The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Thursday 23 May 2013

Session 4

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
8th Meeting 2013, Session 4

CONVENER

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

DEPUTY CONVENER

*Helen Eadie (Cowdenbeath) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*John Lamont (Ettrick, Roxburgh and Berwickshire) (Con)
*Richard Lyle (Central Scotland) (SNP)
*Margaret McCulloch (Central Scotland) (Lab)
*Fiona McLeod (Strathkelvin and Bearsden) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Stuart Foubister (Scottish Government)
Andy Myles (Scottish Environment LINK)
Don Peebles (Chartered Institute of Public Finance and Accountancy)
Mark Roberts (Audit Scotland)
John Swinney (Cabinet Secretary for Finance, Employment and Sustainable Growth)

CLERK TO THE COMMITTEE

Gillian Baxendine
Alison Walker

LOCATION

Committee Room 6

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 23 May 2013

[The Convener *opened the meeting at 09:16*]

Decision on Taking Business in Private

The Convener (Dave Thompson): Good morning, everyone, and welcome to the eighth meeting in 2013 of the Standards, Procedures and Public Appointments Committee. I remind members and others to turn off mobile phones and BlackBerrys. I welcome George Adam to his first meeting as a full member of the committee.

The first item today is for the committee to agree to take item 6 in private. Item 6 is to discuss the committee's consultation on the parliamentary reform review. Do members agree to take that item in private?

Members *indicated agreement.*

Subordinate Legislation

Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc) Order 2013 [Draft]

09:17

The Convener: Item 2 is to take evidence on the draft Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc) Order 2013. We have with us the Cabinet Secretary for Finance, Employment and Sustainable Growth, John Swinney, and his officials Sam Anwar, team leader, public bodies unit; and Stuart Foubister, divisional solicitor, directorate for legal services. I welcome the cabinet secretary and his officials to the meeting, and I invite him to make an opening statement.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): The draft order, if approved, will, from 1 July 2013, establish a commissioner for ethical standards in public life in Scotland. The single commissioner will replace the Commission for Ethical Standards in Public Life in Scotland and its two members: the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland. The Commission for Ethical Standards in Public Life in Scotland was established by the Scottish Parliamentary Commissions and Commissioners etc Act 2010. The commission is a Scottish Parliamentary Corporate Body-supported body whose functions include the investigation of complaints about members of the Scottish Parliament, councillors and members of public bodies, and the regulation of public appointments.

In January 2012, the Presiding Officer, on behalf of the SPCB, requested that Scottish ministers bring forward an order to restructure the Commission for Ethical Standards in Public Life in Scotland and to merge the roles of Public Standards Commissioner for Scotland and Public Appointments Commissioner for Scotland. That is the purpose of the order that is before the committee today.

The Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland both operate within a statutory framework that promotes ethical standards in public life in Scotland. There is considerable synergy between the commissioners' functions. Their respective functions in relation to the enforcement of codes of conduct and codes of practice are similar, as are their functions in relation to scrutiny and compliance. The commission staff who assist the commissioners to perform their respective functions also work

closely together. Bringing the functions together under a single commissioner will increase the opportunity for efficiency and economy of scale; it would also offer the prospect of a more effective public service, with a single access point for the public.

The new commissioner will be expected to perform the functions of that office without any detriment to levels or standards of service. In fact, the current Public Standards Commissioner for Scotland, in his capacity as acting Public Appointments Commissioner for Scotland, has been performing the role of the new commissioner since June 2012, with the same support staff and with no diminution of levels or standards of service.

The draft order was laid in Parliament and went out to public consultation between 18 January 2013 and 29 March 2013. An analysis report of responses has been published and is available on the Scottish Government website. Responses to the proposal for a single commissioner have been positive. We have taken on board the point raised by the Commission for Ethical Standards in Public Life in Scotland and have amended the order to maintain the present position relative to which statements are absolutely privileged for the purposes of the law of defamation. Two organisations commented on the freedom of information arrangements for the new body. They felt that the new authority should be designated as a Scottish public authority for the purposes of freedom of information. We agree in principle with that proposal but feel that it needs to be discussed further with the bodies concerned.

I welcome the opportunity to answer questions from the committee.

The Convener: As the cabinet secretary has said, members have a copy of the consultation responses document. Do members have questions for the cabinet secretary or his officials?

Richard Lyle (Central Scotland) (SNP): What are the current costs of the commissioner and what savings would there be?

John Swinney: Under the existing arrangements, the current costs are £64,000 for the office-holders involved, and we expect there to be net savings of up to £44,000 per annum as a consequence of the introduction of the order.

Richa7rd Lyle: What is the current cost of the whole department, on average, per annum?

John Swinney: I do not have a total cost for the whole function to hand, but I can supply that information to the committee.

Richard Lyle: Would I be wrong in saying that it is £0.5 million?

John Swinney: It may be of that order, but those are Scottish Parliamentary Corporate Body costs. Although the Government underpins and provides for the SPCB functions, they are not budgets that I control or manage, so I would have to provide the necessary information through the SPCB to assist in answering that question.

Richard Lyle: How many complaints did the commissioners investigate last year?

John Swinney: The latest data available on complaints about councillors and members of public bodies is for 2011-12, when the total number of cases was 185. Sixteen complaints about members of the Scottish Parliament were investigated in 2011-12. The number of complaints made against councillors and members of public bodies has been falling. In 2009-10, the number was 200, and it has fallen to 185 in 2011-12. The number of complaints about members of the Scottish Parliament has also fallen, from 37 in 2009-10 to 16 in 2011-12.

The Public Standards Commissioner for Scotland investigates all those complaints, and considers whether any complaint requires reference to another body. Complaints about councillors and public bodies go to the Commission for Ethical Standards in Public Life in Scotland, and complaints about members of the Scottish Parliament follow a different route.

Richard Lyle: Can you supply the committee with the total cost of the department?

John Swinney: We will certainly do that.

The Convener: I have just one point to pick up with you, cabinet secretary. A point that was made in the responses to the consultation was that the new authority should be designated as a Scottish public authority for the purposes of the Freedom of Information (Scotland) Act 2002. You have said that you agree with that proposal but feel that it should be carried out under FOI legislation in the future rather than as part of the order. Could you explain your reasoning for that?

John Swinney: I will ask Stuart Foubister to do that, because I suspect that the answer will refer to what is the most appropriate instrument to be amended.

Stuart Foubister (Scottish Government): The order maintains the status quo on freedom of information, which is that the public appointments function is subject to FOI, whereas the standards work is not. In paragraph 10 of schedule 2 to the order, the Freedom of Information (Scotland) Act 2002 is amended to maintain the status quo. To extend coverage to the standards work is obviously a change and a step further, but we have the power to do that by order under the FOI act. We thought that we would examine it a bit

further and have further consultation with the Scottish Information Commissioner, and if the decision is still to make that extension, we will do it through the FOI order.

The Convener: Do you have any idea of when you might look at that again?

Stuart Foubister: It is not necessarily a long process, so perhaps we will do so after recess.

The Convener: Thank you.

We now move to item 3, which is for the cabinet secretary to move motion S4M-06606.

Motion moved,

That the Standards, Procedures and Public Appointments Committee recommends that the Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 [draft] be approved.—[*John Swinney*.]

Motion agreed to.

The Convener: The committee will be asked to produce a short report outlining our consideration of the order. I would be happy if members would agree in due course that I could sign off that report.

I suspend the meeting for a couple minutes to allow for the changeover of witnesses.

09:27

Meeting suspended.

09:29

On resuming—

Post-legislative Scrutiny Inquiry

The Convener: Item 4 is to take evidence on our inquiry into post-legislative scrutiny. I welcome our witnesses, who are Don Peebles, policy and technical manager, Chartered Institute of Public Finance and Accountancy; Mark Roberts, portfolio manager, performance audit group, Audit Scotland; and Andy Myles, parliamentary officer, Scottish Environment LINK.

This is a round-table evidence session, which I hope will generate good interaction between the committee and our witnesses. Rather than having opening statements, we will move straight into the discussion. We have a fairly limited time this morning—until 11.30—to get through a number of different things, so I invite members to ask questions of our witnesses.

09:30

Richard Lyle: I will kick off with a question for Mark Roberts of Audit Scotland. You refer in your written submission to

"performance and cost for a particular public service against which the impact of legislation can be assessed."

What do you mean by that?

Mark Roberts (Audit Scotland): What we are trying to get at there is that if there is going to be a legislative change to one particular part of a public service or to how it is delivered, you would be looking for some baseline information on how much it costs currently and basic performance data against which you can have a quantitative measure to assess that change. As we say in our submission, a fairly frequent or recurrent characteristic of our reports is commentary on the poor quality of existing data. There is a challenge in doing that, but you are basically looking for something against which you can compare changes as a result of legislation with where you were before.

Richard Lyle: You are basically suggesting that we look at a department in the way that we have just done—I am sure that you were sitting in the public gallery earlier when I asked my question on the value of what we get from the commissioners. We look at a department to see how well it is working and what it is doing, then assess whether it is providing value for money. Is that what you are getting at?

Mark Roberts: Yes. For the example that you were just talking about with the cabinet secretary, if you were looking at the role of the commissioner

now with regard to a legislative change, you would look at how much the role costs and what his current performance is in order to make a quantitative assessment of the change that would result from the legislation.

Fiona McLeod (Strathkelvin and Bearsden) (SNP): Could I just pursue that a wee bit further? Do you envisage every piece of primary legislation that we pass having a section that will say that data must be collected in the way that you have described?

Mark Roberts: As we suggested, there is probably a balance to be struck with regard to which pieces of legislation will be addressed in that way. It is probably beyond the capacity of the Parliament and its committees, Audit Scotland and others to review performance and change against every piece of legislation that the Parliament passes. A recurrent theme in a number of written submissions to the committee is that there will have to be some selectivity about which pieces of legislation could be identified as meriting post-legislative scrutiny. However, what we suggest is that, as a starting point, you would like to have some reassurance that there was good performance and financial data on how the service is being delivered.

The Convener: I have a question for Don Peebles of CIPFA. You state in your written submission:

"We have designed and recommend a principle-based, but practical, integrated scrutiny model which tests legislation from the draft stage".

Could you elaborate on that and tell us exactly what you mean by it and what the model entails?

Don Peebles (Chartered Institute of Public Finance and Accountancy): Indeed, convener. Thanks for the opportunity to come along this morning.

As you described, we set out in our submission an integrated model on the basis that everybody seems to agree that post-legislative scrutiny is a good thing. I do not think that we are debating whether to have that scrutiny; the issue at hand is how it should look. The institute strongly believes that for post-legislative scrutiny to be effective there must be good pre-legislative scrutiny so that there is clarity about the extent to which the legislation is fit for purpose and whether it is required.

The principles that we have set out are threefold. We think that we should look at legislation in terms of value for money, priority and affordability. In the schematic that we included in our evidence, we set out additional items of information. Legislative scrutiny would commence in advance of the legislation being passed by the Parliament, and it would be subjected to scrutiny on an on-going basis throughout the life of the new service, the legislation or the service change—whichever applied in each case. There would be a clear link to the budget process in that there would be costs or indeed savings associated with that, and committees and the Government would wish to monitor that. After a set period of time, there would be a formal post-legislative scrutiny process within the principles that are set out. As such, there is a clear model for the process to be undertaken.

We trialled the process with the National Assembly for Wales in the budget process last year and the initial evidence is that, so far, it works. It means that we take a view on legislation and the process on a wider and more holistic basis rather than just at the end of the process, and we do that having set out the range of metrics and information that is going to be required. I brought along the schematic, which I am happy to pass around, as it may be of use to committee members.

The Convener: Is it the schematic that was included in your submission to us?

Don Peebles: That is the one.

The Convener: It is very interesting. Does the work that you have done with the National Assembly for Wales relate to one specific aspect, namely the financial—

Don Peebles: Yes. It was a review of the budget for 2012-13.

The Convener: Is the Assembly thinking about rolling out the model to other aspects of its work?

Don Peebles: It is indeed. It sees that, although the model was trialled on the budget, it has benefits and advantages for everything. Although we call it financial scrutiny, if we just use the word "scrutiny", it can clearly be applied on a wider basis. The chair of the Welsh Assembly's Finance Committee has formally—on the record—identified the extent to which she was challenged to think differently and more widely. It has made not only the committee but other Assembly members think differently about their roles as scrutineers.

The Convener: You recommend that we adopt something similar. How would we go about that, in a practical sense? The Welsh Assembly picked one area and tested the model there. Would you recommend that we do that? Do you have any particular area in mind that we should focus on?

Don Peebles: I emphasise that the scrutiny process should commence with more robust pre-legislative scrutiny so that, when we get to the end point, as it were, of post-legislative scrutiny, there is greater clarity about what will be looked at, the extent to which the legislation will be assessed, and indeed when that will happen. The key point is

that we need more robust scrutiny at the legislative and pre-legislative points.

In essence, the principles can be applied to any piece of legislation or any form of regulatory change. I suppose that the legislation that we are talking about could be either primary legislation or regulation. A significant amount of change comes as a consequence of regulation, which might never formally come before any of the committees. The principles can be applied to that.

I do not see that applying the model would necessitate a formal change to the standing orders. I do not see anything in standing orders that precludes it. It could perhaps be done through guidance; it could be for this committee to provide a form of guidance to each subject committee that will undertake work under the model, including the timescales for pre-legislative, on-going and post-legislative scrutiny.

The Convener: I should have said earlier that Sarah-Jane Laing from Scottish Land & Estates has sent her apologies.

If others who have come along to give evidence want to contribute at any time, they should feel free to do so.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): How long has the Welsh model been in place?

Don Peebles: We introduced it last autumn.

John Lamont: So, less than a year.

Don Peebles: Yes, that is correct.

John Lamont: How does the Welsh Government view the process? If we think about some of the desired outcomes, have the objectives been achieved? If the answer is no, I might think that the Government would be uncomfortable with that. Has there been research into the process?

Don Peebles: Yes, the Government would be challenged as a consequence of that. My sense from anecdotal evidence is that the Government was challenged differently as a consequence. I stress that that was to do with the budget process. The success criteria for scrutiny of the budget process were different from what they are now.

We have encouraged the Finance Committee to adopt a wider consideration of what it should be examining, rather than getting immersed in the detail of specific policy. It is a matter of taking a step back and considering the principles. The type of questions that were asked of the Minister for Finance were different from what had been asked in the past. Was the Government uncomfortable? Probably. It was getting asked different questions.

You are right to point out that the Welsh model has been in place for less than a year, so the full cycle has not yet been completed. However, the committee that has adopted the model is recognising that budget scrutiny is not just about scrutiny for the introduction of the budget, and that it has an on-going role throughout the financial year. The process is a longer-term one, and that is what we would recommend for the type of legislative scrutiny that you would be implementing here in any event.

Andy Myles (Scottish Environment LINK): Voluntary organisations in the environment sector strongly support the model that Don Peebles is outlining, but I want to ensure that people understand that the issue is about the principles of financial scrutiny. The model will not necessarily capture scrutiny of the pursuit of a policy for a biodiversity strategy, a freshwater strategy or a strategy to produce something that is not monetised. There is much work in the Parliament in which we are involved that is not monetised, and therefore it does not fit nicely into the model.

Don Peebles: Andy Myles is right to offer that challenge. The model was introduced for the purpose of financial scrutiny, but what we actually undertook was an assessment of the extent to which the model could be applied to legislation per se. We eliminated one of the principles of financial scrutiny from the model that we are promoting today—that was included in our written submission. Our sense is that the principles that we have set out can be applied.

Although not everything can be applied or will be considered in the financial sense, the passing of legislation is a cost to Parliament. It is not an inexpensive process. Irrespective of the outcome or output from legislation, parliamentarians should be clear about the rationale and the reason for it. It should be clear that prioritisation has been applied, and that there will be value for money from the legislation, in whatever sense.

I accept the challenge. The principles are for discussion. The benefit of this evidence session is that it gives us something to talk about and perhaps take forward.

The Convener: We are at the very early stages of considering where we want to go. There might have been a perception that post-legislative scrutiny was a simple, straightforward thing, where we look at a piece of legislation so many years after it has been implemented and see how it has been working. Some work like that has been done in the Parliament over the past 13 or 14 years, but not an awful lot. That is why we were keen to consider the matter.

You are all suggesting that our consideration needs to be broadened out so that, at the pre-

legislative stage, during consideration of the proposed legislation and at the post-legislative stage, we consider not just the financial aspects, but policy, too. That is a lot of work—that is a big range of things.

09:45

That takes me on to the issue of resources. As you will know, it is mentioned in one of the submissions that, with 129 MSPs, when we take away cabinet secretaries, ministers, Opposition leaders and so on, we are down to 100 or fewer MSPs who are able to service parliamentary committees. We have 16 committees at the moment, and we have more than 80 cross-party groups and a whole host of other things. We have constituencies to look after, too. Do you have any suggestions about how we could find the space in our timetable and the resource to do what you are suggesting? You are leading us towards a very big piece of work.

Fiona McLeod: It is interesting that, in a discussion about post-legislative scrutiny, you say that pre-legislative scrutiny sets the foundation, and the issue is one of resources. As you have been talking through that, I have thought about the current various stages of legislative consideration. We do have pre-legislative scrutiny—that is what stage 1 is about. You mentioned affordability, prioritisation and value for money. We consider those already—we have to consider the financial memorandum to all bills. We also have impact assessments that must be carried out before a bill can be introduced.

We keep coming back to the point that post-legislative scrutiny will be resource intensive, but we are doing a lot of it already anyway. I would say that we are doing a lot of the things that you have spoken about today, but under slightly different headings. Is it just that we are not doing them well enough? Do we have to change things completely if we are to do things in the way that you are thinking about?

Andy Myles: You are quite right to say that you are doing all those tasks already. Parliament is doing them, and it is doing them to the best of its ability. As the convener has said, you are 129 MSPs, minus approximately 15, on average, which leaves you with an extraordinarily large job to do.

I will compare the scrutiny role that this Parliament has with that of Westminster; it has hundreds of MPs who can sit on scrutiny committees; indeed, it has committees that are dedicated purely to scrutiny. That model is not going to function, and never was going to function, with the size of the Scottish Parliament. In an earlier committee investigation, I caused laughter by suggesting that one way out of the situation was to have more MSPs. I acknowledge that, in the current circumstances, that is highly unlikely. We suggest in our evidence that there are other ways in which the workload could be tackled better. It is a matter of using the resources that you have to tackle the task of scrutiny as well as possible.

People will take it from the Scottish Environment LINK evidence that we are critics, to an extent, of the way in which scrutiny is handled. Having reviewed the agenda of Parliament and its committees, we are of the view that you have been handed vast amounts of legislation to pass, and that parliamentarians should give consideration to the question whether too much of your time is spent dealing with legislation and pre-legislative scrutiny.

Committees, particularly in the field of the environment, but in other fields too, have had so much legislation to pass since 1999 that there has been very little time left for scrutiny of Government. All scrutiny of Government is, in effect, financial scrutiny, because all government expenditure has to be based on legislation. However, you also have the task that I mentioned with reference to Don Peebles's comments and to the model: you must consider value for money, effectiveness and what is actually being produced from the legislation.

We hope that Parliament will, in the course of the review, be able to consider guidance to the subject committees to ensure that some of their time is protected for post-legislative scrutiny or inquiry into policy areas. At present that is not the case, under the standing orders.

We entirely agree with Fiona McLeod that the resource issue is crucial. It is worth looking at the experience of the Scottish Parliament over the first three sessions and the two years of the current session and asking whether committee members have enough time to draw on the expertise and advice of the rest of civic society and the Parliament's advisers, including the Scottish Parliament information centre and the advisers who are appointed to committees. Our view is that you do not have enough in the way of support and advice to do your job properly. When Parliament passes the next budget, it should seriously consider ensuring that it is properly financed with the advice and expertise that is required to do the job of scrutiny.

We make a third suggestion in our evidence, which I think is pertinent to your question, convener. When the Scottish Parliament was being set up through the Scottish Constitutional Convention and then the all-party constitutional steering group, a great deal of work was put into looking at the practice in the Scandinavian Parliaments and in similarly-sized legislatures,

including in the United States of America, Australia and Canada, in order to get the furnishings of the Parliament right—if not its architecture.

We suggest that it might be time to have another good look at how legislatures that are similar in size to the Scottish Parliament deal with the balance between legislation and scrutiny. You have those two huge functions to fit into your timetable, but you do not have the luxury that huge legislatures have of being able to divide into scrutiny committees and legislative committees. We find, however, through contact with colleagues from throughout the United Kingdom, that others have experienced that. We recently hosted a meeting of parliamentary officers from the environment link organisations in Belfast, Cardiff and London, and we know from our work with the International Union for the Conservation of Nature—the world conservation union—the European Environmental Bureau, and colleagues in other parts of the world, that there are different models to the one that has been used here. A good place to start may be to review that model and to do some research into what happens elsewhere.

John Lamont: I want to pick up on the point about workload. If the scrutiny process is working properly, surely some bills will not be enacted because they will fail during the scrutiny process. Governments will be less inclined to introduce legislation that they think may not meet the scrutiny test. What do the panel members think?

Don Peebles: I agree absolutely. That relates to Fiona McLeod's point about what is done at the moment; she was right to highlight the scrutiny in the current legislative process and scrutiny of the financial memorandum at stage 1, which all fits neatly into what we propose as a model. It is not distinct or different from that.

The challenge that should perhaps be brought to bear is the extent to which legislation has been scrutinised effectively by all parliamentarians and committee members, against the background of your limited resources and time. For Parliament, the main instrument of change is legislation. Our assessment tells us that when legislation is introduced and assessed according to the requirements of stage 1, there is less consideration of whether the case for that legislation has been made robustly by Government, and of the extent to which existing legislation has performed—or not performed. That consideration seems to be absent from stage 1 at present.

That is not true in every respect, but there are differences between the subject committees—for example, in the format of their work programmes. The programmes differ in structure, but in most of them there is no post-legislative scrutiny at all, and the work tends to consist of inquiries. Workload can, in part, be determined by different work plans for individual committees.

That consideration seems to be absent from stage 1 at present. That is not true in every respect, but there are differences between the subject committees—for example, in the format of their work programmes. The programmes differ in structure, but in most of them there is no post-legislative scrutiny at all, and the work tends to consist of inquiries. Workload can, in part, be determined by different work plans for individual committees.

Committees will always have limited resources, so the issue is how they use those resources. I agree that undertaking pre-legislative scrutiny may make subsequent legislation much more effective as a consequence, but there would be a direct impact on the workload of individual committees in the medium to longer term.

The convener is right to mention the amount of work with which committees deal. I sympathise with members in that regard, and I understand why the suggestion of even more work does not sit comfortably with them. However, the answer perhaps lies in planning and in determining the committees' priorities in the limited time that they have.

If there was a clearer structure for the scrutiny that it is proposed individual committees undertake—which could perhaps be set by this committee—that would bring clarity for everyone who is expected to do that work.

The Convener: Are you suggesting that we should, in the first instance, look at our current stages 1 and 2 and pre-legislative processes, and adjust them first? Should we focus on bringing in some of the improvements that you and others are suggesting in order to get that right first? John Lamont suggested that such an approach would be a self-limiting mechanism that might reduce the amount of legislation. Do we need to get that right first—before we look at the following stages?

Don Peebles: That is correct; you have summarised the point very well. That is not to imply any criticism of the current process or of those who take part in it. It is always easy to provide commentary from the outside looking in.

However, Andy Myles was right to mention that a significant amount of legislation comes your way, and that you are, while you examine it, unable, probably because of time constraints, to exert a challenge regarding the extent to which the legislation is necessary—which is sometimes taken as read—which you might be able to do in other circumstances

In previous submissions and in various papers, we have suggested that responsibility for scrutiny should, rather than necessarily sitting with committees, Parliament or Government, be taken at the earliest possible stage—when proposals are made. Legislation usually has its roots in a party political manifesto, which might contain something as simple as a promise. There is perhaps a strong case—I am straying from our discussion somewhat—for the proposals to be properly costed at that point. That would mean that, by the time legislation reaches the Government programme, there is a firmer basis for what is, in effect, a political promise. I accept that the suggestion is a bit controversial.

John Lamont: Fully costed election manifestos? Shock! Horror! [*Laughter*.]

The Convener: Yes—that could lead to some interesting situations.

Andy Myles: John Lamont raised an important point, and Don Peebles provided a partial answer. However, there is one important step in the pre-legislative procedure—between fully costed manifestos and stages 1 and 2 and the other pre-legislative stages of bills—which consists of the decisions that are made about the legislative programme that comes before Parliament.

10:00

It strikes us, from watching how the Scottish Parliament has operated, that it has adopted a very Westminster-based model, in which the vast majority of the legislative programme is introduced by the Government. In other words, the Executive introduces the legislation, and the legislature just has to put up with what it is given. There is no serious discussion or consultation before the legislative programme is decided on. In Westminster fashion, it is brought forward in a chunk at the beginning of the parliamentary session, and at the first meeting in September, thereafter. It is given to the Parliament in chunks.

This may be a terribly radical suggestion, but you should consider, as a legislature, whether you need to look in more detail at the size and shape of the legislative programme—including all the parties' manifestos—to decide which areas of the law most need to be brought up to date or need attention. At present, those discussions go on inside Government, and the results are then laid in front of Parliament. The legislation is not coming from Parliament and from MSPs discussing what they consider to be the most pressing legal problems and which areas of the law most need to be reviewed.

That point feeds into the issue of scrutiny, because the scrutiny and legislative functions are inextricably interlinked. In other Parliaments around the world—this is another reason for some wider study—there is more input from members of the legislature to the programme of legislation that Parliament will deal with, and there is less control by the Executive.

Those ideas were discussed back in the days of the Scottish Constitutional Convention, throughout Scotland and in the consultative steering group. We do not have a real separation of powers between the three classical branches of government, but if you think along the lines of that model, it might be helpful in allowing you to establish a balance between the legislative and scrutiny functions that you have to perform. Overall, it might elevate the Scottish Parliament within the system, and take away—dare I say it?—a little bit of power from the executive branch and bring it back to members and to this building.

Fiona McLeod: That is a lot to think about, and I cannot think about it just now. I will go back to the model that we discussed. I might sound as if I am being very negative about it, but I am not.

Do we have to change radically our procedures to comply with the model, or do they fit it, with the issue being just that we need to use different terms?

Don Peebles said that, although committees do a lot of inquiries, they do not undertake post-legislative scrutiny. However, from my experience of being on a committee, it seems that an inquiry is, in fact, post-legislative scrutiny. We just do not call it that. Something comes up that has not worked properly, and the committee says, "Let's do an inquiry into that". It does not say, "Let's look at that legislation and scrutinise it". Do we currently have the structures, and are we doing it already? Do we just need to make it clearer that scrutiny is what we are doing?

Don Peebles: You are right to highlight inquiries, which we referred to earlier. I think that I am right in saying that not all inquiries would fit neatly into your description of them as post-legislative scrutiny, although some undoubtedly do.

You are also right to highlight the fact that you conduct some elements of scrutiny, although they are probably not as structured, and there is limited evidence of plans being made at the outset, when legislation is introduced, for later post-legislative review by way of an inquiry. In our experience, inquiries tend to come along as a consequence of perceived service failure, excess cost, public opinion, or a host of other reasons, rather than as a structured requirement of the passing of legislation.

Maybe the thing to debate is the time that is applied to inquiries; a different approach may show that the resources and time are actually

available. You might call it something different and tag it on to a piece of legislation or on to an initiative that was introduced some years previously, but it would mean in effect that in three years, five years, or whatever timescale is determined, your work programme would set aside meetings to consider a piece of legislation.

It has been pointed out that committees try as far as possible to reduce the extent to which they are overburdened. I see much of the requirement for post-legislative scrutiny falling to the Government. Committees will undertake the scrutiny role, but I do not see it as being their role to undertake consideration of all the evidence. When legislation is being passed, the Government should make clear the extent to which committees will be provided with information so that they can continue to carry out their scrutiny role. That would give clarity throughout the passage and use of legislation—not just at the end of its passage—about service performance and the performance of legislation.

That means that post-legislative scrutiny will be informed not only by the pre-legislative scrutiny but by on-going scrutiny. The parcel of information will have been compiled over a period of years, but the bulk of it will come as a consequence of the information that is compiled and determined by Government.

Mark Roberts: Fiona McLeod asked where post-legislative scrutiny fits in the existing legislative procedures. The existing stage 1 procedure provides an opportunity to set out whether, how, when and against what criteria post-legislative scrutiny might be conducted. If Parliament were to ask lead subject committees to give their views on whether a bill merited post-legislative scrutiny, and over what timescale—timescales will vary, depending on the nature of the legislation—that might provide a marker for a framework against which future committees, in future sessions of Parliament or later in the same session, could conduct post-legislative scrutiny as part of an individual inquiry.

As Don Peebles said, there is an awful lot of secondary legislation, so it will be slightly more challenging to pick up scrutiny of that kind of legislation, which could be significant. Our written submission contains an illustrated example of that. We must not be trapped into thinking that it is solely about primary legislation.

There is also the even more complex question of how to deal with the cumulative effect of multiple pieces of legislation and how they all add up together. Again—I echo Don Peebles—you could take a proactive approach to planning future post-legislative scrutiny, but there will always be a need for reactive responses to things that come up unexpectedly, and time would have to be factored in for that. Even things that might never have been an issue at the time when legislation was passed may emerge because of public concern or other circumstances.

Fiona McLeod: That leads us nicely on to the triggers for post-legislative scrutiny, which we have discussed. Have we covered that in your evidence?

Don Peebles: As far as triggers are concerned, let us start with the timescale for considering legislation. It will be difficult to pinpoint a timescale, albeit that the UK Parliament has set three years for the assessment of primary legislation. That was set in 2008—although the UK Parliament has not met that target. Three years seems to be early to me. When we start talking about timescales, we can almost end up with arbitrary figures—three, five or however many years.

Initially, the will must be there to undertake the scrutiny and there will have to be leadership from individual committees. What happens will be determined by the expected impact of the legislation; some legislation might not need to have its outcomes or impacts considered until a considerable number of years have passed; there might be longer timeframes for some elements of legislation.

The requirements to undertake scrutiny could be set out according to whether the legislation is primary or secondary legislation. That could be something for us to debate in relation to the type of thing that you would be considering.

It would be interesting to know what prompts an inquiry. If an inquiry is part of a post-legislative review, what does a committee consider that it would be required to undertake for that inquiry? It would be useful to know that and to tease it out in this discussion. Perhaps that can be channelled into the model that we are speaking about or the process that we will potentially be speaking about.

Andy Myles: The decisions as to what would trigger post-legislative scrutiny will always lie with the committees themselves and will depend on how much time and resource MSPs can put into scrutiny. That goes back to my suggestion to set times specifically for scrutiny purposes and to balance legislation and scrutiny.

I would put the things that might trigger MSPs' decisions about post-legislative scrutiny into three categories, following the evidence that we submitted. First, consideration can be given to the inclusion of the equivalent of sunset clauses, which we all talk about frequently. It is written into some bills that, after five, 10 years or whatever, the act will be fully reviewed. You could do that with every piece of legislation, although I am not sure that you would want to. I refer to some

important legislation, including the Marine (Scotland) Act 2010, the Climate Change (Scotland) Act 2009 and lots of other legislation in which our organisation has been involved and on which we have worked with Parliament. It might be a good idea to include such a statutory review of legislative efficacy.

The other thing that it would be good for committees to consider is scrutiny during implementation of an act. During the process of passing a bill, it may well be worth considering how much scrutiny will be required, such that the Executive properly delivers the provisions of the eventual act.

In our evidence, we suggest that Parliament has done some really good scrutiny work, when it has got down to it, with the Climate Change (Scotland) Act 2009 and the land use strategy. Parliament called in the documents that were being sent out regarding the land use strategy and told the Government, "This is not what we asked for. We asked for something much stronger. Could you strengthen this, please?" The next iteration of the relevant document, which was finally passed into law using a secondary instrument, was much stronger and much improved, because Parliament had set aside time to intervene at an early stage, having scrutinised what was going on in the Executive. That is a second and important way in which Parliament can act.

I praise the Rural Affairs, Climate Change and Environment Committee for the work that it has just done on the Marine (Scotland) Act 2010. It has been looking at that before the orders on marine protected areas and the marine plan are made by the Executive, and it is checking on progress. That has been an effective parliamentary scrutiny operation, which has had a great effect on the Executive branch sitting up on the hill.

10:15

In our view, you are quite right about policy inquiries. When you set up a policy inquiry, you are doing post-legislative scrutiny, because you have to look at the legislative framework on which the policy that you are looking at is hung. Almost inevitably, you have to consider whether fresh statutory legislation or fresh secondary instruments are required to redirect the way in which public policy is being run.

On the few occasions when Parliament has entered the field of public scrutiny, it has been able to make a real difference. The 70-odd pieces of legislation on the marine environment, some of which were conflicting, were brought together into the Marine (Scotland) Act 2010—which is, in our view, one of the great works of the Scottish Parliament—because of a parliamentary inquiry. The Environment and Rural Development Committee, as it was in those days, inquired into the subject and said, "This is a mess. We need to bring things together. We need new foundation legislation." That was the genesis of the 2010 act.

This work is crucial from a public policy point of view, and it is crucial that you have the time and resources to do it, but you need a framework for how the law works, rather than just individual triggers.

The Convener: You suggest sunset clauses or some other mechanism whereby, depending on the legislation, there is a set time when it should be reviewed. Over a period of time—a number of years—that suggestion, if it was implemented and a number of acts and regulations had such clauses built in, would serve to limit the Executive's ability to bring in new legislation. If a sunset or review clause is built in that says that we have to review the legislation in four years' time, and that is done for everything, when we get to four years from now, and another Government comes in and is looking at its legislative programme, it will have to take cognisance of the reviews that are already built into the system, which will take up space.

I suppose that the danger is that, if there were so many reviews to be done, all that we would be doing in a session of Parliament would be reviewing legislation that had been approved previously. There would be no room for new legislation. I can see some potential difficulties there. Does anyone have any comments on that?

Don Peebles: I suppose that that is the extreme result—that you would have no time at all for new legislation. However, at present more and more legislation comes before the Parliament without such a review provision. The incremental effect and consequence of that is that we end up with a lot more legislation than we had at the start of the parliamentary session. I accept that there is a risk, but it might not get to the extreme position that you describe.

Andy Myles: As I said earlier, I do not think that you would want to put such a provision in every bill. Also, you would always know what was coming up: you would have a schedule and you would be able to deal with it. I dare say that a parliamentary committee could decide following a brief glance that something was working fine and that it therefore did not need to run a full inquiry, or it could say, "Actually, this isn't working in the way that the Parliament intended when it passed the law. It needs a full inquiry."

I think that you would be able to manage the system, although I stress again that it might not be a good idea to put a review clause into every piece

of legislation. We would only really suggest such a clause for important, fairly major pieces of legislation.

The Convener: Would another way to deal with the situation be to have a requirement to consider whether to review rather than an absolute requirement to review?

Andy Myles: Yes.

The Convener: So a committee would consider whether further review work was required, which might limit the scope of such work.

Andy Myles: You are the MSPs, and you pass the laws.

The last point that I want to make on this is that there are many major bills. For example, the Environmental Assessment (Scotland) Bill was about the strategic environmental assessment of all the Government's policies, programmes and plans. Parliament passed the bill, but I do not think that it has ever been looked at again. There are fairly critical pieces of legislation that, at the moment, seem to just disappear. The processes with regard to the Environmental Assessment (Scotland) Act 2005 are being run in the Government, but that act applies to all public bodies. I recently heard it suggested that no strategic environmental assessment has ever been carried out of the development plans in any of the 32 local authorities; the suggestion is that that should be done. I am fairly certain that there are other areas for which strategic environmental assessment should have been carried out but has not been. There has been no time for the Parliament to scrutinise that area—I am not blaming MSPs for not doing it.

We present ideas as to what inquiries we think that Parliament should undertake. However, there is the danger of there being a kind of laissez-faire approach that means that important pieces of legislation on which parliamentarians have spent considerable amounts of time just slide off into obscurity and are never looked at again, which seems like a terrible waste of MSPs' time.

Helen Eadie (Cowdenbeath) (Lab): A sunset clause was built into the Health Board (Membership and Elections) (Scotland) Act 2009 because the politicians recognised that acute political sensitivities were involved in the legislation and that therefore it should be reviewed in due course. My recollection is that the peg for that was set at five years. Similarly, I think that the High Hedges (Scotland) Act 2013 has a sunset clause. I think that those examples show that MSPs recognise that there are sensitivities out there that mean that the legislation must be monitored carefully. I think that civic society expects MSPs to anticipate such sensitivities.

We are aware that some legislation has not been changed for 100 years. We have to balance doing something about such legislation against, for example, reviewing recent legislation in five years' time. That is always a tricky one, but we must gauge our response by the public's expectation of what we should deliver. It is not just about what we and the Executive want to do; it very much depends on the public's demands as well.

Fiona McLeod: I have a question for Mark Roberts. On triggers for post-legislative scrutiny, is there a way of moving beyond fixed dates, such as sunset clauses, and views on policy? Is there a way of using data as a trigger? For example, could we use facts and figures to tell us that legislation needs to be looked at?

Mark Roberts: I go back to my answer to Richard Lyle's question. It is about having high-quality baseline data against which to assess performance at the point at which you start and then at whatever point in the future you wish to review legislation. However, to do that it is critical to have the data in place early on. If you start to see service delivery failure or decreases in performance, and your quantitative information shows you that that is happening, that might trigger a review. I suspect that if such failures or decreases happened, committee members and other MSPs would hear about it anyway before the data kicked in. That would become the reactive trigger that I talked about earlier that might engender interest in an issue.

We are not totally convinced that a fixed timescale is necessarily the right way to go. Different pieces of legislation have different purposes. Andy Myles mentioned the Climate Change (Scotland) Act 2009, which sets targets for the next 40 years. The post-legislative scrutiny requirement for that act is different from that for the suite of legislation for the protection of vulnerable groups. You want the protection of vulnerable groups legislation to be working now, so you might want a shorter timescale for reviewing it than you would choose for an act whose impact will extend over a longer period of time. It is probably horses for courses, as far as timescales are concerned.

Don Peebles: I emphasise a point that has been made. Although there should be post-legislative scrutiny, it may not take the same format—in every significant sense. A structured approach will build up a body of evidence over a period of time, and it may be that post-legislative scrutiny can be constrained to a review of the evidence to date. However, if that evidence proves, or implies, that objectives have not been achieved, that could lead to what we now understand by an inquiry by the subject

committee, which would resemble post-legislative scrutiny.

The Convener: I would like to pick up a point in your submission. You mention the danger of any post-legislative scrutiny becoming a replaying of old arguments. How do you prevent that from happening?

Don Peebles: The burden of responsibility for that falls on the committee members—the parliamentarians themselves. They will have to adopt the role of scrutineer, rather than that of politician, if I may make that distinction—the Scottish Law Commission made a similar point in its 2006 paper. There is a fine line between the two roles. Pre-legislative scrutiny will have convinced members of the case for legislation so, irrespective of party-political view, the case will already have been made in the brave new world of scrutiny. Legislation is passed on the basis that members accept that the case has been made, and it would be for them to take an objective view of whether the objectives of the legislation had been achieved against the background of the evidence presented by Government, by public witnesses or by whomsoever comments on it. The responsibility for that will certainly fall to committee members.

The Convener: I imagine that it would be quite difficult to set criteria to limit a committee once it had decided to look at something. Committees guard jealously their right to do what they need to do in relation to their remits. I suppose there would be guidance that says that they should be looking at not so much the why of the legislation but the how—how it has actually worked, not why it was implemented in the first place—but it might be difficult to restrain parliamentarians from drifting into the why arguments.

Don Peebles: The committees have many strengths in that regard, and it may be that there is no advantage to restraining them completely. Committee members have skills—that is why you are here—and we want those skills to be brought to bear. We agree that there would be a clear set of evidence for members to assess in considering the worth and achievement of legislation. At the moment, committees conducting inquiries often issue a general call for evidence without necessarily having an expectation of what may come in—if anything. With the new approach, there would already be a body of evidence, probably provided by Government, and the committees would seek in the inquiry or review to establish further or corroborating evidence.

Andy Myles: It comes back to the resources at the disposal of each committee. If there were greater staff resources and greater resources for advice, expertise and research behind each committee, all those matters would be eased, as would that issue in particular. You would be able to get your staff to go away and produce a report. Your staff could ask the policy community how a piece of legislation under review was going and whether the policy community had any serious concerns—whether anyone was shouting that we should reopen old battles because the legislation was not working. You can get an assessment from advisers or researchers of those matters in order to make fairly swift decisions. With 129 MSPs, you still have a massive workload. That is where the resource point is perhaps most acute.

10:30

The Convener: I can see how that might work if there were enough staff resources or resources to fund advisers to consider an issue and do what we are doing here now. Advisers or staff would speak to folk such as you, pull everything together and come back with a succinct and targeted report, recommending whether the legislation had been working okay or whether more work was needed. I can see that there might be some advantage in that. Obviously, there are cost implications and so on. That is a difficulty at any time, but particularly now.

The other thing that strikes me is that one of the benefits for MSPs of engaging in that process is that we get to hear the detail from you. We can begin to form in our minds views about what might or might not work and where we might want to go. There are big advantages for us in engaging in discussions such as this. That would be one of the downsides for us of coming to an issue at the end, when a report was presented to us that we had to plough through. That would not be quite the same as getting a feel for the issues and the subject by speaking to folk such as you.

Don Peebles: Importantly, that is because we need to look at scrutiny as being whole life rather than just at the start and the end, which is perhaps where we are. There could be an on-going scrutiny role throughout the course of the legislation's lifetime. That is probably about holding Government to account and seeking the evidence from Government on an on-going basis rather than building up to what is perceived as the end.

The Convener: Does anyone else have any points?

Mark Roberts: I want to raise a point about the role of Audit Scotland and how it might contribute. Some of the performance audits that we publish, which the Auditor General brings to the Public Audit Committee, fall within the category of post-legislative scrutiny. In our submission, we refer to our report on free personal and nursing care, which was published a few years back. We have

also done work on the reform of the planning system, which came about a result of a large amount of legislative change. Some of those things feed into the post-legislative scrutiny agenda. That is one way to provide information to the Parliament. Those reports look at finance, performance and value-for-money issues and stop short of questioning the policy principles behind a piece of legislation. Andy Myles talked about that earlier.

Not all reports fall into the category that we are discussing: some of them are on wider issues of public policy and are not specifically tied to individual pieces or sets of legislation.

Helen Eadie: I apologise if my question was covered earlier—just stop me in my tracks if it was. On the evidence that was submitted to us about the situation in Wales, it was interesting to read that CIPFA had modernised the system, working with the Welsh Assembly. Can you expand on that a little?

Don Peebles: You are right: we have covered that.

Helen Eadie: That is okay then, convener.

George Adam (Paisley) (SNP): I was on the Public Audit Committee for my first year or so as an MSP. Previously, I had a similar role in a local authority, as a member of a committee that was both an audit committee and a scrutiny committee. Is there scope to expand the Public Audit Committee's remit so that it is not just about pounds, shillings and pence but about scrutiny? We have talked about trigger mechanisms such as inquiries, evidence to the Public Petitions Committee and other committees, and reports from Audit Scotland. Of course, members of the Public Audit Committee would probably hate that idea.

Mark Roberts: I do not know whether I can fully answer that question as I think that it is primarily one for the Parliament. The Public Finance and Accountability (Scotland) Act 2000 limits the coverage of our reports to questions of economy, efficiency and effectiveness, so we do not get into policy questions. The public audit model is built around such limitations, and scrutiny of wider policy issues is done elsewhere.

George Adam: Given that the politicians on the Public Audit Committee end up debating policy issues anyway, it makes sense to me to have the Public Audit Committee doing post-legislative scrutiny.

Mark Roberts: Our role as currently configured is very much about considering how policy is being implemented, whether it is delivering value for money and what it was intended to achieve, rather than going back to consider whether it was the best policy to make. It would be for the Parliament to consider whether it wanted to change our role.

Andy Myles: One committee of a legislature of which I have had experience across the years is the House of Commons Environmental Audit Committee, which does the policy auditing that George Adam suggests might be added to the Public Audit Committee's fairly static function in the Scottish Parliament. Our experience is that the process that is run through the Environmental Audit Committee has been hugely beneficial in drawing an environmental focus to policies that are not in the environmental box. That committee has been able to look across the policy spectrum, which has been extremely useful in trying to integrate Government functions. However, if you gave all the environmental, social and economic policy functions to one committee, I think that it would die of overload.

George Adam has had a good idea, but given that the Scottish Parliament has fewer members than the UK Parliament, the policy audit function probably has to remain with the Scottish Parliament's subject committees. We considered such questions of integration and audit in "Governance Matters: The Environment and Governance in Scotland", which is the report that we produced on our experience of the Parliament's first three years. Having looked at what has happened at Westminster, my only comment is that there is an enormous job to do on policy audit.

The Convener: We have probably dealt with the subject pretty fully now. The session has been very useful, and I thank all of you for coming along and contributing and for your written submissions. We will have another evidence session in a couple of weeks, when we will continue to tease out the subject. However, we have had a lot of interesting ideas and suggestions today, which we will consider.

I suspend the meeting for a minute or two to allow people to leave.

10:38

Meeting suspended.

10:42

On resuming—

Cross-party Groups

The Convener: Item 5 is the first monitoring report on the activities of cross-party groups since the review. The paper demonstrates that the new monitoring system is now more robust. The vast majority of cross-party groups are now providing more detailed information on their activities and finances in annual returns to Parliament. There are still a few groups that are not providing that information, or are not meeting at least twice a year.

Members have the opportunity today to consider the report and to decide how we want to deal with it. I intend to go through annex B page by page, but do members have any general comments before we do that?

Margaret McCulloch (Central Scotland) (Lab): Did you say that we are going through it page by page?

The Convener: Yes. Annex B is the crucial part. The general report summarises matters first. Let us go through the first few pages and hear general comments, and then we can go through annex B.

Fiona McLeod: I would like to thank the clerk who went through the huge bundle of information. It was really useful to have a summary—I got as far as China before I realised that someone had summarised it for me. Thank you very much—it was instructive and helpful.

The Convener: Do members wish to pick up on any points on the first pages of the report?

Fiona McLeod: Page 4 states that one cross-party group is "currently in abeyance". What does that mean? Is it a cross-party group or not?

The Convener: I think that the group is considering its future—that is the issue. A cross-party group continues to exist until it ceases being one. We hope to hear from the group quite quickly to find out what its plans are for the future.

10:45

Margaret McCulloch: The report states that some groups have not met for a year, and it provides some recommendations to address that.

The Convener: We can pick up on all the groups referred to in annex B and decide what action we wish to take in relation to them—a number of groups are not fully complying in different ways. However, there is generally a much better level of compliance now than there was previously.

I am pleased by how the review has worked. The fact that we do a six-monthly report now rather than an annual one has helped, as has the fact that the clerks have a more proactive role in ensuring that the groups do what they need to do. All of that is working together to improve the system, so I am very pleased about that.

Margaret McCulloch: I do not know whether this matter is dealt with in annex B, but footnote 5 on page 4 states that

"the Beer and Brewing CPG currently only has 3 MSP members".

Is that then considered to be a cross-party group?

The Convener: I think that that point is picked up in the annex as well, so we will come to it.

Fiona McLeod: I have a general point on paragraph 21, which is that it is really good to see how many cross-party groups hold joint meetings. We should praise them for that and support them in doing so.

The Convener: Absolutely. We should encourage joint meetings as much as we can.

We move on to annex B and the information there on CPG meetings. Members will see that 72 groups have met once in 2013, but this is obviously still early in the year, so a number of groups will have meetings that have been scheduled. A number of groups have not met this year at all and have no meetings scheduled, but they still have quite a bit of time in which to do that.

It concerns me that four groups have not met for over a year. The beer and the brewing industry group, which was mentioned earlier, has not met since it was formed on 29 June 2011; similarly, the co-operatives group has not met since—

Helen Eadie: But I believe that it has an annual general meeting scheduled—it says that further on in the annex. The AGM is scheduled for 29 May, which is next week.

The Convener: Where is that information, Helen?

Helen Eadie: It is on page 11.

The Convener: Oh, yes. Okay. The fact remains, though, that it is nearly two years since the group met, so—

Helen Eadie: No, I do not think so.

The Convener: Annex B states that the group

"has not met since initial meeting on 29 June 2011".

Helen Eadie: I am sure that that is wrong, because I am sure that I have been at a meeting of the group since then. Perhaps the paperwork has not been brought up to date.

The Convener: Ah.

Helen Eadie: I am sure that I have been to a meeting of the co-operatives group. I believe that James Kelly has been to a meeting as well.

The Convener: Since June 2011?

Helen Eadie: Yes.

The Convener: We can check to see whether the group has met since that date. [*Interruption*.] The clerks have told me that they are not aware of that group having a meeting and have not been informed of one—it has not been posted on the website. If the group has met but has not complied with the requirements of the code, we need to deal with that.

The park homes group has not met since January last year, and the sexual health group has not met since February last year.

What do members feel we should do in response to that information? Obviously, we can check to see whether the co-operatives group has met. If it has but has not complied with the requirements of the code, do we want to write to the group to remind it as to what it should do and ask it to ensure that it complies in future?

Helen Eadie: It would be good to check the facts first, as my recollection is that the last big occasion that the CPG had was in the garden foyer last year and that it organised that. I would want that to be checked.

If it turns out that the information in front of us is correct, convener, you are right: people need to be advised. It would be right to write to the group to say that it needs to give an account of itself. If there is no intention to meet, the matter will then need to be brought back to the committee to decide what to do. However, the fact that the group will have an AGM next week shows that something is happening. I am certain that I attended the group last year.

The Convener: Was that an event in the Parliament rather than a meeting of the cross-party group?

Helen Eadie: I am virtually certain that the cross-party group organised it, as James Kelly is one of its co-conveners. I think that I am right in saying that.

The Convener: We can check with the group to find out exactly what has happened and get a report back to the next committee meeting.

The beer and the brewing industry cross-party group has not met for nearly two years. What do members want to do about that? I know that it has a problem with the number of its MSPs.

Margaret McCulloch: The note says that it has only three MSPs. It does not have cross-party support, so is it technically allowed to call itself a cross-party group?

The Convener: I think that we should write to it, reprimand it for not having met, and basically ask it to clarify whether it wishes to continue as a group. If it does not get its house in order pretty soon, we should remove it as a cross-party group. Are members happy with that proposal?

Fiona McLeod: I agree. In the first instance, we must write to all the groups that we have concerns about. If we are not happy with the written responses, we should invite the conveners to come and give us evidence.

The Convener: Would you want to invite the conveners to come along to explain?

Fiona McLeod: I think that we should give them the opportunity to respond in writing first. Inviting the proposed conveners of new cross-party groups to speak to us when those groups are being set up has been a really good thing. The cross-party groups are taking things really seriously. We should write to the groups in the first instance and give them an opportunity to respond. If we are not happy with the response, we should ask them to come to the committee.

The Convener: Are members happy with that approach?

Members *indicated agreement.*

The Convener: Okay. Let us do that.

Richard Lyle: As the convener of a cross-party group, I find one requirement of the code of conduct very hard. The code says:

"Groups must hold at least two meetings per year, and one of these must be the AGM. Meetings of a Group must be announced in advance via the Parliament website with meeting details notified to the Standards clerks at least 10 calendar days in advance of the meeting."

My group nearly fell foul of that because a meeting that we intended to have was in the Christmas period, which is one of the busiest periods for the Scottish showmen's guild. Members will appreciate that there are fairs all over at that time, and we had difficulty in pinning down a date.

Another problem with there being so many groups and functions in the Parliament is that it is getting harder to get a room here at a particular time on a particular day. I wonder whether the notice period of 10 clear calendar days should be shortened, as meetings have sometimes been cancelled and others have been organised at short notice when we have been able to get a room. By not meeting the 10-day requirement, I am technically in breach of the code. I flag up that issue for possible consideration later.

Helen Eadie: Perhaps through the clerks' contact with the committee's convener or the cross-party group conveners, members could be encouraged to set up a calendar for the entire year. My cross-party groups have done that. That way, people can flag up difficulties in the first meeting of the year in a discussion about the calendar of meetings. One would anticipate that some members would know whether there are likely to be difficulties. That would be a good time to raise any such issues, and it would enable conveners to put the information in their diaries.

One other benefit would be that members could avoid conflicts with other cross-party groups that they are keen to attend. If members see that there are two meetings on the same night of groups that they are really keen on, they can perhaps try to switch the meetings round.

The Convener: Yes—we should encourage all groups to arrange their programme of meetings very early. There will be occasions on which a cancellation has to happen, but if things are planned well in advance, that should not be a problem.

I am not sure that reducing the 10-day notification period is a good idea, given the need to inform the public and others who may be interested in attending.

Richard Lyle: I just wanted to flag up the issue, convener.

The Convener: Okay. We will move on to the next point.

A number of groups, which are listed at the bottom of page 9 and the top of page 10, did not provide notification of their meetings. They have all been reminded that they should provide the 10 days' notice to which Richard Lyle referred.

Do members feel that such a reminder is sufficient at present, or would we want to write to the groups as a committee to remind them?

Richard Lyle: I am glad to see that the group that I mentioned is not the only culprit. However, the CPG on families affected by imprisonment, of which I am a vice-convener, meets regularly in the Parliament and we know about those meetings in advance. One factor may be that we are not reminding ourselves enough that we need to inform people—either by passing out minutes or by setting out particular dates as Helen Eadie suggested—so that we meet the standards.

The Convener: Are we happy to leave that issue at the moment? The clerks have already written to the groups, and if the groups continue to slip up, that will be brought to our attention.

Members *indicated agreement.*

Richard Lyle: I will make sure that I do not slip up in future, convener.

The Convener: I am glad to hear that.

The next point concerns annual general meetings. Groups are required to hold an AGM once every 12 months. Members will see from the paper that, of 82 groups in total, four are not yet required to hold an AGM, and 32 have held AGMs and submitted their annual returns as appropriate. The clerks have written to the other 46 groups to remind them, and 26 of those groups have now held AGMs and provided their annual returns forms.

Page 11 notes that a number of groups will have held their AGMs by today, so if those meetings have all gone ahead the groups will have complied. Other groups have AGMs scheduled in the next few weeks. Again, we come to the cross-party groups on beer and the brewing industry and on sexual health, to which we have already agreed to write as they are not complying with any of the requirements.

The CPG on park homes has said that it is awaiting the introduction of legislation before continuing its work, but it has been advised that it needs to hold an AGM regardless. It seems rather bizarre that a group would be set up in anticipation of legislation when members do not know when that legislation is going to be introduced. That particular group needs to consider why it has been set up. If there are no on-going issues for it to deal with, why does there need to be a group?

Would members be happy for the committee to write to that group, as the clerks have already advised it? [*Interruption*.] I have just been told by the clerk that the group has scheduled an AGM for 4 June. Given that the group has scheduled an AGM, are we happy to leave it at that just now and to keep an eye on what the group does?

Margaret McCulloch: We could remind the group anyway, as it is one of the groups that are mentioned on page 9.

The Convener: Yes, that is true.

The CPG on Scots language has been in abeyance since December, and it is considering its future as a group, so we will wait to hear what it has to say.

The CPG on dementia was due to hold its AGM on 22 May, but it was cancelled because of the resignation of the convener, Mark McDonald, who stood down as a list MSP to take part in the Aberdeen Donside by-election. The group still has a sufficient number of members: it has a minimum of five, even without Mark McDonald. The group will reschedule, and we will be happy to allow it a wee bit of time to do that.

The CPG on lupus has dissolved.

11:00

Helen Eadie: I think that lupus comes under the category of musculoskeletal conditions. I am not certain about that, but I extend an invitation as convener of the cross-party group on musculoskeletal conditions to the members of the dissolved group. If they want to switch, we would be glad to take them.

The Convener: I would be happy for you to do that; it is a very positive suggestion.

Going back to the recommendations on page 5, we have considered all the general issues. Are members content with the annual returns form in annex C of the paper? Do you wish any changes to be made to the form, or are you happy with it as it is?

Helen Eadie: I think that it is okay as it is.

Members *indicated agreement.*

The Convener: The second suggestion is that we should issue supplementary guidance with the form to specify the type of information that is required.

Fiona McLeod: As I said, I only got as far as the CPG on China, but it was interesting to see how many groups said that the benefit-in-kind section did not apply. When we saw who their secretariat was, we realised that they should have put something under that section, so guidance is needed on that.

The Convener: The clerks can provide guidance and present it at a future meeting, and we can consider it.

I think that we have dealt with everything in the CPG review report. Are members happy with that?

Members *indicated agreement.*

The Convener: We will now move into private session for the rest of the meeting.

11:02

Meeting continued in private until 11:18.

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