

## **Committees in the Scottish Parliament – Dr. Mark Shephard**

Prior to the creation of the committee system and the Scottish Parliament, a Consultative Steering Group was tasked with drawing up detailed proposals of how the Scottish Parliament was going to operate, and from the outset, committees were expected to be the 'engine rooms' not only for the effective scrutiny and influence of government, but for policy initiation as well. The idea was for a 'new politics' in which the 'old politics' of Westminster (majoritarian and top-down) would be replaced by more consensus-based and bottom-up democracy. To that end, committees were given extensive powers to scrutinise policy, administration and finance, to conduct inquiries, and to introduce legislation.

There are two main types of committee in the Scottish Parliament: mandatory committee and subject committee. Mandatory committees are set up at the start of each session and are subject to parliamentary rules. They include: Standards, Procedures and Public Appointments Committee; Finance Committee; Audit Committee, European and External Relations Committee; Equal Opportunities Committee; Public Petitions Committee; and Delegated Powers and Law Reform Committee. Subject committees are established at the beginning of each session and reflect main devolved policy domains and ministerial portfolios (for example, Education and Skills; Justice; and Health and Sport; Justice; and Local Government and Communities). While matching changing ministerial portfolios and priorities has an obvious benefit of committees fitting latest ministerial briefs, concerns have been raised that this can create confusion outside the parliament as groups have to adjust to committee name and brief changes. Other committees include private bill committees that are established to work with persons and/or companies at delivering outcomes that cannot be achieved through regular channels, for example, major infrastructure projects like trams and railways.

### **Theory versus Practice and Potential Improvements**

Committees can be given extensive theoretical powers, but what matters is what happens in practice. By the end of the first session it became clear that committees were not realising the potential their extensive powers suggested. The Procedures Committee (2003) noted how committees had become a 'conveyor-belt' for dealing with government legislation. The laments of 20 years ago are much the same issues of today. In the first session of the Scottish Parliament (1999-2003), 50 Government (then Executive) bills passed compared with eight members bills, three committee bills and 1 private bill. In the second session (2003-2007), 53 Government (then Executive) bills passed compared with three members bills, one committee bill and nine private bills. In the third session (2007-2011), 42 Government bills passed compared with seven members bills, two committee bills and two private bills. In the fourth session (2011-2016), 66 Government bills passed compared with seven members bills, one committee bill and five private bills. If we count current bills in the fifth session of the Scottish Parliament (as of 1<sup>st</sup> November 2018) we find 16 are government bills, two are members bills and two are private bills. What is noticeable about this comparison across the years is that even when the government has been in minority (2007-2011; and 2016- ), the preponderance of bills being considered in committee and passing into legislation are from the government. While we can quibble about the actual origin of legislation and of amendments (for example, legislation can be inspired by backbenchers and a minority of amendments originate from backbenchers and are

withdrawn on the proviso that government ministers will address the point(s) raised – see Shephard and Cairney, 2005), what is clear is that government dominates even when it is a minority government. Research on inquiries also points to limited committee performance given the primary emphasis given to the consideration of government legislation (Cole, 2016). In turn, evidence for a ‘new politics’ has been sorely lacking.

Why does the government dominate? First, the government has a strong level of control over the parliamentary agenda and business conducted. Second, parties maintain too much discipline over their MSPs meaning that votes are less about building an informed committee consensus and more about adherence to party whips and the party line. Third, while committees may theoretically be able to exercise lots of powers (e.g. right to initiate legislation), in practice reaction to government legislation dominates the agenda and calls for more proactive inquiry work as well as more pre and post-legislative scrutiny still resonate, including calls for the three-stage legislative process to be replaced by a five stage process that incorporates pre and post-legislative scrutiny as the norm rather than the exception. Fourth, the Scottish Parliament is relatively small in size and so any rotation (e.g. of ministers, of committee members, of leaders etc) can have more noticeable knock-on effects for all committee memberships. In the case of the nine member Health and Sport Committee, for example, 21 MSPs have been members of this committee in just over two years since the start of the 2016 session. While this committee has experienced most turnover, there have been 97 movements across committees since the 2016 session, and only two committees out of 16 (mandate and subject committees) have experienced no turnover. This then affects the capacity of committees to develop subject expertise and institutional memory, both of which are critical in building power and influence vis-à-vis the scrutiny of the government. One theoretical solution is to increase the number of MSPs as this would dilute the knock-on effects of any movement. While politically sensitive to increase MSPs in practice, this should become less of an issue the more powers the Scottish Parliament accrues from both Westminster and ultimately most likely from Europe post-Brexit. Alternatively, you could reduce the number of MSPs per committee and rely more on substitute members to deal with absences. However, one of the side-effects of reducing the number of MSPs per committee is the risk of losing the representation of party dynamics in the parliament. A more radical solution to the increasing pressures and lack of time for scrutiny within the Scottish Parliament is to introduce a second chamber.

However, developments at Westminster (and in other parliaments such as the Welsh Assembly) have not gone unnoticed and one of the ways party control in committees has been reduced in the House of Commons has been to remove committee chair selection from the power of the party leaders and whips and hand this power to Parliament. Indeed, The Commission on Parliamentary Reform (2017) has recommended that convenors (committee chairs) be elected by the Parliament rather than allocated according to party seat-share balance in the Parliament and then by party (leadership) choice. The rationale for this change is threefold: to increase transparency and fairness of selection; to facilitate more independence and strength of convenor behaviour (especially when scrutinising government policy, administration and actions); and also to provide alternative career paths for politicians other than ministerial posts.

To attract the best talent to convenor (chair) posts, additional pay incentives were made available in Westminster and this and/or money for support fulfilling wider roles that a convenor may forgo to fulfil committee duties is also something that has been proposed for the Scottish Parliament and that is being considered by the Standards, Procedures and Public Appointments Committee. A more radical proposal would be to ensure that all convenors were from opposition parties (current Standing Orders of the parliament state that the convenor of the Public Audit and Post-Legislative Scrutiny Committee cannot be from the governing side).

Committee size has continued to be a point of contention over the last 20 years. Initially, committees were quite large (up to 15 members). Currently, mandate and subject committees are much smaller and range from five (Delegated Powers and Law Reform) to 11 members (Education and Skills, Finance and Constitution, and Rural Economy and Connectivity) with seven to nine MSPs the norm. The Commission on Parliamentary Reform (2017) has recommended a norm of seven MSPs per committee with exceptions granted for larger committees where sizeable issues such as constitutional reform should permit a more balanced representation of party dynamics in the parliament.

While limited resources do mean that most committee meetings are based in Edinburgh, committees have worked hard at connecting with the wider community through visits and meetings and evidence collection around Scotland. Concerns that committees are still too removed from public service users and 'remote' voices (for example, by geography, culture, language, accessibility, and finance) are currently being addressed through the creation of a Committee Engagement Unit designed to assist committees and witnesses in undertaking more innovative and meaningful engagement. Lessons have been learned from Wales, particularly on how to engage early, think across committees (rather than in silos), and on how to broaden communication with groups beyond the usual suspects while at the same time taking some of the weight off convenors and clerks in delivering on these fronts. The benefits of addressing CSG principles of power sharing and participation, as well as improving public trust and evaluating all of this, are deemed worthy of the additional costs.

As well as assistance from a Committee Engagement Unit, another way in which committees could improve their scrutiny could be to rely more on existing external expertise and advice, and not just through formal appointment of advisers, but through ad hoc informal channels as well. The Committee Engagement Unit could also help deliver these connections. Thinking more radically, external expertise and advice could provide the basis for a second chamber that connects experts and sectors and regions to the Parliament without the need for an added tier of elected politicians and all the costs associated with this. Internally too, more could be done to realise the potential expertise, knowledge, resources and external links of cross-party groups. Committees are also starting to find more ways to use the Chamber as a forum for announcing and publicising the launch of inquiries and for summarising the findings from published reports. This will help with increasing visibility outside the Chamber, which should help widen community engagement and trust and support. Committee timetabling could also be improved so that it is not curtailed unnecessarily by chamber business. One way of doing this might be to have set days and/or weeks for chamber business and set days and/or weeks for committee business so as to reduce the stop/start nature of trying to do multiple things on one day. Timetabling could

also be used to enhance the profile of issues by making chamber debates connect more closely with committee topics and discussions. Finally, experience to date has shown that legislation comes thick and fast at the end of a session and so timing of parliamentary activities like inquiries might need better and earlier planning.

To address better the need for government scrutiny, The Commission on Parliamentary Reform (2017) recommended that the Conveners' Group (chairs of all the committees) start thinking more strategically across committees about the issues that they focus on for scrutiny given the time and resource limitations of the committees. From the government, giving committees both additional supporting documents and evidence for new government bills and also post-legislative feedback on the extent to which bills have been enacted, at what cost, and with what effect compared to that proposed would also assist greatly committee scrutiny. Also, granting committees more control over the timescale for completing oversight of bills would greatly improve committee capacity to scrutinise the government.

Other developments at Westminster have not gone unnoticed. The creation of a 'back bench committee' has enabled MPs to have a say in parliamentary business, often to raise issues and agenda-set through their own debates, for example, calls for a referendum on EU membership can arguably be traced back to discussions and pressures stemming from the back bench business committee. The Commission on Parliamentary Reform (2017) have recommended that the Scottish Parliament think about introducing something similar to raise the capacity and profile and impact of back benchers.

## **Summary**

Committees in the Scottish Parliament are expected to do a lot (theoretical powers) with little (relatively small number of politicians and support resources combined with an increasing amount of devolved powers and expectations). Consequently, the concern from the outset of devolution that committees were 'conveyer belts' for government legislation is arguably even more prescient now. Ever mindful of the need for efficiencies and creative thinking to solve problems, The Commission on Parliamentary Reform (2017) has provided a range of creative and low cost solutions to many of the problems faced by committees (for example, better use of external experts). While many of these will see improvements in how committees operate, we might still need to think more radically (for example, increased numbers of politicians, a possible second chamber...) if we don't keep wanting to reiterate many of the concerns about theory not matching practice raised by the Procedures Committee in the very first session of the Parliament. This becomes even more acute an issue given the additional pressures likely to be created by increasing levels of devolution from both London and Brussels.

Relating reforms proposed versus reforms realised to the founding principles of the Scottish Parliament (power sharing; accountability; participation and access; and equal opportunities) it is arguably easier for the Parliament to implement reforms that address participation and access and equal opportunities (for example, the creation of a Committee Engagement Unit) and harder to implement reforms that deal with the more politically sensitive areas of power sharing and accountability, particularly when these pertain to the

working relationships between committees and the government (for example, elected convenors and greater roles and powers for the opposition and back benchers). While elected and remunerated convenors and greater roles for back benchers are likely to see the light of day (after all, if Westminster can do it...), some of the more challenging proposals such as weakening government control over timetabling and convenors (opposition convenors only) are less likely to come to fruition.

## References

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