



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Thursday 23 April 2015

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CONTENTS

	Col.
ELECTION OF COMMITTEE CONVENER	1
“CODE OF CONDUCT FOR MEMBERS OF THE SCOTTISH PARLIAMENT”	21

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
8th Meeting 2015, 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)

*Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab)

*Gil Paterson (Clydebank and Milngavie) (SNP)

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Rt Hon Sir Alan Beith

Colin Keir (Edinburgh Western) (SNP) (Committee Substitute)

CLERK TO THE COMMITTEE

Gillian Baxendine

Alison Walker

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 23 April 2015

[The Convener opened the meeting at 09:30]

Election of Committee Conveners

The Convener (Stewart Stevenson): Welcome to the eighth meeting in 2015 of the Standards, Procedures and Public Appointments Committee. I remind everyone to switch off their mobile phones, as they can affect the broadcasting system.

We have received apologies from Dave Thompson, and Colin Keir is attending as his substitute.

The first item today is an evidence-taking session as part of our inquiry into the election of committee conveners. With us we have Sir Alan Beith, who is the former chair of the Justice Committee and the Liaison Committee in the House of Commons.

Welcome, Sir Alan. Thank you for making yourself available. It is worth saying that the Presiding Officer has initiated this piece of work and is keen that we should look at it but that the committee is, perhaps, more sceptical than she hoped. We are happy if you wish to be an advocate as well as an informant, but that is a matter for you, of course.

I do not normally invite opening remarks—we usually go straight to questions—but, in these circumstances, we would be happy for you to lay out your stall, comparatively briefly, if you wish to do so.

Rt Hon Sir Alan Beith: Thank you, convener. In the committees that I have chaired, I have followed the same practice of not encouraging opening statements. However, in light of your opening comment, I should say that it is not for me to say how the committee system of the Scottish Parliament should work, and that there are quite important differences between the systems in the two Parliaments, the most important of which is that your committees have a legislative role, which ours do not. One of the reasons why we do not have that role is that, given the very strong whipping tradition in the House of Commons, we think that importing it would undermine the ability of committees to act in a collegiate and consensual way.

I am not sure whether that has implications for the way in which you elect the chairs, conveners

or members, but it is a difference. The judgment is very much for you to make, but what I can say, very briefly, is that it is my view—which I think is widely shared—that the election of chairs of committees in the House of Commons has significantly enhanced the authority of the chairs and of the committees, and has added to a number of things that have caused ministers, civil servants and outside bodies to take committees more seriously than ever before. I am quite confident that the election of chairs has been quite important in that respect and has given committees a greater degree of independence from the Executive.

The Convener: Thank you, that is helpful. We will move to questions. We have a list of pre-prepared questions but, as you would expect, we will go off script if that is appropriate.

Margaret McDougall (West Scotland) (Lab): You said that the election of conveners had raised the profile of committees and given committees and conveners more authority and independence. Why do you think that is?

Sir Alan Beith: It is quite clear that the person who is holding the chair does not hold it because they have been given that opportunity by the Executive and the whips system. It is also clear that that person has had to assemble the support of a range of members of Parliament in order to secure the mandate to achieve and, perhaps, keep the position. That is quite clearly strengthening to the independence of the committees.

If you observe the election process, it is quite interesting to see that the house has not always done what might be expected in its choice of chairs. Recent by-elections—if I can call them that—for two chairs have led to the appointment not of the most senior people to those positions but of people who, although they had a reputation in the appropriate field, were relatively junior as members of Parliament. It all illustrates that no one can say that it has been fixed by the whips. If I keep referring to that terminology, it is because it is historically very important in the way that the House of Commons operates.

Margaret McDougall: Are there any other benefits in electing conveners, apart from what you have just laid out?

Sir Alan Beith: It is really all summed up in that independence and authority combination that I have described. In our experience, that outweighs any disadvantages that you might find from it.

Margaret McDougall: In your opening remarks, you mentioned that the committees in the Scottish Parliament are different because we deal with legislation, which committees in the United Kingdom Parliament do not do. What does that

difference mean when it comes to electing conveners to committees in the Scottish Parliament?

Sir Alan Beith: I know what difference it would make if we handled the kind of legislative process that goes on in our standing committees. In standing committees, the Executive—and indeed the Opposition—feels it necessary to assert its management of its members, and therefore there is great pressure to vote appropriately and not rock the boat too much, and all those things that are alien to the work that we do in a select committee.

However, in the committees of this Parliament, you must have achieved a way of combining those two functions that does not destroy their ability to operate as scrutiny committees. The judgment that I make about what would work in our system is peculiar to the traditions of our system, powerful as I think they are.

Almost all other Parliaments have committee systems that find a way of combining the scrutiny and the legislative roles. In some of them, it means that the scrutiny function is not carried out very effectively, but I cannot believe for a moment that that is true here. Of course, I have not made a study of it, but it appears to me that you have found ways of reconciling that challenge that would be difficult for us in the House of Commons.

Margaret McDougall: Have there been any disadvantages to electing conveners?

Sir Alan Beith: The only disadvantages are probably from the standpoint of the Executive, which cannot use the system as a way of rewarding people; nor can it use removal from a committee as a way of threatening people. There is a disadvantage there.

I suppose that you could say that creating a career structure for members is less easy when you hand over the decision to the house as a whole. However, set that against the principle that the house should be able to choose who it wants to chair its committees and that pales into insignificance.

The Convener: I want to pick up a couple of points that have come out of your contribution so far, Sir Alan. First, I have a technical question on the matter of removal. Here, one may leave a committee only when one chooses to resign. Forgive my ignorance, but is there a process by which an external initiative can remove somebody from a committee in the House of Commons?

Sir Alan Beith: That used to be the case. Indeed, I can recall—I am going back 20 or 30 years, which is a very long time in Parliament—hearing a member being told that his future on a particular select committee had been threatened

by the rebellious position that he taken up on something. That was not a member of my party, I hasten to add. What happens now is that members are elected within the parties, normally by secret ballot, so the threat of removal has been taken away.

The Convener: That is fine. My next question is from the point of view of an old cynic, as I would say I am. How have the whips adapted to the apparent loss of power that comes through the loss of their directly nominating and, essentially, appointing people? How do they now try to exercise their influence over the process? Or are you saying that they have suddenly taken a vow of abstinence and take no part whatever?

Sir Alan Beith: I think that they have largely given up trying to control the select committee process, realising that they cannot. You get the occasional row about whether a part of a report has been given to a minister or a parliamentary private secretary, and whether they have tried to pressure committee members to get it changed. I cannot think of a good recent example of that; you occasionally get allegations of that kind, but they are relatively few.

If you had a whip giving evidence, they would probably say that their job has been made far more difficult because they now have fewer means of telling members that, if they are helpful, the whips will be helpful in return, by giving them the opportunity to get on the committee that they want to be on and so on. Whips feel that their armoury has been raided and that most of their traditional weapons have been taken from them. They have to learn to live with that.

However, there has been some talk that there might be pressure in the next Parliament to pull back from those reforms. Some of the members of the Liaison Committee brought that to the committee's attention, so we made it quite clear in our report—this is a committee of more than 30 chairs from all different parties—that there must be no going back on what we know to be the right reforms, which brought in the system of election.

Gil Paterson (Clydebank and Milngavie) (SNP): There are significant differences between the Scottish Parliament and the Westminster Parliament, one of which is the number of members. I understand that one of the drivers for having elected chairmen in Westminster was the high number of members and the fact that so many of them, especially on the back benches, did not have any influence. Given that the numbers at Holyrood are so different, do you see that system as being workable here? So many people in one party are involved in running the Government itself that the number of members available diminishes as you go along.

Sir Alan Beith: In the House of Commons there is a large Executive component. I have not checked the proportions as to how the size of the Executive drawn from the legislature compares with that in the Scottish Parliament. However, the number of chairs did not change as a result of the election system, because the number of chairs is determined by the structure of Government. If the Government reduces the number of departments, then the number of select committees will reduce. Similarly, if the Government increases the number of departments, the number of select committees increases. We exactly parallel the Government structure.

There are other issues around numbers. Even though we have quite a large number of members—we are quite a large legislative body—there is a core of people who are very committed to select committee work and there are others who find themselves engaged in various other activities that conflict with select committee work. We also have a double structure, because we have committees dealing with bills, and there are many pressures on members to attend standing committee hearings, even at the same time as select committee hearings.

Even with our larger numbers, we have quite a lot of management problems. I cannot conceive of a way in which the system of election would be made more difficult simply because you are in a smaller Parliament.

Gil Paterson: Sticking to the issue of numbers, I note that, because there are 129 MSPs here, less the number of MSPs who are in the Executive, and most of us sit on two or even three committees, we become very familiar with one another and with one another's attributes. What are your views on that? Is it a benefit?

Sir Alan Beith: In the House of Commons, where the numbers are larger, it is through the committee process that members become more familiar with colleagues and their attributes. As someone who has spent a lot of years chairing parliamentary committees, I find it a very valuable and constructive process. People start to learn that those with whom they fundamentally disagree on some major principles nevertheless have merits and something useful to contribute. I have been struck by the way in which I have been able to work with people of radically different views who, if you focus their attention on a particular problem, will apply their minds and come up with a common solution.

I digress slightly, but that is a very valuable process, although perhaps more so in a large Parliament such as Westminster, where there are fewer opportunities for people to get to know one another well. I may have missed part of the point of your earlier question.

09:45

Gil Paterson: In that respect, is it a strength or a disadvantage that we are a small Parliament?

Sir Alan Beith: There is quite a strong view among committee chairs in the House of Commons that committees in our system are too large to work effectively. Many chairmen feel that a committee of six to nine members, all of whom are fully engaged, is a much better size of committee to question people, to undertake visits and to be in fairly constant communication with one another. If you have a committee of 12, 13 or even 16 members—there are various pressures that have led us to make committees bigger than the recommendations—you start to lose some of the cohesive qualities. The Liaison Committee has recommended that committees should be smaller than they currently are.

The Convener: Roughly how many committee places are there per back-bench member? My understanding, which is informal, is that there are fewer committee places available than there are members who might be available to fill them.

Sir Alan Beith: That is arithmetically the case, but if you take out the almost 100 people who are in the Executive or are parliamentary private secretaries, and those who are carrying out other responsibilities, such as chairing standing committees, and those who choose to focus their activities on something completely different, you reach a point where the number of places as a whole does not exceed the number of members who are prepared to commit themselves to select committee work. Obviously, there are some committees that are particularly popular, and there will always be more candidates for the places. I am thinking about committees such as the Foreign Affairs, Defence and Treasury committees.

In the latter part of the Parliament, when vacancies arose, it became quite difficult to fill some of them. Ironically, I found myself turning to the whips sometimes and saying, "Your party does not seem to have produced a nominee for this place—why is that and do you have any suggestions?" That is not really how we intended the system to work and is partly a product of having those larger committees.

It appears to be the case, given the nature of Westminster politics, that the number of places available is more than sufficient for the willingness of members to commit themselves to committee work.

Cameron Buchanan (Lothian) (Con): Do you think that the election of conveners would work well in different political environments? For example, how would independent members get on the schedule?

Sir Alan Beith: It is not something that we have really faced, because there are very few independent members in the House of Commons, other than people who have left their party after being elected. It would be perfectly possible for the election system to cater for independent members. The problem that they would face is the allocation of committees to parties at the beginning of a Parliament. The way in which our system works is that the arithmetic of party representation in the house determines the allocation of chairmanships between parties.

Cameron Buchanan: Are you using the d'Hondt system?

Sir Alan Beith: It is not exactly the d'Hondt system. My former clerk and I have been discussing precisely how one would describe the system that is used. It is one of those strange mysteries. The clerks, whom we trust implicitly, advise the Speaker and the Speaker tells us what the allocation is. At that point, the parties discuss between themselves how the numerical allocation will be reflected in the committees. There are some things that are established practice, such as the fact that the Public Accounts Committee is always chaired by an Opposition member. Similarly, the Government would probably want to have the chairmanship of the Foreign Affairs Committee.

There is inevitably a process of negotiation, and there is no role for the independent member in that. It is quite difficult to envisage circumstances in which it would work. If there were one independent member of the House of Commons who was widely thought to be a suitable person to chair committee X, the committee would have to be allocated to independent members, and then the house would have to report that that person should become the chair. The process is not terribly well catered for. If there were a group of 25 or so non-aligned members, that might change the situation, but that is not something that we have experienced.

Cameron Buchanan: So, if there were a single independent member, he could not lobby to be chairman of a particular committee.

Sir Alan Beith: Well, he would have to lobby at the very beginning of the Parliament that a committee should be allocated to independent members. I do not think that that case would be heard very enthusiastically if he were the sole independent member.

Cameron Buchanan: And would the situation be similar in a situation in which there was a minority Government? Who would decide the make-up of the committees in that circumstance?

Sir Alan Beith: It would not change things very much. The clerks would advise the Speaker on the

arithmetical calculation and the parties would then negotiate among themselves. What tends to happen in the Westminster system is that the formation of the Government delays the appointment of committees and, therefore, parties' agreement on committees. We find that very frustrating and the Liaison Committee has expressed concerns about that. It can result in a situation in which, not because of the system of election but because of the allocation arrangements and the need to wait for the Government to be formed and news to be announced about whether any new committees will be established or old committees abolished, the process of election to committees can be set back, which can mean that committees cannot really get going before the summer recess in August.

The Convener: This might not be a relevant question, but I am always interested in the extent to which joint committees play into this agenda. Are they affected by it?

Sir Alan Beith: They play into it very badly, and it is a matter of concern to the Liaison Committee.

Joint committees still work on the old system. Before I develop this point, I should perhaps add that they are usually created to consider draft bills, rather than in relation to specific subjects. Earlier, I said, by way of shorthand, that our committees do not do legislation. However, although we do not take part in the formal process of bills, we extensively consider draft bills. We also do a lot of post-legislative scrutiny and we sometimes make comments during the passage of a bill.

Sometimes, partly because it is under pressure from the House of Lords, where there are lots of people who are interested in certain key topics, a Government will create a joint committee to consider a particular draft bill. The result is that the committee is appointed on a motion of the house, which brings us right back into the whips' territory. There might be a process of discussion or an implied commitment to ensure that perhaps several people from the select committee are on the joint committee but, at the end of the day, the election process for chairs and for members does not apply to a joint committee.

As I said, the Liaison Committee has been concerned about that, and that has led to us being a little more hostile than we might otherwise have been to the idea of draft bills being considered by joint committees.

The Convener: That is interesting. However, I am not sure how it will inform our considerations.

Sir Alan Beith: You do not have the issues of the two-chamber legislature.

The Convener: No, and if we had to have one, I suspect that there might be a majority in favour of one that would be structured with a rather different balance, shall we say. However, that is for another day.

Sir Alan Beith: That brings me into other territory.

The Convener: Let us not bring raw politics into an objective analysis of where we are and where we are going.

George Adam (Paisley) (SNP): Those who favour elected chairs here say that, under the current system, it is not always the best candidate who becomes the convener of a committee. Do you have any evidence that, through the changes at Westminster, it has been the best candidates who have been selected as the chairs of committees?

Sir Alan Beith: We certainly have very good chairs of committees. I have had the interesting task of chairing the committee consisting of all of them and I have got to know them pretty well. We have managed to achieve quite a lot by working together, which you might think surprising as they are all strong personalities.

I cannot really answer the question because it involves a value judgment about the people who have been elected chairs and those who might otherwise have got the jobs.

The two people who were elected as chairs of committees during the Parliament were not in the original selection but were elected because vacancies arose in the Health and Defence Committees. What is striking about those elections is that they led to the election of relatively junior members in terms of time in the house, and therefore not the people that the previous system would have tended to promote. Each had a reputation in the field that the committee covered. In the case of the Health Committee, it was Sarah Wollaston, who was a general practitioner; in the case of the Defence Committee it was Rory Stewart, who had extensive experience in defence and foreign affairs. That meant that the posts did not go, for example, to the most senior of the existing members of the committee. The house decided that those particular individuals had qualities and experience that made them a good choice to be the chair.

George Adam: We have heard the same point from a number of sources during the evidence that we have taken. Could there be an argument, however, that all that has really changed is that a couple of wild cards have been put into the mix?

Sir Alan Beith: If you are thinking of those two as wild cards, I should point out that they were both elected, as it were, through by-elections. The

elections did not happen at the beginning of a Parliament. I cannot imagine that the same two people would have been as likely to have been elected or to have put their names forward at the beginning of the Parliament, because they would have been completely new members at that stage. There is a difference.

Under the previous system, the executive and the party leaderships—not just the Government party but the Opposition parties as well—had the opportunity to say, “So-and-so deserves a turn in this position.” That did not prevent some very good and independent-minded people from becoming chairs. On occasions some years ago, when the executive tried to remove independent-minded chairs, the house resisted that. I am thinking of the case of Gwyneth Dunwoody.

I would not want to make a value judgment that said that the previous system produced bad chairs. I would simply say that those of us who have occupied the positions under the new system have felt an enhanced independence and authority because we have been elected.

George Adam: Okay. You mentioned that elections take some of the control of the selection process away from party whips. One of my colleagues has brought up the point that, with our obviously smaller number of members, elections might make controlling the selection more difficult but they would not affect the final outcome.

Sir Alan Beith: That is a judgment that only you can make. I cannot make a judgment as to how an election system would work in the dynamics of the Scottish Parliament. I can say that, in almost any system, having to win the confidence of your colleagues across the chamber has the potential to enhance your independence and authority. The particular dynamics within the Scottish Parliament would be better judged by yourselves.

The Convener: Sir Alan, you have used the phrase “enhanced independence and authority” several times in different forms. Can you give us examples of how you have achieved that? They are easy words to say, but they are perhaps more difficult to demonstrate. It would be helpful if you could do so or indicate what limitations there may be.

10:00

Sir Alan Beith: Committees inevitably face a bit of a running battle with the executive to get the information that they want, to get it timeously and to get a satisfactory response to matters that they raise although, of course, the Government is formally required to respond to committee recommendations.

It is a judgment. I have found that senior departmental officials and ministers, including ministers with whom I have disagreed quite a lot, feel more obliged to appear to respect the position of select committees and their chairs than they did previously.

In addition, there is an increasing outside interest in the role of select committee chairs. They are invited to address conferences and to meet constantly organisations in the field with which they deal. They are seen to have more status in those fields. You might want to ascribe some of the strengthening of committees to other factors, but that is a major factor. Indeed, it is quite often cited to me by others that we are the elected chairs who have been put into the position by the house and they must take account of that.

That is a rather nebulous answer, but it is one about which I have genuine convictions. I can talk about how my committee—the Justice Committee—has achieved a significant change in how the Government approaches matters. You would then have to decide how far that is because the committee did an effective job and how far it is because chairs and members are elected. That is quite a difficult judgment to make.

The Convener: Thank you for making that point. We could perhaps even measure how many more invitations to speak externally we get as a result of the change.

You specifically mentioned officials and ministers. Is there a difference in how the two groups have responded to the changes? There are Parliament officials and Government officials, so there are perhaps three categories of people. Are the responses to the changes and the effects different for those different categories of people?

Sir Alan Beith: Parliament's officials serve the committees and they serve them very well. They did so before the election to committees took place and they do so now. In a sense, it is not so much of a change for them, except to the extent that the committees that they serve attract more authority.

Ministers and senior officials affect one another. If a minister makes it clear that he does not want the officials to engage more than they are obliged to do with the committee, that could influence the officials' attitude—but not always. I have sometimes found officials are able to say, "I have to bring this before the committee." There are plenty of stories of officials who say, "Minister, if this option was put in front of the select committee, I think that they would take it apart—they would have some very serious reservations about it." Indeed, ministers' memoirs will tell you things like that.

Some ministers naturally deal well with select committees; others think that they are a bit of a nuisance to them, which we perhaps should be.

The main problem that I have experienced with officials is them not ensuring that, down the chain, everyone deals with the select committee timeously and efficiently, and then, suddenly, an announcement is rushed out of which the committee has not had the proper notice that it ought to have had about it.

The process is continuous; it is not just affected by elections. We are digging away at the matter all the time and trying to establish a better working relationship—not one in which we become part of the executive, but one in which we know what the executive is doing all the time.

The Convener: That very much echoes some of my experience when I was first minister—I do not mean First Minister with a capital F, but when I was first a minister. My party had two of the seven members of the committee that shadowed me and did not have the convenership, so the relationship between ministers and their committees can be quite interesting.

I think that I saw Patricia Ferguson, who is also a former minister, nod as I was saying that.

Are you trying to catch my eye, Cameron?

Cameron Buchanan: No.

Sir Alan Beith: Perhaps I should add that ministers will sometimes shrewdly recognise that the select committee is interested in developing policy in the direction that they want to develop it. When a minister is meeting resistance, either from other ministers or from within the department, the committee is potentially an ally on something that the minister cares about.

The Convener: I think that the two former ministers on this committee recognise the strength of what you are saying there.

Colin Keir (Edinburgh Western) (SNP): Good morning, Sir Alan. I am really interested in knowing whether there are any procedural safeguards that you would consider if you were setting this up. For example, should the nominations be from the parties that wish to have the convenership, so to speak? What type of voting system would you recommend?

Sir Alan Beith: The Wright committee went into some detail about the procedures precisely in order to protect chairs and to ensure that they were genuinely independent. In our context, I think that what we have works pretty well. The alternative vote system of election works well when you are choosing one person as opposed to when you have a multiplicity of people. In my view, the single transferable vote system is the better

system, but if it is for one place, it is in effect an alternative vote system.

The nomination system is a completely open one. It does not depend on the party as an organisation sanctioning your nomination and the ballot is secret. All of that seems to work well. The ballot process for chairs is conducted by the staff of the house—by the clerks.

The system for election of members is still done within the parties. The decision to do it that way was partly born of a decision to try to get the system for chairs firmly in place and then see how we got on with the development of the system for parties. People were a little bit anxious about that. Reformers were a bit anxious about that. However, it seems to have worked satisfactorily. On paper, it would look better if the election of members within the parties was more formally conducted than it is at the moment.

Colin Keir: Should parties continue to have conveners allocated proportionate to the number of seats that they have in Parliament?

Sir Alan Beith: My answer would be yes because I cannot think of a better principle on which to decide it.

Colin Keir: Are there any other rules that you would add to strengthen that policy?

Sir Alan Beith: As far as we are concerned, it works. The allocation system existed before the election system so we have been used to it working over a number of years. The next Parliament might be interesting. The House of Commons, despite being quite traditional in some ways, adapts its procedures as time goes on to recognise new situations, but the basic principle that the distribution of places should reflect the composition of the house seems to me to be the only obvious way to do it.

Colin Keir: You might have covered this point in some of your previous answers, but were there any other changes to committees in the House of Commons that supported the introduction of elected conveners?

Sir Alan Beith: The election of members of committees from within their parties was simultaneous with that. That was certainly relevant, and initially it was quite competitive for many committees.

As I said earlier, towards the end of the Parliament, it became difficult to fill casual vacancies on some committees because most members had committed themselves to other kinds of activity by that stage. I am thinking particularly of the last 12 to 18 months of the Parliament. That is perhaps the main simultaneous change.

However, the Liaison Committee has also worked pretty hard with the Government on a range of issues. For example, the Government has rules—which I would not want to go into detail about today—about how its officials engage with committees, which it calls the Osmotherly rules. Those are not rules of Parliament; they are the Government's own rules.

We have quite a frank and free discussion with Government over a period of time about the extent to which we do and do not recognise the principles of those rules. In particular, we feel very strongly about ensuring that truthful and complete evidence is given to committees by officials. Various things like that are part of the continuing process.

The Liaison Committee sees part of its role as being to support committees when they feel that they need to challenge the way that the executive has interpreted its own rules, and on other issues, too. We come in quite often in support of a committee that we feel has a strong case for being granted something that it is being denied.

Colin Keir: Thank you.

The Convener: You commented on single transferable votes, which is something that I am interested in. All systems, of course, have flaws. In the 1945 election, two members were elected by single transferable vote but lost their deposits. They were university seats. One example was in Scotland, where the first two university members got elected with, I think, 44 per cent and 42 per cent. The third one had 4.16 per cent of the first-preference vote and the hurdle was 4.17 per cent. There was one in England as well.

Let me ask a couple of questions that arise from your contribution. With regard to support for conveners, particularly in environments where the Government party has a majority, is it absolutely necessary that there is demonstrable support from more than one party before a convener can be put forward or elected?

Sir Alan Beith: I will check. I cannot remember whether the nomination rules require that, although I do not think that they do. [*Interruption.*] No, they do not—I am confirmed in my recollection that they do not.

Interestingly, however, a motion to remove a chair requires support from more than one political party. It is a process that we have never had to test, by the way. Removal requires support from at least two members of the majority party and at least one member of another party.

The Convener: Right. Okay.

Sir Alan Beith: I would like to correct an earlier piece of evidence. The process for removing a member from the chair does not require the consent of the house as a whole. It is a process

that the committee can carry out, subject to that proviso that more than one party has to be involved. There are other rules: it cannot be done repeatedly and it cannot be done until a period of time has elapsed after the original election of the chair. It is quite a guarded process, and it has not been used.

The Convener: The other point that arises from your earlier comments is that there are other administrations in the world in which all committee chairs have to be from opposition parties. Have you a view on the merits, or otherwise, of that?

Sir Alan Beith: Personally, I would not want our system to go that way. I can see that in some political contexts it might help, but in our system it would bring more harm than good. A committee's authority is enhanced by the fact that a chair from the Government party can make a criticism of Government policy, with support from across the committee, because of some important problem that the committee has discovered with the policy. If all committees were Opposition led, that element would be taken away, and it would lead to a tendency to dismiss the committees as vehicles for their chairs. The mix and the fact that we support each other are much more helpful for presenting committee work as a different kind of activity in which it is possible to reach quite critical views but that does not engage in the party battle in the same way.

The Convener: We can recognise that. The convener of our Finance Committee, who is a member of the Government party, has on two occasions in the last six months been quite robust, shall we say, with the Government. The Government has quite properly accepted that the committee convener was correct and that the Government was not performing to the required standard.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): Good morning, Sir Alan. I was interested in your point about the two recent by-elections to committee chairs and the appointments of Dr Wollaston and Mr Stewart. As I understand it, your point was that those individuals had experience of the topics of the committees of which they were elected chairs. Is that an overriding qualification, or is the ability to effectively manage and control a committee a better attribute for a candidate?

10:15

Sir Alan Beith: Members have to make those judgments when they cast their votes. If somebody was put forward on the basis that they knew a lot about something, but others felt strongly that they could not manage a group of people effectively and productively or that they were very divisive,

that would become an issue in the election process, and members would take that into account. That is an entirely relevant consideration. If I were casting a vote on who should chair a committee, I would certainly have in mind whether the person could work with a group of people. Sometimes, chairs develop that ability although it might not have been thought that they had it to start with.

Patricia Ferguson: At the beginning of the meeting, the convener referred to the fact that the committee is perhaps not as yet convinced of the need to change our process, or at least to change it in the way in question, but many of us are convinced that there is a need for greater scrutiny in our committees. They have a dual function, but some of us at least are not convinced that the system operates particularly well. If you had a blank sheet of paper and you were asked to design a committee system, what would your priority be in the organisation of a committee to ensure that it had the best possible chance of being an effective body for scrutiny of the Government?

Sir Alan Beith: I would want a process to create its membership that was not heavily influenced by either the Government or the formal Opposition, because that is not in the interests of either. They want to get business through, to stop business getting through or to make things very embarrassing for the Government that gets its business through. That is a different process.

I would want a process that brings together people who are prepared to engage in something quite different, and I would want to give them sufficient resources to enable them to do that. I am not a big spender in that sense, but there should be good core committee staff who understand that role and can research and support that role and draw in the necessary research from elsewhere to enable it to be carried out effectively.

I would also want to ensure that there was a process by which the Government had to respond—as our Government does—to things that committees put forward and that the house had adequate opportunity to draw on the work of committees, sometimes in the way that it debated reports and sometimes simply in the way that it used them, perhaps to draw on what a committee said about an aspect of a bill in considering amendments in more detail in the legislative process.

Off the cuff, those are three things that I would want to be certain of. They are in addition to having a chair who has a feel for doing things in that way.

The Convener: One thing that has not come up so far is where the people whom we serve fit in. I

would like to probe that for a minute or two, as we have made no reference whatsoever to it. Have the changes that have been made created more opportunities for those who elect members to interact directly with committees, influence them and be informed about what they are doing, or are they broadly neutral? Is that question really for a different domain of interest?

Sir Alan Beith: In so far as the election of chairs and committee members has enhanced the role of committees and the recognition that they are independent bodies that are not arms of the Government or the Opposition, that has helped the public at large and specialist groups in the public to see that those committees matter. At the same time, the committees have been emboldened to an extent by the status that they now have and have gone to considerable lengths to engage the public more.

Public engagement with Parliament is probably greater in the world of select committees than in any other aspect of the life of Parliament. Every week, our committee corridors are filled with people who are engaged in an enormous variety of activity—for example, in the health service or the judicial system—who have come to give evidence to committees. That includes of course those who are affected by the system. For example, in the Justice Committee, we talked a lot to victims of crime and ex-offenders—that was a very large engagement. In addition, new technology has allowed committees to carry out e-consultations. For example, we did a big one on prison officers that informed our report on their role.

The committee system offers massive opportunities for people to engage with Parliament, because it looks at the kind of things that they deal with in their everyday lives. The enhanced status has emboldened committees to do more of that.

The Convener: Do committees meet outside the Westminster campus?

Sir Alan Beith: Yes. My committee—the Justice Committee—was here in Edinburgh and met in Cardiff. We do a lot of visits, as well as having formal hearings elsewhere. Sometimes, there is merit in having a formal hearing somewhere else, and various committees, including the Scottish Affairs Committee, do that. However, there is also a lot of merit in undertaking less formal visits, such as simply getting into an institution.

I can give an example of such a visit, although it exemplifies something slightly broader than the topic of this discussion. Quite early in the Parliament, my committee decided that it wanted a better understanding of how its department worked. We therefore said to it, “We want to go all

over the department and all we want with us is somebody who has got the keys to every door. We just want to talk to anybody we meet and find out what they do. We have no particular agenda; we just want to get a feel for how the department is working.” The department’s initial horror was replaced by the realisation that it would probably benefit from our having that level of understanding.

The Convener: Perhaps even the more junior officials benefited from the opportunity to make their views known directly to those who make decisions on their behalf.

Gil Paterson: You mentioned the issue of status, Sir Alan. Does the fact that chairpersons in Westminster are paid for the job that they do enhance their status or is the mere fact that they do that job status enough?

Sir Alan Beith: I think that being paid enhances their status, although that is one of those difficult things to judge. That in turn benefits the committee system, although part of the motivation for deciding to pay chairs in the first place was the slightly different one of suggesting an alternative career structure for MPs that means that they do not have to spend their entire time in Parliament hoping to be a minister and conducting themselves in a manner that they think most likely to lead to their being a minister.

People say that there is more than one route, but nevertheless the feeling was that having a recognised career structure in which a committee chair was financially recognised and got at least as much as a junior minister would enhance the committee system, and I think that it has done so. On the extent to which chairmen think when they get up in the morning, “I am paid to do this, so I’d better get on and do it to the best of my ability,” you must make your own judgment.

Gil Paterson: In the private sector, people are recognised through the wallet. Already, conveners here definitely do more than committee members—I think that that is a fact. Is it part of the consideration in Westminster that there is more work for chairs and that it is not just about status?

Sir Alan Beith: I think that it is. The chair’s burden is very large. A large number of organisations want to engage with the chairs and the chairs feel an obligation to engage with those people on behalf of their committee. Moreover, the opportunities to explain the work of a committee and its proposals at conferences and so forth add to the considerable burden on chairs. It is probably helpful for them to say, “We are paid to do this job, so we must get on and do it even though it is very time consuming.”

The Convener: I think that Sir Humphrey might have described that contribution as courageous, but there we are.

Cameron Buchanan: My question was about conveners being remunerated, but it has been partly answered. However, were the chairs of Westminster committees always remunerated, even before the Wright committee?

Sir Alan Beith: Yes, the payment of chairs started before the election of chairs. There is a downside to that, because it was another job that the executive could offer to somebody because it was remunerated, which might add to its attractions. Most of us think that the election of chairs and their remuneration fit better together than the old system did.

Margaret McDougall: Our inquiry is on the election of conveners. Am I right in thinking that the Wright committee reforms to the election of chairs and membership of the committees were simultaneous? I think that you said that.

Sir Alan Beith: That has been achieved but by an internal process. The parties are responsible for conducting their own elections of committee members. As far as I am aware, there has been no challenge or criticism that they are not doing it properly. Certainly, in my party, although the election of committee members is not conducted by the clerks in the way that the election of a chair is, we go along and put pieces of paper into a ballot box in much the same way.

Margaret McDougall: Did the change happen at the same time?

Sir Alan Beith: Yes. Well, the chairs were elected first. A rather curious delay followed before the election of committee members by the parties. That is the sequence of delays that I mentioned.

Margaret McDougall: Right. However, it was all part of the same reform.

Sir Alan Beith: Perhaps I should add for explanation that I had two jobs: I was chairman of the Justice Committee but I also chaired the Liaison Committee, which is the committee of all the chairmen. That had not been provided for—it was not an elected post. The previous practice was that somebody who was not the chair of a committee was appointed on a motion to the Liaison Committee on the basis that the committee would be kind enough to elect them chair. The members who had been elected to chair their committees and who would become the Liaison Committee when it was formally set up got together informally over a number of meetings to prepare for the changed system and came to the conclusion that they wanted to elect their own chair. I got landed with the job as a result of that process.

Margaret McDougall: My other question concerns resources, which we have touched on a little. Has there been an increase in the amount of resources?

Sir Alan Beith: The Liaison Committee began an initiative about two years ago—that is, just over halfway through the Parliament—to enhance the resources that were available to select committees. As a result, the House of Commons has made a commitment of just short of £1 million of expenditure from within the total house budget—it is not additional money—to enhance the resources of committees in a variety of ways. Some of the money is to offer better support to chairs of committees, some of it is to improve our use of technology and social media as a means of disseminating the committees' work and some of it is to strengthen the press assistance that is available to committees.

In the new Parliament, the members will have access to increased resources as a result of work that the Liaison Committee did.

The Convener: I do not see anyone else who is bursting to come in with further questions. Is there anything that we might usefully be informed about that we have not questioned you about? Do you wish to make any brief concluding remarks?

Sir Alan Beith: You have covered the ground pretty thoroughly. Off the top of my head, I cannot think of anything that you have missed. Obviously, you must make a judgment that is based on your Parliament. I suppose that the question that you have to answer initially is whether the election of conveners would strengthen the ability of committees to do their scrutiny role and strengthen the position of the legislature in relation to the executive in ways that would benefit Scotland. That is a judgment not for me but for you.

The Convener: Thank you very much for your contribution, which I found interesting and informative. I think that I am entitled to say that on behalf of the entire committee.

I suspend the meeting for five minutes before we move on to the next item.

10:29

Meeting suspended.

10:34

On resuming—

“Code of Conduct for Members of the Scottish Parliament”

The Convener: Agenda item 2 is consideration of the rules on lobbying and access to MSPs. During the lobbying inquiry, the committee agreed to review the terms of section 5 of the code of conduct; it later agreed to consider the proposals that were put forward by Jim Murphy relating to consultancy roles and directorships as part of that review, and there was a brief reference to that in our debate in the chamber yesterday.

In order to initiate this work, I think that it would be useful to get the committee’s initial views on the issue, and I therefore propose that we work our way through the paper before us. Members have the opportunity to contribute in any way they feel appropriate.

The paper contains a number of questions relating to section 5 of the code, and I will go straight to them and invite comments from members. The first, which can be found in the fourth paragraph of page 1, is

“Do members want to apply Section 5 to in-house and commercial lobbyists wherever possible?”

Does the committee have a view on that? Indeed, do members want to move away from the term “lobbyist”? In our deliberations so far, we have focused on the activity rather than on the job title or on the perceived role that people have.

Gil Paterson: I think that it would be confusing to change the word “lobbyist”. The public know what that is, and the public know what they do—by and large, anyway. We certainly know what we are talking about when we discuss lobbyists and their role. If we changed that, we might do something that we never want to do: confuse the public, or make the public think that we are trying to hide something. A lobbyist is a lobbyist, and I think that we should stick with that.

Cameron Buchanan: I totally agree. I think that, as a term, “policy advocates” are just fodder words. We all understand what a lobbyist is. Even if it has bad connotations in some circumstances, I think that we should keep the term “lobbyist”.

The Convener: I think that we are quite clear on that.

Moving to the subject of activities undertaken by members—*[Interruption.]* I beg your pardon. Before that, we should consider whether the tone and content of volumes 2 and 3 on lobbying reflect the nature of our experiences with lobbyists.

Should we change the tone to reflect the current lobbying landscape?

Patricia Ferguson: I am sorry, convener, but had we decided on our position on in-house lobbyists?

The Convener: I simply noted what was being said. I am happy to continue that discussion.

Patricia Ferguson: I thought that the question that was answered related to whether we wanted to continue to use the word “lobbyist”. I presume that, by “in-house lobbyist”, we are referring to organisations that happen to have a function that could be seen as lobbying rather than to people who are commercial lobbyists. I wonder whether, instead of talking only about “commercial lobbyists”, we should take out the word “commercial” in section 5.1.4. It is important that anyone who lobbies, for whatever motivation, is covered. Rather than making it a big thing, I would just take out the word “commercial”.

The Convener: Is everybody okay with that? I certainly am.

Members indicated agreement.

The Convener: Good—that is fine.

Returning to page 2 of our paper, does anybody want to address the question about tone and content? We do not have to do so—the questions are merely what they are.

As members have no comments, I will move on to activities undertaken by members and the Presiding Officer’s referral to us of Mr Murphy’s letter, which relates to consultancy and directors. Do you wish to say anything on that, Patricia?

Patricia Ferguson: I think that my position is quite clear on that one, convener.

The Convener: If no one else wishes to comment, I should say—not as convener but as a member of the committee—that I have difficulties with the use of descriptive terms. I have no difficulty whatever with ensuring that we capture a wide range of behaviours, and it might be important for us to understand how people are influenced and who might benefit. After all, there are many types of director, including directors of charities and so on and so forth, and it will be difficult to find a definition that catches commercial directors who are remunerated for perhaps relatively large sums of money as well as directors who serve in the public interest in, for example, charities, for no reward other than personal satisfaction, you might say.

We should look at people’s activities, but we should not get too hung up on considering the particular difficulties that particular job titles carry with them. For example, I have absolutely no clue what “consultancy” is. A lot of the time, it seems to

be simply a title that people appear to append to their activities to enhance the value of what they do, rather than its being a description on which we could base a formal definition.

Cameron Buchanan: I am against the proposal. Consultancy and paid directorships should be permissible, providing that they are declared in the register.

Like you, convener, I am not sure what a “consultancy” is. I have found in my experience of business that the title is often used by someone who has been made redundant and who does not have any other title to put to his or her name.

The Convener: According to your entry in the register of members’ interests, you are currently a director.

Cameron Buchanan: Absolutely. Those interests, whether they are paid or unpaid, are in the register of interests. This proposal is a step too far.

Gil Paterson: Sticking with the question of directors, I have with me a copy of my entry in the register of interests. I will need to change it, because I am no longer a board member of Rape Crisis Scotland. In that role, I received nothing; there were no expenses. The work was all voluntary.

Like the convener, I would be extremely worried about using the term “director”. If I thought that it were advisable to use the term—and in some regards, I do not—it would need to be qualified heavily for those who participate on, give their time to or find themselves on the boards of charities and other organisations. Some charities—not Rape Crisis Scotland, unfortunately—bring in enormous amounts of money. Nevertheless, some people give their time freely and receive no expenses. If we proceed along such lines, we will need to be very careful.

I might have something to say later about declaring interests, but I would like to point out that I have already declared an interest by saying that I was a past board member of Rape Crisis Scotland.

Margaret McDougall: On paid directorships, even if you have declared and registered such an interest, who is to say that you are still not being influenced by that position? The very act of being a director means that you have responsibilities. Can they be put completely to one side?

The Convener: I suppose that the question is: why focus just on directors? In the past, we have had an MSP who continued to operate as a Queen’s counsel. The same rules could apply to them—and I could make the same case for many other roles. Is not the core of this discussion, which Jim Murphy has properly put

into the debate, that we must make it absolutely clear that the primary responsibility of those of us who are privileged to be elected to this Parliament is to our electors and that all our other activities, particularly those that are remunerated, must take second place?

Patricia Ferguson: My responsibility is to my constituents. That is—and should be—my only responsibility.

I have no concerns about the use of the words “directorship” and “consultancy” for the reasons that members have put forward for not being concerned about the use of the words “lobbying” and “lobbyist”. This is all about what people outside understand those terms to mean, and I think that people are quite clear about that. I accept that people do voluntary work and that what they do might be called a directorship, but that is not what we are talking about. We are talking about paid directorships and paid consultancy. That is what Jim Murphy’s letter describes.

10:45

The Convener: So if a director of a commercial company ceases to take reward during their time as an MSP but otherwise continues to work in the same way, that is acceptable?

Patricia Ferguson: It must still be registered.

The Convener: That is a different issue. We are talking about whether to ban people from doing that. Equally, of course, in some—but not all—circumstances, directors of charities may be directors in terms of the Companies Act 2006.

Gil Paterson: It might be appropriate for me to say that there is a flaw in that argument. I must declare an interest, because I am going to talk about my business, which I own but my son runs. There are ways to circumvent that. In my own case, I have recorded exactly what the position is in my entry in the register of members’ interests.

We are a private company, so when the chartered accountant does the books and there is a profit in the business, it is allocated to me. There is nothing that I can do about that unless I sell my business. It is a private family business, so I would need to give my business up, which I do not intend to do. The money can sit in the business, but it will be taxed to the business in any case. I can get round that simply by moving it to my family. There are ways round that.

I spend almost all my time in Parliament—folk will know that I am here early and leave late. I visit my business from time to time, that is for sure, but nothing like the 20 days that I have declared. I know a person who is an MP and a crofter. At times such as lambing time, he needs to spend

time on his croft; it is a family thing. Therefore, I am not just talking for myself. If we are going to have a Parliament whose members have a broad range of experience and expertise, we need to think about folk like me who have a private business. My main concern is that they will be locked out of the equation. I would worry about that—not just for my sake, but for the sake of the Parliament.

The Convener: Does anyone else wish to contribute? The question in the paper before us is whether there is merit in expanding the definition of the activities that members cannot undertake in section 5 of the code. The question mentions “activities” rather than people’s roles. That is perhaps a fine distinction. The question that we must consider today is whether we wish to take that forward.

Patricia Ferguson: Yes.

Margaret McDougall: Using Gil Paterson as an example, if he does not mind—

Gil Paterson: Carry on.

Margaret McDougall: If he were to become a minister with responsibility for enterprise, for example, which would relate to his company, what would his position be then?

The Convener: Just for information, that would not be a matter for Parliament; it would be a matter for the ministerial code.

Margaret McDougall: So that is different.

The Convener: I am not saying that it would not touch on Parliament, but the ministerial code would operate first.

Patricia Ferguson: That is a moot point, given that the Minister for Parliamentary Business could not answer the question yesterday about whether there was a separate register of interests for ministers.

The Convener: There is not.

Patricia Ferguson: There is according to the Scottish Parliament information centre. If there is not, the minister is affected only by the code for members and the register of members’ interests.

The Convener: Subsequent to the debate, I reminded myself of the situation. Just to be absolutely clear, ministers—as you will recall, because it was broadly the same from the outset—have to advise the permanent secretary of their interests and, indeed, those of their spouse or partner. However, there is not a register, notwithstanding what SPICe may say on the matter.

Patricia Ferguson: Well, whatever kind of document it may be described as—

The Convener: That is it—there is not a document.

Patricia Ferguson: It is not published, so the only register of interests that ministers have is the members’ one. Therefore, Margaret McDougall’s point is entirely valid.

The Convener: Yes, but as far as Parliament is concerned, we all serve equally as members. Being a minister is a parliamentary appointment—that is correct—albeit one that is made on the recommendation of the First Minister.

At the end of the day, I am in the committee’s hands on where we go with this, but I come back to the core issue that has got us here, which is consultants and directors.

Patricia Ferguson: I am quite happy if members want to include other categories to debate.

The Convener: I do not know what some of the categories mean—even the two before us. I do not know what a consultant is.

Patricia Ferguson: In that case, we should not use the word at all, either in our code of conduct or the register of interests. However, I presume that we use it because there is a generally accepted definition.

The Convener: Actually, we do not; only Jim Murphy is using it.

Patricia Ferguson: No, it is mentioned in the code of conduct, I believe. The code allows a member to be a

“director of a consultancy firm”,

for example, but it does not allow them to undertake paid employment as a consultant specifically advising on parliamentary matters.

The Convener: Yes, but that is focusing on the activity, not the role. I am sorry that I am being very picky. I am speaking here in a personal capacity; I am not attempting to speak as convener.

One of the things that came out of our work on lobbying was the difficulty that Westminster appears to have created for itself by using a role—which I think is defined as “consultant lobbyist” or something like that—rather than the activity. We should focus on the activity. It is perfectly proper that we consider extending the range of prohibited activities; it is even perfectly proper that we consider what people should earn from other activities. However, I am very uncomfortable about labels, because the moment we go for labels we simply invite those who wish to do so to use other labels.

Patricia Ferguson: We have already done it with lobbyists.

The Convener: We have not, actually; we have dealt with lobbying.

Patricia Ferguson: The code of conduct refers to “commercial lobbyists”.

The Convener: Yes, but we have not made any particular distinction. We have focused on lobbying.

Patricia Ferguson: I think that we are dancing on the head of a pin over this. If we want to have a discussion about the activities that might be covered by these terms, I am happy to do that, but we have to have the discussion.

The Convener: Sorry—I do not wish to be seen to be attempting to say that we should not have a discussion. It is just that when I am in considerable doubt as to what definition could ever say what a consultant is, I would prefer to focus on activity, not roles.

Cameron Buchanan: Once you have a definition, it is open to people to circumvent it and use another word, as we have found with lobbying and other activities. I do not think that we should have a definition. I am against the proposal.

The Convener: The question that we are addressing is whether there is merit in expanding the definition of activities that members cannot undertake. In other words, should we look further at the subject? Broadly, there is no reason why we should not. Do we all agree to carry that forward and look at it further?

Members indicated agreement.

The Convener: Right. The general issue is whether section 5 of the code of conduct is sufficiently clear or whether we can make the language simpler. That can form part of our looking at the subject—or do we think that section 5 is sufficiently clear in its present form?

Patricia Ferguson: No.

The Convener: Patricia does not. Do you want to put any specific comments on the record at the moment, bearing in mind that we are on the record?

Patricia Ferguson: I do not have any specific comments about how we should change section 5, as we would have to have a wider debate about that, particularly as we are not sure what we would change. However, in general terms it is an area in which members of the public must find it very hard to understand what we are talking about. If we can do anything at all to make that simpler, we should.

The Convener: So one of the things that we should do—it is not necessarily all that we should do—is look at our language.

Patricia Ferguson: Indeed.

The Convener: That is helpful.

The next question is quite interesting: whether we need to include more information in one place. We have promoted that theme in particular. For example, there have been issues around the Scottish Parliamentary Corporate Body’s charities policy. Are members quite comfy with the suggestion that we should pursue the possibility of drawing more information into one place, so that one can see exactly what is going on?

Members indicated agreement.

The Convener: Do members have anything more to say on what we should include or exclude? I see that they do not.

At the end of our paper, we are invited to discuss the terms of the rules and guidance on lobbying—it is clear that we have done that—and to decide whether consultation would be useful in advance of proposed changes to the code being drafted. Since Patricia Ferguson raised the issue of the public, we should at least give people the opportunity of a consultation, if that is the committee’s view.

Members indicated agreement.

The Convener: We now move into private session.

10:56

Meeting continued in private until 11:15.

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