states will also be expected to take a more highly pressured and much less leisurely approach to scrutiny of EU law and EU proposals. If there is a danger of an increased workload, it is in work coming from Brussels—not from London.

The Convener: That is an important point. The subsidiarity issue is really going to focus minds in the future. A lot of people have not thought it through, but it could have major implications for what we do in the Scottish Parliament.

Michael Clancy: I suspect so.

The Convener: I think that you are right.

The Law Society of Scotland submission mentions the possibility of having a special committee to deal with Scottish Law Commission reports. As Michael Clancy knows, in the previous session of Parliament, I was a member of the Justice Committee for a year—

15:30

Michael Clancy: You still bear the scars, convener—although they are healing, I am glad to say.

The Convener: Indeed. They do not look too bad.

There is a lot of work to be done in that area. There were two justice committees for a while, and there has been discussion of whether technical legal matters could go to the Subordinate Legislation Committee. We are talking about additional work, but there is plenty to be done on legislation. We have special committees such as the Scotland Bill Committee, and we could have a welfare reform committee. The number of committees is increasing, as are the workloads. There is also a need for a lot of post-legislative scrutiny. Where does that take us? Given that all that work needs to be done and that there are 14

committees at present, should we have fewer committees or more? How do we balance the pressures and the workload?

Andy Myles: The simple answer is that Parliament cannot have more committees, because there are only 129 members. A number of members are hived off as Government ministers and so do not sit on committees. You are left with 118 or 115 members who can take part in committee work. You can cut up that number in only so many ways.

To return to my original point, the truth is that the important point is not the hours that are put in, but what is put into the hours and how the cake is cut. LINK urges that, in the laudable review that the committee is undertaking, it should consider the division between scrutiny and legislation and how much of the legislative timetable is pushed by the Executive. The committee should consider whether too much law is being pushed through the Scottish Parliament. There were two justice committees at one stage because one justice committee could not possibly have coped with the number of bills that were being pushed forward.

There is an argument that one or two of the bills that were before those committees were introduced to make a point; they were not really there to change the law. That kind of legislation has been introduced on several occasions. Some bills are introduced that are of lesser importance, and Parliament, MSPs and the committees could assert themselves and say that they want to spend more time doing scrutiny work. They could do more post-legislative scrutiny and spend more time with Government officials who are implementing Government policies to find out what is going on, how things are going and how measures are being put in place. Those functions could be defined in that way. Parliament would have to be fairly determined to assert its position over the Executive's and say that it does not want a legislative programme that is stuffed full, but instead that it wants to allocate more committee time to scrutiny.

In "Governance Matters", we raise the possibility of committees meeting more often. For instance, we raise the highly unpopular prospect that committees might start meeting during recesses. If the workload is greater and nobody is prepared to increase the number of MSPs to increase the number of possible committees, perhaps committee meetings during recesses should be considered. That should be part of your review, although I can see from the looks round the table that I am not making myself popular.

Michael Clancy: As always, Andy Myles makes interesting points. I was just thinking that, if the Scottish Government was a free agent in proposing legislation for the Parliament to

consider, that would be fine, but it is not a free agent.

Frequently, it is implementing European legislation and ensuring that we comply with our international obligations. We need to bear it in mind that the Parliament has to work within the constraint of ensuring that it provides, for the people of Scotland, law that complies with the European convention on human rights. Those factors militate against it simply being a decision of Government to introduce legislation. Admittedly, the Government chooses to legislate in some areas in which there is no essential urgency to do that, and a moment of reflection and postponement would build in greater time for thinking and scrutiny, but in some instances the Government is not the master of its own devices and legislation has to be introduced.

That said, if we look at the Parliament's record from 1999 onwards, members will remember that the first bill to be considered in the Parliament was emergency legislation to deal with Noel Ruddle's situation, and we have had emergency legislation at various points during the years since then. If my memory serves me right, there have been about 50 acts of the Scottish Parliament in each session. It would be interesting, as part of the post-legislative scrutiny that the convener spoke of earlier, to take some time out to have proper reflective scrutiny of the statutes that the Parliament has enacted in various areas since 1999.

Earlier this year, in relation to compliance with human rights, we suggested that there should be an effective human rights audit of Scots law to ensure that we do not get into the situation that we were in last year; in fact, we had a couple of pieces of emergency legislation during the previous session. We would probably take a neater approach to legislative scrutiny if we think of the statute book as something that we keep under review and we clear out material that has not proven to be useful or has proven to be actively defective.

The Convener: You highlight in your submission that the sunset clause in the Alcohol etc (Scotland) Act 2010 is daft.

Michael Clancy: Yes.

The Convener: Paul Cairney wants to come in, then John Downie, and then Andy Myles.

Dr Cairney: That is unfortunate, because I have worked out a way to say everything that I want to say in one big, long sentence, so you should get comfortable. [*Laughter.*]

My first comment ties together the points that have been made about the Scotland Bill and about law reform. The scrutiny of the Scotland Bill does

not seem to be the usual game whereby the Government introduces a bill that is almost complete, it gives the Parliament limited information while the bill is going through stages 2 and 3, committees get through the amendments quite efficiently, and the bill is passed as quickly as possible. That seems to be the usual process. Scrutiny of the Scotland Bill will not be like that, unless the United Kingdom Government plays that role. In this case, it is in the Scottish Government's interest to give the committee as much information as possible, because it wants to influence the committee. Unusually, it wants the committee to be as effective as it can be. I do not suppose that you could say that, convener, but I can. The Scottish Government wants to maximise the committee's efficiency. I do not see a problem there.

I could be less cynical and say that things are usually done in a certain way for a good reason. The Scottish Government presents a bill that is based on consultation with a range of groups, and it does something that the Parliament cannot do. It is difficult to pick and choose how to change that legislation, because committees do not have the same sense of how it could undermine a long-term, negotiated piece of legislation.

The Scotland Bill is a good test of flexibility in the process. The problem is that the image of committees was, or is, that of being part of a sausage machine that churns out lots of legislation. With a flexible system, a decision can be made bill by bill on whether some bills need more time than others. Some will be simple; others will be complex. A commitment could be built into the system to give more time. One of the distinctive features of the Scottish system is that bills do not fall every year but only after four years, so they are not limited by parliamentary recesses in the same way that bills at Westminster are. There is therefore always scope—if we are not fixated on getting things done very quickly. The Scotland Bill could be a nice test case for that.

Law reform has been mentioned, and that reminded me of what happened with private bills. Initially, the Parliament was set up to deal with such bills, but it soon found that it involved an incredibly complex, lengthy and dull process. The Government then took over more of that business. Parliament is still involved, but in a much less day-to-day way. I wonder whether that is the kind of thing that we are talking about. I believe that that is what Parliament should be doing anyway. It does not have the time or resources to get into the detail in the same way that a Government with thousands of civil servants can; it is really there to talk about the principles. Its role is to ask the big questions about whether proposals are right or wrong, rather than getting down to the nitty-gritty.

Law reform involves the same kind of thing. Parliament should talk about the big questions of rights and responsibilities and let someone else sort things out, based on that framework. Of course, that depends on trusting the people who look after the detail. That is the rub. In our system, we have no choice but to trust the Government to a large extent, because there is little alternative.

I am trying to stay positive. My last point is that the alternative to trust is authority, which is another route that the Parliament could go down. We could set up a system in which we accept that the Scottish Government is responsible for almost all policy and we either trust it to do the right thing or punish it effectively if it does the wrong thing. That is something that could come out of the committee's inquiry. At Westminster, if someone misleads or is less than forthcoming to Parliament, it can be a career killer. Everyone knows that you do not say the wrong thing to your colleagues.

That is true to some extent in the Scottish Parliament, but there does not seem to be the same sense that, if the Parliament wants something, such as information, the Government, local authorities or health boards will supply it. The sentiment that I see expressed most often in committee reports is, "We'd like to do more scrutiny, but we don't have the information and no one has given it to us." That suggests that, over time, the Parliament's authority could be eroded, and we cannot sort such things out by giving more time on a Tuesday afternoon.

I suppose that those are the big questions that underpin the inquiry.

John Downie: This is a really difficult question. Andy Myles and Michael Clancy made some good points, but this is about striking the right balance between the legislative programme, scrutiny and everything else in the work of the committees. Sometimes, the Parliament needs to be more of an equal partner with the Scottish Government, because the Parliament is driven by a heavy legislative programme, which influences the committee workload. There needs to be much more full and frank discussion about that. A lot of it is to do with information and how we do things. Paul Cairney made a point about information. I heard the Auditor General say that most of his reports were based on duff information from local government. If he cannot get information, I am not sure how the Parliament is going to do so; he is supposed to be auditing it.

15:45

As Michael Clancy said, we need to be clear about the importance of bills, the scrutiny that is built in and how we create a flexible system that allows appropriate time for bills. At the moment,

everything seems to be equal, although it patently is not.

To be frank, my perception is that the Scotland Bill is taking so long to consider because everybody has lost interest in it. It is going nowhere. As many people say, it will not make the biggest transfer of powers to the Scottish Parliament that we have ever seen. Even the parties that proposed the bill do not seem very engaged in it. The process seems endless, partly because of Westminster; it is taking up MSPs' time that could be better spent on other issues.

We need to look at what is important and the key issues that we need to deal with. As I said, some committees have in their workloads issues that are less of a priority. The question is what is really important and will make a difference to the lives of people in Scotland. That is a judgmental criterion, but the Parliament needs to be more assertive with the Government in how it manages its legislative programme, and to have more full and frank discussions of such issues.

The Convener: Perhaps members and cross-party groups or whatever could have more ability to propose legislation—I think that Scottish Environment LINK mentioned that. A mechanism could provide another route into legislation.

Andy Myles: I will speak about almost precisely that point. The Parliament's legislative programme has been heavily dominated by Government, which has produced a sort of Scottish version of the Queen's speech to announce a legislative programme. In its inquiry, the committee should consider whether that is good practice. If we look back to the consultative steering group's position, it envisaged that committees would introduce bills, but I do not think that there has ever been a committee bill.

Michael Clancy: Yes, there has.

Andy Myles: Has there been one?

Michael Clancy: I think that there have been two—

Andy Myles: One or two committee bills in 12 years is not very good.

Space has been made for member's bills, but their importance has dropped off in recent years. The bulk of the programme is still dominated by the Executive's initiative.

In the Parliament's first eight years, some of the coalition's bills could have been called "a bill to give the minister for education the powers that he has already got", for example. Such a bill would be introduced to make a point about education, because we had to have a bill. Often, an education bill did not seem to change anything radically—it

would shuffle the chairs of the Scottish education system and do little else.

Under the minority Government and now the majority Government, important matters have been included in the Parliament's legislative programme, which has been busy. However, legitimate questions could be asked about whether some bills have been the most urgent in the world.

You, as parliamentarians, must ask how much the Parliament asks what subjects it wants to legislate on, what areas we most need legislation in and what parts of the law most need reform and review. Those questions do not arise. The legislative programme is not debated until after the First Minister announces it. That abandons the position that the political parties and civic Scotland widely envisaged in the consultative steering group, which was that the Scottish Parliament would have greater freedom to discuss how large legislative programmes should be and how they should be constituted.

In the second part of its inquiry, the committee should investigate whether the legislative programme should simply be delivered in a speech at the beginning of the parliamentary year or whether the Parliament, the committees and back benchers should consider such matters.

I hesitate to disagree with an expert on how we form law, but although Michael Clancy's analysis of where bills come from was good, I suggest that only a small percentage of bills have been driven by the European convention on human rights or European Union directives and, indeed, that at Westminster most European Union directives are dealt with through not primary legislation but secondary legislation resulting from the European Communities Act 1972.

I remember a discussion in the Scottish Parliament about whether it would be best to implement the strategic environmental assessment directive through primary legislation or secondary legislation, as happened in England and Wales. On that occasion, the Scottish Parliament got it right and decided to use primary legislation to follow through from a directive. It is unfortunate that the system that was brought in has not been dealt with particularly well by the Executive, and has never been reviewed by a committee of the Parliament. The Parliament has never gone back to the Environmental Assessment (Scotland) Act 2005, which was a major act, to ask whether the law has been implemented in the way that it wanted. The truth is that environmental NGOs will tell you that that has not happened and they want the Parliament to review such legislation, follow it through and implement it properly.

That means that the Parliament needs to look more widely than just at its parliamentary week; the committee's inquiry has to be broadened out so that you consider the relations between the legislative and executive branches of government. In "Governance Matters", we attempt to cover the three traditional branches of government and civic society's involvement. I suggest on behalf of Scottish Environment LINK that the paper contains ideas at which the committee might want to take a close look.

The Convener: Much of the material that we are picking up will feature heavily in the second part of our inquiry in the new year, when we will look in much more detail at committees and so on. Much useful information is emerging from today's discussion.

Margaret McDougall: On a slightly different issue, what are the witnesses' thoughts on increasing committees' independence on matters such as membership and the election of conveners?

The Convener: Does anyone have a view on that? Andy Myles?

Andy Myles: I feel rather like the school swot who has done his homework, because LINK has been dealing with governance issues for a year and so I can always jump in first—convener, please do not think that I am doing so because I am the school swot.

Politically, it might be useful and interesting for the Parliament to assert itself by saying that committees will elect their own conveners—you could have a battle with the whips on that—but I do not know whether it would make a difference to how committees function, and it might not be worth making a major change that would produce very little difference in how committees operate, although the debate is worth having.

There are ways in which committees could increase their independence. That takes me back to John Downie's point about the advisers that you appoint and the resources that you use. In "Governance Matters" we looked at the independence of the advice that Government and parliamentary committees get and we suggested that consideration be given to whether it would be better if independent scientific advice, in particular, were given to the Parliament and parliamentary committees, rather than to the civil service and ministers through Government agencies. Quite often, the independent advice that comes out of a Government agency is limited, because the agency's ability to say, "You are asking the wrong questions" is limited. Such agencies are under straightforward budgetary and controlling pressures because they are within the

Government, so the independence of their advice is legitimately to be questioned.

If such independent advisory bodies were the creatures of Parliament, they would have greater independence and it would strengthen the power of parliamentary committees. The bodies could still be used by the Government for independent advice, but they might be more free-standing.

Parliamentary committees' independence would be addressed if the committees were beefed up by the amount of independent advice that they could call for. Resources would be required to do that. There is no pretence in our minds about the requirement to transfer, and perhaps increase, resources to make committees more powerful by giving them the ability to commission more research, to seek permanent advisers and to develop their role, particularly in scrutinising what the Government and its agencies get up to.

The Convener: I know that Michael Clancy and Paul Cairney want to speak. John Downie, do you want to comment on that point first?

John Downie: I agree with Andy Myles. I do not think that the election of committee conveners would make much difference as the number of seats that each party has in the Parliament would still drive it. We would probably end up with the same result as under the current system, so I do not think that it would make much difference.

The Convener: I call Michael Clancy to speak about the previous point—or whatever point you want to make.

Michael Clancy: Yes—which point are we at? *[Laughter.]*

Thoughts about independence tie in with what Andy Myles was saying. For clarification, when I was talking about how a lot of the Executive's legislation is driven by Europe, I was not talking simply about bills—I include subordinate legislation in that comment, too. The balance is probably shifting substantially from home-grown policy initiatives to ones that come from other places.

I have been struck by the way in which we approach the separation of powers. In one sense, the debate is really about how to ensure that the executive, parliament and judicial branches of government all fulfil their proper roles in keeping with the philosophy behind the separation of powers. If you ever have occasion to read Montesquieu's "De l'esprit des lois"—sometimes I have fallen asleep doing so—you realise that he was saying that there is a threat to liberty if the judicial, legislative and executive branches are intermingled. That is the fundamental baseline.

"Il n'y a point encore de liberté, si la puissance de juger n'est pas séparée de la puissance législative et de l'exécutrice."

That fundamental point means that, when we think about the independence of committees, we must think about the separation of powers. We do not live in a parliamentary structure that is supportive of the separation of powers; we live in a parliamentary structure that is supportive of the distribution of powers. If we were living in one where there was true separation, the Scottish ministers would not be in the Parliament. We would have an Administration—an executive branch—that was much more like that in the United States, where the Secretary of Defence and the Secretary of State are outwith Congress.

We have to think about how to maximise the freedom and the liberties that come from a system of separation of powers given our imperfect approach to that doctrine. That means putting the independence of committees as well as the independence of the Parliament from the executive branch front and centre and both Parliament and the Executive paying proper respect to and supporting the constitutional principle of the independence of the judiciary.

If we think about it through that prism, we see that it comes down to the voting system. The voting system creates a situation in which one party dominates—even though there has been much criticism of the voting system and fanciful claims have been made for it in the past—and, in those circumstances, we must think about how to ensure that the committee conveners who happen to be members of the majority party are insulated from pressure from their party, which is in government. Our system allows us to say which individuals we want to have in place and that they are the kind of people that we want to have as committee conveners—I know which side my bread is buttered on, convener—but a future convener might not be so independently minded, so we have to think of mechanisms to ensure that committee conveners and committees themselves are sufficiently protected from the influence of Government in carrying out their important accountability and scrutiny functions.

16:00

The Convener: Thank you for that. You will have to tell me what the French meant, or I will be worrying all night about it.

Dr Cairney: I was going to say the same thing as Michael Clancy. Scotland did not adopt a United States-style system, and that really limits your ambitions; it is a parliamentary system and one of the ironies of a parliamentary system is that it means that Parliaments are less effective—it is one of the rubs. You can see that as soon as the

budget comes in in the way that resources are distributed: to a relatively small parliamentary staff and a relatively large Government staff. We know that beefing up the parliamentary staff is just not going to happen. If anything, the Parliament looks every year to save money and employ fewer people. The same goes for the scrutiny bodies that are controlled by Parliament.

My impression of what happened when the Parliament sponsored the five or six bodies including the children's commissioner was that independent scrutiny seemed like a fantastic idea at the time. Now, the chances are that people would say, "Isn't scrutiny expensive these days? We don't have the money. Can we rationalise this scrutiny?" That is the way that things are going.

I disagree with the idea of having a bigger inquiry. As I said at the start, it should be as focused as possible, because if it gets any bigger, the chances are that you will just lose it all. If you get too ambitious, the next time I see you it will be on the Subordinate Legislation Committee—or whatever the graveyard one is; I do not know.

On electing conveners, that could be a positive step in two ways. First, you would be saying finally, "We can learn from Westminster," because it is an initiative that I associate with it. For a long time in the Scottish Parliament the idea has been, "We have cracked it with the CSG. We are much better than old Westminster. We've nothing to learn from them." If this signals learning from other Parliaments—although I know that the Scottish National Party thing will get in the way—that could be a positive step.

There could be another positive step. The thing that is lacking in the Scottish Parliament now, partly as a result of its size, is that there is no alternative career path for an MSP. There is no equivalent in Scotland yet of a senior backbencher with real weight. There could be scope for solving that problem through the election of conveners. Independence and a sense of permanence are built up by gaining a reputation in that way.

On a less positive note, membership of committees is crucial. My impression of the first 10 years or so is that people were supposed to build up expertise by being on the same committee for a long time. They are constantly moved around, however, and if one were to be cynical, one might say that was partly to undermine their expertise by keeping them on the hop and less experienced. We would still have that problem. Indeed, we might produce a sense of independence without actually creating it.

The Convener: Thank you. Are there any other points that people want to pick up on? If not, I have a quick one. I cannot remember who it was who mentioned MSPs playing with their

BlackBerrys during the plenary sessions. There is a view that they should be allowed to take their laptops into the plenary sessions and to work away when other things are going on. How would that be perceived by you, looking in at us in the Parliament?

Andy Myles: I think that seeing Welsh Assembly parliamentarians with computer screens in front of them gives a terrible impression. We can see that some of them are paying no attention whatever. We should at least keep up the pretence that our parliamentarians are oratorically gifted enough to attract one another's attention across the chamber. The presence of BlackBerrys and computer screens would be worse, frankly, than having an empty chamber. I agree with one thing that Paul Cairney said, even though I disagree with several others: I agree that we should look at other Parliaments, including Westminster, and not only those operating on the CSG model. We should do as we have done in the past and look at other small, unicameral Parliaments that have the same issue of a smaller number of members. We should learn what they do in the small, unicameral legislatures in New Zealand, in the provinces of Canada or in the states of the United States. We could also look at other Parliaments that allow their members to use BlackBerrys and other electronic devices inside their chambers, and see whether it affects our perception of them.

We need to have the necessary resources, and perhaps MSPs might be prepared to assert themselves by saying, "We pass the budget. We vote for it every year and, as members of Parliament, we are going to vote to give ourselves more resources. We are not going to increase our wages or expenses, but we are going to give our committees greater resources." You could do that. Although we do not have full separation of powers, we still have the idea; it would be possible to do it. Civic society discusses these matters, and my section of civic society would like MSPs—as members of the Scottish Parliament—to start to be more assertive, and to be less under the thumb. We need to avoid any danger of the Scottish Parliament coming to be seen as the kind of rubber stamp that other Parliaments in the United Kingdom are seen as.

The Convener: You will be pleased to know that we had the convener of the House of Commons Backbench Business Committee at Westminster up speaking to us a few weeks ago and we will meet members of the House of Commons Procedure Committee, who will be up here next week. One or two of us went over to have a word with the Irish parliamentarians at the Dáil last week, which was very interesting. They have committees sitting at the same time as plenary sessions in the chamber and they used

computers when they interviewed Gay Byrne, who is the convener of the Road Safety Authority in Ireland. That seemed rather odd.

We are looking around and we have also had quite a bit of written evidence from the Scottish Parliament information centre on what happens in other places. We are looking at the issue quite widely.

Michael Clancy: I notice that everyone sitting around the table has big piles of paper in front of them, yet we are in a Parliament that was founded on the basis of using technology to improve the experience for legislators and those who are legislated for alike.

Little anecdotes keep on coming to mind. I remember phoning up the chief whip of the Opposition party in Westminster in 1997 to ask for their fax number. I was told, "You can't have it. It's a secret." We have come a long way from there.

I would be inclined—those who know me might say counterintuitively—to say that there would be nothing the matter with using technology that would enable members to have the papers for the committee on a screen in front of them when they are sitting in a committee or in plenary. That would be an efficient and green thing to do. It would show that the sense of modernity that was ascribed to the Parliament in the beginning has been taken forward.

However, although, unlike Andy Myles, I do not watch the National Assembly for Wales that often, I do fall asleep in front of the Parliament channel watching Prime Minister's question time and suchlike and it is a constant disconcertment to me that every so often two MPs who sit on the second bench in the House of Commons, immediately behind the Prime Minister, lift their BlackBerry, play around with it and send another message to their constituency or whatever. I have occasionally remarked on that, making comments such as: "My goodness. Look at that. She's at it again with that BlackBerry while the Prime Minister is speaking." Last week, I saw that she had two BlackBerrys—one was on the green baize next to her and the other one was in her hands. I thought, "That is an inappropriate place for the use of such technology." We expect, I think reasonably, that when our elected representatives are engaged in the issues of the day they should be engaged fully in the issues of the day.

The BlackBerry is not being used as a tool to enable a bon mot to be used because she has just read a letter that I sent her and found a pearl of wisdom—she is not using it for that; something else is going on. Unfortunately, members who use BlackBerrys do not use them as tools to contribute to the debate. That is where I would draw the line.

John Downie: I do not think that Prime Minister's question time is about discussing the issues of the day. It is just political theatre and I am pretty sure that people can multitask.

I agree with Michael Clancy that in committee it would be helpful to use computers and have a screen in front of you. Unlike Andy Myles, I am relaxed about social media being accessed in the chamber, as it is another way for parliamentarians to engage with people. People follow the debates through social media and get all their information about Parliament and what is happening through the different parties' social media and the Parliament's own social media. Only a small number of members will do it anyway; it will not be everyone.

The more interesting issues are the ones that Michael Clancy and Andy Myles mentioned—the independence of committees, the scrutiny aspect, and the fact that budgets are the key. We need to recognise the integration of the parliamentary system, which Paul Cairney talked about, with the involvement of the executive, the Parliament and, let us be frank, party politics as well. No one is ever going to be completely independent, but we try to make it as complete as possible. Andy Myles described the ideal that we should aim for. I am not sure that we will ever get there, but that is what we want.

16:15

Chloe Clemmons: I am in favour of more social media in the Parliament. I return to the point about how the Parliament is seen, because social media can be a really easy way of seeing what the Parliament is doing. I follow debates on Twitter all the time. It is a good way of keeping in touch with the progress of the day and knowing when to turn on the webcast or whether to read the *Official Report*. It is positive to be able to follow debates in that way, and it gives different people access to the information.

John Downie: That is how all our young policy officers follow the Parliament.

Dr Cairney: In an ideal world, the Parliament would look like an efficient, well-informed, forward-looking Parliament where everyone is technologically savvy. I suppose that there are three drawbacks. The first would arise particularly during the consideration of legislation. Having a computer in front of them would be almost the logical conclusion of the crib sheets that members have to tell them how they should vote on each amendment and they would not even have to work out which button to press; it would all be done by computer.

Secondly, this is all about appearances. For example, if someone does most of their social

media through Facebook, they might have an open screen with Facebook on it that people can see on television. There are problems there. It happens with my students, an increasing number of whom have laptops at seminars and are tapping away. It looks like it is helping them with the seminar, but some of them are checking their messages.

The third thing is that you only need the odd rogue MSP to mess it up for everyone. I remember a case—I do not know whether it was in the Italian Parliament or elsewhere—involving a politician who was caught looking at some shady websites during debates. It did not look good.

The Convener: That would never happen here.

Thank you very much, everybody. It has been a useful session. If there is anything else that you want to bring to our attention after you leave, perhaps something that you forgot to mention, please feel free to do so. We will supply you with a copy of our report in due course, I hope in the next few weeks, as we hope to produce our first phase report and our first set of recommendations before Christmas. We are trying to hold our inquiry in a short and snappy way and to make a difference. Working in bite-sized chunks is perhaps the way to tackle the issues, rather than trying to do too much at once.

That ends the public part of the meeting.

16:18

Meeting continued in private until 17:24.

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