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The **Constitution** Unit

Realising the Vision:
a Parliament with a Purpose
An audit of the first year of
the Scottish Parliament

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Executive Summary

- Contrary to the conventional view that the Scottish Parliament was created by a clear, consistent policy process, its founding blueprint betrays a confused, contradictory variety of approaches to the Parliament's role in devolved governance. The influence of UK politicians and officials ensured that the Parliament, as established, was firmly within the 'Westminster model' family, especially in its relationship with the Executive.

- In the Parliament's first year, it sought to reconcile these various visions and the reality of its inherited statutory rules. It has had to review and adapt many procedures and practices in the light of experience, while seeking to retain the basic operational structure of its initial Standing Orders.

- The centrality of political party involvement and competition within the Parliament has ensured a more adversarial, less consensual parliament than was suggested by some of the more idealistic rhetoric of the 'new politics'. The success of the Parliament has been in synthesising these two pressures to produce a lively and very productive assembly, embracing genuine debate and disagreement within an ethos of collegiality unknown at Westminster.

- The committees exemplified this trend, even though they faced greater workload and resource pressures, particularly due to the volume of Executive legislation, than was anticipated. These constraints prevented them from exploiting as much of the innovative and participative working practices, or being as involved in the first budgetary process, as they would have wished.

- The Chamber has become more central than originally foreseen, rather overshadowing the committees, at least in terms of media and public attention. The creation of a First Minister's Question Time in January 2000 was a stark acknowledgement of this trend.

- The Parliamentary Bureau has proved to be less an open, transparent and inclusive business committee model, and more a formalisation of Westminster-style 'usual channels' practice. The weighting voting system in the Bureau has consolidated the power of business managers and the Executive at the expense of MSPs as a whole.

- While the Parliament continues to face up to the problems caused by its initial blueprint and the conflicting expectations of its operation, it
  - has successfully established itself as a permanent feature in Scottish governance,
  - is outgrowing these limitations and restraints,
  - can now develop genuinely innovative practices, and
  - is developing a more coherent, individual ethos.

- An essential component of that success is that it has some form of underpinning vision to guide it. Unlike Westminster, it is genuinely a parliament with a purpose.

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1.   Introduction

1.1.   Scope of this Study

This Study has a defined but ambitious focus. Evaluating whether the Scottish Parliament, in its first year of life, realised the vision which gave it birth, requires examination of a number of matters:

- what was that vision;
- what did the Parliament actually do in the period under examination, and
- how should that activity be equated to that vision.

Central to the founding philosophy of the present Scottish devolution scheme was that it should be more than merely a practical exercise in governmental decentralisation. Whatever the immediate political imperatives which led to the enactment of the *Scotland Act 1998*, there was always a strong and influential current of opinion that demanded that the devolution scheme should provide 'better' governance in terms of both process and outcomes. This was a crucial trend for the purposes of this Study, as these aspirations were almost entirely focussed on the new devolved Parliament.

That the Scottish Parliament should be different from, and better and more effective than, the UK Parliament at Westminster was a constant refrain since the late 1980s. The Parliament was not just administratively constructed; it was formed in accordance with what was seen as a defined vision which set out its aims and values. Any evaluation of the Parliament, therefore, has to encompass not just the success of its establishment, or the fact of its continuous existence or operation. It also has to consider whether it realised that vision under which it was created. The Scottish Parliament was not just to be a functioning parliament, but a parliament with a purpose.[1] How it sought to achieve that purpose is the main focus of this Study.

It will be argued in this Study that the core work and output of the Scottish Constitutional Convention (SCC, 1989-1995) and the Consultative Steering Group (CSG, 1997-1998), while in many important respects a radical and innovative political process, cannot be regarded as a sufficiently comprehensive template for any parliament in action. In particular, it was insufficient for one in the mould of the Scottish Parliament as established, especially in its initial phase. Further, it will be argued that this is largely due to the lack of consistency between the various visions of a devolved parliament which were influential in the decade and more of devolution policy-making. It was not always clear what sort of democratically elected institution was being created, whether it was a devolved Scottish version of what is

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[1] This was the title of a Hansard Society conference in July 2001 in conjunction with the publication of its study of the scrutiny role of the UK Parliament, and would have been an excellent title for that study, or, indeed, for the CSG report itself.

generally understood and accepted as a 'parliament', or something entirely unique and tailored to the specific devolution scheme.[2] This complicates any audit of the Parliament's performance.

This was compounded by the extent to which any such visions were not consistently carried through in the detailed proposals for the Parliament's operation, and then in its actual rules and procedures. Further, how the Parliament itself dealt with its own establishment, within the inevitable legal and practical limitations of that process, is also relevant to an assessment of its early performance. This involved the Parliament testing the very blueprint with which it was presented, making changes where it deemed it necessary, and thereby altering that very benchmark against which its performance is being measured.

Such reshaping can arise for a number of different reasons relevant to this Study. Early changes of procedure and practice could be regarded as a manifestation of the flexibility and robustness of the founding vision, in that it encompassed and enabled necessary refinement. On the other hand, if such changes arose from defects or gaps in that initial blueprint, and if they were 'solved' by convenient quick fixes based on Westminster practice, they could be regarded as retreats from its basic philosophy.

Process is fundamental to a parliament's operation. A parliament exists to facilitate various key governance activities, such as debate, scrutiny, law-making and the ventilation of citizens' grievances. It was neatly put in a useful submission to the CSG:[3]

> Standing Orders sound boring, dusty and irrelevant to the democratic agenda; this could not be further from the truth. Standing Orders are at the very heart of any democracy. The operational aspects of the Scottish Parliament will be crucial to its future effectiveness.

The provenance of the rules under which the Scottish Parliament operated in its first year is important for this Study. The Parliament's basic structure and rules were not devised by the Parliament itself, but by the UK Government, through the *Scotland Act 1998* and its related delegated legislation. The initial set of Standing Orders is the most obvious and important example of the latter. It was not the package of proposals of the SCC or of the CSG which the Parliament had to operate. It had to abide by the statutory scheme created by UK legislation,

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[2] Just as the National Assembly for Wales, the Northern Ireland Assembly and the Greater London Assembly are unique constructions, each designed for its own 'devolution' scheme.

[3] M Mitchell, *Standing Orders for the Scottish Parliament*, Charter 88, 1998, p4. An influential contribution to the early 1990s policy debate put it similarly, "procedures are not irrelevant to democracy, they are part of its essence:" B Crick & D Millar, *To make the Parliament of Scotland a model for democracy*, 1995, p3 (a revised version of a 1991 publication).

which may or may not have fully translated that vision into operational parliamentary practice.

The Parliament has, within its legal competence, power to create its own rules and practices. It can do so by changing Standing Orders or by enacting relevant legislation; by creating rules, guidance or practices fleshing out these Standing Orders, or by dealing administratively with matters not covered by the initial rules. It will be argued that the Parliament accepted the initial procedural framework, in the sense that its first year operated it, and all reviews and amendment of its practices retained that essential structure.

It is natural for a new organisation, especially one whose creators explicitly intended to leave much of its operating detail for it to work out itself, to spend a significant amount of its time dealing with these internal matters. Yet much of this was decried by the media as 'navel-gazing' at the expense of so-called real parliamentary work. This onslaught made the Parliament and its MSPs feel that they had to justify their activities even more than would be expected, which may be why there has been so much talk by MSPs, ministers and others, about how much, and how well, the Parliament has done thus far.

Yet, in the long run, the Parliament's first year will be judged not by how many Bills were passed, or questions or motions were dealt with, but how well the Parliament grew up during that period into a body that begins to meet the many, often contradictory, expectations heaped upon it. It is in this spirit that this Study is written.

1.2.   Measuring the performance of the Parliament

"A new Parliament does not guarantee new politics"[4]

This Study must not only examine the Parliament's initial performance by reference to measures based on its founding blueprint. It must also provide some broader indication of its performance as a parliament, as a representative democratically elected legislative assembly within the scheme of devolved Scottish governance. This assumes that there are some functions and attributes which are fundamental to all 'parliaments', or at least common to those within the broad 'Westminster model' family, as characterised by some degree of separation between executive and parliamentary institutions and functions.

Such a model of parliamentary government[5] means that, contrary to much of the devolution rhetoric since the 1980s, the Scottish Parliament is not directly a mechanism for devolved policy delivery. Unlike an executive, it has no public policy agenda of its own against which

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[4] A Brown, "Designing the Scottish Parliament" (2000) 53 *Parliamentary Affairs* 542, 554.

[5] This is neatly discussed in chapter 1 of the modern classic work on the UK Parliament, J Griffith & M Ryle's *Parliament: functions, practice and procedures*, 1989.

it can be measured. It does have, however, a key role in shaping and facilitating these policy outcomes, and is a central player in the achievement of 'better governance'. The sole focus of this Study is the Scottish Parliament, not Scottish devolution itself. While the Parliament is a key component of Scottish devolution, and its most visible innovation, it is not the whole devolution story by any means, though some aspects of its performance will depend on the success or otherwise of the Scottish devolution scheme established by the *Scotland Act 1998*.[6]

The Scottish Parliament has been deliberately termed a 'parliament', implying that it has some defining characteristics in common with other parliaments, rather than simply being one of the generality of democratically elected representative assemblies and legislatures. This is not the place to review the literature on the definitions of these types of institutions.[7] What is relevant here is the extent to which the Parliament can be assessed in isolation, based purely on 'domestic' indicators, and to what extent it should be measured against some more generic measure of parliamentary performance.

Every parliament is a product of the constitutional structure and political culture of the 'state' it inhabits. It will have its own regime of powers and duties, which may provide different emphases as to the range of its functions. Imposing the standards and values of existing parliamentary practice - whether from Westminster, the Commonwealth, Europe or elsewhere - may well detract from the very innovativeness intended to be at the heart of the new Parliament. On that basis, the Parliament should be assessed primarily on its own terms, on the basis of what was intended for it in its creation.

On the other hand, it is generally accepted that democratic representative legislative assemblies, especially those which are termed 'parliaments', have some essential characteristics and functions in common. In particular, there are six prime functions of a parliament which are usually enumerated, and which are adopted by the audit template underpinning this Study:
- Representing the people
- Making the law
- Providing, sustaining and scrutinising the executive
- Controlling the budget
- Providing an avenue for the redress of grievances
- Managing itself effectively to carry out the above five functions

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[6] For wider studies of devolution, see R Hazell (ed.), *The state and the nations: the first year of devolution in the United Kingdom*, Imprint Academic, 2000, and N Burrows, *Devolution*, Sweet & Maxwell, 2000

[7] For a recent contribution, see John Uhr, *Deliberative democracy in Australia: the changing place of Parliament*, Cambridge UP, 1998. See also, for example, the 1998 'Latimer House Guidelines for the Commonwealth' on governance and parliamentary supremacy:
http:///www.comparlas.co.uk/guidelines/index.htm

Applying such criteria enables an assessment to be made of the Parliament's performance against both the specific internal indicators of the CSG report, and a more general standard of parliamentary performance. This Study has been undertaken on the basis that a twin-track evaluation of this sort is required for the Scottish Parliament. Its approach has to take full and fair account of its unique personality and structure, as a product, not just as the embodiment of the aspirations of its founding blueprints, but also as part of a Scottish, British or wider parliamentary tradition.[8]

1.3. Methodology

This Study was begun by members of the Constitution Unit, who undertook initial research, including interviews with key parliamentary players, during or shortly after the period under examination. The carrying-forward of this Study by the present author, and its timescale, has required some modification of this approach. In particular, a degree of hindsight has become possible, with all the advantages, and pitfalls, that that brings. More information has now been collected and published by the Parliament on its first year of operation. Some initial academic work has been produced to balance both the published work on the pre-devolution period, and the flood of media punditry on the early days of devolution.

The relevant time-frame of the Study is the first year of the Parliament. This is interpreted loosely, for a number of reasons, even though the first parliamentary year is defined in Standing Orders as the twelve months from the first meeting of the Parliament, 12 May 1999 to 11 May 2000. The end of that year does not form a natural break in the work of the Parliament - as the Parliament itself has realised in matters such as annual reports - as it fell during a normal sitting period. Further, an important component in the CSG blueprint was that the Parliament should operate on a four-year sessional cycle, rather than what was seen as Westminster's more restrictive and inflexible annual sessional cycle. In addition, as is inevitable in an initial year, a great deal of parliamentary effort was devoted to start-up tasks, much of which did not bear fruit until the following year. While this Study concentrates on the Parliament's activity in the first twelve months, it also considers events in the following months in so far as they are appropriate or necessary. No changes or developments since the 2001 summer recess are included.

Because what is being examined is the first year of a totally new institution, some description or explanation of the Parliament's origins, structure and operation is required. However, this Study is intended to be freestanding, and not to be a procedural guide. Readers wishing

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[8] That the Parliament regards itself as belonging to the international parliamentary family may be seen in its successful application for membership of the Commonwealth Parliamentary Association in 1999-2000.

further details of any particular aspect of procedure and practice should consult the Parliament's own sources or other relevant material cited in this Study. For brevity, references and citations to primary material are kept to a minimum.

Caution must be exercised in relation to the statistics used in this Study. The Parliament has produced a mass of data and general information in a number of ways, such as committee briefing papers, annual reports, and in routine official records. All this material is available on its public website: http://www.scottish.parliament.uk. However, a close examination of that material discloses some inconsistencies and errors. While, to some extent, this is understandable in a brand-new institution, where uniformity of practice cannot be easily guaranteed, it does make the detailed study of many aspects of parliamentary practice difficult. This is especially the case in discrete and complex areas of business, such as subordinate legislation scrutiny, or the extent and categorisation of plenary and committee business.

Where such problems have either been identified or suspected, the relevant data have been recalculated directly from the primary sources, in so far as that is possible from the available material as published, or as kindly provided by parliamentary staff. This may well mean that some of the data presented in this Study will be different from that published in official parliamentary sources or in academic work. In many cases, there is no 'true' answer, because of procedural or technical variations inherent in some of the initial procedures and rules of the Parliament, or in differential interpretation during that first year. This is compounded in the many areas where either the formal rules or the actual practice has changed during the first year, thereby changing the basis of any relevant data collection.

Grateful thanks are due to all the parliamentary staff, MSPs and their staff who, in the true spirit of the CSG vision, generously and helpfully responded to requests for information or assistance during the production of this Study. Colleagues at various institutions, including the Constitution Unit itself, also provided invaluable support and advice. Without the editorial and inspirational support provided by the Unit's Director, Robert Hazell, this Study would not have been possible. The initial work of Richard Cornes and his colleagues on this Study greatly assisted the final product, as did discussions with the authors of the parallel Northern Ireland study.[9] Nevertheless, it must be emphasised that none of them is in any way responsible for any of the views or conclusions expressed in this Study, or for any of its errors or omissions.

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[9] Robin Wilson and Rick Wilford, *A Democratic Design? The political style of the Northern Ireland Assembly*, Constitution Unit, May 2001.

2.   Planning the Parliament

2.1.   Devising a parliament

".. as it is always in the power of the majority, by their numbers, to stop any improper measures proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts by those in power are the forms and rules of proceedings.."[10]

"Scotland has a unique and enviable opportunity: a blank sheet of paper to devise a new Parliament fit for the 21st century."[11]

The previous chapter has already noted the constant theme during the development of devolution policy since the late 1980s, that not only should there be a Scottish Parliament, but also that the opportunity should be taken, in the creation of a whole new tier of decentralised government, for the adoption of new and innovative procedures and practices. These would

- exploit the potential of new and developing information technologies
- adopt and adapt the best practice of parliaments and assemblies in other countries, and
- be tailored to the unique culture and traditions of Scotland and its people.

The challenge for the creators of the new arrangements has therefore been to give practical effect to these aspirations within a context that would provide a workable, effective system of devolved governance, acceptable to the people of Scotland. The very features designed to ensure a novel, innovative scheme of devolved governance, such as substantial civic participation, should enhance, not inhibit, the achievement of these aspirations.

Much has been written about the process in the 1980s and 1990s being an empirical one, starting with a 'blank sheet of paper.' While understandable as political rhetoric, the notion that the Scottish Parliament was a body totally created from first principles, based on a considered and consistent politico-constitutional theory, has persisted more than two years after the establishment of devolution.[12] It is a central theme of this Study that the Parliament was not created by such a pure and logical process, but resulted from a complex amalgam of

- 'bottom-up' Scottish thinking on a 'new form of politics',
- 'top-down' adoption of existing UK constitutional and political practice, and
- adaptation of parliamentary procedure and practice from a variety of sources, but especially from Westminster.

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[10] *Hatsell's Precedents*, 1818 ed., II, 237

[11] M. Mitchell, *Standing orders for the Scottish Parliament*, Charter 88, 1998, p2

[12] The new Leader of the House of Commons, Robin Cook, could even say, in a speech in July 2001, that, "in Scotland we have a new Parliament with what we might describe as 'green field' rules" (speech to Hansard Society conference, Church House, London, 12.7.01).

Conventional wisdom has it that the process of the last 15 last years did more than produce the vision and blueprint of the 'new politics', but was itself a guiding example of the 'new politics' in action. It followed, so the theory goes, that if this process was so inclusive, participative and consensual, then its product must itself be a satisfactory blueprint based on these very principles. Thus, this Study requires some overview of the development of the process itself, especially the extent to which it was consistent in theory and practice.

2.2.   The Scottish Constitutional Convention

The most useful starting-point for the process which led to the present devolution scheme is probably the late 1980s, as the period, in the aftermath of the abortive 1970s devolution attempt, when many of the disparate pro-devolution forces came together to form the Scottish Constitutional Convention (SCC). The SCC is central to the story because it was conceived, in deliberate contrast to the 1970s experience, as a non-elitist, inclusive exercise by Scottish civil society. It also involved Labour and the Liberal Democrats, although the Conservatives and the SNP chose not to participate. Despite the setback caused by the 1992 general election result, the SCC provided a forum for 6 years of intensive and considered discussion between 1989 and 1995. This led, in its final report in November 1995, *Scotland's parliament, Scotland's right*, to a fairly detailed blueprint for devolution around which many political and civic forces in Scotland could unite.

Some work on the detailed operational structure of the proposed parliament was undertaken within the SCC process during these years. However, with few exceptions, much of this was limited to aspirational principle, often of the 'not like Westminster' variety, rather than detailed proposals. Though a detailed procedural blueprint was not prepared or published by the SCC, its final report's section on the working of the Parliament clearly influenced future policy development, not least in terms of the form and terminology of the continuing policy debate.

It described the creation of a new parliament as "a rare and exciting moment, one which affords unique opportunity for change and renewal… a chance to effect fundamental improvements to the way Scotland is governed." It expected the parliament to "provide through its practices and procedures a form of government in whose accountability, accessibility, openness and responsiveness the people of Scotland will have confidence and pride." The parliament would be "very different from the Westminster model." The proximity of the new Parliament would be reinforced by an information strategy "designed expressly to encourage understanding of the parliament's workings and participation in its decision-making by all organisations and individuals. The parliament will take steps to ensure the greatest possible involvement by the people of Scotland both as Members of the Scottish parliament and as contributors to its work… Specific and systematic arrangements

should be put in place to make sure that the parliament remains responsive to the wishes and values of the Scottish people."

The SCC saw these aspirations being put into force in two ways. Enshrined in the devolution legislation would be matters of "fundamental importance" without which "the parliament could not begin to function." These would include the methods of appointing a Speaker and deputies for the parliament, a chief Minister and a Cabinet, the length of the parliamentary term and the question of dual mandates. The Parliament's operating rules would be encompassed in Standing Orders. The SCC had been working with others on the detail of these rules, and it "would encourage wider debate and discussion." The report set out some basic principles:

> Like all modern legislatures, the Scottish parliament will operate according to an agreed set of Standing Orders… While it will ultimately be for the parliament itself to decide its Standing Orders, the Convention is committed to delivering a parliament of a new type and therefore expects methods of operation which ensure openness, responsiveness, accessibility and accountability. Accordingly, the Convention believes that these conditions will require the adoption of Standing Orders which, for example:
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> - oblige MSPs to devote themselves to the business of the parliament and to the interests of the electorate;
> - enable electors directly to petition the parliament;
> - provide for the parliament to operate through a system of powerful committees which are able to initiate legislation as well as to scrutinise and amend government proposals, and which have wide-ranging investigative functions;
> - require the legislators to consult widely both before and during the legislative process;
> - specify working hours and a working year designed to make it as easy as possible to stand for the Parliament and to influence it;
> - promote all aspects of equal opportunities, and monitor the parliament's success or otherwise in this respect;
> - make appointments to public bodies as open and democratic as possible;
> - make provision for independent investigation of alleged malpractice on the part of individual MSPs or of government departments;
>
> - provide facilities for the public and the media to meet MSPs easily, and

- to observe and report on all aspects of the parliament's activities; and
- encourage and promote constructive, rather than confrontational, debate and discussion.

2.3.   The Crick-Millar proposals

Among all the more generalised work of this period on the proposed parliament, two expert students of parliamentary practice, Bernard Crick and David Millar, undertook the most influential and detailed research being undertaken at the time on operational aspects of the proposed parliament as a functioning institution.[13] This work was designed to fit the emerging themes of the SCC's proposals, and to produce effective procedures relevant to modern Scottish conditions and opinion. Their aim was to ensure that these detailed matters would receive consideration within the forum of policy development provided by the SCC, in advance of any formal involvement by the UK Government when preparing the relevant legislation.

The authors of this work feared that, to fill any policy gaps, resort would be had by UK policy-makers to their existing (though unpublished) work done for the proposed 1970s Assembly, which they described as "a scaled down mini-Westminster perfectly fitting for a small colony in the 1950s."[14] They warned that any practices adopted by the parliament could be frustrated by poor organisation and resources. The Parliament required an efficient organisation and administration, a first-class modern information service, and, in particular, relevant and effective procedures suited to Scotland's conditions, but also drawing on democratic devices from outside the United Kingdom.

This work is very relevant to this Study, both as a key document in the creation of the founding vision of the new Parliament, and as perhaps the only substantial work of the 1989-1999 period that is wholly grounded in a parliamentary ethos. It is this latter attribute which makes the Crick-Millar package such a useful reference at various points of this Study.

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[13] *Making Scotland's Parliament work*, 1991, revised as *To make the Parliament of Scotland a model for democracy*, 1995.

[14] The authors regarded the pre-1707 Parliament as irrelevant as a model for the 21st century. The SNP did undertake some study of its own on the workings of a Parliament for an independent Scotland, which included examination of the extent to which the procedures and terminology of the pre-1707 Parliament could be adapted and updated.

2.4.   The Consultative Steering Group

As a Labour victory in the imminent UK general election became increasingly likely, devolution planning moved more into the more conventional arenas of the political parties, and of the think tanks such as The Constitution Unit. It also developed, both in Scotland and more widely, as part of the general debate on constitutional change and reform.

The new Labour Government's white paper, *Scotland's Parliament* (Cm 3658, July 1997), reflected the party's devolution policy,[15] as it had developed in internal party bodies, the SCC, and in the pre-election constitutional reform agreement with the Liberal Democrats.[16] The Government's general position on the creation of the Parliament and its procedures was described:

> **9.1** The Government intend the minimum of legislation to establish the Scottish Parliament; and wherever possible to leave the Scottish Parliament to decide for itself what its procedures should be. This Chapter sets out the basic constitutional arrangements which the Government will put in place, within which the Scottish Parliament will operate according to its own procedures …..
>
> **9.8** The Scottish Parliament will be responsible for drawing up and adopting Standing Orders. The Government intend that these Standing Orders be designed to ensure openness, responsiveness and accountability. There will be minimum requirements …..
>
> **9.9** The Government wish so far as possible to leave detailed decisions on how the Scottish Parliament will work to that Parliament itself. The Government expect that the Scottish Parliament will adopt modern methods of working; that it will be accessible, open and responsive to the needs of the public; that participation by organisations and individuals in decision making will be encouraged; and that views and advice from specialists will be sought as appropriate.
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> **9.10** The Government also expect committees to play an important part in carrying out Parliamentary business and the Scottish Parliament will have power to establish such committees as it considers appropriate….

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[15] For example, in *A Parliament for Scotland: Labour's plan*, March 1995, and the election manifesto, *New Labour: because Scotland deserves better*, April 1997.

[16] See the report of the joint consultative committee on constitutional reform ('Cook-Maclennan report'), March 1997.

> **9.11** In summary, the Government will provide a framework for the Scottish Parliament, but it will be left open to that Parliament itself to develop procedures which best meet its purposes.

These principles were reflected in the legislation that proceeded through Parliament during 1998. However the general expectation that the Parliament itself would devise its own procedures - presumably during the extended period between election and full operation that was initially factored into the devolution timetable - was abandoned before the end of 1997. The influential 1996 Constitution Unit report, Scotland's parliament: fundamentals for a new Scotland Act, had proposed a process which called for the preparation of a draft set of standing orders by an all-party group, and drawn up by the core specialist staff already identified for secondment to the Parliament following its establishment. This would forestall any risk that standing orders would simply be imposed by the UK Government. Consensus could be achieved relatively smoothly by accepting the main thrust of existing detailed drafts, especially the Crick-Millar proposals. It was envisaged by the Unit's report, as by the SCC, that any initial standing orders would be adopted by the Parliament itself immediately after its establishment.

In November 1997, the Scottish Secretary, Donald Dewar, announced the establishment of the Consultative Steering Group (CSG):

> Decisions about how a Scottish Parliament operates should be for that Parliament to make. It would be unreasonable, however, to expect MSPs to begin drawing up Standing Orders - the detailed operating rules of the Parliament - from scratch, immediately after the first elections. For that reason it is far more sensible, in my view, for the procedural arrangements and working approaches for the Scottish Parliament, including draft Standing Orders, to be developed over the next 12 -18 months, and made available to the Parliament as a starting point for their deliberations.
>
> Clearly, these arrangements are more likely to meet the Parliament's requirements if all political parties and other interested bodies are involved from the start. I intend therefore to establish a Consultative Steering Group to oversee this task. The task facing this group should not be underestimated. Developing a new politics for a new millennium

is a significant challenge in anyone's book. The group starts with a blank piece of paper and hopefully a lot of ideas. A lot of interesting matters have to be addressed and let me make it clear that there are no blueprints sitting in Ministerial desk drawers. This group is drafting the rules from scratch… The aim throughout would be to develop consensus proposals, which the Parliament would of course be free to take, leave or amend as it saw fit.

Crucially, this group would be, in essence, a Scottish Office body. In Wales, where there had been little in the way of detailed advance planning for the operation of the proposed Assembly, and certainly nothing akin to the SCC process, the equivalent work was undertaken initially by an advisory group. This was followed by an independent statutory commission established under the *Government of Wales Act 1998*, which reported to the Secretary of State for Wales. In Scotland there was no such statutory independent input. The CSG was chaired by the Scottish Office devolution minister, Henry McLeish, and its Secretariat was provided by that department.[17]

2.5. The CSG Key Principles

Some earlier work on devolution had adopted the technique of devising a set of principles which would then inform more detailed proposals. While the SCC did not promulgate an over-arching set of principles as such, its final report referred frequently to certain defining principles, including openness, responsiveness, accessibility and accountability. In relation to particular issues, the report also referred to principles such as consensus and equal representation of men and women. This 'principles' approach was also politically topical in the work of the Committee on Standards in Public Life (the Nolan Committee) and its 'seven principles of public life'.

The July 1997 white paper did not refer to principles as such, but did consider the structure and operation of the parliament by reference to a number of criteria. These ranged from the SCC agenda of openness, responsiveness and accountability, to more practical parameters such as the importance of committees and the unicameral basis of the Parliament. However one of the first working papers presented to the CSG by its Secretariat did refer to a number

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[17] It was assisted by an Expert Panel on procedures and standing orders, chaired by the Head of the Scottish Office's Constitution Group. The translation of the CSG report into the final set of Standing Orders was undertaken within government, assisted by the Expert Panel, and by staff of the new parliament as they were being appointed at this time (some by secondment from the Scottish Office or the UK Parliament).

of key principles, said to be set out in the SCC report and reiterated in the White Paper. These were:

- the Parliament should normally sit for a fixed term of 4 years
- it should be a single chamber legislature
- it should be accountable, accessible, open and responsive
- it should provide for adequate scrutiny of legislation
- committees should play an important role.[18]

At its first meeting in January 1998, the Group agreed that its Secretariat would "draw up a revised list of key principles against which the Group might consider issues relating to the operation of the Scottish parliament". Such a list was prepared and presented to the Group in March, and were agreed in their entirety, with only a couple of textual amendments. This became the set of key principles which were published in the final report nine months later.

Thus virtually all the detailed work of the Group through 1998 was informed by what it saw as a consistent view of its fundamental vision. The report explained the role of these principles:

> Our aim has been to try to capture, in the nuts and bolts of Parliamentary procedure, some of the high aspirations for a better, more responsive and more truly democratic system of government that have informed the movement for constitutional change in Scotland; and in submitting these proposals for debate, our hope is that the principles on which they have been based will continue to influence the life of Scotland's Parliament, not only in the letter of its Standing Orders, but in the spirit of its work.

and,

> 3. These key principles were an invaluable benchmark against which to test our emerging conclusions. They also served as a basis for the consultation exercise and have been broadly welcomed and accepted by the wide range of bodies and individuals who have responded to us. We invite the Scottish Parliament to endorse them, to stand as a symbol of what the Scottish people may reasonably expect from their elected representatives.

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[18] working paper CSG(98)(2), January 1998, para 1. Unfortunately the devolution website hosted by the Scottish Office, http://www.scottish-devolution.org.uk/ appears to be no longer accessible on-line. The site contained virtually all significant official devolution material, including all published working papers, agendas and minutes of the CSG.

4. These key principles and our recommendations are also designed to achieve the Parliament envisaged by the Scottish Constitutional Convention, in the Government's White Paper "Scotland's Parliament" and provided for in the Scotland Act 1998 (referred to throughout as the Scotland Act). They aim to provide an open, accessible and, above all, participative Parliament, which will take a proactive approach to engaging with the Scottish people - in particular those groups traditionally excluded from the democratic process. To achieve this the Scottish Parliament must avoid adopting procedures which are obscure or archaic. It should adopt procedures and practices that people will understand, that will engage their interest, and that will encourage them to obtain information and exchange views. We have detected a great deal of cynicism about and disillusionment with the democratic process; it will require an effort both from the Parliament itself and from the people with whom it interacts to achieve the participative democracy many seek. We firmly believe that the Scottish Parliament should set itself the highest standards. Our key principles are intended to achieve a Parliament whose elected Members the Scottish people will trust and respect, and a Parliament with which they will want to engage.

The four key principles, and how the Group related them into particular practical proposals, were summarised in Section 1 of the report:

1: **Sharing the Power** – "The Scottish Parliament should embody and reflect the sharing of power between the people of Scotland, the legislators and the Scottish Executive."

- *Relevant aspects*: the programming of Parliamentary business; the role of the Presiding Officer; the role of committees; the role of civic society, and public petitions.

2: **Accountability** – "The Scottish Executive should be accountable to the Scottish Parliament and the Parliament and Executive should be accountable to the people of Scotland."

- *Relevant aspects*: Members; Scottish Executive; finance, and Europe

3: **Access and Participation** – "The Scottish Parliament should be accessible, open, responsive and develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation."

- *Relevant aspects*: consultation mechanisms; encouraging wide participation; the role of committees; location of committees; the role of committees in gathering views; facilitating transparency; the use of information and communications technologies; providing information; physical accommodation, and pastoral issues

4: **Equal Opportunities** – "The Scottish Parliament in its operation and its appointments should recognise the need to promote equal opportunities for all."

- *Relevant aspects*: committees, working pattern, and language

The Group urged that the Parliament regularly review its performance against the principles, and summed up as follows:

> 53. This section of our report sets out the way in which we believe the Scottish Parliament should operate and the implications of this for Scotland as a whole. We see the Parliament as the central institution of a new political and community culture, and recognise that a more open democracy requires innovative institutions and attitudes in Scottish society, if our goal of a participative approach to the development, consideration and scrutiny of policy and legislation is to be achieved. While these aspirations cannot all be directly reflected in the Standing Orders, we feel strongly that the Standing Orders should be drafted with these expectations and implications in mind, and should encourage the Parliament to operate as we propose.

2.6. Establishing itself

 "Busy new parliaments are likely to continue much as they begin."[19]

By leaving many aspects of the Parliament's operational machinery to be decided by the Parliament itself, subject to some initial transitional provision, the UK Government was ensuring that the new body would need to spend a significant amount of time in its early days fleshing out its own internal arrangements. This task would involve
- Making provision where none was already in place (such as the regulation of cross-party groups, guidance on relationships between MSPs, or procedures in standards cases)
- Revising some rather skeletal provisions it was bequeathed (such as Members' allowances)
- Replacing key transitional provisions (such as Members' interests)
- Reviewing and improving existing procedures, based on experience.

This was a continuous process before, during and after the Parliament's establishment. Transitional provisions, in delegated legislation under the *Scotland Act*, were being made all this time by the UK Government. The set of Standing Orders itself only emerged in final form a month before the Parliament's election and first meeting. Arrangements had to be made for the Parliament's first meetings, from the oath-taking process to the election of the Presiding Officers. A similar exercise was required for the formal opening ceremony a few weeks later, on 1 July.

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[19] Crick-Millar, *op cit*, p4.

Where such arrangements depended on external factors, they had necessarily to be tentative and flexible. Apart from the political make-up of the Parliament and Executive, these assumptions had to take into account the roles and personalities of those who would likely become the Parliament's key players – Presiding Officers, Scottish Parliamentary Corporate Body members, Bureau members, party business managers/whips, ministers, committee conveners and so on – and what they, and MSPs generally, would want and expect of the Parliament and its staff. Would the Parliament even accept and operate the transitional provisions as expected, or seek to establish a very different scheme in so far as it had the legal competence to do so?

At the same time, detailed arrangements had to be made for the actual running of all aspects of the Parliament, including the procedures whereby the Parliament would conduct its formal business, in plenary or committee proceedings. Staff were being recruited and trained. Much of the relevant infrastructure, especially the underpinning IT (including very visible examples such as the electronic voting equipment), was novel and relatively untested. Planning had to be undertaken at the same time for

- establishing and running what was then assumed to be a short-term operation in the interim accommodation pending the move to Holyrood,
- preparing for the move to the permanent facility at Holyrood with the minimum of disruption, and
- devising and creating the permanent operation at Holyrood.

Time was very short, because the UK Government had drastically reduced the transitional phase between first meeting and full operation from around eight months to about eight weeks. Prior to the Parliament's meeting, everything was, formally and in practice, a UK Government responsibility, generally in the hands of the Scottish Office. This only changed during the transitional phase before 1 July, with a progressive handover to the Parliament's authorities. Even after that, the Parliament, as a new and relatively small organisation, continued to use many government support services, and a proportion of its staff remained (and some remain) secondees from the Executive. The Parliament was in a novel institutional position before 1 July 1999, something akin to an 'arm's length' Scottish Office body being prepared for full autonomy. This meant that implementation work could well reflect the UK Government's view of the Parliament's proper role and function. For some Scottish Office officials concerned, the position must have seemed a little like a period prior to an expected change of administration.

Steps were taken by senior Parliamentary managers to instil in the new staff some sense of what working in, and for, a parliament was like, and how it may differ from what they had experienced in their previous jobs. These may have been in the Scottish Office, other central departments or public bodies, local government, academe or in the private sector, where

Westminster was likely to have been the only direct experience they would have had of a parliament, if they had had any such experience at all.

All these various factors in the practical creation of the Parliament, as more than just a political vision or aspiration, may suggest that it was remarkable how well the Parliament actually did operate in its first year. That many of the predicted and assumed political and other outcomes did materialise in early 1999 greatly assisted the process in the initial phase. The challenge then moved from getting the Parliament started to keeping it going.

3.   Representing the people

3.1.   The first general election

The 6 May 1999 election took place under a novel voting system, designed to produce some degree of proportionality in the composition of the Parliament. Of the 129 MSPs,

- 73 were elected on a traditional 'first-past-the-post' basis from the 72 existing Westminster constituencies, with Orkney and Shetland split into 2 seats, and
- 56 were elected from 8 regions based on the former European Parliament constituencies, with 7 MSPs from each region chosen from party lists.

Table 3.1:   May 1999 election results: Seats by Party[20]

	Constituency	Regional	Total
Labour	53	3	56
SNP	7	28	35
Liberal Democrat	12	5	17
Conservative	0	18	18
Green	0	1	1
D Canavan	1	0	1
Scottish Socialist	0	1	1
	73	**56**	**129**

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[20] tables derived from SPICe Research Paper 99-01, 14.5.99

Table 3.2:   Share of Constituency and Regional votes by Party

	Share of Seats	Constituency Votes	Share of Constituency Votes	Regional Votes	Share of Regional Votes
Labour	43.4%	908,346	38.8%	786,818	33.6%
SNP	27.1%	672,768	28.7%	638,644	27.3%
Liberal Democrat	13.2%	333,269	14.2%	290,760	12.4%
Conservative	14.0%	364,425	15.6%	359,109	15.4%
Green	0.8%	0	0.0%	84,024	3.6%
Anti-drug	0.0%	423	0.0%	0	0.0%
Civil Rights Movement	0.0%	0	0.0%	806	0.0%
Communist	0.0%	190	0.0%	521	0.0%
Highlands & Isl Alliance	0.0%	0	0.0%	2,607	0.1%
Humanist	0.0%	0	0.0%	447	0.0%
MP for Falkirk West	0.8%	18,511	0.8%	27,700	1.2%
Other	0.0%	12,967	0.6%	18,066	0.8%
Liberal	0.0%	0	0.0%	5,534	0.2%
Natural Law	0.0%	0	0.0%	4,906	0.2%
Prolife Alliance	0.0%	0	0.0%	9,784	0.4%
Scottish Socialist Party	0.8%	23,654	1.0%	46,635	2.0%
Scottish Unionist	0.0%	0	0.0%	7,009	0.3%
Socialist Labour Party	0.0%	5,268	0.2%	55,232	2.4%
Socialist Party	0.0%	0	0.0%	309	0.0%
Socialist Workers Party	0.0%	2,757	0.1%	0	0.0%
		2,342,578		**2,338,911**	

The election did not produce a majority for any one party, and Labour and the Liberal Democrats rapidly formed a coalition which guaranteed a working majority, under Donald Dewar as First Minister and Jim Wallace, as Deputy First Minister (and Justice Minister). A policy agreement, *Partnership for Scotland*, was published, and was intended to subsist for the full 4-year session. This included a statement of each party's agreement to operate on a basis of "collective decision-making and responsibility" in support of the coalition government, though each party would make its own business arrangements "to ensure effective Party support for the Executive." A total ministry of 22 was announced, subject to the necessary agreement of the Parliament. Of 11 Cabinet posts, 2 went to the Liberal Democrats, and of 11

deputy posts, 2 were Liberal Democrats (including the party's business manager, Iain Smith, becoming Deputy Minister for Parliament).[21]

3.2. Representing the people

The first key parliamentary function, representing the people, refers not just to the Parliament's activities, but also to the characteristics of its membership. An important aim of the mixed member voting system[22] was intended to produce a membership in the Parliament that would better reflect the Scottish electorate, both in terms of their political preferences and their demographic characteristics, than was the case under a simple plurality system.

The first election produced an outcome where the four main Scottish parties took all but three of the 129 seats. The other seats were won by the Scottish Socialists and the Scottish Greens (each by way of a regional list), and by an individual winning a constituency seat.[23] The two small parties' breakthrough was seen as some vindication of the new voting system, but earlier hopes of a more diverse composition, comprising newly formed parties representing geographical, cultural or other interests, were not realised.

In demographic terms, there were two visible outcomes of the voting system. A positive result was the proportion of women elected (48, 37%), but the main negative result was the absence of any members from the ethnic minorities, whereas strict proportionality with the general population would have produced at least one such MSP. The party breakdown of women MSPs can be seen in table 3.3, which highlights the significant variation in gender balance as between the two largest parties and the other two major parties. None of the MSPs from the single member parties was female. Following the loss of a Labour seat at the Ayr by-election in March 2000, more than half of the Labour parliamentary group was female. Other indicators suggest that MSPs were not significantly different from Scottish MPs, at that time. For example, the average age of MSPs when elected was 46, with women slightly younger than men. This is not very different from Scottish MPs (average age 49), though the number of relatively young MSPs, especially among the more visible ministers, has produced a perception of a more youthful parliament.

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[21] The Cabinet, and the posts of 'cabinet minister' and 'deputy minister', are entirely the creation of the present administration, and have no formal statutory basis. They have, with a few exceptions, virtually equated with the statutory terms 'Scottish Minister'/'member of the Scottish Executive' and 'junior Scottish Minister'.

[22] This system was set out in the legislation, and therefore, strictly speaking, outwith the scope of the CSG. It was devised during the SCC process, and the details were fleshed out in negotiations between the participating political parties.

[23] Dennis Canavan had been rejected as a Labour candidate, though already a Labour MP. Unlike Tommy Sheridan (SSP) and Robin Harper (Green), he was not elected as a member of a registered political party, and is sometimes described as an 'independent', though he is designated within the Parliament as 'MSP for Falkirk West'

Table 3.3: Women MSPs elected, May 1999

	All MSPs	Women MSPs			as %age of party group	as %age of all women MSPs
		All	Constituency	Region		
Labour	56	28	26 (93%)	2 (7%)	50.0	58.3
SNP	35	15	2 (13%)	13 (87%)	42.9	31.3
Conservative	18	3	0	3	16.7	6.3
Lib Dem	17	2	2	0	11.8	4.2
Green	1	0	0	0	0	-
SSP	1	0	0	0	0	-
MSP, Falkirk West	1	0	0	0	0	-
	129	**48**	**30**	**18**		

The Parliament's operational structure and practice does not explicitly require representational balance. For example, there are no 'demographic' requirements for the membership of sub-parliamentary structures, such as committees, the Bureau or SPCB, where more traditional notions of party balance predominate. One potential exception is the requirement in *Rule 6.3* that, in proposing committee memberships, the Bureau has regard to any relevant qualifications and experience of those who have indicated an interest in serving on a particular committee. The more radical suggestions of non-MSPs participating directly in the work of the Parliament - such as by co-option of members of the public on to committees - have not come to pass. This suggests that notions of sharing of power may have given way, at least thus far, to more traditional ideas of representation.

The Parliament could create mechanisms which institutionalise such a formal role for non-MSP representatives of particular interests or communities, perhaps within or alongside the existing committees when undertaking their various scrutiny and legislative activities.[24] These representatives could operate through other representative forums (perhaps by development of the existing 'civic forum' concept[25]) given some role within formal parliamentary processes, such as questions, debates, motions or petitions. To some extent cross-party groups fulfil some of these roles, but at present do so entirely informally, and they are not integrated into the Parliament's formal procedures and processes.

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[24] For example, committees could be created with remits that cover a geographical area (such as the National Assembly for Wales' regional committees) or a particular ethnic or other community, and these could have a mixed MSP/non-MSP composition of some form.

[25] In October 1999 the Executive announced funding to the Scottish Civic Forum of £300,000 over 3 years. For details of the Forum's activities, see http://civicforum.org.uk.

In its functional sense, representation is integral to the activities of the Parliament. The SCC's final report stated that "the purpose of electing a Scottish parliament is to give a representative say to the people of Scotland over the way in which their affairs are run. That is in itself a fundamental democratic principle." This was echoed in the first paragraph of the July 1997 white paper: "The Government are determined that the people of Scotland should have a greater say over their own affairs." In so far as it relates to the discussion of matters of public interest and concern, and seeking to influence decision-makers, either directly or through elected representatives, this aspect is considered in this Study in the context of redress of grievances.

Functional representation involves, in the sense of direct public engagement, a synthesis of the two CSG principles of sharing the power, and access and participation. The people are part-owners of governmental and political power, but they also appear to have access rights as if they were somehow outside the power centre. The CSG principles say little explicitly in terms of representation of the people by elected members, and the assumption therefore seems to be that they encompass some sort of productive synthesis between representative democracy and participative democracy. In this model, representation of the people's interests by elected members is one, but not the sole, means of political engagement by the people in Scottish devolved governance, with the people themselves (directly or through other groupings) having a right to engage directly as principals in the business of government, through the Parliament and otherwise.

3.3. Representational practice and problems

Table 3.4 Seats by constituency/region, May 1999 election

Region	Constituency Seats	Regional List Seats	Total Seats
Central Scotland	10	7	17
Glasgow	10	7	17
Highlands & Islands	8	7	15
Lothians	9	7	16
Mid Scotland & Fife	9	7	16
North East Scotland	9	7	16
South of Scotland	9	7	16
West of Scotland	9	7	16
TOTAL	**73**	**56**	**129**

Table 3.5 Seats by party, May 1999 election

Region	Constituency Seats					Regional List Seats					Total Seats				
	L	SNP	C	LD	Oth	L	SNP	C	LD	Oth	L	SNP	C	LD	Oth
Central Scotland	9	0	0	0	1	0	5	1	1	0	**9**	**5**	**1**	**1**	**1**
Glasgow	10	0	0	0	0	0	4	1	1	1	**10**	**4**	**1**	**1**	**1**
Highlands & Islands	1	2	0	5	0	3	2	2	0	0	**4**	**4**	**2**	**5**	**0**
Lothians	8	0	0	1	0	0	3	2	1	1	**8**	**3**	**2**	**2**	**1**
Mid Scotland & Fife	6	2	0	1	0	0	3	3	1	0	**6**	**5**	**3**	**2**	**0**
North East Scotland	4	2	0	3	0	0	4	3	0	0	**4**	**6**	**3**	**3**	**0**
South of Scotland	6	1	0	2	0	0	3	4	0	0	**6**	**4**	**4**	**2**	**0**
West of Scotland	9	0	0	0	0	0	4	2	1	0	**9**	**4**	**2**	**1**	**0**
TOTAL	**53**	**7**	**0**	**12**	**1**	**3**	**28**	**18**	**5**	**2**	**56**	**35**	**18**	**17**	**3**

The novel voting system used for elections to the Scottish Parliament has had a significant, but largely unanticipated, impact on the first year of the Parliament's operation. This resulted from the conjunction of three aspects:

- MSPs were elected to the Parliament in two distinct ways, in single-member areas ('constituencies') under 'first-past-the post', and in multi-member areas ('regions') by way of a party list,
- these areas overlapped, in that each single member-constituency was wholly within a multi-member region, and that each region consisted of an aggregation of single-member constituencies
- with the exception of Orkney and Shetland, the single-member constituencies were exactly the same as those for election to the House of Commons.

This 'mixed member' form of voting system was designed primarily to produce greater proportionality and fairness in terms of the relationship between votes gained and seats won. Relatively little consideration was given by proponents of this system to its consequences once the Parliament was elected, and how MSPs elected to represent the same locality but by different electoral routes would interact with each other. Westminster experience has demonstrated the potential tensions and scope for dispute between Members if clear rules and conventions against 'poaching' are not operative. This would apply even more in the Scottish Parliament because of the existence of two novel representational relationships created - those between 'constituency' and 'regional' MSPs, and those between MSPs and Westminster MPs for Scottish seats.

The representational impact of a mixed member system had been considered by the Independent Commission on the Voting System for the House of Commons, established by the new Labour Government, and chaired by Lord Jenkins of Hillhead.[26] The only other contemporary and substantive consideration was during the Commons Scottish Affairs Committee's surprisingly little-noticed inquiry into multi-layer democracy. The committee had examined the then junior Scottish Office minister, Henry McLeish, on the more complex representational environment, implicit in his Government's devolution legislation, an exchange which covered much of the relevant ground of this issue.[27]

The matter was not directly addressed in any great detail before the Parliament began operation. No guidance was provided for the Parliament or for the Scottish people, either in the devolution legislation or in the Parliament's standing orders, on the respective roles of constituency and regional MSPs. The only substantive advice given publicly by the UK

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[26] Cm 4090, Oct 1998, paras 114-7, 135

[27] *The operation of multi-layer democracy*, HC 460, 2nd report of 1997-98, evidence of 1.7.98. See also the evidence of practice in countries with similar electoral systems

Government in advance of the May 1999 election was the following extract from *In Prospect*, the Scottish Office's briefing pack to prospective candidates in February 1999:[28]

> *2.3.6* Interest has been expressed in particular in the relative roles and responsibilities of constituency and regional MSPs. Although they will be elected in different ways, it is not anticipated that there will be any official differentiation between their roles (for this reason, all MSPs in the Parliament will be addressed by name rather than by constituency once elected). Regional and constituency MSPs will be subject to the same rules of procedures and have the same power to scrutinise the work of the Scottish Executive and departments of the Scottish Administration, and consider legislation. Subject to any alternative arrangement which the Parliament decides upon members of the public will be able to choose which of their MSPs they approach on any particular issue. As with Westminster MPs and local councillors, it is expected that MSPs, once elected, would wish to represent equally and impartially all their constituents, whether at constituency or regional level.

The CSG's Code of Conduct Working Party had given "serious consideration" to putting in the Code some "guidance for the conduct of Members in their relationships with their constituents and civic society in general and in their responsibility for developing the patterns of social partnership and public participation". However, it concluded that the Code "was not the appropriate vehicle for addressing this issue. Nor should we seek to impose constraints on the ways in which the relationship between MSPs and the public should develop. Rather the conduct of Members in relation to their constituents and the wider public should be a matter which is allowed to evolve as MSPs and the parliament develop their working methods in the light of experience." They believed that "constituents have a right to know and to help define what to expect of their MSPs regardless of the way in which they were elected and whether they were returned to represent constituencies or regions." They suggested that these issues, including any proposal for 'job descriptions' for MSPs, should be considered and consulted upon by the Parliament, taking into account MSPs' own views.

3.4. MSPs' allowances

The Parliament had to face up to the conceptual and practical difficulties very early in its existence, when it considered, on 8 June 1999, a formal scheme of allowances for MSPs, to replace the initial, skeletal scheme provided in transitional delegated legislation. This included the level of financial assistance for MSPs' parliamentary activities within their local

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[28] http://scottish-devolution.org.uk/infopack/section2.htm. Similar guidance, in a little more detail, appeared in one of the Parliament's Public Information *Fact Files*, produced just before the Parliament's opening (No. 4 *You and your MSPs*).

electoral areas. The matter was compounded politically by the disparity in the balance between constituency and regional MSPs of the different parliamentary parties (table 3.5). The Labour Party was overwhelmingly, and the Liberal Democrats predominantly, comprised of constituency members, whereas the Conservative Party at that time was entirely composed of regional members, and the SNP, the main opposition party, predominantly so.

The effect of the deep divisions which exploded so publicly in that debate were not fully anticipated by those responsible for the arrangement of the Parliament's business. There was, for example, no preliminary debate in the Chamber, or, as would have been more in keeping with CSG principles, by a committee inquiry. In either forum, these difficulties could have surfaced and been addressed, and any apparently relevant overseas comparisons, such as New Zealand and Germany, could have been examined. The scheme which was presented to the Parliament resulted from the labours of an ad hoc group of MSPs from the four main parties (those represented on the Parliamentary Bureau), including some who were themselves members of the Bureau or of the SPCB. Presenting the scheme to the Parliament, on behalf of the Bureau, the SNP's business manager, Mike Russell, noted that the group "has met on innumerable occasions to examine in very great detail the items contained in the motion." Crucially, this group was unable to resolve all differences between the parties, and Russell himself openly expressed his dissent on the key aspects in dispute.

The Parliament was being required, within weeks of its establishment, to come to a final decision on this sensitive matter, whether by consensus or otherwise, in the open arena of a plenary debate. While there were attempts to couch the arguments in the language of the 'new politics' – terms like 'equality' and 'equal opportunities' abounded during the debate - it was difficult to read them as not being based primarily on current partisan interest. Under these circumstances, it was not surprising that the episode became one of the main reasons for the well-publicised media (and, through them, public) antipathy to the Parliament in the initial period.

The difficulty went to the heart of the new system of representation, and the roles of the two types of MSP. Were they both representatives of their respective territorial localities, with the regions being a form of 'super-constituency'? Or were regional members supposed to adopt a more strategic rather than territorial approach, leaving 'constituency' representation and casework to the constituency MSPs? Labour's constituency MSPs who spoke in the debate were in no doubt. They claimed sole or primary interest in representing 'their' constituency, to the exclusion of regional MSPs (especially of those from other parties) covering the same territorial area.[29] Karen Whitefield was typical of this approach:

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[29] One argument which was used was that many regional MSPs had been unsuccessful candidates for constituency seats, and thereby had been explicitly rejected by the constituents they purported to

"The people of Airdrie and Shotts gave me a clear mandate to represent them, and them alone. It is my constituency office that they will visit and my surgeries that they will attend. I alone am accountable to the people of Airdrie and Shotts. I do not believe that there is, nor do I want there to be, two classes of MSP. However, it is essential that the additional work load that I and other constituency MSPs will have is recognised… The people of Airdrie and Shotts gave me their mandate. I am honoured to be their representative, I will work tirelessly on their behalf for the next four years and they will hold me to account. I do not want taxpayers' money to be spent on setting up a second constituency office or a second MSP to take on casework with which I am already dealing. I believe that I am more than capable of representing all the people of Airdrie and Shotts and so do my constituents — that is why for every vote received by my closest opponent, I received more than two."

Margaret Smith (Lib Dem) proposed what she described as a compromise motion, based on the idea of local office provision for parties rather than individual MSPs. The result was that the Allowances Scheme ultimately agreed to by the Parliament distinguished between office allowance provision for constituency and regional MSPs, with lower overall assistance to parties with more than one regional MSP in any region.[30]

3.5. Relationships between constituency and regional MSPs

The Allowances Scheme which was finally agreed in June 1999 contained some guidance as to its operation, in the form of a brief Allowances Code. Part of this sought to lay down some principles as to how constituency and regional MSPs in the same locality should interact:

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represent as regional Members. This demonstrates the representational 'Pandora's Box' which can be opened up when the implications of a mixed member voting scheme are examined.

[30] As can be seen from Table 3.5 above, this formula would not impact on the Liberal Democrats as much as it would on the other main parties, as all 5 of their regional members were their party's sole regional representative.

A: Relationships Between Members

1. Any constituent can approach any MSP within his or her constituency or region.
2. If a constituent seeks to approach a particular MSP, the constituent must be directed to that MSP by other MSPs or their staff.
3. All MSPs have a right to hold surgeries within the area for which they were returned.
4. Any constituent from outside a region who approaches an MSP with a constituency issue should be directed initially to a relevant MSP.
5. Any list MSP who raises a constituency issue should notify the relevant constituency MSP at the outset unless the consent of the constituent is withheld.
6. Any MSP who is approached by a constituent with an issue related to a reserved matter (e.g. social security) should consult with the appropriate Westminster MP.

While other aspects of the Code related more directly to the use of offices and other facilities, it was perhaps symptomatic of the inherent political difficulties involved that more general representational guidance had to be inserted explicitly in the Code. The terms of these provisions reflected local problems which had already arisen around Scotland. They attempted a balance between the desire of Labour MSPs to assert some local primacy for constituency MSPs, while incorporating some of the representational conventions that had arisen at Westminster (albeit under a different electoral system) and which were generally understood and accepted.

Continued media coverage of alleged local disputes between MSPs, and between MSPs and Westminster MPs in terms of dealing with devolved and reserved matters respectively, led to the establishment by the Presiding Officer in July 1999 of an informal working group. This consisted of elected members from the Parliament and from the House of Commons[31] to produce a "draft concordat" on issues such as:

- arrangements between regional and constituency MSPs for responding to constituents' correspondence, the holding of Members' surgery meetings and the locations of their offices

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[31] George Reid MSP (SNP and a Deputy Presiding Officer) in the chair; Mike Watson MSP (Lab); Annabel Goldie MSP (Con), and Archy Kirkwood MP (Lib Dem). Watson was a constituency MSP and Reid and Goldie regional MSPs.

- whether Scottish Executive Ministers should respond directly to matters raised in correspondence by Scottish MPs on devolved issues
- whether UK Ministers should respond directly to matters raised by MSPs on reserved issues affecting Scotland

This was an ambitious remit, seeking to tackle both the MSP-MSP and MSP-MP relationships, especially as the Westminster authorities were not formally represented as such on the group.[32] There was, for example, no necessary connection in principle between the two relationships, given the very different natures of the two parliaments. In the event, the group reported to the Presiding Officer within the desired timescale solely on the domestic intra-MSP aspect. At the time of writing, there appears to have been no further formal steps towards addressing the inter-parliamentary aspect.

While the fruits of the Group's deliberations and report to the Presiding Officer were not themselves published (being distributed to the parliamentary parties for their consideration), they were widely trailed in the Scottish media. In particular, much publicity was given to a set of 4 guiding principles said to form the basis of the proposed detailed guidance. The media swiftly dubbed them the 'Reid Principles', after the Deputy Presiding Officer chairing the Group, and, as reported in the media, they can be summarised as follows:[33]

- Each Scottish constituent and each territorial part of Scotland is represented by 8 MSPs, ie one constituency and seven regional MSPs
- All MSPs are equal, whether representing a region or a constituency, in relation to their parliamentary and representational roles
- No 'poaching', that is constituency and regional members should not deal with matters outwith their constituency or region, as appropriate
- The interests of constituents and localities should be paramount in determining how MSPs carry out their representational roles.

These guidelines related primarily to the two relationships between constituency and regional MSPs, and between constituents and all their local MSPs. They implicitly recognised that both types of Member had a territorial jurisdiction (unlike New Zealand's single national list), and therefore both could legitimately claim to have a 'constituency'. They also addressed only indirectly what had emerged as the most obvious problem on the ground, the alleged differential activity by regional MSPs' *within* their region, based on electoral rather

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[32] The one MP, Archy Kirkwood, was involved in a personal capacity, though he had much experience of matters of Commons administration and parliamentary party management.

[33] See A McCabe & J McCormick, "Rethinking representation: some evidence from the first year", in G Hassan & C Warhurst (eds), *The new Scottish politics: the first year of the Scottish parliament and beyond*, 2000, p41.

than representational considerations. It was presumably hoped that a general statement of equality, allied to the twin principles of 'no poaching' and the primacy of local wishes in any particular case, would deal with most situations. This would avoid resort to formal rules, which could be seen as recognising that there were two 'classes' of MSP. Much of the detailed advice sought also "to offer guidance to the Parliament for each 'player' in the triangular relationship involving parliamentarians, constituents and agencies/organisations."[34] This was seen as particularly important in view of the very limited published guidance which existed hitherto.[35]

The Parliament itself did not formally consider these representational issues, or the Group's work directly, whether by a structured committee inquiry (other than in the Standards Committee, as considered below), or any plenary debate. It appeared that progress was being made 'behind the scenes' by MSPs and parliamentary officials, in and around the Bureau, the SPCB and the party groups themselves.[36] At Westminster, this would have been described as negotiation through the usual channels. Party differences on the detail of the 'Reid Principles' and the related guidance, as tracked in media reports, can be assumed from the fact that the matter did not reach the Parliament for formal endorsement until just before the 2000 summer recess, as well as from the nature and text of the guidance as finally agreed.[37]

The Standards Committee briefly considered the matter in late June, because the guidance was proposed to be included in the existing Members' Code of Conduct.[38] The Convener introduced the item in interesting terms:

> "The third item on our agenda is consideration of a paper on the so-called Reid principles, which have been referred to us for approval by the parliamentary

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[34] McCabe & McCormick, p41.

[35] Much of the content in the Parliament's Public Information Factfile 4, *You and your MSPs*, especially the basic notion that every person was represented by 8 MSPs, was in practice adopted and adapted in the later official guidance agreed by the Parliament in July 2000.

[36] The best description of these events published thus far is in chapter 7 of Mike Watson's *Year Zero: an inside view of the Scottish Parliament*, 2001. Watson, a senior Labour MSP, and former MP, was a member of the Reid Group.

[37] The Allowances Code in the revised Allowances Scheme agreed by the Parliament on 16 March 2000 did not contain the guidance on relationships between MSPs which had appeared as part A of the original Code. Presumably this was in preparation for the more detailed guidance expected to emerge from the Presiding Officer's Group.

[38] 11th Meeting, 2000, 28 June 2000, cols 592-6. The Code of Conduct already referred in various places to MSPs' relations with their constituents, and one of its 'key principles' is the MSP's "duty as a representative", which includes the following: "Members have a duty to be accessible to the people of the areas for which they have been elected to serve and to represent their interests conscientiously."

Bureau. Members will be aware that discussion of these matters has been taking place between the various party groups. I am advised that there has been general agreement between all groups. If the committee endorses the paper, the Bureau is keen that the paper should be put before the Parliament before the recess, with a view to its incorporation in the code of conduct as an annexe."

One member complained that the relevant papers had only appeared the previous day, suggesting that "this smacks of our being bounced into doing something", but the process was defended by other members (including those who were on the Bureau and the SPCB). Tricia Marwick, an SNP business manager, said that "it is not the role of the committee to go through the paper line by line and to suggest changes. The paper has been agreed and all that remains for us to do is to decide whether it should become an annexe to the code of conduct. After that, we can debate it in Parliament."

The Parliament approved the guidance formally without any debate or vote on 6 July, the last sitting day before the summer recess. The motion, in the name of the Standards Committee's convener, first appeared in the previous day's *Business Bulletin*. The underpinning principles had evolved from those reported in the media as the original 'Reid Principles', including the addition of a fifth principle against misrepresentation:

> **I** One constituency MSP and seven list MSPs are elected in the wider region. All eight MSPs have a duty to be accessible to the people of the areas for which they have been elected to serve and to represent their interests conscientiously.
> **II** The wishes of constituents and/or the interests of a constituency or locality are of paramount importance.
> **III** All MSPs have equal formal and legal status.
> **IV** MSPs should not misrepresent the basis on which they are elected or the area they serve.
> **V** No MSP should deal with a matter relating to a constituent, constituency case or constituency issue outwith his or her constituency or region (as the case may be), unless by prior agreement.

3.6.   Lessons and prospects

It remains to be seen whether, and how, the Parliament will seek to tackle the second part of the Presiding Officer's Group's original remit, dealing with the relationship between MSPs and MPs. If such work is undertaken, it may build upon the existing work, in so far as some of the intra-MSP guidance is applicable to the MSP-MP relationship.

There has been little public evidence as to how the guidance is operating, or whether MSPs were consciously applying it. The rarity of media reports of 'turf wars' may or may not

indicate that local tensions have eased. No cases based on the guidance reached the Standards Committee until 2001, though the Presiding Officer openly expressed his disquiet, during the 23 May 2001 plenary meeting, at the volume of informal complaints by MSPs about other MSPs he has had to deal with. He described this as "quite the most tedious and distasteful part of my many duties," and appealed to members "to read the code of conduct carefully to see how they are supposed to describe themselves and how they are supposed to deal with each other so that we diminish these internal complaints. It is time that we took steps to do that…"

Cowley and Lochore have noted, from a study of local constituency activity, some significant differences in the scale of various types of constituency activity:

- constituency MSPs spent noticeably more of their time on constituency work when compared to regional MSPs
- constituency MSPs were both more likely to hold surgeries at all and also more likely to hold more.
- more of the correspondence ('letters + email') received by constituency MSPs came from their constituency compared to the proportion received by regional MSPs originating in their region.

They concluded that "there does appear to be a difference – slight, but still noticeable – between the attitudes and behaviour of the two types of MSPs. They may be equal, but they do not appear to be identical. The fact that differences are detectable so early on in the life of the new system may suggest that, as the system grows in its influence on Scotland's political order and culture, the differences between MSPs may develop."[39] McCabe and McCormick noted from a mid-1999 survey of MSPs that there is "a degree of confusion around the appropriate roles of constituency and list MSPs."

Developing practice in this area may well expose any tensions and contradictions that there may be between a mixed member system and traditional notions of representation. Perhaps the most important of these (and repeated in the 1999 Scottish Office guidance) is that an elected representative, once elected, represents *all* constituents within his or her locality, not just those who supported or voted for him or her. It is sometimes said that one advantage of a multi-member system is that each constituent has more chance of being represented by someone sympathetic to their own political views. Guidance emphasising the primacy of a constituent's choice of elected representative as a defender of their interests, may serve to entrench this perception. If differences between constituency and regional MSPs do emerge

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[39] P Cowley & S Lochore, "AMS in a Cold Climate: Lessons from Scotland", revised version of a paper presented to a Constitution Unit seminar, 22.1.01. Differences were also noted in attitudes to other functional issues, such as chamber/committee work, policy-making and scrutiny of the executive. I am grateful to the authors for permission to quote from this paper.

as consistent features of the Scottish parliamentary scene, then the Parliament will have to decide whether to recognise such divergences in any future guidance it decides to offer, or in any further formal rules it makes.

On the wider issue of the representativeness of the Parliament's membership, crucial to the achievement of the CSG vision, much of this is outwith the Parliament's control. Changes to the electoral system or to the regulation of political parties are matters reserved to the UK Parliament. At the time of writing, the UK Government has announced its intention of legislating to encourage better representation of women in elections. Any changes to the Parliament's mixed member electoral system, such as the replacement of regional lists by a national list, could well assist the election of a wider range of parties and individuals.

4. Arranging the Parliament's business

4.1. Arrangement of Parliamentary business

"A Steering Committee (or Business Committee if preferred) to determine timetable is an essential innovation … Its absence is a key to the Government's excessive control of the House in Westminster."[40]

How, and by whom, the Parliament's business is arranged is one of the most important issues to be considered in this Study. This, and the related issue of how, and by whom, the Parliament is run as an institution, between them cover the two fundamental topics of the organisation of the formal proceedings of the Parliament, and of its wider institutional administration as an autonomous entity.

Little was said by the SCC on this matter, at least in its main report. The Crick-Millar proposals, however, did regard it as of key importance, and their model is worthy of some consideration in comparison with the Parliament's actual model, both as it was established and as it has developed. Crick-Millar proposed the establishment of a Steering Committee to organise and arrange the Parliament's business. It would consist of the Presiding Officers; one member elected by democratic ballot by each party (defined as a group of 6 or more MSPs, in a parliament of 145); one Member from each of Orkney and Shetland; one Member elected by independent Members, and two Members nominated by the First Minister. It was intended that such a composition would make any single-party majority unlikely, and would, by its diversity, ensure that a majority for any particular proposal would require support of a wide range of opinion in the Parliament, and therefore be more representative of the views of the Scottish people.

This Committee would propose to the Parliament the timetable for and agenda of its business. It could also appoint sub-committees to make recommendations to the full Committee on:
- financial and organisational decisions on matters concerning Members, Parliament and its bodies,
- the number of officers and other servants of Parliament and their terms and conditions of work,
- the draft estimates of expenditure and the accounts of Parliament.

To ensure a measure of accountability, the decisions of the Committee would be printed and made public, and any Member could put down questions for written answer, addressed to the Presiding Officer, on its work.

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[40] *Crick-Millar*, *op cit*, p20 fn19

The key aspects of this model, for present purposes, were

- a broad composition, all of whom could vote, where each main party would be represented by an MSP elected by it, not nominated by its leadership, and would only have a single vote rather than a weighted vote in proportion to their party size
- some institutional and administrative responsibilities
- some, though unspecified, degree of public accountability.

When the CSG came to consider the organisation of business management – significantly, within the context of its first principle of 'sharing the power' - there was early consensus that the process should be more open, inclusive and transparent than in the House of Commons. Westminster practice was, in the words of one CSG working paper, "perceived as allowing the Government too great a control over the business of the House". It would be based on something like a continental business committee model, with a small membership, and the Presiding Officer in the chair to provide "reassurance to ordinary members that their interests would not be overlooked". Each party's representative would be nominated by its leader, and there would be a representative of smaller parties and independents.

The basic principles of business management would reflect a balance between the conflicting demands for time, from the Executive, ordinary members and so on, and ensure that there was sufficient time for proper debate and for scrutiny of the Executive. These arrangements had to:

- recognise the need for the Executive to govern, including enacting primary and subordinate legislation and obtaining approval of its expenditure proposals;
- provide Parliament with the time and opportunity to scrutinise the work of the Executive;
- allow for the debate of issues of both national and local interest;
- enable individual Members to raise matters of concern and introduce proposals for legislation;
- allow sufficient time for Committees to carry out their work.

There are some basic differences between this model and that of Crick-Millar, not all of which was due to factors within CSG's influence. The devolution legislation gave the administrative functions remit to a totally separate body, the SPCB, thus ensuring that there would not be a single parliamentary steering committee covering both its institutional and business arrangements. The proposed composition of the Business Committee reflected a tight, cohesive, 'party leadership'-driven model. This can be contrasted with one based more fully on the principle of dispersal of power, through a broad and diverse membership, and by the election of party representatives. The priorities of elite-driven functional efficiency appear to have won over broader notions of power-sharing and inclusiveness.

This scheme was broadly adopted in the Parliament's Standing Orders, except that it was decided that the business committee was to be called the Parliamentary Bureau. Not only did

this provide a suitably continental flavour, but it also emphasised that it was not a parliamentary committee as understood in the rest of the Standing Orders. As such it did not have to conform to any requirements for party balance or for openness.

4.2. The role of the Presiding Officer

The Presiding Officer and the two Deputy Presiding Officers are the lynchpins of the Parliament's operation. While the post of Presiding Officer is often compared to that of the Commons Speaker, it is, both potentially and actually, much wider and more proactive. The Presiding Officer is

- at the apex of all the Parliament's formal power centres, through chairing meetings of the Parliament, the Bureau and the SPCB,
- has a direct, substantive role in the dates of elections[41] and the designation of an 'acting First Minister',[42] and
- is required by Standing Orders to "represent the Parliament in discussions and exchanges with any parliamentary, governmental, administrative or other body, whether within or outwith the United Kingdom."

Although a more visible, hands-on office, it is, unlike the Speaker of the US House of Representatives, clearly a non-partisan one. The Presiding Officer and the two deputies are required by Standing Orders to "act impartially, taking account of the interests of all members equally," and state how they may participate in formal proceedings, such as speaking and voting. The extent of their participation is expected to develop further by convention. For example, Sir David Steel gave up his party allegiance while in office, and has not participated in any proceedings other than using a casting vote or speaking in SPCB-related debates. The two deputies appear not to be so constrained, and have remained members of their particular party groups; have participated in debate; asked questions and

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[41] When the resignation of the Labour MSP for the Ayr constituency in December caused the only vacancy of the first year, it was announced that "the Presiding Officer this afternoon discussed the matter with the main party business managers and they agreed to his suggestion that the by-election be held after the new electoral register is published in mid-February" (*Parliament press release 66/99*, 21.12.99). When he set the date for Thursday 16 March 2000, after consultations with the Ayr returning officer and the main political parties, Sir David Steel revealed that he had seriously considered picking a Saturday as polling day, because "as a Parliament, we are always trying to be innovative and forward looking." He did not do so because of doubt as to the legality of a Saturday poll, but had written to the Scottish Secretary about the relevant legislation, and had expressed the hope that a future by-election could be held on a Saturday (*Parliament press release 6/2000*, 27.1.00)

[42] The Presiding Officer was not required to act when the First Minister went into hospital in the spring of 2000. See the First Minister's written answer on 8 May 2000 explaining how his powers and duties were to be exercised during his absence. Following the death of the First Minister in October 2000, he designated the Deputy First Minister, Jim Wallace, to exercise the relevant functions of First Minister (*Business Bulletin 154/2000*, 12.10.00).

even become members of committees. However, other than 'constituency matters' and the like, they have generally restricted their more visible contributions to subjects which are relatively non-partisan or which reflect their representative position.[43]

As occupants of the chair, the presiding officers have a crucial role in the development of parliamentary procedure and practice, not least through their duty, under Standing Orders, to "determine any question as to the interpretation or application of these Rules and give a ruling on any such question."[44] The two deputies can participate in Bureau meetings, and often do so, though they cannot vote. One deputy, George Reid, convenes the Conveners Liaison Group, and, probably because of his previous CSG membership, appears to have a watching brief over matters relating to the Parliament's culture and ethos.

Thus, it can be concluded that the Presiding Officers are central to the Parliament's achievement of the CSG vision, in terms of the arrangement of its business, as well as in terms of its formal proceedings and practices, and its wider institutional organisation and operation. Much, inevitably, will depend on the personalities of the three incumbents, and their relationship with the other leading players, such as the party leaders and business managers, and the Clerk/Chief Executive and other senior permanent staff.

4.3.   The Parliamentary Bureau

One of the key bodies in the Parliament is its business committee, the Parliamentary Bureau. It has two main functions - proposing the Parliament's business, and proposing the constitution and membership of committees – which are central to the Parliament's operation. Its composition, as provided for by Standing Orders, is a major determinant of its role and influence within the Parliament. That composition reflects the CSG model of a group representing the party leaderships, rather than the more inclusive, 'backbench' model proposed by Crick-Millar.

The Bureau is convened and chaired by the Presiding Officer. Each party with 5 or more MSPs is entitled to a representative on the Bureau, and any group, made up of parties with fewer than 5 MSPs and of MSPs not representing any political party, is also entitled to a representative. Thus, there is no fixed membership of the Bureau, as its composition depends

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[43] For example, Patricia Ferguson is a member of the Standards Committee, and, on 8 March 2000, initiated a Members' Business debate on International Women's Day.

[44] They have, for example, consistently sought to apply the Westminster principle that significant ministerial policy announcements should, where possible, be made first to the Parliament. This was dramatically demonstrated on 18 January 2001 (strictly speaking, outwith the timeframe of this Study), when a deputy presiding officer decreed that a ministerial statement on quango reform was to be 'taken as read', because of extensive advance press briefing. The minister was not permitted to make his statement, and the Parliament moved on to questions on the 'statement'.

on the political balance of the Parliament. Since the establishment of the Parliament, the Bureau has had 4 party representatives (Labour, SNP, Conservative and Liberal Democrat), and no group representatives, as the other parties together can only muster 3 members.

While each of the main parties is represented by a single member, that member wields a vote in the Bureau measured by the size of his or her party in the Parliament. Unless a Bureau representative chooses to divide up that vote in some way, this means that each of the 4 business managers carries a 'block vote', a form of voting that has long been criticised in British politics.[45] In practice, the philosophy behind the Bureau model is that business arrangements should, as far as possible, be made on a consensual basis, without resort to formal votes. Standing Orders require Bureau meetings to be held in private, and state that votes are used "in the event of any disagreement". In such a model, agreement is therefore assumed to be reached on the basis of debate and discussion, and this makes the composition of Bureau meetings of particular significance.

The Presiding Officer's role is potentially much greater than that of a passive chair of Bureau meetings.[46] The presence and active participation (other than voting) of the two Deputy Presiding Officers, and of any other MSPs invited to a meeting by the Bureau, may also help to steer the balance of Bureau discussion away from the four business managers. In practice, MSPs (such as committee conveners or promoters of a Member's Bill) are invited to participate in specific agenda items, rather than in a whole meeting. On the other hand, the party's deputy business managers may also attend a Bureau meeting, so long as the Presiding Officer is so informed, and may be relied on to support their particular party line.

The Bureau's various roles and functions are considered in the appropriate sections of this Study. It is relevant here to note the Bureau's relative lack of accountability, both to the Parliament and to the people generally. Not only does the Bureau meet in private, it did not, until April 2001, publish any details of its deliberations other than by way of formal motions before the Parliament, announcements from the Chair or as *Business Bulletin* announcements. For almost all of the first two parliamentary years, no details of the composition of any particular meeting were released. Neither, other than in the early weeks of the Parliament, were any formal changes in Bureau membership announced publicly.

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[45] The Presiding Officer's participation in any formal Bureau vote, which is available only as a casting vote, has had little substantive value since 1999, because there has been virtually no disposition of party block votes which could have produced a tie.

[46] The Presiding Officer has sought to distance himself publicly from the practicalities of party management inherent in business arrangement. During the votes on changes to Standing Orders on 9 December 1999, he said that "the Presiding Officer never knows anything about whipping or otherwise; it is not a matter over which I have any influence."

Donald Gorrie (Lib Dem), a member of the Procedures Committee, submitted a paper to that Committee in June 2000, setting out proposals which sought to ensure that the Parliament "should gain more control of its own business". The first problem he identified was that "complete control of Parliament's business lies in the hands of the Business Bureau". He noted that "it is quite possible that the bureau, which represents the four main parties, will become a sort of collective that tends to work in its own way and that does not necessarily represent the views of the Parliament as a whole." He proposed that there should be an "Executive Business Manager's Question Time", akin to the House of Commons' weekly Business Questions period to the Leader of the House. Although the Bureau's response to Gorrie's proposals came in December 2000, strictly speaking outside the period of this Study, it is of interest in the context of the above discussion:

> The Bureau's view on this was that there should not be a Question Time for the Minister for Parliament to answer questions on Bureau business. The consensual approach to Parliamentary business taken by the Bureau wherever possible would not be easily transferable to a Question Time format and it was not thought feasible to expect Executive Business managers to answer questions on behalf of Non-Executive parties or Committees. The Bureau did suggest, however, that it might be helpful to remind Members regularly of the provision to question the business motion when it is being moved. The ability to ask written questions of the Minister for Parliament should also not be overlooked.

Collective responsibility within the Bureau appears to exist, as was demonstrated in the discussion in the Parliament on 26 January 2000 of the business motion, when the SNP's business manager, Michael Russell, sought to speak, though not vote, against the motion. He was interrupted by the Minister for Parliament's point of order that "Mr Russell is part of the Parliamentary Bureau. If he was unhappy with the motion, he could have asked for the bureau to be reconvened." When another Labour MSP asked, on a point of order, whether it was in order "for someone who is a member of the bureau on whose behalf Mr McCabe is moving this motion to speak against something that he has already agreed to", the Presiding Officer conceded that he may have a point.[47]

A convention of collective Bureau responsibility appears to be important for the operation of the CSG business committee model. The Bureau's members (and, presumably, other participants in its meetings) are expected to maintain the confidentiality of Bureau business, and to support publicly (or at least not oppose) its proposals or decisions. While this may reinforce the idea of cross-party consensus on the arrangement of parliamentary business, it

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[47] A similar altercation took place, when Russell opposed the business programme on 2 June 1999, during which he not only revealed some of the relevant Bureau discussions, but also accused the Executive parties of treating the Bureau as if it were a Cabinet sub-committee.

can also serve to reinforce the Executive, given its ability to have its way in the Bureau through the availability or use of its voting majority.

4.4.   The normal pattern of business management

The usual process for the promulgation of business is broadly as follows:

- The Bureau presents to the Parliament a forward 'business programme' for a specified period, including the agenda for meetings of the full Parliament, and timetables for consideration by the Parliament or any committee of any legislation.   A business motion can only be moved by a Bureau member; generally, as the CSG expected, an Executive's representative. It can, under certain conditions, be debated and even amended, and is generally decided immediately, rather than at Decision Time.

- Primarily on the basis of the business programme, the Clerk publishes a 'daily business list'. The Parliament can, on a Bureau motion, make alterations in the daily business list.   The business programme, daily business list and any alterations, are published in the *Business Bulletin*. The Presiding Officer can make late changes to cope with emergency business.

Generally in the first year, a business programme has covered two-week periods.   The information provided can sometimes be relatively sparse, such as 'ministerial statement' or 'non-Executive business'.   This means that there are occasions where, in practice, neither Members nor the wider public may know details of the actual business, or the terms of the relevant motions or amendments, planned for a forthcoming sitting.

Again, even a forward period of a fortnight or so is liable to relatively frequent amendment, especially for business in a plenary which only meets for 1½ days a week. Both Executive and non-Executive 'owners' of a forthcoming time-slot may well be tempted to leave to the last minute decisions on the subject matter, or the exact wording of a motion, to ensure the greatest possible topicality and political value from this valuable parliamentary asset. This has the consequential effect of making the lodging of any amendments to such motions even later in the process.

The balance between the benefits of certainty and adequate advance notice on the one hand, and flexibility and topicality on the other is always a difficult one. Certainty is a factor more easily achieved in a parliament based on consensus rather than party competition, and one which provides sufficient time in which most reasonable demands of all concerned can be met. The Scottish Parliament has proved to be an assembly where, whatever consensuality there may be in the actual conduct of business, party competition is certainly alive and

kicking. There will also be some relationship between the degree of Executive control of business management, and the employment by non-Executive forces of tactics such as late lodging of motions or amendments. In all this, it is difficult for those immediately involved not to see business management primarily as an internal process, with insufficient weight being given to the interest of the wider Scottish public, as sharers of powers and active parliamentary participants, in knowing what the Parliament's business is.

4.5. The ownership of parliamentary time

A related business management issue, which goes to the heart of the executive-parliamentary relationship, is the actual allocation of time in meetings of the Parliament between different categories of business.

Time during each parliamentary year is provided in Standing Orders for 'special cases of Parliamentary business' (*rule 5.6.1*):

- *committee business* (12 half sitting days)
- *business chosen by non-Executive parties* (16 – originally 15 - half sitting days)
- *Members' business* (30 minutes – 45 minutes, from November 2000 - at the end of each plenary meeting).

 "Sufficient time" must be provided for

- a statement by the First Minister "setting out the proposed policy objectives and legislative programme of the Scottish Executive for any Parliamentary year" and a debate on that statement, and
- various items of financial business (including the main Budget Bill) at particular times of the year

Specific provision is also made for other business periods, such as question times and decision times. More generally, while many recognisable types of parliamentary business are envisaged in Standing Orders, no particular allocation of parliamentary time is generally prescribed for them. Crucially, there is no explicit, equivalent provision to House of Commons *S.O. no 14(1)*: "Save as provided in this Order, government business shall have precedence at every sitting." The nearest the Rules come to any such suggestion, however indirectly, is in *Rule 5.6(1)(a)*, where committee business "is given priority over the business of the Scottish Executive."

Given the CSG list of possibly conflicting priorities over allocation of time, this ring-fencing of particular types of business can cause difficulty. Are the Standing Orders to be read as implying that all time other than that regarded as a 'special case' is, at least potentially, at the disposal of the Executive? This could, in theory, cover any additional time required for virtually any other business, whether substantive or procedural, and could affect the

availability of time for types of business which can be initiated by 'ordinary Members'. Taken in conjunction with an Executive majority in the Bureau, such an arrangement could put an Executive in virtually the same dominant position as the UK Government enjoys in the House of Commons, a situation contrary to the spirit and the letter of the CSG report.

On the other hand, was it intended that all non-specified time remained at the Parliament's disposal, to be shared out by the Bureau as it saw fit, taking into account factors such as those which the CSG noted? Such an approach could mean that any periods specified in Standing Orders should be regarded simply as minimum requirements. These, and other categories of proposed business, can compete in the Bureau with any Executive claims for time. As Crick-Millar puts it, "time must ... always be found for Government business, but not always to the convenience of the Government."

This would require the Executive to determine its true priorities, and to make a compelling case for parliamentary time for its legislation, general debates and other business. It would also remove any suspicion that it was managing the Parliament's business in its own interests, such as by staging debates on matters of its own choosing which may be regarded by the other parties or by the wider public as not necessarily being the most relevant or topical. Where there is a very limited amount of plenary time, any perception that the Executive was staging debates primarily as 'time-fillers' would be very damaging to the ethos and status of the Parliament.

The symbolic impact of the latter interpretation is crucial to the achievement of the spirit of the CSG/SCC vision. A position where the Parliament itself, not the Executive, is the true owner of all parliamentary time (including committee time) not otherwise specified by Standing Orders, signals an appropriate relationship between the two institutions; that the Parliament does not exist primarily as a vehicle for the transaction of a government's business. The Executive would be in the same position as other bidders for time, albeit one whose priorities should, and would, receive special consideration. It also ensures proper consideration for claims by non-Executive parties for adequate support to carry out their party business, such as facilities for legislative drafting of Member's or Committee Bills.

The Executive had taken the view that all plenary time other than that expressly allocated should be, and is, at the disposal of the Executive in order that it can have its business transacted. This claim was made clearly by the Minister for Parliament, in his 21 September 1999 Procedures Committee evidence:

> "Our firm view is that there are certain slots of time that are allocated to non-Executive parties—with certain slots of time allocated for the work of committees—and that the remainder of the Parliament's time is for the Executive

to advance its programme. That is why we have an Executive, and the remainder of the time should be available to the Executive for that purpose."

The Bureau implicitly accepted this interpretation in the Parliament's early days, as can be seen from guidance issued to Members on 14 June 1999:

> 16. Most business taken in Executive time will originate in the Executive. However CSG envisaged the possibility that the Bureau might note the strength of feeling among Members on a particular issue, and the desire to debate it, based on the motions lodged and the support they carry. In such cases, CSG envisaged that the Executive might agree to allow a debate on such issues. The terms and origin of the motion to be debated would be a matter for negotiation in the Bureau; but it should be recognised that such debates would take place in Executive time.

On the other hand, the SNP business manager, Mike Russell, has argued that no such presumption can be made in the absence of any explicit statement in standing orders. In his view, all unallocated time belongs to the Parliament, for business as arranged under usual Bureau procedures.

This divergence of view was most clearly seen in the allocation of time for the three Members not represented on the Bureau. *Rule 5.6* did not provide them with any guaranteed time, and the two major non-Executive parties had shared out the allotted 15 periods between them (10 to the SNP and 5 to the Conservatives). The three aggrieved MSPs asked the Procedures Committee in September 1999 to ensure the provision of a period each, raising the total allocation to 18. The Executive objected to what it saw as the diminution of available time for its business, and initially proposed that any provision for these Members be accommodated within the existing overall allocation. Ultimately a compromise was reached, by increasing the allocation from 15 to 16. This was calculated on the basis that appropriate time be allocated to the single member parties (currently the Greens and SSP), with the Presiding Officer ensuring that independent members (currently, only Dennis Canavan) have "the opportunity to put forward the issues that are important to them."

Some analysis of how plenary time was allocated in the first Parliamentary year is provided in chapter 9 of this Study. Over the succeeding years, it will be interesting to see how this matter develops. The four-year sessional cycle may mean that the balance between different categories of business may vary within the different parliamentary years of a session.

4.6.   The Parliamentary timetable

Central to the ethos of the Parliament's ethos was an operating cycle which, in terms of its daily, weekly, yearly and sessional calendar and timetable, would be a significant

improvement on Westminster. This encompassed a number of inter-related criteria, including the following:

'family friendly': There should be normal working hours, as far as possible, with no Westminster-style late-night sittings. The sitting hours should take proper account of factors such as Scottish school holidays, the domestic needs of Members and staff, and the accessibility of the Parliament and its proceedings to the public.

balance between Chamber and committee work: Both the committees and the Chamber should be seen as the major forums for the Parliament's business. There was a desire not to imitate the perceived Westminster situation of the Chamber being regarded as by far the more important forum.

balance between work in the Parliament, within political parties and in Members' localities: The parliamentary schedule should recognise time be set aside to allow Members' to undertake work other than participation in the formal proceedings of the Parliament, in the Chamber or in committee.

The Parliament has experienced similar problems as have plagued Westminster's attempts to reform its sitting times. Not all these factors fitted neatly with each other. For example, normal office hours may not be convenient for citizens who themselves may have competing working, domestic or other commitments during these hours. MSPs from localities outwith Central Scotland may find such hours still do not allow them to return home between days when they have parliamentary business. The media and the public tend to regard any non-sitting period, whether a formal recess or not, as holiday for parliamentarians, with 'constituency business' and similar phrases being mere euphemisms.[48]

A particular strain has been maintaining the balance between committee and plenary business. Standing Orders required that committees should not sit at the same time as a meeting of the Parliament, and also by allowing them to meet during non-sitting periods, though not normally in recesses. With the level of committee workload experienced thus far, the rule against concurrent meetings has been under pressure. Committees have found advance planning difficult within this constraint, given the number of Members who served on more than one committee.

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[48] The Bureau itself appears to be coy about recesses, and has adopted obscure euphemisms, as the relevant Bureau motions tend to refer not to recess dates but to "dates under Rule 2.3.1" (see the brief exchange during the 16 November 2000 plenary meeting). This is hardly within the CSG spirit of openness and accessibility.

The normal pattern of plenary sitting is 1½ days per week, with an afternoon session on Wednesdays (at an average of 3 hours 19 minutes) and a full day on Thursdays (at an average of 5 hours 53 minutes). One formal change in the standard pattern of weekly sittings, which was implemented as part of the major reform of Standing Orders at the end of 1999, was the extension of Wednesday plenary sittings from a 17:30 close to a 19:00 close, if necessary. The Procedures Committee apparently did not wish to go further at that stage, and so options such as extended Thursday plenary sittings, the use of Wednesday mornings for plenary sittings, or of allowing plenary and committee meetings to take place at the same time, were not pursued.

The latest the Parliament sat in plenary session was 18:59 on Wednesday 29 March 2000. No sitting began earlier than the set times of 09:30 or 14:30, nor did a sitting run continuously through the day without a midday break.[49] Generally the Parliament managed to maintain its normal plenary cycle, other than in the initial period before the first summer recess, when there were two meetings on a Tuesday, one on a Friday, and two Wednesday morning sittings.

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[49] The shortest lunch break was during an early meeting of the Parliament, on 17 June 1999, when the morning session, devoted to a full debate on the future of the Holyrood Parliamentary Building Project, ended on 13:20 and the afternoon session began at 14:30.

5. Committees: the Parliament's powerhouse

5.1. Introduction

The committees of the Parliament were intended to be integral to its style of operation. Though the legislation did not require committees to be established, their existence was assumed throughout the SCC, legislative and CSG processes from 1989 onwards. Committees enable a parliament to take on a greater workload than could be managed effectively in plenary session. In the unicameral Scottish Parliament, the committee system was seen to be particularly relevant because there would be no other means for internal review and alternative consideration of policies or legislation.[50] Committees also provide a convenient and efficient channel for the meaningful participation of outside interests in parliamentary work, something which was central to the Scottish Parliament's ethos.

The CSG proposed a system of all-purpose subject committees, combining the role of the Westminster standing and select committees, with wide-ranging remits covering consideration and scrutiny of policy and legislation. This was substantially implemented in the initial Standing Orders, as can be seen from the provisions of *Rule 6.2* on the functions of all committees:

> 1. A committee shall examine such matters within its remit (referred to as "competent matters") as it may determine appropriate or as may be referred to it by the Parliament or another committee and shall report to the Parliament on any such matter.
>
> 2. In particular, each committee shall conduct such inquiries into such competent matters as it may consider appropriate or as the Parliament or another committee may require, and may-
> (a) consider the policy and administration of the Scottish Administration upon any competent matter;
> (b) consider any proposals for legislation which relate to or affect any competent matter, including proposals for primary or secondary legislation, whether before the Scottish Parliament or the United Kingdom Parliament;
> (c) consider any European Communities legislation or any international conventions or agreements or any drafts which relate to or affect any competent matter;

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[50] This was a point made strongly in commissioned Constitution Unit research for the Scottish Office and the CSG: *Checks and balances in single chamber parliaments*, 1998.

> (d) consider the need for the reform of the law which relates to or affects any competent matter;
>
> (e) initiate Bills on any competent matter; and
>
> (f) consider the financial proposals and financial administration of the Scottish Administration (including variation of taxes, estimates, budgets, audit and performance) which relate to or affect any competent matter.

5.2.   Establishment

Standing Orders required that the Bureau propose the establishment of certain mandatory committees (Procedures, Standards and Finance) within 21 sitting days of a general election, and the others within 42 sitting days. The relevant motion, covering all committees, including these mandatory committees, was moved on 8 June, which appeared to meet the requisite time limit. The actual memberships were agreed by a further motion on 17 June.

Some committees were regarded by CSG as being so important to the operation of the Parliament as to be required in Standing Orders. These are defined as 'mandatory committees', and the remit, though not the size, of each was set out in the Rules. All mandatory committees were to be established for a whole parliamentary session:

- Audit Committee
- Equal Opportunities Committee
- European Committee
- Finance Committee
- Procedures Committee
- Public Petitions Committee
- Standards Committee
- Subordinate Legislation Committee

As for others, described as 'subject committees', the Parliament agreed on 8 June 1999 to the Bureau's proposals to create 8 such committees. The remit of each broadly indicated that they mirrored ministerial (though not necessarily departmental) responsibilities, by way of a standard description of the main subjects, followed (other than in the case of local government) by "such other matters as fall within the responsibility of the Minister for X":

- *Justice and Home Affairs*: the administration of civil and criminal justice, the reform of the civil and criminal law and such other matters as fall within the responsibility of the Minister for Justice;

- *Education*: school and pre-school education, the arts, culture and sport and such other matters as fall within the responsibility of the Minister for Children and Education, Culture and Sport;
- *Social Inclusion, Housing and Voluntary Sector*: housing and the voluntary sector and such other matters as fall within the responsibility of the Minister for Communities other than local government;
- *Enterprise and Lifelong Learning*: the Scottish economy, industry, tourism, training and further and higher education and such other matters as fall within the responsibility of the Minister for Enterprise and Lifelong Learning;
- *Health and Community Care*: health policy and the National Health Service in Scotland and such other matters as fall within the responsibility of the Minister for Health and Community Care;
- *Transport and the Environment*: transport, the environment and natural heritage and such other matters as fall within the responsibility of the Minister for Transport and the Environment;
- *Rural Affairs*: rural development, agriculture and fisheries and such other matters as fall within the responsibility of the Minister for Rural Affairs;
- *Local Government*: local government

During the 8 June debate, several MSPs queried the ability of this structure to deal with cross-cutting matters which straddle more than one ministerial portfolio. The Deputy Minister for Parliament, when winding up the debate, referred simply to the provisions in Standing Orders for the creation of sub-committees and for joint consideration of issues. During the first year, no sub-committees were established, and only one joint meeting took place, that between the Finance and Audit Committees on 30 June 1999. The mandatory committees are, almost by definition, cross-cutting committees, and it may be that any new cross-cutting committees the Parliament decides to establish will be accorded similar status.

The absence thus far of any dedicated committee scrutiny of core Executive issues such as machinery of government issues, freedom of information, public appointments, ministerial ethics and so on, can dilute the scope for strategic scrutiny. This is demonstrated by the issue of quangos, agencies and similar forms of public body. The scrutiny of quangos has been described as "the area of policy and administration in which the committees were most effective".[51] This may be a fair and accurate judgment in terms of the scrutiny of particular bodies in particular situations. It is not the case for the scrutiny of strategic Executive policy on the existence, use and operation of the quango as an instrument of devolved government.

Negotiations were required by, and around, the Bureau as to the size of the 8 mandatory committees, the number, remit and size of all other committees ('subject committees'), and

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[51] P Lynch, *Scottish government and politics*, 2001, p87

the actual membership of each committee. Notwithstanding the ideals of the 'new politics', these negotiations, especially those concerning the party distribution and actual members, appear to have taken place in true Westminster tradition, within private party caucuses and between party business managers. The main factors which appeared to influence the shape and size of the committees, especially the subject committees, were the desire to make the committees mirror the ministerial portfolios as much as possible, and the need to accommodate party wishes and political balance.

5.3.   Composition

An essential aspect of the CSG vision for the committee system was that of sharing of power. By this was meant that committees would be a key linking mechanism between the three pillars of devolved governance – the Parliament, the Executive and the people. One way this can be achieved, alongside the related principle of equal opportunities in the Parliament's appointments, is through their composition.

The *Scotland Act 1998* required that standing orders include provision "for ensuring that, in appointing members to committees and sub-committees, regard is had to the balance of political parties in the Parliament." The CSG report repeated this requirement, and Standing Orders incorporated it, though it is linked to other criteria: "In proposing a member to be a committee member, the Parliamentary Bureau shall have regard to the balance of political parties in the Parliament and, where that member has expressed an interest in serving on that committee, to his or her qualifications and experience as indicated by him or her."

It appears that the Parliament took this criterion as an injunction to ensure that the composition of each committee reflected that of the Parliament as a whole. The Bureau proposed committees of a size which would incorporate that intention, along with other requirements of viability, resources and the expressed desires of the political parties. The implications of this approach are discussed further in chapter 13 of this Study, as an aspect of the 'majoritarian principle' inherent in the Parliament. For present purposes, what is relevant is the acceptance and implementation of this approach by the Bureau and by the Parliament in its first year, in terms of the membership, convenerships and deputy convenerships of committees.

The Bureau adopted the d'Hondt method of allocating committee seats to parties. However, within that formula, the Labour Party and other parties agreed to accept less than their full entitlement, partly in recognition of the absence of a single-party majority in the Parliament, and partly to accommodate seats for the three single-member parties

The 16 committees provided a total of 164 committee places. Over the year, 104 MSPs sat on committees; 43 on one, for all or part of the year, 55 on two and 6 sat on three. Standing

Orders did not state whether committee membership was restricted to 'backbenchers' or to any other category of MSPs. However the implication of the CSG approach was that committees should not contain ministers or the Presiding Officer, though no such restriction appeared to apply to Deputy Presiding Officers or to the four appointed members of the SPCB. In the Parliament's first year, this approach was adhered to by the Parliament, and all 130 MSPs (including the MSP returned at the Ayr by-election in March 2000), other than the Presiding Officer, ministers, and one Deputy Presiding Officer (and the two main Opposition party leaders) were allocated committee places.

Of the 164 initial committee places, 73 (44.5%) were allocated to Labour MSPs, 43 (26.2%) to the SNP, 22 (13.4%) to the Conservatives, and 23 (14.0%) to the Liberal Democrats. The three single member MSPs were each allocated one committee place. This distribution was roughly in line with each party's membership in the Parliament, and was virtually identical as between the mandatory and subject committees.

Of the 16 initial convenerships, there were 8 Labour, 4 SNP, 2 Conservative and 2 Liberal Democrat. Thus Labour did claim 50% of the convenerships and the coalition had 10 of the 16 convenerships, thereby having a majority on the informal Conveners Liaison Group. The initial deputy convenerships were distributed in the same ratios. This distribution in both cases was identical as between mandatory and subject committees.

The gender distribution of the 164 initial committee places is of interest. 97 (59%) were male, and 67 (41%) were female. The greater proportion of women on committees than in the Parliament as a whole may be explained by their low rate of memberships of the categories of MSP not represented on committees.[52] Women held only 6 (37.5%) of the 16 initial convenerships, but, perhaps in recognition of this, 10 (62.5%) of the initial deputy convenerships, and 11 (68.75%) from February 2000.

There was some variation in the gender balance as between, and within, mandatory and subject committees. Although women had 41% of all committee places, they held only 37% of mandatory committee places, but 44% of subject committee places. Only 1 (Equal Opportunities) of the 8 mandatory committees had a female convener. The 5 subject committee convenerships were Education, Culture and Sport; Health and Community Care; Justice and Home Affairs; Local Government, and Social Inclusion, Housing and the Voluntary Sector. The three committees which had both a female convener and deputy convener were Equal Opportunities; Education, Culture and Sport, and Social Inclusion, Housing and the Voluntary Sector. By contrast, the Audit, Subordinate Legislation, Rural Affairs, and (initially) Finance had both male conveners and deputy conveners.

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[52] Only 5 (22.7%) of 22 ministerial posts were held by women in the first administration

Describing particular areas of public policy as being regarded traditionally or stereotypically as 'female' or 'male' issues is be fraught with difficulty. Also, there is no official hierarchy of committees, or even of categories of committee, within the Parliament. Nevertheless, it may be suggested tentatively that female committee participation and leadership seems to have been concentrated more in subject areas which have been typically characterised as 'women's issues'. This may have been due to the choices of the MSPs concerned and the decisions of the party business managers,[53] or to a combination of these and other factors.

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[53] Initially, the 4 business managers, who represented their parties on the Bureau, were male, though the SNP (Tricia Marwick) and Liberal Democrat (Margaret Smith) deputy business managers, and one of the two Labour deputy business managers (Margaret Curran), were female. When Margaret Smith was elected as convener of the Health and Community Care Committee, she was replaced as Liberal Democrat deputy business manager by Keith Raffan.

Table 5.1: Committees, as established June/July 1999

Committee	Mandatory or Subject	Members	Convener by party	Convener by gender	Lab	SNP	C	LD	Other	Male/ Female
Audit	M	11	SNP	M	5	3	2	1		8-3
Education, Culture and Sport	S	11	L	F	5	3	1	2		6-5
Enterprise and Lifelong Learning	S	11	SNP	M	5	3	2	1		6-5
Equal Opportunities	M	13	L	F	6	3	1	2	1 (SSP)	6-7 (5-8 from 13.01.00)
European	M	13	L	M	6	3	2	1	1 (MPFW)	7-6
Finance	M	11	L	M	5	3	1	2		9-2
Health and Community Care	S	11	LD	F	5	3	2	1		5-6
Justice and Home Affairs	S	11	SNP	F	5	3	2	1		4-7 (5-6 from 13.01.00)
Local Government	S	11	L	F	5	3	1	2		8-3
Procedures	M	7	C	M	3	2	1	1		6-1
Public Petitions	M	7	L	M	3	2	1	1		2-5
Rural Affairs	S	11	C	M	4	3	2	2		7-4
Social Inclusion, Housing and Voluntary Sector	S	11	L	F	5	3	1	2		7-4
Standards	M	7	LD	M	3	2	1	1		4-3 (5-2 from 07.10.99 to 18.11.99)
Subordinate Legislation	M	7	SNP	M	3	2	1	1		6-1 (5-1 from 21.12.99)
Transport and the Environment	S	11	L	M	5	2	1	2	1 (Gr)	6-5
TOTALS	**8 M, 8 S**	**164**	**8L, 4SNP, 2C, 2LD**	**11M, 6F**	**73**	**43**	**22**	**23**	**3**	**97-67**

The appointment of deputy conveners was delayed until the last sitting day of 1999, and the actual members were elected by their committees on their return after the Christmas/New Year recess. The party and gender distributions were in the same proportions as for convenerships:

Table 5.2: Committee deputy convenerships

Committee	Deputy Convener by party (Jan 00-)	Deputy Convener by gender (Jan 00-)
Audit	C	M
Education, Culture and Sport	L	F
Enterprise and Lifelong Learning	C	F
Equal Opportunities	SNP	F
European	L	F
Finance	L	M (F from 01.02.00)
Health and Community Care	L	M
Justice and Home Affairs	L	M
Local Government	L	F
Procedures	L	F
Public Petitions	L	F
Rural Affairs	SNP	M
Social Inclusion, Housing and Voluntary Sector	SNP	F
Standards	SNP	F
Subordinate Legislation	LD	M
Transport and the Environment	LD	F
TOTALS	**8L, 4SNP, 2C, 2LD**	**6M, 10M** **(5M, 11F from 01.02.00)**

5.4. Activity

The work of committees during the first year is summarised in table 5.3. This shows that the level of formal meetings was generally much greater than the fortnightly cycle originally envisaged. The Justice & Home Affairs Committee met no less than 31 times, mainly due to its heavy legislative load.

It also demonstrates the significant variation in the balance of business between committees, such as the scrutiny of legislation and EU documents, the consideration of petitions and the conduct of inquiries. The first two types of business are those allocated to committees from elsewhere in the Parliament, and the level of such business can affect the extent to which a committee can set its own agenda, especially in the areas of pursuing scrutiny inquiries. In some cases, such allocated business will inevitably dominate the agenda, as can be seen in the cases of the European, Finance, Subordinate Legislation and Public Petitions Committees.

Table 5.3: Committee activity: 1999-2000 parliamentary year

	Meetings	Visits	Inquiries	Bills	Sub Leg, EU docs	Petitions	Reports	Divisions
Audit	16	3	3	1	1	0	4	2
Education, Culture & Sport	27	3	3	2	3	8	6	31
Enterprise and Lifelong Learning	21	4	1	2	8	4	1	0
Equal Opportunities	20	0	0	3	2	1	1	0
European	18	4	4	0	----- (a)	3	7	0
Finance	21	0	1	8	4	0	11	2
Health & Community Care	28	0	1	1	43	14	16	3
Justice & Home Affairs	31	2	0	4	12	10	6	26
Local Government	27	15	1	3	25	5	9	0
Procedures	15	0	0	0	0	0	1	0
Public Petitions	14	0	0	0	0	189	0	1
Rural Affairs	23	5	4	3	26	18	10	15
Social Inclusion, Housing and Voluntary Sector	29	3	2	1	3	15	1	1
Standards	24	0	3	0	0	0	6	0
Subordinate Legislation	29	0	0	6	182	0	31	0
Transport & the Environment	20	1	2	1	26	22	8	1
TOTAL (b)	**363**	**40**	**25**	**35**	**335**	**289** (c)	**118**	**82**

Notes:

(a) The Parliament's statistics provide no formal total, but the Committee's annual report refers to "over 1,100 items emanating from Brussels". The total for all committees therefore ignores the contribution of the European Committee itself.

(b) Totals of bills, subordinate legislation, and petitions refer to total of committee considerations for each category

(c) 100 petition considerations by committees other than the Public Petitions Committee

5.5.   Information-gathering

Standing Orders provided for the traditional forms of information gathering by committees, through the attendance of witnesses and the production of documents.   In addition, committees can appoint a reporter from among its members "to report to it upon any competent matter within such time limit as the committee may determine."   This was proposed by the CSG report, along the lines of the 'rapporteur' of continental parliamentary practice.   The Parliament's guidance on the operation of committees, suggested that the reporter might be responsible for "researching, investigating an issue, or the drafting of a committee report on a particular subject over a set period of time." This could be done directly or by "commissioning and monitoring the work to the committee's instruction." A reporter could also act as a link person with another committee or an outside body.

Some committees, such as Equal Opportunities, Health & Community Care, Local Government and Rural Affairs have actively used reporters in their operation in the first year, while 5 committees (Audit, Procedures, Public Petitions, Standards and Subordinate Legislation – all mandatory committees) did not use the technique at all during that period. The reason for this apparent divergence in practice between mandatory and subject committees is not immediately obvious, and it may not be maintained in future years.

Committees can also arrange through the SPCB for the appointment of one or more advisers. Again this technique was more actively used by subject committees than by mandatory committees.   Of the 8 committees which did not use an adviser, 6 were mandatory committees. Of those which did use advisers, only 3 had appointed any by the end of 1999.[54] This may suggest that part of the reason for this pattern of use in the first year was the requisite administrative arrangements, especially the need to seek the approval of the Bureau, required by the rules.

It will be seen from table 5.3 that committees varied greatly in their use of visits as an investigatory tool. The extensive use by the Local Government Committee (15, 37.5% of the total) between November 1999 and February 2000 was related to its major inquiry into the McIntosh Report on local government reform in the era of devolution.

The workload of the committees in their first year contributed to the relative lack of experimentation with more innovative forms of information gathering, especially those exploiting new technology or promoting means of civic engagement. A 'civic participation fund' of up to £50,000 was announced in October 1999 for committees "to ensure 'partnership

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[54] One of those, the Standards Committee, had appointed an adviser to assist in its 'Lobbygate' inquiry, mainly because it had not yet had time to set up any formal arrangements for the investigation of complaints, such as a 'standards commissioner'. In that sense, this may not be regarded as a usual use of an adviser.

with the people' in their work [and] to engage in new forms of participation",[55] and some committees did discuss, in open session during the first year, how such funding could be used. The 'Business in the Chamber' event organised by the Enterprise and Lifelong Learning Committee in February 2000, a form of 'mock parliament' for business representatives, was a rare example of a novel committee exercise. Committees do conduct electronic consultations, and the European Committee produces a regular on-line newsletter, *Europe Matters*.

Much of the committees' information-gathering in the first year was through formal evidence-taking, both written and oral. It can be seen from table 5.4 that, though just over a quarter of all witnesses were from the Executive, and a further 12% from public bodies, the majority were described in the Parliament's statistics simply as 'other witnesses'. While a large proportion of this category were no doubt what may be described as 'the usual suspects' – prominent pressure groups, academic experts and so on[56] – many will have been individuals and groups which would have not accustomed to have been consulted by government or parliament prior to devolution.

There were no serious problems for the Parliament in its first year over the exercise of its information-gathering powers, and evidence was gathered through invitation rather than by recourse to its statutory powers. However, tensions grew between the committees and the Executive in the autumn of 2000 over their investigation of the Scottish Qualifications Authority's handling of the 2000 school exams diet. Westminster experience had demonstrated that such battles of wills over ministerial accountability generally were unproductive affairs, with Parliament generally unwilling or unable to assert its theoretical powers fully to obtain all the evidence it demanded. The Executive reacted to the SQA problem in a rather traditional way, if dressed up in 'new politics' rhetoric.[57] It brought forward a motion which invited the Parliament to agree to its view as to how the Parliament's information-gathering powers should be exercised against the Executive:

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[55] *Parliament press release 56/99*, 29.10.99, the same day as the Executive announced £300,000 over 3 years for the Scottish Civic Forum (*SE press release 1098/1999*). The Parliament's notice provided a list of possible examples of such new forms of participation.

[56] One early study concluded that the committees became "the focus of pressure group attention…. Consultation therefore largely involved the usual suspects rather than the general public – despite the intention of making the process more open to 'groups more traditionally excluded from the decision-making process'": P Lynch, "The committee system of the Scottish Parliament" in G Hassan & C Warhurst, *The new Scottish politics*, 2000, p72.

[57] The proposed process for access to sensitive Executive information was reminiscent of the 'Crown Jewels' procedure used in the wake of the *Belgrano* affair in the mid-1980s for limited Westminster committee access to defence and other security material.

> That the Parliament notes that the Executive is committed to a policy of openness, accessibility and accountability in all its dealings with the Parliament and its Committees; further notes both the Parliament's right and duty to hold the Executive to account including the power to invoke section 23 of the Scotland Act and the public interest in maintaining the confidentiality of exchanges between officials and Ministers concerning policy advice; observes that other Parliaments with strong freedom of information regimes do not disclose the terms of such exchanges and calls, to that end, for the Executive and the Parliament to observe the following principles:
>
> (i) consistent with its policy of openness, the Executive should always seek to make as much information as possible publicly available as a matter of course and should respond positively to requests for information from the Parliament and its Committees;
> (ii) officials are accountable to Ministers and Ministers in turn are accountable to the Parliament and it follows that, while officials can provide Committees with factual information, Committees should look to Ministers to account for the policy decisions they have taken;
> (iii) where, exceptionally, Committees find it necessary to scrutinise exchanges between officials and Ministers on policy issues, arrangements should be made to ensure that the confidentiality of these exchanges is respected,
> and commends these principles to Committees as guidelines to be followed in their dealings with the Executive.

After a lively debate on 1 November 2000 (though not preceded by any detailed committee examination, as would have been generally expected in the case, for example, of other Executive policy proposals), this motion was approved. It therefore can be regarded as a concordat between the Parliament and the Executive on this matter, though strictly without prejudice to the Parliament's formal powers.

Table 5.4: Committee witnesses: 1999-2000 parliamentary year

	SE ministers	SE officials	MSPs	Represent-atives of public bodies	MPs, UK govt ministers & officials	Others	TOTAL
Audit	1	10	0	15	0	0	26
Education, Culture & Sport	6	6	0	25	0	66	**103**
Enterprise and Lifelong Learning	7	18	0	12	0	79	**116**
Equal Opportunities	2	10	0	10	0	54	**76**
European	6	7	0	4	0	17	**34**
Finance	5	4	1	8	1 (official)	12	**31**
Health & Community Care	2	6	0	13	0	43	**64**
Justice & Home Affairs	25	27	1	3	0	60	**116**
Local Government	11	19	0	2	0	58	**90**
Procedures	16	2	5	0	0	17	**40**
Public Petitions	0	0	11	2	2 (MPs)	34	**49**
Rural Affairs	9	28	21	9	0	20	**87**
Social Inclusion, Housing and Voluntary Sector	3	13	1	20	5 (officials)	59	**101**
Standards	2	1	0	0	0	16	**19**
Subordinate Legislation	0	8	0	0	0	1	**9**
Transport & the Environment	8	14	4	6	0	53	**85**
TOTAL	**103**	**173**	**44**	**129**	**8**	**589**	**1046**

5.6. Location and openness

The CSG report was clear that committees had a key role in making the Parliament accessible to the people of Scotland, and that it was important where committees were based and where they met. Committees were to be encouraged to meet and take evidence outside Edinburgh, and, if appropriate, committees could be permanently located in other parts of Scotland.

Andrew Wilson (SNP) pressed this approach during the 8 June 1999 debate establishing the committees, emphasising the cross-party support for the relevant motion. He argued that "it would be to the Parliament's credit, in bringing a new democracy to Scotland to start the new century, if we were to assert the fact that the Parliament is not just Edinburgh's, but Scotland's. Indeed, our work should go around the country, both on a roving basis and, where possible, on a permanent basis."   However, the response of the Deputy Minister for Parliament, was in the finest *Yes Minister* tradition:

"We are all minded to support the principles behind Andrew Wilson's motion that committees should move around the country… I do not think that, at this stage, we should tie ourselves down to specifying how that should work. The committees themselves need to consider their programmes, the issues that they intend to address and how best they can obtain the views of the people who are affected by those issues. It should then be for the committees to make proposals about holding meetings around the country. … We must consider those practicalities, but the principle is certainly accepted."

Table 5.5 Committee meetings: 1999-2000 parliamentary year

	Meetings	Within the Parliament	Elsewhere in Edinburgh	Outside Edinburgh
Audit	16	16	0	0
Education, Culture & Sport	27	24	3	0
Enterprise and Lifelong Learning	21	17	3	1 (Inverness)
Equal Opportunities	20	20	0	0
European	18	17	0	1 (Glasgow)
Finance	21	20	1	0
Health & Community Care	28	28	0	0
Justice & Home Affairs	31	28	2	1 (Stirling)
Local Government	27	24	1	2 (Glasgow, Stirling)
Procedures	15	15	0	0
Public Petitions	14	13	0	1 (Galashiels)
Rural Affairs	23	21	2	0
Social Inclusion, Housing and Voluntary Sector	29	24	3	2 (Glasgow, Stirling)
Standards	24	23	1	0
Subordinate Legislation	29	29	0	0
Transport & the Environment	20	16	4	0
TOTAL	**363**	**335** *(92.3%)*	**20** *(5.5%)*	**8** *(2.2%)*

No committees are permanently located outside Edinburgh. Only 8 meetings in the first year, 2.2% of the total, were held outside Edinburgh, and 20 meetings were held in Edinburgh but outside the parliamentary complex. Of the 16 committees, 10 (6 mandatory, 4 subject) had no meetings outwith Edinburgh. It is clear that, at least in the first year, that this was due in part to resource constraints and time pressures. However, Mike Watson (Lab), convener of the Finance Committee, is probably correct in suggesting that committees felt inhibited in indulging in much travel for fear of media accusations of junketing, especially after the initially hostile press reaction to matters such as allowances and the cost of the Parliament generally.[58]

However, in addition to formal meetings outside Edinburgh, committees also made 40 visits of various sorts to locations outside Edinburgh, and in one case in the first year, outside Scotland, when the European Committee visited Brussels in March 2000. These visits, by some or all members of a committee, as reporters, in small groups or otherwise, have included:

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[58] M Watson, *Year Zero: an inside view of the Scottish Parliament*, 2001, pp 179-83.

- *Audit*: examination of Scottish Ambulance Service - visits to Glasgow, Dundee and Galashiels (Feb 2000)
- *Justice & Home Affairs*: Annual report of HM Chief Inspector of Prisons – visits to HMP Low Moss, Bishopbriggs and HMRI Longriggend, Lanarkshire (Sept 1999)
- *Local Government*: McIntosh Report on local government and the Scottish Parliament – visits to 15 local councils (Nov 1999-Feb 2000)
- *Rural Affairs*: Changing employment patterns in rural Scotland - 4 public meetings in Newton St Boswells, Lewis, Newton Stewart and Laurencekirk (Apr-May 2000)

Of equal importance for the purposes of the CSG vision is whether committee meetings were held wholly or partly in public. This is considered in chapter 12, as part of the general issue of openness.

5.7. Conclusion

The committee system is one of multi-purpose committees, dealing with all relevant matters within their respective remits, including primary and subordinate legislative scrutiny. This was a bold model, in stark contrast with the Westminster tradition. The main advantage of this arrangement is intended to be the greater opportunity for committee members to gain the necessary expertise in the policy areas within their committee's remit, and develop close working relationships with the relevant government bodies and interest groups.

The main potential disadvantages are that
- a mix of legislative scrutiny and investigations and inquiries would mean that committees' work patterns could be set too much by the legislative timetable (generally at the behest of the Executive) rather than at their own initiative, and
- the potential for a consensual and inclusive culture among members could be diluted by partisan, political pressures when scrutinising government legislation.

Therefore, it is more appropriate and useful to think of a committee as having a common ethos and seamless approach across all its work, rather than seeing it as operating sometimes in 'select committee' or sometimes in 'standing committee' mode, in a Westminster sense. In general, in the Parliament's first year, the advantages outweighed the disadvantages. An effective degree of collegiality and cohesiveness had begun to develop, as can be seen by the relatively low frequency of formal divisions in committee, albeit within an overall context of a Parliament with a flourishing ethos of party competition. The most notable example was the virtual rebellion which frustrated ministerial attempts to kill off Tommy Sheridan's bill on warrant sales at its Stage 1 plenary debate in April 2000. Labour members felt bound to support the bill, having already supported it in three separate committees.

Perhaps the most visible aspect of committee activity in the first year was how busy they were. At the outset, it was envisaged that committees would generally meet once a fortnight. This would have implied around 150-200 meetings a year, whereas in the first year there were 363 meetings, taking well over 600 hours of parliamentary time. This workload has been a key feature of the Parliament's early operation.

The inherent tension between plenary and committee activity will remain a problem for the Parliament generally. This is likely to manifest itself both in terms of time (such as the maintenance of the prohibition on concurrent committee and plenary meetings), and in the consumption of other parliamentary resources. Committee workload is also a matter of the balance between legislative and other work, an issue primarily for business managers in the Bureau, presumably in conjunction with the Conveners Liaison Group (or its more formal successor).

Such pressures will also be relevant to the extent to which committees can fulfil the more innovative aspirations of the Parliament's founding spirits, in terms of their work programmes and operational techniques. For example, post-legislative scrutiny is an activity which has generally been regarded as a low priority at Westminster, but which is ideally suited to the Scottish committee model. There was little opportunity for this sort of work in the first year, at least in terms of post-devolution legislation, but this could become more relevant as the Parliament develops.

Committees can fulfil their innovative potential if they regard themselves as key facilitators of the CSG vision, especially in terms of sharing power, participation and openness. This requires integration of civic engagement techniques into their operating template, and it may be expected that the relatively modest steps in the first year, due to the limitations inherent in a start-up and learning phase, will expand significantly in future years.

A key aspect of that will be the committees' relationship with the Executive. In practice, the Executive has been the primary focus of committee activity. This manifested itself not just in terms of witnesses, but also in terms of the development of committee procedures. A protocol was concluded between committee clerks and the Executive in September 2000,[59] the purpose of which can be gleaned from the following extract:

> While the Parliament and the Executive have their own distinct roles it is in the interests of good governance for there to be a shared understanding of how the Committees and the Executive should work together. This document sets out such an understanding. In particular, an open flow of information between the

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[59] The November 2000 resolution on Executive accountability, considered above, is another example of this close Executive-committee relationship.

Parliament and the Executive will contribute to a productive working relationship between the two organisations.

The presumption appeared to be that, though committees formally report to the Parliament or to another committee, their reports are in practice directed at the Executive, and that it was for the Executive to respond to them:

> Advance embargoed copies of Committee Reports will be provided to the Executive. Neither the Parliament (ie Members, Parliamentary officials and staff of Members) nor the Executive (ie Ministers and officials) will place such Reports in the public domain in advance of their publication…The Executive will determine the form of its responses to Committee Reports according to the nature and content of the Reports. The Executive will normally provide a response within 2 months of publication of the Report. Where a response will take longer than 2 months to prepare, the Executive will write to the Committee Convener or Clerk explaining the reasons and indicating the likely timetable.

The committees' relationships with 'civic Scotland' can also cause difficulty. Committees will wish to create and maintain close contacts with key players in the areas of public policy within their respective remits. Yet they must not become 'captured' by these outside interests. As one commentator noted: ".... the specialist committees are likely to attract MSPs representing producer rather than consumer interests."[60] Another went further:[61]

> "… the development of 'clientistic' relations with some subject committees and their main pressure groups associated with that policy area cannot be ruled out. This fact raises the potential for committees to go native and become supporters of particular interest groups. Arguably, this scenario may already have occurred with the Local Government Committee: a committee comprised of former councillors and local authority employees … Acting as a lobbyist for COSLA was not exactly what the Consultative Steering Group had in mind for the Local Government Committee."

In the context of that particular committee, its convener has written:[62]

> "As Convener I have made clear that the Committee would not be seen as a limb of the Scottish Executive – it would be responsible and accountable to Parliament,

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[60] M Dyer, "Representation in a devolved Scotland" (1999) 36 *Representation* 18, 22

[61] P Lynch, "The committee system of the Scottish Parliament", in G Hassan and C Warhurst (eds), *The new Scottish politics: the first year of the Scottish Parliament and beyond*, 2000, pp72-3

[62] Trish Godman, "The Local Government Committee", *SCOLAG Journal*, Nov 2000, p12

and local authorities need not be apprehensive of our examinations of the relationships of councils, Parliament and the communities they seek to serve. Our objective is to assist with the improvement of local government throughout Scotland. One year on, I believe that my colleagues and I have demonstrated that independence from the Executive and have gained the respect of most councillors and officials."

In summary, one can conclude that the committees generally made a genuine and honest attempt, during the Parliament's first year, to give effect to the CSG vision, in so far as it was within their power and ability to do so. They do not have a totally free hand in determining what they do and how they do it, and this was especially so in their initial year. However, they generally operated in more consensual and less adversarial ways than the Parliament in plenary mode. Media attention has tended to concentrate on Chamber proceedings rather more than was originally expected (especially after First Minister's Question Time was initiated). Committee proceedings tend to be covered mainly when they are controversial or raise the spectre of defeat or embarrassment for the Executive. Specific events, such as the 'Lobbygate' affair in late 1999, may thrust otherwise obscure committees like the Standards Committee temporarily into the limelight.

As committees exploit their range of powers and functions, the balance between them and the plenary may change. Enhancement of their legislative functions will be central to this, especially effective pre-legislative and post-legislative scrutiny, and in the promotion of their own legislative proposals through Committee Bills. Similarly, the development of financial scrutiny, necessarily limited in the first year, will be a touchstone of committee effectiveness, especially as they become more closely integrated into the budget process. Structural reforms, such as enhanced resourcing, remuneration for conveners, and a role in public appointments, could also enable committees to make a real difference in devolved governance.

6. Shared business: legislation

6.1. Making laws

Law-making is a touchstone of a parliament. It is said to separate a parliament from, say, a Welsh-style assembly, and perhaps the most common synonym for a parliament is 'legislature'. The SCC said little about the role of law-making, presumably as this function was taken as read. The consistent view of the SCC, CSG and others, was that the legislative process should be better than as at Westminster, where it was regarded as too formalistic, adversarial and ineffective.

Unlike Westminster, the Scottish Parliament is a unicameral body. The same institution, albeit in its various guises, would be responsible for all parliamentary legislative work. There was no other parliamentary body either to preview draft legislative proposals or review actual legislative proposals. The preview function, sometimes called pre-legislative scrutiny, is seen as important in securing 'better' legislation, in terms of its efficiency and effectiveness, and the review function had particular importance in a subordinate legislature with a defined area of legislative competence.

The purpose of the Parliament's legislative process was to produce legislation that was both valid and effective. In this, the role of the committees was designed to be critical, and perhaps more important than the Parliament in plenary. They could be the mechanism for

- informed pre-legislative scrutiny
- civic participation in the legislative process
- detailed and informed scrutiny of the efficacy and validity of legislative proposals
- explanation of, and advice on, legislative proposals to the full Parliament
- initiation of 'cross-party' legislative proposals
- scrutiny of the operation of enacted legislation.

With the significant exception of bills being initiated by committees, the categories of legislation are generally comparable to those at Westminster, such as the division between public and private bills, though the latter was not expected to be a significant proportion of the Parliament's legislative load.[63] The very idea of private legislation appears to be contrary to the true spirit of the CSG principles, in that bodies or groups within Scottish society are able to secure the involvement of the Parliament in the passage of legislation specifically designed to be applicable to be in their own particular interest. Such promoters are literally

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[63] The initial Standing Orders included a skeletal process for private bills, which, perhaps fortunately, was never required to be operated in the first year (neither yet has the Parliament been confronted with the more esoteric category of 'hybrid bills'). A more comprehensive procedure was designed,

buying parliamentary legislative time. However, such objections appear not to have been aired thus far in the Parliament.

Within public primary legislation, the three main categories[64] are
- Executive Bills
- Members' Bills
- Committee Bills

The assumption throughout, and made clear in the CSG Report, was that the Executive would be, by far, the major promoter of legislation, as was the case in the various parliaments the CSG looked at. While legislative initiation would be primarily a governmental rather than parliamentary function, the desired balance between the Executive and the Parliament meant that the latter would also have opportunities to promote legislation. The ability of individual members to do so was familiar from Westminster, but the idea of committees as such also initiating legislation was more innovative. The SCC regarded legislative initiation as a power to be shared between the Executive and parliamentary committees, and the July 1997 White Paper also envisaged such a role for committees.

The CSG Report did not specify what sort of legislation should be introduced as Committee Bills. It would probably be a proposal with substantial cross-party support, perhaps arising out of the committee's scrutiny work (an inquiry, or an examination of a petition). It would likely be in a policy area where the Executive has not yet acted or refused to act, or one where it was thought more appropriate for non-Executive initiation. An obvious example of the latter is legislation on parliamentary matters, presumably by one of the mandatory committees such as Procedures or Standards.

No Committee Bills were introduced in the first year, partly due to time and resource (especially specialist drafting assistance) constraints. However the first such Bill - the *Protection from Abuse (Scotland) Bill* by the then Justice & Home Affairs Committee – began as a suggestion from a committee member, Maureen Macmillan, at that Committee's 2nd meeting on 31 August 1999. [65]

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and included in Standing Orders in November 2000, with detailed guidance published the following April.

[64] The rules provide for different legislative procedures for particular types of public bill, such Budget Bills and Emergency Bills, as well as more specialised forms such as Statute Law Repeals Bills. None of the latter has yet been introduced.

[65] It was formally proposed to the Parliament in a report in November 2000, following an extensive inquiry, and the Parliament agreed to the proposal following a debate on 24 January 2001. At the time of writing, the Bill is proceeding through the Parliament. The second such proposal was not until April 2001. This was the Standards Committee's recommendation for a bill to establish a

6.2.   The place of Executive law-making in the Parliament

The passage of government legislation is often seen as the epitome of a parliament's role, and the new Scottish Parliament is no exception. The view of ministers, prior to devolution, was made clear in the July 1997 white paper, which stated that "the role of the Scottish Parliament will be to make laws in relation to devolved matters in Scotland."

The CSG Report envisaged a form of 'Queen's Speech', subject to a plenary debate, where the Executive would announce its forward legislative programme for the 4-year session soon after a general election, and which "would be detailed in respect of the forthcoming year and more aspirational in respect of the following years". The Executive could bring forward any revisions to that programme during a session, and it would be required to inform the Parliament each year of its planned legislative timetable. Standing Orders did provide that, when the First Minister wished to make such a parliamentary statement "setting out the proposed policy objectives and legislative programme of the Scottish Executive for any Parliamentary year", notice is given to the Presiding Officer, who notifies the Bureau. The Bureau must ensure "sufficient time" for the statement to be made and debated.

The First Minister made the first such statement on 16 June 1999, the second on 14 September 2000, and the third on 5 September 2001. Though the Parliamentary year in the current session runs from May to May, the making of the annual legislative statement in September, if it becomes the norm, will distort parliamentary, media and public perception of the parliamentary rhythm implied in the CSG report and Standing Orders. Scrutiny of the proceedings on, and reporting of, these statements reveals that this confusion has already become common.[66] If there is a desire to mark the practical start of a parliamentary year from the end of the long summer recess, perhaps this should be formally integrated into Standing Orders.

Each statement contained a list of proposed bills. In the first, Donald Dewar said:

> "Let us not underestimate the scope and range of powers available to this Parliament… Day in, day out, it is here that the law of the land will be shaped and laid down. This Parliament is in charge of a wide sweep of domestic policy, which will touch on the lives of every man, woman and child in the land. This is fundamental, radical change. This is, in every sense, a Parliament. With that

parliamentary standards commissioner (2nd report, 2001). The Parliament agreed to this proposal following a debate on 23 May 2001.

[66] This is especially the case with 'session', which is increasingly being used in proceedings and in the media in the Westminster sense of a parliamentary year. Use of 'a parliament' as a synonym for the 4-year session is also not uncommon.

power comes responsibilities. We shall pass laws, not because we are here and must look busy, and not because someone grabs a microphone, or a megaphone, and says that something—anything—must be done. We shall act for and in the name of the people of Scotland. Already we can see one way in which the Parliament can make a difference. Under the old dispensation, we could reasonably expect to get one major piece of Scottish legislation through Westminster in a year, but today I will be giving the Parliament details of eight bills that will address matters of pressing importance to the people of Scotland in ways that meet their concerns and needs—Scottish solutions for Scottish problems."

That devolution would provide greater opportunities for the enactment of Scottish legislation than existed at Westminster is a claim commonly made by ministers and others. It assumes that more legislation is good for Scotland, and that much-needed laws were being prevented from being enacted because of time constraints at Westminster. It also assumes, perhaps, that some laws enacted in the UK Parliament may not always have been entirely suitable for Scotland, because they were being made by a body primarily composed of representatives of areas other than Scotland.

Dewar recognised, in his statement, the potential pitfalls in setting a too-simple goal of more legislation for its own sake:

> "A balance must be struck between the understandable call for quick results and the promise of genuine dialogue, proper scrutiny, and public and parliamentary involvement. That balance will be a matter of fine judgment. Members must understand—and must relay that understanding to those who watch our business—that proper scrutiny takes time."

This tension has been a constant theme throughout the Parliament's early months. It can be compounded by legislative programming based more on an annual, than on a 4-year, cycle. Though the procedural pressures of any annual 'cut-off' were deliberately removed in the Scottish model,[67] the Executive's programme appeared to have to conform to more Westminster-style rhythms and pressures of an annual legislative cycle, and one based on a de facto autumn-autumn parliamentary year. To some parliamentarians and senior staff alike, this imposed an unnecessary pressure on the parliamentary process, which could jeopardise the desired gains of greater, more effective legislative scrutiny. It can have a

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[67] Ministers apparently felt obliged to achieve most, if not all, of their set targets in the annual cycle. Reviewing the first year's programme in his second statement, the First Minister said that the one 'programme bill' (on land reform) which had yet progressed, had been "delayed for the best of reasons… Making new law in this area is especially complex and we must get it right; it will be introduced in this Parliamentary session."

knock-on effect on the non-legislative functions of committees, or the amount of time devoted in the Chamber to matters other than Executive legislation. These pressures, and trends towards more Westminster rhythms, may also have the unfortunate consequence of creating an assumption of the government legislative programme as the main determinant of parliamentary business.

The legislative timetables set for some Executive Bills produced complaints from some committees. For example, the Rural Affairs Committee was unhappy at the time available for Stage 1 consideration of the *National Parks (Scotland) Bill*. It was designated as lead committee on 30 March, and a Bureau motion, approved by the Parliament on 27 April, required Stage 1 to be completed (that is, including the plenary debate) by 24 May. It issued its report on 22 May, which included the following comment:

> 6. The draft proposals for National Parks were first considered by the Rural Affairs Committee in February 2000 although it was the Transport and the Environment Committee which had taken a more active role in the pre-legislative stage. Since being given the lead role, the Rural Affairs Committee has had to rely upon both evidence and advice from the Transport and the Environment Committee for which it is grateful. The other committees involved were asked to report by 9 May in view of the timescale set for stage 1, but this was not possible. The report by the Subordinate Legislation Committee was finished the day before, and the Transport and the Environment Committee report was agreed on the same day as the Rural Affairs Committee had to agree the final terms of this report. Accordingly, there has been limited opportunity for the lead committee to take into account the views of the Transport and the Environment Committee, as required by standing orders. The Transport and the Environment Committee's report is being published separately and the Parliament may wish to consider their additional evidence, which is not duplicated in this report.

> 7. The Committee wishes to express dissatisfaction with the extremely tight timescale set for the consideration of stage 1 of the bill. This report contains a number of questions to be answered by the Executive, which may have an impact on the timetable for completion of the Bill.

As the Executive does not have formal control of the Parliament's time, its programme has to take account of its potential impact, not only on the Chamber, but also on the committees. It has to balance ministers' desires for legislation, with the Parliament's ability to deal with it. This could imply programmes which, to some extent, include Bills across a broad range of public policy areas, and not overly concentrated on particular areas.

Parliamentarians, the media and wider civic Scotland will have to accept the implications of the intended operation of the Parliament's legislative procedures. Too great an emphasis on the quantity and 'newsworthiness' of legislation, and on speed of enactment, can only encourage undesirable practices. Some have already appeared, such as ministers sometimes being unwilling to accept substantive amendments to its proposals, or opposition parties routinely criticising Executive legislative programmes as "unimaginative" or "lacking in ambition". The nature and scope of any particular legislative programme may be due as much to the present limitations of the Parliament's legislative competence, as to the policies of any particular Executive.

The initial period of the Parliament may turn out not to be representative of its law-making activity in the future, for a number of reasons:

- Early programmes may contain a number of 'law reform' measures from pre-devolution days. Such measures may be significant, and indeed controversial, but not always contentious in a partisan sense, or conventionally newsworthy.

- 'Pre-legislative scrutiny' and detailed, widespread consultation may mean that some measures (such as FoI) expected by some to appear early in a session, may not in fact be introduced or enacted quite so quickly. Pre-legislative scrutiny and consultation which may have taken place prior to devolution, may not be regarded by the Executive or the Parliament as wholly sufficient.

- Some structural devolution legislation, giving effect to matters covered by the *Scotland Act* or proposed by the CSG and related reports, would be required. The major example thus far is the *Public Finance and Accountability (Scotland) Act 2000.*

- All concerned are inevitably learning how the legislative process works in practice, and can be expected to build up expertise over time. This also applies to ministers and their officials, who may have been more familiar with those at Westminster.

6.3. Executive legislation in the first year

Table 6.1: Executive Bills introduced in the first parliamentary year

Title	Introduced	Stage 1			Stage 2	Stage 3 & passed	Royal Assent
		Lead Cttee	Other Cttees	Plenary	Cttee	Plenary	
Mental Health (Public Safety and Appeals) (Scotland)	31.08.99	-	-	02.09.99	*CWP*; Finance (fr)	08.09.99	13.09.99
Public Finance and Accountability (Scotland)	07.09.99	Audit	Finance (inc fr); SL (dps)	30.09.99	Finance; Audit; SL (dps)	01.12.99	17.01.00
Abolition of Feudal Tenure etc. (Scotland)	06.10.99	JHA	SL (dps); Finance (fr)	15.12.99	JHA; SL (dps)	03.05.00	(09.06.00)
Adults with Incapacity (Scotland)	08.10.99	JHA	Health; SL (dps); Finance (fr)	09.12.99	JHA; SL (dps); EO; Health	29.03.00	09.05.00
Standards in Scotland's Schools etc.	19.01.00	Educ	EL; EO; Finance (fr)	22.03.00	Educ; (EO); (SL (dps))	(07.06.00)	(14.07.00)
Budget (Scotland)	21.01.00	-	SL (dps)	26.01.00	Finance; SL (dps)	10.02.00	20.03.00
Census (Amendment) (Scotland)	29.02.00	-	Finance (fr)	09.03.00	*CWP*	15.03.00	10.04.00
Ethical Standards in Public Life etc. (Scotland)	01.03.00	LG	EO; Educ; SL (dps); Finance (fr)	27.04.00	(LG)	(21.06.00)	(24.07.00)
National Parks (Scotland)	7.03.00	RA*	T&E*; SL (dps)*; (Finance (fr));	(24.05.00)	(RA)	(05.07.00)	(09.08.00)
Education and Training (Scotland)	28.04.00	ELL	(Finance (fr); SL (dps))	(25.05.00)	(ELL)	(29.06.00)	(07.08.00)

Notes:

(i) Committee references are to those which considered a bill in any substantive way, whether so designated as a lead or secondary committee or not. The first-named committee at Stage 2 is the lead committee, except that both Finance and Audit were lead committees for the PF&A Bill.

(ii) dates in parentheses refer to proceedings after the first year. An asterisk (*) denotes proceedings partly in the first year, and partly in later years.

(iii) CWP = Committee of the Whole Parliament

(iv) (dps) = Delegated powers scrutiny by Subordinate Legislation Committee, after Stage 2

(v) (fr) = Financial resolution scrutiny by Finance Committee

Ten Bills were introduced by the Executive in the first Parliamentary year, and table 6.1 tracks their progress. This section records, in order of introduction, some of the highlights of that programme, noting relevant aspects about their provenance and progress in the Parliament during that period.

Mental Health (Public Safety and Appeals) (Scotland) Bill [SP Bill 1]: It was ironic that the first legislation before the brand-new Parliament, was emergency legislation. As such, it had to be dealt with in ways expected to be atypical of the normal pattern of legislative scrutiny. In addition, it raised ECHR issues, and therefore the Presiding Officer's certification of legislative competence involved considerable discussion between Executive and parliamentary officials. Neither side would have wished the Bill to be accompanied by a statement that, in the Presiding Officer's view, all or part of the Executive's, and the Parliament's, first piece of legislation was not within legislative competence. Such a negative judgment could not, by itself, block progress of the Bill, but would be, at the very least, an embarrassment to the Executive and an invitation to future challenge on *vires* grounds.[68]

A Sheriff Court case, during the Parliament's summer recess, had exposed a "loophole" in mental heath legislation, leading to the release from the state hospital of a patient convicted of a serious offence. Discussions within the Executive, and between them and the main political parties, took place speedily, partly in response to critical media reaction concerned that other patients could have to be released on a similar basis. Initial statements from ministers hinted that legislation was an option, but no commitments were made. By 28 August ministers had announced early legislation:

> Scottish Ministers this morning confirmed their intention to put a Mental Health Bill before the Scottish Parliament using emergency legislation procedures when the Parliament resumes next week. When the Bureau meets this afternoon, the Minister for Parliament will propose a timetable which would get the Bill through Parliament within 10 days of introduction. The timetable we are setting out will ensure that the Bill is in place before any further relevant appeals are determined. It meets the commitment we gave at the time of the Ruddle judgement. We are determined to ensure that, when the courts come to consider similar cases, they can take full account of public safety. We want to ensure that our proposals command Parliamentary support and are effective in the courts. I am therefore contacting the Presiding Officer and the main Opposition Parties to brief them on our proposals. We shall also be making sure that our proposals are consistent with

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[68] In the event, there was such a legal challenge, which was not upheld: *A v Scottish Ministers*, 2001 SC 1, 2000 SLT 873 (Court of Session, June 2000). At the time of writing, this is being appealed to the Judicial Committee of the Privy Council.

the European Convention of Human Rights. We intend to conclude those discussions in time to allow us to publish the Bill by Wednesday 1 September.

Although *Rule 9.21* envisaged the passage of an emergency bill in one sitting, the Parliament agreed on 1 and 2 September, its first days after the recess, to take the Bill over two days. The first day (2 September) would be for Stage 1 (the debate lasted 90 minutes), and the second (8 September) for all remaining stages (the debate on these Stages lasted over 3 hours).[69] No committee involvement on Stages 1 and 2 was required for emergency bills, though the Finance Committee did present its required report on the Bill's financial resolution.

These debates were far from mere formalities, even though the Executive had taken great care in getting the other parties 'on side'. The Justice Minister explained, when opening the Stage 1 debate:

> "Speed of preparation has ruled out formal consultation, but I was able to brief the principal Opposition spokesmen late last week on the provisions of the bill. I record my appreciation of their willingness to help us to deal with this legislation on a fast track. In accepting the general principles of the bill, they reserve the right to examine it in detail and to provide the kind of parliamentary scrutiny that we expect from responsible Opposition parties."

Proceedings were conducted on that basis. Executive amendments were accepted, and amendments from others, many of a probing nature, were not. Opposition parties criticised the Executive for making such emergency legislation necessary in the first place, and questioned the limited nature and form of consultation undertaken on it. Attacks were also made on the Bill's scope and content for being both too broad in parts (incorporating matters not directly relevant to the immediate case), and too narrow in other parts (risking the creation of further potential legal 'loopholes' by its drafting). ECHR concerns were aired, concerning the adequacy of the various legal definitions employed and the allegedly retrospective nature of some provisions.

Opening the Parliament's 15 September meeting, the Presiding Officer announced that the Bill had received royal assent two days previously. In the unique circumstances, this first exercise in law-making could be regarded as a success, in that the procedures, both for legislating generally, and for emergency bills in particular, did not collapse under the strain. The Procedures Committee, during its initial review of Standing Orders, believed that the passage of the Bill "had been achieved successfully, albeit with the suspension of certain standing orders", and decided that any changes to the relevant Standing Orders could await

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[69] The Parliament also had to agree to the Bill being treated as an emergency bill. This was the subject of a 90-minute debate on 2 September just before the Stage 1 debate.

the Executive's intended review of emergency and other legislative procedures." The *Census (Amendment) (Scotland) Bill*, which was enacted very speedily in early 2000, did not however use the formal Emergency Bills procedure, but proceeded by way of suspension of certain Standing Orders.

Abolition of Feudal Tenure etc (Scotland) Bill [SP Bill 4]: This programme bill is a good example of a 'law reform' measure, being on a matter of purely domestic Scottish interest; long and highly technical in form and content, and which may not have easily found legislative time at Westminster.   Opening the Stage 1 plenary debate on 15 December 1999, the Justice Minister said that "this is the kind of detailed law reform that would have been delayed for years waiting for a legislative slot at Westminster, but is ideally suited for consideration by this Parliament."

Two major UK Acts on feudal reform had been passed in the 1970s, and the Scottish Law Commission produced a discussion paper in 1991 and a report and draft bill in February 1999. Reform was supported by the main Scottish parties (though the Conservatives favoured updating the present system of land tenure), and it featured in the Executive's partnership agreement. The Executive announced, in June 1999, its intention to produce a bill based primarily on the 1999 draft bill, and that Bill was introduced on 6 October 1999. It was designed to be part of a package of wider land reform, a factor that some MSPs noted complicated the operation of the Parliament's legislative scrutiny, based as it is on examination of individual bills.

The bill was examined at Stage 1 by the Justice and Home Affairs Committee (JHAC), as lead committee, over 4 meetings in November-December 1999, and by the Parliament on 15 December. The JHAC carried out Stage 2 scrutiny over 3 meetings in March 2000. The Bill was examined at Stage 3 and passed by the Parliament on 3 May, and was enacted on 9 June.

The JHAC's Stage 1 Report is a good example of this form of legislative scrutiny. It surveyed the background to the bill, and highlighted any relevant issues and particular areas of concern for the Parliament. The Committee had had a heavy workload in the Parliament's initial period, as much of the early legislation fell within its remit.[70]   The following extract is relevant to this Study:

> 9.That evidence raised a number of issues of concern in relation to the Bill, which
> we discuss below. Our purpose in doing so is not to suggest that the Bill is
> fundamentally flawed or that the Parliament should have any major reservations
> in agreeing to the general principles of the Bill. It is based, rather, on a recognition

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[70] It had a convener with experience of being a Westminster MP and a senior clerk who had previously been a House of Lords clerk.

that, if the Parliament's legislative procedures are to work effectively, even largely uncontentious Bills must be carefully considered. Scottish Parliament Bills are subject to a relatively simple process compared with the complexities of the Westminster system – but because there are fewer stages, it is all the more important that each is used to full effect. Evidence taken at Stage 1 is likely to be a key resource to all members at later stages – as well as representing the best, if not the only, opportunity for outside interests to make their views known to members of the Parliament.

10.In that connection, the Committee wishes to draw the Parliament's attention to the extremely tight timescale within which it has had to work….

11.Reporting on a Bill of 75 sections and 11 schedules that makes fundamental changes to a complex area of Scots law is not a task that can easily be completed in a hurry. The fact that it has been widely consulted on does not reduce the need for Parliamentary scrutiny – if anything, it increases the time needed for such scrutiny, since the extent of consultation has generated a lively and informed debate and a long list of prospective witnesses. The Committee has endeavoured to hear a wide range of views – but we have had only a limited opportunity to reflect on what we have heard. A more realistic timescale would have allowed us to produce a more considered report which, in turn, would have better equipped us – and other members – for Stage 2.

Adults with Incapacity (Scotland) Bill [SP Bill 5]: This programme bill was the result of lengthy policy examination. The Scottish Law Commission had produced a report and draft bill in 1995, based on a 1991 discussion document, and the UK Government had issued its consultation paper in 1997. The Executive published a policy document in August 1999, *Making the right moves*, which formed the basis of the Bill introduced on 8 October 1999.

The JHAC, as lead committee, held 3 Stage 1 sessions, and the Health and Community Care Committee 2 sessions, in November. The Parliament considered the Bill's general principles on 9 December, based on the lead committee's report. Stage 2 consideration of the Bill was undertaken by the JHAC over 6 sessions between 19 January and 1 March. Other committees were looking at the Bill during this period. The Equal Opportunities Committee, in particular, concentrated on potentially discriminatory provisions in a key definition on the Bill. These concerns were raised during Stage 1 proceedings, and, following disquiet during Stage 2, a revised amendment was put forward at Stage 3. The Bill was considered at Stage 3, and passed, in plenary on 29 March, and received royal assent on 9 May.

It can therefore be regarded as the first Bill to go through the full legislative process (other than direct pre-legislative scrutiny). Although not a bill of a politically partisan nature, it did

deal with many matters of social and ethical concern. The Parliament's legislative procedures may be at their best when dealing with a bill of this nature, as they enabled the major issues and controversies to be aired, and for what was described at its final stage by the minister as a "substantially improved" bill to proceed to enactment.

Census (Amendment) (Scotland) Bill [SP Bill 8]: This was not originally part of the Executive's programme, but arose because of pressure from within the Parliament and its committees. Disquiet had been expressed, through questions and motions, about the Executive's decision not to include a question on religion in the 2001 Census. Ministers had claimed that inclusion of such a question would require an Act of the Parliament.[71]

The Equal Opportunities Committee (EOC) took the lead in this matter when, at its 14 December 1999 meeting, a couple of its members said that they approached the Executive, but without much success. The convener promised to write to ministers on the EOC's behalf. The draft *Census Order 2000* was laid on 10 January 2000, and in an accompanying written answer (presumably responding to an 'inspired question'), the Justice Minister, Jim Wallace, explained why it did not include a religion question. The laying of the draft Order prompted further activity by supporters of a religion question, including a motion by a number of Conservatives. The Subordinate Legislation Committee (SLC) considered the draft Order on 25 January. However the EOC made the running, by holding several sessions on the draft Order, hearing from the Commission for Racial Equality on 18 January, and from the Justice Minister and the Registrar-General on 8 February.

This committee activity demonstrated the tension between desires for effective parliamentary (and especially, committee) scrutiny and the practical demands of committee time and resources. Subordinate legislation of this sort would usually be referred to the SLC, and to a lead committee. Indeed, the Justice Minister had described that procedure for the draft Order in a written answer on 11 January. However, on 20 January, the Parliament agreed, without debate or division, to a Bureau motion that it be considered by the Parliament directly. While this may have been due in part to the controversy surrounding the measure, and to the complex form of the draft Order, there were indications, in the EOC's discussion on 18 January that it was also due to the existing workload on the relevant committees. Nevertheless, MSPs were critical of this diversion from committee scrutiny.

The imminence of a plenary debate limited what the EOC could do, especially in putting forward a collective view in a motion for discussion at that debate. The Justice Minister's appearance before the Committee on 8 February crystallised matters, coming as it did only a

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[71] Other issues were also aired in the Parliament about the content of the Census, such as questions on the Scots language and on income. This analysis, however, concentrates on the religion question, which was the main controversy through the relevant period.

week before the relevant debate. The convener had already lodged a motion on behalf of the Committee, and on 9 February, she lodged a revised motion calling for the introduction of Executive amending legislation to permit a religion question in the 2001 Census. The day before the plenary debate on 16 February, the Committee discussed suggestions that the Executive would concede on the religion question, rather than risk defeat in the debate. The convener reported that she had received informal assurances to that effect, although she refused, when questioned by other members, to go into explicit detail. There appeared to be a split, partly on party lines, in the EOC on how to proceed, especially as it was not clear whether the apparent Executive concession covered all of its desires on matters beyond a religion question.

Though the convener had said that she still intended to press her motion, it was announced, at the start of the plenary debate, that it had been withdrawn. During the debate, she explained that the majority of the EOC believed that they had achieved as much as they reasonably could expect, but that she understood the views of the SNP members who had moved their own motion on the outstanding matters of concern. As the Justice Minister had formally announced the Executive's change of heart during his opening speech, any real tension or risk of a defeat for the Executive had evaporated.

The fruits of this successful campaigning emerged swiftly in the form of the Executive's *Census (Amendment) (Scotland) Bill*, introduced on 29 February. Because of the Executive's claim of time pressures in advance of the following year's Census, the Parliament agreed to expedite the Bill's progress. Unlike the previous year's mental health bill, this was achieved not by way of the emergency bill procedure, but by the suspension of various standing orders. The Parliament cooperated with the Executive's desire for speedy enactment, as evidenced by the brevity of the various legislative stages, and the absence of any substantive amendments. Stage 1 was taken in plenary session on 9 March, the remaining stages in plenary on 15 March, and royal assent was given on 10 April.

Both the parliamentary events which gave rise to the legislation, and the process of its enactment, make this Bill a noteworthy instance of the Parliament's first legislative year. Various potential difficulties were overcome, such as the substantive and procedural complexities surrounding the draft Order and the need for primary legislation in implementing the Executive's policy change. Those pushing for the inclusion of a religion question maintained impressive solidarity, although party differences did emerge in the EOC as to how to react to the Executive's overtures in advance of the 16 February debate. Perhaps the most appropriate endnote to this bill's passage is the comment by Johann Lamont (Lab) at the EOC's 15 February meeting:

> "I would be happier if, in general terms, we stopped perceiving every change in
> policy as a defeat. We should recognise that we have the opportunity for a

meeting of minds and that people can change their views after they have talked to others. We do not have to have the old combative model where, if someone is beaten, they lose their credibility. In fact, the most positive message might be that the minister has been able to shift on this issue because of the representations that can be made through a committee such as this."

Ethical Standards in Public Life etc. (Scotland) Bill [SP Bill 9]: This became one of the most visible Bills in the Parliament's short life, because it was the vehicle for the Executive's plan to abolish 'Section 28' or 'Section 2A'. This was controversial legislation passed in 1988, to prevent the promotion of homosexuality by local authorities (including the teaching in its schools of the acceptability of homosexuality as a pretended family relationship).[72] While nothing was said about this in the first legislative programme, it was clearly an issue with which the two coalition partners would empathise, and abolition was also on the agenda at Westminster. It also fitted well with much of the 'equal opportunities' and 'inclusiveness' rhetoric at the heart, not just of ministerial policy, but also of the ethos of the Parliament itself.

At a more political level, abolition would also inject the very element of controversy and boldness which was said to be missing from the first legislative programme. If so, then it probably exceeded ministers' expectations, with one commentator noting that this proposal "almost completely obscured the rest of the legislative programme."[73] If it also deflected some attention from the public disquiet about the standards of conduct in Scottish local government, especially in some Labour-run councils, which had given rise to the main policy of the bill, then Labour parliamentarians were unlikely to complain.

The ethical standards legislation was a programme bill originally intended to apply to local government. The Minister for Communities announced, a few weeks after the First Minister's initial legislative programme statement, that the proposed bill would be extended to cover public bodies. As such, the bill could have been accepted as a bold, if not particularly controversial, measure, especially as it proposed a stricter standards regime than was envisaged south of the border.

In response to a (pre-arranged?) question from a Labour member, during a wide-ranging session of the EOC on 28 September 1999, the Deputy Minister for Communities, stated that ministers were "looking for an appropriate legislative vehicle for abolition of Section 2A." This policy announcement was, however, not mentioned in the Executive's press release that

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[72] Much confusion had arisen because of the various 'popular' names for this provision, even claims that the provision was called 'Section 28' (or 'Clause 28') south of the border and 'Section 2A' in Scotland. In fact the same legislation applied to both jurisdictions: s28 of the *Local Government 1988* added a new provision, s2A, to the *Local Government Act 1986*.

[73] P Jones, "The first laws of the new Parliament" in G Hassan and C Warhurst, *The new Scottish politics: the first year of the Scottish Parliament*, 2000, p60

day, trailing the minister's committee appearance. The Minister for Communities, Wendy Alexander, announced the use of the ethical standards bill on 29 October, during a speech at Glasgow University.

The draft bill was published on 18 November, and the Local Government Committee (LGC) conducted pre-legislative scrutiny, issuing its report on 8 February 2000. Both that Committee and the EOC then considered the Bill (which was introduced on 1 March) at Stage 1 in late March, as did the Parliament on 27 April. The LGC took Stage 2 of the Bill over three sessions in May, and the Bill surmounted its final hurdle on 21 June when the Parliament considered it at Stage 3 and then overwhelmingly passed it.

That brief narrative of the legislative process covers what amounted to more than six months of deep controversy, centred almost exclusively on the Section 2A provision. There was widespread media and public debate, and the political heat was raised substantially by the well-publicised anti-abolition 'referendum' financed by a prominent Scottish businessman. What began as an outright repeal grew into substantive legislation (with much argument about the status of statutory guidance), not only in the ethical standards bill, but also in the *Standards in Scotland's Schools Bill*, as the debate focused on issues such as sex education in schools, and the relative value of marriage.

The main part of the Bill also underwent significant amendment due to the parliamentary scrutiny, especially in the LGC. This was based to a large extent on representations by the various groups and organisations directly interested in the issue of public ethical standards. Listing the various matters added to the Bill, Kenneth Gibson (SNP) said, during the final plenary debate on the bill:

> "To those who say that Parliament does not work, or that its committee system is ineffective, this bill gives the lie. As it now stands, the bill bears little resemblance to its original form. The Executive is to be commended for taking on many committee recommendations, albeit grudgingly at times."

The Minister made a similar point, from the Executive's perspective, tying the process into the broader ethos of the Parliament:

> "I thank my colleague, Frank McAveety, for all his work and for his willingness to listen and to take on board the views of the Local Government Committee. Like others, I pay tribute to the work of that committee in shaping the heart of the bill, which is a different one today because of its efforts. As with the discussion that we have just had on section 2A, this is a different way of doing business in the new Scotland. Much of the credit must go to Trish Godman, [the LGC convener] who managed to achieve consensus in bringing forward amendments."

The Bill's parliamentary passage can, therefore, be regarded as a success in a number of respects. The Executive got their legislation, including possibly the most controversial provision of the Parliament's first year. If amendment can be regarded as improvement, the Bill which received royal assent in late July was a better one than was introduced at the beginning of March. But, to what extent did the Parliament take account of, and reflect the views of, the Scottish people on the Section 2A issue? Such issues are notoriously difficult for representative assemblies, as the actual balance of public opinion is hard to gauge.[74] If the anti-repeal campaign reflected the true opinion of the Scottish people, then did the Parliament act properly in legislating contrary to that wish? Were the additional statutory provisions arising out of the repeal a positive contribution to the body of Scottish legislation, or were they a political fudge to allow ministers their main policy? Only time will tell.

6.4. Members' legislation

The concept of legislation being initiated by 'back-bench' Members is well-known at Westminster, where several different procedures exist, including the private Member's ballot. The CSG report had suggested two forms of initiative by what it called (somewhat surprisingly) 'private Members' bills':

- directly to the full Parliament, if a proposal received a sufficient level of support (perhaps 10% of all MSPs), or
- via submission to the relevant subject committee, where, if supported, it could follow the procedure for committee bills.

It also proposed that each MSP should be limited to the introduction of 2 bills in any session (normally 4 years). If this allocation was fully used, there could be around 250 such bills each session. The Parliament's rules gave general effect to these proposals. However, Members wishing to pursue the Member's Bill route face two practical hurdles:

- *parliamentary time* – No ring-fenced time is expressly provided for consideration of Members' Bills, and the short 'Members' business' period at the end of each plenary sitting is used for what may be thought of, in Westminster terms, as 'adjournment debates'. Members' Bills have to conform to the same legislative procedure as any other bill, and, like Executive Bills, they have to await the allocation of parliamentary time by the Bureau. This absence of guaranteed time can be beneficial, so long as the Bureau allocates reasonable time for a bill's progress, as it limits the opportunity for obstruction and delay by its opponents. As at Westminster, Members seeking to

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[74] Though a privately funded 'referendum' would be potentially suspect, the successful 'referendum' on water privatisation in the 1980s by Strathclyde Regional Council gave such 'informal' exercises some credence within Scotland.

promote legislation have to balance the substance and potential controversiality of a Bill, with the likelihood of its successful passage through the legislative process.

- *legislative drafting* – The legislative, procedural and other requirements as to the form and content of Bills, and the current practice that Scottish drafting style generally conforms to traditional UK practice, mean that drafting is a specialised art. No specific assistance existed initially within the Parliament, as 'parliamentary counsel', as governmental not parliamentary officials, were fully occupied on Executive business. Backbench MSPs were required to draft their own legislation or seek external assistance,[75] and the Parliament's initial guidance could only suggest that "clerks may be able to assist in the drafting of Members' Bills in certain cases". The Parliament took steps to remedy this situation in 2000 with the establishment of a Non-Executive Bills Unit.

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[75] This latter aspect can cause potential ethical and legal difficulties, as Mike Watson (Lab) found when accepting some outside assistance in connection with his proposed *Protection of Wild Mammals Bill* (on which see *Whaley v Lord Watson of Invergowrie* 2000 SLT 475)

Table 6.2: Members' Bills introduced in the first parliamentary year

Title	Lodged	Threshold reached (& total)	Intro-duced	Stage 1			Stage 2	Stage 3 & passed	Royal Assent
				Lead Cttee	Other Cttees	Plenary	Cttee	Plenary	
Abolition of Poindings and Warrant Sales Bill)	10.09.99	15.09.99 (24)	24.09.99	JHA	SIHVS; LG	27.04.00	(JHA; SL(dps))	(06.12.00)	(17.01.01)
Protection of Wild Mammals (Scotland) Bill	01.09.99	02.09.99 (35)	01.03.00	RA/RD*	(JHA; Finance (fr))				
Sea Fisheries (Shellfish) Amendment (Scotland) Bill	16.12.99	13.01.00 (11)	08.03.00	RA		(18.05.00)	(RA)	(28.09.00)	(02.11.00)
Family Homes and Homelessness (Scotland) Bill	15.09.99	30.09.99 (15)	04.04.00	(SIHVS)					(Withdrawn 14.06.01)
Leasehold Casualties (Scotland) Bill	07.09.99	16.09.99 (15)	10.05.00	(JHA)		(10.01.01)	(JHA)	(08.03.01)	(12.04.01)

Notes:

(i) Committee references are to those which considered a bill in any substantive way, whether so designated as a lead or secondary committee or not.

(ii) (dps) = Delegated powers scrutiny by Subordinate Legislation Committee, after Stage 2

(ii) dates in parentheses refer to proceedings after the first year. An asterisk (*) denotes proceedings partly in the first year, and partly in later years.

In the first year, there were 14 proposals for a Member's Bill, all of which reached the 11-supporters threshold. Five Bills were introduced in that period based on these proposals,[76] and one other was introduced in the second year.[77] Eight successful proposals have not led, or yet led, to a bill.[78] No Members' Bill was enacted by May 2000, and none

[76] In addition, Tommy Sheridan's successful proposal for a *Debtors (Amendment) Bill* was overtaken by his later Bill.

[77] The *Mortgage Rights Bill* was introduced in July 2000, based on a successful proposal, with 21 supporters, in September 1999.

[78] *Debtors (Amendment)* (Tommy Sheridan, SSP, 26, see above); *Public Appointments (Confirmation)* (Alex Neil, SNP, 23); *Tuition Fees* (Brian Montieth, Con, 17); *Meat Labelling* (Alex Johnstone, Con, 19); *Organic Food and Farming Targets* (Robin Harper, Green, 38); *Alzheimer's and Dementia Care* (Christine Grahame, SNP, 19); *Civil Marriages* (Ewan Robson, Lib Dem, 13); *Bank Arrestment* (Alex Neil, SNP, 15). There is no time-limit specified for the introduction of a Bill following a proposal reaching the required threshold of support. Some proposals may never be intended to lead to a Bill, while others may be awaiting drafting, or the Presiding Officer's certificate of legislative competence. Some proposers may

until November 2000 (*Sea Fisheries (Shellfish) (Amendment) (Scotland) Act 2000*).   Two of the Bills introduced became as visible as any of the Executive's Bills, perhaps more so – Mike Watson's *Protection of Wild Mammals (Scotland) Bill* and Tommy Sheridan's *Abolition of Poindings and Warrant Sales Bill*.

Anti-hunting measures have been promoted regularly at Westminster, and the new Parliament opened another legislative front. Mike Watson (Lab) announced on 20 July 1999 that he planned to take advantage of that opportunity. His proposal for a Bill was lodged on 1 September, and reached the required level of support the following day. However the Bill itself was not formally introduced until 1 March 2000, much of the intervening time being devoted to a legal challenge to its proposed introduction. The Rural Affairs Committee (RAC) was quickly designated as the lead committee, and the JHAC as secondary committee, the latter's involvement intended to be only in relation to the Bill's provisions for creating criminal offences.   The RAC had a preliminary discussion on 21 March, when they agreed to aim for a Stage 1 report by early September.   At its 4 April meeting, Watson gave a presentation, and expressed his willingness to move amendments at later Stages to meet some of the concerns which had been expressed to him.   Following some close questioning on the Bill's scope and viability, the Committee considered, in private, how to proceed.

It was clear that scrutiny of such a controversial bill, especially a Member's Bill, would be a major undertaking for any committee, and could seriously affect the rest of its work programme. Watson's intention to move major amendments also posed problems for the RAC, as it could find itself reporting to the Parliament on its scrutiny of a bill, which was due to be substantially revised at its later Stages. The RAC announced a consultation exercise, asking for responses by 11 August, and indicated that they anticipated taking oral evidence at meetings beyond that date. The slippage in the Bill's timetable had begun, and it was not until the spring of 2001 that the RAC reported, coming out against the bill.

Tommy Sheridan's attempt to abolish poindings and warrant sales was also controversial. While there was little public or political support for the retention of this particular debt recovery method, there was concern among some interested organisations that simple abolition, rather than reform or replacement, would leave a serious gap in legitimate debt recovery. If the Bill was not to include such a comprehensive reform (a daunting enterprise for a Member's Bill), the Executive would come under immediate pressure to bring forward its own legislation.

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delay introduction until what they perceive is the most propitious moment, though this could potentially lead to a build-up of outstanding successful proposals, and Member's Bills in progress, late in a session.

Sheridan had, on 19 August 1999, lodged a proposal for a Member's Bill to amend the *Debtors (Scotland) Act 1987* so as to remove the option of poinding and warrant sale. Although it easily achieved the required level of support by the end of the month, he did not proceed with it for various drafting reasons. He lodged an alternative proposal on 10 September seeking outright abolition. This gained sufficient support five days later, and the Bill was introduced on 24 September.

This was the Parliament's first Member's Bill. It was referred to the JHAC as lead committee for Stage 1 consideration, and, later, to the LGC and the Social Inclusion, Housing and Voluntary Sector Committee, as secondary committees. These committees held a total of 12 meetings between November and January dealing to some degree with the Bill, and the lead committee issued a detailed and closely argued report on 9 March, which covered all the main issues of controversy. The JHAC concluded, having taken into account the other two committees' views, that there was "a strong case for amending the Bill during its passage to provide that it does not come into force until a specified future date." On that basis, it recommended that the Parliament approve the general principles of the Bill at Stage 1.

The controversy over the fate of the Bill came to a head at the Bill's Stage 1 plenary consideration on 27 April. On the previous day, the Executive had tabled an amendment seeking rejection of the Bill at Stage 1, in exchange for a commitment to Executive legislation in the 2001-02 parliamentary year to reform the debt recovery system. However, several Labour MSPs said, in the debate, that they could not support the amendment and urged its withdrawal. Their argument was based on the support of 3 parliamentary committees for the Bill's general principles, and presumably on the likely local reaction to being seen publicly to vote down such a popular Bill. Faced with the real prospect of defeat, the Executive backed down and withdrew its amendment.

Nevertheless, the Executive was able to have the Bill amended during its later Stages, so as to delay the implementation of the abolition provisions to allow time for alternative mechanisms to be introduced. Sheridan and his supporters fought a rearguard action against these amendments, but Labour backbenchers, having resisted the Executive at Stage 1, were by then less prepared to rebel over commencement dates. The Bill was eventually enacted in January 2001.

It is extremely unlikely that these two Bills will be typical of Member's Bills. Most will presumably involve less ambitious or controversial proposals, and many of the rest will be promoted more in the expectation of gaining an airing in the Parliament for a particular issue than with any real prospect of success. Some Members may also be content to use the initial proposal to test support for an issue, much as motions are used. Some will be 'hand-out' measures on a matter which the Executive wishes to have enacted, but has no available time itself, or feels it is a more appropriate topic for non-Executive initiation. As in the case of the

Leasehold Casualties (Scotland) Bill, an MSP may have already lodged a proposal independently, in largely the same terms. In all such cases the Executive may give their explicit backing to the Member's Bill, and even assist in its drafting. Though the 'hand-out' bill may be common at Westminster, it can be viewed as an appropriation of limited parliamentary time by the Executive, and contrary to the Parliament's true ethos.

The Sheridan Bill benefited from being examined by three committees, thereby bringing in a significant proportion of all MSPs into its legislative scrutiny in advance of plenary consideration. These MSPs clearly felt they had a stake in the Bill's progress, and realised how illogical it would appear to vote in favour of a Bill's general principles in committee, but against them in the Chamber. The eventual fate of the Watson Bill may prove to be a more significant indicator of how contentious legislation will fare under the Parliament's Member's Bill procedure.

6.5. Legislative consultation and participation

Civic engagement was at the heart of the CSG agenda, embodying the spirit and letter of its key principles. As well as being a vital expression of 'sharing the power' (the first principle), it was the essence of the third principle of accessibility, openness, and participation. CSG's aim was to provide "above all, a participative Parliament, which will take a proactive approach to engaging with the Scottish people..." This was particularly the case with policy-making and law-making, which were thought to be inadequate in pre-devolution days. The report produced a detailed model for pre-legislative scrutiny, based on greater participation, asserting that: "a formal, well-structured, well-understood process would … allow individuals and groups to influence the policy-making process at a much earlier stage than at present. By making the system more participative, it is intended that better legislation should result." This would go well beyond the existing practice of consultation in the form of inviting comments on specific legislative proposals, as it was believed that such exercises often came too late in the policy-making process to lead to any great changes in the published proposals.

CSG proposed that "Standing Orders should require Executive Bills to complete a consultative process before being presented to Parliament. The role of the Committee would essentially be a monitoring/enforcing role to ensure the requirement is met. The Committee would always remain able to take evidence relating to the legislative proposals if it felt that the Executive's consultation process had been insufficient." It saw the benefits of this model as including:

- involving relevant bodies in the development of policy and the legislative process at an early stage;

- allowing the Executive, as the elected Government, to take forward its policies;
- ensuring proper participative consultation by the Executive through giving Committees a supervisory role;
- freeing up valuable Committee time, allowing Committees to focus on proposals which have already been the subject of participative involvement of interested bodies.

Though Standing Orders did not adopt this recommended model, much that has been written and said to date about the Parliament's legislative process appears to assume that this is how the Parliament actually operates. This not only leads to confusion by those wishing to participate in the legislative process, on Executive Bills in particular, but also to misconceived criticism of the Parliament's legislative work thus far.

There is virtually nothing in Standing Orders about the legislative process prior to the introduction of a Bill, and so no standard template exists for pre-legislative scrutiny.[79] The Parliament is not required to have any involvement at this stage, and all the Executive is only required to show, in the Policy Memorandum accompanying the introduction of its bill, what consultation, if any, it had undertaken and a summary of its outcome. There is even some confusion as to what is meant by 'pre-legislative scrutiny'. It was sometimes assumed to include not just any policy development processes involving the Parliament prior to the formal introduction of a Bill, but also Stage 1 scrutiny of a Bill by its committees.[80] That the Parliament does not adhere to a single model of pre-legislative scrutiny may be no bad thing, as different policy issues may well require their own approaches. For a new Parliament, experimentation with different techniques could be a valuable, indeed necessary way of working.

In the period under review in this Study, there was also an existing body of 'pre-legislation', at various stages of development, which had built up prior to devolution. Some policies may already have been the subject of extensive consultation, by or through the Scottish Office, the Scottish Law Commission or other body. This might even have included the production of a draft Bill. Others may have been at much earlier stages of development.

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[79] The following discussion concentrates on Executive legislation, though similar issues also arise about consultation and pre-legislative scrutiny of proposed Committee Bills and Members' Bills.

[80] For an apparent example, see the remarks of the Enterprise and Lifelong Learning Committee's convener, opening the Committee's deliberations on 9 February 2000 on the *Standards in Scotland's Schools Bill*. This Bill had been introduced on 19 January 2000, and another committee, as lead committee, had begun Stage 1 scrutiny on 2 February. The convener said that "the Education, Culture and Sport Committee is in the process of pre-legislative scrutiny of this bill…"

Another potential source of confusion was the interaction, if any, between Executive consultation, and those conducted by the Parliament on substantially the same issue. There is little guidance as to how such exercises could or should relate to each other. This can cause difficulty for those wishing to participate actively in them. Whereas experienced interest groups may be able to take advantage of this situation, perhaps by playing one institution off against the other, others may find it an expensive and wasteful duplication of effort. The CSG model saw consultation on Executive proposals as largely an Executive function, with parliamentary committees' role being primarily the scrutiny of the efficacy of that exercise. However it did accept that a committee could take its own evidence "if it felt that the Executive's consultation process had been insufficient." It is not clear how, under this model, the Parliament could come to an informed view about the adequacy of any Executive consultation, if it did not conduct some form of independent scrutiny. It could find itself limited to acting as a 'court of appeal' for those who felt aggrieved or dissatisfied by the consultation process or its outcome.

For the Parliament's committees,[81] the absence of a standard procedure enables them to decide for themselves whether and when to enter the policy development process. This need not necessarily bear a close relation to the Executive's internal timetable. For example, a committee may

- conduct a policy debate itself, on a topic where the Executive was not actively considering legislation,
- involve itself in an area where the Executive, or other body, was actively engaged in policy formation, but had not yet 'gone public',
- await the 'public' stage of policy development, where the Executive is seeking input from interested parties on the formation of its policy, or
- await the formal introduction of legislative proposals.

These tactical decisions, influenced by practical considerations such as timescale and political interest, may result in very different forms of committee involvement in 'legislative consultation' or 'pre-legislative scrutiny'. Joining in at the early stages may be resented by ministers and officials as 'muscling in' on what is properly their terrain, and could cause problems of confidentiality and secrecy ('legislative sub judice'). On the other hand, waiting for a policy to emerge from within government could be taken as the Parliament accepting that it is just another consultee, albeit a particularly important one. Waiting for the introduction of a Bill means, strictly speaking, no parliamentary pre-legislative scrutiny, and a return to the unsatisfactory situation which the CSG was seeking to remedy.

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[81] This discussion concentrates on the committees, because of their role in the formal legislative process at Stage 1 and Stage 2. The Parliament itself can, and will, participate in the policy development process prior to the introduction of legislative proposals, by way of debates, questions, motions and other parliamentary proceedings.

Examination of two bills in the Parliament's first year may provide some evidence as to how the committees have gone about their legislative, or, more properly, pre-legislative business:

(i) Ethical Standards in Public Life (Scotland) Bill: The bill was published in draft by the Executive in November 1999, and the consultation period ended on 14 January 2000. According to the Bill's policy memorandum, over 6,500 copies of the consultation paper were issued, as well as being made available on the Executive's website. This exercise elicited 2,200 responses, and the Bill was introduced on 1 March.

The Local Government Committee (LGC) had begun to prepare to scrutinise the proposals, even before the draft bill was issued, with a preliminary discussion at its 27 October meeting, followed by further discussions on 24 November. It held three witness sessions (8 and 14 December, and 18 January), the last including the appearance of the relevant deputy minister. The LGC considered a draft report on its scrutiny, in public session, at its meeting on 24 January and issued it on 8 February. This broadly welcomed the proposals, while making a number of suggestions for improvements in the Bill itself. The Committee regarded its pre-legislative scrutiny as "extensive", and on that basis explained, in its later Stage 1 report, how it concentrated its Stage 1 scrutiny on particular aspects of the Bill which its earlier exercise had identified. The Stage 1 report also commented in some detail on the adequacy and outcome of the Executive's consultation exercise:

> 12. Overall, the Committee notes that some significant changes were made to the Bill as a result of consultation although there were a greater number of proposed changes which the Executive decided not to consider. It is recognised that after consultation there will inevitably be some points of view which are not taken on board. Where the Committee feels that the Executive has not taken sufficient account of the views expressed in consultation, this is mentioned in relation to the specific area of the Bill.

(ii) National Parks (Scotland) Bill: In its Stage 1 report, the Rural Affairs Committee (RAC) described the extensive consultation there had been on the topic in the year prior to devolution, and on that basis it decided that "a general call for further public evidence was unnecessary and our examination was concentrated upon key areas of concern." The Executive published a draft bill on 21 January 2000, on which consultation ended on 3 March 2000. According to the policy memorandum, 2,500 copies of the consultation paper were issued as well being made available on the Executive's website. This exercise elicited 343 responses, and the Bill was introduced on 27 March.

The RAC had a preliminary meeting on 15 February to discuss how to conduct its pre-legislative scrutiny, and took evidence from witnesses on 29 February and 8 March. The

latter included the Transport Minister, who reported on the Executive's consultation exercise. The Transport and Environment Committee took evidence from a minister on 16 February as part of its pre-legislative scrutiny. [82]   Neither committee issued a report on their pre-legislative scrutiny, but, as they were later designated as lead and secondary committees by the Parliament, they could take these exercises into account in their formal scrutiny.

6.6. Subordinate legislation

The scrutiny of delegated legislation is an important, though often relatively neglected, parliamentary function. The Parliament's role is to examine, and (if appropriate or required) to approve or reject, actual or draft subordinate legislation made by Scottish Ministers and others. This is a more limited role than in relation to primary legislation, and it can be regarded more as an aspect of scrutiny than of law-making.

The parliamentary procedures somewhat resemble those at Westminster, in terms of twin-track committee scrutiny of substantive and of more procedural, technical aspects of such legislation. Perhaps the most obvious difference is that the scrutiny of the policy and merits of subordinate legislation is dealt with by the appropriate subject or mandatory committee, rather than by dedicated 'SI committees'. This accords with the CSG desire for committees to deal with all aspects of the policy subjects within their respective remits. The more procedural, *vires* aspects are generally examined by the Subordinate Legislation Committee (SLC). This section will concentrate on committee, rather than plenary, handling of subordinate legislation.

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[82] In addition, as part of its Stage 1 scrutiny, it conducted a short public consultation exercise in April, focusing on the Bill as introduced.

Table 6.3: Committee consideration of subordinate legislation: 1999-2000 parliamentary year

Committee	SSIs considered (a)	SSIs, affirmative-negative	SIs considered	Subordinate Legislation Reports	EU documents scrutinised
Audit	1	0-1	0	0	0
Education, Culture & Sport	3	1-2	0	3	0
Enterprise and Lifelong Learning	4	0-4	0	1	4
Equal Opportunities	2	1-1	0	0	0
European	8	0-8	0	(2 – EU docs)	--
Finance	4	2-2	0	3	0
Health & Community Care	42	10-32	1 (negative)	13	1
Justice & Home Affairs	9	3-6	0	1	3
Local Government	24	8-16	1 (affirmative)	6	0
Procedures	0		0	0	0
Public Petitions	0		0	0	0
Rural Affairs	20	1-19	0	6	6
Social Inclusion, Housing and Voluntary Sector	3	1-2	0	1	0
Standards	0		0	0	0
Transport & the Environment	20	5-15	2 (2 negative)	7	4
TOTAL	**140**	**32-108**	**4 (1, aff, 3 neg)**	**41** (b)	**18**
Subordinate Legislation	*176*	*39-100 (and 37 other)*	*6*	*27 (+ 4 delegated powers scrutiny)*	*0*

Notes:

(a) = SSIs include instruments as Grant Reports, subject to similar procedure. The totals will include instruments considered by more than one committee, other than the Subordinate Legislation Committee.

(b) = excludes the 2 European Committee reports on EU documents

While undeniably an important function, scrutiny of subordinate legislation is rarely among the more exciting of parliamentary activities. There is generally an imbalance between the level of effort required for effective scrutiny of such complex documents, and the extent to which the Parliament can actually influence their content. It cannot, for example, directly amend such instruments. All this can contribute to the function being treated more superficially and perfunctorily than others, to the detriment of the quality of such legislation and the accountability of those making it.

As with Parliament's other more technical and complex tasks, such as financial scrutiny, experience in the first year will probably not be typical. All concerned were on a steep

learning curve, familiarising themselves with the relevant procedures. Many members were not embarrassed to admit their inexperience, and even expressed concern that scrutiny, especially when not the lead committee for a particular instrument, could be ineffective. In the European Committee's meeting on 14 September 1999, when members were tackling the subject for the first time, Bruce Crawford (SNP) remarked that "the easy way out" would be to "just approve the SSIs", but he was worried whether something in one of them "might prove to be horrendous. I do not want to be Pontius Pilate."

Concern was also expressed about the workload imposed on committees in scrutinising subordinate legislation. As with bills and petitions, this work was not at an individual committee's own initiative, and so could distort its desired work programme. Subordinate legislation scrutiny was not spread evenly among the committees. Almost 58% of all committee reports concerned subordinate legislation, and even discounting the SLC's own reports, that proportion is 47%. In the first year, ignoring the SLC itself, three quarters of all instances of committee scrutiny of statutory instruments were undertaken by just four subject committees (Health & Community Care, Local Government, Rural Affairs and Transport & the Environment). While the number of instruments considered is, inevitably, a rather crude measure of actual workload, it is not unexpected that such subject committees would bear the brunt of subordinate legislation scrutiny.

A related aspect of committee work in this legislative area is the function of the SLC of examining any provisions in Bills which grant powers to others to make subordinate legislation. This delegated powers scrutiny role is derived from Westminster, where the House of Lords pioneered this technique in the 1990s. During the first year the committee reported to the Parliament upon 4 Bills on this basis: *Public Finance and Accountability*; *Budget*; *Adults with Incapacity*, and *Abolition of Feudal Tenure*. It also examined other Bills on this basis and reported to the relevant lead committee.

6.7. Law-making in the Parliament

Law-making was seen as a parliamentary function which could and should reflect the spirit of the CSG principles, especially those of sharing of power and of access and participation. The Parliament and, equally importantly, civic Scotland, should be able to engage in a meaningful way in the promotion and scrutiny of laws. The perceived Westminster situation, of the legislative process as a private and not very effective conversation between ministers and parliamentarians, was not to be replicated in Scotland.

In terms of initiation of legislation, it was generally expected that the vast majority of proposals would come from the Executive, and the procedures proposed by the CSG and others reflected that expectation. It is not clear how far the CSG's proposals for initiation by

committees and by individual MSPs were intended to have a real impact on the Scottish statute book. Perhaps they arose more from a desire to provide some diversity in the initiation of legislation, and to make clear its intention that the Parliament should not be exclusively a processor of government legislation. In this sense, Committee Bills may have been seen as an extension of the 'private Members' bills' concept adopted for the Parliament. The priority accorded to Executive legislation both in terms of procedures and in allocation of parliamentary time and resources is clear in the first year of the Parliament, though there have been some developments in favour of committees and MSPs, such as the creation of the Non-Executive Bills Unit.

The involvement of the public was seen to be of particular importance at the pre-legislative stage, which the CSG wished to amount to more than traditional consultation. Yet, early experience has suggested that civic engagement on legislative policy has been displayed as much with the Executive directly, as with the Parliament's pre-legislative scrutiny processes. The Parliament has published guidance on its legislative process, and there is a certain amount of information through its website and publications on the progress of Bills and other legislation. However, decisions it has taken as to the form and content of legislation, and the perhaps inevitable complexity of the actual procedures themselves (such as the admissibility and consideration of amendments), may have produced a legislative process in some ways almost as remote and alienating as that at Westminster.

The position is more positive in terms of the Parliament's own scrutiny of Executive legislation, where the legislative procedures proposed by the CSG do produce enhanced opportunities for meaningful involvement. The unicameral nature of the Parliament also imposes a premium on coherent and well-drafted legislation, which can give MSPs some real influence on the passage of Executive legislation. The committee structure enables MSPs to become more involved and informed in legislative scrutiny, because they will have already been involved in any pre-legislative processes leading up to the introduction of a bill, and, in partnership with the full Parliament, in Stage 1 scrutiny of its general principles.

The involvement of committees other than the designated lead committee in the scrutiny of legislation also provides the Parliament with a broader and deeper form of scrutiny than is the norm at Westminster. The EOC, for example, has exploited the potentialities of these procedures to ensure that equality issues are considered as part of the Parliament's legislative scrutiny. It has secured some significant successes, such as on 'Section 2A', and on a religious question in the Census.

Nevertheless there are pressures, other than the usual time limitations, and the imbalance in resources between the Executive and the Parliament, which may inhibit full exploitation of the legislative process. The Executive desire to operate on an annual legislative cycle, which appears to enjoy the support or, at least, acquiescence of the Bureau, has inhibited committee

scrutiny, especially in the development of innovative methods of engaging the wider public or in analysing legislative proposals. Party discipline and whipping, and Executive resistance to significant amendment of its proposals, have been imported from Westminster to a greater degree than was anticipated by some prior to devolution. The attempt by the Executive to kill off Sheridan's Member's Bill may also suggest that it is not always happy at ceding the initiative in controversial or complex public policy areas. By contrast, there has been willingness by the Executive, and, more surprisingly, by the Parliament, to agree to Westminster legislating for Scotland in devolved areas, under the Sewel Convention. Whether that arrangement (considered further in chapter 9, as a form of plenary activity) will survive any changes in the makeup of either the UK or Scottish government remains to be seen.

The scrutiny of subordinate legislation has generally followed Westminster practice thus far, in terms of substantive and technical scrutiny by committees, and of opportunities for plenary debate and votes on particular measures. The role of the SLC is crucial in the Parliament's scrutiny of such legislation, and, equally importantly, in the scrutiny of proposed delegated powers contained in Bills. The Parliament as a legislative body has a wide degree of scope to change the procedures for scrutiny of subordinate legislation and even in determining the use and scale of such legislation, and it may well seek to use these powers in the future.

7.   Committee-driven business: scrutiny of devolved finance

"Finance is key to the operation of the Scottish Parliament"[83]

".. the financial arrangements for the Parliament are inherent in its status as a subordinate rather than sovereign body."[84]

7.1.   Parliamentary scrutiny of financial issues

Financial issues are of the highest importance, both for Scottish devolution and for the Parliament. However, as experience at the House of Commons has demonstrated, such matters, though central to the nature of a parliament, can be extremely difficult for an elected representative assembly to involve itself with in a meaningful sense. While the broad subject matter – the raising of finance and its expenditure – is intrinsic to the general political and public policy debate, the detailed procedures can make much of a parliamentary role appear dry and technical. Many of the concepts and terminology are almost unintelligible to all but economists or accountants. Thus, financial scrutiny may often be equated with other important functions, such as scrutiny of delegated legislation or of EU documents, as necessary but dull and complex, and often not the obvious or highest priority for MSPs as political animals.

This chapter does not attempt to examine in detail many important aspects of the Parliament's financial role, such as audit procedures; the Parliament's own finances; financial provisions in legislation, and the most visible financial power, that of varying the rate of income tax.[85] It concentrates on aspects directly relevant to the first year - the establishment of the Parliament's financial scrutiny mechanisms, and involvement in the budgetary process.

The SCC contributed relatively little in detail as to how a Scottish Parliament would carry out its financial role. This was partly due to its tendency to equate the Parliament with devolved governance as a whole, and therefore, its focus was more on broader policy questions of the financing of devolved structures and services.   The July 1997 white paper said, of the Parliament's role in devolved finance:

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[83] S Dow and D Bell, "The financial powers of the Scottish Parliament" in G Hassan and C Warhurst, *The new Scottish politics: the first year of the Scottish Parliament*, 2000, p93

[84] C Mair and B McCloud, "Financial arrangements" in G Hassan (ed.) *The shape of things to come: a guide to the Scottish Parliament*, 1999, p80

[85] The present Executive has made it clear that it does not intend to exercise the tax-varying power during this session, and, as the power of initiative on this crucial matter rests entirely with it, it has not featured regularly in proceedings.

7.27 The detailed arrangements which the Scottish Parliament makes to control and scrutinise the spending of the Scottish Executive will be a matter for the Scottish Parliament and its committees, but the Scotland Bill will lay a general obligation on the Scottish Parliament to establish effective scrutiny and audit arrangements. Suitable machinery will have to be agreed before the Scottish Parliament becomes fully operational to ensure that the actions of the Scottish Executive can be called to account as soon as it assumes its responsibilities. In common with other central government expenditure the grant to the Scottish Parliament will fall to be audited by the UK Comptroller and Auditor General.

In fleshing out these aims within the context of the evolving devolution legislation, a Financial Issues Advisory Group (FIAG) was set up by the Scottish Secretary.[86] Its main conclusions were published as annex 1 of the CSG Report, and were accepted by the CSG:

The objective of FIAG endorsed by CSG was to ensure that the Scottish Parliament's finances are managed in a way that is open, accessible and accountable to the people of Scotland. FIAG has considered a wide range of public finance issues. Its report is also wide ranging and covers the main aspects of public finance. The report contains recommendations on the following issues:

- terminology;
- budgetary procedures;
- accounting arrangements;
- public accountability;
- audit arrangements.

CSG proposed that two key committees, Finance and Audit, be established to deal with financial matters. This committee structure, with both being designated as mandatory committees, was incorporated into Standing Orders, along with a general financial scrutiny role for subject committees within their subject areas, as was also recommended by the CSG. One of the generic functions of all committees is to "consider the financial proposals and financial administration of the Scottish Administration (including variation of taxes, estimates, budgets, audit and performance) which relate to or affect any competent matter".

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[86] Its full remit was "to assist The Scottish Office in developing for consideration by the Consultative Steering Group (CSG), proposals for the rules, procedures, standing orders and legislation which the Scottish Parliament might be invited to adopt for handling financial issues, taking account of the deliberations of the CSG and contributing to the draft report which the CSG is to submit to the Secretary of State by the end of 1998 to inform the preparation of draft standing orders."

7.2.   Legislating for the new financial procedures

The main legislative vehicle for the enactment of the new devolved financial arrangements was the *Public Finance and Accountability (Scotland) Bill* ('PF&A Bill'), the Parliament's second bill. While it was a 'programme bill', announced in the First Minister's statement of June 1999, this Bill can perhaps best be regarded, to a large extent, as part of the foundational legislation for the new system of Scottish devolved governance. The *Scotland Act* itself had set out much of the general financial framework, and required the Parliament to enact legislation on a number of matters of financial control, accounting and audit (*s70*).

Initial arrangements for the Parliament had been made by way of delegated legislation under the *Scotland Act*. Detailed work on this and related matters of financial procedure and practice, was undertaken within the CSG arrangements, by way of FIAG, so that permanent arrangements could be in place early in the life of the Parliament. Not all the matters considered by FIAG required legislation; some were incorporated in Standing Orders, and others were dealt with administratively between the Executive, the Parliament and others. The Minister for Finance, Jack McConnell, provided the Parliament on 24 June 1999 with further detail of the Executive's proposed legislation, and the Executive initiated a consultation exercise the following month. A summary of the responses was sent by ministers to the Finance and Audit Committees in early September.

Though the Bill was the first legislation to go through the full 3-stage legislative process, the Executive made it clear that they wished enactment by the end of 1999, so that its provisions could take over from the transitional scheme in good time for the 2000-2001 financial year process. Therefore, its parliamentary passage, of little more than 4 months from introduction on 7 September 1999 to royal assent on 17 January 2000 (having been passed by the Parliament on 1 December), may not be typical of major Executive programme bills. The Bill was considered at Stage 1 by the Audit Committee (as lead committee) and by the Finance Committee, both on 14 September, and by the full Parliament on 30 September. Stage 2 was taken by the two Committees in early November and the Bill completed its parliamentary passage in the Chamber on 1 December.

Clearly, financial issues are at the heart of any government's business. It would be expected that the Executive would have a close interest in having this legislation enacted speedily and substantially intact, so as to ensure that the integrity of its financial mechanisms were maintained. Nevertheless, it may have been more appropriate for those particular aspects which related directly and specifically to the Parliament to be taken through as a Committee Bill, from the Finance and Audit Committees, rather than as a government measure. In principle, these were (to adapt Westminster terminology) as much 'parliament matters' as were, say, the Standing Orders themselves. The Bill was subject to some degree of parliamentary scrutiny during its rather speedy passage, but the ownership of the

substantive proposals, and even of the legislative process itself, was clearly in the hands of the Executive.

7.3. The budget process

The first year of the Parliament meant that there would be an inevitable period of transition, not only to set up the procedures in legislation, Standing Orders and in other agreements and conventions, but in dealing with the first Scottish Budget. This was recognised by the Finance Committee in its report in December 1999:

> As a result of the timing of the Scottish Parliament elections, the envisaged three stage process has of necessity been curtailed this year. The Committee therefore agreed that it was not feasible to attempt to engage the subject committees in consideration of individual departmental expenditure plans this year. Instead, the Committee decided to use this transitional year as an opportunity to consider the format of the data made available at this stage of the process, the manner of its presentation and its content. … The Committee welcomes the approach that the Minister has taken in these discussions and commends his willingness to discuss ways in which the Budget process can be made more transparent both to the Parliament and to the public at large.

Thus the Committee had the unenviable task over its first year or so of
- preparing for the establishment of all the relevant scrutiny machinery
- scrutinising the first Scottish Budget in a truncated process, and
- scrutinising the second Scottish Budget using, for the first time, the full, new machinery.

Other than its work relating to the passage of the PF&A Bill, this involved a number of other practical issues, including the conclusion of a set of agreements with the Executive on the budgetary process. The negotiations were described by the convener, Mike Watson on 28 June 2000, opening the plenary debate seeking their endorsement:

> "The wording of the first three agreements is a product of a lengthy process, which involved the committee impressing on the Minister for Finance the need to be as open as possible with financial documentation to increase accessibility and comprehensibility and to allow for meaningful scrutiny. In that spirit, it should be recorded that the minister made several concessions, not least in terms of the information that will be disclosed when the budget bill is published every January. The minister appeared before the Finance Committee on seven occasions in its first year of operation. That is an example of the way in which the Parliament's committees hold the Executive to account and the willingness with which members of the Executive appear before those committees."

These main agreements are contained in the Finance Committee's *written agreement between the Parliament and the Scottish Ministers on the budgeting process*, SP Paper 155. This contained three agreements on

- the budgeting process itself,
- the format of the budget documents
- in-year changes to expenditure allocations

In addition, the Committee concluded separate agreements with the SPCB on the Parliament's budget, and with the Scottish Commission for Public Audit on Audit Scotland's budget, and the Audit Committee published an agreement with Scottish Ministers on the form of accounts and powers of direction (SP Papers 156-8).

As to the budget process itself, FIAG approach was designed to ensure that it "will be less dominated by the Executive than is presently the case. This should enable the people of Scotland and their elected representatives to have more of a say in setting priorities for expenditure. …[T]he process recommended by FIAG is based on three stages. It is designed to provide a timetable around which constructive dialogue between the Parliament and the Executive can take place with the objective of agreeing a budget for the year ahead *before* it begins."

The three budget stages (not be confused with the three stages of the Parliament's legislative process) are:

- *Stage 1:* a consideration of spending strategy, to enable the parliament to express its views on future expenditure priorities
- *Stage 2:* a consideration by the Parliament of the Executive's detailed spending proposals for the next financial year
- *Stage 3:* Parliamentary consideration of the annual Budget Bill.

The process was described in more detail in two of the June 2000 agreements:

> Scottish Ministers have undertaken to submit each year to the Parliament (by 31 March or the first day thereafter on which the Parliament sits), a provisional expenditure plan. This document will set out general expenditure proposals for those forward years for which aggregate figures are available. The Finance Committee will then seek views from a variety of sources including members of the public and other Committees of the Parliament.

> Normally the Scottish Ministers will present detailed expenditure proposals for the next financial year by 20 September or the first day thereafter on which the Parliament sits. The Finance Committee will then produce a report in consultation

with other committees of the Parliament. This will comment on the Scottish Ministers' proposals and may include an alternative set of proposals. The total spend proposed by the Finance Committee will not exceed the total proposed by the Scottish Ministers. A plenary debate will follow in which Committees and individual members may seek to table amendments to the Executive's expenditure proposals, within the total proposed.

The Scottish Ministers will produce a Budget Bill by 20 January each year or the first day thereafter on which the Parliament sits.

This process seeks to provide a parliamentary and public input into the budgetary process, including what may seem the rather radical notion that the Finance Committee can even produce what amounts to its 'alternative budget'. This is balanced by the truncated legislative procedure provided in Standing Orders for Budget Bills themselves. Stage 1 is taken in plenary, and not preceded by committee scrutiny; the usual rules on intervals between Stages do not apply; Stage 3 must begin no earlier than 20 days after introduction, but must be completed within 30 days of introduction, and amendments to a Bill can only be moved by a Scottish Minister.

7.4.   Initial evaluation and prospects

The Parliament, and its Finance Committee in particular, had to spend as much, if not more, time during its first year in setting up the relevant financial procedures as in operating them. When compared with the Executive bureaucracy, this put the Parliament at somewhat of a disadvantage in fulfilling the CSG/FIAG aspirations of providing a novel and effective system of genuine parliamentary engagement in the financial function. Ministers constantly paid tribute to the co-operative spirit of the Parliament, its committees, and its members and staff in facilitating the passage of the necessary legislation, the PF&A Act, and the first Budget Act in 2000. However, parliamentarians were well aware of the structural shortcomings in these exercises, from their perspective. Some acknowledged improvements were made to the legislation during the Parliament's scrutiny processes, and much useful experience and familiarisation will have been gained during the first year. However the initiative in financial business remained firmly with the Executive during that first year.

The Finance Committee has been reviewing the procedures and practices relating to financial business, and has sought to involve the public in this exercise. It made a number of proposals for improvements, based on its experience of the first year's abbreviated process. Some of the proposed reforms that may result from these reviews, and from other evaluations of the Parliament's financial business, may be able to be implemented through Standing Orders or even administratively. However some may require legislation by the Parliament, and it will be a test of the Executive's commitment to the spirit of FIAG and CSG as to how constructively it approaches any demands for changes to the PF&A Act.

Another possible indicator of the Executive's and the Parliament's commitment to meaningful parliamentary and public engagement will be the extent to which the Parliament is given the resources to fulfil its financial functions. Of particular importance is the issue of time. Standing Orders requires the Bureau to ensure that sufficient time is set aside for certain aspects of financial business, especially consideration by the full Parliament and by its committees, of financial proposals and draft budgets. The Bureau will not only need to take account of committee needs and desires, but also ensure that there can be meaningful public engagement in financial business, whether through the committees or otherwise.

The early experience of the Parliament is not entirely happy in this respect. There was a widespread perception that the Bureau regarded the Executive's business, especially its legislative programme, as its primary concern, when setting plenary agendas and allocating business (including setting timetables or deadlines) to committees. In relation to financial business, and especially in the passage of financial legislation, some of this concern may well have been due to the unique circumstances of the Parliament's initial period.

The effectiveness of the financial procedures will depend on not only adherence to the letter of the process but in the extent of genuine commitment of those involved within the Executive, the Parliament and in the wider Scottish public to its spirit. Measures of success will include the extent to which all these parties feel that they were genuinely involved in the processes, and whether they felt that they had adequate opportunities both to receive information from, and to transmit their views to, the appropriate decision-makers. An obvious, though not in itself sufficient, indicator of this will be the extent to which such engagement results in changes to the Executive's original plans. If the public or parliamentarians feel that their input does not produce any identifiable results, then they could lose faith in the process, and withdraw from it.

In any consideration of the Parliament's financial activities, it has to be borne in mind that, other than decisions made in plenary, it may well not speak with a single or consistent voice. This is not a party political point, but one which recognises how many bodies within the Parliament which have a potential role. The mechanisms for involvement of subject committees in budgetary scrutiny, for example, can encourage fragmented consideration, based as much on special interests as on strategic overview. This will place a particular onus on the Finance Committee as the key coordinating machinery, reconciling possibly disparate and contradictory views and projecting a sufficiently coherent 'parliamentary' view, where appropriate, that can command the attention of the Executive.

The FIAG-inspired procedures provide significant limitations on the extent to which particular Executive financial plans can be obstructed or rejected. However the first year or so of the Parliament has already produced a few well-publicised cases of policy changes by the

Executive (such as tuition fees and personal care for the elderly), often due to the risk of parliamentary defeat. Whether or not these are regarded as indicators of the success or failure of the new politics, they can have significant financial consequences for Scottish devolved governance.

Financial scrutiny and control is an area where the CSG had ambitions of making the Scottish Parliament genuinely different from, rather than simply an improvement on, Westminster. The FIAG/CSG scheme, is designed to adhere to the CSG key principles, by making the budgetary process, in particular, an exercise which involves all three pillars of devolved governance, the Parliament, the Executive and the people. This is the main, perhaps only, significant area where the CSG process involved itself directly with a key Executive function, rather than in simply with its interactions with the Parliament. As such, the FIAG scheme is ambitious in scope and daunting in implementation. If it is seen to be successful to a satisfactory degree, it will mark a sea-change in British parliamentary-executive relations and demonstrate a genuine sense of innovation in the operation of the Parliament within Scottish devolved governance.

It is difficult to come to any definite conclusions on the Parliament's operation of its financial scrutiny function, based on a first year, when it was not able to operate the full FIAG scheme. Any evaluation of the first budget round purely in terms of the FIAG model would have to be negative, as there was little genuine opportunity for sharing of power, and for participation by all parts of the Parliament or by the Scottish people. Similarly, notions of openness and of accountability were not satisfactorily realised in the necessarily truncated initial process.

A more realistic assessment, taking account of the unique circumstances of the Parliament's first year, would produce a more positive marking. Faced with significant pressures of time, resources and inexperience, it, and especially its Finance Committee, appeared to demonstrate sufficient flexibility and initiative so as to meet the strict legislative deadlines required by the Executive, while taking advantage of the truncated process as a necessary experiment in the Parliament's financial procedures.

The Finance Committee's policy of using the first round partly as a learning exercise, rather than simply to treat it as a compressed, one-off process to be got through, appears to have been sensible. Its approach should bear fruit to the extent that that process (along with the experience gained in the passage of the PF&A Bill itself) significantly informs its later formal review of the budget process. It also meant that it should have been in a better position to fulfil its coordinating role with the other committees in the second round, when these committees would be involving themselves in the budget process for the first time in any meaningful, structured sense.

If ownership of the budgetary function is to be shared, rather than resting solely with the Executive, then the whole process must provide scope for genuine involvement both by the Parliament and, equally importantly, by the wider public. The FIAG system sought to maximise the degree of sharing of power at the earlier stages, when Executive plans should be at their most tentative and subject to external influence. Stages 1 and 2 operate as a form of pre-legislative scrutiny exercise, enabling outline proposals to be tested, and even for alternative priorities and proposals to be floated. The third and final Stage is seen as the point at which the Executive gains ownership of the process, and the Parliament's role becomes more one of legitimation and approval, much as at Westminster.

This model can succeed if the first two Stages are seen to be legitimate and effective, from the point of view of all concerned. If not, there is a risk that demands will grow for greater parliamentary and public involvement at the third Stage, such as by making the legislative procedure for Budget Bills to become more like that of any other Executive Bill, with more committee involvement, and with the ability of all MSPs to propose amendments. Such a trend could, in practice, set the FIAG scheme on a path towards a more closed, Westminster form of financial scrutiny.

Greater familiarity with financial procedure will also give all the committees, and especially Finance and Audit, more scope to initiate inquiries into, and scrutiny of, other financial issues and policies. This type of activity may project the Parliament's financial scrutiny functions more to the forefront of parliamentary politics, especially if the Parliament tackled core issues such as the extent and use of revenue-raising and tax-varying powers. The budgetary process may, therefore, not become the sole or main forum for parliamentary debate on such fundamental issues as spending priorities or fiscal autonomy. The development of such parliamentary strategies will have an impact on the scope for effective and genuine public participation in the financial debate.

The present financial arrangements under the devolution legislation are significantly unbalanced in that the Executive, and therefore, by extension, the Parliament, have a far greater role in the spending of money than in the raising of money. This makes both institutions financially 'irresponsible', in a literal sense; distorts both the development and the scrutiny of public policy, and skews the crucial political function of making informed choices in the allocation of limited resources. It also detracts from the public transparency of the relative responsibilities of the UK and the devolved institutions for Scottish public policy, even in the devolved areas.

At a more practical level, the potential for agreed timetables for financial business in the Parliament can be upset by UK financial decisions, resulting from spending reviews, budget changes, or amendments to allocation formulae. These factors have already affected the

Parliament in its first year, and do not assist the development of a stable and continuing engagement between Executive, the Parliament and the Scottish people.

Therefore, the extent of the Parliament's meaningful involvement in devolved finance will depend, not just on how it uses the existing mechanisms and opportunities, but also whether or not the devolved institutions are given greater financial responsibility and power. This debate has begun both in Scotland and in the UK generally, and is unlikely to moderate, especially in the run-up to the next Scottish parliament elections.

8. Committee-driven business: petitions

8.1. Petitioning: positive participation

Meaningful and effective participation by the people of Scotland in the work of the Parliament was, as has been seen throughout this Study, intended to be a key element of the Parliament's operation. One particular mechanism which was consistently seen as providing genuine participation was a system of public petitions.

The SCC's final report proposed that Standing Orders should "enable electors directly to petition the parliament." The Crick-Millar report suggested an innovative petitions system as part of a package (including surveys and referendums) which would provide "a direct public input into Parliament independent of membership of parties, but without being able to override legally parliamentary decisions … Parliaments should be forced to listen and to respond directly to public concerns in different ways according to different measures of intensity. It is the vanity of many elected Members to believe that they understand public opinion well simply because they know how to get nominated in a party caucus." The Crick-Millar system required that

- any admissible question or petition signed by 1,000 or more electors, addressed to a minister or a committee convener would receive as of right a reasoned response from that minister or convener, to be published in the Official Report,
- any petition for redress of grievances signed by 10,000 or more electors and addressed to the Presiding Officer must be published in the Official Report, and debated by the Parliament."

The CSG Report saw a petitions system as an important way of achieving its key principles. Significantly, it placed this within the context of the first principle of 'sharing the power' rather than of the second (accountability) or third (access and participation), believing that "it is important to enable groups and individuals to influence the Parliament's agenda." The key criteria of such a system would be as follows:

- public petitions should be encouraged by the Parliament;
- any member of the public should be able to petition the Parliament;
- there should be clear and simple rules as to form and content;
- it should be clear to petitioners how and to whom petitions should be submitted;
- there should be clear expectations of how petitions will be handled, the form of response which can be expected and the time in which such a response can be expected; and
- all petitions and responses should be in the public domain.

It rejected any requirement for a minimum level of support for the Parliament to be obliged to act: "the action taken by the Parliament on a particular petition should be dependent on a wide assessment of the strength and depth of support it enjoys, and not only on the number of signatures the petition has." The system would operate through a dedicated parliamentary committee, which would receive all petitions and determine what action should be taken on each. The committee would also "acknowledge receipt of all petitions within 5 sitting days and… inform petitioners of the action and decisions the Committee had taken within 42 sitting days."

8.2. Processes and practice

Standing Orders broadly followed the CSG model, rather than the more radical Crick-Millar proposals. The Public Petitions Committee (PPC) was created as a mandatory committee, emphasising the formal status accorded to the petitioning process. Nevertheless the actual importance and value of the process would depend on how the system was operated in practice. There had to be, for example, a balance between adherence to necessary procedural requirements, and sufficient flexibility to enable a proper interaction between prospective petitioners and the Parliament.

The process has to cope with the various motivations that may give rise to the presentation of a petition. Some petitioners may simply wish to gain 'official' recognition of, and publicity for, their particular view or interest. That their petition has been published through the Parliament, or that parliamentary committees, ministers, or other public agencies have been required to give it some consideration, may be regarded as an acceptable and sufficient outcome. Others will wish to seek a more substantive, positive outcome, whether by way of a change of official policy or decision or otherwise. For them, the mere airing of their grievance will not be regarded as a sufficient outcome of the petitioning process.

In these respects, a petitioning system is similar to other forms of grievance procedures, such as elected Members' constituency casework, use of ombudsman-type systems, or even to more legalistic processes such as judicial review. It involves a balance between
- a procedural approach, emphasising factors such as process, fairness and participation, and which regards its purpose as enabling citizens to feel that their grievance has been properly aired and considered or reconsidered, whatever the eventual outcome, and
- a substantive approach, emphasising the outcome of the process, in terms of the scope for review, and possible change, of public policy.

This is particularly relevant to a parliament with a participative ethos, but which also has to be careful not to allow itself to be used inappropriately or unlawfully for sectional interests. The tension between legitimate representation and improper lobbying has been a constant theme in the Parliament's early life, and petitioning has the potential to be exploited as a

lobbying tool, or as a means of privileged access to decision-makers. This is a difficult balance, and, thus far, the Parliament has seen the process primarily as a participative process, a means of connecting citizens with those in authority who influence their lives. In this model, the PPC's role is largely that of a facilitator, or as the published guidance describes it, "a gateway for public involvement in the parliamentary process." The Committee's convener has written about this aspect of its role:[87]

> "[The] committee exists to ensure that people have the right to directly petition the parliament and its committees, and, more importantly, to ensure that when they do so their petitions are treated respectfully and seriously….[It] has no agenda of its own other than to assure access to the parliament for petitioners and action by the parliament in response to those petitions. The issues to be dealt with are entirely a matter for the petitioners themselves."

This last point is crucial to the petitions system as a means of giving effect to the CSG vision. Other than by way of private legislation (an option not likely to be used frequently, certainly not by the public at large), a petition is the only substantive way that citizens can *require* the Parliament to consider and react to their views. Other forms of 'external' initiative, as in the Crick-Millar model, or by direct public involvement as members of committees, have not been adopted so far. Virtually all other processes are entirely at the formal initiative of the Parliament, its committees and bodies, or its individual MSPs.

The Committee has seen it as essential to its facilitating role that any procedural requirements, such as those relating to form, content and transmission of petitions, are kept to a minimum and are interpreted flexibly. The aim is to encourage, rather than impede, the interaction between petitioner and the Parliament. Thus, for example, there are virtually no restrictions on who can petition; no minimum number of signatories, and no single template for the format of a petition.

There are also relatively few restrictions as to the subject matter of a petition. A narrow interpretation of a petition's content would severely limit the process's potential. A petition is inadmissible if "it requests the Parliament to do anything which, in the opinion of the Committee, the Parliament clearly has no power to do." This has been interpreted broadly, distinguishing between the Parliament's legislative competence and its ability to consider virtually any subject, whether a reserved matter or not. The published guidance states that "a petition can make a request for the Parliament to take a view on a matter of public interest or concern, or amend existing legislation or introduce new legislation", and it provides a summary of the Parliament's legislative competence in terms of 'devolved' and 'reserved'

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[87] J McAllion (Lab), "Public Petitions Committee" *SCOLAG Journal*, September 2000, p5

matters.[88] However, it does go on to exclude petitions which, for example, relate directly to particular legal proceedings, or which request unlawful action.

The PPC has to maintain a good relationship with those bodies, within and outwith the Parliament, to which it may refer petitions. If it acted merely as a 'post office', recipients would rapidly become disenchanted with the process. In the early days, some committees, already more overburdened than initially expected, were irritated at having more items in effect dropped in their lap over which they had little control.[89] On the other hand, the committees did not wish substantive petitions within their remit to be diverted elsewhere. As one study noted, "such contradictory expectations are characteristic of a new and developing procedural etiquette and have diminished as the PPC itself has become more assured about its own role in processing and monitoring public petitions."[90] Procedures have evolved between committees to smooth this process, including committees being copied into relevant petitions on receipt by the PPC and giving an indication whether they might wish for a referral.

8.3.   Operating the petitions process

The scale of petitions has been seen by many as being greater than expected. In the first year, the PPC considered 189 petitions, although quite a number of these were sent by a particular individual who gained some notoriety as a 'serial petitioner'. This number may have been seen as high relative to the Westminster level of around 100 a year.   On the other hand, it is, in absolute terms, a relatively small number, and there is no reason to suppose that it could not increase substantially over time, as the procedure becomes more known and understood. If the volume increases, it could overload the PPC's resources and lead to stricter or more formal procedures, such as in late 2000, when the PPC promulgated new arrangements for the handling of 'inadmissible' petitions.

To date the petitions process is being little used, at least overtly, by commercial lobbying organisations and the like, and such use has been discouraged by the PPC. There is also little significant evidence of multiple petitions (or even counter-petitions) on the same issue. Some individuals and groups are, quite legitimately, using the petitions system as just one of a number of weapons (parliamentary and otherwise) to be deployed in an overall campaign

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[88] This is discussed further in M Cavanagh, N McGarvey and M Shephard, "Closing the democratic deficit? The first year of the Public Petitions Committee of the Scottish Parliament" (2000) 15 *Public Policy and Administration* 67, 73.

[89] See, for example, the convener's report to the PPC at its meeting on 21 September 1999 on the views of other conveners, expressed through the Conveners Liaison Group, about proposed timescales for responses to petitions (col 60).

[90] Cavanagh, McGarvey and Shephard, *op cit,* p74

strategy. In this way, petitioning may develop as a recognised, even standard, campaigning tactic.

Classifying petitioners by type may be rather subjective, but the available evidence suggests that about half of all petitions come from individuals (including 'serial petitioners'), with about 40% from groups of various types, and the remainder from local councils, businesses, political parties and politicians. It is difficult to break down the petitioning groups and associations with any accuracy. Some single-issue groups, for example, may have been formed expressly for the purpose of generating and submitting a petition. A recent study concluded that "in the main it has been organisations who would normally be labelled 'outsider' who have used public petitioning procedures to have their voice heard. … Overall, petitioning has proved a popular vehicle for a diverse range of local, Scottish, UK and national groups to raise their own issues of concern."[91]

The PPC has been determined to keep petitioners involved after they have submitted petitions. In addition to calling witnesses from the bodies responsible for the policy area which is the subject of a petition, it may invite the petitioner to participate in its proceedings. This happened 45 times in the first year, and the practice has evolved of having three petitioners appearing before it at each meeting. The Committee will seek to keep the petitioner informed of the progress of the petition, as well as its outcome in parliamentary terms.

Patterns of referral in the first year or so show that almost 70% go to other committees as the sole or primary point of referral (the vast majority being for their consideration rather than simply for information); around 10% each to the devolved Scottish government and to local authorities and other public bodies, with only 3% going to UK ministers. The Transport and Environment Committee is the most popular recipient committee, with more than a fifth of all committee referrals, followed by the Rural Affairs Committee and the Health and Community Care Committee.[92]

Analysing 'outcomes' is more problematic. Comparing the Parliament's own information, as recorded on its website, with the published research shows that for about 10% of petitions, no further action was taken by the PPC, other than by noting contents or by responding to the petitioner with readily-available information. On two occasions (on GM crops and on a proposed Borders Rail Link), petitions led to a debate in the Parliament. Petitions led directly, on nine occasions, to committee action such as an inquiry or as part of legislative scrutiny.

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[91] Cavanagh, McGarvey and Shephard, p75

[92] See table 5.3, above. Figures derived from table on petitions considered, *Scottish Parliament Statistics 1999-2000*, Dec 2000, p39 (and from the pages on each individual committee), and from Cavanagh, McGarvey and Shephard, *op cit*, tables 3 and 4

Examples of this are the reports by the Health and Community Care Committee in response to petition over processes relating to the future of Stracathro Hospital in Tayside and to the siting of a new and controversial unit at Stobhill Hospital, Glasgow. Some petitions have fed into further Parliamentary activity on existing policy debates, such as on GM organisms or the MMR vaccine. More detailed research is required, perhaps by, or on behalf of, the Parliament, on the pattern of outcomes of petitions, taking into account, for example, the views of petitioners themselves.

While the vast majority of petitions are submitted in hard-copy, the Parliament does provide means of on-line submission via its website (although signatures must be submitted in hard-copy). There is also an arrangement for a dedicated form of electronic transmission, called *E-Petitioner*, supported by the International Teledemocracy Centre at Napier University, Edinburgh (http://www.e-petitioner.org.uk). The ITC had written to the Parliament proposing the use of its *E-Petitioner* system, and the PPC agreed to a one-year pilot scheme at its meeting on 14 March 2000. Only 2 petitions have been submitted in this way. However, the trial scheme may lead to developments that would not only fulfil CSG's desire for genuine public participation in the Parliament's operation, but also assist the achievement of another CSG aspiration, that of the integral use of new technology to promote innovative procedures and practices.

8.4.   Initial evaluation

Petitioning is one of the Parliament's most visible procedures intended to exemplify its distinct culture. It was designed to be more meaningful than the virtually moribund petitions mechanism in the House of Commons. The recent Hansard Society Commission on the scrutiny role of the UK Parliament was struck by this apparent contrast.[93] Its report saw petitions as "one method of engaging more systematically with the public interest", but believed that "there is little sense that petitions to [the UK] Parliament result in any concrete action on the part of MPs." On the other hand, in the Scottish Parliament "the Public Petitions Committee plays a pivotal role between the public and the Executive." It was impressed by the fact that even where all concerned decide that no action should be taken on a petition, "the fact that it was discussed in Parliament is significant. That Parliament addressed and responded to the issue is important to members of the public and it also offers a valuable means for MSPs to remain in touch with issues of public concern."

The UK Government appears to have been impressed by this argument, and the new Leader of the Commons, Robin Cook, told a Hansard Society conference on the Newton Report in July 2001 that he would be looking at the Holyrood system to see whether it could be applied

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[93] *The challenge for Parliament: making Government accountable*, Hansard Society Commission on the scrutiny role of Parliament, 2001, paras 7.45-48 ('Newton Report')

to Westminster.[94] It may be that this positive ministerial view may be due to a feeling that the Scottish petitions model is just the sort of discrete and visible 'off the shelf' procedure, which can be conveniently copied elsewhere as a public symbol of modernisation and reform.

This may sound a timely warning for the Scottish process. For the petitioning technique to make a genuine contribution to the achievement of the CSG vision, it has to be, and be seen to be, a means of enabling the public and the Parliament to make a difference in Scottish public policy. Robin Cook chose to describe the Newton Report's support for the technique in terms of providing the Commons "with a valve for the release of public pressure inside Parliament." If petitioning in the Parliament becomes little more than a way of the public letting off steam, it will have failed, and it could become as marginal as its present Westminster counterpart. Petitioning is a potentially expensive exercise for the Parliament and Executive, in terms of their limited time and resources. However, like parliamentary questions and consultation exercises, it can justify its cost in terms of good governance. It appears, from the early evidence, to have made a good start.

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[94] Speech to Hansard Society Conference, Church House, London, 12 July 2001

9.   The Parliament in plenary: representing the people together

9.1.   The role of the plenary meeting

The previous chapters have examined the ways in which the Parliament operates primarily or substantially through its committees. The intention of the framers of the Parliament was not to so concentrate its formal proceedings in either plenary or committee sessions that one forum would overshadow the other. The focus on committee activity was not meant to be at the expense of plenary meetings. While covetous eyes are often cast across the Atlantic at the strength and prestige of Congressional committees, none wished to replicate the perceived diminished role of the two Congressional chambers. The balance between plenary and committee was not to be a 'zero sum' relationship, but rather a complementary, and mutually fruitful one, where the activity of the Parliament as a whole would be more than the sum of its constituent parts.

This is not an easy balance to achieve, and, to a large extent, it is not something that can be assured simply by way of provision of the appropriate institutional framework. Though the CSG Report referred constantly to plenary sessions and business of the Parliament,[95] it did not, unfortunately, attempt explicitly to set out any overall rationale for its division of parliamentary business between the plenary forum and the committee forum. Notwithstanding the apparent importance of the committee system, it was almost inevitable that the Parliament in plenary session could become the 'default' form of parliamentary proceeding, especially as the decision-making or ratifying forum.

A reading of the devolution legislation could suggest that the plenary session is the primary, indeed almost exclusive form of Scottish Parliament proceeding. Virtually all parliamentary powers and duties in the *Scotland Act* were expressed in terms of the Parliament as a whole, either directly or through its particular office-holders. In practice, some of these may have been exercised by or in committee rather than the full Parliament, the most obvious example of this being the power to call for the attendance of witnesses or the production of documents.

Plenary sessions were designed to deal with a range of parliamentary business, from full-scale debates initiated by the Executive and by others, to questions to, and statements from, ministers. They provide a forum for expressing the will of the Parliament itself, through the making of resolutions, whether or not following a formal division. Such decisions have ranged from general propositions on matters of public policy or internal 'housekeeping', to appointments to, or removal from, various parliamentary and other

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[95] It refers to 'Plenary' to indicate formal sessions of the full Parliament. The Parliament rules adopt the term 'meeting of the Parliament' in this context.

offices. Some parliamentary business, such as oral questions, takes place entirely in plenary, whereas other forms of business derive from prior activity in committees. The legislative process, in particular, is designed as a seamless process involving both plenary and committee proceedings.

9.2. Making collective decisions

i. Appointments et.

The Parliament is required or empowered by a range of legislative[96] and Standing Orders provisions, to be involved in the appointment or removal of people to many particular offices, not all of which are internal parliamentary posts. The extent of parliamentary involvement varied, depending on the type of office or post concerned. For example, it nominates an MSP to be appointed as First Minister, but the actual appointment of First Minister is made by the Sovereign following a recommendation by the Presiding Officer of that nominee. However it directly elects its Presiding Officer and two deputies. Again, its powers of removal may be different from those of appointment. It (or the SPCB) may also have power to set terms and conditions, including pay and allowances for some offices.

Some of these appointments powers were of necessity exercised in the Parliament's initial meetings:

Presiding Officer & 2 Deputy Presiding Officers:	12 May 1999
First Minister:	13 May 1999
Other Scottish Ministers:	19 May 1999
Junior Scottish Ministers:	19 May 1999
Scottish Law Officers:	18 May 1999
Scottish Parliamentary Corporate Body (SPCB):	19 May 1999
Parliamentary committees: [97]	17June 1999
Auditor General:	15 Sept 1999
Parliamentary Bureau:[98]	---

Over the first Parliamentary year, there was no further use of any power of appointment or removal in relation to the 3 presiding officers, the SPCB or to any ministerial posts, other than

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[96] These powers will likely grow over time as the Scottish and UK Parliaments legislate in particular areas. In the first year, for example, the *Public Finance and Accountability (Scotland) Act 2000* provided for the appointment by the Parliament of 4 of its MSPs to be members of the Scottish Commission for Public Audit. The method of appointment to the SCPA, by the SPCB following the agreement of the Parliament, was added to Standing Orders in June 2001.

[97] The initial membership was completed by two further appointments on 2 July.

[98] The Bureau is required to be 'established' by the Parliament (*rule 5.1.1*), but this seems not to have been by way of any proceedings at a meeting of the Parliament in 1999.

the two Law Officers. This last exercise was due to the appointment of the Lord Advocate as a senior judge, and the Parliament agreed on 17 February 2000 (not without some adverse comment on the nature and timing of this elevation, especially in view of the forthcoming trial in the Netherlands of the two Libyans accused of the Lockerbie bombing) that he be replaced by the Solicitor General, Colin Boyd, and that Neil Davidson be the new Solicitor General.

There were no other changes in the ministerial team until the First Minister's death in October 2000 led to the nomination of Henry McLeish on 26 October (contested also by the SNP and Conservative leaders and by Dennis Canavan), and of the consequential changes to the composition of his ministerial team on 1 November. This major, and unexpected, reshuffle highlighted the limitations of the Parliament's involvement in the makeup of the Scottish government. As was made even clearer during the later reshuffle in March 2001 following the resignation of the Environment Minister, Sam Galbraith, the Parliament has no formal say in the composition of particular ministerial portfolios or their allocation among the ministerial team. Other than proactively seeking their removal by way of a motion of no confidence, the Parliament is only asked to approve nominations to the ministerial, junior ministerial or law officer teams, as vacancies to one or more of these become available that the First Minister wishes to fill.

Changes to committee memberships were made relatively frequently, as parties reshuffled their front-bench (including ministerial) or committee packs; MSPs resigned,[99] or members stood down from committees.[100] The Parliament itself agreed to the party from which conveners and deputy conveners came, but the committees themselves selected the actual occupant of these posts.

ii.   *Internal matters*

The Parliament had to make a number of decisions on domestic matters in the short period from its establishment until the first summer recess in early July 1999. The two most visible and controversial of these, which epitomised media accusations of parliamentary 'navel-gazing', were the muddled and divisive debate on 8 June on members' allowances, and the 17 June debate on the Holyrood New Parliamentary Building Project. As no committees existed for most of that period, and could not be said to be fully functioning until the autumn, the whole focus was on the Parliament in plenary mode at a time when the institution was in its infancy, and had had little time to adapt to its working practices.

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[99] As in the case of Ian Welsh, a member of two committees, who resigned from the Parliament itself in December 1999

[100] As in the case of Patricia Ferguson, who was replaced on the Standards Committee, during its 'Lobbygate' inquiry in the autumn of 1999.

This was compounded by the transitional nature of this period. The Parliament and the Executive did not inherit their full powers until 1 July, thereby blurring the demarcation lines not just between the UK and the devolved tiers of governance, but also between the respective roles, powers and responsibilities of the new Parliament and the new Executive. This confusion was evident in the media, and in the parliamentary debate over the Holyrood Project, and persisted through the first year, culminating in the further heated and tense debate on the same matter on 5 April 2000.

Other than regular decisions on domestic matters, such as the arrangement of business or the amendment of its procedures (generally deriving from motions from the Bureau, SPCB, Procedures Committee and Standards Committee), the Parliament considered a variety of internal issues in plenary session. The extent of that consideration can vary significantly from full debate and division to purely formal endorsement with no debate or vote. Examples relating to its own operation were (with those initiated by ministers as ministers marked *):

- *Prayers/'Time for Reflection'* – debated in principle, and agreed to on division, 18 May 1999; scheme debated and agreed on division, 9 September 1999
- *CSG Report** – debated on 9 June 1999, and spirit of its principles and approach endorsed
- *Treatment of devolved legislation at Westminster** -- statement by First Minister on 9 June 1999; subject to immediate questioning, but no formal debate or decision
- *Commonwealth Parliamentary Association membership* – SPCB motions agreed formally, without debate or division, 9 September 1999 and 4 May 2000
- *Regulation of cross-party groups* – debated and agreed without division, 15 December 1999
- *Members' Code of Conduct* – debated and agreed without division, 24 February 2000
- *Members' allowances* – revised scheme agreed formally without debate or division 16 March 2000[101]
- *Register of Interests for Members' staff* – scheme debated and motion withdrawn 16 March 2000; revised scheme debated and agreed without division 4 October 2000
- *Witness expenses and allowances* –scheme agreed formally, subject to one agreed amendment, without debate or division 6 July 2000
- *Relationships between MSPs* – Guidance incorporated into Code of Conduct, agreed formally without debate or division 6 July 2000

Other matters considered in plenary concerning the overall scheme of Scottish devolution, and which had an impact on the Parliament, included:

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[101] A further revised scheme was agreed virtually formally on 21 June 2001, with the only 'debate' being very brief remarks by the mover of the SPCB motion

- *Executive's Legislative Programme** – (i) statement by First Minister, and questions and debate, no question for decision 16 June 99; (ii) statement by First Minister and debate, no question for decision 14 September 2000
- *'Programme for government'** – Executive policy programme *'Making it work together'* debated and agreed on division 9 September 1999
- *Concordats** – Memorandum of Understanding and initial concordats debated and agreed, subject to two agreed drafting amendments, on division 7 October 1999
- *British Irish Council** – policy and Executive participation debated and agreed, subject to one agreed amendment, 2 February 2000

iii.   Deciding public policy

Meetings of the full Parliament are regarded as the appropriate place for debate and decision on major matters of public policy. These can be initiated by non-Executive parties, parliamentary committees or by individual MSPs, and guaranteed time is provided for such business. However the bulk of this business has been at the initiative of the Executive itself, which views the Parliament as the appropriate platform for the announcement and consideration of its policies. The two main ways in which it does this are by ministerial statements and by debates on Executive motions.

Standing Orders do not provide any guaranteed time for such Executive business. There are inevitable problems in categorising such a residual class of parliamentary business, especially at the very outset of a parliament, when procedure and practice is in a state of organic development. Not all debates based on motions from a minister would necessarily have been on Executive business, for example. Some in the name of the First Minister or of the Minister for Parliament may well have been on what would more properly later have been regarded as 'parliamentary business'. Some issues, such as tuition fees and the Holyrood Project, which were discussed in plenary during the early weeks of the Parliament, may well have been discussed (also) in committee, had they been established and fully operating at the time.

With that caveat in mind, there were 46 plenary Executive-led debates on public policy matters during the first parliamentary year. As ministerial portfolios do not parallel Executive departments, the most convenient categorisation of these debates is by noting the opening ministerial speech:

First Minister:	4	
Children & Education:	6	(3 cabinet, 3 junior)
Communities:	7	(3 cabinet, 4 junior)
Enterprise and Lifelong Learning:	12	(7 cabinet, 5 junior)
Finance:	4	
Health & Community Care:	5	(4 cabinet, 1 junior)

Justice:	5	(3 cabinet, 2 junior)
Rural Affairs:	2	(1 cabinet, 1 junior)
Transport & the Environment:	1	(1 cabinet)

	(30 cabinet, 16 junior)	

Other points to note are:

- 42 Executive motions (91%) were subject to amendment by one or more opposition parties or members.
- Of these, 37 were moved by the SNP, of which all but 5 were defeated, the others (including one textual) accepted without division.
- 25 were moved by the Conservatives (a further amendment was subsequently withdrawn), all defeated.
- In 21 debates, motions were moved by both the main opposition parties, including one also subject to a (defeated) motion by the Green Party MSP.
- There was no division on the main motion in 25 of the 46 debates (54%), and the Executive won all 21 where a division was required.

Thus, it can be suggested that, although virtually all Executive propositions were challenged to some degree by the opposition parties, not all were automatically opposed to the extent of a division. Some of this apparent consensuality may be ascribed to the relatively anodyne nature of some motions for debate. However, there seems to have been a sincere attempt across the Parliament to ensure that its proceedings would not be accused of being unthinkingly adversarial and confrontational.

The 'new politics' was not so obviously replicated during debates initiated by non-Executive parties. This is not surprising, as such parties have more limited opportunities to determine directly the Parliament's agenda, and would therefore feel it hard to resist the temptation to use such time for more obvious partisan advantage. They would wish to contrast their own distinctive policies with both those of the Executive as whole or of its constituent parties, and of the other opposition parties.

Standing Orders provided 16 half sitting days to non-Executive business. This was allocated by the relevant parties among themselves, on the basis of 10 to the SNP, 5 to the Conservatives and 1 to be shared between the SSP and the Greens. There were 22 plenary debates initiated by non-Executive parties - 10 full (ie half-day) debates and 12 shorter debates where the allocated time was used for 2 debates on different subjects. Every opposition motion bar one was the subject of a successful Executive amendment, and the other (an SNP motion on air transport, a substantially reserved matter, on 3 February 2000) was successfully amended by a Liberal Democrat motion. All the amended motions were

then carried, in all cases bar one (an SNP motion on the Act of Settlement, a reserved matter, on 16 December 1999) by division. Inter-party rivalry among the Opposition is demonstrated by the frequent challenges to each other's motions. 8 Conservative amendments were lodged to the 13 SNP motions (62%), although all but two fell before they could be voted upon. 6 SNP motions were lodged to the 7 Conservative motions (86%), but only 2 reached the stage of a division.

9.3.   Scrutiny and accountability

The main forms of plenary scrutiny and accountability activity, other than those discussed in the previous section, are questions, ministerial statements, the examination of legislation (especially Executive legislation) and debates initiated by committees and individual members.   Although the detailed procedures are different from those at Westminster, the basic techniques themselves are generally familiar. Any innovation in these parliamentary mechanisms therefore tends to arise in their relative importance in the overall mix of parliamentary activity, and the extent to which they have any positive impact in delivering the parliamentary culture implied in the CSG principles.

i.   Questions
This section briefly examines parliamentary questions of both the oral and written variety, although only the latter type is directly a plenary activity. However the CSG and the Parliament appeared to regard oral and written questions substantially in common, in terms of procedure and overall guidance, despite obvious operational differences. In addition, the Executive has openly used the 'planted' or 'inspired' written question as a means of making public many of its policy announcements. For these reasons it is convenient for both types of PQ to be considered together.

The parliamentary question is an example of the adoption of a Westminster-style parliamentary technique. The CSG report only briefly considered the rationale for a PQ procedure, and barely noted any distinction between the oral question -- those asked and immediately answered in plenary, with supplementaries from the original questioner and other members – and the written question – those asked and answered in writing, usually after a period of time, with no scope for immediate follow-up.[102] The impression appears to be that these familiar mechanisms were accepted as the standard practice of a parliament, and that all that was required was to refine and adapt these existing processes to fit the desired operation of the new Parliament.   There seems to have been little *de novo* consideration of what mix of plenary and other activity is required to achieve the desired objects of effective scrutiny, accountability, participation and sharing of power.

The usual oral question exchange is a particular type of parliamentary interaction between MSPs and the Executive, and therefore similar to other forms of exchanges such as debates, statements and committee questioning. Among its main characteristics are that a parliamentary question

- is not initiated by the Executive (other than those of the 'inspired' variety) - in that sense it is akin to a Non-Executive, Committee or Member's debate
- requires a formal response answer of some sort – unlike, say, the lodging of a motion
- initiates a brief and limited exchange – and therefore is much shorter in time and in scope than a debate or committee questioning session.

The CSG Report stated that "oral and written Parliamentary Questions (PQs) will provide an important means for individual Members to obtain information from the Executive and to hold the Executive to account. The time provided in Plenary for Parliamentary Questions should not be used for political points scoring. PQs should be used genuinely to elicit information". This rather disingenuous approach is formally adopted by the Parliament, in its published guidance, although it also recognises a wider role:

> Of course, questions which seek to obtain information can have other purposes as well. For example, if a member wishes to press the Executive to act in a particular way, a question asking for information in the format "To ask the Scottish Executive whether it will act [in the particular way desired by the member]" could be lodged. However, it is for individual members to take responsibility for the quantity, quality and relevance of their questions and to take account of the availability of all other sources of information so that the parliamentary question system is used in the most efficient and appropriate manner.

Ministers have been unhappy about the volume of PQs they have received from MSPs, claiming that it has imposed a significant burden on Executive time and resources. In particular they seemed to be taken by surprise at receiving PQs during the first summer recess, and, unlike Westminster, being expected to answer them during the recess.[103] Through Procedures Committee inquiries,[104] and in direct discussion with relevant Parliament staff, the Executive has sought ways of stemming the tide of PQs. This has ranged

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[102] The Parliament also follows the Westminster practice that oral questions not reached during the set Question Times are given a written answer.

[103] It initially claimed that PQs were never intended to be answered during long recesses. They would be answered during that first summer recess, but without prejudice to any future recesses, because it began only a day after the Parliament's official opening on 1 July.

[104] See its 1st report of 2000, SP Paper 169, August 2000; 2nd report of 2001, SP Paper 346, June 2001, and the Parliament's debate endorsing the former report on 23 November 2000

from seeking to deflect some categories of information requests towards other bodies (especially the Parliament's own services), to seeking the extension of the period for answer during recesses. In response, the Procedures Committee has scrutinised the Executive's performance in meeting the relevant response times for written answers provided in Standing Orders,[105] and its practice of providing holding answers.

This continuing exchange has provided the opportunity for the considered examination of the role and purpose of parliamentary questions which was missing from the CSG report.[106] For example, in its 2000 report, the Procedures Committee described the purpose of questions as follows:

> We think that there is both an information gathering aspect <u>and</u> a political aspect to the process of questioning any Executive. To suppose that questions and their responses are not a legitimate part of the democratic *political* process is unrealistic. The action of gathering information by politicians in their political role is in itself intrinsically political. "The question period offers members an opportunity to put potentially embarrassing questions to the Government and obliges the Government to respond publicly to them." The question of whether "embarrassing" a Government is an appropriate part of the legitimate objective of holding it to account is likely to be contentious. It is difficult however not to recognise a "natural" political aspect to the parliamentary questioning process…
>
> *This Committee considers that the duality of information gathering <u>and</u> political rationale is central to the nature of questions in democratic assemblies and parliaments and contributes to the proper accountabilities noted previously.*
>
> The Parliament must ensure however that these elements are in proper balance, that the risk of abuse is avoided and that all appropriate methods of obtaining information are utilised in a proper manner.

A good example of this sort of considered procedural thinking was in relation to 'inspired' (or 'planted') questions. These are questions provided by the Executive for lodging by an MSP, so that ministers can make some form of public announcement through the written answer. This is a contentious use of the PQ mechanism, because such questions are, in reality, being initiated by ministers rather than by individual MSPs. They add to the Parliament's and the Executive's, administrative burden of processing and responding to PQs, and could

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[105] The initial rules set this as generally within 14 days. This has been extended twice, to 21 days for those lodged during a recess of more than 4 days (December 1999), and to 28 days for questions lodged within 7 days of, and during, such a recess (June 2001).

[106] This has included a written agreement between the two bodies on devising ways of matching demand to resources (see the 2000 Procedures Committee report).

be said to enable ministers to avoid public scrutiny through the questioning or debate that follows an oral statement in plenary.

The usual justification, one which Executive ministers have made, is that this use of PQs is a convenient and less burdensome way of making Parliament and the public aware of information they judge relevant, and which otherwise would be released through time-consuming plenary statements or simply by extra-parliamentary announcement. Generally, the Procedures Committee has accepted the practice as not objectionable in principle, especially given the limited amount of plenary time available for oral statements. It has argued that its use needs to be more transparent, so that such questions can be distinguished from 'genuine' questions initiated by MSPs.

There is a dedicated question period in plenary each week, generally on a Thursday afternoon. Initially there was a period of 30 minutes for randomly-selected questions to all ministers ('Question Time'), followed by a period of 'Open Question Time' lasting 15 minutes, where up to 3 questions were selected by the Presiding Officer. This was changed in the December 1999 revision of the rules, following requests for a dedicated period of questioning of the First Minister. Question Time was extended to 40 minutes, and Open Question Time became First Minister's Question Time and was extended to 20 minutes. 1,806 oral questions were lodged in the first parliamentary year.

Questions can be lodged for oral answer the same day, if they meet the same urgency criteria as urgent ministerial statements. However no such questions were accepted during the first parliamentary year, the first being taken on 26 May 2000, on a proposed strike affecting ferry services.

A total of 6,619 written questions were lodged during the first parliamentary year, a monthly average of 552.[107] The heaviest single month was March 2000, with 1050, and the lightest June 1999, with 331.[108] As may be expected, the main Opposition parties asked the bulk of these questions – SNP Members asked 3803 (57%) and Conservatives asked 1173 (18%).

ii.   Ministerial statements
There were 44 ministerial statements during the first Parliamentary year. As with the categorisation of Executive debates in the previous section, these statements can be divided by the minister making them:[109]

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[107] This includes those to the Presiding Officer on SPCB matters (232 were answered up to the end of May 2000), and is based on figures in the Parliament's own statistics.

[108] This is based on the total for the two part-months of May 1999 (15) and May 2000 (337) being added together to count as a single month.

[109] The Parliament's own statistics records ministerial statements by reference to the relevant Executive department.

First Minister:	4	
Children & Education:	5	
Communities:	4	(3 cabinet, 1 junior)
Enterprise and Lifelong Learning:	3	
Finance:	5	
Health & Community Care:	6	
Justice:	5	(4 cabinet, 1 junior)
Rural Affairs:	3	(1 cabinet, 2 junior)
Transport & the Environment:	9	

	44	(40 cabinet, 4 junior)

Parliamentary rules appeared to regard ministerial statements as fulfilling two distinct purposes.[110] Ministers could notify the Presiding Officer of their intention to make a statement, and the Bureau would then provide time for it in a business programme. If a statement is "of an urgent nature", and the Presiding Officer is of the opinion that it is "sufficiently urgent", a statement can be made on the same day as it is requested. These two mechanisms (there is a separate procedure for 'emergency questions') appeared therefore to envisage, respectively

- planned or programmed statements, presumably for policy announcements, especially those deemed sufficiently important as not to be made by way of an 'inspired question'. Unlike Westminster, slots were often provided in business programmes, which generally dealt with two weeks' future business, for such statements, even though the proposed subject was always not revealed at that time.
- unplanned, reactive statements, presumably to deal with current crises or policy developments.

The parliamentary treatment of a statement of either form, such as whether and how they should be debated, as provided by Standing Orders, caused some initial confusion. Early practice was for a statement to be followed immediately by a period of questioning of the Minister concerned. In some cases, this was followed by a debate on the statement, either immediately or at a future date. Bureau guidance on this was during the first summer recess, which was endorsed by the Procedures Committee during its review of Standing Orders in late 1999, and these procedures appear to have operated smoothly thereafter. Five

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[110] The presiding officers have consistently enforced the principle that major Executive policy announcements should be made first in the Parliament, as far as possible.

statements in the first year were followed by a debate, all on subjects which could be regarded as falling into the category of planned announcements.

iii.   Examining legislation

The Parliament's legislative process has already been considered in chapter 6, in the context of the role of committees, and will not be repeated here. The plenary role is primarily

- to decide on whether to approve the general principles of a Bill, following a report from one or more committees
- to make any final amendments to a Bill after it has had detailed 'line-by-line' scrutiny in committee
- to decide whether or not to pass a Bill, so that it can receive royal assent.

Depending on the particular procedure adopted for a Bill, more (or even all) proceedings on a Bill may also be taken in plenary (sometimes in the guise of a Committee of the Whole Parliament) rather than in committee. An example of this is a Bill taken under the emergency bill procedure, of which the Mental Health (Public Safety and Appeals) (Scotland) Act 1999 was the only instance during the first two years.[111] Any reconsideration of a Bill which has been passed but then challenged by the Secretary of State or a Law Officer under the Scotland Act provisions is also taken in plenary rather than in committee. This has not yet been necessary.

The impact that plenary proceedings can have on the passage of a bill, and the interaction between plenary and committee stages, can be seen from the case of the Abolition of Poindings and Warrant Sales Bill, discussed in chapter 6 in the context of Members' Bills. In the early days, this was the only substantive example of a potentially serious clash between the views of the Parliament in committee and of the Parliament in plenary, as can arise at Stage 1. The Stage 1 decision is important for the rest of the legislative process, as any proposed amendments at later stages which are deemed to be contrary to a Bill's 'general principles', as agreed, are inadmissible. These are described in the official guidance as 'wrecking amendments'. Stage 3 plenary proceedings could also provide the opportunity for 'legislative bargaining' by promoters of bills, whether they be the Executive, a committee or an individual MSP, as they provide (reconsideration aside) the last chance in the unicameral parliament for changes to be made to proposed legislation.

One important legislative decision made in plenary session is the granting of consent, by way of 'Sewel motions', to Westminster legislating on devolved matters. This derives from the so-called 'Sewel Convention' set out by the Scottish Office Minister, Lord Sewel, during proceedings on the Scotland Bill in the House of Lords on 21 July 1998. It was confirmed by

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[111] The second Emergency Bill, the *Erskine Bridge Tolls Bill*, was taken in September 2001.

the First Minister in the Parliament on 9 June 1999; by the UK and Scottish governments in the Memorandum of Understanding, and by the House of Commons Procedure Committee.[112]   There were 7 'Sewel Motions', covering 9 Bills, in the first year, and a further 5 before the summer recess in July 2000:

Table 8.2: Sewel motions, to July 2000

Motion	Bill	Minister	Debated
S1M-60	Food Standards Bill	Susan Deacon	23 June 1999
S1M-61	Financial Services and Markets Bill; Electronic Communications Bill; Limited Liability Partnerships Bill	Angus Mackay	23 June 1999
S1M-344	Sea Fishing Grants (Charges) Bill	John Home Robertson	8 Dec 1999
S1M-405	Representation of People Bill	Wendy Alexander	13 Jan 2000
S1M-430	Sexual Offences (Amendment) Bill	Jim Wallace	19 Jan 2000
S1M-628	Political Parties, Elections and Referendums Bill	Frank McAveety	9 Mar 2000
S1M-733	Regulation of Investigatory Powers Bill	Jim Wallace	6 Apr 2000
S1M-887	Race Relations (Amendment) Bill	Jackie Baillie	25 May 2000
S1M-889	Insolvency Bill	Angus MacKay	1 June 2000
S1M-975	Care Standards Bill	Sam Galbraith	22 June 2000
S1M-1072	Government Resources and Accounts Bill	Jack McConnell	6 July 2000
S1M-1073	Political Parties, Elections and Referendums Bill	Frank McAveety	6 July 2000

It remains to be seen whether this convention will survive any changes of government in Edinburgh or London, and it may require adaptation where, for instance, consent was given to a UK measure which was not subsequently enacted, or was substantially amended, at Westminster.   If the procedure is used too frequently, its anomalous character could come to the fore.   The logic of devolution is that devolved parts of the UK can choose to legislate differently or identically on particular policy issues.   However, two legislatures enacting substantively identical legislation for their respective jurisdictions is not the same as one legislature contracting out its legislative functions to the other simply as a matter of administrative convenience.   While such legislative partnership may sometimes be sensible, it operates only in one direction, and could undermine the very principle and symbolism of legislative devolution.

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[112] See further R Hazell, *The State and the Nations: the first year of devolution in the United Kingdom*, 2000, pp 158, 188-190 and 272

iv.   Committee and members' business

The Parliament's rules guarantee periods of plenary time for committee-initiated business. This amounts to 12 half sitting days in each parliamentary year, or approximately 33 hours. It would appear that this minimum target was not achieved in the 1999-2000 year. The Parliament's official statistics only record 9 hours 43 minutes of plenary business based on committee motions (although they do not itemise this business), and none on committee bills (there not being any in the first year). Of the 9 motions introduced on behalf of committees, 6 were in relation to Standards (4) and Procedures (2) Committee reports on internal parliamentary matters, such as the establishment of the Code of Conduct or amendments to Standing Orders. The other three were:[113]

- 16.03.00 Health & Community Care: Health Boards and NHS Trusts
- 26.04.00 Rural Affairs: Impact of Water Boundaries Order
- 11.05.00 Transport & the Environment: Telecommunications Inquiry

The first year, therefore, is not a good guide as to how committees may be able to make use of their plenary opportunities. As Committee Bills begin to progress through the Parliament, this type of business will account for a growing proportion of parliamentary business.

Members' business had a dedicated period of at least 30 minutes (45 minutes, as from November 2000) at the end of each plenary meeting. That this slot would be used for debate rather than for legislative or other business, can be seen from the Bureau guidance issued in June 1999:

> 8. CSG recommended that time should be set aside after the votes at the end of the day specifically for private Members' business. This was intended to allow members to raise non-controversial, constituency-related issues. CSG recommended that members should also be able to lodge motions for publication in the Bulletin. It would be for the Bureau to make recommendations to the Parliament on which motions should be debated and voted upon.
>
> 9. CSG envisaged that business taken after decision time would be of such a non-controversial nature, and of limited interest, that most MSPs would be able to plan to leave the chamber after the end of decision time, leaving Members whose business was to be taken, and the relevant Minister, in the chamber for up to 30 minutes longer. It was not envisaged that such business would normally lead to a division, or that any whipping arrangements should be put in place.
>
> 10. … The Bureau has decided that Members' business should not normally lead to a question being put……

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[113] The dates of these 3 debates may be significant, coming near the end of the parliamentary year. It may be that the business managers were attempting to boost the annual total of committee business.

There were 62 such debates, consuming 33 hours 11 minutes, in a first year which had 73 meetings. All 11 meetings without such a slot were near the beginning of the year, and all meetings after 23 September 1999 had a member's business debate. These slots do not appear to have been allocated by any particular formula, being spread among the main parties – Labour: 19; SNP: 18; Conservative: 13, and Liberal Democrat: 12.

Most motions appeared to adhere to the 'non-controversial, constituency-related' criterion set out in the initial guidance, or the expanded criteria of the revised guidance of 3 February 2000 ("motions will normally have an explicit local or regional dimension, or raise issues of national policy in a local or regional context and have cross party support"). Many debates were on specifically local issues, while others tended to focus primarily on a more national public policy matters, perhaps with citation of a local example or context. No such motion was put to a vote.

One significant difference between these debates and the daily adjournment debate in the Commons is in the number of participants. Whereas a Commons debate will usually only involve the relevant MP and the minister replying (generally with virtually no other MPs even in attendance), Member's Business debates in the first year involved anything from 2 (on Environmetally Sensitive Areas schemes) to 14 (on domestic violence) speakers other than the mover and the minister. Most debates had between 5 and 9 speakers in total. This makes these sessions more of a genuine debate than the usual dialogue in the Commons chamber, and they perhaps more resemble the Lords 'unstarred question' idea of a short debate.

9.4. Conclusion

The Parliament's plenary sessions provide a range of opportunities and mechanisms whereby the aims of the CSG principles can be achieved. Much of this activity would be relatively familiar to anyone used to business in the House of Commons chamber. The first year is inevitably not a safe guide as to how all these mechanisms are operating; whether they are effective; whether the balance between them is right, or whether they should be replaced or supplemented by more innovative procedures and techniques.

Plenary sessions are generally animated and dynamic political meetings, though the level of 'drama' will vary depending on the nature and contentiousness of the particular business. These meetings tend to be conducted in a spirit of what may be described as friendly partisanship, in an atmosphere which is both serious but relatively informal. This may not accord with some of the more wishful thinking of the 'new politics', but it is probably central to the success of the Parliament in practice.

The Executive has tended to dominate plenary business. Other than the Parliament's first two meetings, when no Executive existed, there were only 5 meetings which contained no business initiated by, or on behalf of, the Executive. The proportion of committee-initiated business in the first year may not have been typical, and the advent of committee bills in later years will raise that proportion. Almost exactly 10% of plenary time was spent on Bills, virtually all of which were Executive Bills (over 30 hours out of a total of just under 33 hours). Half the time spent on substantive policy debates was on Executive motions, and virtually 10% of the total plenary time was taken up by ministerial statements.

The ability of the Executive to set so much of the Parliament's plenary agenda can undermine the achievement of the CSG principles, especially in the extent to which the Parliament can hold ministers to account effectively, and can scrutinise their policies and actions. Despite much of the early media reporting, the Parliament also spends relatively little, perhaps too little, of its time in domestic 'navel-gazing'. A regular working pattern of 1½ days a week in plenary session may well be too little, though the Parliament has thus far resisted virtually all attempts to expand this time significantly. This pattern is designed to maintain a balance between plenary, committee, party and 'constituency' activity, but it may also limit the Parliament's overall ability to do its job. Extra time could be made available if the Parliament sat for more weeks in the year, as an alternative to longer sessions over more days each week. Such options may well have to be considered in the coming years.

10.   Managing itself

10.1.   Introduction

The extent to which the Scottish Parliament has legal and functional autonomy is central to the way in which it operates both as a 'parliament' and as a functioning institution. The devolution legislation provided the Parliament with a number of ways in which it can operate as an administrative entity, beyond simply how its parliamentary business can be transacted. To a great extent, these arrangements appear to reflect Westminster practice, but without, at the same time, recreating the unique legal and constitutional status that the UK Parliament enjoys. The tension thereby created explains much about how the Parliament operates, how it can make the CSG vision a reality and the scope it has to reform itself. This is also a crucial aspect of the executive-parliamentary relationship, as the CSG vision implies a much greater degree of parliamentary autonomy, especially from executive influence or even dominance, than is the case at Westminster. This chapter briefly examines some aspects of this broad and important issue, especially those relating to how the Parliament manages itself.

10.2.   The legal basis of the Parliament

The legislation clearly contemplates an active entity called 'the Parliament', whose collective will on 'internal' matters (as well as in relation to legislative and similar business) would generally be expressed through its resolutions. The Act does not appear to distinguish between 'the Parliament' which makes laws from 'the Parliament' which makes provision for parliamentary and ministerial remuneration, gives instructions to the SPCB, or requires, through the Clerk, the attendance of witnesses or the production of documents.

The Scottish Parliamentary Corporate Body (SPCB or 'parliamentary corporation') is the major legal persona of the Parliament established by statute. Its main powers and duties are as set out in the *Scotland Act*, and it can delegate any of its functions to the Presiding Officer or the Clerk. The Parliament can give it special or general instructions "for the purpose of or in connection with the exercise of the corporation's functions."   The other main representatives or manifestations of the Parliament for various purposes are the Presiding Officer, the Parliamentary Bureau, the Clerk/Chief Executive, and, perhaps, the Minister for Parliament.[114]

The Parliament has not, to date, adopted a Westminster-style 'domestic committees' approach to its internal administration. This domestic committees model is not without its problems and has been much reviewed and amended at Westminster in recent years.

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[114] 'Minister for Parliament' as a ministerial title has an 18th century tone, almost implying a degree of ownership, and is no more in tune with the 'new politics' than, say, Chief Whip.

Nevertheless it does provide an in-house forum for a parliament to consider matters of internal policy and administration, other than by either consuming valuable plenary time, or by a 'behind closed doors'/'usual channels' arrangement which would be contrary to the spirit of the CSG principles.

The SPCB does not have at present a government majority in any sense (in any case, the corporation's members are not elected to 'represent' any particular political party), and is chaired by the Presiding Officer. As such, it could, in theory, be an appropriate body to deal in a proactive way with much of the Parliament's internal administrative business. It appears that, in some matters which strictly go beyond the arrangement of parliamentary business, the Bureau, a body which does have an Executive majority, is emerging as a key mechanism in the Parliament's administrative machinery.

Through parliamentary privilege generally, and the doctrine of 'exclusive cognisance' in particular, the UK Parliament has a powerful array of legal power and protections, which are intended to enable it to function effectively and independently as a parliament. This legal shield has two main aspects, by enabling it to organise and determine its own affairs, and by preventing any external inteference in that internal activity. This legal regime has come in for much criticism, being regarded by many as an unfair and improper legal immunity, contrary to general principles of the rule of law and of natural justice. Various changes have been made or proposed in recent years which have served, intentionally or otherwise, to undermine the concept of parliamentary privilege.

In particular, these criticisms led to the enactment of a tightly defined scheme of legal protection for the new Parliament. While much of the legislation dealt with issues arising in 'parliamentary proceedings' (itself a complex and uncertain concept), there was very little provided to the Parliament or its institutions by way of internal legal competence.

Confusion amongst MSPs, particularly those with Westminster experience, about the existence or extent of the Parliament's 'privilege' led the Presiding Officer to issue initial guidance to MSPs in August 1999 on what 'parliamentary privilege' the Parliament and its Members and staff might enjoy.[115] The guidance concentrated on issues covered by the devolution legislation, but did offer the following general observations:

> The starting point is that the Parliament, its members and staff are not beyond the law. Any "privileges" (i.e. legal protections and immunities) applicable in relation to the Parliament are those conferred by or under the Scotland Act 1998. The Parliament does not derive rights by reference to privileges which exist (whether by statute or otherwise) at Westminster and there is no concept of "parliamentary

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[115] Promulgated by way of an announcement in *Business Bulletin* 38/1999, 6.8.99

privilege" in relation to the Scottish or its members in the sense understood at Westminster….

This guidance cannot and must not be regarded as a comprehensive statement on this complex area of law, which is expected to develop over time. The senior staff of the Parliament will be happy to provide further advice and assistance as required.

Notwithstanding such warnings, the notion that any parliament must be covered by some degree of parliamentary privilege as is enjoyed at Westminster appears to be one which is hard for many parliamentarians to shake off, and the Official Report records instances of assertions by MSPs that they are so protected.

The Parliament, like other bodies created by statute, is subject to judicial review by the courts, and the attitude of the Scottish and UK judges would be crucial as to the degree of discretion and autonomy that the Parliament could enjoy in practice within the scope of its statutory powers. Would they apply standard administrative law principles strictly or would they accept, to some degree, the special position of a democratically elected representative body? Some Commonwealth jurisprudence suggests that 'parliament'-type institutions do have some legally recognised area of 'inherent power' to allow them to regulate necessary internal matters.

The Scottish courts had a very early opportunity to answer these basic constitutional questions. Opponents of a proposed Member's Bill banning forms of hunting challenged the introduction of the measure on the grounds that the MSP promoting the Bill had breached members' interests rules by accepting assistance in the drafting of the Bill. In effect, the courts were being asked, at the end of 1999, to decide the extent to which they could, and should, intervene in internal parliamentary proceedings. As this was a matter of the highest importance to the Parliament itself, the SPCB involved itself directly in these proceedings.

At first instance, the judge, Lord Johnston, while clearly defining the Parliament as a subordinate legislature and a creature of statute, was prepared to take a flexible view of its legal status:

> It seems to me to be a recipe for disaster to allow members of the public who are aggrieved by the potential consequences of a particular piece of legislation to have the right to enter into the procedure of the Scottish Parliament and require this Court to declare that it has misdirected itself….. The Scottish Parliament is entitled to make its own determination, in my opinion, upon its own rules and this Court should not even look at it on grounds of irrationality…. What I am entirely satisfied about is that it is quite inappropriate for pressure groups, or individuals, however their interests may be affected, to have the right to tell, by

way of legal action, a Committee of this Parliament that its own view of its own rules is inappropriate or even wrong. That, in my opinion, is far beyond what the legislation contemplated the extent of intervention by the Court of Session would be in the activities of the Scottish Parliament.

However, on appeal, a different view was clearly taken, best expressed by the Lord President, Lord Rodger of Earlsferry, in a passage whose importance entitles it to be reproduced extensively here:

The Lord Ordinary gives insufficient weight to the fundamental character of the Parliament as a body which - however important its role - has been created by statute and derives its powers from statute. As such, it is a body which, like any other statutory body, must work within the scope of those powers. If it does not do so, then in an appropriate case the court may be asked to intervene and will require to do so, in a manner permitted by the legislation. In principle, therefore, the Parliament like any other body set up by law is subject to the law and to the courts which exist to uphold that law….

Some of the arguments of counsel for the first respondent appeared to suggest that it was somehow inconsistent with the very idea of a parliament that it should be subject in this way to the law of the land and to the jurisdiction of the courts which uphold the law. I do not share that view. On the contrary, if anything, it is the Westminster Parliament which is unusual in being respected as sovereign by the courts. And, now, of course, certain inroads have been made into even that sovereignty by the European Communities Act 1972. By contrast, in many democracies throughout the Commonwealth, for example, even where the parliaments have been modelled in some respects on Westminster, they owe their existence and powers to statute and are in various ways subject to the law and to the courts which act to uphold the law. The Scottish Parliament has simply joined that wider family of parliaments. Indeed I find it almost paradoxical that counsel for a member of a body which exists to create laws and to impose them on others should contend that a legally enforceable framework is somehow less than appropriate for that body itself….

[C]ounsel for the first respondent submitted, however, that this court should exercise "a self-denying ordinance in relation to interfering with the proceedings" of the Scottish Parliament. Lord Woolf used that expression to describe the attitude which the courts have long adopted towards the Parliament of the United Kingdom because the relationship between the courts and Parliament is, in the words of Sedley L.J., "a mutuality of respect between two constitutional sovereignties". The basis for that particular stance, including Article 9 of the Bill of

Rights 1689, is lacking in the case of the Scottish Parliament. While all United Kingdom courts which may have occasion to deal with proceedings involving the Scottish Parliament can, of course, be expected to accord all due respect to the Parliament as to any other litigant, they must equally be aware that they are not dealing with a parliament which is sovereign: on the contrary, it is subject to the laws and hence to the courts. For that reason, I see no basis upon which this court can properly adopt a "self-denying ordinance" which would consist in exercising some kind of discretion to refuse to enforce the law against the Parliament or its members. To do so would be to fail to uphold the rights of other parties under the law. The correct attitude in such cases must be to apply the law in an even-handed way…"

The Lord President could not be clearer. It is the UK Parliament, not the Scottish Parliament, which is the exception to the general level of legal protection afforded to parliaments. As the case was not taken further, there matters rested in terms of Scottish public law. The UK Parliament could overturn the effect of this interpretation by legislation, but it is less certain that the Scottish Parliament is legislatively competent to do so itself.

10.3. The SPCB and its staff

At the apex of the Parliament's administrative and institutional structure is the Scottish Parliamentary Corporate Body (SPCB), composed of the Presiding Officer and 4 MSPs elected by the Parliament.[116] It is a body created directly by the *Scotland Act*, to fulfil various legal functions for the Parliament, such as the provision of its staff, property and resources. It sets the Parliament's budget, which comes out of, and has a prior call on, the Scottish Consolidated Fund.[117] In these respects, it can be loosely compared with the House of Commons Commission, though that Commission only acts in respect of one part of the UK Parliament.

The SPCB is not a parliamentary committee for the purposes of Standing Orders, and is therefore not bound by any requirements of openness and transparency. It can determine its own procedure. It generally meets weekly while the Parliament is sitting, and met 39 times in the first parliamentary year. For the first two years, no details of its meetings or decisions

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[116] They were elected during the 19 May 1999 plenary meeting. Though neither the Act nor Standing Orders specified any requirement for the membership to reflect the Parliament's party balance, the 4 MSPs came from the four main political parties. This appeared to reflect, as suggested during the brief election process, some form of inter-party agreement.

[117] The first year was somewhat of a transitional one in this respect, The SPCB did not take on this role until 1 June 1999, and the 'start-up' budget was largely determined at UK level. In June 2000, the Finance Committee agreed procedures with the SPCB on relating the Parliament's own budget to the overall devolved budgetary process (chapter 7)

were formally published, but from June 2001, the minutes and most papers of SPCB meetings have been published on the Parliament's website. It moved 6 motions in plenary sessions during the year, all agreed to by the Parliament, and produced five reports to the Parliament in the first year, all relating to the Holyrood Building project, which was by far its 'hottest potato'. While not required to produce an annual report, it did so, in December 2000, for the first parliamentary year, and the intention appears to be that it will maintain this practice.

The SPCB seems to regard itself as a more 'hands on' parliamentary corporate manager than the House of Commons Commission. In its annual report, it describes its role as to "consider and make decisions on a wide range of issues to do with the running of the Parliament" and "our main job is to make sure that the Parliament is managed effectively." It employs the Clerk/Chief Executive "to manage the Parliament under our supervision", and "we and the Senior Management Team aim to run the Parliament by focusing on achieving results that best serve the MSPs and the public they represent."

Although the annual report does not refer expressly to the CSG principles, they are broadly reflected in the document, much of which is devoted to demonstrating how open, accessible, participative and effective in scrutinising the Executive the Parliament is. The management plan, prepared by senior managers and approved by the SPCB, in effect attempts to translate that vision into concrete corporate objectives, and has 4 main aims:

1. *A Parliament which can meet its constitutional role*: output measures relating to the quality and effectiveness of parliamentary business, processes and resources
2. *A Scotland which is well informed about its Parliament*: output measures relating to the accessibility of, and availability of information on, the Parliament.[118]
3. *A Parliament in which the people of Scotland can be involved*: output measures relating to the participation of the public in the Parliament.
4. *A Parliament that is well run*: output measures relating to efficiency, effectiveness and economy.

The Parliament's staff are employed by the SPCB, and are not civil servants. This situation, which can be compared with staff at Westminster and contrasted with those of the National Assembly for Wales, underpins the Parliament's independence from the Executive. The permanent staff is headed by the Clerk/Chief Executive, and the organisation is divided into a number of Directorates.[119] As at the end of March 2000, there were 334 permanent staff in post, 164 (49%) of whom were female, including three of the five Directors (of Clerking, of Legal Services and of Communications).

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[118] Including the important performance measure of the public understanding "the Parliament's role in public affairs" and does not "confuse it with the Executive."

[119] The organisation chart as at May 1999 is published in the SPCB annual report, and on the SPCB pages of the website (http://www/scottish.parliament.uk/spcb/sp-org.htm#ce). Unfortunately the web-based chart seems to be out-of-date.

There was a transitional period at the establishment of the Parliament, when all staff were formally employed by, or seconded from, the Scottish Office/Scottish Executive. During this period, the SPCB prepared and offered contracts to existing staff, and began employing new staff in its own right. As at 1 July 1999, of the 319 such staff employed "96 were career civil servants from the Scottish Executive; eight were seconded from Westminster; and 215 had been recruited directly from a variety of sources such as local government, central government departments, other public sector bodies and the private sector." By November 2000, "out of a total of 371 staff in post: 316 are employed by the SPCB direct; 53 are seconded from the Scottish Executive and two are seconded from Westminster."[120]

The SPCB ran 55 recruitment programmes and filled 105 posts up to the end of May 2000. It recruited its staff directly as from 1 April 2000 "under the principles of fair and open competition", and 61 new posts were advertised in external competition between then and the end of November 2000.[121]

The Parliament's preparatory work in the area of equal opportunities should also be noted. In August 1999 the SPCB decided that a strategy should be developed for the Parliament, covering MSPs and their staff as well as parliamentary staff. Consultants were commissioned to assist a working group of staff and MSPs, and an Equal Opportunities Adviser was appointed and began work in June 2000. It was expected that recommendations resulting from this work, leading to the production of an Equalities Framework, would be considered by the SPCB, and by relevant committees such as Equal Opportunities and Standards. In its annual report, the EOC stated that among its key functions was "looking at how both the Parliament and the Scottish Executive can mainstream equal opportunities into their work." MSPs themselves have maintained scrutiny of various equality issues, especially in the field of SPCB personnel policies, through the use of PQs.

10.4. Review and reform of the Parliament's procedures

"Procedures are servants, not masters. Procedures, once adopted, must be followed, but if they do not work well, or produce results unacceptable to those whose operations are conditioned by them, they can and should be changed."[122]

Once the initial set-up of the Parliament had been planned and implemented, as described in chapter 2, the challenge then moved from getting the Parliament started to keeping it going.

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[120] Written answer by the Presiding Officer, S1W-10467, 6.11.00
[121] Written answer by the Presiding Officer, S1W-11323, 28.11.00
[122] J Griffith & M Ryle, *Parliament: functions, practice and procedures*, 1989, p172

This is considered here by way of case-studies of two central aspects of that second phase - procedures and standards – through the work of the two relevant committees.

Initial reform: Perhaps the important domestic task the Parliament had to undertake in its first year or so, was to examine the adequacy and efficacy of the rules, procedures and practices it had been presented with at its inception. This was carried out primarily by the Procedures Committee, a mandatory committee with a remit "to consider and report on the practice and procedures of the Parliament in relation to its business."

The Parliament's initial constitution was created, through the primary legislation, delegated legislation made under it, and the development of detailed rules and procedures. There was a four-track approach in the 1997-99 period:

- basic provisions about operational aspects of the Parliament, including some mandatory and discretionary issues to be covered in Standing Orders, in the *Scotland Bill* going through Parliament in 1998;
- detailed preparatory work in and around the CSG process (1997-1998)
- preparation of initial set of Standing Orders and other provisions in delegated legislation made under the *Scotland Act* (1998-1999);
- practical preparation for the establishment of the Parliament and its initial necessary business, such as oath-taking and elections of the presiding officers (1998-1999)

Standing Orders were promulgated in UK delegated legislation in April 1999, just a month before the Parliament was due to assemble. This also provided that these Standing Orders would "cease to have effect on the day on which the first standing orders made by the Parliament come into force". Thus any action by the Parliament to bring in its own Standing Orders would automatically override the whole of the initial set. The Procedures Committee was required to propose to the Parliament the draft of a new set of Standing Orders. These could be the same set as the initial set, with or without modifications, but any modifications had to be consistent with the provisions of the *Scotland Act*.

The Committee described in its December 1999 report how it approached this task. The Parliament should have its own Standing Orders "without undue delay", and, because of the absence of much operational experience, "it would be inappropriate to embark on wholesale changes which could in hindsight prove to have been ill founded." Significantly, the Committee believed that, "so far as can be ascertained, the present standing orders constitute a sound base on which to develop further. For these reasons therefore the Committee felt that the appropriate approach was to consider what priority changes across all standing orders might assist the Parliament in carrying out its functions." The exercise "was not intended to be a root and branch review. Further changes will undoubtedly be required to the standing orders of the Parliament as time goes on."

It involved other MSPs, by way of consultation exercises in this process, held in June and July 1999. This elicited 29 responses, which "assisted it materially in its task of identification and prioritisation." In addition, some issues were referred to the Committee by Parliamentary staff operating the rules, or arose spontaneously during the course of proceedings, as perceived difficulties occurred.[123] Thus, the review itself was fairly extensive, as can be seen in the list of priority issues identified in annexe 1 of the report.

The Committee was also undertaking other work during the six months of the review, which provided useful cross-fertilisation of ideas and discussion. As such, the Committee, during that period and thereafter, provided what amounted to a continuing seminar on the basic operating principles of the Parliament, and on such fundamental issues as the relationship between the Parliament and the Executive. There were some potential limitations, however, in the Committee's approach of building on the existing Standing Orders, especially where the initial rules did not conform to the CSG blueprint, as in models of pre-legislative scrutiny.

On 9 December 1999, the Parliament was asked to note the Committee's substantial report, approve the draft set of Standing Orders and bring them into force as from 17 December. This was an important symbolic day in the life of the new Parliament, as by making these new Standing Orders it was taking ownership of its detailed procedures and practices. This was also the first plenary debate directly on a committee report. The Parliament generally welcomed the proposals, while emphasising that monitoring of the Parliament's procedures and practices would be a continuing exercise, especially in the context of the CSG agenda. The Committee explained in its report how the CSG report had informed their review:

> 3. In completing this task the Committee was alive to the work of bodies such as the Scottish Constitutional Convention and the Consultative Steering Group (CSG). The Committee recognised that the principles set out in that work and the aspirations embodied there were highly influential in shaping not only the Parliament's initial standing orders, but the ways in which devolution was intended to operate in Scotland.

> 4. In its debate on the main CSG report on 9 June, the Parliament recorded its appreciation of the CSG's work and acknowledged the contribution which it had made to the development of the Parliament's procedures. The Parliament agreed that its own operations should continue to embody the spirit of the CSG key principles. The Committee has taken this fully into account in its present task, and will continue to do so in future work. It intends to do everything possible to

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[123] Not every issue required changes to Standing Orders. Refinements, amplifications and interpretations of procedures and practices, were regularly promulgated by 'rulings' from the Chair, *Business Bulletin* announcements, or as more detailed published guidance.

build upon and develop the innovatory procedures and practices of the Parliament which, as members will be aware, are being observed with keen interest in other parliaments and assemblies in the UK and around the world.

Ministers certainly believed that they had a significant and central role in the Committee's review, and in its work generally. The Executive had submitted a memorandum on the review of Standing Orders in September 1999, in advance of the appearance of the Minister for Parliament before the Committee. They did not wish, however, openly to claim the dominant and often initiating, role in parliamentary procedural development that their UK counterparts enjoy at Westminster. There appeared to be a public desire by the Executive for its involvement in the organisation of the Parliament and its procedures to be seen to be in accordance with the CSG principle of 'sharing the power'. It is understandable that the Executive has some interest in the Parliament transacting its business smoothly, as so much of that business is the Executive's own business.[124]

Continuing reform: The Procedures Committee has continued to look at the workings of the Parliament, from the relatively mundane and technical, to issues of central importance. However, some important internal matters were not subjected to the full and public scrutiny, by committees such as the Procedures Committee, which CSG had proposed for Executive legislation and policy. They tended to be examined behind the scenes, and presented for formal endorsement by the full Parliament without any substantive debate. The most obvious examples were the creation and reviews of the Allowances Scheme, and the protracted and complicated discussions which led to the major restructuring of committees at the end of 2000.

Some of the issues which were examined by the Committee reflected Executive concerns. Others arose at the instigation of MSPs, officials or the Presiding Officers. The Committee produced a smaller tranche of changes to Standing Orders in late 2000, and also carried through the complete rewrite of private legislation procedure. Many administrative and institutional matters have also come before the Committee, sometimes more for information and comment than for decision (except where such changes may have required amendments to Standing Orders), such as the status of the informal Conveners Liaison Group, and the creation of a Non-Executive Bills Unit.

The Committee has a key role in ensuring the Parliament's adherence to the spirit of the CSG principles. The CSG, in its main report, had recommended that "the Parliament should

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[124] In the early days of the Parliament, the then Deputy Minister for Parliament was a regular and active participant in the Committee's work, and appeared virtually as a full member, albeit one with no voting rights. This tendency tailed off later, perhaps due to the change in the post from Iain Smith to Tavish Scott (both Lib Dem)

regularly review its policy and performance against these key principles. We suggest that such reviews should be undertaken at least once during each Parliamentary session; with the end of each Parliament providing a further opportunity to take stock."

The Committee agreed to take this forward at its last meeting of 1999, and this was given further impetus by the appearance before it by a group of interested observers of devolution and the Parliament who had produced a paper, urging constant adherence to the spirit and practice of the CSG principles and agenda. As a first stage of this enquiry into "whether the key CSG principles as endorsed by the Parliament … are being implemented in the Parliament, to what extent and with what success", the committee undertook a review of existing research. At the time of writing, stage 2, involving wide-ranging evidence-taking and consultation, both within and outwith the Parliament, is in progress.

10.5. Maintaining the Parliament's standards

The Parliament was created at a time when parliamentary standards was a major issue in British politics. 'Sleaze' was one of the key political buzz-words of the 1990s, and it was clear that the new Parliament would not only have to be modern and efficient, but would also have to demonstrate the highest standards of probity. In addition, there had been similar problems in Scottish local government, and there was some concern that a devolved parliament could, in this respect at least, become a local council writ large.

The CSG report said that its principles were intended to achieve a Parliament "whose elected Members the Scottish people will trust and respect," and a CSG working group produced a detailed report on a Code which sought to give effect to that aspiration. The Standards Committee was charged by Standing Orders with producing a Code of Conduct, a task initially seen as an important if a relatively technical and low profile task. It was also expected to begin work, following the first summer break, on other standards issues, such as a register of members' interests.

However the Committee's workload, and with it, its parliamentary and public profile, rocketed due to the emergence of a number of unexpected issues. The regulation of cross-party groups, for example, is considered in chapter 11. The biggest issue was the 'Lobbygate' affair which blew up in September 1999, when the *Observer* newspaper published a story about the alleged actions of a lobbying company with connections to senior Scottish Labour figures. This was a complex story, involving many leading politicians, including ministers in the new Executive, and the then Scottish Secretary's son, who was employed by the lobby firm.

In many respects, this was an issue which should properly have been directed primarily at the Scottish Executive, and, in so far as some of the allegations related to pre-devolution

events and ministers, at the UK Government. The Parliament could have legitimately said that it was largely not a matter for it, and, in any case, as a very new body, it had yet to work out its complaints and investigatory procedures. These procedures had to be robust, in view of the Parliament's exposure to legal challenge. However, the media outcry focused squarely on the Parliament and what it intended to do about this 'scandal', and there were reports that the First Minister had agreed to, or even 'ordered', a parliamentary inquiry. The Parliament was, in effect, caught in the crossfire, and was ill-equipped to resist becoming embroiled.

There also appeared to be a feeling that, after a series of negative presentational episodes in its first few months, here was an opportunity for the Parliament to assert itself by taking a robust stand on such a sensitive issue. Legal questions as to its jurisdiction to examine what was largely events involving ministers, including pre-devolution UK ministers, were overcome to its own satisfaction, by way of the Standards Committee restricting its investigation into whether there was any "evidence of breaches of any code that covers the conduct of MSPs."[125] An adviser was appointed to support the Committee in this inquiry.

The Lobbygate inquiry dominated the Standards Committee's work in October, when it met in formal session on five occasions. Much of its proceedings, especially when there were high-profile witnesses before it (such as the son of the Scottish Secretary on 8 October, and the Minister for Finance, Jack McConnell on 27 October), were conducted in the full glare of media publicity. Ultimately all the allegations which the Committee felt were within its remit were rejected.[126] However, the episode had thrown up lessons for the Committee and its proposed work programme, especially the preparation of a members' code of conduct, the issue of lobbying, and the creation of a robust scheme of standards regulation and enforcement.

Thus, though the whole Lobbygate episode had been harrowing both for the Committee and the Parliament, and had given rise to much 'old politics' partisan confrontation, there was a sense that the Parliament had acquitted itself well, and had enhanced its reputation. With hindsight, it came to be regarded as an invaluable 'baptism of fire', and much of the Committee's work thereafter was devoted to the issues highlighted by Lobbygate.

Perhaps the most significant activity was the preparation of a Members' Code of Conduct. It would have been relatively simple for the Committee to adopt the CSG proposals en masse, but, as a more confident body after Lobbygate, it set about its task more intensively. Though many ethical and interests aspects were already prescribed by legislation, and provided little

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[125] This phraseology reflected the Committee's remit under Standing Orders. Quite what codes were in the Committees mind was not stated, as there was then no Members' Code of Conduct. It appeared to relate to the *Scottish Ministerial Code*, in so far as some of those against whom allegations had been made were not just ministers, but also MSPs.

[126] 1st report 1999, SP Paper 27, November 1999

scope for innovative development, it did make a number of changes to the set of key principles which CSG had provided as the template for the Code, especially in the areas of accountability and representation. The 9 key principles which CSG said should form the basis of such a Code, included the following relevant aspects:

- *Public duty*: "Members have... a duty to act in the interests of the Scottish Parliament as a whole and the public it serves"
- *Duty to constituents*: "Members have a duty to be accessible to their constituents. Members should consider carefully the views and wishes of their constituents; and, where appropriate, help ensure that constituents are able to pursue their concerns."
- *Selflessness:* "Members should take decisions solely in terms of the public interest…"
- *Integrity:* "Members should not place themselves under any financial or other obligation to any individual or organisation that might influence them in the performance of their duties."
- *Honesty:* "Members have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest."
- *Openness*: "Members should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands…"
- *Responsibility for decisions*: "Members remain responsible for any decision they take. In carrying out public business Members should consider issues on their merits taking account of the views of others."
- *Accountability*: "Members are accountable for their decisions and actions to the Scottish people and should submit themselves to whatever scrutiny is appropriate to their office."
- *Leadership*: "Members should promote and support these principles by leadership and example, to maintain and strengthen the public's trust and confidence in the integrity of Members in conducting public business."

The Parliament stated clearly its own view of itself in the very first paragraph of its Code of Conduct:

> The Scottish Parliament commits itself to being an open, accessible, participative Parliament in which the public and other organisations in civic society are partners. It exists to serve the people of Scotland and is accountable to them.

Although again much of the Code, as adopted, reflects overriding concern with issues of ethics and probity, its set of 7 key principles have a dual purpose. They "set the tone for the

relationship between members and those they represent and between the Parliament and the people of Scotland," and contain some wording on representational aspects which are subtly distinct from CSG's draft:

- *Public duty*: "Members' primary duty is to act in the interests of the Scottish people and their Parliament…"[127]
- *Duty as a representative*: "Members have a duty to be accessible to the people of the areas for which they have been elected to serve and to represent their interests conscientiously…"
- *Accountability and openness*: "Members are accountable for their decisions and actions to the Scottish people. They have a duty to consider issues on their merits, taking account of the views of others. Members have a duty to be as open as possible about their decisions and actions."
- *Leadership*: "Members have a duty to promote and support these principles by leadership and example, to maintain and strengthen the public's trust and confidence in the integrity of the Parliament and its members in conducting public business."

These changes are significant, and reflect a wider concept of the relationship between MSPs and the Parliament, and the Parliament and the people. Whether these more ambitious aspirations are achieved is up to the Parliament and its members. The Committee had performed its proper function in providing a Code which better articulates what was presumably the true SCC/CSG vision than was presented to it by the CSG report.

An interim complaints procedure was proposed by the Committee in a report in December 1999, and a more permanent model (including a standards commissioner) in a report the following September. In addition, it produced a scheme for the registration of MSPs' staff interests, and has conducted an ongoing inquiry into the complex issues of lobbying. It has also taken forward the work on replacing the initial Members' Interests Order, which had to take account of legal problems that had arisen over issues such as the prohibition of paid advocacy. Members' interests reform and the appointment of a standards commissioner were to be implemented through Committee Bills.

It also had to deal with a complaint against the Labour MSP promoting a proposed Member's Bill against hunting, an issue that ultimately went to the Court of Session.[128] This affair had highlighted something that had become understood at Westminster, that sleaze allegations

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[127] This principle also contains an obligation of allegiance to the Sovereign arising from the member's oath of allegiance. This inclusion caused some controversy during the Parliament's debate on the proposed Code on 24 February 2000.

[128] 4th report 1999, SP Paper 51, December 1999. *Whaley v Lord Watson*, discussed above.

and parliamentary complaints against the conduct of elected members can be regarded in some quarters as a legitimate weapon in political battles.

This is an impressive and significant body of work for the Committee in the first year or so of the Parliament, a mixture of the expected and the unexpected, and of the technical but necessary and the controversial and sensitive. Like the Procedures Committee, it has been responsible for implementing a number of essential 'foundational' schemes, crucial to the proper working of the Parliament.

10.6. Conveners' Liaison Group

The Conveners Liaison Group is a useful case-study of the ways in which the Parliament is creating mechanisms to run itself and its business. It did not exist in Standing Orders, but operates as an informal group of those MSPs who are committee conveners, chaired by a Deputy Presiding Officer (who had also been a CSG member), George Reid. Such a group, whether formally constituted or not, is bound to be potentially influential in the day-to-day working of the Parliament, because of the nature of its composition. It can be regarded as one of the main pillars of the parliamentary structure, alongside the Bureau, the SPCB, the Presiding Officers and the Clerk/Chief Executive.

However, by being informal, it operates in private, and therefore issues of accountability and transparency arise. The Group's existence is in no sense secret, and is from time to time referred to in parliamentary proceedings,[129] in the media or in discussions with conveners and other parliamentarians. There has been much work since late 1999 within the Parliament, brokered through the Procedures Committee, to enable the Group to be formally constituted under Standing Orders. Such a body was contemplated by the CSG, but it did not make any formal proposals because, according to Reid's evidence to the Procedures Committee, "it took the view, quite rightly, that the form of the group would emerge in the light of parliamentary experience."

This expectation had been rapidly realised, as the advantages in having such a gathering to consider matters of common interest were obvious. The Bureau announced in June 1999 that it wished "to encourage conveners of Committees to consider the establishment of a Conveners' Group. Such a Group could consider issues of timetabling, joint inquiries, priorities for research, etc, and would provide a useful liaison point for the Bureau."[130]

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[129] An informative briefing was given by the Health & Community Care Committee's convener at its 8 September 1999 meeting. She described the Group as "a good forum in which to share working practice and we will share new experiences as we make use of the full range of mechanisms available to us, such as reporters and sub-groups, setting agendas and working together in a cross-cutting way."
[130] Announcement in *Business Bulletin* 16/1999, 14.6.99

The committee conveners first met as a group just before the end of the Parliament's first summer recess under the aegis of the Presiding Officer. It convened in private, presumably for much the same reason that the Bureau meets in private, to facilitate free and substantive cross-party discussion.

The Group very rapidly decided that it should be formally constituted in Standing Orders, so that it could have an independent status in its dealings with the Parliament's governing bodies, such as the Bureau and the SPCB, and have a defined remit in terms of functions and responsibilities.[131] Because of the way Standing Orders are constructed, this formalisation would require substantial rewriting of the existing rules. Given its unique nature and composition, it would presumably exist as a *sui generis* body like the Bureau, rather than be a parliamentary committee.

The Procedures Committee were approached, and very briefly considered the matter at its 5 October 1999 meeting, though a hint of future difficulties appeared in the contribution of Mike Russell, then the SNP's business manager and Bureau member:

> "One of my concerns, which I know has been expressed by several members of the bureau, is that there is already the Scottish Parliamentary Corporate Body and the Parliamentary Bureau. There are difficulties with that in terms of roles and responsibilities—they are being worked out. If we have a third standing group, the committee of conveners, does that add to our difficulties or does it diminish them? I would like that question to be addressed, because clarity in parliamentary business and in the Parliament's operation is what we need."

By the time the Committee discussed the matter again, in two meetings in February 2000, the Group had set out its thinking in more detail, and consultations had been undertaken with interested parties, such as the Bureau. Differences had indeed emerged between the Bureau and the Group, especially over the Group's desire to take over some of the Bureau's functions relating to committees. The Bureau seemed reluctant, ostensibly on business management grounds, to cede some of these functions, preferring generally to see the Group retaining an essentially advisory rather than executive role. The Procedures Committee took the view that it was not its function to resolve such differences.

There matters rested, at least publicly, until the autumn of 2000. Behind the scenes, this time was apparently devoted to the Group, the Bureau and the SPCB thrashing out an agreed approach that could be presented to the Committee as a basis for amendment of Standing

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[131] The Group may have had in mind the model of the House of Commons' Liaison Committee, and related bodies such as the Chairmen's Panel and the Committee of Selection. The group appeared originally to be known as the 'Conveners' Group', but the word 'Liaison' was added almost immediately.

Orders. The option still remained of adhering to the status quo, with the Group functioning on an informal basis, perhaps with some development of the functional relationship between it and the Bureau.

An agreed scheme was considered by the Committee at its 12 September meeting, where Reid defended the discussions and agreement as being in accord with the CSG spirit:

> One member said to me that this all seems very Byzantine and bureaucratic. I disagree. It is inclusive, in the best traditions of the Parliament, and it involves the bureau in the views of conveners, and vice versa. It is participatory, in that it allows members across the parties to discuss matters not as party political figures but as conveners. It has been focused.

At time of writing, the Group has not yet been constituted under Standing Orders. If and when it is so constituted, the formal balance of power in the Parliament will change. The new body will become one of the Parliament's key governing bodies, affecting what one MSP has described as "the appropriate checks and balances within the Parliament." Its particular importance, especially in contrast with the Bureau, is that (assuming it remains unchanged) it is composed entirely of senior backbenchers. This could provide the sort of formal mechanism for some form of backbench influence at the heart of the Parliament that has hitherto been missing.[132] Using the language of the current Westminster debate, a formal and public role for the Conveners Liaison Group could well 'shift the balance' in the Parliament away from the party leaderships, and towards the interests of backbench MSPs of all parties.

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[132] Donald Gorrie had suggested that an "all-party backbenchers organisation" be created. This was briefly discussed at the Procedures Committee on 23 May 2000

11. Realising the vision: innovative design

11.1. Introduction

The Parliament, in its early days, faced pressures from both within and outwith the Parliament to adopt some practices which were relatively familiar to the public and to Westminster parliamentarians. How the Parliament responded would be a significant measure of the extent to which the fledgling body could be seen to be adhering to its founding vision. If it simply adopted Westminster practices more or less whole, then it would be accused of abandoning its principles at the first sign of pressure. If it rejected them, then it could be open to the charge of not being 'a real parliament', at least in the sense as recognised at that time by the media and the public. The highly charged atmosphere of the Parliament's early period had demonstrated how susceptible the new institution was to instant verdicts on its performance. Therefore, the challenge was not simply to respond to these pressures, but to do so in a way that would be seen to be consistent and sensible, and consistent with its underlying ethos.

Three examples are examined here, as between them they bring out the various issues involved in the Parliament's response to such pressures:

- *'All-party groups'*
- *'Prayers'*
- *'Prime Minister's Questions'*

11.2. Cross-Party Groups

An early domestic matter that the Parliament had to deal with was the recognition and regulation of what became termed 'cross-party groups'. In the initial weeks of the Parliament, it had become clear that MSPs, either on their own initiative or prompted by outside interests, were forming and joining equivalents of the Westminster concept of 'all-party groups'.

There had been little discussion over the previous decade or more, of this Westminster mechanism being transplanted to Edinburgh in some form, either from the perspective of interactive parliamentary participation, or as a potential ethical/standards issue. In particular, the CSG Report said nothing about this issue, another example of its concentration on a parliament's formal proceedings and procedures.

The Parliament reacted to the spontaneous emergence of 'all-party groups' as primarily a matter of standards regulation. It accepted that such groups were inevitable in the new Parliament, and therefore it saw its role as deciding the parameters within which such activity could take place. The ethical aspect was further spurred in the autumn of 1999 by the 'Lobbygate' affair, which had catapulted issues of parliamentary standards to the top of the

Parliament's agenda. Just before the end of the first summer recess, the Presiding Officer had set out publicly, in a written answer, the Parliament's approach:

> Clerks are currently preparing draft proposals for the establishment of a scheme to register all party parliamentary groups, to be considered by the Standards Committee. Once such a scheme is in place, the SPCB will be invited to consider what facilities might be made available to registered groups….

The Standards Committee examined the practice of all-party groups at the House of Commons, to see whether it provided a suitable and appropriate template for the Scottish Parliament.   However there were wider issues of principle for the Committee to address, some of which were being aired actively in the related lobbying debate. In essence, these could be summarised as whether or not the existence of all-party groups enhanced or impeded the Parliament's agenda, especially in terms of openness, inclusiveness and participation.

The Committee's approach envisaged a mechanism which, though bearing a superficial similarity to the Westminster 'all-party group', would actually be based on principles more in tune with the Parliament's underpinning philosophy. A deliberate decision was made, for example, to use the term 'cross-party group' in official references, to emphasis this distinctive approach. Westminster groups were perceived to be more a means whereby outside groups could connect with MPs (a lobbying technique) than as a method of informal, non-partisan inter-member activity. The Scottish model would be based clearly on the latter approach, where groups primarily, though not exclusively, would exist for MSPs to meet and discuss issues of common interest, along with appropriate 'outsiders'. This approach informed the Committee's detailed drafting of its proposed regulatory scheme, especially in matters such as the minimum requirements for MSP membership.   As the Committee's convener succinctly expressed it during one such discussion of a particular requirement, "that would establish the fact that the group was owned by the MSPs."

Having adopted this approach, the Committee could justifiably regard cross-party groups as facilitators of the 'new parliamentary politics' rather than a means of undermining them. They can combine the functions of

- bringing together MSPs from across any party divides, and promote cross-party cooperative activity,
- enhancing the CSG philosophy of public accessibility and genuine participativeness, and
- contributing to the substantive work of the Parliament.

The Committee's report, published in November 1999, proposed 14 rules with which registered groups would have to comply. The key points of the rules relevant to this Study can be summarised:

- "The group must be Parliamentary in character, and its purpose must be of genuine public interest" (*rule 1*)
- Membership must be open to all MSPs, and must include at least 5 MSPs, with at least one from each party represented on the Bureau. The Standards Committee can modify or waive this rule (*rule 2*)
- The group can contain members from outwith the Parliament, but the overall membership profile "must remain clearly Parliamentary in character" (*rule 3*)
- Any MSP may attend and speak at any group meeting, though only registered members may vote (*rule 8*)
- Group meetings must be held in public, and must be advertised in the *Cross-Party Bulletin* at least a week in advance (*rule 9*).
- "To maintain and guarantee the Parliamentary nature of the occasion", at least 2 MSPs, being group members, should be present at every meeting (*rule 10*)
- Groups must respect specified limitations on the use of parliamentary facilities (*rule 12*)

These proposals were endorsed by the Parliament the following month, after a short debate (conducted mainly by Standards Committee members), and the Committee spent at least part of virtually every meeting thereafter considering applications for registration from proposed groups. The Parliament's website not only maintains the register of approved groups, and of proposed groups yet to be approved by the Committee, but also the *Cross-Party Bulletin*, which advertises future meetings of groups.[133] The on-line register contains information on each group's purpose, membership (both MSP and non-MSP), officers, and financial and contact details.

By the end of the first parliamentary year there were 20 approved groups and 9 proposed groups, and by the 2001 summer recess, this had grown to 42 approved groups. The remits of these groups are, not unexpectedly, very diverse. Many groups deal with obvious cross-party issues in the social and cultural fields, but some cover economic and industrial issues (such as shipbuilding, oil and gas, and agriculture and horticulture). Several groups deal with matters wholly or partly reserved rather than devolved (such as nuclear disarmament, international development, railways and oil and gas), and the Standards Committee has adopted a broad interpretation of the rule requiring groups to be parliamentary in character.[134]

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[133] The *Bulletin* therefore is, in this respect, akin to the *All-Party Notices* at Westminster. See http://www.scottish.parliament.uk/msps/cpg/cpg-bull.html.

[134] The SNP sees this as a positive benefit of such groups, as it enables discussion of non-devolved matters, and the involvement of organisations devoted to such issues.

There has been some debate in the Committee about whether some proposed purposes may be regarded as too local or specific to conform with the spirit of *rule 1*. Perhaps the most interesting aspect, from the broader perspective of the ethos of the Parliament, is the potential conflict between the requirement for 'all-party' inclusiveness and the 'campaigning' nature of some issues. Inclusiveness does not mean 'non-controversial', and can encompass the creation of groups with diametrically opposing purposes relating to the same area of public policy; indeed it can emphasise that not all issues divide neatly and cleanly on party lines.

However, greater difficulty arises when support for, or opposition to, a group's purposes, is actually or potentially divided on broadly partisan lines. A good example of this was the prolonged Committee deliberations through 2000 on the proposed group on nuclear disarmament. Not only did it cause problems about the inclusion of Conservative MSPs, there was a more general concern that what was being established was in effect a branch of CND within the Parliament. The proposed group's original application was in the name of the 'Cross Party CND Group' and its purpose was "to oppose nuclear weapons in principle and their presence in Scotland". Following much informal discussion between the Committee and the proposed group's officers, the group was finally approved as the 'Cross-Party Group on nuclear disarmament', and its purposes were revised, to remove explicit reference to unilateralism, and to refer instead to 'Scottish nuclear issues'.

Like public petitions, the cross-party group is a technique which is explicitly designed to enhance the CSG agenda, and to be a clear improvement on the 'equivalent' Westminster mechanism. Will such groups develop in innovative and purposeful ways, providing genuine input into the parliamentary process, or will they, despite the detailed regulatory system, become similar in practice to Westminster all-party groups? In particular, will the Standards Committee's clear determination for 'group ownership' by their MSP members rather than by external groups or individuals be sustained as the groups mature, or will some groups become driven by external pressures, acting as 'entryist' vehicles into the parliamentary process? The Committee has expressed some concern at the apparent proliferation of groups, the extent and openness of their actual activity, and the growing potential for overlap and for excessive demands on parliamentary resources.

11.3. 'Parliamentary Prayers': Time for Reflection

The first motion lodged, which led to the first substantive topic of debate, in the new Parliament's life was, perhaps surprisingly, an attempt to incorporate a short period for 'prayer' at the beginning of each sitting of the Chamber. The matter had briefly been considered by CSG, in the context of its 'access and participation' key principle:

> We welcomed the proposals made to us in a submission by Action of Churches
> Together in Scotland (ACTS) on the level and nature of pastoral support from an

interfaith chaplaincy team which might be provided to MSPs and staff in the Scottish Parliament, including proposals that there should be a regular prayer/other spiritual meditation/reflection period built into the life of the Parliament. We recommend that the Parliament should reach an early view on these issues.

Within days of the Parliament meeting after the general election, a motion was put down, by Alex Fergusson (Con) seeking to trigger a process of establishing a regular prayer period. The motion was debated on 18 May, and Fergusson concluded his opening speech as follows:

"Great play has rightly been made of the concept of this Parliament, and its committees, being able to call on the help of others from outwith its ranks for advice and guidance on any issue that falls within its remit. It seems entirely appropriate, therefore, that this Parliament, particularly as it meets in the assembly building of the Church of Scotland, should ask for a little daily advice and guidance from the greatest expert of all. This is not a party political matter; it is a question of getting our priorities right. To my mind, a Parliament that meets without prayer is not respectful or complete."

Some MSPs, especially the SNP leader, Alex Salmond, attempted to broaden the proposal into one involving all faiths, not just Christian denominations, on the grounds of genuine inclusiveness and equality. Other speakers suggested different models, such as a short period for quiet contemplation, or even reminded the Parliament about the feelings of those Scots who professed no formal faith. While supporting the sentiments behind the motion, the Minister for Parliament, Tom McCabe, suggested that the matter be taken forward by the establishment of a small cross-party group to consider the matter and discuss it with representatives of the various faiths, "and bring forward recommendations on how best to proceed". He therefore asked the movers to withdraw their motion. Other speakers opposed withdrawal as an attempt to kill off the proposal, and the motion was carried on a division.

The Bureau, thus mandated to take the proposal forward, organised a meeting early in the recess with representatives of many denominations and faiths. McCabe reported to the Parliament on the fruits of these and other deliberations on 9 September. He explained that, though the proposed period should comprise mainly Christian prayers, "the critical underlying principle is that it will allocate time to all the main beliefs held in Scotland. The aim is simply to reflect the diversity of our country as it is today."

An attempt by Phil Gallie (Con) to make these occasions reflect not "the balance of beliefs in Scotland", as stated in the Bureau motion, but "the traditional Christian culture and faith of Scotland" was heavily defeated. The arrangements agreed for the new proceeding were as follows:

- Time for Reflection will be held in the Chamber in a meeting of the Parliament normally as the first item of business each week;
- Time for Reflection will be held in public and will be addressed both to Members and to the Scottish people;
- Time for Reflection will last for a maximum of four minutes;
- Time for Reflection will follow a pattern based on the balance of beliefs in Scotland; invitations to address the Parliament in leading Time for Reflection will be issued by the Presiding Officer on advice from the Parliamentary Bureau;
- Time for Reflection will be recorded in the Official Report.

The first Time for Reflection took place on 27 October 1999, and contributors have included representatives of the Christian denominations (including Cardinal Winning and the Moderator of the General Assembly of the Church of Scotland), of the Muslim, Jewish and Hindu communities, of humanists, and of interdenominational organisations.

The creation of this particular proceeding is relevant to this Study. The initial impetus within the Parliament came from a desire for an element of religious prayer in the Parliament's formal proceedings, somewhat akin (consciously or otherwise) to 'prayers' at Westminster. The ethos of the 'new politics' provided a convenient and legitimate way of defusing the potential for acrimony and division, by broadening the initial proposal into something regarded as (compared to Westminster) more inclusive and transparent. This can be seen, not just in the process by which general consensus was reached, but also in three crucial provisions of 'Time for Reflection' - it has a multi-faith aspect, it was directed not just at MSPs but at "the Scottish people", and it would be recorded in the Official Report. The apparent success of the Time for Reflection period can be attributed to the availability and application of the Parliament's underlying vision.

11.4. First Minister's Questions

Perhaps one of the most interesting and revealing procedural changes which occurred early in the Parliament's operation was the adoption of a dedicated Question Time for the First Minister, as part of the reforms to Standing Orders at the end of 1999. A constant theme of the founding spirits of the new Parliament was that it should not imitate Westminster's defects, which were seen to derive, to a large extent, from its confrontational style.

The worst example of that style is often said to be Prime Minister's Question Time. A leading CSG member, Professor Alice Brown, has written that a First Minister's Question Time "had not been recommended by the CSG on the grounds that it might encourage some of the more

negative aspects associated with Prime Minister's Question Time at Westminster."[135]   The CSG Report emphasised that "the time provided in Plenary for parliamentary questions should not be used for political points scoring". It proposed that, rather than dedicated question periods for particular ministers or topics, all PQs would be addressed to the Scottish Executive, and "it would be for the First Minister to allocate questions to particular Ministers for reply". This latter proposal "would ensure that questions on topical issues could be pursued."

The initial Standing Orders generally followed the CSG's preferred model for the Parliament's oral question period ('Question Time' and 'Open Question Time'). The First Minister answered questions just like any other Minister during both segments of the regular Thursday afternoon question period. The level of involvement of the First Minister can be gleaned from three Question Times in 1999: 17 June (the first such period), 23 September, and 16 December (the last period under the initial arrangements):

> *17 June 1999*
> *Question Time:*
> 18 Questions, of which 12 answered by Cabinet Ministers and 6 by Junior Ministers. None was answered by the First Minister
>
> *Open Question Time:*
> 3 Questions, of which 2 were answered by the First Minister and 1 by another Cabinet Minister. The first question was asked by the SNP leader, who had 3 supplementaries, followed by 2 supplementaries by other Members. The second question was asked by the Conservative leader, who had 2 supplementaries, followed by a supplementary by another Member. The third question elicited 2 supplementaries, 1 by the original questioner.

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[135] A Brown, "How the Parliament works", in G Hassan & C Warhurst, *The new Scottish politics: the first year of the Scottish Parliament and beyond*, 2000, p52.

23 September 1999

Question Time:

18 Questions, 3 of which were answered by the First Minister, 5 by other Cabinet Ministers and 10 by Junior Ministers. All three dealt with by the First Minister appear to be taken in the place of the Transport & Environment Minister, who was in Ireland on official business, although two later transport questions were taken by a Junior Minister

Open Question Time:

3 Questions, of which 1 was answered by the First Minister, 1 by another Cabinet Minister, and 1 by a Junior Minister. The first question was asked by the Conservative leader, who had 2 supplementaries, followed by a supplementary by another Member. The second question was asked by an SNP frontbencher, who had 2 supplementaries, followed by a supplementary by another Member. The third question, by a Liberal Democrat MSP elicited 5 supplementaries, 2 by the original questioner.

16 December 1999

Question Time:

18 questions, 1 of which was answered by the First Minister, 13 by other Cabinet Ministers and 4 by Junior Ministers. The question answered by the First Minister concerned his meetings with the Prime Minister.

Open Question Time:

3 questions, of which 2 were answered by the First Minister, and 1 by another Cabinet Minister. The first question was asked by the SNP leader, who had 3 supplementaries, followed by a supplementary by another MSP. The second question was asked by the Conservative leader, who had 2 supplementaries, followed by a supplementary by another Member. The third question, by a Conservative MSP, elicited 5 supplementaries, 2 by the original questioner.

There was no consistent pattern in the First Minister's accountability through oral questions in the Chamber. While the original intention seemed to be that the Open Question Time period would exhibit some attributes of PMQs in the House of Commons, especially in the direct questioning of the chief minister by the leaders of the main opposition parties, this was

not always the case. The consensus of opinion within the Parliament and from observers in the media was that this attempt to provide a mechanism that would exploit the best of PMQs without its defects, was not working successfully.

The Conservative leader, David McLetchie, wrote to the First Minister, in a letter released to the press, as early as 28 May 1999 to ask for a First Minister's Question Time. His arguments are an interesting illustration of the tension between the desire for some form of 'new politics' (about which McLetchie had regularly expressed some scepticism) and the desire for recognisable yet effective methods of parliamentary accountability:

> "As far as the Scottish Conservatives are concerned, a key element of accountability should be the ability of Members to question the First Minister … on a weekly basis. The proposal that Questions should be put to the whole Scottish Executive is not an adequate substitute, as the person in overall charge is questioned separately and is not able to hide behind other members of the Executive.

> The excuse given that these arrangements were introduced to provide more information for Members and avoid the 'confrontational politics' of Westminster is nothing more than a smokescreen. By appearing to decline to answer questions personally in the Parliament, you would be imitating one of the worst recent Westminster practices which is to treat Parliament with contempt and bypass it at every possible opportunity… I urge you to remedy this impression by accepting that the Scottish Parliament should have the right to question the First Minister on a weekly basis and by supporting the adoption by the Parliament at the earliest opportunity of an amendment to standing orders which will enable this to be done."

Dewar wrote to the Presiding Officer a month later about the question period arrangements, which he believed to be "flawed". He asked that "consideration be given to early changes," such as the conversion of Open Question Time to "something rather similar to Prime Minister's Question Time at Westminster. If the First Minister did not take the lion's share of these questions, it would not be long until he was under heavy fire for having no appetite for the fight and for his failure to stand public criticism and examination. We could of course hold to one question period of 45 minutes but that would allow the First Minister to choose the questions he wanted to answer rather than the ones that the MSPs wanted to ask him."

The Procedures Committee recommended, as part of a general package of reform of the questions mechanisms, that Open Question Time be renamed 'First Minister's Question Time'; that that period be extended from 15 to 20 minutes, and the number of questions to be selected by the Presiding Officer be doubled from 3 to 6. The Committee expected that "the

First Minister will normally answer personally such questions as are selected for FMQT, but that exceptionally another member of the Executive may do so in his absence."

These proposals were welcomed during the Parliament's debate on the Committee's report on 9 December 1999, especially by the Executive itself. The Committee's convener, Murray Tosh (Con), explained that it was intended to provide a key element of accountability desired by MSPs and the First Minister weekly, and he hoped that it would "add to the Parliament's standing among the Scottish people."

The change in the profile of the First Minister's involvement at the Parliament's regular Thursday afternoon question period can be seen from three such periods, those of 13 January 2000 (the first session under the new arrangements), 11 May 2000 (the end of the first Parliamentary year), and 7 September 2000 (the first after the Parliament's second summer recess).

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13 January 2000

Question Time:

15 questions, of which 11 were answered by Cabinet Ministers and 4 by Junior Ministers. None was answered by the First Minister.

First Minister's Question Time:

4 questions, all of which were answered by the First Minister. The first question was asked by the SNP leader, who had 3 supplementaries. The second question was asked by the Conservative leader, who had 2 supplementaries, followed by 2 supplementaries by other Members. The other two questions elicited 6 supplementaries, 3 by the original questioners.[136]

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11 May 2000

Question Time:

15 questions, of which 9 were answered by Cabinet Ministers, and 6 by Junior Ministers. None was answered by the Deputy First Minister, either in his capacity as Minister for Justice, or as Acting First Minister (in the absence through illness of the First Minister).

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[136] The Presiding Officer had intended that there be a fifth question, but the Member, when called, chose to ask a supplementary to the previous question.

> *First Minister's Question Time:*
> 5 questions, all of which were answered by the 'Acting First Minister'. The first question was asked by the SNP leader, who had 3 supplementaries, followed by a supplementary by another MSP. The second question was asked by the Conservative leader, who had 3 supplementaries. The other 3 questions elicited 9 supplementaries, 3 by the original questioners.

> ***7 September 2000***
> *Question Time:*
> 11 questions, of which 7 were answered by Cabinet Ministers and 4 by Junior Ministers. None was answered by the First Minister.
>
> *First Minister's Question Time:*
> 5 questions, all of which were answered by the First Minister. The first question was asked by the SNP leader, who had 3 supplementaries. The second question was asked by the Conservative leader, who had 2 supplementaries. The other 3 questions elicited 7 supplementaries, 3 by the original questioners.

The distinction between the two question periods was now clear, with the first period becoming 'Ministers' Question Time', without the participation of the First Minister. The second period was exclusively intended for questions to the First Minister (or by another Minister, in the First Minister's absence).

These changes were not merely cosmetic adjustments to the existing system. The decision to adopt so explicit a name for the question period signalled an acknowledgement that something akin to Commons' PMQs was what was generally wanted. This appeared to extend even to the habit of the two Opposition leaders generally asking an 'open question', such as the First Minister's meetings with the Cabinet, Prime Minister or Scottish Secretary. Though the Committee stated that it was determined to keep the whole issue under review, it seems certain that, while the details of FMQT may be fine-tuned, it will not be abolished in the near future.

In itself, as a form of parliamentary proceeding, it cannot be doubted that it is operating well. Participants, and, significantly, the media, seem to be more comfortable with the FMQT format than the previous 'Open Question Time'. It is a lively and relatively spontaneous

period in the parliamentary week, unlike some of the more structured and managed proceedings of debate and statement. As at Westminster, it performs the valuable democratic function of allowing parliamentarians and public alike to compare the performance of the head of government and the aspirants to that office.

On the other hand, FMQT exhibits many features regarded as defects in the Westminster context, and which are especially relevant in the terms of the stated ethos of the Parliament. It confirms the 'confrontational' aspect of parliamentary activity at the expense of the 'consensual', by highlighting the inevitable party political competition inherent in the 'government-opposition' divide. This cuts across the 'government-parliament' relationship that is more appropriate to effective parliamentary scrutiny and accountability activity. It consumes a disproportionate amount of media and public attention, by distorting the perception not only of the overall pattern of work in the Chamber, but, more significantly, of the balance between Chamber and Committee work towards the former.

In addition, by institutionalising this exemplar of Westminster parliamentary practice so early in the Parliament's life, the Parliament may be unconsciously signalling that it is unwilling or unable to find truly innovative solutions to significant procedural difficulties. The CSG package of parliamentary scrutiny and accountability was itself a rather conventional and familiar collection of techniques, such as questions, debates, statements and so on. For the Parliament to react to difficulties with one of the more original aspects of even this timid blueprint, not by seeking a novel or radical solution, but by appearing to import an even more familiar and conventional Westminster practice is worrying. Even at Westminster, efforts are being made, albeit unsuccessfully thus far, to find different and potentially more effective ways of holding the head of government accountable, such as regular appearances before a select committee. A committee-based mechanism, whether of this sort or otherwise, could well have some relevance for the ethos of the Scottish Parliament, and could symbolise a desire to explore more innovative techniques of scrutiny of the executive, and for holding it to account.

Only time will tell whether adoption of a First Minister's Question Time will be seen as a sell-out of the founding principles and a return to the familiar practices of Westminster, or as a sensible reform of the original procedures to provide a mechanism of holding the head of government to account publicly essential to the true model and spirit of the Parliament.

12.   Realising the vision: openness and accessibility

12.1.   Openness, accessibility and participation

At the heart of the CSG vision was the notion that the principles should "aim to provide an open, accessible and, above all, participative Parliament, which will take a proactive approach to engaging with the Scottish people – in particular those groups traditionally excluded from the democratic process." Participation was to be the benchmark of the particular form of parliament that was desired. Like equal opportunities, it had to be embedded in the procedures and practices of the Parliament, not merely regarded as an optional, symbolic 'add-on'.[137]

The notion of participation has been considered in context in other parts of this Study, especially in relation to committees (chapter 5), legislative consultation (chapter 6) and petitions (chapter 8). The extent to which the Parliament's rules themselves gave effect to the notion of participation is arguable. There is a dedicated chapter in Standing Orders entitled 'openness and accessibility', which deals with a variety of matters from proceedings to be open to the public, provision for non-members to address the Parliament and petitioning procedures.

On the other hand, there was no provision for direct membership by non-MSPs on committees, a radical innovation that was regularly proposed during pre-devolution days. Other than the petitioning process, non-MSPs cannot formally initiate any substantive parliamentary action, or participate in any of its proceedings, save by invitation or compulsion. At the heart of the Parliament's procedural structure remains some notion of 'them' and 'us', 'insiders' and 'outsiders'. While there may be valid legal and statutory reasons for such distinctions, they do demonstrate the difficult tension between the competing notions of representative and participative democracy underpinning the Parliament's design.

This chapter concentrates on aspects of openness and accessibility which underpin the aim of wide participation in the Parliament, especially that of the availability and flows of information about the Parliament, its structure and its activities.

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[137] The principle of equal opportunities has a key role in ensuring accessibility and inclusiveness. One example, which has both symbolic and practical importance, is the use of gender-neutral language in all parliamentary publications.

12.2. Accessibility

The rules give effect to the principle of parliamentary proceedings being in public, balanced by provisions for the maintenance of order and the holding of meetings in private. The Presiding Officer issued conditions for public access to plenary meetings in May 1999:[138]

Members of the public admitted to the public gallery during any meeting of the Parliament must:

*respect their surroundings and behave in an orderly manner at all times;

*be silent when proceedings are under way;

*obey any instructions given to them by staff of the Parliament;

*not eat, drink or smoke;

*refrain from dropping or throwing objects from the gallery.

*not display any banners or slogans;

*switch off mobile phones, pagers, laptops and hand-held computers;

*not sing or whistle or make or play recorded or broadcast sounds of any kind;

*not take photographs, sound or video recordings;

*not paint, draw or sketch without the prior authorisation of the Presiding Officer;

*enter and leave quietly.

Particular codes of guidance also exist for the various forms of media activity in the Parliament. For example, the Parliament is required to produce a Code of Conduct for the broadcasting of proceedings. No such Code has yet been made, and, in the interim, the SPCB has promulgated rules for coverage of plenary and committees.

The more general issue of private meetings was well-aired in the early days of the Parliament, especially in the context of the Standards Committee's inquiry into the 'Lobbygate' affair. Except in specified circumstances, all committee meetings should be held in public, and the official guidance issued in the initial months provided some advice on the circumstances when private meetings may be justified or appropriate. While emphasising that a committee must consider each case on its own merits, it gave some possible examples:

- Discussion of questions to be put to witnesses.

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[138] *Order in the Chamber, Business Bulletin* 5/1999, 24.5.99. The Parliament's website also contains a *Code of behaviour* for the public at plenary and committee meetings (http://www.scottish. parliament.uk/welcoming_you/code.html). The first serious disturbance in the public gallery did not occur until 5 April 2001. It led to a suspension of the sitting and a severe warning from the Presiding Officer on 25 April, directed not just at the public, but at MSPs who may have expressed support for, or involvement in, the disturbance.

- Discussion of draft committee reports.
- Taking oral evidence and considering written evidence of a particularly sensitive nature
- Discussion of a future work programme.

The *Scotsman* newspaper, presumably willing to test the young Parliament, took action in the Court of Session challenging the Standards Committee's plans to hold some aspects of its Lobbygate enquiry in private session. The matter was swiftly dropped following some assurances on behalf of the Parliament about resort of private sessions. This was a rather muddled episode, trumpeted by some in the media as a blow for press freedom and public access, though it was probably unlikely that the Committee had actually exceeded its powers. Since then, the issue has settled down, with little public comment about private committee meetings. The extent to which committee meetings were held in private in the first year can be seen from the following table:[139]

Table 12.1: Committee meetings in public and private: 1999-2000 parliamentary year

	Meetings	Meetings wholly in private	Meetings partly in private
Audit	16	3 (19%)	8 (50%)
Education, Culture & Sport	27	0	11 (41%)
Enterprise and Lifelong Learning	21	2 (10%)	6 (29%)
Equal Opportunities	20	0	7 (35%)
European	18	0	2 (11%)
Finance	21	0	9 (43%)
Health & Community Care	28	0	10 (36%)
Justice & Home Affairs	31	0	14 (45%)
Local Government	27	1 (4%)	5 (19%)
Procedures	15	0	0
Public Petitions	14	0	0
Rural Affairs	23	0	12 (52%)
Social Inclusion, Housing and Voluntary Sector	29	2 (7%)	18 (62%)
Standards	24	1 (4%)	5 (21%)
Subordinate Legislation	29	0	0
Transport & the Environment	20	2 (10%)	13 (65%)
TOTAL	**363**	**11 (3%)**	**120 (33%)**

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[139] The statistics in the two relevant parliamentary publications, *Scottish Parliament statistics 2000* and *Parliamentary committees annual report 2000* are not always consistent. This table is based on analysis of each set of minutes of committee meetings for the parliamentary year, as published on the website.

Only 3% of all meetings were held entirely in private, and a further 33% partly in private.[140] On the other hand, only three committees operated entirely in public throughout the year.[141] None of these - Procedures, Public Petitions and Subordinate Legislation – was a subject committee. 10 committees (4 subject, 6 mandatory) held no meetings entirely in private. The wide variation among committees as to the proportion of meetings taken partly in private would depend on a number of factors, such as the balance of work between inquiries and legislative scrutiny, and differential practice among committee clerks on the holding of informal meetings in private. Agenda items taken in private tended to relate to preparatory sessions for evidence-taking meetings, for consideration of future business, or for the consideration of draft reports.

While statistics can give some indication of how much committee business is being transacted out of the public gaze, they cannot tell the whole story. What is more relevant is the extent to which committee business is being held in private which it may be expected, based on the Parliament's underlying culture and ethos, to have been taken in public session. This is a more subjective measure, and any judgment requires more evidence from future parliamentary years. It would be in keeping with the Parliament's underlying ethos if there was a trend towards, rather than away from, greater openness.

12.3. Knowing what's going on

For 'civic Scotland' to be able to participate fully and effectively in the work of the Parliament, it must be able to know *and understand* what the Parliament is doing and, just as importantly, how and why it does it. One of the strongest criticisms of the UK Parliament, especially by devolution campaigners in the last decade, was that its procedures and practices were not only inefficient, but were unintelligible (and even deliberately so) to all but insiders and experts. The Scottish Parliament should not only be a modern and effective assembly, but one where the Scottish people would, by understanding what it is doing, be able to giving substantive effect to the aspirations of participation and inclusiveness. These sentiments are at the heart of the four key CSG principles, and were the subject of more detailed work within the CSG process, including (but not exclusively so) the exploitation of Information and Communications Technology.

For the Parliament to achieve the CSG vision fully, this much-discussed 'external' focus has to be paralleled by an internal one. The Parliament must be open and accessible to MSPs,

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[140] In its annual report, the Transport & Environment Committee uses the measure of the number of agenda items taken in private: "the fact that only one meeting [of 18] in this period was wholly private, and only 17 of the 92 Agenda items were in private demonstrates that the Committee is open and transparent in its work."

[141] These figures relate only to formal meetings, and do not include more informal gatherings, such as pre-meetings, visits and the like.

their staff, the Parliament's staff, and all the others in and around the Parliament. They need, and are equally entitled, to be sufficiently well-informed about the detailed rules, procedures and practices of the institution within which they operate.

These are two separate but necessary conditions, which deserve equal consideration. Neither should be regarded as the sole or overriding focus. In particular, there should be no unnecessary distinctions between 'insiders' and 'outsiders'; unlike Westminster (with its alienating terminology, such as 'strangers'), there cannot be any clearly defined line of those who are 'in the know' and those who are not. A Parliament which purports to exemplify the CSG vision cannot be a closed, inward-looking and self-contained institution, which regards its activities as primarily private.

Further, the Parliament cannot live up to the CSG vision if it not only acts in such an exclusionary manner, but also regards its main external relationship in devolved governance as being with the Executive. The key principle of sharing the power implies two related notions:

- both the Scottish people and the Scottish Executive are equal players in devolved governance with, and within, the Parliament, and
- both are best regarded conceptually as part of the Parliament, as 'insiders' rather than outsiders.

This latter concept is a difficult and complex one. Clearly the notions of representative democracy which underpin the devolution scheme mean that the Parliament, and its members and staff, are formally and legally distinct from both the public and the Executive. The Parliament's rules and procedures recognise and apply that distinction. The Executive, as compared with the wider public, has a substantial advantage in its relationship with the Parliament because of

- the direct membership of the Parliament of virtually all its ministers, and
- its control, and limited sharing with the Parliament, of much of the essential information underpinning public policy making.[142]

This symbiotic relationship can provide the ideal breeding ground for a form of devolved governance which is based on a 'private dialogue', familiar to Westminster and Whitehall, rather than on an open and transparent tripartite discussion between Executive, Parliament and public. This means that both the Parliament and the Executive have an obligation to assist the relatively disadvantaged public, so that it can participate fully and effectively in the

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[142] Through the devolution legislation and the web of concordats and the like, it could be argued that the Executive shares as much, if not more, with the UK Government as it does with the Parliament. The Parliament is not a direct partner in these intergovernmental arrangements, and, as yet has concluded no equivalent arrangement with the UK Parliament or the other devolved assemblies.

policy debate. The Executive is formally taking steps towards this through its proposed freedom of information legislation. The Parliament can fulfil its part of the inclusiveness bargain by making all its rules, practices and activities as open and transparent as possible. If Westminster is, at least in its legislative guise, the "Queen-in-Parliament", then the devolved Scottish institution should be regarded as, in an operational if not a strictly legal sense, the "People-in-Parliament".

The CSG Report's draft information strategy neatly encapsulates this approach in its opening paragraph, setting out its basic objective:

> The Scottish Parliament is committed to providing an Information Service aimed at ensuring that the Parliament is as open, accessible and participative as possible. Only well-informed citizens can maximise the opportunities which this presents for individuals and organisations to contribute to the democratic process. Only well informed MSPs can contribute fully to the governance of Scotland. An information strategy, and a well-resourced information service, are vital to the achievement of an on-going dialogue between Parliament and the People.

This approach fits in with technological developments, which can ensure the efficient integration of operational functions (such as business management) and the gathering and dissemination of information. It also helps to counter any residue of the traditional 'culture of secrecy' which may have been brought over from pre-devolution days by politicians and officials. A presumption of openness, explanation and information, rather than a 'why do *they* need to know?' approach by both the Parliament and the Executive, is necessary to make the CSG aspirations a reality in this respect. Using the language of the electronic age to which the Parliament subscribes, as much as possible should be available on, and conducted through, internet rather than just intranet.

These are novel and ambitious aspirations for a British parliamentary institution, especially one based to a large extent on the 'Westminster model'. They test not only the individual commitment of all connected with the Parliament, but the innovative structures at the heart of the Parliament as a functioning institution. For present purposes, they are crucial to the achievement of the CSG vision in the information field, as there will often be competing or conflicting interests involved in any particular situation. A 'private dialogue' model of Parliamentary activity, based on a closed, bilateral relationship with the Executive, can be a convenient and comfortable model for those who see the smooth transaction of business as the main goal.

Such a culture requires more than visible or obvious nods to accessibility, whether it be by way of the public website, partner libraries, live webcasts or open days. It means, for

example, genuine two-way information flows, both within the various parts of the Parliament (a complex multi-layered institution), and between them and the wider world of civic society. It may, for example, require calm consideration of the necessary balance of information transmission means, appropriate to the diversity of Scotland. The all-electronic strategy of the National Assembly for Wales may be admirably radical, but does it actually deliver greater accessibility than other apparently less innovative approaches?

The Parliament was due to debate and endorse the CSG draft information strategy, alongside, but independently of, the main CSG report in its debate on 9 June 1999.[143] However, the motion which was debated made no explicit mention of the strategy. It may be that it was decided that, procedurally, the motion endorsing the main report automatically included the draft information strategy, as it was included as an annex to that report. It would be damaging to the Parliament if the absence of explicit endorsement meant any dilution of its commitment to an inclusive information strategy.

Having considered, albeit briefly, some of the basic, and extremely complex issues involved, it is possible to examine the reality of the first year of the Parliament's operation.

12.4. Explaining how the Parliament actually works

A basic accessibility requirement is that all those involved in the Parliament, whether intimately or otherwise, have the greatest possible opportunity of knowing how the Parliament operates. A parliament is inevitably a complex organisation, because of the multiple nature of its participants and its activities. As other parts of this Study seek to demonstrate, a parliament is more than just a forum for the transaction of business in formal plenary or committee proceedings.

Many of these more informal activities tend to be less visible, and therefore less accessible, than formal proceedings. Activities by MSPs as individuals (such as their representational functions) or as collectivities (party groups, cross-party groups and so on) may be more a matter for personal, party or other responsibility than properly a matter for the Parliamentary authorities as such. Nevertheless the Parliament itself can have some input, albeit with a lighter touch, even in some of these areas, such as the regulation of cross-party groups; registration of interests of the various categories of people involved in and around the Parliament, and in rules for the availability of Parliamentary facilities and resources. Through these means, it can ensure that appropriate levels of openness and transparency also apply to these types of informal parliamentary activity.

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[143] The amended business programme for that day, as agreed the previous day, stated: "… a debate on the Consultative Steering Group report and draft Information Strategy"

The Parliament has not produced, or collaborated in, the production of a comprehensive 'rule-book', whether or not similar to *Erskine May* at Westminster and its equivalents in other parliaments. This may be a conscious decision by the Parliament, perhaps wishing to avoid the potential pitfalls of precedent-setting and inflexibility that such an approach can bring, especially to a new-born institution. However, it does mean that the Parliament has to seek other, preferably better, ways of making its rules and procedures available and transparent.

There are different levels of information of this sort, not all of which is within the custody of the Parliament itself, such as:

- *UK legislation*: The *Scotland Act 1998*, and the mass of delegated legislation made under it, can almost be regarded as the 'written constitution' of Scottish devolution. The Parliament does not make that material, and any other directly relevant UK legislation, publicly available, even by way of website links.

- *Scottish legislation*: As at Westminster, the text of legislation in all its forms (including any 'accompanying documents') from introduction up to, but not including, enactment is regarded as parliamentary matter. After enactment, legislation becomes a matter for governmental and private publication. The Parliament has been innovative in making some of the legislative process more available than at Westminster, by
  - producing a consolidated volume containing a complete parliamentary legislative history of each Bill, including its accompanying documents[144]
  - printing a version of a Bill 'as passed', but before enactment, when it will appear as an Act on the relevant HMSO site[145]

- *Standing Orders*: The Parliament took ownership of its Standing Orders in December 1999, and they are available in hard-copy and electronic formats, updated as necessary so as to ensure currency of the text.

- *Detailed procedural guidance*: The Parliament has ensured the public availability of such collections of detailed procedural guidance as are produced by its clerks. This is a great advance on Westminster, where much guidance of this form is not publicly available nor, in some cases, is its existence even acknowledged. In the early months of the Parliament, guidance of this type was produced on motions, questions, public bills, the operation of committees and the role of committee conveners. More recently, guidance has been

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[144] This system began in February 2001, outside the main timeframe of this Study, but it is an innovation certainly worthy of note. Such volumes are cited **SPPB [number]**

[145] There are practical reasons for this, because of the statutory provisions regarding potential challenges to a passed Bill, and any further consideration of such a Bill by the Parliament.

produced on private bills, and updated versions of the early guidance have been or are being produced, to take account of developments in procedure and practice.

- *Other procedural and practical guidance*: In addition, ad hoc guidance has been produced for specific audiences, sometimes by way of the Public Information Service's *FactFile* series. Other than the general guides to the Parliament which were produced at its establishment in the spring of 1999, these *Factfile* guides are:
  - *You and your MSPs* (FF 4, May 1999, rev ed. March 2001): a guide to representational practices under an AMS electoral system
  - *Guidance on the submissions of public petitions* (FF 5, October 2000)
  - *Information for witnesses appearing before committees* (FF 6, October 2000)
  - *Amendments to Executive Bills: guidance for external organisations and individuals* (FF 7, October 2000)

- *'Guidance from the Chair':* While no system akin to that of Speaker's rulings has evolved as such, any ad hoc procedural guidance which is issued by the Presiding Officers does not appear to be collected or published.. Again, this may be because of a conscious desire to avoid the potential rigidities of a body of precedent. However, such jurisprudence inevitably exists, and practical utility, as well as principles of openness and transparency, suggest that some formal arrangement should be created. If not, a class of 'secret parliamentary knowledge' will evolve, known only to the select band of senior staff.

- *Other Parliamentary information*: The Parliament has a system of regular press releases (available to the wider public through its website) about its current and future activities, and on other matters of public interest. This is an advance on the current practice at Westminster. The website contains virtually all published parliamentary material.[146] This includes *WHISP*, the Parliament's regular detailed publication on its business, which is designed primarily for the general public. On the other hand, some information is designed entirely for internal consumption, and will be available only to insiders through the intranet, email or in hard-copy. This is unexceptionable, so long as such information is solely and genuinely of an internal nature, and does not concern matters about which the wider public, on openness grounds, should also be informed.

- *Business Bulletin 'announcements'*: This is a favoured method of publication, as it reaches both the internal and external audiences, though primarily designed for the former. A wide range of information is published in this way, from relatively mundane 'housekeeping' matters to promulgation of important matters of procedure and practice.

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[146] However not all material, especially documents in PDF format, has been easily accessible in practice to all outside visitors to the site. It is important that all the material on the site is archived and remains accessible to all users, but this has not always been the case.

The status of such announcements from the Presiding Officer and others may not be entirely clear, as compared to statements made from the Chair during a formal meeting of the Parliament, for example. More formal means of collection and publication may have to evolve.

- *Videos and other visual material*: The Parliament's Broadcasting Office holds an archive of broadcasts, as well as special compilation videos, picture stills and archive footage.

- *Other targeted Parliamentary information*: Information about the organisation and activities of the Parliament is made available in a number of other ways, such as through what the CSG draft information strategy describes as the Parliament's 'external' and 'internal' information' services. These are its public information services and its research and information service directed primarily at MSPs and their staff. The draft strategy sets out goals for these two types of service:

Goals for the Parliament's external information services
- to ensure that the public, regardless of gender, age, race, religion or disability, has access to information about the Parliament and its activities;
- to increase the Scottish public's knowledge of, and interest in, Parliament, its work and the democratic avenues which will allow them to contribute to the decision-making process;
- to contribute to the creation of a greater awareness of and respect for the work of the Scottish Parliament and its place in the context of local and national government;
- to provide information in forms which are concise, clear, accurate and attractive.

Goals for the Parliament's internal information services
- to ensure that all MSPs and staff of the Parliament have easy access to the information they need for the effective performance of their duties;
- to give effective support to MSPs and staff of the Parliament in their external information activities concerning the work of the Parliament;
- to respond courteously, promptly and accurately to all requests for information.

The Public Information Services *FactFiles* are now available on the Parliament's website, as are the publications of the Education Service. The Visitor Centres at the Parliament and at the new Holyrood site are valuable and accessible sources of parliamentary information. All research briefings produced by the research and information service (SPICe) are also available on the website. However, there are other categories of information (such as the collation of parliamentary reference lists and tables), produced by SPICe and other parliamentary offices, which appear to be available only internally within the Parliament.

The first SPCB annual report and the accompanying volume of parliamentary statistics (published just before the 2000 Christmas break) provide much useful information, and, in many ways, are more informative and accessible than the equivalent House of Commons material. They could be developed and expanded over time, to form truly useful reference and research tools.

12.5. Parliamentary papers

The range of documentation directly related to the Parliament's 'core business' is extremely wide, and to some extent mirrors the range at Westminster. Some aspects of the main examples, which are relevant to the present discussion are:

Business Bulletin: The House of Commons 'order paper' (and 'vote bundle' generally) has traditionally been among of the UK Parliament's least user-friendly documents, both for MPs and for the wider public, although steps have been taken in recent years to make it less complex and more accessible. The CSG report said very little directly about this aspect of information provision, beyond referring occasionally to the Parliament's 'order paper'. The *Bulletin* concept was laid down in Standing Orders, as a document to be produced by the Clerk, to include certain specified items such as the business programme, daily business list, committee agenda and written questions, and "any other information which the Clerk considers appropriate." It also provides that it "shall be issued to members by whatever means the Presiding Officer considers appropriate and shall be made public." The Clerk is required to keep it "under review" and "if necessary... issue to members an amended version of any part of it."

The form and content of the *Bulletin* has been refined frequently, while retaining its basic concept and structure. It appears to be a relatively effective means of announcing the business of the Parliament, given that little of its substantive content (especially motions, amendments or the ordering of legislative business) can be regarded as user-friendly.

The *Bulletin*'s availability on the Parliament's website enables it to be used as a source document, linking users to full-text documentation available elsewhere on the site. This functionality could be developed further, though not at the expense of its use as a

free-standing tool in its hard-copy format. Website availability means, in principle, that users both within and outwith the Parliament should have the same access to current information on the Parliament's business. This potential can be fully realised if the Standing Order requirement about the availability of amended versions (to take account of the frequent changes to the proposed business programme or daily business list) is also regarded as being directed not just to Members, but also to the wider actual and potential readership of the *Bulletin*.

Official Report: The basic principles of the Westminster Hansard operation have been retained for the Parliament's Official Report. The *Scotland Act* required that Standing Orders made provision for the reporting of the proceedings of the Parliament and for the publication of such reports. The CSG report proposed that there should be a 'substantially verbatim' record of plenary proceedings. It thought that "most who will require working copies are likely to use electronic means", and therefore suggested relatively limited hard-copy production, such as a weekly, rather than daily version of the plenary proceedings. Committee proceedings need not be available the following day, so long as the report is available electronically in good time for the next meeting, and a printed version be produced "at a subsequent date". The CSG report considered that the Parliament should also produce "some sort of summary report, perhaps even edited highlights of each week's proceedings".[147]

Standing Orders adopted the requirement for a 'substantially verbatim' report (as defined by the Presiding Officer in a *Business Bulletin* announcement on 19 May 1999), and in practice, thus far, the Parliament has ensured the production, both electronically and in printed format, of daily reports of Chamber and committee proceedings, generally available the following day. This has involved a significant investment in resources, especially as the Parliament's workload has been greater than appeared to be anticipated by the CSG.

Minutes and Journals: The *Journals* will be a cumulative record of the minutes of proceedings, and other related information. At the time of writing, no *Journal* has yet been published. The Parliament is required to produce minutes of proceedings of each plenary session and each committee meeting. These are published on the website (and plenary minutes are also printed), and are often a convenient way of discovering what has actually been decided at a meeting of the Parliament or at a committee, especially when

- there has been any procedural complexity, such as a series of amendments being carried to a motion, or

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[147] This proposal has not been taken up by the Parliament, by way of an Official Report product. However the regular publication of the Parliament's Information Centre, *WHISP* ('What's happening in the Scottish Parliament') substantially fulfils this function.

- where a detailed resolution of the Parliament, especially on 'house-keeping' matters, has been agreed and is not otherwise formally published as a separate document.[148]

Annual Reports: Although not required by the *Scotland Act* or by Standing Orders, the SPCB has produced a report on its first year, just before the recess in late December 2000. It was accompanied by a statistical volume, *Scottish Parliament Statistics*, which is akin to, but often more accessible and informative than, the *Sessional Return* of the House of Commons. Each committee is required to submit to the Parliament an annual report of its activities (including details of the number of times it met in private) "as soon as practicable after the end of each Parliamentary year." A cumulative annual report, containing brief individual reports for each committee was published for the first parliamentary year ending in May 2000 in early 2001.

Committee papers: Exploitation of the internet has meant that much of what is discussed in committee proceedings is made publicly available. As from March 2000, a significant advance in accessibility was made when committee papers were made available on the Parliament's website. Prior to this time, such papers were generally only made available to members of the press attending the relevant meeting. These papers tend to be substantially comprehensive, and even include issues papers prepared by committee staff.

Other papers relevant to Parliamentary proceedings: Many papers which are relevant to plenary and committee proceedings are prepared by other bodies, especially by the Executive. These include explanatory memoranda on legislation (including those on amendments) or the topic of a particular debate or motion. These are often not generally published, or made available on-line, being distributed or made available to the members of the Parliament or the relevant committee dealing with the particular business. Such ephemeral material may well be referred to during the proceedings or in the media. This can only produce a sense of exclusion among those without access to the material, as they will not be able to follow or understand the debate.

12.6. Information and participation

Information is an essential precondition of the achievement of the CSG vision of public accessibility and participation in the operation of the Parliament. The widest possible availability of all types of information relevant to the Parliament, its operation and its activity enhances the sense of inclusiveness and 'sharing of power', overcomes any residue of civil service notions of 'need to know' or the Westminsterish ideas of a parliament being an essentially private exercise, and enables and encourages meaningful public participation.

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[148] such as resolutions on Members allowances (8 June 1999 and 16 March 2000), or on executive accountability to the Parliament (1 November 2000).

The principles being evaluated in this chapter are both objective and subjective. A certain amount can be learned from measures such as the extent of committee business taken in private; the number and types of committee witness; novel methods of civic participation; visits to the Parliament;[149] attendance of pupils in the Educational Visits Programme,[150] use of the website[151] and so on. However the principles of openness, accessibility and participation will be adhered to fully if the public is satisfied that the Parliament

- acts on the presumption of comprehensive dissemination of all information relevant to itself and its operation, in a timely and comprehensible way, and
- actively encourages interactions with, and participation by, the public, regarding these as necessary and substantive mechanisms in the parliamentary process, not as merely symbolic acts.

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[149] There were almost 27,000 attendees at plenary sessions, and almost 20,000 at committee meetings. There were also over 46,000 visits to the Parliament's Visitor Centre.

[150] 2,697 from 106 schools from the inception of the Programme on 15 September 1999 until March 2000. By the end of May 2000, 131 schools had participated in the Programme.

[151] The number of hits ranged between 643, 530 in May 1999 to 1,714,143 in March 2000. The total number of website pages requested (the Parliament's preferred indicator of website usage) ranged from 107,848 in May 1999 to 397,579 in March 2000.

13.   Realising the vision

13.1.   The nature of the vision: interpreting the principles

In attempting to examine the extent to which the Scottish Parliament has achieved what was expected of it by its founders, this Study has analysed the operation of the Parliament by reference to the two inter-related sets of criteria:

- the CSG principles and proposals, and

- the underlying list of inherent parliamentary functions.

This inter-relationship is at the heart of any analysis of the new Parliament, because it reveals the true nature of its founding philosophy, including some of its inherent confusions and contradictions. In essence, this is a question of what sort of body the Parliament was intended to be. Was it to be an improved, modern and tailored 'parliament', in particular one of the Westminster model family? Or was it to be a unique form of governmental assembly, albeit designated a parliament, explicitly designed to fit into a particular model of Scottish devolved governance, much as the other devolved assemblies are each unique constructions, within their particular devolution schemes?

There was a discernible trend during the policy development process since the late 1980s, away from the creation of a radical, *sui generis* institution, towards one which was more recognisable as a variant of a Westminster-style parliament. This is contrary to the received wisdom, that the present Scottish Parliament is the natural product of a process with a consistent vision, from SCC to the legislation and the CSG. While some in wider civic Scotland pressed for some form of novel body, the increasing influence, especially after the 1997 election, of UK politicians and officials ensured that any such radical constitutional model of governance would be diluted, in favour of a more familiar, congenial and manageable model.

The work of the CSG itself epitomises these various trends. It can be regarded as an attempt at synthesising

- the vibrant, sometimes radical, policy process of the previous decade, embracing the work of the SCC, of Crick-Millar and others, and

- the evolving policy of the political parties involved, both in opposition and in government.

The CSG exercise is best regarded as a stage in the devolution policy development process, rather than as its end-point. It contributed to the final shape of the Parliament's governing 'constitution', as it was contained in the *Scotland Act*, the delegated legislation made under it (including the initial Standing Orders), and in many of the other procedures and practices adopted by the new body on its establishment. But this constitution did not incorporate

every detail of the CSG proposals, produced just a few months previously. In some areas, such as pre-legislative scrutiny, the actual procedures differed quite significantly from them. The CSG report is a foundation of the Parliament's constitution, not the edifice itself.

Thus the Parliament was born with a variety of different expectations, aspirations and obligations. There were, and remain, those who expect that it will be an exemplar of some form of 'new politics' and of a 'different form of governance'. On the other hand, many of those directly involved in its creation and operation wished it to operate in ways fundamentally similar to existing UK constitutional norms, albeit in a far more efficient and effective way. The Parliament itself had a legal obligation to act in accordance with the statutory regime with which it had been bequeathed, whether or not it accorded with one or other, or both, of these expectations.

The Parliament overall has sought publicly to operate as if bound by the CSG principles. On the initiative of the Executive, and introduced by Henry McLeish, the former Scottish Office devolution minister and CSG chair, it debated and agreed to endorse the CSG report on 9 June 1999.[152] Resort to the CSG vision may even have helped to save some procedures, mechanisms, and even some committees, which seemed, even in the first year or two, under threat. The work of the Standards and Procedures Committees, such as the revision of Standing Orders, the creation of the various limbs of its standards regulation, and the devising of new procedures (chapters 10-11), has been directly related to the CSG principles and proposals. In accordance with CSG recommendations, the Procedures Committee is currently conducting a long-term review of the extent to which the Parliament has put the CSG principles into practice.

It is reasonable, therefore, to regard the CSG report's underlying vision, as expressed in part by its 4 key principles, as the most suitable and convenient benchmark against which to measure the extent to which the Parliament has met its various founders' aspirations. These principles themselves need to be examined, especially the extent to which they fit the list of generally accepted parliamentary functions.

The four key principles are
- Sharing the power
- Accountability
- Access and participation
- Equal opportunities

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[152] That debate provided an early opportunity for MSPs to consider the new Parliament's culture and ethos, and it revealed the divergence in the interpretation of the CSG vision among the newly-elected parliamentarians. See, in particular, the speeches of the various party leaders, and of George Reid, a CSG member and a Deputy Presiding Officer.

Principles expressed in these terms are ways in which the Parliament carries out its functions, rather than a description of these functions themselves. The nature of the Parliament's initial template would have been clearer to understand had the CSG been more explicit about the functions it expected the Parliament to fulfil, and had it seen its role as describing the criteria by which the Parliament should operate within that range of functions. Unfortunately a close reading of the CSG work and report demonstrates that it was more focused on the Parliament's operational style than on its functions.

There appears to have been little empirical examination, within the CSG process, of the full range of functions the proposed Parliament should undertake. The CSG seems to have implicitly assumed the existence of many such functions, perhaps because they existed in Westminster and in other parliaments it examined. It saw its main job as devising procedures and practices which would enable these assumed functions to be carried out in the 'proper spirit'. Other parliamentary functions and activities, especially those not directly related to formal proceedings, appear to have been largely or entirely overlooked. Therefore, in terms of the Parliament's practical operations, the CSG's work did not fully address the 'what' and 'why', but concentrated on the 'how'. This meant that there was insufficient consideration of the various inherent tensions present in the emerging parliamentary model.

There was little examination of the effect on the proposed parliament of the relationship between the two distinct and potentially incompatible notions of 'parliamentary sovereignty' and of 'popular sovereignty'. Such tensions had influenced much of the more general creative thinking since the late 1980s, such as the SCC's extended efforts on issues such as the possible entrenchment of the devolved legislation against interference or repeal by Westminster. These were matters of symbolic importance, emphasising that the genuine will of the Scottish people, rather than the expression of Westminster sovereignty, was the source of the devolution scheme. Even after the SCC had to admit defeat on entrenchment, the language of popular sovereignty remained, to be modified (or, perhaps, diluted) into the 'power-sharing' language of the CSG principles.

Of more direct, practical importance was the absence of any detailed consideration of the tension between notions of 'representative democracy' and 'participative democracy'. The CSG would have been an obvious and ideal forum for an examination of how the Parliament could balance these two approaches in a positive and effective way. By saying very little about the 'party political' nature of modern parliamentary activity, or of the representational roles of individual MSPs, the CSG report provided little assistance as to how the work of MSPs, individually and through their parliamentary groups, would relate to modes of direct civic engagement with the Parliament and with the Executive.

This was a serious gap. The House of Commons has problems in reconciling the 'party' and 'individual' roles of the MP, and the extent to which it functions both as an aggregation of individual MPs and as an aggregation of party groups. For the Scottish Parliament, this is compounded by the degree to which the Parliament operates not just on behalf of the people of Scotland, but with their active involvement, as notional 'co-owners' of devolved power. The CSG principles, especially the first (power-sharing) and third (access and participation), appear to provide mixed signals. In terms of the relationship between people and parliament, the former principle implies an 'insider' model, where the people are, just as is the Executive, part of the Parliament. On the other hand, the latter principle implies a more 'outsider' model of the people coming into the Parliament to participate in its activities.

In the CSG principles, 'sharing the power' appears to address the power invested in devolved governance itself, rather than just in the Parliament, but the Parliament is the major place where the three power-sharers come together. However, these three partners are not equal holders of power, in the sense that, while the Executive is, through its ministers, physically within the Parliament, the people are not directly a part of the Parliament itself. Their exercise of power, therefore, is carried out in two ways:
- indirectly, through their elected representatives, and
- directly, through mechanisms of access and participation.

This may explain the purpose of the third CSG principle of access and participation. It does not, however, explain why representation was not also explicitly regarded as a key principle. In so far as representation was considered at all, the CSG appeared to recognise it implicitly within its accountability principle.

Some of the radical ideas floating around in the early 1990s which would have made 'the people' partners in, or sharers of, devolved parliamentary power, did not survive after 1997. To use CSG terminology, the emphasis shifted from the people as power-sharers to the people as participants, as the more traditional representative model of representative democracy, with elected politicians as the primary players on the parliamentary stage, prevailed. Yet again the apparent consistency of the visible rhetoric may have hidden a significant shift in the core structure of devolved governance. Civic engagement was central to the CSG vision, but it may have been more convenient for government to have the primary focus of such activity directed at the Parliament, rather than at the Executive itself. It may also have been because, as suggested by one trenchant commentator, the proponents of the new, more participative politics themselves focussed on the Parliament rather than what he calls the "more important branch of government."[153]

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[153] J Mitchell, "New Parliament, new politics in Scotland", (2000) 53 *Parliamentary Affairs* 605, 614

The Parliament has already addressed some of the aspects of representation and accountability which were not considered by the CSG, through the Members' Code of Conduct and in the guidance on relationships between MSPs. By doing so, it may well be emphasising the traditional notion of representation as the main form of relationship between people and the Parliament. Will it also address the more complex issue of marrying these notions of representation to the explicitly participative sentiments of the 'new politics' agenda? Or will it allow itself, consciously or otherwise, to adopt the safer and familiar ideas of indirect representation of the people through the medium of its MSPs, at the expense of more novel direct civic engagement? One of the leading proponents of what she describes as civic Scotland's access agenda has warned that "in reality simply keeping it as far up the list of political priorities as it should be over the crucial months and years to come will be hard work."[154]

The four CSG principles cannot have been intended to be a statement of the four necessary *and* sufficient criteria for the Parliament's successful operation. The first principle, 'sharing the power', is best regarded as an overarching aspiration, and the fourth principle, 'equal opportunities', should be a criterion applicable to any public institution or activity. Thus, the second and third principles, 'accountability' and 'access and participation', are the substantive, practical core of the CSG approach, with accountability being the expression of a central parliamentary function, and access and participation emphasising the 'new politics'.

13.2. The nature of the Parliament

For the Parliament to adhere to its founding principles, it has to have some degree of autonomy. It was explicit throughout the period of devolution policy-making that the Scottish Parliament would be very different from Westminster by not being dominated by the government. This applied even when the Labour Government made it clear, in its white paper, that "the relationship between the Scottish Executive and the Scottish Parliament will be similar to the relationship between the UK Government and the UK Parliament."

Examination of various aspects of the Parliament's operation in this Study has shown the extent to which Executive-related business has dominated the work of the Parliament. These include the management of its business (chapter 4), its work in committee and in plenary (chapters 5 and 9), as well as proceedings relating to legislation and finance (chapters 6 and 7). Some of this can be regarded as giving effect to the accountability principle, as the Parliament scrutinises the policy and actions of the Executive. On the other hand, much of this business was generated at the initiative of the Executive. It was not hard to detect, especially in the initial months, a ministerial assumption that the Parliament existed primarily to facilitate the

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[154] L McTernan, in G Hassan & C Warhurst, *The new Scottish politics: the first year of the Scottish Parliament and beyond*, 2000, p144

Executive's agenda, by enacting its legislation, by debating and approving its policies, and by being a forum for its announcements, whether through statements or by answer to 'inspired questions'.

The CSG said virtually nothing about how the executive-parliamentary relationship would operate in practice, beyond outlining procedures for standard mechanisms such as questions, debates and committee inquiries. Like the UK Government itself, it assumed that the Westminster notions of parliamentary accountability and ministerial responsibility would generally apply. This meant, for example, that Parliamentary access to Executive officials would be indirect, because, even after devolution, civil servants would remain accountable through their ministers. Ministers have resisted the idea of a more direct relationship between the Parliament and their officials. They have sought to control such direct contacts,[155] even when some MSPs expressed the belief that such a relationship was implicit in the 'new politics'.[156]

This approach reached its zenith thus far in November 2000 when the Executive presented to the Parliament, for its endorsement, a protocol on how committees would seek evidence from ministers and officials (chapter 5). A year earlier, when a similar situation arose, both the Presiding Officer and the First Minister had assured the Parliament that any guidelines as to how Executive officials would relate to the Parliament would only emerge following full consultation, and would not be imposed unilaterally by ministers.[157]

The style and shape of much parliamentary activity is due to a combination of this executive-parliamentary relationship, and of the division, virtually from day one, of the Parliament's membership into 'government' and 'opposition'.[158] These are the two key relationships which underpin the style of Westminster politics,[159] and their appearance within the new Parliament also has been central to its actual ethos and style. For those who defined the 'new politics' as the replacement of confrontational, adversarial politics with consensus and partnership, the actual working style of the Parliament in its first year appeared to be a retreat from the founding aspirations.

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[155] For example, the Executive negotiated protocols with the Parliament as to its direct dealings with MSPs, and with the research and information service (SPICe), which it published in September 1999.

[156] This approach had been bluntly expressed by the then deputy Minister for Parliament, during the 23 May 2000 Procedures Committee meeting. He had made a similar point on 8 June 1999, winding up the plenary debate on the establishment of the committees.

[157] For discussion in plenary on the existence or otherwise of any so-called 'MacOsmotherly rules', see proceedings on 25 November 1999, especially cols 994-6 and 1001.

[158] Immediately after the outcome of the May 1999 general election was clear, the SNP was describing itself as the 'Official Opposition', and the SNP leader claimed the title of 'Leader of the Opposition'.

[159] This is well described in J Griffith & M Ryle, *Parliament: functions, practice and procedures*, 1989, pp 13-15, in a section entitled, significantly, "Two confrontations".

The notion of the Parliament 'managing itself', with a sufficient degree of independence and autonomy, both from the Executive and from the pressures of other external forces, was examined in chapter 10. The lesson of the first year or so is that the Parliament has gradually sought to take control of its internal affairs, both institutionally and in relation to its formal business.

13.3. Realising the vision: year one

As neither the devolution legislation nor the CSG report provided a comprehensive statement of the Parliament's functions, this Study has adopted and applied a generally accepted list of parliamentary functions. This list provides the foundation for the audit template, devised by the Constitution Unit, which is the basis of both this Study, and of the parallel Northern Ireland Study.[160] These functions are:

- Representing the people
- Making the law
- Providing, sustaining and scrutinising the executive
- Controlling the budget
- Providing an avenue for the redress of grievances
- Managing itself effectively to carry out the above five functions

(1)   Representing the people

It was seen in chapter 3 that the new mixed-member electoral system helped to produce a Parliament with a much better gender balance than previously in the UK. It also assisted the election of two minor parties, the Scottish Socialists and the Scottish Greens, as well as one rebel from a major party. On the debit side, the Parliament has no representation from any ethnic minority community, and, other than the three MSPs mentioned, all its members came from the 4 existing major Scottish parties. While a wide variety of parties and groups contested the May 1999 general election, any expectations that the new electoral system would encourage the return of members from a much wider range of political opinion were not realised.

The electoral system, by returning MSPs under two different methods, has created novel and largely unforeseen problems for the Parliament. These had an immediate impact in the initial weeks, during the unhappy debate on MSPs allowances on 8 June 1999, which contributed significantly to the initial media and public antipathy to the Parliament's initial performance. The Parliament sought to address these problems through the preparation and publication of

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[160] *A Democratic Design? The political style of the Northern Ireland Assembly* by Robin Wilson and Rick Wilford, Constitution Unit, May 2001

guidance, aimed formally at MSPs themselves, but also intended to be assist constituents, public agencies and others who interact with MSPs. That these matters were politically sensitive can be seen in the non-transparent process adopted for their resolution, and the fact that it took almost a year from the initial steps taken during the first summer recess to the agreement of the guidance just prior to the following year's summer recess.

In the wider sense of the Parliament representing the interests of the people, it can be concluded from examination of a range of parliamentary activity - petitions (chapter 8); plenary activity such as questions and debates (chapter 9); committee activity (chapter 5), and legislation (chapter 6) and so on - that the new institution has sought to address a much larger and broader range of matters of concern to the people of Scotland than was possible prior to devolution. The Code of Conduct has been devised so as to emphasise the centrality of the representative role of the Parliament and its members, and the formulation of the regulatory regimes for activities such as lobbying and cross-party groups (chapter 10) also aim to ensure as open and inclusive a Parliament as possible.

Parliamentary government, at least in the devolved arena, has definitely been brought closer to the people, and the Parliament has taken some steps towards being regarded as an institution for all Scotland. Committee meetings were held outside Edinburgh, though not to any great extent initially. The Parliament itself made a virtue of necessity, the chamber being required by its permanent owners, the Church of Scotland, for its general assembly, by meeting in Glasgow at the beginning of its second year in May 2000. These measures, and others such as having at least one 'partner library' in each constituency, have all helped to promote the Parliament as more than just an Edinburgh or Central Belt institution.

The Parliament's endorsement of the CSG principles of access and participation (chapter 12) and of equal opportunities, together provide substantive meaning to the notion of it representing the people of Scotland. This has been demonstrated by the creation of the weekly 'Time for Reflection' period as a more inclusive exercise than was envisaged by those who wished for something like Westminster's 'prayers' (chapter 11). It can also be seen in the various developments of electronic communication as a means of civic engagement as well as of dissemination of its information, and in the promotion of Gaelic in the work of the Parliament.

Finally, despite the formal legal position, the Parliament and the Executive have both taken on a representative status, on behalf of Scotland. The Executive has been very active in developing an 'external affairs' role, and the Parliament has also enthusiastically developed its external relations. There has been much interest world-wide in Scottish devolution as a form of decentralisation, and in the Parliament as a (self-declared) example of a modern, efficient and participative parliamentary institution. In addition, the Presiding Officer has fulfilled his Standing Orders obligation to "represent the Parliament in discussions and

exchanges with any parliamentary, governmental, administrative or other body, whether within or outwith the United Kingdom."

(2) Making the law

The legislative process was designed to be central to the Parliament's operation, not just in terms of the efficient processing of legislation, but also in enabling meaningful public involvement in law-making (chapter 6). This was intended to apply, in particular, to the two ends of the process – pre-legislative scrutiny and post-legislative review – which were regarded as being badly handled at Westminster.

From the Executive's perspective, a primary benefit of devolution has been the scope for much more domestic legislation to be enacted than was possible at Westminster, and ministers frequently trumpet the extent to which the number of statutes passed has multiplied. However, some, including senior parliamentary staff, have expressed concern that this emphasis on quantity may prevent the Parliament from exploiting fully the particular legislative process that was devised for it. For example, both the rules and practice still tend to encourage, to some extent, the idea of an annual legislative programme, rather than a cycle based on a four-year session.

Such time pressures can skew the Parliament's working rhythms, and committees frequently complained about this in the first year. It can result in insufficient time for proper pre-legislative scrutiny, and for adequate Stage 1 scrutiny of the basic principles and policy of bills. Perceptions of haste can exclude all but the more established and resourced of outside interests from meaningful participation in any consultation and scrutiny processes, and can also focus consultation processes away from the Parliament, and towards the Executive itself.

Although efforts were made to provide the Parliament with a more effective subordinate legislation scrutiny process than was perceived to exist at Westminster, early experience suggests that the inevitable problems of a political institution being asked to process a mass of complex, highly technical legislation have already emerged. Similar difficulties apply to the scrutiny of European documents, and probably will apply also to private bills, if and when they appear.

Understandably, relatively little use was made in the first year of the opportunities for legislative initiative, other than by the Executive. No Committee Bills were introduced, although two of the early Members' Bills – on poindings and warrant sales, and on hunting – were extremely high profile examples of that genre. The Parliament began to take steps to solve the problem of resources (especially for drafting) for such bills, by establishing the Non-Executive Bills Unit (NEBU). A growth in Committee and Members' Bills relative to Executive legislation may send an important signal as to the culture of the Parliament.

While some changes have been made to the relevant Standing Orders, the 3-Stage legislative process appears to have operated successfully. The well-publicised drama over Stage 1 of the Members' Bill on the abolition of poindings and warrant sales, culminating in the retreat of the Executive at the plenary Stage 1 vote in April 2000, demonstrated the virtues of a process which provides an integral and continuing role to committees. That particular experience may assist the development of a more collegial, cross-party approach to controversial legislation.

There was no legal challenge to the Parliament's legislative competence during the first year, and so what may be potentially the most controversial and sensitive aspect of the Parliament's law-making did not arise. The 'Sewel motion' device may be coming under increasing strain through overuse. However, with the exception of the one Emergency Bill, the Parliament's legislative system had not been seriously tested in the first year.

(3)   *Providing, sustaining and scrutinising the executive*

A constant theme throughout this Study has been the centrality of the executive-parliamentary relationship, and its impact on the proceedings and the operation of the Parliament. A Westminster-style relationship was assured by the combination of the formal rules, procedures and composition of the Parliament, and the way in which the Executive (reinforced by the two weapons of party discipline and collective responsibility) acted as if such a relationship unquestionably existed.

The Parliament is required to participate in the nomination of the Executive, and has a role in the removal of its ministers. The Parliament fulfilled these obligations at its early meetings, when it approved the choices of First Minister and of all other ministers and junior ministers. It also acted when replacements were required, such as in October 2000, following the death of the First Minister. As described in chapter 9, the Parliament's role in the exact make-up of any administration is limited, in terms of the creation and allocation of particular ministerial portfolios. The Parliament was not asked to debate a motion of no confidence in the first year, indeed not until December 2000. There are also other certain key set-piece debates and decisions where the Parliament may be said to be constructively deciding the fate of an administration.[161]

Other than confidence motions or these other occasions, very little was said in the CSG report, or in the relevant legislation or rules, about the party basis of the Parliament's operation. As

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[161] Examples are the First Minister's statement on the annual legislative programme (which is akin to a 'Queen's Speech' event); proceedings on the Executive financial business (such as Budget Bills), and occasions where the Parliament is asked to endorse the Executive's overall policy programme.

at Westminster, parliamentary support for an administration is generally presumed, unless and until demonstrated otherwise. Political parties were assumed in the CSG report and in the legislation, primarily through the requirements for party balance in committees, guarantees of plenary time for non-Executive parties, and in the composition of the Bureau. However, there was no discussion of party organisation or operation, even in terms of party discipline and whipping.

Nevertheless, the party group immediately became a key operative mechanism in the Parliament. This gave enormous influence to the party leaderships, through the special consideration given in proceedings to party leaders and frontbenchers, and in the role of party business managers in the Bureau. Not only does this tend to divert power from the Parliament as a whole towards party elites, putting at risk the development of cross-party relationships and allegiances, it also challenges the principle of wider access and participation. There are no requirements for party meetings to be public or transparent, and Bureau proceedings are conducted in private, thereby ensuring much important decision-making in and about the Parliament is undertaken in the absence of public scrutiny or participation.

The emphasis on party also tends to consolidate the influence of an Executive with a parliamentary majority. Rules and procedures which are primarily designed to preserve and protect minority parties and groups in the Parliament – such as the 'party balance' requirement, and the guarantees of shares of parliamentary time - also have the effect of entrenching the influence of the majority. Such arrangements also encourage the non-Executive forces to maximise, in terms of party advantage, their available opportunities, such as choosing the topic of debate or putting questions to ministers. This also inevitably tends to emphasise the adversarial at the expense of the consensual.

The CSG designed the Parliament's procedures primarily in terms of scrutinising the Executive, and its policies, actions and legislative proposals. These procedures tended to dominate both plenary and committee activity in the first year, through mechanisms such as questions, debates, statements and committee inquiries (chapters 5-7 and 9). However many of these opportunities in practice arise at the initiative of the Executive itself, especially through its choice of topic of debate, or by making oral statements.

The committee structure exists at the initiative of the Bureau, with its Executive majority. This tended to discourage the development of structures designed to examine cross-cutting policies, or to provide dedicated, joined-up scrutiny of many core executive functions. Committee scrutiny was inevitably relatively conventional and cautious in the first year, and it may be expected that more innovative methods of scrutiny will be exploited as committees develop and mature. The formalisation of the Conveners' Liaison Group could provide an important catalyst for such developments.

(4) Controlling the budget

How the Parliament undertook its financial functions in the first year was examined in chapter 7. That emphasised the extent to which much effort was devoted to the necessary task of setting up many of the detailed procedures and practices, as much as to substantive financial scrutiny. For that reason, the Parliament's performance of its financial functions in the first year is unlikely to be typical of its future activity or effectiveness. Nevertheless, the Parliament was generally successful in balancing these two functions, within the inevitable limitations of a start-up year and of the technical complexity of financial procedures. In particular, the indications for future years are that the committees will become meaningfully involved in the annual budgetary process, and through them, there will be scope for equally substantive participation by wider civic Scotland.

Finance is central to the devolution scheme as a whole, and its importance has become increasingly apparent. Nevertheless, the Parliament's role is relatively limited, as the legislation and the Parliament's own rules and procedures assume that the power of financial initiative rests almost entirely with the Executive. This is particularly true of the most prominent of devolved financial matters, that of the tax-varying power. The imbalance in the overall scheme of devolved finance as between the ability to raise money and to spend it, has tended to skew the Parliament's role, as well as that of the Executive. This degree of fiscal 'irresponsibility' is a topic which may well have to be tackled by the UK Government and Parliament, and the outcome will inevitably have a significant impact on the work of the Parliament.

(5) Providing an avenue for the redress of grievances

To some degree, this function overlaps with the representational function. The concept of representative democracy implies that individual elected members are a primary conduit for the ventilation and redress of the grievances and interests of their constituents and their locality.

MSPs do operate in familiar parliamentary ways, such as the use of questions, motions and debates (chapter 9). While the Parliament did not expressly provide for an 'Early Day Motion' mechanism, the lodging of motions has been used by individual MSPs as a method of the expression of opinion, often on matters of local or constituency interest, without any real expectation that they will be picked up by the Bureau as a basis for a plenary debate.[162] This has been recognised in guidance issued by the Parliament and by the Bureau. The lodging of proposals for Members' Bills also seems to perform a similar 'notice board'

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[162] The initial guidance noted that "frequently a Member may lodge a motion simply to indicate his or her concerns on an issue." The Bureau guidance in September 1999, and as revised the following June, also accepted that some motions are of a congratulatory nature, concerning local sporting achievements, notable anniversaries and the like.

function. The Bureau also indicated, in guidance issued in June 1999, that the Members' Business slot at the end of each plenary meeting should be used "to raise non-controversial, constituency-related issues." Such debates can be contrasted with the Commons' daily adjournment debate by the extent of participation by other interested members. This makes them genuine short debates rather than merely private dialogues between an MSP and a minister.

The CSG proposals also provided for a layer of direct engagement between citizens and the Parliament, through public petitions (chapter 8), and the encouragement of direct participation through committees (chapters 5 and 6). In addition, more informal means of contact have developed, through cross-party groups, (chapter 11), lobbying (chapter 10) and the like, as well as through direct contact with local MSPs, through correspondence, surgeries and other meetings.

A parliamentary ombudsman scheme was established on an interim basis by the initial legislation, which, as at Westminster, preserved a parliamentary involvement through the requirement for an 'MSP filter'. At the time of writing, this is under review by the Executive. It has proposed an overarching public sector ombudsman scheme, which would remove the necessity of the 'MSP filter'. The Scottish Parliamentary Ombudsman's first annual report, published in September 2000, showed that 47 new complaints had been received in the scheme's first nine months (from 1 July 1999 to 31 March 2000), which was "about three times the number of complaints against the Scottish Office and related bodies referred to the UK Parliamentary Ombudsman in the full year of 1998/99." Of the 53 complaints received (including 6 carried over from pre-devolution days), 32 were resolved, one by full investigation. None of these complaints was directed against the SPCB.

The public petitions system is one of the Parliament's more innovative procedures. Its performance in the first year has generally been regarded as successful, both in terms of providing a means for the ventilation of grievances and for public promotion of particular points of view. It is the one opportunity the public has of directly influencing the Parliament's agenda. As such, it can be, and is being, used as one weapon in a broader campaigning or lobbying strategy targeted at the Parliament and the Executive or other appropriate public agencies.

The constituency welfare work of elected members was not substantively dealt with by the CSG report. Nevertheless, the 3 versions of the Allowances Scheme thus far have implicitly accepted that MSPs have a representational responsibility to their locality, will hold regular surgeries, and otherwise deal with constituency casework. These Schemes have provided financial assistance for the provision of local offices and support staff. The Presiding Officer's July 2000 guidance on the relationship between MSPs, also recognised this 'constituency ombudsman' role (chapter 3). The general parliamentary and public

expectation that MSPs would undertake a constituency welfare role similar to that of Westminster MPs has been borne out in practice from the inception of the Parliament.

(6) *Managing itself effectively to carry out the above five functions*

This Study has emphasised the importance of how the Parliament operates as a functioning institution. This is not just a matter of organisational efficiency, but of a necessary and sufficient degree of autonomy and self-regulation appropriate to a parliament (chapter 10). In this context, the nature of the executive-parliamentary relationship is crucial, especially if executive influence extends, as at Westminster, beyond the arrangement of a parliament's proceedings and into matters of its internal administration.

Various mechanisms have been provided in the legislation and in Standing Orders for the central direction of the Parliament. These range from the SPCB and the Clerk/Chief Executive, through the presiding officers, to the Parliamentary Bureau and, more informally at present, the Conveners Liaison Group. How these various organs relate to each other will go far in determining the culture and ethos of the Parliament. Much depends on the personalities concerned, especially in the case of the Presiding Officer, who has a formal role in the Bureau and the SPCB. The first year demonstrated the powerful influence of party leaderships, through the Bureau, at the expense of backbench MSPs (individually and collectively), and there appeared to be a degree of competition between the Bureau and the Conveners Liaison Group over control of committee business matters.

Much of this internal administrative activity has not been conducted transparently, either in relation to MSPs as a whole, or to the wider public. Some steps were taken in early 2001 to make the business of the Bureau and of the SPCB more public, but it can be concluded that the internal management and operation of the Parliament remains an essentially closed matter. If not in breach of the letter of the CSG report, this is certainly contrary to its spirit. The thrust of the CSG vision was that the Parliament should operate efficiently and effectively, and within the spirit of the CSG key principles. This required genuine public participation, inclusiveness and equal opportunities, attributes which cannot flourish within a closed and private system.

The internal management of the Parliament is subject to a limited degree of accountability and scrutiny, through the publication of annual reports and statistics and, more recently, through publication of Bureau and SPCB minutes and decisions. Questions can be asked of the Presiding Officer, concerning SPCB matters, though this has in practice been restricted to written questions, and the idea of a Bureau Question Time has thus far been rejected. There appears to be little, if any, formal provision for the wider public to question the internal administration of the Parliament. Public confidence in the operational competence of the

Parliament has been shaken (whether fairly or not) by the Holyrood Building Project saga, and perceptions of secrecy cannot assist restoration of the public's faith.

13.4. The nature of the vision: a parliament with a purpose

When compared with Westminster, the Scottish Parliament is different in two crucial respects. One is negative: as a body created by statute, its power of self-regulation and autonomy is formally limited, and the highest Scottish court confirmed and approved that limitation in the Parliament's first year in the *Whaley* case (chapter 10). The catalyst for internal development and growth must come, therefore, from sources other than formal, inherent legal power.

However, the other is positive, and may well be regarded as just as crucial to its constitution, and to the scope for its development. That is the fact that the Parliament was created with a vision; it is, literally, a Parliament with a purpose. This Study has described throughout how that vision was not always clear or consistent when translated into specific procedures and practices. Nevertheless, the notion that the Parliament does have some form of fundamental, guiding purpose can be the catalyst for the development of a genuine and common ethos and culture within the Parliament itself.

It is in this respect that the CSG key principles play a key role. They provide the underlying vision for this unique Scottish parliamentary ethos. As demonstrated by more than a century of growing executive control at Westminster, the development and implementation of truly innovative and effective parliamentary procedures requires a strong foundation of principle and vision. For the Parliament, the real legacy of the CSG process is not the detail in its final report (although that was said to have been derived entirely from the principles), nor the 4 key principles in themselves   It is in the sense of purpose that grew out of the CSG process (itself the culmination of years of substantially open and participative policy-making), out of the very act of thinking about fundamental questions such as why the Parliament should be created and what it was for. This sense of purpose is much more than the sum of the individual principles, but that set of key principles as a whole can be regarded as convenient shorthand for what this Study has defined this as the *CSG vision*.

Assuming that the initiative for change in *how* the Parliament operates rests with the Parliament, in the short term at least,[163] the guiding light for such change will be that vision. This is how the Parliament, and all its parties and members, have openly declared that they

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[163] The UK Government and Parliament may well make significant changes to the overarching devolution scheme, as in the Parliament's membership and elections, the basic arrangements for devolved finance, or the boundary between devolved and reserved power. Changes in the political makeup of the governments and parliaments in Edinburgh and London may also be catalysts for structural change.

will operate, and this Study has described how they have sought to put that promise into practice. Any proposals made in this Study, therefore, are designed to be within the essential spirit of that vision.

The CSG vision is of a parliament which can be
- a forum where devolved governmental power is shared between the Executive, the people and itself,
- truly open, accessible and participative,
- effective in holding the Executive to account, and is itself accountable to the people, and
- an institution where the operation of equal opportunities is an integral component of its structure and operation.

For the Parliament to develop along these lines, it is necessary for the principles to remain as substantive benchmarks, and not to degenerate into meaningless slogans camouflaging undesirable trends in its procedures and practices. The Executive led the Parliament into accepting the spirit of the CSG principles within weeks of the Parliament's creation, and it incorporated them into its own workings through the *Scottish Ministerial Code*. It is therefore as incumbent on the Executive, as it is on the Parliament, to act always within the spirit of the CSG principles. That includes sharing its devolved power with the Parliament, and with the people of Scotland.

The relationship between the Executive and the Parliament will go far to shape how the Parliament develops. The muddled media and public confusion of 'the Parliament' and 'the Executive' as distinctive organs of devolved governance is, at last, diminishing. It is now becoming generally understood and accepted that 'consensus' and 'new politics' rhetoric of the SCC and the CSG does not mean the absence of genuine partisan debate and disagreement.

As the Parliament's first year has demonstrated, this may involve constructive friction between the two bodies when appropriate. The sign of a successful parliament is not one which smoothly and passively operates simply as a vehicle for the processing of executive legislation and as a platform for the announcement and validation of executive policy. In terms of the wider vision which created the Parliament, how the Parliament operates is as important as any crude, objective measure of operational efficiency. Robust debate and genuine expression of disagreement, even the necessity for changes in business programming, should be regarded as part of that vision, not a negation of it.

The following section makes some proposals for the future development of the Parliament in the spirit of this analysis, and arising out of the results of the audit exercise underpinning this research.

13.5. Some proposals

A fundamental revision of the role of the Parliament within the overall devolution scheme is something that is probably outwith its own competence to achieve. This would require action at UK level, in terms of the underlying devolution legislation. Subject to any such constitutional upheaval, the Parliament will not, for example, be transformed into some executive, governing body alongside the Scottish Executive, but will develop its present role as a parliament of the Westminster model family. This does not mean that it does not have the potential to develop that role in radical and innovative ways, both those which have been considered in the last 15 years, and in ways not yet seriously contemplated.

In this sense, the construction of the Parliament remains incomplete or unsatisfactory in certain respects. The following proposals are offered as possible options for consideration, and are aimed at entrenching the Parliament's autonomy, enhancing its accountability role and developing its openness and participativeness.[164]

(a) Examination of the statutory and legal basis of the Parliament so as to determine the maximum scope for internal development of its structure, procedures and practices. Though rather limiting, the Parliament's existing 'constitution' does provide opportunities for reform, which can be expressed in Standing Orders, parliamentary resolutions, internal guidance, or even in Acts of the Parliament. The Parliament recognised the symbolic and practical importance of taking ownership of its Standing Orders at an early stage. So that this approach can be developed more generally, the Parliament itself should examine how much initiative it has to determine its own development, within the existing statutory framework. This would also enable it to decide what, if any, changes to its founding legislation may also be desirable.

(b) Adoption of a resolution of the Parliament on the relationship between the Parliament and the Executive, which
- confirms that that it should operate on a basis of mutual acceptance of each other's autonomy, and adherence to the true spirit of the CSG vision,
- declares that the initiative in all matters relating to the Parliament, its business, organisation, procedures, resources and sitting patterns[165] belongs to the Parliament itself expressed through mechanisms and arrangements not dominated by any Executive of the day,

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[164] This section should be read in conjunction with the concluding sections in the individual chapters of this Study.

[165] As the Minister for Parliament said in a written answer on 5 February 2001, when asked if the Executive intended to make announcements during a parliamentary recess, "Government continues even when Parliament is in recess."

- ensures that any significant Executive rules or procedures on its interactions with the Parliament, such as those on the provision of information and documentation by its ministers and officials, will only be made following full consultation with the Parliament, and

- guarantees that any devolved legislation which would significantly affect the structure, operation or proceedings of the Parliament (including its members or its staff), will not be introduced by way of an Executive Bill, except where the Parliament agrees otherwise.

(c) Adoption of a Standing Orders rule that the party, or group of parties, forming the Executive does not have an overall majority on some or all committees, and on like parliamentary bodies. Applying the statutory and Standing Orders obligation of 'having regard' to party balance, so as to reflect as closely as possible the party balance in the Parliament, not only protects minorities, but also entrenches the primacy of the majority. This ensures Executive dominance over key aspects of the work of the Parliament, not totally dissimilar to that in the House of Commons. There is no logical reason for an Executive majority on bodies which are supposed to hold it to account. This proposal should, at the very least, be applied to mandatory committees such as Procedures, Standards, Equal Opportunities, Public Petitions and Audit, whose remits are not directly appropriate subjects for partisan politics.

(d) Reform of the Parliamentary Bureau's composition and procedure to ensure that the key function of the arrangement of the Parliament's business is conducted as openly and transparently as possible, and reflects the interests and priorities of the Parliament as a whole. This would include removal of the *de facto* Executive majority over parliamentary business management, by ending the 'block vote' of Bureau members, and through a broadening of Bureau membership, perhaps to reflect parliamentary interests other than party, or even to facilitate some direct public participation in its deliberations.

(e) Establishment of open and transparent mechanisms for the supervision and accountability of parliamentary organisation and administration, which would ensure the involvement of 'back-bench' members directly and collectively, rather than through their business managers and other party-based channels.[166] Important internal 'housekeeping' issues, such as members' allowances, the July 2000 guidance on relationships between MSPs, and the November 2000 resolution on executive accountability, should not be decided through the 'usual channels' or in private party caucuses, and then presented to the full Parliament for formal ratification with little or no public debate. The lesson of the unhappy experience of the June 1999 allowances debate should be that more, not less, openness is

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[166] The formal establishment of the Conveners Liaison Group should provide a necessary counterweight to the Bureau, and fill the existing gap at the heart of the Parliament's existing central administrative framework.

required in a mature and confident Parliament. These matters should be considered as thoroughly and openly by the Parliament as are Executive policies and legislation.

(f) Establishment of coordinated and focussed mechanisms for the scrutiny of core executive functions and actions: This would include scrutiny of policy areas currently within the portfolios of a number of different ministers, including the First Minister, the Minister for Justice and the Minister for Finance and Local Government, and subject to scrutiny by various parliamentary committees or by none, such as

- the structure, staffing and operation of the Scottish Administration (including particular common strategic policies such as freedom of information; 'quangos'/agencies and public appointments; minister/civil servant relationships, and 'modernising government' programmes), and
- inter-governmental relations with the UK and the devolved administrations, and other 'external relations'.[167]

(g) Expansion of inter-parliamentary relations and activities, at member and official level and otherwise, both in terms of individual 'parliaments' and like representative assemblies within the UK and beyond, and through relevant parliamentary associations

(h) Publication of comprehensive and accessible information and guidance by the Parliament on its organisation, procedures and practices. This would complement the currently incomplete existing sources, and should be available at various levels of detail, suitable both for those who wish to participate actively in the Parliament (including MSPs themselves, and their staff) and for those who simply wish to understand more about their Parliament. There should be a more open and transparent approach to the operation of the Parliament's business, with more advance information on the substance of future business, including committee agendas, and the terms of motions forming the basis of parliamentary business. The presumption should always be clearly in favour of publication, and against any outdated and inappropriate 'need to know' notions. The Parliament's twin aim should always be to inform its civic partners and to encourage their participation.

13.6 Conclusion

The CSG report, as fed into the initial Standing Orders and other parliamentary procedures and practices, may have consolidated the sort of parliament envisaged by the UK Government in the devolution legislation, rather than the more radical one envisaged by some. This more limited vision was carried forward in the early days, primarily by those in the Parliament and Executive who were not just brought up in pre-devolution Scottish

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[167] The Northern Ireland Assembly's Committee of the Centre might be a useful comparator for such scrutiny machinery.

politics and government, but were instrumental in the creation of that very vision. Within that context, the Parliament, in its first year, adhered to these proposals, and applied them in its operation. This was best demonstrated when it chose to maintain that fundamental structure, when it reformed, and took ownership of, its Standing Orders at the end of 1999.

The CSG process itself, and the vision it generated, have together provided the necessary catalyst for the creation of a living, vibrant parliament. Even in that first year or so of life, as well as managing both to establish itself and to fulfil its various parliamentary functions, the Parliament began to develop its own style, and to change that initial template. This was inevitable once the dry, theoretical blueprint met the reality of a representative assembly, composed of elected politicians, who were armed with a democratic mandate, and who came from a variety of political traditions. This variety, it must be remembered, even extended to their support or otherwise for the very existence of the devolution scheme itself, and therefore of the place of the Parliament in Scottish governance.

The Parliament has demonstrated in its initial year that it has the potential and the political will to outgrow that rather limited initial blueprint, and to become the sort of parliament of which the Scottish people can be proud. Despite the deluge of initial media and public criticism, opinion polls appear to show consistent public support for the Parliament, and media and academic opinion, such as that published on the various devolution anniversaries, has been generally favourable and supportive. The Parliament has rapidly developed into a model worthy of examination by similar bodies around the world, and even, albeit rather belatedly, at Westminster.

That the Parliament has established itself as a permanent and central fixture in Scottish governance, in so short a time, and under the difficult political and institutional circumstances described in this Study, is the most telling measure of its success in its first year.