



Agenda

2nd Meeting

Friday 18 November 2016

The Commission will meet at 1.00 pm in the Sir Alexander Fleming Room (CR3) at the Scottish Parliament.

1. The Commission will discuss the role of the Scottish Parliament, its engagement and scrutiny with—

Professor Alan Page, Professor of Public Law, University of Dundee;
Professor Nicola McEwen, Professor of Politics, University of Edinburgh;
Dr Hannah White, Director of Research, Institute for Government; and
Samir Lee, masters graduate in public policy, University of Edinburgh.

Paper CPR/2/1 – written views of discussion participants
Paper CPR/2/2 (private paper) – note by the Secretariat

2. The Commission will consider its approach to seeking written views (in private).

Paper CPR/2/3 (private paper) – Approach to seeking written views

3. The Commission will consider its initial approach to engagement (in private).

Paper CPR/2/4 (private paper) – Approach to engagement

4. The Commission will consider its approach to research (in private).

Paper CPR/2/5 (private paper) – Approach to research

Commission Secretariat
Room CG.07
The Scottish Parliament
Edinburgh
Tel: 0131 348 6400
Email: cpr@parliament.scot

Commission on Parliamentary Reform

2nd Meeting, Friday 18 November 2016

The role of the Scottish Parliament, its engagement and scrutiny – views of discussion participants

Introduction

1. At its meeting on 7 November, the Commission agreed to hold discussions at its meeting on 18 November with a number of academics on the role of the Scottish Parliament, its engagement and scrutiny functions.
2. The Commission will hear from—
 - [Professor Alan Page](#), Professor of Public Law, University of Dundee;
 - [Professor Nicola McEwen](#), Professor of Politics, University of Edinburgh;
 - [Dr Hannah White](#), Director of Research, Institute for Government; and
 - Samir Lee, masters graduate in public policy, University of Edinburgh.
3. The annexes to this paper contain the written views from the discussion participants.

PROFESSOR ALAN PAGE

I welcome the setting up of the Commission and the opportunity to contribute to its deliberations. The following paragraphs provide a brief summary of the analysis in my *Constitutional Law of Scotland*, which was published in June last year.¹ I have not sought to update the analysis at this stage, but the election of a minority government in May of this year represents a potentially significant shift in the balance of power between the Scottish Parliament and the Scottish Government – a shift on which the Parliament as an institution should make every effort to build.

There is no question about the high expectations that were held of the Scottish Parliament after 300 years which the only ‘Scottish’ Parliament had been Westminster. The Scottish Constitutional Convention’s ‘powerful hope’ was the coming of a Scottish Parliament would usher in a way of politics that was ‘radically different from the rituals of Westminster: more participative, more creative, less needlessly confrontational’.² The Consultative Steering Group, which was set up by the Secretary of State for Scotland to recommend the procedures the Parliament might be invited to adopt, was struck by the consensus that existed ‘that the establishment of the Scottish Parliament offers the opportunity to put in place a new sort of democracy in Scotland, closer to the Scottish people and more in tune with Scottish needs. People in Scotland have high hopes of their Parliament, and in developing our proposals we have been keen to ensure that these hopes will be met.’³

There are various ways in which we might characterise the change sought by the Scottish Constitutional Convention and others at the time. What they have in common is the idea that that political power should be shared rather than concentrated in the hands of government, and that decisions should be reached by consensus rather than a majority. But whether we characterise the shift as one from a ‘power-hoarding’ constitution to a ‘power-sharing’ constitution,⁴ or from a ‘majoritarian’ to a ‘consensus’ democracy,⁵ we should not underestimate the challenge involved in bringing it about, or the continued attractiveness and hence likely persistence of the Westminster tradition of ‘winner takes all’.

Were that tradition to simply reassert itself, however, as has arguably happened, the result would be a Parliament that is closer to the people but otherwise little real change.

In approaching its task, therefore, the Commission should not confuse the high expectations that were held of the Scottish Parliament with their realisation in practice. Nor should it overlook the extent to which, especially during Session 4 (2011-2016), the question of how well the Parliament does its job became part of the battle between the political parties at Holyrood.

¹ Alan Page, *Constitutional Law of Scotland* (Edinburgh, W Green, Thomson Reuter 2015)

² *Scotland’s Parliament, Scotland’s Right* (1995) 9

³ Scottish Office, *Shaping Scotland’s Parliament: Report of the Consultative Steering Group on the Scottish Parliament* (December 1998) Foreword

⁴ Anthony King, *The British Constitution* (OUP 2007) 50-51

⁵ Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (2nd edn, Yale UP 2012)

Faced with an avalanche of criticism at the end of Session 3,⁶ the Parliament embarked on what the Standards, Procedures and Public Appointments Committee billed as a 'thorough MOT' of its performance.⁷ In a letter to all MSPs in July 2011, the Presiding Officer wrote: 'I am pleased to report that the conveners enthusiastically endorsed a reform agenda that should enable parliamentary committees to increase their agility, responsiveness and focus.'⁸ As it unfolded, however, the Conveners Group's programme for change emerged as more about securing favourable media coverage for the work of committees than improving their effectiveness on holding the Scottish Government to account.

The setting up of the Commission, with the support of all the party leaders at Holyrood, acknowledges that the challenges the Parliament faces are not simply ones of media coverage. If the reputation of the Parliament's committees is to be improved, it will only be by doing the job they are supposed to do, and doing it well. What is needed now is a fresh look at the expectations of the Scottish Parliament in the light of the experience of the last 17 years, together with proposals for how that vision - or some lesser vision - might realistically be achieved.

In formulating recommendations for change, however, it will be important to bear in mind that procedural reform can only achieve so much. As the Calman Commission concluded: 'No doubt the system could be improved, but the drivers for change are likely to be less about the formal structures of the Parliament or its rules, and more about its culture and working practices, which are not easily influenced by external strictures. The committee system could work better than it does, but the motivation to achieve that can really only come from within.'⁹

⁶ See e.g. 'Lord Foulkes attacks "pathetic" Scottish Parliament' *Telegraph* 21 September 2010, Jackson Carlaw, 'It's time to realise the potential of the Scottish Parliament' (October 2010), Jack McConnell, 'Why the "pedestrian" Scottish Parliament needs overhauling' *Telegraph* 24 November 2010, 'Holyrood's "three wise men" back parliament overhaul' *Telegraph* 24 November 2010, 'Veteran MSP in call for-shake-up of Parliament' *Herald* 23 May 2011, Bruce Crawford, 'All parties needed to help change Holyrood' *Scotland on Sunday* 12 June 2011

⁷ Standards, Procedures and Public Appointments Committee, 2nd Report, *Reform of Parliamentary Business Inquiry Phase 1 Report: Remodelling the Parliamentary Week* (SPP 57 2011) para 6

⁸ Letter from the Presiding Officer to all members, 8 July 2011

⁹ Commission on Scottish Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century* (June 2009) para 6.43

PROFESSOR NICOLA McEWEN

Parliaments are widely recognized for their representative function and their legislative function. As representative bodies, they reflect the voting preferences of the electorate, provide a forum for constituency representation and provide democratic legitimacy to executive policy-making institutions. As legislatures, they process and pass legislation. But governments tend to dominate the legislative process. Governments have more power to set the legislative agenda, to initiate legislation, sufficient resources to inform and shape the legislative process, and usually the parliamentary majority to achieve their desired outcomes. As a result, the primary role and function of parliaments has become more focused on *oversight*.

Parliamentary oversight refers to the capacity and behaviour of elected members - individually or collectively - to check, question, examine, debate, challenge, influence, change, support, criticise, censure or generally hold to account those in public office. According to a study conducted for the Inter-Parliamentary Union¹⁰, the key functions of parliamentary oversight are:

- to detect and prevent abuse of power by the executive
- to hold the government to account for its priorities and efficiencies in public spending, revenue-raising and the economy
- to ensure government's policy commitments, authorized by parliament, are delivered and achieve their intended outcome
- to improve the transparency of government and enhance public trust in governing institutions

In the Scottish Parliament and elsewhere, parliamentarians have a range of tools to practice legislative oversight, including committee enquiries, witness hearings and evidence, written/oral parliamentary questions, motions, debates and votes. Two factors are key to how effective these tools are: capacity and motivation.

The capacity of parliaments to exercise scrutiny will depend upon broad institutional and structural factors. Some of these relate to the procedures and resources of parliament, including the rules and opportunities for parliamentarians to hold government to account; the experience, skills and expertise of parliamentarians; and the depth, expertise and capacities of the staff available to support parliamentarians.

These are areas that the Commission may consider revision. For example, can the expertise of parliamentarians be improved by focused training, developing specialisms or enhancing access to expertise? Would investment in support staff strengthen parliamentarians' capacity to exercise oversight of government? Is the balance between focused committee enquiries and plenary debate optimal for ensuring effective oversight? Access to information is crucial to effective oversight – are the flows of information from government and other institutions sufficient?

¹⁰ Yamamoto, Hironori, *Tools for parliamentary oversight: A comparative study of 88 national parliaments*, Inter-parliamentary Union, 2007.

The effectiveness of parliamentary oversight is also shaped by factors beyond the control of the Commission. These include the constitutional power of the chambers; the electoral system and its tendency to produce majority or minority governments; the structure and internal discipline of political parties; and the openness, strength and vulnerabilities of ministers. The nature of party competition, the extent to which issues are contested between parties and/or considered politically salient, the relative strength of government and opposition, proximity to an election, public/stakeholder interest, will all shape the motivation and political willingness of parliamentarians to engage in oversight activity.

A recurring theme in Scottish political debate is whether the Scottish Parliament requires a revising chamber. I will refrain from taking a particular view on this issue, though would encourage the Commission to look beyond the UK when evaluating whether two chambers are necessarily better than one in supporting parliament's oversight role.

DR HANNAH WHITE**More effective scrutiny: evidence to the Commission on Parliamentary Reform**

Biography: Dr Hannah White is Director of Research at the Institute for Government and leads the Institute's work on Parliament and on Brexit. Her research and experience is focused on the House of Commons and Lords. Hannah has more than 10 years' experience in the House of Commons and the civil service.

Key areas of focus:

1. Structural and behavioural factors affect the effectiveness of scrutiny

Structural factors include the size and composition of committees, their membership and how it is selected, their powers and remit. Behavioural factors include the attitude of members and the government to scrutiny, including the extent to which it is seen as appropriate to whip business in committees.

2. The skills and experience of those engaged in scrutiny shape its effectiveness

Skills and experience of those involved in scrutiny includes the background of members and whether they have held particular portfolios in Government or outside of it. It can also cover the skills of those working for the committee, and whether the committee has access to a range of qualitative and quantitative research.

3. Evaluation of committee impact improves scrutiny over time

Evaluation of impact should include assessing whether or not the committee achieved the aims it set out to achieve, as well as gathering feedback from key audiences such as ministers, business and civil society. Evaluation should aim to uncover what worked well but also what challenges the committee faced and how to improve in future inquiries.

4. The benefits of elected Chairs for effective scrutiny

The benefits of allowing members to elect committee chairs include: breaking the link between committee activity and party positions; encouraging a sense of independence among Chairs; electing Chairs with an appropriate range of experiences, skills and networks.

5. The role of specialised resource and Units in effective scrutiny

In Westminster specialist units, such as the Financial Scrutiny Unit, have been established to provide committees with expertise. The Scrutiny Unit works with individual committees to encourage them to engage with complex financial data and identify potential avenues for investigation; for example, highlighting areas where there is little transparency on how public money is spent.

SAMIR LEE

Samir Lee recently completed a master's degree in Public Policy at Edinburgh University. The dissertation – 'Unusual Suspects: Committee Engagement at the Scottish Parliament' – was based on research he carried out during a two-month placement at the Parliament. This looked at how (and with whom) committees engage during their inquiries, through the lens of five case studies from Session 4. The executive summary of Samir Lee's dissertation is provided below.

Key discussion points—

- A brief overview of his research
- Unpacking some of the different meanings of engagement
- How far do committees go with public engagement?
- Committee inquiries:
 - 'The usual suspects' in consultations
 - Factors affecting the diversity of committee witnesses
 - Open and closed (by invitation) processes
 - The status/use of different kinds of evidence (and how this relates to participation)
 - Public engagement as an 'add-on' / public engagement with purpose
 - How engagement might be evaluated
 - Opportunities for further public participation.

Executive summary of dissertation—

This report explores committee engagement at the Scottish Parliament. It looks at the issue of 'the usual suspects' – influential pressure participants that dominate consultations – and what committees can do to get beyond them, to engage with individuals and groups who might not ordinarily take part in the work of parliament.

To do this, five cases of successful and innovative engagement were investigated—

- Economy, Energy and Tourism Committee; Work, Wages and Wellbeing Inquiry
- Welfare Reform Committee: *Your Say* Initiative
- Education and Culture Committee: Inquiry Into decision making on whether to take children into care
- Equal Opportunities Committee: Age and Social Isolation Inquiry
- European Committee: Connecting Scotland Inquiry and International Development Event

The aim was to document good practice, and draw out lessons for engagement. A secondary objective was to evaluate each case, and, more generally, to contribute towards Parliament's thinking around the evaluation of engagement.

Key findings include—

Looking at the issues of bias, representation and inclusion only in relation to formal evidence---taking provides an incomplete picture.

'Unusual suspects' can offer lived/direct experience. This adds value to committee deliberations, makes an impact on MSPs, and can be used effectively when supported by other forms of evidence (i.e. with triangulation).

To date, committees have done little to evaluate their engagement work. Evaluation has focused on process, and has not involved external participants to a significant extent.

There has been a tendency for committees to work in silos; however, recently there have been moves towards a more joined---up way of working.

There is a perception that committees are not good at closing the feedback loop.

The Parliament has difficulties in tracking its audiences, which has implications for its engagement work.

Recommendations—

1. Parliament should continue to move towards joined---up working, in line with the Committee Engagement Strategy. How this works should be assessed periodically.
2. Build on the wealth of good practice documented in this report and elsewhere, and consider mechanisms for sharing innovations and learning.
3. Consider developing a more systematic approach for tracking audiences: a contact management system.
4. Develop an evaluation programme for committee engagement. This should involve evaluation of both processes and outcomes (especially impact on policy and policymakers), and take into account the views of those engaging and being engaged. Possible methods include focus groups and interviews. Committees should seek feedback from participants on their reports and other outputs as standard.
5. Look for opportunities to further involve the public (or publics) in deliberation, agenda---setting, and consensus building, particularly in open or politically divisive areas. Some committees are already setting precedents for this, which could provide models.
6. Address the perception that committees do not do enough to close the feedback loop. Following up on recommendations and keeping in touch with contacts is important here.