The Scottish Parliament
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Official Report

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Thursday 5 June 2014

Session 4

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
9th Meeting 2014, Session 4

CONVENER

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

DEPUTY CONVENER

Margaret McDougall (West Scotland) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Cameron Buchanan (Lothian) (Con)
*Cara Hilton (Dunfermline) (Lab)
*Richard Lyle (Central Scotland) (SNP)
*Fiona McLeod (Strathkelvin and Bearsden) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Professor Paul Cairney (University of Stirling)
Michael Clancy (Law Society of Scotland)
Mark Griffin (Central Scotland) (Lab) (Committee Substitute)
Lynn Williams (Scottish Council for Voluntary Organisations)

CLERK TO THE COMMITTEE

Gillian Baxendine
Alison Walker

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 5 June 2014

[The Convener *opened the meeting at 09:30*]

Decision on Taking Business in Private

The Convener (Stewart Stevenson): I welcome everyone to the ninth meeting in 2014 of the Standards, Procedures and Public Appointments Committee. I remind everybody—members, witnesses and the teeming hordes in the public gallery—to switch off their mobile phones as they affect the broadcasting system. Some members—I am referring to George Adam—will refer to their tablets for the committee papers, as we are moving somewhat slowly, and some of us reluctantly, into the electronic world.

Item 1 is a decision on taking in private at future meetings our consideration of the review of the evidence and the issues for, and a draft report on, our inquiry into the procedures for considering legislation. Do members agree?

Members *indicated agreement.*

The Convener: Sorry—I should have welcomed Mark Griffin, who is here today as a substitute for Margaret McDougall, who cannot be with us today. Welcome, Mark.

Legislative Procedures

09:31

The Convener: Item 2 is to take evidence from a panel of witnesses. I welcome Lynn Williams, policy officer, Scottish Council for Voluntary Organisations; Michael Clancy, director of law reform, Law Society of Scotland; and Professor Paul Cairney, professor of politics and public policy, University of Stirling. My approach to the evidence sessions is to go straight to questions. If, at the end, any of the witnesses feels that there are matters that we have not covered on which it would be useful for us to have information, I will give them an opportunity to speak.

Opening the batting today is Cara Hilton.

Cara Hilton (Dunfermline) (Lab): Good morning, panel. I will kick off with a general question. The legislative process in the Scottish Parliament has three stages. In principle, do you think that that model is the right one, or are fundamental changes needed?

Lynn Williams (Scottish Council for Voluntary Organisations): I am not a legal expert—my colleagues on my left will have more to say on how the process operates. In general, the three-stage process seems to be appropriate. We should recognise that, generally, the process by which the Parliament operates is relatively progressive and in many ways very open. My answer is therefore that the Parliament operates relatively well but that we have to find ways to strengthen the process. I reviewed the evidence that the committee heard in last week's session. It is clear that there are issues, and many of us agree on a number of themes with regard to what needs to improve. However, we should start from the basis that we have something that works well and ask how we can build on that.

Michael Clancy (Law Society of Scotland): The question is very interesting, of course, because it goes to the root of what the purpose of the legislative scrutiny process is. If you accept the idea that we put in our submission that law should be

"(a) Necessary;

(b) Clear;

(c) Coherent;

(d) Effective; and

(e) Accessible",

the three-stage bill process, in which members look first at the principles, then zero in on the technicalities and finally wrap up the effects of the two preceding stages, looks as we might expect it to.

As Lynn Williams said, the committee's inquiry does not touch specifically on the pre-legislative process, but it is important in setting the context for the legislative process. If we have a sound and robust pre-legislative process, and a sound and robust legislative process, we should end up with better legislation at the end.

Although the general scheme of three stages is appropriate, it is clear that parts of the process could do with some improvement. Perhaps we will get to those later in the evidence session.

Professor Paul Cairney (University of Stirling): The rules are only as good as the people who are responsible for using them. One reason why they were introduced was that this is supposed to be a unicameral, front-loaded system, which requires a certain amount of give and take on both sides. We expect the Scottish Government not to bounce the committees or the Parliament by bringing in substantive amendments at stage 3. The system works if the Government does not do that. We expect committees not to use stage 2 to negate the Scottish Government and insist on a whole bunch of changes that will affect the tone of the bill. If both sides behave as expected, everyone is happy.

The same idea is behind having stages 2 and 3 in that order. The idea was that committees would always go first and that it would be a relatively businesslike Parliament. The committee itself would be businesslike and, as far as possible, non-partisan. It would be responsible for processing most of the technical legislation, which would leave stage 3 for final revisions and broad debates on principles again. Those stages are good as long as everyone sticks to the deal.

The Convener: You made reference to our being a unicameral jurisdiction. From the numbers that I have—you may be more up to date than I am—about 60 of the 183 members of the United Nations are multicameral, so the majority are unicameral. Are there particular challenges in our process that derive from our being unicameral that we need to look at, or do we simply have to have a set of behaviours that respect the fact that we are not going to be reviewed by another chamber?

Lynn Williams: This is going back to my politics degree, which was a very long time ago. The question for me is this: how effective is the external scrutiny of what is going on? If there is no second chamber to rescrutinise legislation, how do we ensure that, at each stage, legislation is being scrutinised effectively, particularly by external bodies and also, potentially, by those who would be affected by the legislation?

To go back to the point that Michael Clancy made about the good law project's five principles of law making, it seems to me that there is probably one principle that is missing, which relates to the impact of the legislation: is there a common good or social benefit? Based on that point, how do we ensure, at each stage of the bill—during pre-legislative scrutiny and throughout the bill process—that there are enough chances, not only for those of us whose job it is but for those who are affected by the legislation, to have a say in how that legislation will be shaped and how it will impact on their lives?

The Convener: As you raised the subject, Professor Cairney, do you want to comment on that and, if necessary, correct my numbers?

Professor Cairney: No, I cannot correct your numbers. I will also say that my politics degree was a long time ago as well.

The usual points are that, with a unicameral system, there is no chance to have a process in which people can effectively slow down a bill or stop it from progressing if there is something wrong with it—at Westminster, they call it ping-pong. That is what the Lords can often do, simply by suggesting some amendments. Also, it very much depends on what type of second chamber it is. Often, the argument for the House of Lords is that it is populated partly by people who have a huge amount of experience from previous jobs and who want to use that experience in quite a professional or technical way to improve legislation. Over their careers they may have more experience of legislating than relatively new members of Parliament do. There are those sorts of reasons.

Michael Clancy: I do not have a politics degree and, as everybody knows, I am not a politician, but the important thing when we are dealing with a unicameral system is to set it in context. The context for the establishment of the Scottish Parliament under the Scotland Act 1998 was that the voting system was designed so that no one party would have a majority, which would lead to Government that did not have the ability to effectively get their will all the time.

That meant that, in terms of the Parliament's founding principles and the consultative steering group's ideas, the committee system was to work as a robust check on what would inevitably be a coalition Government. Situations change and ideas that were once thought to be graven in stone turn out to be graven in sand. We have therefore got a majority Government that can, if it wants, get its will all the time.

We should consider the relationship between the House of Commons and the House of Lords. Any Government that I have ever dealt with at Westminster has, in some way or another, had a majority. That majority means that, in the House of Commons, the Government can get its way. It is

when something comes to the House of Lords, where there is no inherent Government majority among peers, that the fun begins and the checks and balances in that bicameral arrangement are allowed to operate. The question is whether it is structure or behaviour—which I think the convener was leaning towards—that puts a check on Government. It is the structure of the United Kingdom Parliament that puts a check on Government; it is not the behaviours that do that. The behaviours are that power accresces power to itself.

Power, when it is given to a Government by an election, is within the mandate and a Government is within its right to use its mandate. I therefore think that one has to temper behaviours with process and structure. Otherwise, we can get into a position in which a Parliament is supine in the face of a Government that decides that it will not listen.

The Convener: A couple of members want to come in. Let me make the rather obvious comment that we have travelled a little distance from the brief that we are trying to deliver. Of course, the discussion is relevant if we find out from it what we might do here within our legally laid down unicameral structure. We could have a political discussion or another discussion later.

Does Cara Hilton wish to raise any other matters before I bring in her colleagues?

Cara Hilton: No, that is fine.

The Convener: I saw Richard Lyle first.

Richard Lyle (Central Scotland) (SNP): Thanks, convener. I am sorry but, if I may stray for a second, it is interesting that the submission from the Scottish Council for Voluntary Organisations covered scrutiny in the context of majority government. I found Michael Clancy's comments quite interesting. I do not have a politics degree, but I am a politician. If the House of Lords does not want to play with the House of Commons, when a bill goes back to the Commons, the Commons can change it through the Parliament acts.

My question is for Lynn Williams. The SCVO submission states:

"Voting along party lines can be seen to reduce the effectiveness of scrutiny processes."

I do not think that that is the case. Why do you think that it is?

Lynn Williams: There are a number of issues. I will pick up on evidence that was submitted to the committee—in particular, a submission from Children in Scotland, which is a third sector representative organisation. It noted that there had been a lack of amendments to some bills at stages 2 and 3.

It is our experience, particularly of recent bills, that we have made what we believe is quite a strong argument for some amendments and we have had people on side, but when we have got to committee stage those amendments have been voted down. There are reasons for that and that is how politics operates. However, I sometimes wonder whether we lose sight of the fact that the committee stage is a chance to improve a bill or to have a stronger voice for key groups in bills. There is a risk that, to some extent, if there is voting along party lines—that happens and I understand it—we might miss the chance of improving legislation. I would raise a question mark over that rather than make the point.

A number of us worked closely and extensively on the Public Bodies (Joint Working) (Scotland) Bill. For example, we wanted key groups as well as the statutory partners to be recognised in the bill. Many of us agreed on that proposal, including a number of politicians across parties, but it was voted down. Perhaps the resulting act is less strong because of that. We are now consulting on a set of regulations. That is perhaps after the fact, given that partnerships have been set up. The question is whether there is a risk that we have less good scrutiny of legislation because of voting along party lines.

09:45

Richard Lyle: On Mr Clancy's point, is majority government a bad thing?

Lynn Williams: Do I have to comment on that?

Richard Lyle: I am sorry—my question was for Mr Clancy. The system was set up on the basis that no one party would win power in the Parliament, but the Scottish National Party did. Is majority government not a good thing? Do minority Governments take on more amendments, as suggested by Lynn Williams?

The Convener: Before you answer that, I add that it would be helpful if you made reference to the majority but coalition Governments in sessions 1 and 2.

Michael Clancy: I do not necessarily think that majority government is a bad thing. Indeed, I do not think that I said that; I said that, when a Government is elected, it has the mandate and it can do what it wants. I am not making a moral judgment—whether that is good or bad is another question. It is possible then for the Parliament just to do what the Government wants to be done and for there to be no effective challenge of the Government unless it is prepared to listen. A

majority Government is not of itself necessarily a bad thing.

Cameron Buchanan (Lothian) (Con): At the risk of getting slapped down by the convener, I point out that most unicameral Parliaments include in their legislation a review clause—I cannot remember whether that it called a sunset or a sunrise clause—to review that legislation after five years. Is that the right way to go about things?

Michael Clancy: I have only limited experience of sunset clauses. Generally speaking, they produce interesting results because, for example, they allow legislation to be tried and tested in order to discover whether it works. I do not think that to have them in every instance would necessarily be a good thing. Many pieces of legislation do not need to benefit from such an arrangement.

Cameron Buchanan: A couple of unicameral Parliaments automatically include sunset clauses in their legislation but they are not always debated. If, for example, after five years, there is no controversy about the legislation, it just carries on. That is what I really meant.

Michael Clancy: I do not think that including a section in a piece of legislation that may or may not be operated is necessarily a good thing. I would rather have specific sections that have a purpose and are used.

Cameron Buchanan: Thank you.

Lynn Williams: To return to Richard Lyle's question, majority government has generally worked relatively well. However, you need to look at the external perception of how it operates. I will put on a personal hat to give you an example. As many of you know, I am an unpaid carer. Many of us supported the Social Care (Self-directed Support) (Scotland) Bill as it went through Parliament. We fought against a section in that bill on the lack of rights for unpaid carers. Many people who I know were activists externally but, despite how hard we worked to change the section and despite the support for changing it, it went through.

Things generally work well, but you need to be wary of external perceptions and the trust element. After the legislation was passed, many carers wondered what the point was of lobbying and trying to change things, because the argument had been lost. That is the perception outside. There is a trust element that we must look at. The risk is that people will ask what the point is of trying to change things when the legislation will go a certain way.

Fiona McLeod (Strathkelvin and Bearsden) (SNP): Cara Hilton asked whether the three-stage model is right or whether more fundamental changes are needed. Lynn Williams's points are interesting. I was an Opposition member in the Parliament's first session, when a coalition Government with a majority was in power. I remember having to work through amendments at committee.

Is more fundamental change needed? In four sessions, we have had only one Government that did not have a majority. The electorate gave the current Government a majority, and the first two Governments had a majority because they made a coalition. Is more fundamental change needed, or does the three-stage system work?

Lynn Williams: From looking at the evidence that the committee has received across the board and from speaking to colleagues, I think that the question is what we would put in its place. Generally, the system works, but the issue is how we tweak the stages to allow effective external scrutiny. That is potentially within the scope of this inquiry.

The pre-legislative stage is absolutely critical in getting that right. There are some really good examples of pre-legislative consultation. Again, I will give an example to do with carers. There were weekend sessions for the recently announced carers bill to allow carers who worked to attend. There are examples of that approach, and I think that Stewart Maxwell gave examples last week that related to the Children and Young People (Scotland) Bill. It is about how to engage people in the different stages.

The issue is how we capture the good practice that exists. If that does not happen across different committees, why is that the case? Where are the weaker points in the different stages that need to be considered?

One point that Michael Clancy or Paul Cairney made was about the lack of a draft bill prior to stage 1. I think that Michael Clancy said that bills sometimes come to Parliament that it has not necessarily seen before that point, although members may have seen documents such as policy documents. How do we ensure that people have at least some idea of where a draft bill is heading?

On stage 2, there are issues for those of us who are external to the Parliament to do with following marshalled lists of amendments and the committee process, and it is clear that there are issues around whether we should separate stage 3 to allow proper scrutiny, given some of the recent experience of members. Perhaps we are talking about slightly more major tweaks—I do not know—but there are tweaks that need to be made.

To go back to what I said at the beginning, the Parliament is incredibly open in many ways. For me, it is a case of building on its strengths.

Professor Cairney: I am almost three questions behind.

A couple of issues to do with majority and minority Governments were raised. From looking at the Scottish Parliament experience, there is a big difference between what in principle we might expect from a majority Government and a minority Government and what has actually happened. That goes back to what I said about the people or parties involved.

My impression of minority government was that there was a very brief sense—it might have lasted for a few minutes—of an opportunity to do things very differently. For example, the committees could have been more assertive, as there was no majority. The governing party could not take plenary votes for granted and people could have become more businesslike and independent, but I do not get the impression that that ever happened. I am trying to be even-handed, but I think that the Government was able to operate as if it were a majority Government because it had most resources. It was still able to produce draft bills that could not really be changed very much by the time they came to Parliament, and some Opposition parties—I will not name names—were not as engaged with the committees as they could have been, so they did not use the opportunities that existed.

That can be contrasted with majority government, on which MSPs—often of the same party as the majority Government—can have more of an influence through, for example, meetings with their party or ministers before committee meetings. I was going to say "back benchers" rather than MSPs—is that a Westminster term? However, that is double edged. Such meetings are often described as a way of stitching up votes before committee meetings, but they also often provide a way for committee members to feed back concerns and try to influence things behind the scenes. I am not convinced that the minority period was more effective for the Opposition than the majority period has been. From that experience, it is very difficult to say.

We are talking about why voting along party lines can undermine scrutiny. At the plenary stage in particular, very few MSPs have any incentive to know what is in a bill. They will have a list of amendments and a little thing that tells them which button to press—perhaps that does not apply to everyone. The chances are that, if a member has not been involved until then, they will be much better off checking their email and then pressing the right button than they would be getting involved in trying to amend things. In fact, it might be quite irresponsible for them to suggest amendments at that stage, because they will not know what is going on with them. There is a big difference between the principles that we are talking about and what is done in practice. It comes down to the personalities involved.

I like to talk about Sweden occasionally and the alternative there, where, with a lot of pre-legislative scrutiny, the idea is that the Opposition parties get involved at a very early stage, at the same time as public and interest group consultation. In previous sessions of the Scottish Parliament, that has been rejected because many people in Parliament want there to be a clear division between Executive and legislature, so that they can hold the Executive to account. The argument is that, if the Parliament is involved in developing legislation, it cannot step back and evaluate it at the same time. That is what has held back that major reform.

The Convener: I will exercise my convener's prerogative and say that, when I was a minister in a minority Government, the committee that had oversight of my ministerial duties had seven members, only two of whom were Government members. The convener was an Opposition member. It did not always feel quite as comfortable as I might have hoped. At stage 3 of the Climate Change (Scotland) Bill, we accumulated, through Opposition amendments, more than 20 mandatory reports. Quite a lot went on. I would be delighted to hear that it looked seamless and perfect, because it did not always feel that way. However, that is rather indulgent on my part.

I want to pick up on the issue of sunset clauses. All of us who are involved in the process would recognise that there are often bits of bills that are never commenced. They are passed, but they are never given the force of law. Do you have a view on whether, in relation to commencement, there should be a sunset clause that commences everything after, say, five years, ready or not? I have not given any prior thought to that—it just came out of the discussion and I wondered whether you had any views on it. You may not have thought about it either.

Michael Clancy: I had not thought about it until now. It is an interesting idea. There would be a difficulty if a part of a bill was to come into effect "ready or not", as you put it, because pieces of legislation frequently need a lot of support to be effective. It would be quite a perilous path to tread to have a sort of catch-all implementation long-stop date for legislation. We have got to take things as they come, which allows the Government of the day to consider whether the legislation ought to be brought into effect. It allows the Government of the day—it might be the same Government that promoted the legislation—to consider whether there have been changes in circumstances that make that item redundant or

whether it needs to be refurbished to make it more amenable to circumstances at the point of implementation. It is an interesting idea, but one that we would need to look at from all sides.

The Convener: I suppose that my concern is that there would not, of necessity, be any parliamentary process associated with a new Government of a different political flavour from that which took the legislation through deciding to reject what Parliament had passed by simply doing nothing.

Michael Clancy: There is one—it is not a process but a principle—which is that a Parliament cannot bind a future Parliament and a Government cannot bind a future Government. Therefore, if the outgoing Government decides not to implement the legislation and leaves it to the incoming Government, it is, in effect, ceding the decision to that Government.

The Convener: We are opening up the discussion to some wide and interesting subjects. Panel members say that it has been a long time since they did their studies. I have just realised that it is 50 years since I started my university studies.

Anyway, let us move on to other issues.

10:00

Fiona McLeod: We have got quite close to talking about pre-legislative scrutiny and stage 1. It is stage 1 that I want to ask about, but in light of your comments about pre-legislative scrutiny, you might want to talk about that as well.

Do any changes need to be made to the rules on the supporting documents that accompany each bill on introduction? Do the rules provide for the right number of supporting documents? I noticed that each of you talked about that in your submissions.

Lynn Williams: It is my job to plough through supporting documents for legislation, although when the regulations for the Public Bodies (Joint Working) (Scotland) Act 2014 dropped on my desk last week, my heart sank a bit. It is fine for those of us whose job it is to wade through such documents; my question would be about the external perception of them and how people make sense of some of them. Some are incredibly complex and the language used is sometimes inaccessible, particularly for a technical bill. The Public Bodies (Joint Working) (Scotland) Bill was incredibly technical.

I get the sense from looking back at some of the work that you have done that some of the documents have been in place for a long time, as has the process. The question is how the process is working. There is the policy document and the financial memorandum, with all the stuff that sits around that, which is an awful lot to wade through. Someone suggested that there should be a way of sucking that up and making a summary document that showed the key points of the legislation and other key points to consider for people who are external to the process so that they understand what the point of the legislation is. That could be a way of making it easier to understand and more accessible. In relation to disability access, for example, there should be easy-read versions of such documents, although I think that, in general, that happens. However, a third sector organisation in Glasgow has pointed out that there is not an easy-read version of the draft community empowerment bill, so we sometimes do not get it quite right.

My other point is on the variability of pre-legislative scrutiny. There is sometimes a very in-depth consultation process that involves the public, but on other occasions there is not; and sometimes we get a draft bill, but sometimes we do not. My question would be about why there is such variability and whether a standard process is needed, or whether it just depends on the type of bill and what we are looking for. For substantial bills that will have a massive impact, Children in Scotland and other organisations have said that how well the pre-legislative scrutiny works depends on getting as many views as possible before the bill is introduced.

Michael Clancy: In my submission, I spoke about the four separate documents that can accompany a bill and the attachment of a competence statement. I would focus on the explanatory notes as the area that it would be fruitful to examine closely, because they frequently reword sections of the bill. I suggested in my submission that that could be enhanced by consideration of the policy context, case law or comparative analysis to make it a much more useful explanation of what a section actually means. That could be a bridge to the accessibility issues that Lynn Williams was talking about, because it would be in non-statutory, plain language for people to understand. Of course, all the various formats could be applied to it. If one were to make the explanatory notes more like the Scottish Parliament information centre briefings that one sees occasionally, I think that that would be a big help.

The other big help that I suggest is that the Presiding Officer could give reasons for considering that a bill is within the competence of the Scottish Parliament, because that would lead one to clear out issues surrounding compliance with European Union law, the European convention on human rights or whatever. In effect, that would lay the cards on the table and show whether there were points of argument. As many

members of the committee will know, issues frequently turn up during stage 1 scrutiny when a particular view about ECHR compliance is advanced that is directly contrary to that advanced by the minister or the Presiding Officer when certifying the bill. That sort of debate could be avoided by providing some transparency.

Professor Cairney: I was going to make the same point about SPICe briefings. If it was up to me, I would ensure that Parliament had sufficient resources to produce a decent SPICe briefing for every bill. I suppose that I have the privilege of looking at a lot of bills after they have been passed. I read the explanatory documents, but you cannot read them if you are tired. However, the SPICe briefings are written from the perspective of an interested outside observer, which most of us would be, so that seems helpful. It would be good if they were routine.

Fiona McLeod: I think that the SPICe briefings are routine—every bill gets a SPICe briefing with it, I think. Are you saying that the policy memorandum and explanatory notes need to have less civil servant-speak—although I do not want to be disrespectful—and be more like a SPICe briefing? I used to be a librarian, so obviously I think that SPICe briefings are very good.

Professor Cairney: For me, the difference is that the explanation from the Scottish Government is to the Scottish Parliament, whereas the Scottish Parliament's role is to explain things to the public. The central role of the Scottish Parliament is to tell the public what is going on so, in one sense, it is probably better placed to do that than the Scottish Government is. The Government can then focus on the relatively detailed stuff that a very small audience will be interested in.

Michael Clancy: I would not necessarily disparage civil servant-speak. When we are dealing with legislation, which affects us all, it is important that the language is precise and understandable and that, in its context, it refers to the legislation appropriately. My point was that the characteristics of the SPICe briefing—of providing the context and things such as comparative analysis—are missing from the policy memorandum.

There are other documents that are below the radar, such as the business and regulatory impact assessment and the equality impact assessment. Those are also useful documents that do not get the fresh air that many of them frequently deserve.

Fiona McLeod: To sum up, am I right in saying that the current documents are necessary and that there are documents that we already have that we perhaps need to highlight more, but the suggestion to the committee is that the SPICe briefing should become part of the suite of documents that must be produced? The SPICe briefing is always produced, but it does not have to be produced. Is that a fair summary?

Michael Clancy *indicated agreement.*

Professor Cairney *indicated agreement*.

Lynn Williams: That would be helpful.

It is difficult for anybody to get into the depths of really technical legislation. For me, the important thing is how the consultation is ordered, how it operates and how clear it makes the intention behind a bill. When there is a lot in a bill, as with the Social Care (Self-directed Support) (Scotland) Bill, when the Government consults, either before the bill is introduced or after that, the wording is important. For example, the wording in calls for evidence is important. That process has to work effectively and be transparent.

Fiona McLeod: That takes me on nicely to my next question, which is about how effective stage 1 is and whether changes are needed. We keep talking about what happens before a bill is introduced. Our clerks have found out that, of the bills in the current session, the Government consulted on 80 per cent before they were introduced and 25 per cent were produced as draft bills.

In relation to the effectiveness of stage 1, does every bill need a draft bill or, as Lynn Williams said, do we just need to ensure that the pre-consultation process is structured so that, when a committee goes into stage 1, it can structure its stage 1 inquiry?

Lynn Williams: I think that it has to be proportionate—it depends on the legislation. The very good briefing that the committee received from Children in Scotland noted that, although stage 1 is important, there is sometimes a focus on particular issues and people lose sight of the bill's wider aims. One example is the corroboration element of the Criminal Justice (Scotland) Bill. Stage 1 can become less about overall scrutiny and more focused on a particular point, which then becomes politicised.

As has been described, there is a high level of consultation going on, but the question then is how effective it is. Will the responses change the minds of ministers and officials? In most cases, they are taken on board. Is there consultation with the right groups? How wide is the consultation? Do we take enough time to carry out the consultation so that we get the bill right and there are not masses of amendments at the other end? Those questions are critical.

The third sector is doing a lot more of that, which is good because it brings in a whole range of voices. It is important that we get stage 1 absolutely right so that we have the strongest

basis possible on which to develop the legislation before it continues through the parliamentary process.

Michael Clancy: We look at a large number of consultation documents in the course of a year. Last year, my department responded to 98 such documents from across the Scottish Parliament and the United Kingdom Parliament, and from the departments of the Scottish Government.

There is a sense that, while relatively well-resourced organisations can do that job, those that are not well resourced cannot. In structuring the consultation in order to shape stage 1, thought must be given to how it is organised so that it reaches those who are likely to be affected and provides a reasonable way of taking their views on a particular piece of legislation.

I agree that whether there should be a draft bill for every piece of legislation is a question of proportionality. Some issues are relatively simple and do not require a draft bill, but others are much more complex and would benefit from that process.

I recently dealt with the draft Deregulation Bill at Westminster, and gave evidence on it to a House of Lords committee late last year. When the bill was finally introduced, the most problematic provisions had been removed from it. That meant that there was relatively little to say about the bill, so it could have a speedier passage. It is not just me who said that—other people were affected, too.

Part of the business of having a draft bill is that we can learn things about the measures and take the temperature of those who will be affected. In that instance, the question was whether UK ministers should take the consent of Scottish ministers in repealing subordinate legislation. I advanced the argument that not only Scottish ministers, but the Scottish Parliament, should give consent to those repeals. The provision was then dropped from the bill, and UK ministers could not advance repeals of subordinate legislation that affected Scotland.

Resolving that type of issue ultimately makes a bill's passage easier to deal with. At stage 1, if one is true to the Parliament's founding principles, getting out into communities is a good way to consult. My submission mentions using social media to do that, but not everyone has access to it and even those who do may—like me—not be able to use it. We have to think about talking to people on the ground who will be affected by the legislation in question.

10:15

Professor Cairney: I suppose that the question is whether standing orders should be changed. I would offer more of a fudge. A lot of these things can be influenced by shifting conventions and, in this case, the convention might be that the Scottish Government should always provide a draft bill unless it has good reason to do otherwise. That shifts the expectation and ensures that it would be surprising if a draft bill was not supplied; the Government would have to think about why that was not possible so that it could justify its activity. That is not what happens in the current system, where, in a sense, a draft bill is a bonus. In the system that I suggest, the lack of a draft bill would be a notable loss. That expectation could be created without the standing orders being changed.

Fiona McLeod: Another thing that our committee can do concerns guidance, rather than changes to standing orders. We will probably have to think a lot more about pre-legislative scrutiny versus a draft bill and about which of those produces what we need, which, as Lynn Williams said, is engagement.

Michael Clancy's comments on the different ways of engaging with people are interesting, and the Parliament and its committees already use social media such as Facebook and Twitter. However, we need to ensure that we reach the people whom we need to reach.

The Convener: The committee is in slight danger of doing what Parliament has been criticised for doing, in that we have not even got to stage 2 or stage 3 in our discussion and we are well through our schedule. I invite Cameron Buchanan to address that deficiency.

Cameron Buchanan: What are your views on the periods of time that are allowed between stage 2 and stage 3, and do you think that they could be structured differently?

Michael Clancy: I think I said that the periods should be harmonised, so that they have the same number of days.

Cameron Buchanan: For all bills.

Michael Clancy: Yes.

Lynn Williams: I would not—

The Convener: Forgive me for interrupting. Mr Clancy, is that view just a result of your natural sense of order—which, as a mathematician, I have some sympathy with—or is it founded on a view of the processes that need to be undertaken?

Michael Clancy: If you knew as much about me as I know about me, you would not say that I had a natural sense of order. However, it is partially that, but it is also about the need to have time to

consider the amendments that have been made at stage 2. There has to be a period in which you can reflect on that. In the run-up to stage 2, you have to have time to formulate the amendments that you want to promote. Both of those processes are pretty similar and require an equal amount of time. However, I would not be overly prescriptive and, if there were mechanisms to adjust the time between the two without going to the point of suspending standing orders, that would be an equally efficient way of doing things.

The Convener: I interrupted Lynn Williams, who was about to contribute something.

Lynn Williams: I do not want to comment on the question, but I think that the timing is an issue. A number of themes struck me when we were looking at the evidence, such as the timing between the stages, how the size and complexity of bills affect the number of amendments, what the bill says, what has happened beforehand and how effective the bill is in its current form.

I picked up an issue around the rationale behind amendments. Someone might look at the marshalled list and say, "What is the point of that amendment?" Some amendments are just about a change of wording. The amendments to the Public Bodies (Joint Working) (Scotland) Bill were a perfect example of that. By the time that people got through five pages of them, they would be thinking, "Okay, I get that." Is there a way of explaining the rationale for each group of amendments, so that people can see, for example, that it concerns simply shifting some words or changing a paragraph?

Again, I return to the point about getting it right before we reach the legislative stage. Across the voluntary sector, many of us find that there are concentrated bursts of time when we are really focused on a bill. The Children and Young People (Scotland) Bill, which was discussed at last week's meeting, was a perfect example of that. Life stops for that period of time. The Parliament is meant to be family friendly, but I spend a lot of time looking through stuff at weekends, and I speak to a lot of MSPs who spend time looking through stuff at weekends. You also need to have a life outside your job. How effective are those short bursts of intense energy for you, as well as for us on the outside, and how effective is the scrutiny?

I have a last point about stage 2 and stage 3. If there is not enough time, how do you do a temperature check outside the Parliament and get an external view of the legislation? Have we got that right? For many organisations, there is no chance to take a breather and look at what has been achieved at stage 2 before you move on to stage 3.

The evidence shows that there are clearly issues with the stages, and we are sympathetic to many of those views.

Professor Cairney: The effects of the timing on the bodies that are expected to contribute was one of the most striking points in the submissions. The tone of the submissions is that the timing is worked out by you setting the end point and then working out what is convenient for the Scottish Government and Scottish Parliament schedules, rather than looking at what is convenient for the people whom you are supposed to represent. There is an issue there, although I have no idea how you solve it.

In a previous job, I looked through all the amendments that were lodged in the first parliamentary session between 1999 and 2003. There were about 9,000 amendments; the Mental Health (Care and Treatment) (Scotland) Bill had 900. When we divided up the amendments, we found that some were very technical and changed words throughout the bill; for example, "resources" might be changed to "money" or "medical professionals" might be changed to "doctors" 100 times in a bill. There were also the very small detailed amendments, but less than 10 per cent of the amendments were substantive amendments that we had to pay attention to.

I had no idea which were the substantive amendments until I had read the *Official Report* and the explanations that were given by the members who had lodged the amendments. I could not imagine a way in which I could know the significance of those amendments before the debate took place, and that is a problem for groups. If I, as a full-time researcher, could not do that, I cannot see how anyone in the world could reasonably be expected to know what the amendments mean before they are talked about.

The Convener: Are you talking about how difficult it was post hoc?

Professor Cairney: Yes. It took me six months of full-time work to go through the first parliamentary session. There were about 50 bills and 180 days, so it took a few days for each bill for me just to understand that. I had all the information, so I cannot imagine how long it would take someone who did not have all the information to work out what was going on.

Richard Lyle: I turn again to the Law Society's submission. You have said that stage 3:

"is the area with the greatest potential for improvement"

and that it should be in two parts. Part 1 would involve consideration of amendments, and part 2 would be the debate with an option for further amendments to correct "evident mistakes". You say:

"There is a strong case to amend parliamentary rules so that the splitting of stage 3 becomes the normal practice."

Can you expand on that for the new members who are at the meeting? Some of us believe that having the debate after voting on the amendments is wrong. Should we have the debate and then vote on the amendments?

Michael Clancy: I think, as a matter of principle, that Parliament should have the debate and then vote on the amendments. There have been a couple of instances in the past when errors have crept in at stage 3 that could have been corrected, but the end of stage 3 meant the end of the bill and it was passed at decision time.

An example is the Alcohol etc (Scotland) Bill in 2010, when a provision was added at stage 3 that related to a proposed section that was not agreed to during the course of stage 3. That resulted in the Alcohol (Minimum Pricing) (Scotland) Act 2012 including a provision to repeal a section in the 2010 act because it made

"provision for the expiry of amendments made by a section that is not contained in the"

2010 act.

Those things happen, but had we had a two-part stage 3, the amendment would have been agreed to at stage 3.1 and then, a couple of weeks later, at stage 3.2, the Parliament would have seen that section 1 of the Alcohol etc (Scotland) Bill had a hanging section that related to something that was no longer in the bill, and would have been able to remove it so that there would have been no need for a section in a future bill to repeal it. That would be a much neater and more elegant way to do it, and it would mean that we would not get an explanatory note that says:

"This section has no practical effect as it makes provision for the expiry of amendments made by a section that is not contained in the Act."

That is an instance in which an explanatory note does what it says on the tin, but we want legislation to be as good as it can be in order for it to be effective. The analogy is with the report stage and third reading at Westminster. That system has its defects, but it at least gives the opportunity to think again, which is always a good thing when making legislation.

Fiona McLeod: Professor Cairney, did you publish the work that you did on the session 1 amendments and can you give the reference to the clerks later?

Professor Cairney: Yes, I can do that. That is excellent: my university will be very pleased with that.

The Convener: I am sorry—have I lost the plot for a second?

Fiona McLeod: Professor Cairney is going to give us the reference for the work that he did.

The Convener: Oh, I see. That is good. I was receiving some input from my left, to which I was paying attention.

George Adam (Paisley) (SNP): My question has almost been answered. Are any changes needed to the rules on the deadlines for lodging amendments? From some of the bills that I have worked on, I know that it can be quite intense for MSPs, so I can understand what it would be like from the witnesses' side.

Lynn Williams: Those rules need to be considered. In some cases, depending on the bill, keeping to the minimum period that is allowed in the standing orders might be appropriate. That takes us back to proportionality. For the more impactful bills, in which MSPs are considering direct impacts on people's lives in a really complex way, Parliament should consider how much time is allowed so that members can look over everything and understand it.

That is members' job: we examine perhaps one or two bills, but your job is to look at all of them. In order for there to be effective scrutiny of amendments for everybody, we need to know what they mean and what their impact will be. That takes us back to our discussion of the rationale for amendments; we need to consider timescales as well as to understand the point of the amendments in the first place.

Michael Clancy: We can try to construct our submission to a stage 1 inquiry in such a way that it leads members to the amendment that we want to make—that is the ideal—but that is not always possible. To have more time rather than less is always a virtue, without getting into the position in which the process becomes indolent and lazy and months stretch out between the stages.

Last year, the Law Society of Scotland considered 18 bills at the Scottish Parliament and 10 at Westminster and produced a significant number of amendments across the range. Compressing that into the time allowed takes quite an effort of planning and ensuring that we have all the material and the right phraseology.

I pay tribute to the office of the Scottish parliamentary counsel, which does a tremendous job in producing amendments for the Government under high pressure. I hope that the fact that it can do that inspires all the rest of us who deal with amendments to do so to that office's standard.

10:30

The Convener: Would you like to comment, Professor Cairney?

Professor Cairney: We academics always like to talk.

You should decide what the debates are for. If they are for deliberation, and you really think that ministers' minds can be changed before amendments are decided on, have the debate beforehand. If debates are for the public—for members to say either that a bill is great or that it is terrible and that they would have done better—you should have them afterwards.

I will sound like a Scottish Government civil servant. On the technical side, you want two things: you want flexibility, rather than hard and fast rules for every bill, and you want changes not to come at the expense of the technical quality of the bill. Many suggestions could solve problems for groups that are interested in legislation and for committees that consider amendments, but could also have the unintended consequence that people who produce the bill would have less time to do that and would produce a worse bill. Committees would have more time to consider the bill, but doing so would take far more work. It is a real balancing act.

George Adam: In my limited time here, something that has come up all the time—which the Law Society put in its submission—is that there should be more post-legislative scrutiny. Conveners of some committees would say that the work that committees do is quite intense, and there is quite a lot of it. How would we go about ensuring that there is more post-legislative scrutiny?

Lynn Williams: When I was preparing for today I was struck by the work on the recent inquiry into post-legislative scrutiny. All the recommendations that were made are very sensible. What are the trigger points for scrutiny of legislation? We raised the point that if sections have not been commenced, it makes us question why the section is there in the first place—although obviously circumstances may change. If particular impacts of a bill have been controversial, that would suggest to me that we have to go back and look at how a bill has been implemented.

The point is that we need to look at how legislation is working on the ground, and at whether it is having the desired effect. Bills such as the Social Care (Self-directed Support) (Scotland) Bill, the Public Bodies (Joint Working) (Scotland) Bill and the Children and Young People (Scotland) Bill focused on how people live their lives, which seems to be an important trigger point.

I guess that my question back to members would be to ask how you will take forward the recommendations from the inquiry into post-legislative scrutiny? Many of them seem to be eminently sensible. Maybe post-legislative scrutiny is not required in every situation, but what are the important trigger points? How can you, as a Parliament, be clear that you have done your job and that legislation is working relatively well?

George Adam: I was coming from a factual perspective, as I have been a councillor and have been on a licensing board. After the Licensing (Scotland) 2005 Act was enacted I would be in a committee, making a decision, and a solicitor or a lawyer would say, "Ah well, that is a problem with the act, councillor." I would go, "Right—okay." It was difficult for us. Where does the Parliament get the opportunity to look at something like that, post-legislation, and see how it can solve problems?

Michael Clancy: This is an extraordinarily interesting avenue of discussion, which we probably cannot do justice in the time that we are allowed.

Stewart Stevenson: I am minded to let the session run for about another 15 minutes, so if we can all be crisp, that would be helpful.

Michael Clancy: When someone says that an act does not work and the only solution is legislation, one has to remember that Parliament can deal only with what it has in front of it at the time. Committees are not the masters of their workloads: the Government is the master of their workloads in many respects, in terms of legislation. Clearly, committees can create their own inquiries and pursue other work, but legislation is the bulk of the work of some committees, such as the Justice Committee, which made that clear to this committee.

We must consider how a committee reaches the point at which it cannot undertake post-legislative scrutiny because of the agenda that it is trying to satisfy in its day-to-day work. As Lynn Williams reminded us, this committee has already reported on post-legislative scrutiny, and those recommendations are, in the main, still to be worked through.

Post-legislative scrutiny is quite a difficult topic to grapple with when it is set against the issue of overworked committees. How do we get to a situation in which we have overworked committees? It is because we need their expertise. The Justice Committee develops expertise over some years in dealing with justice issues, and the same is true for other committees—for example, the Rural Affairs, Climate Change and Environment Committee and the Health and Sport Committee.

That is the conundrum that Parliament has to crack, because a committee fulfils two functions. One is a scrutiny and accountability function, and the other is a legislative function. If you were to detach the legislative function, you might be able

to create more time for post-legislative scrutiny, but you might lose out on accountability and end up with a split committee system, which this Parliament has set its face against from the very beginning.

We will confront again and again the problem of legislation that we discover does not work in practice. An issue might come up when legislation has been scrutinised because it is to be adjudicated on in some way—in a court, a licensing committee or whatever—or when there is a more structured review of an act of Parliament. I would favour a more structured review—that is my natural inclination—but I freely accept that reviews cannot be done for everything. There will be instances in which someone recognises for the first time, perhaps some years after legislation has been put into effect, that it just does not work and needs to be fixed. That is why we have emergency legislation.

Professor Cairney: I am trying to remember what I said when I gave evidence on post-legislative scrutiny, as I do not want contradict myself.

Michael Clancy: Go on—contradict yourself.

Professor Cairney: I could say that it is all good, flexible debate.

There are a couple of points. One aspect of the system—going back to the three stages of the bill process—is that MSPs often raise issues at stage 3 and the minister says, "We'll deal with that in regulations." They make promises, so it is probably a good idea to check regularly whether they have kept them. That is one reason for post-legislative scrutiny.

I think that what I said to the committee in my previous evidence was that, if you want meaningful post-legislative scrutiny, you have to build it into the legislative process. Evaluation of the success of any bill will always be party political, just as much as its introduction is. You would want the Scottish Government to state clearly what its aims are and how they should be evaluated, so that the scrutiny is structured.

The alternative is that you have an inquiry process that is much more open-ended, but which does not give you the chance to say that you are undertaking a structured and relatively objective evaluation. If you wanted a more technical evidence-based sense of whether legislation had failed or succeeded, you would have to know what the Government had set out to do in the first place, and those measures would need to be entrenched in legislation or guidance.

The Convener: We will move on to a few final items—in particular, the question whether it is easy for parliamentarians and people outside Parliament to understand, from the documents that we provide, what goes on at stages 2 and 3. In particular, picking up on what has been said before, there are no mandated documents of explanation required for amendments, although there are for the bill itself. Should we do something about that?

Lynn Williams: There is an issue. I was going to say, in Kenny Dalglish style, mibbes aye, mibbes naw. In some cases, the bill is relatively clear and the documents are clear. However, latterly, the third sector's experience has raised some concern about the speed with which bills are considered. We are not taking breathing space to think about things.

I understand the drive to put bills through, which is fine, but that might sometimes be counterproductive. When the evidence says that there are issues at stages 2 and 3 and there is complexity that people cannot wade through, and if people whose jobs involve dealing with that find the process difficult, how much more difficult is it for those who watch particular bills with interest?

The Social Care (Self-directed Support) (Scotland) Bill was carefully watched by carers across Scotland. Behind the scenes, we were trying to make sense of what it would mean for them. If that was difficult for us, how much more difficult was it for people who wanted the legislation to be passed and for it to change their lives? The litmus test must be the clarity of the process.

The Convener: Forgive me—I hear the problem being described, but it would help to have ideas about how to solve it. Perhaps the committee will have to come up with such ideas.

Michael Clancy: When the Law Society sends amendments to committee members, it provides an explanation and describes the effect of each amendment. That approach is designed to help the member to understand where we are coming from, the impact on the affected section and any corollary impact on other elements of the bill.

We know—because it happens—that, when ministers speak to their amendments, they use notes that have been written for them and which do exactly the same job as the rationales that we provide. The material exists. The only problem about making it public along with amendments is that that would deprive ministers of something to say in the debate. We do not want that to happen, because ministers must justify what they do.

A member may give a reason and an effect, but the issue is the justification for the position; those are different things. I would certainly be in favour of having a short explanatory note with each amendment to guide one to the rationale for the amendment.

The Convener: You suggest that providing the explanation not when the decision is being made but sufficiently far in advance might have utility in allowing wider consideration by Opposition members and Government back benchers, which would improve quality. Stopping the minister speaking is not necessarily a bad thing. I did post-event scrutiny of myself after the Climate Change (Scotland) Bill process; I spoke for more than four hours at stage 3, but I could probably have managed with less than that.

Michael Clancy: If the rationale were to be given far enough in advance, that would allow people to contemplate what the amendment was designed to do and it would assist them in lodging an amendment to the amendment. It would also mean that stage 3 appearances might be less gruelling for ministers, and the rest of us.

The Convener: In considering the Land Reform (Scotland) Bill, we had amendments to amendments to amendments but, as far as I am aware, that has not occurred again.

Lynn Williams: I support the idea of giving the rationale behind amendments. That makes sense if work is already being done by officials to crystallise a clear explanation for each amendment.

The Convener: That is helpful.

Professor Cairney: The Scottish Government's role would be to explain amendments to the Scottish Parliament, which could decide whether the explanation was adequate or whether more or different explanations should be given to the public. When I read about amendments for the research that I talked about, my sense was that most ministers gave the explanation for amendments pretty much as it was written down—by and large, they read from something that was prepared for them. If that is already written down, we can imagine that it would not be too hard to give people the script before it was read out.

The only issue is that it would be difficult for ministers to ad lib because, for legal reasons, we would not want a written record that was different from the spoken record. Sometimes, what is said in Parliament is taken as the justification for a bill, so people might not want ministers to diverge too much from the script. However, that is a fiddly issue in comparison with the benefits.

10:45

Michael Clancy: I have seen over the shoulder of one minister, "Minister, do not depart from your brief", written in red ink at the top of his notes. I agree with Paul Cairney that for Pepper v Hart purposes if a minister is giving an explanatory statement of a provision in a bill that might be ambiguous in terms of its interpretation, it is important for us to have a clear explanation of that ambiguity or the interpretation of ministers so that it can later be used for Pepper v Hart purposes in court.

Mark Griffin (Central Scotland) (Lab): I think that my question, which was about attaching a statement of reasons to an amendment, has been partly answered, but more broadly, do you feel that the legislative process is open and transparent enough and that it properly encourages engagement with outside bodies throughout all the stages of a bill?

Lynn Williams: I think that there is generally real openness. There are lots of ways in which people can engage with MSPs and ministers. In that sense, the beauty of the Scottish Parliament is that it is incredibly open. You can meet ministers and MSPs and have a discussion with them, and there are also the cross-party groups. The Parliament is open in a lot of ways.

Going back to what I said earlier, though, I think that there are ways of improving that openness and transparency without losing what we have already. That is the uniqueness and beauty of the Scottish Parliament, and it goes back to its founding principles. Let us build on what is there and try to find ways of making it as transparent as we can. To be honest, I think that some of the suggestions that we have had today would definitely help with that.

Michael Clancy: I would like to think that Parliament is very open and transparent, but it is always good to try to improve things. Some of the suggestions that have been made and the discussion that we have had today would go some way to advance that openness and transparency.

Professor Cairney: I am going to be a typical social scientist now and say that I think that the Parliament is probably more open than transparent. The idea of openness is that you pretty much tell everyone what you are doing, which the Scottish Parliament does remarkably well. However, there is a difference between that and people understanding what that means. For example, although I put out almost everything that I write on my blog, chances are that no one is going to understand half of it; in other words, I am being open, but I am not giving people the language to make it transparent. There is a real difference there.

The Convener: Thank you. Cameron, do you want to wrap up quickly?

Cameron Buchanan: Yes, convener. I noted Michael Clancy's comment on the effectiveness of the secondary committees. Is it possible for members of secondary committees to attend the lead committee's consideration of a bill at stages 1

and 2? Is the involvement of secondary committees in the legislation process useful or essential?

Michael Clancy: I certainly think that it is essential. For example, the Delegated Powers and Law Reform Committee focuses on the areas in bills where subordinate legislation is going to be used, and I think that it would be useful for a member of that committee to be present when the lead committee discusses provisions in a bill where delegated legislation powers are going to be created. That would enable that member to inform the committee in a more proximate way than a simple reading of the *Official Report* would provide of the flavour and mood of the lead committee's discussion prior to its report to the Delegated Powers and Law Reform Committee.

The Convener: Thank you. I said that I would provide the opportunity for panel members to make brief concluding remarks if they so wished, but it is not compulsory.

Lynn Williams: I just want to thank the committee for its time. We have had a fantastic debate. In some ways, the committee's inquiry is incredibly timely, as it comes when we are beginning to look at ourselves as a country generally and to take stock of where we are. Given the electoral turnout, we need to consider how we rebuild trust. The transparency point that Paul Cairney made is important. Getting the process right is incredibly important for perceptions of the Parliament and how it operates, and for people's trust in it.

I am pleased to have had the chance to contribute. It is important always to keep the focus on why we do what we do and what the outcome is at the end.

Michael Clancy: One thing that has not been mentioned in our discussion is the referendum and its impact on the Parliament, whether there is a yes or no vote. Depending on the outcome, there will either be a vastly increased range of powers or some increase in the range of powers and, at some point in the future, there will have to be a discussion about the Parliament's legislative capacity to deal with a range of new powers in subjects that hitherto have not been within its province. I am thinking, for example, of the Finance Committee dealing with the new taxes. We have to think about the Parliament's legislative capacity.

The Convener: Your capacity for provocation never surprises me, Mr Clancy.

Professor Cairney, do you want to comment?

Professor Cairney: I will just give you my stock answer. My view is that MSPs do not have the resources that they require given the demands on their time, and that, because of that, scrutiny will always be limited. I think that the big solution to the problems that we have discussed is for you to vote yourselves more of the budget before you give it to the Scottish Government.

The Convener: I will not make any observation on whether I support or disagree with that; I will simply say that that is an absolutely first-class note on which to end the evidence session.

I thank our witnesses very much indeed for their generosity in the time that they have taken to prepare, which showed through in their evidence, and in the contribution that they have made in attending and informing our deliberations.

I suspend the meeting to allow the witnesses to leave, although I should say that we will start again almost at once.

10:52

Meeting suspended.

10:53

On resuming—

Cross-party Groups

The Convener: Agenda item 3 is on cross-party groups. We have a report that looks at some of the positive work that the groups have undertaken and which demonstrates that the new monitoring system is proving effective, as the vast majority of cross-party groups now routinely provide more detailed information on their activities and finances. The report details where groups have undertaken work that is required of them, such as holding annual general meetings, outwith the timescales set out in the code, and, in addition, it highlights two groups that are not currently compliant with the rules on ensuring that a group is sufficiently cross-party in nature.

Do members wish to comment?

Richard Lyle: I compliment the officials on this excellent report, which gives a flavour of what is happening. There are around 88 cross-party groups, and given that I have been asked to start another two, we might get to 90 or even 100 before the end of the session.

However, there are problems. The fundamental one is trying to get a room. I will not mention the group involved—the information is contained in one of the submissions—but we were standing outside a committee room waiting for a committee meeting to finish so that the group could go in. Because the committee meeting overran substantially, the group's annual general meeting could not be held, and it had to be put back a couple of months. The group then ran into difficulty because its AGM was held outside of when it should have been held. I will not give any names, as that would be very unfair.

Writing to conveners of cross-party groups to request an explanation of why things have not happened correctly is the way to go before we stick the boot in. Basically, we have to ask them to comply with the rules and regulations. If they do not, the matter should be brought back to the committee, and we will make recommendations.

I thank the officials for the report. I simply flag up that it is sometimes very hard for a group to get a room.

The Convener: I do not think that it is our role to ask anyone to comply with the Parliament's rules. That is a given. However, it is certainly true that our role is to ensure that any apparent failure to comply with the rules is drawn to people's attention and to act if such failures continue. The system will work if there is self-discipline. We rely on that in many things.

Fiona McLeod: The report is excellent, and I thank the officials very much for it.

Paragraph 20 sets out the different things that we can do. I think that the clerks have written to conveners of cross-party groups as we have gone along; we have explanations from most of them, and almost every one of them is understandable.

As for the cross-party group on Russia and the cross-party on Scots language, I have to say that I have been here before and that we have had problems with them in the past. Given the work that we have done for them, I suggest that we ask their conveners to come and explain why they are still failing to meet the requirements.

The Convener: Would it also be fair to ask what remedies they plan?

Fiona McLeod: Yes.

Cameron Buchanan: I note that one of the options is to disband the non-compliant groups. Can we suspend cross-party groups? Can we suspend the cross-party group on Poland, for example, because not enough people are interested in Poland this session compared with the previous session?

The Convener: Cross-party groups either exist or do not exist. There is no middle ground.

Cameron Buchanan: Right. Okay.

The Convener: One might argue that there should be some middle ground, but procedurally there is none. There is nothing to stop a group returning.

Cameron Buchanan: The report makes it clear that groups can come back again. Perhaps the problem with the cross-party group on Poland is that not enough people are interested in Poland—I do not know. Perhaps in the previous session people were particularly interested in Poland, Russia or whatever it was. There might not be the same interest this session, or the convener might have gone.

The Convener: It might, for the sake of clarity, be worth reminding colleagues that cross-party groups end at the end of a session and that we need to be in action for them to open again. They do not continue over the end of a session.

Perhaps before we move on to a wider debate we should consider Fiona McLeod's proposal that we request and require the conveners of the cross-party groups on Russia and Scots language to appear before us. Do members agree to that proposal?

Members *indicated agreement.*

The Convener: Thank you. That is helpful.

Annual Report

10:59

The Convener: Agenda item 4 is consideration of our draft annual report. Under standing order 12.9, we have to produce a report each year. Do colleagues wish to make any comments or suggest any amendments?

Richard Lyle: Again, this is an excellent report that shows how hard the committee has worked under the previous convener and the new convener. I compliment the officials on it, and I recommend it to the committee.

Fiona McLeod: I have made a note about paragraph 3, which is in the section on "Procedures for considering legislation". I might have got the timescales wrong, but should we add in something about the public engagement plans, or does that issue fall outwith this particular annual report?

The Convener: The report runs up to 10 May 2014.

Do members agree the report?

Members *indicated agreement.*

The Convener: As no amendments have been suggested, are members content for the convener to sign off the report?

Members *indicated agreement.*

The Convener: That is grand.

That concludes the public part of the meeting. We will now move into private session.

11:00

Meeting continued in private until 11:26.

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